THE LEGAL REGIME OF THE CONTINENTAL SHELF: WITH PARTICULAR REFERENCE TO THE PERSIAN GULF

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A.A.L.C.C.	Asian African Legal Consultative Council
A.D.M.D.	Abu Dhabi Marine Development
A.E.L.R.	The All England Law Report
A.I.O.C.	Anglo-Iranian Oil Company
A.J.I.L.	The American Journal of International Law
A.O.C.	Arabian Oil Company
Aramco.	Arabian-American Oil Company
B.Y.B.I.L.	The British Year-Book of International Law
E.E.C.	European Economic Community
E.E.Z.	Exclusive Economic Zone
F.A.O.	Food and Agriculture Organisation (U.N.)
F.C.O.	(British) Foreign and Commonwealth Office
G.C.C.S.	Geneva Convention on the Continental Shelf
H.M.S.O.	Her Majesty's Stationery Office
I.C.J.	International Court of Justice

I.C.L.Q.	The International and Comparative Law Quarterly
I.C.N.T.	Informal Composite Negotiating Text, prepared by UNCLOS III
I.L.C.	International Law Commission
I.L.M.	International Legal Materials
I.L.R.	International Law Reports
I.P.C.	Iraq Petroleum Company
I.S.A.	International Seabed Authority
M.E.E.S.	Middle East Economic Survey, A Weekly Review of News and Views on Middle East Oil, published by the Middle East Research and Publishing Centre, Beirut.
M.E.I.	Middle East International (monthly)
M.E.J.	Middle East Journal (quarterly)
n.d.	no date
N.I.O.C.	National Iranian Oil Company
O.A.U.	Organisation for African Unity
O.P.E.C.	Organisation of Petroleum Exporting Countries
P.D.R.Y.	People's Democratic Republic of Yemen
P.F.L.O.A.G.	The Popular Front for the Liberation of Oman and the Arab Gulf
P.L.O.	Palestine Liberation Organisation
R.S.N.T.	Revised Single Negotiating Text, prepared by UNCLOS III
S.I.	Statutory Instrument
S.N.T.	Single Negotiating Text, prepared by UNCLOS III
U.A.E.	United Arab Emirates
U.A.R.	United Arab Republic (Egypt)
U.K.T.S.	United Kingdom Treaty Series
U.N.C.L.O.S.	United Nations Conference on the Law of the Sea
U.N.E.S.C.O.	United Nations Educational, Scientific and Cultural Organisation
U.N.G.A.	United Nations General Assembly

U.N.L.S.	United Nations Legislative Series
U.N.T.S.	United Nations Treaty Series
Y.B.I.L.C.	The Year-Book of the I.L.C.

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INTRODUCTION

The legal status of the sea-bed and ocean floor is undoubtedly "one of the most important international problems of our time".[1] Some international lawyers have even suggested that the international conflict over the sea-bed is the most important dispute in man's history.[2] This significance arises from the enormous economic and strategic values associated with the sea-bed. With regard to economic values, the natural resources of the sea-bed and the subsoil of the deep sea and ocean floor have become accessible as the result of scientific and technological advances. Eventually, it will be possible to exploit all resources of the sea-bed at any depth.[3] This exploitation of the sea-bed resources will affect the economic balance of the world. With regard to strategic values, the Great Powers have already carried out considerable research on the question of military installations on the sea-bed. The exploitation of the strategic values of the sea-bed will affect the balance of power in the world.[4] Consequently, for both economic and strategic reasons, the legal status of the sea-bed and ocean floor will affect the very structure of international relations.

A comprehensive study which covers the legal regimes of various jurisdictional zones of the submarine areas (the bed and subsoil of the internal waters, the territorial sea-bed, the continental shelf, and the deep sea-bed and ocean floor) is highly desirable. However, such a study is too wide and impractical for the purpose of this thesis. The scope of this thesis is confined to the legal regime of the continental shelf. This regime provides exclusive

rights for coastal States to control and benefit from the submarine areas beyond the territorial sea up to the outer limit of the continental margin.

SUBJECT

This thesis falls into two main parts. Part I is concerned with the definition and delimitation of the continental shelf under both conventional and customary laws. Part II deals with the practice of the Persian Gulf coastal States with respect to their continental shelves.

The object of Part I is to present an up-to-date account of the development of the legal regime of the continental shelf. The study is primarily concerned with the quantitative aspects of the continental shelf, namely where its outer limit should be drawn and how it should be delimited between opposite and adjacent States. The qualitative aspects such as the degree and nature of coastal State's authority over its continental shelf are discussed only to a limited extent. The work does not deal in detail with the rights of coastal States to explore and exploit natural resources, control scientific research, gain military benefits, farm the sea-bed, or other possible exercisable rights within the continental shelf. All issues related to the International Sea-Bed Area (excluding the question of national - international boundary) also fall outside the scope of this thesis.

The subject of Part II is the clarification of the law of the continental shelf as applied and practised in the region of the Persian Gulf. The problem of defining the national-international

sea-bed boundary does not arise in enclosed or semi-enclosed seas such as the Persian Gulf. So the entire submarine area of the Persian Gulf falls within the legal definition of 'continental shelf'. The chief difficulty in such cases is the delimitation of the continental shelf among opposite and adjacent States. This study provides detailed background material regarding delimitation of the continental shelf among various Gulf States. It analyses all the mutual agreements on continental shelf boundaries in this region. Where the continental shelf boundaries are still undefined, it will first clarify the positions of the States concerned, and secondly, suggest the appropriate method for delimitation.

PURPOSE

The primary purpose of Part I of this study is to examine the development of the legal regime of the continental shelf during the last few decades (Chapter II). This requires scientific and legal definition of the term 'continental shelf' as well as clarification of the legal basis of the doctrine of the continental shelf (Chapter I). The ultimate purpose of Part I, however, is to present an analysis of all quantitative aspects of the continental shelf in the contemporary international law of the sea. This includes first national practices and policies on the continental shelf (Chapter III), and secondly, delimitation of the continental shelf between opposite and adjacent States (Chapter IV).

Part II examines the actions taken and policies followed by the coastal States of the Persian Gulf with respect to their continental shelves. The character of State practice on the continental shelf has been constitutive, and not merely declaratory.[5] Despite

such great significance the value of these unilateral acts has been one of the least studied issues in the technical field of international law.[6] This is clearly seen in the case of Gulf States practice, the study of which is most difficult on account of the scarcity of accurate information. Both the paucity of literature on the continental shelf practice of the Gulf States and the tremendous economic importance of the oil and gas resources of the Persian Gulf,[7] indicate the need for a comprehensive study of the continental shelf situation in the Gulf. It is the aim of the present thesis to meet this requirement.

METHOD OF STUDY

The presentation in this work follows the normal manuals of the international law of the sea. There are, no doubt, close interconnections between the legal, political and economic aspects of all issues related to the continental shelf. However, Part I of this study is purely a legal rather than a political or economic study. Where the non-legal discussions are occasionally set out, it is only in schematic fashion. This is compensated for in Part II, where the political backgrounds of delimitational issues in the Persian Gulf region are adequately discussed.

The evolutionary character of the law of the continental shelf is kept in constant view throughout the thesis. The pattern of this gradual development is generally taken here as beginning with the Gulf of Paria Treaty, 1942, and ending with the latest draft Convention on the Law of the Sea, July 15th, 1977, being debated at the Third United Nations Conference on the Law of the Sea (UNCLOS III). The intermediate stages of this pattern covered

here will include the Truman Proclamation, 1945, and its subsequent State practice, the proceedings of the International Law Comissions, 1950 - 1956 (I.L.C.), the First United Nations Conference on the Law of the Sea, 1958, the ruling of the InternationalCCourt of Justice (I.C.J.) in the North Sea Continental Shelf Cases, 1969, the resolutions adopted by the United Nations General Assembly, 1967 - 1973, and the proceedings of the United Nations Sea-Bed Committee, 1968 - 1973.

The constitutive nature of the early bilateral and unilateral actions on the continental shelf (such as the Gulf of Paria Treaty between the United Kingdom and Venezuela, 1942, and the Truman Proclamation, 1945) is kept in constant focus. Due weight is also given to the later contribution of national practices and policies to further developing the law of the continental shelf. The whole study in general, and Chapter III in particular, shows that all legal and political principles and doctrines have ultimately been dominated by the national economic interests of the States concerned.

SOURCES

The quantity of literature in the field of the law of the continental shelf is voluminous. For Part I, which deals with the quantitative aspects of the continental shelf, the following sources were used:

a. proceedings of the I.L.C.
b. proceedings of the 1958 UNCLOS
c. proceedings of the United Nations Sea-Bed Committee
d. resolutions of the different bodies of the United Nations on the law of the sea

e. proceedings of UNCLOS III

f. national proclamations and legislation

g. bilateral and multilateral treaties

The United Nations Publications, housed at the Mitchell Library, Glasgow, provided all aforementioned first-hand materials needed for Part I. The writings of international lawyers were used as secondary sources to elaborate the legal arguments. Thanks to the Inter-Library Loan Scheme all required materials could be consulted - with few exceptions - at the University of Glasgow Library. Research trips to the Library of the Institute of Advanced Legal Studies, London, provided direct access to such materials when necessary.

Written material on the practices and policies of the coastal States of the Persian Gulf with respect to the continental shelf is negligible. The author was highly dependent on the services provided by the following institutions in Iran:

a. The 'Legal Department' of the Ministry of Foreign Affairs

b. The 'Information Centre' of the Ministry of Information and Tourism

c. The 'Institute for International Political and Economic Studies', Tehran

d. The 'Inter-University Research and Information Centre' of the College of Mass Communication

Almost all these materials were in Persian. The official government Gazettes of other Gulf States (in Arabic) were also among the

first-hand sources. Statements made by the representatives of the different Gulf States at official international and regional conferences, specially those at the First and Third UNCLOS, were thoroughly examined.

As second sources, the result of any relevant published or unpublished researches in English, Persian, and Arabic were used. Most of the detailed information concerning the law of the continental shelf in the Persian Gulf were collected during research trips to Iran. Full use was made of any item of information obtainable by correspondence from the Embassies of the Gulf States in both London and Tehran, the legal departments of relevant Ministries in each of the Gulf States (such as the Ministries of Froeign Affairs, Ministries of Oil and Minerals, Ministries of Information, etc.), and any other official institutions inside or outside the region. Unfortunately language difficulties prevented the exploitation of other relevant world-wide research.

The author benefited from a personal visit to different parts of both shores of the Persian Gulf. Most secondary sources used for Part II were supplemented by interviews with the staff of Iran's Ministry of Foreign Affairs, members of the Iranian Delegation to UNCLOS, the legal advisors to the National Iranian Oil Company (NIOC), and numerous Iranian and Arab academic lawyers. Developments occuring after December 1978 have not been incorporated in the present study.

NOTES

1. FRIEDMANN, W., 'Foreward', in ANDRASSY, J., 'International Law and the Resources of the Sea', New York and London: Columbia University Press, 1970.

2. LUARD, 'The Control of Sea-Bed: A New International Issue', London: Heinemann 1974, P.vii.

3. FINLAY, L.W., 'The outer limit of the continental shelf', 64 AJIL (1970), P. 42.

4. See DUPUY, R.J., 'The Law of the Sea: Current Problems', Dobbs Ferry: Oceana Publications, 1974, p. 105.

5. SLOUKA, Z.J., 'International Custom and the Continental Shelf: A Study in the Dynamics of Customary Rules of Internationl Law', The Hague: Martinus Nijhoff, 1968, p. 24.

6. U.N. Secretariat, Memorandum on the Regime of the High Seas, Doc., A/CN. 4/32, July 4th, 1950, p. 89.

7. The Persian Gulf region is the largest single source of oil for the West and Japan.

CHAPTER I

THE DEFINITION OF THE CONTINENTAL SHELF

I. THE CHARACTERISTICS OF THE SUBMARINE AREAS: GEO-PHYSICAL AND LEGAL DEFINITION.

This Section deals with the definition of the different parts of the submarine areas. It is divided into two Sub-Sections. Sub-Section A gives a brief account of the submarine geology and geo-physics. Sub-Section B deals with the legal division of the submarine areas.

A. SUBMARINE GEOLOGY AND GEO-PHYSICS

The purpose of this Sub-Section is to give an accurate account of submarine geology. It presents the definition of some scientific terms which are relevant to the law of the continental shelf. Some physical facts regarding the dimensions of the submarine areas will also be given.

The greatest part (71%) of the solid crust of the earth is covered by the sea.[1] This part of the earth's crust, which lies directly under the fluid element, is called 'sea-bed'. The terms 'sea-bed', 'ocean floor', and 'sea-bottom' are synonymous.[2] The soil beneath the sea-bed is known as the subsoil of the sea. The sea-bed and the subsoil together are usually known as the submarine areas.[3]

The submarine areas are distinguished by different divisions and

subdivisions according to their physical characteristics. They may be classified in different categories.[4] The main dividing factor is the geological structure of the submarine areas which is basically either continental or oceanic in formation. This distinction, as will be shown, is the main reason for distinct legal regimes for the respective submarine areas. In the light of more accurate information, the submarine areas have been classified in three main second-order features, the continental margins, the deep sea-bed and ocean floor, and the major oceanic ridge systems.[5]

1. Continental Margin

The continental margin borders the continents and the larger islands. It covers 20.6 per cent of the sea-bed. As the word 'continental' adequately indicates, it has been proved that the continental margin is an extension of the same geological nature as the continents themselves.[6] The continental margin includes the continental shelves and shallow epicontinental seas that are now flooding continental areas, as well as the area between the shelves and the deep ocean basins.[7] The area of the continental margin may be subdivided into the continental shelf, the continental slope, and the continental rise. The geo-physical situation of these sub-divisions has been characterized as follows:

1.1 The Continental Shelf

The continental shelf refers to the zone around the continents, extending from the low-water line to the depth at which there is a marked increase of slope to greater slope.[8] The increase in depth is gradual until there is a steep slope to greater depth. Where this increase occurs, the term 'shelf edge'

is appropriate.[9] Conventionally, the outer edge of the continental shelf is taken at 100 fathoms (exactly 182.88 metres) or 200 metres. It may, however, lie between 20 and 300 fathoms.[10]

The continental shelves are characterized by structure and stratigraphy that are similar to, or are natural continuations of, the structure and stratigraphy of the adjacent land. That is why some mineral deposits found in upland locations (such as large deposits of petroleum and natural gas) are also found on and beneath the continental shelves.[11] The breadth of the continental shelf varies from a mile or so to 300 miles.[12]

1.2 The Continental Slope

The continental slope is the zone bordering the continental shelf. It extends seaward from the shelf edge at declivities of about 4°15' down to the depths of 1,200 - 3,500 metres. The outer edge of the continental slope approximately marks the boundary between the low density rocks of the continents and the high density ones of the deep ocean floor or the intermediate ones of the enclosed or marginal seas.[13] The continental slope has been described as:

> "(T)he greatest topographic feature on the face of earth an escarpment 3-1/2 km. high and over 350,000 km. in length, which is in turn the surface expression of the greatest structural discontinuity on the earth's surface, the transition from continental to oceanic crust."[14]

1.3 The Continental Rise

The continental rise is the zone that borders the base of many continental slopes. It exists in situations where the steep portion of the continental slope is terminated on its seaward edge by a gentle slope which may extend for a substantial distance into the deep-ocean basins. It has a smooth declivity that averages 30' to depth of 3,500 - 5,500 metres.[15] The sedimental structure of the continental rise creates a significant problem in some instances in locating the actual edge of the continental formation since it may overlie deep ocean structures at this seaward edge.[16]

2. The Deep Sea-Bed and Ocean Floor

The deep sea-bed and ocean floor is the oceanic crust which is thin and "quite different in nature from the continental crust underlying the continents and continental shelves and slopes". This covers a far larger area than the continental margin. The deep sea-bed and ocean floor includes the mid-oceanic ridge, deep sea trenches and plates, abyssal plains and hills, turbidities, and pelagic sediments.[17]

3. The Major Oceanic Ridge Systems

The third class of features may include shallow banks, aseismic ridges and seamounts. Some of the shallow banks, which rise from abysall depth, bear islands or islets; some other are entirely submerged. Aseismic ridges, the largest feature in this section, are all volcanic. Seamounts rising from the deep sea-bed and ocean floor are almost always volcanoes. Some are associated with seismic or aseismic ridges, others are independent.[18]

The following table shows the dimensions of the main sea-bed areas.[19]

Continental Shelf

Width:	Average:	40 - 60 miles
	Range:	less than 1 mile to over 750 miles
Depth:	(outer edge)	
	Average:	436 feet (133 metres)
	Range:	164 - 1, 804 feet (50 - 550 metres)
	General Range:	436 - 656 feet (133 - 200 metres)
Gradient:	Average:	1 : 600 (0.1°)

Continental Slope

Width:	Average:	10 - 20 miles (16.1 - 32.2 kms.)
	Range:	9.3 - 50 miles (15 - 80.5 kms.)
Depth:	(outer edge)	
	Average:	5,998.4 feet (1,830 metres)
	Range:	3,280 - 16,400 feet (1,000 - 5,000 metres)
Gradient:	Common Range:	2° - 6°
	Average:	about 1 : 14 (4°)

Continental Rise

Width:	Range:	May be as much as 620 miles
Depth:	Range:	4,920 - 16,400 feet (1,500 - 5,000 metres)
Gradient:	Range:	Less than 1.40 (about 1.5°) down to 1 : 1.000
Thickness:	May be 0.6 - 6.2 miles (1 - 10 kms.)	

Percentage of Sea Floor at Various Depths

According to Sevendrup, Johnson and Fleming in 'The Oceans;' 1942, the percentage of sea floor between various depth is as follows:

Depth Internal (metres)	Individual Zones	Cumulative Total
0 - 200	7.6	7.6
200 - 1,000	4.3	11.9
1.000 - 2,000	4.2	16.1
2,000 - 3,000	6.8	22.9

B. LEGAL DIVISION OF THE SUBMARINE AREAS

The submarine areas of the closed (or inland) seas and those of the open seas are subject to different legal regimes. Also the various parts of the submarine areas of the open seas are under different legal regimes. The submarine areas may be divided into four jurisdictional zones, the bed and subsoil of the internal waters, the territorial sea-bed, the continental shelf, and the deep sea-bed and ocean floor.[20]

1. The Bed and Subsoil of the Internal Waters

The terms 'internal waters' and 'inland waters' are synonymous in the legal sense. The submarine areas of the inland or closed seas (like the Caspian Sea) and internal waters (consisting of bays, harbors, and other incursions of the sea into the land) are under the legal regime of complete territorial sovereignty.

Article 5(1) of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958) states that the waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.[21] Therefore, the sea-bed and subsoil of such parts of the open seas immediately adjacent to the coasts are subject to the same legal regime as the inland or closed seas. That is to say that the coastal State exercises over the submarine areas of both inland seas and internal waters the same sovereignty as it exercises over its land territory. This legal status is based on the ancient rule that the sovereignty of the State, in its territory, extends 'usque ad caelum et ad infernos' (up to the heavens and down to the depths).[22]

2. The Territorial Sea-Bed

In contemporary international law the territorial sea along with its bed and subsoil, as well as the air space over it, falls within the sovereignty of the coastal States. The territorial sovereignty of the coastal States over the territorial sea-bed is absolute, and should be interpreted in its most strict sense. As regards the territorial waters, however, the sovereignty of the coastal States is subject to the jurisdiction of flag States of the foreign vessels and to the right of innocent passage of foreign ships through the sea (unlike foreign aircraft which have no right of innocent passage).[23]

3. The Continental Shelf

According to the traditional regime of the high seas, the submarine areas beyond the territorial waters could not be under the sovereignty of any State.[24] A new legal norm, however, evolved

when the wealth of the submarine areas outside the territorial sea was found to be of enormous potential.[25] In order to conserve and utilise these resources the coastal States put forward claims to exclusive rights over the economic resources on or under submarine ares outside the territorial sea-bed but adjacent to it. In consequence of governments' claims from the 1940's onward, a specialized legal regime, known as the regime of the continental shelf, was established. This regime provides exclusive rights for coastal States in respect of the resources found at the sea-bed and the subsoil of the submarine areas adjacent to the coasts outside the territorial seas.

The geological definition of the term 'continental shelf' has already been discussed.[26] The legal and scientific references to the continental shelf are not identical. They differ basically in determining both the inner and the outer limits of the continental shelf.

The continental shelf is geologically defined as the zone around the continents or larger islands. In other words, the portion of the continental shelf starts immediately from the coast. In legal terms, however, the sea-bed directly adjacent to the coast is not part of the continental shelf, it may be the floor of either internal or territorial waters. The inner limit of the continental shelf, in the legal sense, is the outer edge of the sea-bed of the territorial waters. This is to say that the outer limit of the sea-bed and subsoil of the territorial sea represents the inner limit of the continental shelf.

The outer limit of the continental shelf is not the same in legal and geological senses. According to customary international law, the seaward limit of the continental shelf is the outer edge of the continental margin.[27] Article 1 of the Geneva Convention on the Continental Shelf, 1958 (GCCS) defines the continental shelf as the "sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas".[28] The isobath and exploitability criteria may or may not be found in the geological continental shelf. Professor E.D. Brown, writing in 1970, asserts that the legal continental shelf under Article 1 of the GCCS may extend even beyond the natural prolongation of the land territory.[29]

Furthermore, the 'fall off' of the continental shelf towards the ocean floor is a substantial element in the geological definition of the shelf.[30] The legal regime of the continental shelf, however, is applied to those regions which do not reach an abrupt 'fall off', like the North Sea, the Baltic Sea, and the Persian Gulf.[31] The continental shelf in the legal sense, therefore, neither starts nor ends at the same point as the continental shelf in geological terms.

4. <u>The Deep Sea-Bed and Ocean Floor</u>

The deep sea-bed and ocean floor, namely, all submarine areas beyond the legal continental shelf, are subject to an international regime which is in the process of being developed at the Third United Nations Conference on the Law of the Sea (UNCLOS III).

This regime is based on a concept which recognizes the submarine areas beyond national jurisdiction as the 'common heritage of mankind'.[32] This term, previously unknown in legal terminology, expresses new programmes and aspirations in international relations. The envisaged international regime shall provide for the orderly and safe development and rational management of the 'common heritage of mankind'. Accordingly the development of the deep sea-bed and ocean floor beyond national jurisdiction shall be undertaken in such a way as to foster the healthy development of the world economy with due consideration to the needs and interests of developing States.[33]

II. THE LAW OF THE CONTINENTAL SHELF IN THEORY

This section presents the theoretical background of the law of the continental shelf. It reviews the various legal bases according to which the claims over the continental shelf have been considered.

A. VARIOUS DOCTRINES REGARDING THE LEGAL REGIME OF THE CONTINENTAL SHELF

Here five principal points of view regarding the legal basis of the submarine areas beneath the high seas are discussed.

1. Res Communis

The traditional legal concept of '*res communis*' is usually

credited to Hugo Grotius, a seventeenth century Dutchman. Grotius' 'Mare Liberum' set out to correct the claims to exclusive rights of navigation over the high seas. His theory of '<u>res communis</u>' holds that the submarine areas of the high seas cannot in whole or part be under the sovereignty of any State or group of States. This opinion is based upon the doctrine that the high seas are the common property of mankind, '<u>res omnium communis</u>', namely that the high seas and their resources belong to no-one and to everyone equally. This concept indicates that nobody can claim exclusive rights over the resources of the submarine areas of the high seas.[34]

The concept of '<u>res communis</u>' would not allow the coastal States to claim any exclusive right over the submarine areas beyond the territorial sea. So it was thought, from 1950 onwards, that the development of all submarine resources beyond the limits of national jurisdiction should be entrusted to the international community.[35] Such proposals were criticized both on the ground of doctrine and because of their shortcomings regarding the practical development of the submarine resources adjacent to the territorial sea-bed.

Theoretically the concept of '<u>res communis</u>' was originally established to safeguard communication, transporting of goods, scientific investigation, and limited fishery in the high seas. The validity of this theory, especially in respect of the development of the living and non-living resources of the high seas, seemed questionable.[36] Moreover, there seemed no necessary reason why submarine areas should be subjected to the same legal regime as the waters of the high seas.[37] It was recognised that the subsoil

was different from the high seas in that it was not incapable of exclusive jurisdiction.[38]

The notion of '<u>res communis</u>' was also rejected in practice. Such a concept could not safeguard the security and economic interests of the States concerned. The coastal States, as will be shown,[39] did unilaterally assert their exclusive rights over the resources of the submarine areas adjacent to their coasts beyond the limits of the territorial waters.[40] These unilateral actions made a significant contribution towards the development of the law of the continental shelf.

At present the principle of '<u>res communis</u>' applies to the deep sea-bed and ocean floor beyond the limits of national jurisdiction.[41] This status was confirmed by the United Nations in its Resolution of December 17th, 1970, according to which the resources of the deep sea-bed and ocean floor beyond the legal continental shelf were recognised as the common heritage of mankind.[42] This concept has been also incorporated in Article 136 of the Informal Composite Negotiating Text (ICNT), prepared by UNCLOS III, July 15th, 1977.[43]

2. <u>Terra Nullius</u>

One of the modes by which States may acquire legal title to a territory is occupation.[44] According to general international law prior to 1945, it would appear that the sea-bed and subsoil of the high seas possessed the legal status of '<u>terra nullius</u>' (no-State's land). Professor H. Kelsen, writing in 1952, maintained that the area of the continental shelf was no-State's land and could therefore be acquired through effective occupation, provided

only that such occupation in no way interfered with the freedom of the high seas.[45] As an early example, the sovereign rights of States over tunnels made under the high seas were thought to be based upon a sort of occupation.[46] It was similarly argued that the subsoil and perhaps the sea-bed of the high seas could lawfully be appropriated to States by virtue of occupation.[47]

Some international lawyers drew distinction between the sea-bed and its subsoil. Oppenheim was of the opinion that no part of the bed of the high seas beyond the territorial sea could be the object of occupation. He, however, pointed out that the subsoil of the bed of the high seas might become the object of occupation by driving mines and piercing tunnels and the like from the coast.[48] Submarine coal mines worked by shafts driven outwards from the land through the subsoil of the sea-bed used to be exploited prior to the jurisdictional claims of the coastal States.[49] Also the proposed construction of a tunnel under the subsoil between Britain and France met no major objection.[50] Oppenheim suggested that the occupation of the subsoil of the high seas could in this way be extended up to the boundary line of the territorial maritime belt of another State.[51]

The concept of '<u>terra nullius</u>' would theoretically, permit exclusive appropriation of all the submarine areas of the high seas irrespective of their distance and depth. However, the submarine areas beneath the high seas were later thought to be capable of exclusive appropriation by occupation only up to the geological limit of the continental shelf. It was held that the sea-bed and subsoil, up to the outer limit of the continental shelf, were

without owner, 'res nullius' until occupied by some State.[52] Accordingly the resources of the continental shelf, were analogized to unoccupied islands or swimming fish, capable of being acquired by assertion of jurisdiction and acquiescence therein or occupation.[53]

It is necessary to consider the implications of the element of physical and effective occupation originally attached to the concept of 'terra nullius' as a condition of possession or acquisition of title. This condition seems to be unjustified in the case of developing States, which are technologically less capable of developing the submarine resources.[54] The concept of effectiveness was in such cases proposed to be applied only in a general and substantially figurative manner.[55] It was generally agreed that 'notional' occupation was sufficient to acquire legal title by a coastal State over its continental shelf.[56] An analysis of this view proves a lack either of justification or of logical reasoning. If occupation were necessary it would not be just, alternatively if mere 'notional' occupation were adequate, then the effective 'occupation' would not be necessary.[57] This is why the International Law Commission (I.L.C.) of 1950 suggested that efforts to derive a theory as to the legal status of the submarine areas beneath the high seas from the traditional concepts of the high seas as 'res communis' or as 'res nullius' were of little practical value.[58]

Article 2(3) of the GCCS provided that neither occupation - effective or notional - nor proclamation was required to assert States' rights over their continental shelves.[59] This concept has also been confirmed in Article 77(3) of the ICNT according to

which the exclusive rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.[60] Therefore, the concept of 'res nullius', as the basis of the continental shelf doctrine has been totally rejected in international law.

3. Constitutive State Practice

The practice of individual States with respect to the continental shelf has been described as constitutive, and not merely declaratory.[61] This was first expressed by the United Nations in 1950 within a memorandum to the I.L.C.[62] The memorandum stated that unilateral proclamations, like that of President Truman of the United States on the continental shelf, September 28th, 1945,[63] might constitute the origin of a new law, and have force of law in the international sphere. This status seems justified since unilateral declarations on the continental shelf are not intended to be of a purely domestic nature.[64]

Unilateral acts of this kind, as well as similar bilateral acts like the Gulf of Paria treaty,[65] were facts which could not be entirely ignored by other States. It was argued that the Truman Proclamation might even be regarded as providing the seed from which legal right and international rules concerning the doctrine of the continental shelf might grow.[66] This view was well presented by Professor Lauterpacht, who in 1950 argued that the unilateral declarations, when not followed by protests from other States, had created the necessary custom, thus constituting evidence of the sovereignty of coastal States over adjacent submarine areas.[67] This view was by no means unanimously held.[68]

It is, however, generally accepted that such unilateral acts, far from being inconsistent with international law, developed into rules of customary international law through gradual acceptance by States.[69]

It is obvious that States, by acting or failing to act in respect of a specific international issue, shape the appropriate legal norm in that particular sphere. However, the acts of States should develop until they become international customary rules so as to be binding in international law. As will be shown later,[70] the acts of States require certain criteria to be established as binding international custom. A mere unilateral proclamation, therefore, can neither vest any legal right to sovereignty in a particular State, nor create any new rules of international law. This was demonstrated by the I.L.C. (1951) which was unwilling to give the authority of a legal rule to unilateral practice resting solely on the will of States concerned.[71] The effects of the unilateral acts should not at any rate be exaggerated as it was by Professor J.M. Yepes of Bogata. Yepes asserted that the Truman Proclamation "constituted a veritable customary law". Thus, he argued, the I.L.C. (1950) should give recognition to the doctrine of the continental shelf.[72] The I.L.C. (1956) did not identify any rules on the continental shelf as having acquired the status of custom.[73]

In summation, it is accepted that although the unilateral act of States does not in itself create any new rights or any new rules of international law, the currently well-known legal regime of the continental shelf was originated in consequence of the unilateral acts of States from the 1940's onward.[74]

4. International Customary Rules

International customs must be recognized as evidence of general practice accepted in international law.[75] The international customary rules are characterized by two recognized facts: first they originate in national policies manifested in the conduct of States; and secondly, their growth is evolutionary. These customs must be proved to be established in such a manner that they have become binding on the parties concerned. They must also be in accordance with a constant and uniform usage, practised by the States concerned.[76]

The international customary law is obviously unable to evolve rapidly in response to new problems of the law of the sea. This inability of the customary law, plus the increasing desire of States to limit possible causes of friction, has given rise to the increasing evolution of the law of the sea through multilateral and bilateral treaties, arising out of preparatory work of international legal bodies and conferences. These treaties, however, are themselves recognized as bases for the development of customary rules. At any rate, custom at present is no longer as predominant or as important a source of law as it was in the formative period of international law.

Customary rules of contemporary international law tend to be articulated by the work of public or semi-public international bodies concerned with the codification of international law. The evolution of the doctrine of the continental shelf demonstrates an interplay between the growth or modification of custom and its codification in a law-making treaty. The practice of States on

the continental shelf led to legal debates by the I.L.C., the 1958 UNCLOS and the eventual adoption of the GCCS. Custom, therefore, is still an important factor in the evolution or modification of the principles of international law. It is, however, closely linked with the subsequent articulation of rules by international treaties.[77]

It is frequently said that the various Geneva Conventions on the law of the Sea (1958), coupled with the judgment of the I.C.J. in the North Sea Continental Shelf Cases, have established that the continental shelf rights flow from customary international law. However, the traditional requirements for the coming into existence of a new general rule of customary international law, such as the generality of the new practice, its duration, and the attendant '<u>opinio juris</u>' did not survive the continental shelf debate unscathed.[78]

To consider rules relating to the legal norm of the continental shelf under international customary law one must look for evidence through the proceedings and statements made before the I.L.C., the ruling of the I.C.J. in the North Sea Continental Shelf Cases, and municipal declarations and legislation.

4.1 <u>Proceedings of the I.L.C.</u>

Codification attempts in the developing, dynamic, and turbulent field of the law of the continental shelf proved very difficult tasks in the I.L.C. The Commission succeeded in adopting several draft articles governing the legal regime of the continental shelf. The 1956 draft articles were ultimately

incorporated in the GCCS. These provisions were soon inadequate to meet the needs of the international community. The value of the I.L.C. deliberations, however, was not limited to codification, but they were also important because they clarified the policies of the individual States as well as the customary rules of international law.

Until 1950 there was no definite conclusion concerning the legal validity of the continental shelf.[79] At that time it was claimed that the declaration of sovereign rights to submarine areas beneath the high seas was contrary to the long-established principle of the freedom of the high seas.[80] In 1950 the I.L.C. distinguished problems of jurisdiction over the surface of the high seas and control of its fishing resources, from jurisdiction and control over the resources of the sea-bed and subsoil.[81] That is to say, while the surface of the high seas is subject to the regime of the freedom of the high seas, their submarine areas adjacent to the coast are subject to the control of the coastal States. Also a valuable Memorandum on the Regime of the High Seas prepared by the United Nations Secretariat for the I.L.C. (1950) pointed out that the principle of the freedom of the high seas did not provide a regime for the utilization of the high seas.[82] In this way the legal validity of the continental shelf doctrine was established.

The I.L.C. (1950), in reply to the questions posed by Judge Manley O. Hudson, was of the opinion that the sea-bed and subsoil outside the territorial sea adjacent to the coast was 'ipso jure' subject to the control and jurisdiction of the

littoral State. Other possibilities considered but rejected were first that these areas were 'res nullius', secondly, that they were 'res communis', and lastly, that they were subject to the exercise of control and jurisdiction for the limited purpose of exploring and exploiting the natural resources.[83]

The I.L.C. justified the doctrine of the continental shelf on several practical, political, and geological grounds. Practically, the Commission pointed out, the effective exploitation of the natural resources of the submarine areas would depend on the existence of installations and devices on the territory of the contiguous coastal States.[84] Most importantly the Commission (1956) regarded the cardinal principle of 'natural prolongation of the land territory' as the fundamental basis of the legal doctrine of the continental shelf. The Commission found it impossible to disregard the geo-physical relationship between the submarine areas up to the outer limit of the continental shelf and the adjacent non-submerged territory of the coastal State.[86]

4.2 Ruling of the I.C.J.

Decisions of international courts constitute the most important means for the determination of rules and principles of international law.[87] Several international disputes in respect of delimitation of the continental shelf between adjacent and opposite States have been submitted to international courts and tribunals. The most significant of these is the ruling of the I.C.J. in the North Sea Continental Shelf Cases. This judgment is especially historic in its consequences for international custom.

The North Sea Continental Shelf Cases concerned disputes between the Federal Republic of Germany and the Netherlands and Denmark over the boundaries of their respective continental shelves in the North Sea. The Netherlands and Denmark contended that the boundaries (both between themselves and the Federal Republic) should be delimited on the basis of the principles and rules of international law as described in Article 6(2) of the GCCS. Since the States concerned were in disagreement, and no 'special circumstances' were established, Denmark and the Netherlands contended that the boundary should be determined by application of the principle of equidistance. The Federal Republic considered that such delimitations would be inequitable to the Federal Republic because of its concave coast. It maintained that the equidistance method was not a rule of customary international law; that even if Article 6(2) were applicable between the Parties, 'special circumstances' would exclude the application of the equidistance method in the North Sea.[88]

On February 2nd, 1967, the three Governments agreed to submit their disputes to the I.C.J. While Denmark and the Netherlands were Parties to the GCCS, the Federal Republic of Germany was not a party and the I.C.J. was compelled to look for international customary rules.

In the eyes of the majority judgment, 'the most fundamental rule was that the continental shelf constituted a natural progongation of the land territory into and under the sea'.[89] Consequently, the Court did not accept that the equidistance method formed part of the natural law of the continental shelf. The principle of natural prolongation also implied

that the whole of the continental margin should be regarded as legal continental shelf. The reason for this interpretation of the Court's judgment is that the natural prolongation of the continent ends where the real ocean begins, that is to say at the outer limit of the continental margin. The ruling also declared that the exclusive rights of the coastal States over the continental shelf had already entered into the domain of general international law. This statement meant effectively the recognition of the legal doctrine of the continental shelf in international customary law.[90]

4.3 Municipal Proclamations and Legislation

It was established[91] that the unilateral acts of States could have no definite legal effect.[92] Nonetheless, it is undeniable that the legal regime of the continental shelf was originated in consequence of the unilateral declarations made by individual States. It is, therefore, regrettable that the value of these unilateral acts is one of the least studied issues in the technical field of international law.[93] So a review of the municipal declarations and enactments is essential for a realistic examination of what originated the present customary rules of international law regarding the regime of the continental shelf.[94]

Subsequent to the Truman Proclamation of September 28th, 1945, continental shelf claims were made by several coastal States. Continental shelf rights were limited to the sea-bed and sub-soil of the high seas adjacent to the coast outside territorial waters.[95] However, some Latin American States put forward

continental shelf claims which included exclusive rights of sovereignty over waters above the continental shelf.[96] Both categories of these proclamations failed to define the term 'continental shelf',

Neither the Truman Proclamation nor its Executive Order defined the continental shelf, but an accompaning press release described the continental shelf as those submarine areas, of no more than one hundred fathoms depth, adjacent to the coast.[97] Other States deliberately avoided defining the term 'continental shelf'. The United Kingdom Continental Shelf Act of 1964 - passed years after the GCCS to which the United Kingdom is a party - did not define the continental shelf. Reference was made to 'any rights exercisable by the United Kingdom outside territorial waters with respect to the seabed and subsoil and their natural resources'.[98] Some highly conservative municipal legislation on this issue, such as Iran's Law of June 19th, 1955, merely stated that a particular term in native language had the same meaning as 'continental shelf' in English and 'plateau continental' in French.[99]

The municipal proclamations and legislation with respect to the continental shelf were inadequate to constitute the appropriate customary rules in this field.. There were no legal principles common to all municipal laws to afford evidence of general practice, except, of course, where the GCCS become, automatically, part of municipal laws of the party States by virtue of ratification.

5. Natural Prolongation

The theory of 'natural prolongation of the territory' in international law has often been used to support territorial claims by States.[100] It is accordingly argued that the continental shelf, being the natural prolongation of the land territory, should be inherently subject to the sovereignty of the coastal States. This doctrine was supported by the I.L.C. (1956), the I.C.J. (1969), and UNCLOS III (1973 - 1977). The I.L.C. stated in its 1956 report:

> "Neither is it possible to disregard the geographical phenomenon whatever the term - propinquity, contiguity, geographical continuity, appurtenance or identity - used to define the relationship between the submarine areas in question and the adjacent non-submerged land".[101]

The I.C.J. in reaching its decision in the North Sea Continental Shelf Cases, confirmed the principle of natural progongation. The Court established that the title of the coastal State to its continental shelf was based on the fact that the submarine areas concerned might be deemed to be actually part of the territory over which the coastal State already had dominion.[102] It said that:

> "The right of the coastal State in respect of the area of the continental shelf that constitutes a natural prolongation of its land territory into and under the sea exists ipso facto and ab initio, by virtue of its sovereign rights for the purpose of exploring the sea-bed and exploiting its natural resources."[103]

Article 76 of the I.C.N.T. has specifically referred to the principle of natural prolongation. The Article defines the continental shelf of a coastal State as the sea-bed and subsoil of submarine areas that extend beyond its territorial sea "through the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles."[104]

The cardinal principle of 'natural prolongation of territory', therefore, must be accepted as the prevailing view regarding the legal basis upon which the doctrine of the continental shelf rests. On such a theory, neither occupation nor declaration is essential to establish the exclusive rights of the coastal States over the areas of the continental shelf. It is important, however, to notice that the principle of natural prolongation is not absolute, but may be subject to qualification in particular situations. The Court of Arbitration, in reaching its decision on the delimitation of the continental shelf between the United Kingdom and France, adopted this view in the region of the Channel Islands.[105] The Court rejected the mere principle of natural prolongation of the Channel Islands in areas adjacent to the French coast - distant from the British mainland.[106] The Court, under the customary law, applied the principle of natural prolongation subject both to the relevant geographical and other circumstances, and to any relevant consideration of law and equity.[107]

B. THE LEGAL JUSTIFICATION OF EARLY CLAIMS

It is of significance to consider how far each of the five above-mentioned theories was taken into account when the early claims over the continental shelf arose.

As early as 1942, the United Kingdom and Venezuela divided the submarine areas beneath the high seas of the Gulf of Paria between themselves.[107] In all, three reasons have been adduced to justify this partition of the sea-bed. These were offered a few years before the signing of the Treaty. The first reason was that the sovereignty of the coastal State extends over the shallow soil and subsoil of sea since these areas are the extension of land territory. Secondly, in accordance with the theory of 'terra nullius', effective occupation implies the acquisition of property. Thirdly, the Gulf of Paria is so shallow that its coastal States are justified in claiming it for themselves as national waters including the subsoil underneath subject to the surface rights of third parties.[109]

In 1945 the Truman Porclamation justified unilateral extension of the United States' jurisdiction and control over the continental shelf adjacent to its coasts on three basic grounds. The most important reason was that the "continental shelf may be regarded as an extension of the mainland of the coastal nation, and thus naturally appurtenant to it". This geographical phenomenon was supported by the fact that the continental shelf resources "frequently form a seaward extension of a pool or deposit lying within the territory" of the coastal States. The second reason

was that "the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore". Finally, referring to security reasons, the Proclamation stated that "self-protection compels a coastal nation to keep close watch over activities off its shores".[110]

The Saudi Arabian Royal Pronouncement of May 28th, 1949, dealing with the subsoil and sea-bed of areas of the Persian Gulf outside of territorial waters was basically justified on a concept of contiguity, which was not precisely defined.[111] Also the Proclamations of the rulers of Bahrain, Qatar, Kuwait, Abu Dhabi, Dubai, Sharjah, Ajman, Umm al Qaiwain, and Ras al-Khaimah were all based upon the same concept of contiguity without further explanation.[112]

Claims over contiguous territories have a long history in the practice of States. However, it is doubtful in international law if territorial acquisition is justified solely on the basis of contiguity. It is argued that contiguity is an aspect of possession, not the basis of title independent of possession.[113] Whatever the validity of the doctrine of contiguity as regards onshore acquisition may be, its enforcement is definitive concerning claims to extend continental shelf regions and fishing zones. This was supported by the I.C.J.'s ruling in the North Sea Continental Shelf Cases.[114]

The formulation of the Pronouncement of Saudi Arabia, was similar to the Truman Proclamation. It was justified on the ground of self-protection and because the exercise of jurisdiction over the shelf resources was 'reasonable and just'. It also went on

to affirm that the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore. Saudi Arabia, Kuwait, and Qatar have also specifically referred to international practice on this issue within their Proclamations dealing with the subsoil and sea-bed of areas of the Persian Gulf outside territorial waters.

Saudi Arabia and all nine Arab Emirates avoided the use of the term 'continental shelf'. This was apparently the result of arguments over the existence or non-existence of a continental shelf in the Persian Gulf. Iran and Oman are the only two Gulf States which have specifically referred to the term 'continental shelf' in their shelf proclamations.

The Iranian draft legislation of 1949, which was finally passed as the law of June 19th, 1955, was designed to conform to the concept of the 'continental shelf'. While other coastal States of the Persian Gulf avoided the use of the term 'continental shelf' in their 1949 Procalmations, Iran asserted its rights to the submarine areas of the high seas of the Persian Gulf and the Gulf of Oman with particular reference to the English and French terms of 'continental shelf' and 'plateau continental'.[115] It is suggested that the reference to the 'continental shelf' in the Iranian Law of 1955 might have been relevant to Iran's previous claim over the Bahrain Islands.[116] This means that the legal doctrine of the continental shelf, which justifies the right of coastal States on the basis of natural prolongation, would have been deemed to assert Iran's claim over submarine areas adjacent to Bahrain.

The Omani Decree of July 17th, 1972 was, however, more in line with

the legal definition of the continental shelf. Article 4 of the Decree specifically defined the Sultanate's continental shelf as the sea-bed and natural resources upon and beneath the sea-bed adjacent to the coast of Oman to a depth of 200 metres or to such greater depth as may admit of the exploitation of the natural resources.[117] Oman is the only Gulf State which has adopted a certain objective criterion such as 200 isobath, plus the dynamic criterion of exploitability test, as to the limits of its continental shelf. Oman, though not a party to the 1958 Geneva Convention on the Continental Shelf has obviously stuck to the criteria provided by Article 1 of the Convention. This is very important especially because Oman's continental shelf in the Arabian Sea is sometimes deeper than 200 metres.

Dr. B.A. Al-Awadhi of Kuwait University states that by ommission of the term 'continental shelf' it was not intended to avoid the legal basis of the continental shelf. She argues that this was simply because the Gulf Emirates were in protectorate relationship with the United Kingdom which had already avoided the term 'continental shelf' in the United Kingdom - Venezuela Treaty of 1942.[118] This argument, however, breaks down on two grounds. Firstly because not only the British protected Gulf States but also the Kingdom of Saudi Arabia avoided the term 'continental shelf'. Secondly because the United Kingdom itself has referred to the term 'continental shelf' both in domestic legislation and in international agreements since 1942.[119]

NOTES

1. DRAKE, IMBRIE, KNAUSS, and TUREKIAN, 'Oceanography', New York: Holt, Rinehart and Winston, 1978, p. 35.

2. ANDRASSY, J., 'International Law and the Resources of the Sea', New York and London: Columbia University Press, 1970, p. 3.

3. As used first in the Treaty between the United Kingdom and Venezuela, February 26th, 1942. For the text see, 1942 U.K.T.S., No. 10, Cmd. 6400, pp. 1 - 7.

4. For full details consult the following sources, GUILCHER, 'Geo-physical characteristics', in CHURCHILL, SIMMONDS, and WELCH, ed., 'New Directions in the Law of the Sea', New York: Oceana Publications INC., 1973, Vol III, p. 109; UNESCO, 'Scientific Considerations Relating to the Continental Shelf', U.N. DOC. A/CONF. 13/2 and Add. 1; also sources recommended in, KNIGHT, G., 'The Law of the Sea: Cases, Documents, and Readings', Washington, D.C.: Nautilus Press, 1976 - 1977, pp. 433 - 439; and in BROWN E.D., 'The Legal Regime of Hydrospace', London: Stevens & Sons, 1971, pp. 74 - 78.

5. DRAKE, etc., op cit, note 1, at p. 45.

6. Ibid, p. 45; also GUILCHER, op cit, note 4, at p. 110.

7. DRAKE, E. etc., op cit, note 1, p. 45

8. UNCLOS 1958, Official Records, Vol 1, (A/CONF. 13/37).

9. GUILCHER, op cit, note 4, p. 104.

10. BOGGS, S.W., 'Delimitation of seaward areas under national jurisdiction', 45 AJIL (1951), supp., p.240 at 245.

11. KNIGHT, op cit, note 4, pp. 433 - 434.

12. LUARD, E., ' The Control of the Sea-Bed: A New International Issue', London: Heinemann, 1974, p. 4; also BROWNLIE, I., 'Principles of Public International Law', Oxford: Clarendon Press, 1973, 2nd ed., p. 221.

13. GUILCHER, op cit, note 4, p. 110.

14. KNIGHT, op cit, note 4, p. 434.

15. GUILCHER, op cit, p. 110

16. KNIGHT, op cit, p. 435.

17. GUILCHER, op cit, 114 - 118.

18. Ibid, 118.

19. BROWN, E.D., op cit, note 4, at pp. 35 - 36; the same reappeared in LUARD, op cit, note 12, p. 20.

20. The maritime zones are divided into five jurisdictional zones, the internal waters, the territorial waters, the contiguous

zones, the continental shelf, the high seas proper. For details see, BROWN, E.D., 'Maritime Zones: a survey of claims' in CHURCHILL, SIMMONDS, and WELCH, ed., op cit, note 4, pp. 157 - 186.

21. U.N. Doc. A/CONF 13/L. 52-L-55; also see, KNIGHT, op cit, note 4, p. 293.

22. OPPENHEIM, L., 'International Law' (edited by LAUTERPACHT, H., 6th ed.), London: Longmans, Green, 1947, Vol 1, pp. 501 - 502.

23. Supra, note 21, Article 2.

24. For details see the following Sub-Section on 'res communis', PP. 18-20

25. By late 1980's at least half of the world oil production will come from offshore. See, Oil and Gas Journal, May 6th, 1974, p. 125.

26. See last Section on Submarine Geology and Geophysics, pp. 9-14.

27. For full account see Sub-Section A(5) on Natural Prolongation, pp. 32-33.

28. U.N. Doc. A/CONF. 13/L.58.

29. BROWN, op cit, note 4, at 35 - 36.

30. GUILCHER, op cit, note 4, pp. 109 - 110; also see, UNESCO, op cit, note 4, Para. 12.

31. For details concerning the existence of the continental shelf in the Persian Gulf see infra, An Introduction to the Persian Gulf, Section III, pp. 225 - 229.

32. U.N. Doc. A/CONF. 62/WP.10, July 15th, 1977, Informal Composite Negotiating Text (ICNT), Article 136. The issue of deep sea-bed and ocean floor will be discussed later in Chapter II, Section III, Sub-section on Preparation for an International Regime of the Sea-Bed and Ocean Floor Beyond the Continental Shelf. For more details see, WALZ, 'The deep sea-bed', in LARSON, D. 'Major Issues of the Law of the Sea', Durham, New Hampshire: The University of New Hampshire, 1975, p. 67.

33. AGUILAR, A., 'How will the future deep sea-bed regime be organized?', in GAMBLE and PONTECORVO, ed., 'Law of the Sea: The Emerging Regime of the Oceans', Cambridge, Mass: Ballinger Publishing Company, 1973, p. 43; also see JOYNER, C.C., ed. 'International Law of the Sea and the Future of Deep Seabed Mining', Charlottesville: Accent Printing Co., 1975, p.39ff.

34. For a full discussion on the freedom of the high seas according to Grotius see MAGOFFIN, R. V. D., 'The Freedom of the Sea: A Dissertation by Grotius', New York: Oxford University Press, 1916, especially p. 7.

35. As proposed at the 66th meeting of the I.L.C. (Geneva, July 12th, 1950), U.N. Doc. A/CN.4/SR/66, p. 28.

36. For an early discussion on this subject see, YOUNG, R., 'Legal status of submarine areas beneath high seas', 45 AJIL (1951), Supp., at pp. 229 - 231.

37. Ibid

38. Lord ASQUITH of Bishopstone, Petroleum Devdopment (Trucial Coast) Ltd. V. Sheikh of Abu Dhabi (1951), 1951 ILR, 1957, pp. 144 - 161; also 1 ICLQ (1952), p. 247.

39. See the following division on Constitutive State Practice, p.23.

40. GRUNAWALT, R.J., 'The acquisition of the resources of the bottom of the sea', Military Law Review, Vol. 34, No. 101 (1966), pp. 106 - 107.

41. SEABROOK HULL, E.W., 'The International Law of the Sea: A Case for a Customary Approach', Rhode Island University, 1976, p. 7.

42. U.N. Resolution, No. 2749 (xxv). December 17th, 1970.

43. U.N. Doc. A/CONF. 62/WP. 10, July 15th, 1977.

44. OPPENHEIM, op cit, note 22, Vol. 1, pp. 506 - 514.

45. KELSEN, H., 'Principles of International Law', New York, London: Holt, Rinehart and Winston, 1966, pp. 537 - 538; also OPPENHEIM, op cit, note 22, p. 568.

46. AKEHURST, M.B., 'A Modern Introduction to International Law', London: Allen & Unwin, 1977, p.178n.

47. For details see, MC DOUGAL and BURKE, 'The Public Order of the Oceans: A contemporary International Law of the Sea', New Haven, London: Yale University Press, 1958, p. 648.

48. OPPENHEIM, op cit, note 22, pp. 508 and 630. It is noteworthy that according to Article 7 of the GCCS the coastal State has the right to exploit the 'subsoil' by means of 'tunneling' irrespective of the depth of water above the submarine areas of the high seas.

49. CAMPBELL, D., 'The continental shelf', in LARSON, op cit, note 32, p. 56.

50. BRIERLY, J.L., 'The Law of the Nations: An Introduction to the International Law of Peace', (cited by Sir Humphrey Waldock, 6th ed.), Oxford: Clarendon Press, 1963, p. 212; also GREEN, L.C. 'The continental shelf', 4 Current Legal Problems (1951), p. 54 at 61 - 62.

51. OPPENHEIM, op cit, note 22, p. 630.

52. HURST, Sir Cecil, J.B., 'Whose is the bed of the sea? sedentary fisheries outside the three-mile limit', 4 BYBIL (1923 - 24), p. 34, and 41 - 43; also O'CONNELL, D.P., 'Sedentary firsheries and the Australian continental shelf', 49 AJIL (1955), supp., pp. 185 and 190, For clarification of Sir Cecil Hurst, see GREEN, L., 'The continental shelf', 4 Current Legal Problems (1951), p. 54.

53. BORCHARD, E., 'Resources of the continental shelf', 40 AJIL (1946), supp., p. 53 at p. 62.

54. For a fine discussion on the technological gap between devleoping and developed States see, PATEL, S.J., 'Technological dependence of developing countries: A survey of issues and lines of action', in GAMBLE and PONTECORVO, ed., op cit, note 33, p. 55.

55. OPPENHEIM, op cit, note 22, p. 633.

56. YOUNG, op cit, note 36, pp. 229 - 231.

57. Ibid

58. U.N. Doc. A/CN.4/32, July 14th, 1950, pp. 10 ff.

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60. U.N. Doc., op cit, note 43.

61. SLOUKA, Z.J., 'International Custom and the Continental Shelf', The Hague: Martinus Nighoff, 1968, pp. 24 - 26.

62. U.N. Doc., op cit, note 58, p. 89

63. U.S. Department of State Bulletin, No 327, September 30th, 1945, p. 485; also Official Documents, 40 AJIL (1946), supp., pp. 45 - 48.

64. GOLDIE, L.F.E., 'Australia's continental shelf', 3 ICLQ (1954), p. 558; also SLOUKA, op cit, note 61, p. 25.

65. U.K.T.S., op cit, note 3.

66. VALLAT, F., 'The continental shelf', 23 BYBIL (1946), p.333, at 337.

67. LAUTERPACHT, 'Sovereignty over submarine areas', 27 BYBIL (1950), pp. 393 - 394.

68. GRANT J.P., 'The development of United Kingdom oil and gas law', in DAINTITH and WILLOUGHBY, ed., 'A Manual of United Kingdom Oil and Gas Law', London: Thomson Scottish Petroleum Ltd, 1977, p. 4.

69. SLOUKA, op cit, note 61, p. 25.

70. See the following Sub-Section on International Customary Rules, p. 25

71. BRIERLY, op cit, note 50, p. 215.

72. 1 I.L.C. Yearbook (1950), p. 218.

73. 11 I.L.C. Yearbook (1956), p.300; also GRANT, op cit, note 68, p. 4.

74. ANDRASSY, 'International law and exploitation of natural resources of the sea-bed and subsoil'. 6 Pomork: Zbornik (1968) p. 249.

75. Article 38(1)(b) of Statute of the I.C.J. For text see, BROWNLIE,I., 'Basic Documents in International Law', Oxford: Clarendon Press. 1967, p.228, at 327.

76. Asylum Case (Columbia V. Peru), 1950 I.C.J. Reports, p. 266, at 276 - 277; also see D'AMATO, A.A., 'The Concept of Custom in International Law', Ithaca and London: Cornell University Press, 1971, pp. 252 - 255.

77. FRIEDMANN, W., 'The Changing Structure of International Law', London: Stevens, 1964, pp. 122 - 123; also see, D'AMATO, op cit, note 76, pp. 172 - 229.

78. For details see, SLOUKA, op cit, note 61, pp. 5 - 35, especially p. 26.

79. Ibid, p.21. For the historical development of the legal regime of the continental shelf see Chapter II.

80. SCHWARZENBERGER, G., 'A Manual of International Law', London: Stevens & Sons, 1960 (4th ed.), Vol.1, p. 128. The legal validity of the continental shelf, however, was recognized in the last edition of this authoritative manual jointly edited by Professor G. Schwarzenberger and Professor E.D. Brown See SCHWARZENBERGER and BROWN, 'A Manual of International Law', Milton: Professional Books Ltd., 1976 (6th ed.), p. 106.

81. U.N. Doc., A/CN.4/SR, July 1950, pp. 66 - 69.

82. U.N. Doc, op cit, note 58, pp. vi, 112.

83. U.N. Doc., op cit, note 81, pp. 9 - 13.

84. I.L.C. Yearbook (1951), Vol 2, p. 142; ibid, Vol. 2, 1953, p. 215; and ibid, Vol. 2, 1956, p. 298.

85. Ibid, 1951, Vol. 2, p. 142.

86. Ibid, 1956, Vol. 2, p. 298.

87. CHENG, B., 'General Principles of Law as Applied by International Courts and Tribunals', London: Stevens, 1953, p. 191.

88. 1969 I.C.J. Reports, p. 3; also see MUNKMAN, A., 'Adjudication and adjustment - international judicial decisions and the settlement of territorial and boundary disputes', 46BYBIL (1972 - 1973), p.1, at pp. 81 - 89.

89. 1969 I.C.J. Rep., p. 22, para 19; for a fine interpretation see ANAND, R.P., 'Legal Regime of the Sea-Bed and the Developing Countries', India: Thomson Press (India) Ltd., 1975, p. 266.

90. ANAND, op cit, p. 22.

91. Chapter I, Section B, Sub-Section I(3), on 'Constitutive State Practice', p. 23.

92. I.L.C. Yearbook, 1956, Vol 2, p. 298.

93. UN. Secretariat, Memorandum on the Regime of the High Seas, Doc., op cit, note, 58, p. 89.

94. The national Policies and Practices on the continental shelf will be studied in detail in Chapter III.

95. Reference may be made to claims by Australia, Brazil, Dominican Republic, Guatemala, Israel, Nicaragua, Pakistan, Philippines, Venezuela, the United Kingdom (for Bahamas, British Honduras, Falkland Islands and Jamaica), Iran, Iraq, Saudi Arabia, Kuwait, Bahrain, Oman, Qatar, and the United Arab Emirates.

96. Claims made by Argentina, Chile, Costa Rica, Honduras, and Peru included claims to sovereignty over waters above the continental shelf. Ecuador, Panama, and Salvador claim 200 miles of waters off their shores for fisheries purposes, while Chile and Peru also adopt this figure. See BISHOP, W.W., 'International Law: Cases and Materials', Boston and Toronto: Little, Brown Company, 1971, p. 640.

97. U.S. Department of State Bulletin, op cit, note 63, pp. 484 - 487.

98. The Continental Shelf Act, Article 1; Statutory Instrument (of the United Kingdom); 1964 Current Law Statutes, London: Sweet & Maxwell, 1964.

99. 1334 Majmoaeh-i Qavanin (Offidal Gazette of 1955 - 1956), pp. 79 - 81; for English text see, LAY, CHURCHILL, NORDQUIST, 'New Directions in the Law of the Sea', London: The British Institute of Internatioanl and Comparative Law, 1973, Vol. 1, p. 307. For details of this legislation see Chapter VI, Sub-Section on Iran's practice on the continental shelf, p.322-328

100. As a classic example see, the Memorandum of Russian Imperial Government of September 29th, 1916, to foreign powers. The English translation can be found in, 'Soviet Status and Decisions', 1970, Vol. VI, No. 3, pp. 255 - 256.

101. op cit, note 73, p. 298.

102. 1969 ICJ Reports, p. 3, at 32.

103. Ibid, p. 22.

104. U.N. Doc., op cit, note 43.

105. Court of Arbitration, The United Kingdom - France Shelf Boundaries, Decision of June 1977, para. 191.

106. Ibid, para, 182.

107. Ibid, para. 184.

108. U.K.T.S., op cit, note 3.

109. BORCHARD, 'Resources of the continental shelf', 40 AJIL (1946), supp., at pp. 62 - 63.

110. op cit, note 63.

111. For the English text see, UNLS, 'Laws and Regulations on the Regime of the High Seas', Vol 1 (1951), p. 22, also 43 AJIL (1949), supp., pp. 156 - 157.

112. For the English text of the Proclamations of all Gulf Emirates, see UNLS, op cit, note 111, pp. 22 - 30.

113. JENNINGS, R.V., 'The Acquisition of Territory in International Law', Manchester: 1963, p.74.

114. 1969 ICJ Rep. at p. 30 and p. 159.

115. op cit, note 99

116. LENCZOWSKI, G., 'Oil and State in the Middle East', Ithaca: Cornell University Press, 1960, p. 136.

117. Omani Decree of July 17th, 1972, Middle East Oil Laws and Concession Contracts, supp., No. xxxx (1972), 15. The text later appeared in UNLS (1974), p. 23.

118. AL-AWADHI, B., 'Al qanoon-al dowalliy lel behar fel Khalij-i al-Arabi' (International Law of the Sea in the Arabian Gulf), Kuwait: Matbeato Dari al-Taleef, 1976 - 1977, p. 77.

119. Municipal legislation such as the 1964 Continental Shelf Act, op cit, note 98, and international agreements like the 1965 agreement with Norway on continental shelf delimitation (U.K.T.S. 71; Cmnd. 2757).

CHAPTER II

THE DEVELOPMENT OF THE LAW OF THE CONTINENTAL SHELF

The legal conception of the continental shelf was first approached explicitly in 1945, within the Truman Proclamation. Over a decade or so a great deal of effort and work by the International Law Commissions (I.L.C.) on the subject was included in the Geneva Convention on the Continental Shelf (GCCS), 1958. Since then the provisions of the Convention proved inadequate for the increasing demands of the coastal States over the submarine areas adjacent to their coasts. The development of the legal concept of the continental shelf can be studied in three distinct evolutionary periods - before 1945, between 1945 and 1958, and 1958 until the present time.

I. BEFORE 1945

During and after the tenth century English and Continental Governments put forward claims to the sovereignty of the seas.[1] Claims by these States over the adjacent waters off their coasts is a long-standing practice.[2] The coastal States also put forward claims over the marginal sea-bed and subsoil adjacent to their coasts as long ago as the sixteenth century.[3] One of the earliest references to a shelving coast as a source of rights for the littoral State was made in 1806 by J. Nicholl, a British Law Officer, in a Report on a proposal by the United States for an extension of territorial waters.[4] The sixth paragraph of this Report contained a reference to the nature of the continental shelf as a legal factor.[5]

The expression 'continental shelf' was first employed in 1898 by the geographer H.R. Mill in his 'Realm of Nature'.[6] The legal concept gathering around this term was also approached as early as 1910 both in writings of publicists and in the practice of States.[7] These legal references to the continental shelf were chiefly in respect of the limit of commercial fisheries. In 1910 Portugal prohibited trawling by steam vessels within the limit of the continental shelf. The Portugese decree defined the continental shelf as 100 fathom isobath.[8] The coastal States also used the submarine areas outside the territorial waters for coal mines worked by shafts driven outwards from the land through the subsoil of the sea-bed. Coral exploitation was developed off the coasts of Algeria, Sardinia, and Sicily. In addition some continental shelves such as those of Australia, Ceylon, Mexico, Colombia and Tunisia were used for the harvesting of sponge, oyster, and shell fish.[9] This harvesting was accomplished by diving to the sea-bed.[10] The harvesting of sedentary species was justified both on the ground of 'effective occupation' and the claim of exclusive rights to sedentary fisheries rather than to the sea-bed.[11]

As a basis for the exclusive rights of the coastal States to the continental shelf, reference can be made to the claim of the Russian Imperial Covernment over certain islands in 1916.[12] This claim was made on the ground that the islands situated near the Asian coast of the Empire were 'an extension of northward of the continental plateau of Siberia.[13] The Government of the USSR in 1924 confirmed its adherence to these principles.[14] However, in spite of references to this claim in the First Report of I.L.C. (1950),[15]

no Soviet jurist has made reference to it as a basis for the legal concept of the continental shelf.[16]

One of the early developments of the doctrine of the continental shelf was the treaty between the United Kingdom and Venezuela on February 26th, 1942, relating to the division of the submarine areas of the Gulf of Paria.[17] There was no explicit reference to the term 'continental shelf', but Article 1 of the Treaty defined the term 'submarine areas' as "the sea-bed and subsoil outside of the territorial waters of the High Contracting Parties to one or the other side of the lines ...". By this Treaty each party undertook to recognize "any rights of sovereignty or control which have been or may hereafter be lawfully acquired" by the other over submarine areas on their respective sides.[18]

In 1939, a few years before the signing of the Treaty, some international lawyers upheld the power of the United Kingdom and Venezuela to explore for oil in the submarine areas of the Gulf of Paria.[19] As the Treaty contained no claim by either party to the sovereignty over the submarine areas, other States were not apparently prevented from exercising their rights over these areas as the bottom of the high seas. It was, however, thought to be clear that the intention of both parties had been that they should exercise exclusive rights in these areas.[20] It is further argued that this Treaty contained some features that have become part of the regime of the continental shelf.[21]

The subsequent British Order in Council, 'Submarine Areas of the Gulf of Paria (Annexation)', claimed for the United Kingdom an

exclusive right to the defined shelf territory, August 6th, 1942.[22] This was beyond the legal scope of the bilateral Treaty between the United Kingdom and Venezuela. It is argued, therefore, that the Treaty and the Order in Council, taken together, may present the beginning of an exclusive right that could eventually mature either as a prescriptive right or as a title obtained by the legal process of territorial aquisition.[23]

In the period prior to the 1940's there was little interest in the sea-bed beyond territorial waters. The legal doctrine of the continental shelf was introduced when it became technologically possible to exploit the mineral resources found at the bottom of the sea. Such technology was not available before the 1950's. The 1945 Truman Proclamation, as will be shown, was the major development of the continental shelf doctrine in the 1940's. This doctrine, however, was first explicitly asserted on January 24th, 1944 in a proclamation by the Argentine Republic.[24] This decree asserted jurisdiction over 'temporary zones of mineral resources'.[25] It was later, in the Argentine decree of October 1946, referred to as having asserted categorically sovereignty over the shelf and sea.[26] The main reason for such claims was to prevent exploration and exploitation by other States in these zones along the coasts and in the epicontinental sea.

II BETWEEN 1945 - 1958

The development of the law of the continental shelf during the period 1945 - 1958 should be studied separately with respect to unilateral proclamations on one hand and international development on the other.

A. NATIONAL SHELF PRACTICES, 1945 - 1958

President Truman of the United States issued a proclamation with respect to the natural resources of the sea-bed and subsoil of the continental shelf, September 27th, 1945.[27] The Proclamation did not specify the extension of the continental shelf. An official press release from the White House accompaning the Proclamation defined the continental shelf as "generally, submerged land which is contiguous totthe continent and which is covered by no more than 100 fathoms ...".[28] The Proclamation, however, made no claim to sovereignty, title or ownership of the continental shelf.[29] It only declared it the national policy of the United States to regard the natural resources of the sea-bed and subsoil of the continental shelf as "appertaining to the United States, subject to its jurisdiction and control".[30] The American oil companies first considered the Proclamation in view of its internal effects, that is, the end of the oil industry. It was soon realised, however, that the Proclamation was far more important in view of its external implications.[31]

During the five years following the Truman Proclamation, 1945 - 1950, more than 30 nation-States, most notably those of Latin America and the Middle and Far East, issued proclamations, legislative acts, and orders announcing their exclusive rights over their continental shelves. The States' practice concerning the doctrine of the continental shelf during 1945 - 1958 can be classified into three major categories: The extensive claims, the restricted claims, and the negative policies.

1. Extensive Claims

Many developing States, mostly those of Latin America, declared

that the scope of the doctrine of the continental shelf should apply not only to the resources of the sea-bed and subsoil, but also to the waters above the shelf. Sierra Leone, Brazil, Ecuador, El Salvador, and Panama all declared both the sea-bed and its superjacent waters up to two hundred miles off their coasts to be subject to their exclusive rights.[32] In the region of Latin America the various claims which were not identical were, however, recognised mutually by all Latin American States. But they met with protests both by leading maritime States and Western international lawyers.[33]

The United States in its notes to Argentina, Chile, and Peru (July 2nd, 1948), El Salvador (December 12th, 1950) and Ecuador (June 7th, 1951) declared that their respective declarations were "at variance with the generally accepted principles of international law".[34] The United Kingdom also protested against the extensive claims of Peru, Chile, Ecuador, El Salvador, and Honduras, calling the claims "irreconcilable with any accepted principle of international law".[35] The Latin American lawyers stated that, as a matter of economics, the doctrine of the continental shelf ought to be considered as being uniform with the superjacent waters.[36] It is also argued that the traditional rules of the law of the sea were created to protect the interests of the developed States, and could not obligate the developing States.[37]

The Latin American States have justified the extension of patrimonial seas[38] to 200 miles in terms of control of the Humboldt Current, since this approximates the farthest it ever moves out to sea.[39] This explanation, however, has not been supported with appropriate

factual evidence.[40] The contemporary international law, as developing at UNCLOS III, admits an Exclusive Economic Zone (EEZ) of 200 miles. During 1945 - 1958, claims of sovereignty over the superjacent waters of the continental shelf beyond 12-mile limit of territorial seas appeared to violate international law.

2. Restricted Claims

The Truman Proclamation, as already mentioned, made no claim to sovereignty, title or ownership of the continental shelf. A press release accompaning the Proclamation defined the continental shelf as submarine areas adjacent to the coast covered by no more than 100 fathoms. This was a restricted claim in comparison with the extreme claims by Latin American States of up to 200 miles. A Truman type approach to the doctrine of the continental shelf could be found in a great number of proclamations and statutes issuing from several States during the 1945 - 1958 period.

The following proclamations and legislative acts did more or less follow the doctrine of the continental shelf as introduced in the Truman Proclamation: The Royal Pronouncement of Saudi Arabia (1949), The Proclamations by the Arab Emirates in the Persian Gulf (1949), British Orders in Council (Bahamas and Jamaica, 1948, British Honduras and Falkland Islands, 1950), Guatemalan Petroleum Law, (1949), Petroleum Act of Philippines (1949), The Brazilian Decree, (1950), Declaration of Pakistan (1959), Proclamation of Israel (1952), Act of Iran (1955), Proclamation of Iraq (1958).[41] These proclamations and status follow an almost similar approach to the shelf doctrine with respect to the concept of contiguity, recognition of the legal statutes of superjacent waters as the high seas, and recognition of freedom of navigation and fishery.

As to the outer limit of the continental shelf, Honduras, Ecuador, Australia, Portugal and the United States all fixed the outer limit of their continental shelves at the depth of 200 metres or 100 fathoms.[42] Saudi Arabia, India and the United Kingdom relied on the concept of contiguity and adjacency rather than the geological dimension of 100 fathoms.[43]

3. Negative Policies

There were views expressed in opposition to the doctrine of the continental shelf which should be examined. Some lawyers argued that the shelf doctrine, especially in its extreme forms, was contrary to the long-established principle of the freedom of the high seas.[44] KORETSKII, a Russian academic lawyer, published in 1950 an article on the question of the continental shelf. In defence of the freedom of the high seas, he opposed any doctrine permitting States to have exclusive rights beyond the limits of their territorial waters.[45] Moreover, commenting on the avalanche of claims on the continental shelf he stated: "Americans declare, sattelites 'follow', 'science' recognizes - and a norm has been born".[46]

Lord Asquith of Bishopstone also expressed a critical attitude towards the doctrine of the continental shelf in 1951. He considered the draft articles prepared by the International Law Commission (1951) on continental shelf as draft conventions on a subject which had not yet been regulated by international law, and in regard to which the law had not yet been sufficiently developed in the practice of States. Considering the lack of existing law in this field at that time Lord Asquith further expressed that there were "so many ragged ends and unfilled blanks" that the

status of the continental shelf could not be considered in any form as 'an established rule' of international law.[47]

B. INTERNATIONAL DEVELOPMENT OF THE LAW OF THE CONTINENTAL SHELF 1945 - 1958

The General Assembly of the United Nations in 1950 invited the International Law CCommission to examine the legal status of the continental shelf in conjunction with their study of the law of the high seas. The provisions adopted by the International Law Commissions were finally incorporated in 1958 in the Geneva Convention on the Continental Shelf. The international development of the law of the continental shelf in the light of the labours of the United Nations from 1950 to 1958 should be examined under two headings: first the International Law Commissions, and second, the First United Nations Conference on the Law of the Sea.

I. International Law Commissions

According to the decision of the United Nations in 1950, the International Law Commission thoroughly examined the question of the continental shelf at its second (1950), third (1951), fifth (1953) and eigth (1956) sessions. The distinguished Dutch jurist Mr. J.P.A. Fransois who submitted his First Report at the second session (1950) was elected special rapporteur.[48]

The Commission at its second session (1950) confirmed two principles regarding the legal status of the sea-bed and subsoil of the submarine areas outside the territorial waters. The first principle was that control and jurisdiction over these areas might be exercised by a coastal State for the exploration and exploitation

of the natural resources. The area for such control and jurisdiction would need definition but would not necessarily depend on the existence of a geological continental shelf. The second principle was that such control and such jurisdiction should not substantially affect the right of free navigation of the waters above such submarine areas, nor the right of free fishing in such waters.[49] A predetermined distance from the coast was proposed as the outer limit of the continental shelf.[50]

The International Law Commission at its third session (1951) reviewed the question of the continental shelf on the basis of the Second Report of the special rapporteur.[51] Consequently the Commission adopted some seven draft articles as the first attempt by an official international body of jurists to formulate systematic principles with regard to the continental shelf.[52] Article 1 of the Draft Articles defined the term 'continental shelf' as "the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the areas of territorial waters where the depth of the super-jacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil".[53] Departing from the scientific concept of the continental shelf, the Article preferred the concept of exploitability, and thus rejected an objective limit fixed in terms either of depth or of distance from the shore. The exploitability criterion was adopted because the geological sense of the continental shelf would exclude such areas where the depth would admit exploitation but which would not be scientifically recognized as continental shelf (such as the Persian Gulf).[54] The Commission did not specify the natural

resources subject to the continental shelf rights, although it stated that fishing activities and the conservation of the resources of the sea should be dealt with in separation from the continental shelf.[55]

The 1951 draft articles on the continental shelf were considered as draft conventions on a subject which had not yet been regulated by international law. The Commission did admit that the already extensive State practice was not yet sufficient to establish a customary rule on continental shelf.[56] Also Lord Asquith of Bishopstone in the Abu Dhabi Arbitration Case (1951) regarded the practice of States on continental shelf insufficient for the development of a customary rule. Referring to 1951 draft articles, Lord Asquith considered that the legal status of the continental shelf was not yet "an established rule" of internationsl law.[57]

Subsequent to the third session, the Internationsl Law Commission at its fifth session (1953) re-examined the 1951 draft articles in the light of observations contributed by some 15 States. Accordingly the Commission admitted that the exploitability test adopted as a defining factor in the 1951 draft article would give rise to uncertainties and disputes. Showing some developments in its thinking over the previous year, the Commission finally adopted 8 draft articles on the continental shelf.[58] The Commission abandoned the exploitability test in favour of the criterion of a 200 metre depth.[59] It also confirmed that the sovereign rights of the coastal States over the continental shelf should not affect the legal status of the superjacent waters, nor of the airspace over these waters. However, most provisions adopted

at the I.L.C. were the subject of disagreement.[60]

Finally the International Law Commission at its eigth session(1956) adopted seven draft articles on the continental shelf. Here the Commission combined the two criteria of the 200 metre isobath and the exploitability test.[61] This is what was eventually adopted with some modifications as Article 1 of the Geneva Convention on the Continental Shelf (1958). Significantly, the 1956 Commission considered the principle of natural prolongation as the main reason for the sovereign rights of the coastal States over the continental shelf.[62]

The 1956 I.L.C. was unwilling to accept the 'sovereignty' of the coastal State over the sea-bed and subsoil of the continental shelf. The formula 'sovereign rights' rather than 'sovereignty' was adopted in draft Article 68 (now Article 2 of the GCCS) to safeguard the full freedom of the superjacent waters, and the air space above them.[63]

2. United Nations Conference on the Law of the Sea (Geneva, 1958)

The General Assembly of the United Nations by its Resolution No. 1105 (xl), adopted on February 21st, 1957, called for a conference of its members to examine the law of the sea and embody the results of its work in international conventions.[64] The First United Nations Conference on the Law of the Sea (UNCLOS) was convened in Geneva on February 24th, 1958, and finally adjourned on April 26th of the same year. The conference adopted four conventions on the law of the sea including one on the continental shelf.[65] The Geneva Convention on the Continental Shelf (GCCS) was adopted on April 29th, 1958, by a vote of 57 to 3 with only 8 abstentions.[66]

Several parties, however, attached reservations to their accession to the GCCS which came into force on June 10th, 1964.[67]

The most crucial problems at the 1958 UNCLOS were to determine first, the outer limit of the continental shelf, and secondly, the nature of the rights of the coastal States over their continental shelves.

As to the outer limit of the continental shelf, some States proposed a criterion of certain distance from the inner or outer limit of the territorial sea.[68] Some other States fovoured a proposal combined of two criteria, the depth and a given distance from the territorial sea.[69] UNCLOS I finally adopted an outer limit "to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources." It also referred to the criterion of adjacency as a defining element.[70]

The isobath criterion was derived from the geological concept of the continental shelf. This criterion regards the legal continental shelf to be limited to a line at which the waters adjacent to the coasts attain a depth of 200 metres. The alternative extends the continental shelf beyond the 200 metres of depth to where the depth of superjacent waters admits of exploitation. This was a compromise to meet the susceptibilities of States whose continental shelves are deeper than 200 metres (like Chile), and other States off whose coasts deep submarine canyons are found with shallow areas further out to sea (like Norway).[71]

Article 1 of the GCCS has been criticized since it fails to distinguish between the bed of the sea and its subsoil. It is said that the bed of the high seas beyond the limits of the territorial waters is incapable of appropriation by any State. Therefore, it is argued, the legal status of the sea-bed, unlike its subsoil (which is capable of occupation), should be the same as that of the waters of the high seas above it.[72] But neither the practical development of the sea resources nor the geological structure of the sea-bed and ocean floor supports such a distinction.

Another controversial issue at the 1958 UNCLOS was the kind of authority which the littoral State could exercise over its continental shelf. Some developing States demanded that national rights over the continental shelf should be in the nature of absolute 'sovereignty'. But this was rejected by the majority of States.[73] Argentina, Mexico, Peru, Chile, and Uruguay justified their demand for complete sovereignty both on the grounds of the physical nature of the continental shelf and of the nature of rights vested in States. They maintained that the continental shelf was an appurtenance of the mainland and that its ownership derived from the ownership of the mainland.[74] On the other hand, other delegations regarded the continental shelf rights as limited to those necessary for the exploration and exploitation of natural resources. The term 'sovereign rights' was proposed, and the United States proposed the deletion of the word 'sovereign' and the substitution for it of the word 'exclusive'.[75] The United States later supported the wording 'sovereign rights' at the Plenary Session of the Conference. The final term which was adopted at the Conference ensured the 'sovereign rights' but

carefully retreated from full territorial 'sovereignty'.[76] The term "sovereign rights for the purpose of exploring and exploiting" has been criticized since 'sovereignty' in its international legal concept is indivisible.[77] But the practical reasons justify such a qualified and limited sovereign rights over the areas of the continental shelf.

In addition to sovereign rights for the purpose of exploring and exploiting the natural resources, the GCCS confirmed the exclusive right of the coastal State to control scientific research within the continental shelf, /Article 2(1) and Article 5(8)/. Other possible uses of the continental shelf, such as for ocean farming and military purposes, were not covered by the GCCS. Article 5(2) of the Convention provides that the coastal State is entitled to construct, maintain, and operate on the continental shelf installations and other devices "necessary for its exploration and exploitation of its natural resources." This implies that the coastal State is not entitled to construct or operate any artifical islands or installations for any other uses.[78]

III. AFTER 1958

The GCCS is undoubtedly an important political and legal document. It advanced international law so as to enable it to cope with emerging problems. However, technological development since 1958 proceeded at a far quicker pace than could be then foreseen, thus rendering the GCCS inadequate to new demands. As will be shown, new uses within the continental shelf for purposes other than for exploration and exploitation have been introduced. Both farming and military activities relating to the sea-bed are in progress and need regulation.[79] These questions aside, there have been several

criticisms of the GCCS text. The controversial interpretation of the Convention text creates several problems. The exploitability test is so vague that the continental shelf may be argued to extend out to the middle of the ocean. In other words, it can be inferred that all the submarine areas of the world have been theoretically divided among the coastal States. [80]

The GCCS does not deal with the problem of the authority to use the continental shelf for purposes other than for exploration and exploitation of resources. By way of example the question as to whether the coastal State is entitled to exclusive rights of military installation in the area of the continental shelf has not been considered.[81] Nor has the GCCS considered the farming activities on the sea-bed. It is not clear whether any State, or anly the coastal State, can use the area of the continental shelf for purposes other than exploration and exploitation of natural resources. The doctrine of the high seas would justify the inclusive use of the continental shelf for all purposes other than those specifically contemplated in the GCCS. This is why Colombos regards the sea-bed of the high seas as incapable of occupation by any State. He considers the legal status of the sea-bed of the high seas, including the area of the continental shelf, the same as the status of the waters of the open sea above it.[82] This approach, however, is totally unacceptable because of the security interests of the coastal States. It is submitted that the coastal State should exercise exclusive control over any use of the continental shelf which requires emplacing relatively fixed installations.[83] Besides the security risks, a 'free for all' approach would by-pass the obvious danger of interference with the coastal State's management of the shelf resources.[84]

It has generally been accepted that the GCCS failed to solve all the problems of the continental shelf and related matters. Furthermore, it is claimed that the framers of the GCCS left the actual definition of the limits of the continental shelf to the authority of the future decision-makers.[85] Consequently there is an urgent need to reach a new convention on the law of the continental shelf and related issues. There has been a great deal of effort by the United Nations and several regional groups of States to provide a convention covering different problems concerning the legal, technological, and economic implications of exploitation of the sea-bed and ocean floor. The ruling of the International Court of Justice (I.C.J.) in the North Sea Continental Shelf Cases,[86] as well as several academic and professional conferences and seminars, along with numerous publications, have all contributed to the trimming of the ragged ends of continental shelf doctrine in the period since 1958.

A. PREPARATION FOR AN INTERNATIONAL REGIME OF THE SEA-BED AND SUBSOIL BEYOND THE CONTINENTAL SHELF

The status and legal regime of the sea-bed and subsoil beyond the continental shelf during 1958 - 1970 was far from clear. It was, in the first place, disputed if there was any objective seaward limit on the elasticity of the concept of the continental shelf. If this had existed, in the absence of necessary conventional provisions, the legal regime of the sea-bed and subsoil beyond the continental shelf would have been uncertain. Professor E.D. Brown concluded in 1970 that the international customary rules would provide a workable framework within which States could establish titles to the sea-bed and subsoil beyond the continental

shelf.[87] Such a customary regime which in practice would admit the exploitation of the deep sea-bed resources only to developed States, was unacceptable to developing States.

The dissatisfaction of the majority of the member States of the United Nations with the lack of necessary provisions within the law of the sea-bed resulted in the adoption of several Resolutions in this field. Ambassador Arvid Pardo of Malta appealed at the United Nations General Assembly for the creation of a certain type of international regime for the sea-bed area beyond national jurisdiction. He further explained that it was impossible to reduce the principle of inequalities between developed and under-developed States without creating profound changes in the existing international order.[88] Malta expressed fears that the failure to introduce an international regime for the sea-bed beyond the continental shelf would lead to these areas becoming subject to national appropriation and militarization.[89]

The General Assembly on December 18th, 1967 decided to consider the question of the sea-bed beyond national jurisdiction.[90] This decision to investigate had two significant implications. First, the exploitability test provided in Article 1 of the GCCS could not be applied to all the submarine areas of the world. In other words, the ocean floor was confirmed to be beyond national jurisdiction. The second implication was that there was no satisfactory legal framework for deep sea-bed mining activities. Prior to this Resolution, the most important question was whether those parts of the deep sea-bed and ocean floor which were exploitable,[91] could be considered under the exploitability test provided by the

GCCS as part of the 'continental shelf'. If not, to whom should the untapped mineral resources of the deep sea-bed belong? And was an internationally supervised regime necessary to license, regulate or practice exploration and exploitation actions in submarine areas beyond the continental shelf?

Having adopted the previous Resolution of December 21st, 1968,[92] the General Assembly on December 15th, 1969 (by 65 votes to 12, with 30 abstentions) considered that the definition of the continental shelf contained in the GCCS did not define with sufficient precision the limits of the areas over which a littoral State could exercise continental shelf rights. It also declared that the customary international law on this subject was inclusive.[93] The Resolution noted that there was a close link within the problems relating to the high seas, territorial waters, contiguous zones, the continental shelf, the superjacent waters, and the sea-bed and ocean floor beyond the limits of national jurisdiction. The General Assembly requested the Secretary-General to convene a conference on the law of the sea to review the legal regimes of the above memtioned maritime spheres.[94]

The Resolution No. 2749(XXV), December 17th, 1970, declared that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction were the common heritage of mankind.[95] By virtue of these Resolutions the deep sea-bed and ocean floor was put outwith the claims of sovereignty and private appropriation. The Resolution also guaranteed an equal sharing of advantages between all States, and particular consideration towards the needs and interests of the developing nations.[96]

Having rejected appropriation by States or persons, an international regime including appropriate international machinery was decided to be essential to govern the sea-bed beyond the limits of national jurisdiction.[97]

The General Assembly in its Resolution No. 2881(XXVI), December 21st, 1971, confirmed its previous decision to convene UNCLOS III in 1973. The United Nations Conference on Trade and Development adopted in May 1972 two Resolutions concerning the exploitation of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction.[98] In the same year the reports of the 1972 Session of the United Nations Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the limits of National Jurisdiction were submitted to the General Assembly. The Assembly, having considered those reports, confirmed that the various problems of ocean space were closely interrelated and should be considered as a whole at UNCLOS III.[99]

U.N. Sea-Bed Committee

According to the United Nations Resolution No. 2750 the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the limits of National Jurisdiction was entrusted to determine the precise agenda for the envisaged UNCLOS III and to prepare the relevant draft articles.[100] The Committee, composed of 85 States, first convened at Geneva on March 1st, 1971. It was divided into three Sub-Committees. Sub-Committee I was in charge of elaborating draft articles concerning the international regime of the sea-bed and ocean floor beyond the national jurisdiction. Sub-Committee II was entrusted to prepare the list of subjects for UNCLOS III and

to draw up draft articles on those subjects. Sub-Committee III was charged with the questions of the preservation of the marine environment and the drafting of relevant articles.

The Sea-Bed Committee accomplished its mandate only to a limited extent.[101]

The issue of the continental shelf was the fifth item of 25 adopted by Sub-Committee II for discussion at UNCLOS III, August 18th, 1972.[102] Sub-Committe II spent two years (1971 and 1972) on the preparation of a comprehensive list of subjects relating to the law of the sea. Proposals regarding the limits of the continental shelf, or 'the coastal sea-bed area', were submitted at spring and summer Sessions, 1973.[103]

A wide range of proposals were submitted with respect to the outer limit of the continental shelf. The Ecuador-Peru-Panama proposal stated that the seaward limit of the continental shelf should be given consideration where the continental margin extends beyond 200 miles.[104] But the Argentine proposal favoured an outer limit of the continental shelf corresponding to the outer lower edge of the continental margin or, when that edge is at a distance less than 200 miles from the coast, a limit extending up to that distance.[105] The Argentine proposal was also supported in proposals submitted by Colombia, Mexico, Venezuela during the spring 1973 Session, and by Australia, Norway and China during the Summer 1973 Session.[106] The 200 mile movement sponsored by Latin American States was advocated not only by some African States but also by some developed States which did not find this proposal incompatible

with their interests.[107] This proposal suggests a jurisdiction of the coastal State over the sea-bed and the superjacent waters for up to 200 miles. This implies a departure from the established concept of the continental shelf which previously had been confined to the sea-bed only. There were, however, some coastal States who opposed this, favouring some sort of conventional definition for the limits of the continental shelf. The USSR, for instance, submitted a draft convention to the Committee which suggested that the outer limit of the continental shelf should be established within the 500 metre isobath. It proposed a combination of the 500 metre isobath and a distance of 100 miles from the coast as a definition of the limits of the continental shelf.[108]

B. UNCLOS III

UNCLOS III is the longest conference in the history of the United Nations.[109] Its task is to search and find a consensus on the new principles of the law of the sea among the nations and finally codify those principles and details in a treaty. Some of the general principles of the traditional law of the sea have been abandoned and the international law of the sea is in a state of transition.[110] It has also been highlighted that the problems of the law of the sea are closely interrelated and need to be considered as a whole. UNCLOS III primarily deals with the establishment of a more equitable international regime for the development of the sea-bed resources beyond the limits of national jurisdiction. It intends to bring together all issues of the law of the sea in a new comprehensive convention. Apart from the establishment of rules for exploiting the resources of the deep sea-bed and ocean floor, the most difficult problem for UNCLOS III

is the delimitation of the submarine areas which remain under national jurisdiction. This problem is the one on which this study will focus.

The first organisational meeting of UNCLOS III was held in New York, December 3rd, 1973.[111] UNCLOS III revived the three Committees which existed under the Sea-Bed Committee 1968 - 1973. Committee I discusses an international regime for the sea-bed and ocean floor beyond the limits of national jurisdiction. Committee II deals with what now for convenience is called 'traditional' issues of the law of the sea, such as territorial sea, exclusive economic zone, continental shelf, fishing rights, innocent passage, and all their by-products. Committee III is concerned with the protection of marine environment and respective issues of technology and scientific research in this area.

The second session was held in Caracas, June 20th, to August 29th, 1974. In this session the three main Committees were convened separately.[112] As regards the procedure it was provided that the agreement on substansive matters should be reached by the way of consensus - 'gentlemen's agreement' - instead of the standard method of a majority vote.[113] In this session, the Secretariate of Committee II, in which the issue of the continental shelf was examined, was able to prepare informal working papers indicating general trends upheld by the Committee. In the final stage of this session both the Chairman of Committee II and the President of the Conference stated that the 200 mile economic zone had become firmly entrenched in the treaty-making procedure.[114]

The third session was convened in Geneva, March 17th to May 10th, 1975, where substantial negotiations were immediately started.[115] The Chairman of each Committee was asked to prepare a single text which could be used as a basis for further discussion at the Conference.[116] In a thorough review of the paper on 'main trends' prepared at the Caracas session, the Chairman of Committee II urged mutual compromise by all groups. Specific issues, including the continental shelf, were reviewed in several separate informal consultations; these consultations were subsequently reflected in the Single Negotiating Text (S.N.T.).[117]

In Article 62 of the S.N.T. the concept of natural prolongation was incorporated in the definition of the continental shelf.[118] The outer limit of the continental shelf was fixed at the outer edge of the continental margin, or to a distance of 200 miles from the baselines of the coastal States where the continental margin does not extend up to that distance.[119] The basic alternatives as regards the breadth of the continental shelf were set out as (a) the outer extension of the continental rise, (b) a distance of 200 miles, (c) a distance of 200 miles or the outer limit of the continental margin, whichever is greater, and (d) the sea-bed and subsoil of the continental margin to a maximum of 200 miles, or the lower edge of the margin, whichever is greater.[120] If the trend of the 200-mile EEZ is adopted a considerable part of each of the above mentioned proposals will be unnecessary.[121]

It is argued that the extension of the exclusive rights of the coastal States to beyond the limit of 200 miles would deprive the International Sea-Bed Authority (I.S.A.) of all the more accessible

resources of the sea-bed. This is why an international zone has been frequently proposed for areas beyond the 200-mile limit within the continental slope area. The profits of coastal State development in this proposed area would be shared with the I.S.A.[122] Such proposals, however, are not favoured by the majority of the States bordering the oceans. They argue the coastal State should not be deprived of the natural prolongation of its land territory even where it extends beyond 200 miles.

The following reasons have been advanced in opposition to a narrow continental shelf. First, that the coastal States are already invested with exclusive jurisdiction over the natural resources of the continental margin, and that any attempts to limit this jurisdiction to 200 miles is in violation of well established rights. Secondly, that the continental margin is a natural extension of the adjacent coastal State. Thirdly, that to vest exclusive jurisdiction over the resources of the sea in the I.S.A. is not practical or feasible given the limitations of political machinery at present. Fourthly, that the international bureaucracies are perhaps less efficient than national ones. Lastly, that the economic and security interests of the coastal States demand exclusive jurisdiction over wider and not narrower submarine areas.[123]

The question of the outer limit of the continental margin is not, however, precisely defined. In other words, it is necessary to define where the continental margin ends. Since the natural resources of the sea-bed beyond the limits of national jurisdiction are to be developed under an international regime, the definition of the national-international boundary is urgently needed.[124]

The whole issue of the continental shelf in the SNT falls mostly within the debate on the Exclusive Economic Zone (EEZ). General trends in 1975 favoured the control of the coastal State in an exclusive economic zone over all resources out to 200 miles.[125] The EEZ in conceptual terms, and with regard to the evolution of international legal norms, is an outgrowth of the concepts of the contiguous zone and the continental shelf. In practical terms, nonetheless, it is a completely new approach towards the old dilemma between 'mare clausum' (closed sea) and 'mare liberum' (free sea).[126] Some land-locked and shelf-locked States like Mali, the Upper Volta, the Khmer Republic, Singapore, Belgium and the Federal Republic of Germany believe that the concept of the continental shelf is now superfluous, because of the adoption of the 200- mile EEZ. Some States insist on retaining the concept of the continental shelf, either because it often runs beyond the 200-mile zone (United Kingdom, Canada, New Zealand, Argentina, Mexico, Mauritania), or on grounds of customary rules which confirm the principle of natural prolongation. Despite all obvious major differences between the legal norms of the continental shelf and the EEZ, it is said that,[127] the GCCS laid the foundations of the EEZ.[128]

The GCCS was criticized because it lacked compulsory provisions for the settlement of disputes.[129] By contrast, there were measures adopted in the SNT in respect of the delimitation of the EEZ and the continental shelf which were compulsory in nature. According to Articles 61 and 70 of the SNT the delimitation of the EEZ and the continental shelf between adjacent and opposite States should be agreed upon in accordance with the median or

equidistant line.[130] If no agreement was reached the States concerned were to resort to the procedures for the settlement of disputes, provided in Part IV of the SNT.[131]

The 1975 SNT was later debated at the 4th session of UNCLOS III held in New York, March 15th, May 7th, 1976.[132] The SNT, having been reviewed in May 1976, was thereafter termed Revised Single Negotiating Text (R.S.N.T.). The R.S.N.T., similar to the SNT, confirmed the exclusive rights of the coastal States in the sea-bed and subsoil of the EEZ.[133] Article 44(1) of the RSNT provided that in an area beyond and adjacent to its territorial sea, a State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the bed and subsoil and superjacent waters. Article 64 of the RSNT defined the extent of the continental shelf and was identical to Article 62 of the SNT. Similarly Article 63 of the SNT (concerning the nature of the rights of the coastal States over the continental shelf) was adopted unaltered as Article 65 of the RSNT. This Article confirmed the sovereign rights of the coastal States over the continental shelf for the purpose of exploring it and exploiting its natural resources. These natural resources were considered to consist of the mineral and other non-living resources together with living organisms belonging to sedentary species.[134] The only contrast between the 1975 SNT and the 1976 RSNT on continental shelf issues was with regard to the settlement of disputes. The application of the median or equidistant line provided in the SNT was rejected by Part IV of the RSNT which contained the compulsory procedure for the settlement of disputes. Furthermore, Article 18 of the RSNT provided that the disputes concerning sea boundary delimitation

between adjacent and opposite States were among optional exceptions and that States might declare themselves exempt from compulsory procedures.[135]

Although the RSNT (Part II) treats the EEZ and the continental shelf under separate titles, there was, nevertheless, a considerable trend towards the establishment of a single functional zone. This zone would extend to a distance of 200 miles from the coast, within which the coastal State would have sovereign rights over both submarine areas and superjacent waters.

Under the RSNT the authority of the coastal State over its continental shelf is not confined to economic purposes. Article 68 (Part II) of the RSNT, in conjunction with Articles 48 and 44 (Part III) provides that the coastal State shall have the exclusive right to construct artificial islands and economic installations on its shelf area for both economic and non-economic purposes. Dr. Papadakis anticipates that these provisions will result in exclusive authority of the coastal States to construct artificial islands and installations on the continental shelf, whether economic or non-economic, floating or fixed.[136]

The sixth session of the Conference was convened in New York, May 23rd, July 15th, 1977.[137] The Conference in this session decided that an informal negotiating text should be prepared to bring together in one document the draft articles of the entire range of subjects and issues covered by the Conference.[138] In order to prepare the prescribed negotiating text the Chairman of each of the three main Committees prepared a single negotiating

text (Part I, II, III respectively). The President of the Conference prepared Part IV on the settlement of disputes. The fruits of these labours were brought together in one document, the Informal Composite Negotiating Text (I.C.N.T.), which was finally prepared in May 23rd - July 15th, 1977.[139] This text serves as a procedural device, providing only a basis for negotiation, and does not affect the right of any delegation to suggest revisions in the search for a consensus.[140] It is expected that the I.C.N.T. will be totally reviewed in next Session which will be convened in Geneva, on March 19th, 1979. Article 76 of the ICNT defines the outer edge of the continental margin or a distance of 200 miles as the outer limit of the continental shelf.[141] The concept of natural prolongation has already been established as the defining criterion of the continental shelf in international law. The alternative of the 200-mile limit is the result of the dissatisfaction of the developing States with the traditional law of the sea. The majority of States at UNCLOS III support the 200-mile limit of national jurisdiction in the hope of a better and more equitable distribution of ocean resources.

The seventh session of UNCLOS III was held in Geneva, from March 28th to May 19th, 1978,[142] but did not achieve the objectives it had set out to achieve. At this session Negotiating Group 6 could not reach agreement on a definition of the outer limit of the continental shelf. However, the Group considered three new proposals besides Article 76 of the ICNT. These were first, a proposal submitted by Arab States which would limit the width of the shelf to 200 miles, the same as the EEZ. Secondly, a USSR proposal employing geological and geomorphological criteria when the continental margin extends beyond 200 miles but imposing a

maximum width of 300 miles. Thirdly a proposal by Ireland submitted in 1976 giving each State a choice between two natural criteria - one relating to the thickness of sea-bed sediments and the other to a measure of distance - but both related to the foot of the continental slope where the sea-bed begins to rise steeply from the deep ocean to the shallower offshore.[143]

UNCLOS III having held eight sessions during the six years (from December 3rd, 1973 to September 15th, 1978) has not yet progressed towards a treaty.[144] The proceedings of UNCLOS III show the confrontation of national interests between the developed and the developing States. While the United Nations Resolution of December 17th, 1970 has declared that the resources of the deep sea-bed and ocean floor beyond the limits of national jurisdiction are the common heritage of humanity, the world's nations remain deeply divided over who is to develop that common heritage. The developing coastal States, as will be shown in the following Chapter on National Policies and Practices, insist on conserving a very extended exclusive right over the marine and submarine areas contiguous to their coasts. The majority of the developed States want most of these areas to be accessible to whoever possesses the means of exploration and exploitation. UNCLOS III is searching for principles on the law of the sea which maintain the balance of interests among all nations.

The eighth Session of UNCLOS III was convened in New York, August 21st to September 15th, 1978.[145] The Conference is to reconvene in Geneva for six weeks starting on March 19th, 1979 to finish the informal stage of discussions. There is then expected to be

another six-week session in New York in the autumn of 1979 and if everything goes well, the new Convention will be formally signed in Caracas in 1980.[146] It is hoped that UNCLOS III will reach agreement, but, even if it does, there is all likelihood that several States will delay ratification of the new convention. However, whether UNCLOS III will finally result in the envisaged convention or not, the process of negotiation and clarification of national policies in this Conference has exerted and is exerting a dynamic influence on the development of the law of the sea. By way of example it is significant that the work of UNCLOS III has already been referred to as a supporting legal authority before the Court of Arbitration in the United Kingdom - France continental shelf delimitation case.[147]

It is feared that if no progress emerges from UNCLOS III the developed mining States, led by the United States, will go ahead with unilateral legislation to allow development of the mineral riches of the deep sea-bed and ocean floor beyond the national jurisdiction.[148] At present States contemplating legislation to enable deep sea mining in areas beyond national jurisdiction are the United States, Japan, Federal Republic of Germany, and the Netherlands.[149] These States, having developed their own municipal laws for ocean mining, would recognise each other's mining claims as legitimate.[150] Such unilateral actions, however, are not supported by the political behaviour of the major developed States. As evidenced in proceedings of the latest Session of UNCLOS III August 21st to September 15th, 1978, municipal frameworks to develop the 'common heritage of mankind' would result in serious confrontation between the developed and developing States.

Major maritime States would, naturally, prefer to have a wide freedom of exploitation of the resources of the high seas. They are, however, now in a smaller minority in UNCLOS III compared with the big majority of economically and militarily weak States. There are now 115 States in the Group of 77. The developed States, therefore, find it politically inexpedient to take unilateral measures to develop the resources of the sea against claims made and aspirations expressed by the majority of the world's States. In short, the principle of 'one State, one vote' gives all States developed or developing, big or small, rich or poor, a nearly equal opportunity to participate in the development of the envisaged convention on the law of the sea.

NOTES

1. COLOMBOS, C.J., 'The International Law of the Sea', London: Longmans, 1967, 6th revised ed., pp. 48 - 49

2. For a historical account of the nature and scope of the coastal States' rights over adjacent waters, see, OUDENIJK, J.K., 'Status and Extent of Adjacent Waters: A Historical Orientation', Leyden, 1970.

3. As an early example reference may be made to the exclusive right of property of the English Crown over the sea and the soil beneath the sea which originated in 1569 in a treatise by Thomas Diggs, see FULTON, T.W., 'The Sovereignty of the sea', 1911, p. 25.

4. McNAIR, L., 'International Law Opinion', Cambridge University Press, 1956, Vol. 1, p. 258n.

5. Ibid, p. 331, the Report of November 17th, 1806.

6. GREEN, L.C., 'The continental shelf', 4 Current legal Problems (1951), 57.

7. For some harbingers see, MOUTON, M.W., 'The Continental Shelf', The Hague: Martinus Nijhoff, 1952, pp. 46, 240 - 243; AUGUSTE, 'The Continental Shelf: The Practice and Policy of the Latin American States, With Special Reference to Chile, Ecuador and Peru', Geneva, Droz, 1960, pp. 38 - 65; also YOUNG, R., 'Recent development with respect to the continental shelf', 42 AJIL (1948), 849; GREEN, op cit, note 6 pp. 57 -59.

8. AUGUST, op cit, note 7, pp. 13, 57 - 58; also MOUTON, op cit, note 7, p. 46

9. KNIGHT, H.G., 'Law of the Sea: Cases, Documents and Readings', Washington: Nautilus Press, 1976 - 1977 ed., p. 447.

10. CAMPBELL, D., 'The continental shelf', in LARSON, D., 'Major Issues of the Law of the Sea', Durham, New Hampshire: The University of New Hampshire, 1975, p. 56.

11. Ibid.

12. MOUTON, op cit, note 7, pp. 240 - 241.

13. Soviet Status and Decisions, Vol. VI, No. 3, 1970, pp. 255 - 256.

14. IBID, pp. 256 - 258.

15. A/CN.4/17, March 17, 1950.

16. BUTLER, 'The Soviet Union and the continental shelf', 63 AJIL (1969), p. 103.

17. 1942 UKTS, Cmd., 6400, pp. 1 - 7

18. Ibid.

19. The supporting reasons for this view were studied in Chapter I, Section B(II) on Legal Justification of Early Claims, p. 34 See also BORCHARD, 'Resources of the continental shelf', 40 AJIL (1949), supp., p. 62.

20. VALLAT, F.A., 'The continental shelf', 23 BYBIL (1946), p. 333, at 334.

21. Grant, J.P., 'The development of United Kingdom oil and gas law', in DAINTITH and WILLOUGHBY, ed., 'A Manual of United Kingdom Oil and Gas Law', London: Thomson Scottish Petroleum Ltd., 1977, at p. 2.

22. I United Kingdom, Statutory Rules and Orders, August 6th, 1942, at 919.

23. SLOUKA, Z.J., 'International Custom and the Continental Shelf', The Hague: Martinus Nijhoff, 1968, p. 73; also KNIGHT, op cit, note 7, p. 454.

24. ASQUITH, 1951 ILR, P. 144 at 152.

25. CAMPBELL, op cit, note 10, p. 63; also YOUNG, op cit, note 7, p. 852.

26. 41 AJIL (1947), supp., p. 11

27. U.S. Department of State Bulletin, No. 327, September 30th, 1945, p. 485; also, Official Documents, 40 AJIL (1946) supp., pp. 45 - 48.

28. Ibid.

29. It was, however, argued that as the Truman Proclamation contemplated the property over which it should have jurisdiction and control as "pertaining to the United States", the expressions 'jurisdiction and control' and 'sovereignty' might be considered synonymous. For details see, MENCHACA, 'Character and scope of the rights declared over the continental shelf', 47 AJIL (1953), supp., p. 121.

30. op cit, note 27, p. 485.

31. BORGESE, E.M., 'Boom, doom and gloom over the oceans: the economic zone, the developing nations, and the Conference on the Law of the Sea', San Diego Law Review, Vol. II, No.3 (May 1974), pp. 543 - 545.

32. The Latin American practice and policy with respect to the continental shelf will be fully studied in Chapter III, Section on Developing States. For special reference to Chile, Ecuador and Peru see, AUGUSTE, op cit, note 7; also see, GARCIA-AMADOR, 'The Latin American contribution to the development of the law of the sea', 68 AJIL (1974), p.33; SMETHERMAN, B.B. and SMATHERMAN, R.M., 'Territorial Sea and Inter-American Relations: With Case Studies of the Peruvian and U.S. Fishing Industries', New York, London: Praeger, 1974, p. 14.

33. For a review of criticisms see, JESSUP, P., 'Sovereignty in Antarctica', 41 AJIL (1947), supp., pp. 117 - 119; YOUNG, R., op cit, note 7, pp. 849 - 857, KUNZ, J.L., 'Continental shelf and international law: confusion and abuse', 50 AJIL (1956), p. 828 - 853.

34. ANAND, R.P., 'Legal Regime of the Sea-Bed and the Developing Countries', India: Thomson Press (India) Ltd., 1975, p. also see, BISHOP, W.W., 'International Law: Cases and Materials', Boston and Toronto: Little, Brown and Company, 1971, pp. 640 - 641.

35. ANAND, op cit.

36. AUGUSTE, op cit, note 7, p. 103.

37. HJERTONSSON, K., 'The New Law of the Sea: Influence of the Latin American States on Recent Development of the Law of The Sea: A Study of the Law on Coastal Jurisdiction as it has emerged in Latin America and its Impact on Present and Future Law', Leiden: Sijthoff, 1973, p. 14.

38. The proponents of the EEZ differ from the advocates of the 'patrimonial sea' in that the latter insist that the limit for natural resources should extend up to the edge of the continental margin. Both these concepts differ from the doctrine of the continental shelf in claiming both the living and non-living resources under exclusive coastal State jurisdiction.

39. SMATHERMAN, op cit, note 32, p. 14.

40. ODA, S., 'The Law of the Sea in Our Time - 1, New Developments, 1966 - 1975', Leyden: Sijthoff, 1977, p. 169.

41. For the texts of various Proclamations see, U.N.L.S., 'Laws and Regulations on the Regime of the High Seas', Vol. 1, New York: U.N., 1951, and 'Supplement to the Laws and Regulations on the Regime of the High Seas', New York: U.N., 1959.

42. For Australia, Ecuador, and Honduras see, U.N.L.S., op cit, note 41, (1959), pp. 4, 9, and 10. For Portugal and the United States see, Ibid (1951), pp. 19, 39.

43. For Saudi Arabia and the United Kingdom see, Ibid (1951), pp. 22, 23 - 33; for India see, Ibid (1959), p. 14.

44. KUNZ, op cit note 33, p. 828.

45. BUTLER, 'The Soviet Union and the continental shelf', 63 AJIL (1969), p. 103.

46. Ibid.

47. ASQUITH, op cit, note 24, p. 144.

48. Report of ILC covering the owork of its First Session, General Assembly, 4th Session, Official Records, supp., No. 10 (A/925), para. 20; for its background see, BRIGGS, 'Jurisdiction over the sea-bed and subsoil beyond territorial waters', 45 AJIL (1951), supp., 340 - 341.

49. U.N. Doc. A/CN.4/SR/67, July 13th, 1950, pp. 7 - 24, 24 -26.

50. U.N. Doc., A/CN.4/17, at 39 - 40.

51. U.N. Doc. A/CN.4/42

52. For an account of 1951 ILC progress as far as the continental shelf is concerned see, YOUNG, R., 'The International Law Commission and the continental shelf', 46 AJIL (1952). supp., pp. 123 - 128.

53. Report of the ILC Covering Its Third Session, May 16th to July 27th, 1951, A/CN.4/48, July 30th, 1951.

54. Ibid, Explanatory note 2; also MOUTON, op cit, note 7, p.40.

55. Ibid, The explanation given in Point 8; also MOUTON, op cit, note 7, p. 41.

56. BRIERLY, J.L., 'The Law of Nations: An Introduction to the International Law of Peace', Oxford: Clarendon, 1963, p. 215.

57. ASQUITH, op cit, note 24, p.144.

58. U.N. Official Records, supp., No. 9, A/2456; also, Official Documents, 48 AJIL (1954), supp., pp. 27 -38.

59. Report of the ILC covering the work of its Fifth Session, para. 62.

60. For a summary of these views see, LIANG, Y., 'Notes on legal questions concerning the United Nations', 48 AJIL (1954) supp. p. 579, at pp. 588 - 590.

61. U.N. Official Records, supp., No. 9 (A/3159); also 51 AJIL (1957), p. 177.

62. U.N. Doc A/3159, II ILC Yearbook (1956), 264, 295 - 300; for relevant comments see, KNIGHT, op cit, note 9, p. 474.

63. II ILC Yearbook (1956), p. 297.

64. U.N.G.A. 11th Session, Official Records, supp. No. 17 (A/3572), Resolution 1105(XI), February 21st, 1957.

65. For full discussion on the 1958 UNCLOS, see DEAN, A.H., 'The Geneva Conference on the Law of the Sea', in GROSS, L., ed., 'International Law in the Twentieth Century', New York: Appleton-Century-Crofts, 1969, p. 304.

66. U.N. Doc. A/CONF. 13/L.58.

67. For discussions concerning the background of the GCCS, see WHITEMAN, M.M., 'Conference on the Law of the Sea: Convention on the Continental Shelf', in GROSS, op cit, note 65, p. 326; GUTTERIDGE, J.A.C., 'The 1958 Geneva Convention on the Continental Shelf', 35 BYBIL (1959), p. 102; YOUNG, R., 'The Geneva Convention on the Continental Shelf: a first impression', 52 AJIL (1958), p.733.

68. Several Latin American States have always used this method to claim rights extending 200 miles from the coast. See the previous Sub-Section on Extensive Claims (1945 - 1958), p.56-58.

69. Yugoslav proposal, A/CONF.13/C.4/L.12; see also, ANDRASSY, J., 'International Law and the Resources of the Sea', New York and London: Columbia University Press, 1970, at 118 - 120.

70. U.N. Doc. A/CONF.13/L.55

71. BRIERLY, op cit, note 56, p.216.

72. COLOMBOS, op cit, note 1, p. 76

73. GUTTERIDGE, op cit, note 67, p. 102, at 110 - 119.

74. A/CONF.13/42, pp. 2 -3.

75. Ibid; See also WHITEMAN, M., 'Conference on the Law of the Sea', 52 AJIL (1958), p. 629.

76. U.N. DOC. A/CONF.13/L.55, GCCS, Article 2(1).

77. MILIĆ, 'The legal regime of the submarine areas', Nova Zakonitost, 1959, No. 11 - 12, p.552.

78. PAPADAKIS, N., 'The International Legal Regime of Artificial Islands', Leyden: Sijthoff, 1977, p. 67.

79. ANDRASSY, op cit, note 69, p. 20.

80. ODA, S., 'International Control of Sea Resources', 127 Hague Rec., 1967, p. 442.

81. For full discussion, see, BROWN, E.D., 'Arms Control in Hydrospace: Legal Aspects', 1971, p.23; also, O'CONNELL, D.P., 'The Influence of Law on Sea Power', Manchester University Press, 1975; also DUPUY, R.J., 'The Law of the Sea: Current Problems', Dobbs Ferry: Oceana Publications, 1974, p. 105.

82. COLOMBOS, op cit, note 1, p. 67.

83. McDOUGLAS and BURKE, 'The Public Order of the Oceans: A Contemporary International Law of the Sea,' New Haven, London: Yale University Press, 1962, at p. 719.

84. PAPADAKIS, op cit, note 78, pp. 68 - 69.

85. RAO, S.P., 'The Public Order of Ocean Resources: A Critique of the Contemporary Law of the Sea', London: Massachusetts Institute of Technology, 1975, p. 47.

86. 1969 ICJ Reports, p. 3. This ruling was examined in Chapter I, Sub-Section on International Customary Rules, Sub-Division 4(2).

87. BROWN, E.D., 'The Legal Regime of Hydrospace', London: Stevens & Sons, 1971, pp. 81 - 103.

88. Thirty-Sixth sitting of Sub-Committee I of the Committee on Sea-Bed, A/AC.138/SC1/SR.36, p.49.

89. Maltese Memorandum, A/6695. For a full discussion on the Maltese proposal see, ODA, S., 'The Law of the Sea in Our Time - II: The U.N. Seabed Committee 1968 - 1973', Leyden: Sijthoff Publications, 1977, p. 3.

90. Resolution 2340 (XXII) of December 18th, 1967.

91. At present submarine areas in mid-Atlantic as deep as 17,000 feet are exploitable, see the Financial Times, London, August 2nd, 1978, p. 4.

92. U.N. Resolution No. 2467 (XXIII), December 21st, 1968.

93. U.N. Resolution No. 2574 (XXIV), December 15th, 1969.

94. Ibid.

95. U.N. Resolution on the Law of the Sea Conference, A/RES/2750, December 17th, 1970.

96. For a fine study of the implications of these Resolutions see DUPUY, op cit, note 81, pp. 24 - 47.

97. U.N. Resolution, No. 2749 (XXV).

98. U.N. Conference on Trade and Development, Resolution 51 (III), 52 (III), May 19th, 1972.

99. U.N. Resolution, No. 3029 A(XXVII).

100. For a comprehensive account of the Committee see, ODA, op cit, note 89, p. 155.

101. Ibid, pp. 155 - 181.

102. Ibid, 201; also KNIGHT, op cit, note 9, Annex F.

103. For details, see, ODA, op cit, note 89, p. 274.

104. A/AC.138/SC.11/L.54, in A/9021, Vol. III, p. 107, Part II of the Proposal.

105. See Provision 15 of the Proposal.

106. ODA, op cit, note 89, p. 275.

107. This will be studied in detail in Chapter III on National Policies and Practices, Section I on Developed States.

108. A/AC.138.SC.11/L.29.

109. Materials concerning the work of UNCLOS III is to be found in the Records of UNCLOS III, Docs, A.CONF.62/··· and in Docs, A/CONF.62/C.1/L and SR, A/CONF.62/C.2/L. and S.R. and A/CONF.62/C.3.L and S.R.

110. U.N. Doc. A/CONF.62/SR.63,5 Official Records, 45 - 6(1976), U.N. Press Release, Sea/202, April 8th, 1976, at p. 6.

111. For a detailed account of this session, see STEVENSON, J., and OXMAN, B., 'The preparation for the Law of the Sea Conference' 68 AJIL (1974), 1 - 32; also ODA, op cit, note 40, p. 125.

112. For an account of Caracas Session, see, OXMAN, B., 'The Third United Nation Conference of the Sea: The 1974 Caracas Session', 69 AJIL (1975), p. 1.

113. U.N. Doc. A/CONF.62/WP.2 (Rules of Procedure, 1974). The 'gentlemen's agreement' is referred to in U.N. Doc. A/CONF.62/2 and Add. 1.3, A/CONF.62/4-14. For a discussion, see GANZ, D.L., 'The United Nations and the Law of the Sea', 26 ICL Q(1977), 1 - 35, at p. 7.

114. ODA, op cit, note 40, p.169.

115. For detailed account, see OXMAN, B., 'The Third United Nations Conference on the Law of the Sea: The 1975 Geneva Session.', 69 AJIL (1975), 763; also ODA, op cit, note 40, p. 158.

116. U.N. Doc A/CONF.62/SR.54.

117. ODA, op cit, note 40, p. 161.

118. U.N. Doc. A/CONF.62/WP.8/Part II, May 7th, 1975.

119. Ibid.

120. U.N. Doc. A/CONF. 62/C.2/W.P.-2, Provision 68,3 Official Records 117 - 118 (1975); also, see GANZ, op cit, note 113, at p.21.

121. GANZ, op cit, p. 21.

122. ODA, op cit, note 40, p. 164; also RAO, op cit, note 85, p. 66.

123. RAO, op cit, pp. 65 - 66.

124. United States, UNCLOS III. U.S. Delegation Report, March 17th - May 9th, 1975, pp. 16 - 17.

125. U.N. Doc. A/CONF.62/WP.8/Part II, May 7th, 1975.

126. OXMAN, B.H., 'The Third United Nations Conference on the Law of the Sea: The 1976 New York Sessions', 71 AJIL (1977), 247 at 259; also RAO, op cit, note 85, p. 67.

127. OXMAN, op cit, note 126, p. 260.

128. See the GCCS, Articles 2, 4, 5; and the Geneva Convention on the High Seas (1958), Article 2.

129. BOWETT, D.W., 'The Law of the Sea', Manchester: Manchester University Press, 1967, p.39.

130. U.N. Doc. A/CONF.62/WP.8, Part II.

131. Ibid, Part IV.

132. For details see OXMAN, op cit, note 126, p. 247.

133. For a discussion on the EEZ as provided in the RSNT, see Phillips, J.C., 'The Exclusive Economic Zone as a concept in international law', 26ICLQ(1977), p. 585.

134. U.N. Doc., op cit, note 130, Rev.1/May 6th, 1976; also 15 ILM (1976), 61.

135. For further discussion, see ADEDE, A.O., 'Law of the Sea: the scope of the third party, compulsory procedures for settlement of disputes', 71 AJIL (1977), 305.

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137. For details, see BARSTON, R.P., 'Law of the Sea Conference: old and new regimes', 6 International Relations (1978), pp. 302 - 310.

138. Explanatory Memorandum by the President of UNCLOS III, ICNT, A/CONF.62/WP.10/Add.1, July 22nd, 1977, p.1.

139. U.N. Doc. A/CONF. 62/WP.10, New York, May 23rd, July 15th, 1977 (Sixth Session).

140. Ibid, Explanatory Memorandum, at pp. 2 - 3.

141. U.N. Doc. op cit, note, 138.

142. U.N. Monthly Chronicle (1978), p.31.

143. Ibid.

144. For an account of the Conference failure, see HAIGHT, G.W., 'Law of the sea: why paralysis', 8 Journal of Maritime Law and Commerce (1977), p. 281.

145. The Times, London, August 21st, 1978, p. 11.

146. The Times, London, September 19th, 1978, p. 7.

147. See the argument advanced by the French Government in the proceedings of the Court of Arbitration, the United Kingdom - France Shelf Boundaries, Decision of June 1977.

148. The Financial Times, May 23rd, 1977, p. 4; The Times, London, September 19th, 1978, p.7. For further discussion, see Chapter III, Section on the United States.

149. The Times, September 19th, 1978, p.7.

150. HARRIS, S., 'Cashing in on the ocean - the new manganese klondike', The Listener, Vol. 100, No, 2576, September 7th, 1978.

CHAPTER III

NATIONAL POLICIES AND PRACTICES ON THE CONTINENTAL SHELF

The legal regime of the continental shelf was originated in consequence of unilateral declarations made by individual States. These national claims, however, brought about a lack of international consensus with respect to the extension of the continental shelf. Paradoxically, the future existence of this international consensus, as developing in UNCLOS III, does itself depend on national aspirations. That is to say, the final agreement on the text of the envisaged law of the sea convention is subject to the support of the majority of theStates as manifested in the principle of 'one State, one vote'. It is, therefore, regrettable that the value of these unilateral declarations and legislative acts has been one of the least studied questions in the technical field of international law.[1]

In their formulae for defining the future national-international boundary, there are basic differences in what individual States have declared most equitable, most advantageous, or least disadvantageous to their interest.[2] Some proclamations such as the Truman Proclamation of 1945[3] and the Saudi Arabian Pronouncement of 1949[4] claimed rights over the continental shelf, but without defining the geographic extent of these rights. Other proclamations, like the Dominican Law of 1952 and the Indian Proclamation of 1955 included continental shelf zones in their national territory, but always without defining the actual area encompassed.[5] Some States, like the USSR (1968)[6] and Oman (1972)[7] incorporated both the criteria of isobath and exploitability as adopted by Article 1 of the GCCS. Several States, however, preferred to adhere to only

one of the two criteria. For instance, Israel (1953), Argentina (1966), and Honduras (1965) have adopted the criterion of exploitability; while Pakistan (1950) and Portugal (1956) have opted for the criterion of 100 fathoms or 200 metres.[8] On the other hand, the Latin American States extended their sovereignty over the continental shelf up to a distance of 200 miles from the coast.[9]

The present situation of the developing law of the sea is inevitably regarded in terms of groups of States. J.K. Gamble has used the expression 'bloc thinking' to describe this situation of States forming political groupings to achieve specific goals in the development of the law of the sea.[10] The major blocs, he suggests, include developed States, developing States, land-locked States, coastal States, naval powers, commercial maritime powers, coastal fishing States, distant water fishing States, oil exporting States, oil importing States.[11] Although these categories hold good to some extent, individual bloc members may shift their allegiance on specific issue areas and adhere to the policies of different blocs in accordance with their national interests. This Gamble calls 'pluralism'. Classic examples of this situation may be seen in the policies of the Eastern European States and of Canada on the outer limit of continental shelf which will be studied later in this Chapter.

A comprehensive study of the different bloc policies on all issues of the law of the continental shelf is too wide and impractical for the purpose of the present study. The scope of this Chapter is confined to an examination of the shelf practice of four major groups of States which have distinct goals on continental shelf issues: Developed States, Developing States, Socialist

States, and Land-Locked States. The study focuses on bloc policies in defining the outer limit of the continental shelf and State practice on delimitational issues. The distinction generally made between the shelf practices of developed and developing States is the clearest and least debatable. As regards developed States, instead of making general references to all those in this category, the policies of four States only (the United Kingdom, the United States, Canada, and France) will be studied in detail. The developing States will be subcategorised into three major blocs: Latin American States, African-Asian States, and the Persian Gulf States. The shelf practice of Socialist States, for obvious political, economic and legal reasons, will be studied under an independent heading. Clearly, the interests of land-locked States are antithetical to those of coastal States. Therefore a separate study of the policies of the land-locked or shelf-locked States (including both developed and developing States) is required to complete this Chapter.

I. DEVELOPED STATES

The developed industrialized States are those authorities which hold both the technology and capital to exploit the sea-bed resources. They are inclined to develop their own municipal laws for mining on the deep sea-bed and ocean floor beyond national jurisdiction. The developed States would, predictably, recognise each other's mining claims over these areas as legitimate.[12] This is the main reason for the disagreement between the developed and developing States at UNCLOS III. In the event of the Conference failing, it has been suggested by Darman that a sea-bed 'mini-treaty'

should be drawn up outside the Conference framework by the mining developed States. This 'mini-treaty' he considers necessary to assure orderly process, regulatory consistency and mutual respect for security of tenure at mine sites.[13] Such moves by the developed States, no doubt, would be strongly opposed by the developing States.

At present the United States, Japan, Federal Republic of Germany, France and the Netherlands are contemplating municipal legislation to enable mining on the deep sea-bed and ocean floor beyond national jurisdiction. The possibility that consequently private companies would be given the right to start mining the deposits of manganese nodules on the deep sea-bed and ocean floor caused a sharp clash between the developing States and the developed States at the latest session of UNCLOS III, New York, August 21st to September 15th, 1978. On the final day of this Session a spokesman for the developing States (the Group of 77) stated that such unilateral legislative enactments were illegal under contemporary international law and contrary to the notion of 'common heritage of mankind'. Any such move would, the Group suggested, jeopardize the entire treaty-making process of UNCLOS III with possible disastrous consequences. It pleaded with the developed States, contemplating legislation on deep sea mining, not to go ahead until the Conference had settled the issue. That call was supported by the delegations of the USSR, the Eastern bloc, and some Nordic States. Mr Hamilton Shirley Amerasinghe, the President of the Conference during 1973 - 1978, added his weight to the plea, explaining that unilateral legislation such as the American Bill might give the impression that the Conference was negotiating under duress.[14]

Seabrook Hull has made a major contribution by distinguishing the leading attitudes and perspectives of developed and developing States at UNCLOS III. He perceives these to be moulded upon the following considerations, which he lists in the order of importance:[15]

Priority	Criteria of Developed States	Criteria of Developing States
First	National Interest	National Interest
Second	Political Bloc Orientation	Correction of Inequities
Third	International Order	Political Bloc Orientation
Fourth	Correction of Inequities	International Order)

The developed States, however, are far from following a united or even similar line in their policies on the continental shelf. The United States, France, The Federal Republic of Germany, Japan and the Netherlands prefer to recognise an almost narrow continental shelf and to enjoy freedom of exploitation of the sea-bed resources beyond national jurisdiction. The developed States with large continental margin or long coast line (like the United Kingdom, Ireland and Canada) favour extended rights over the submarine areas adjacent to their coasts. The land-locked developed States like Austria, Luxembourg, and Switzerland favour a very restricted area of coastal State rights over shelf resources. The policy of land-locked and shelf-locked States will be studied under a separate heading. As regards the coastal developed States the shelf practice of only some prominent examples (the United Kingdom, the United States, Canada and France) will be examined.

A. United Kingdom

A. United Kingdom

As already mentioned,[16] the United Kingdom was one of the first States which recognised the exclusive rights of coastal States over the submarine areas beyond their territorial sea. The United Kingdom-Venezuela Treaty of 1942 divided the submarine areas of the Gulf of Paria between the two States.[17] Although this Treaty could not be regarded as the beginning from which the doctrine of the continental shelf emerged, it was a fact of which third parties could be expected to take notice.[18] To implement this Treaty the United Kingdom adopted the Submarine Area of the Gulf of Paria (Annexation) Order in Council, August 6th, 1942.[19] The Order went beyond the legal scope of the bilateral Treaty, and claimed an exclusive right to control the use of the defined shelf territory, its soil and subsoil, vis-a-vis the community of States. Thus, the 1942 Treaty and Order in Council, taken together, represented a major and significant stepping stone from which the exclusive right of the coastal States to adjacent continental shelves evolved.[20]

Actions taken by the United Kingdom on behalf of her colonies and protectorates were intended to assert full and exclusive authority over the continental shelf. The British actions with respect to British Honduras and the Falkland Islands claimed sovereign territorial rights over the respective continental shelves rather than rights to specific exclusive uses.[21] On November 26th, 1948, both the Bahamas (Alteration of Boundaries) Order in Council and the Jamaican (Alteration of Boundaries) Order in Council extended the boundaries of the colonies so as to include the adjacent continental shelves.[22]

The United Kingdom formally claimed continental shelf rights over the submarine areas off her own coasts in early 1960's after the discoveries of oil and natural gas in the North Sea. The Continental Shelf Act of 1964 provided the municipal law framework for the exploration and exploitation of natural resources of the continental shelf appertaining to the United Kingdom.[23] Subsection 1 of this Act vested in Her Majesty 'any right exercisable by the United Kingdom outside territorial waters in respect of the seabed and subsoil andtheir natural resources, except so far as they are exercisable in relation to coal.' There is no mention of the nature of the rights exercisable by the United Kingdom over the continental shelf. Article 7 stated that any area from time to time might be designated as an area within which the United Kingdom rights were exercisable. The Act failed to mention any objective criterion for determining the seaward limit of such designated areas.

Although her continental margin extends far in excess of 200 miles,[24] until 1974 the United Kingdom designated no submarine areas farther than 100 miles from the mainland. Much of the designated areas, the subject of the Continental Shelf (Designation of Areas) Orders 1964,[25] 1965[26] 1968[27] and 1971,[28] lie at an internationally acceptable distance, the farthest point being some 100 miles from the coast.[29] However, the Continental Shelf (Designation of Additional Areas) Order, 1974 declared an enormous 52,000 square miles of the sea-bed under the Atlantic Ocean as appertaining to the United Kingdom.[30] This designated area extended to a maximum of 400 miles from the mainland of the United Kingdom (Scotland).[31] The Continental Shelf (Designation of Additional Areas) Order, 1976, designated areas of Cornwall and in the

English Channel as areas within the United Kingdom jurisdiction.[32] Following the Court of Arbitration's decision of June 30th, 1977,[33] further areas in the English Channel and South-Western Approaches were designated on November 15th, 1977.[34]

The precise position of the United Kingdom as regards the outer limit of the continental shelf is not clear. The United Kingdom working papers to the United Nations Sea-Bed Committee did not specify any limit as the outer edge of the continental shelf. It was, however, stated that the United Kingdom supported the International Trusteeship concept proposed by the United States.[35] This proposal was not accepted by the majority of States which regarded it as contrary to the concept of 'common heritage of mankind'.[36] This proposal, however, is considered as legal in the light of the United Kingdom's interpretation of the 'common heritage'. Moreover, Mr. Ronald Arculus, the United Kingdom delegate at UNCLOS III, made it clear that his Government did not even accept that private mining operations on the deep sea-bed and ocean floor would transgress international law.[37]

Article 76 of the Informal Composite Negotiating Text (ICNT), prepared by UNCLOS III, July 15th, 1977, sets the outer limit of the continental shelf at the foot of the continental margin. A distance of 200 miles from the coast is set as the outer limit of the legal continental shelf only where the margin does not extend to 200 miles.[38] Since the continental margin of the United Kingdom extends beyond 200 miles, the definition of the seaward limit of the United Kingdom continental shelf is clearly of crucial importance. The United Kingdom, however, is not in favour of Article 76 of the ICNT, but supports an Irish proposal

of great complexity. The Irish Republic submitted this proposal to the 1976 session of UNCLOS III. The proposal, focused upon in the seventh session, gives each State a choice between two natural criteria. One criterion is related to the thickness of sea-bed sediments and the other to a measure of distance, but both are related to the foot of the continental slope where the sea-bed begins to rise steeply from the deep ocean to the shallower offshore waters.[39] The United Kingdom's support for the depth criterion can be clearly seen in her practice with respect to the continental shelf in the Atlantic. For instance, Article 2 of the Anglo-French Agreement of July 19th, 1974, requested the Court of Arbitration to define the continental shelf boundary between the two States in the Atlantic region as far as the 1000 metre isobath.[40]

The United Kingdom has defined her continental shelf boundaries in the North Sea with Norway, the Netherlands, Denmark, and the Federal Republic of Germany.[41] The boundary lines were delimitated on the basis of the median-line principle.[42] A recent Order was made for the area north of 60° 44' 12", which is where the 1965 boundary line between the United Kingdom and Norway ended. The negotiations proceeding with Norway included the Danish authorities because of the adjacence of the Faeroe Islands. The continental shelf boundary between the United Kingdom and France, both in the English Channel and in the Atlantic Ocean, was delimited in 1977 by arbitration. This will be studied in the next Sub-Section on French shelf practice. Here the two matters to be discussed are firstly, the shelf boundary with the Republic of Ireland, and secondly, the possibility of the delimitation of the continental shelf of the United Kingdom between Scotland and the rest of the

United Kingdom (in the case of the former's independence).

The continental shelf boundary between the United Kingdom and the Republic of Ireland both in the Celtic Sea and in the Atlantic Ocean is undefined. On September 6th, 1974, 52,000 square miles of the sea-bed under the Atlantic Ocean west of Scotland was designated as appertaining to the United Kingdom.[43] It was described as 'an area within which the rights of the United Kingdom outside territorial waters with respect to the sea-bed and subsoil and their natural resources are exercisable'.[44] The Republic of Ireland protested that these designations included areas which fell within Irish jurisdiction.[45] The delimitation dispute was eventually submitted to international arbitration.[46]

The whole designated area of 1974 extending to a maximum of 400 miles from the mainland of Scotland,[47] has, however, geological association with the landmass of the United Kingdom.[48] Therefore, the whole area, being the natural prolongation of the land territory, is appertaining to the United Kingdom, although a depression, the Rockall Trough, occurs between the Bank and the Outer Hebridean Islands. This assumption is supported by the remarks made by the I.L.C. (1956),[49] and the I.C.J. in the North Sea Continental Shelf Cases.[50] Also Article 76 of the ICNT sets the outer limit of the continental shelf at the foot of the continental margin. A distance of 200 miles is set as the seaward limit of the continental shelf only where the continental margin does not extend to 200 miles.[51]

Besides the principle of natural prolongation, the 1974

designation can partly be justified on the basis of the United Kingdom's title to the uninhabitable island of Rockall. The island of Rockall, about 180 miles from the outermost island of the Outer Hebrides, was formally incorporated as part of the United Kingdom. Article 1 of the Island of Rockall Act of February 10th, 1972, stated that - "the Island of Rockall (of which possession was formally taken in the name of Her Majesty on 18th September, 1955 in pursuance of a Royal Warrant dated 14th September, 1955 addressed to the Captain of Her Majesty's Ship Vidal) shall be incorporated into that part of the United Kingdom known as Scotland and shall form part of the District of Harris in the County of Inverness, and the law of Scotland shall apply accordingly."[52] Though the United Kingdom's annexation of Rockall is indisputable, both the Republic of Ireland and Denmark deny its entitlement to any continental shelf or economic zone rights.[53]

Article 121(3) of the ICNT, the latest draft Convention prepared by UNCLOS III, provides that - "Rocks which cannot sustain habitation or economic life of their own shall have no exclusive economic zone or continental shelf".[54] This was also acknowleged in previous versions of the draft Convention as incorporated in Article 132 of the Informal Single Negotiating Text (S.N.T.) and Article 128 of the Revised Single Negotiating Text (R.S.N.T.).[55] However, this proposal, which is in no way part of customary international law, has been rejected by the United Kingdom.[56] The United Kingdom supports the provisions adopted in Article 1 of the GCCS which simply states that the term 'continental shelf' is also used as referring to the sea-bed and subsoil of submarine areas adjacent to the coasts of islands.[57] within these terms and in conjunction

with Article 10(1) of the Convention on the Territorial Sea and the Contiguous Zone all islands, including uninhabitable islands, can assert both continental shelf and territorial sea rights. These provisions, not being part of the customary law, cannot be enforced against the Republic of Ireland which is not a party to the 1958 Conventions.

The possibility of a division of the present continental shelf of the United Kingdom between Scotland and the rest of the United Kingdom is significant. The draft articles for a Scottish constitution, prepared by the Scottish National Party, 1978, are intended to govern an initially devolved and finally independent Scotland.[58] If and when Scotland becomes an independent sovereign State it will obviously be entitled to the natural prolongation of the Scottish land territory under the sea. Scotland's exclusive rights to the continental shelf would be inherent and would depend neither on occupation nor declaration.[59]

As regards the delimitation of the continental shelf boundaries, an independent Scotland would be bound, under both conventional and customary rules of international law, by the equidistance/special circumstances principle.[60] Neither the geographical nor the geological aspects of the Scottish-English continental shelves constitute special circumstances.[61] Therefore, as J.P. Grant has established, a median line in an east-north-easterly direction would define the shelf boundary between England and Scotland in the North Sea.[62] The boundary between Scotland and the rest of the United Kingdom in the Atlantic Ocean would also be settled through the application of the median line principle.[63] The

boundary between Scotland and the Republic of Ireland would be that mentioned above in the discussion of the Anglo-Irish dispute over the 1974 designated submarine areas. Those designated areas adjacent to Rockall would also be apportioned to Scotland. Rockall has geological association with Scotland and it is a shorter distance from Scotland than the rest of the United Kingdom. Furthermore, Rockall was formally recognised by the United Kingdom in 1972 to be part of what was then the District of Harris in the County of Inverness in Scotland.[64] Theoretically, however, one may argue that the acquisition of Rockall, as 'terra nullius' could not be made on behalf of Scotland. That is to say that Scotland might not acquire any sovereignty over Rockall achieved by the United Kingdom in the past, because Scotland has not been an independent State since the Union of Parliaments, 1707. Exclusive appropriation by occupation would not be possible for an envisaged independent Scotland because Rockall is no longer 'terra nullius'. In the legal sense, however, such an argument is highly unrealistic as it is contradicted by the principle of natural prolongation. An independent Scotland would inherit the natural prolongation of both its mainland and minor islands, including submarine areas adjacent to Rockall.

In the case of any division in the United Kingdom the constitutional status of the Shetland islands should be taken into account. The Nevis Institute report of April 1978 suggests that the most convenient option would be for Shetland to accept devolution along with the rest of Scotland. But it also justifies a special government system between Shetland and the United Kingdom similar to that of the Faroes with Denmark.[65] If Shetland gained independence

or remained with Westminster while Scotland gained independence, the maritime boundaries around Shetland would have to be defined. The title to the continental shelf contiguous to Shetland entirely depends on her future constitutional status. An independent Shetland would be entitled to the continental shelf adjacent to her coasts up to the limits of the continental shelves of the adjacent and opposite States. If Shetland joined an independent Scotland, there would be no more division of the continental shelf when the United Kingdom-Scotland boundaries were defined. If Shetland stayed with the United Kingdom, the boundary between an independent Scotland and Shetland would be defined in accordance with median-line principle.[66] The continental shelf of a highly developed but not independent Shetland would depend on constitutional arrangements and political circumstances. In practice it is not impossible for internationally non-independent political units to claim continental shelf rights within certain national or international political structures, though such claims may not be recognised as technically legal vis-a-vis the international community. For instance, each member-State of the United Arab Emirates claims a separate continental shelf within the constitutional framework of the federal State.[67] Also Faroe has been able to make her own settlement for a 200-mile exclusive fishing zone with the European Economic Community.[68] However, it was established in the arbitration case between the United Kingdom and France that a governmental body such as the Channel Islands was not entitled to a continental shelf of her own.[69]

B. United States

In the United States the Truman Proclamation[70] was followed by the OUter Continental Shelf Lands Act of August 7th, 1953.[71] Paragraphs 2 and 3 of this Act declared as the policy of the United States that the submerged lands lying seaward outside the continental shelf appertaining to the United States were subject to her jurisdiction, control and power of disposition.[72]

On July 13th, 1966, President Johnson emphasised that the Americans would strive to retain the status of the deep sea-bed and ocean floor as 'the legacy of all human beings'.[73] He later urged all nations to cooperate with the United States in a concerted programme of ocean exploration on a world-wide basis. This exploration was to determine the geological structure and the mineral and energy potential of the world's continental margin.[74] The Johnson Administration later supported the concept that a part of the profits emerging from exploitation should be dedicated to the benefit of the international community (August 1968)[75] Under the Nixon Administration a report of the Commission on Marine Science, Engineering and Resources suggested as the limit of the continental shelf the 200-metre isobath, or 50 mile limit from the coast, whichever was greater.[76]

The United States submitted a draft Convention on the International Sea-Bed Area (August 3rd, 1970) which provided that the coastal State should delineate the International Sea-Bed Area.[77] Article 1(3) of the draft Convention provided that the precise boundary of International Sea-Bed Area should be defined by straight lines off the coasts not exceeding 60 miles.[78] This failed to impress the coastal States because it did not provide a desirable

degree of control in offshore areas.[79] The 1970 draft Convention proposed an International Trusteeship Area which was that part of the International Sea-Bed Area comprising the continental or island margin beyond the continental shelf. The landward boundary of the Trusteeship Area would be the line where the International Sea-Bed Area meets the national jurisdiction of the coastal State. Its seaward boundary would be a line beyond the base of the continental slope, where the inclination of the surface declines to a gradient to be determined by technical experts.[80] The concept of a Trusteeship Area was flexible both in relation to the area it might embrace and in the division of rights and responsibilities between the coastal States and the International Sea-Bed Authority.[81]

The United States proposed a revenue-sharing system with respect to the International Trusteeship Area, but this was also rejected. This called for a favourable linkage of restraint upon coastal State territorialism with revenue-sharing from resources beyond the 200-metre isobath and a licensing system for sea-bed mining. While this position might have adequately conceived the attractiveness of revenue-sharing, it failed to take into account the associated unattractiveness of revenue-sharing for those who would otherwise receive more.[82]

The Government of the United States abandoned support for its proposed Trusteeship Area and realised American aspirations in conjunction with the creation of an Exclusive Economic Zone. The United States delegation to UNCLOS III(Geneva, 1975) noted that a large number of the States held that the outer boundary

of an economic zone should be at a distance of 200 miles from the coast or should be marked by the outer limit of the continental margin if it extended beyond 200 miles.[83]

Within the draft articles of July 19th, 1973, the United States proposed the extent of the 'Coastal Sea-Bed Economic Area' to be left open for future negotiations.[84] This was a radical move towards the views of the majority of States on the issue of the continental shelf. The draft articles provided that the coastal State had exclusive rights to explore and exploit and authorise the exploration and exploitation of the natural resources within its 'Coastal Sea-BedcEconomic Area', While the provisions for a 'Coastal Sea-Bed Economic Zone' are in line with those of States favouring an offshore EEZ, there are areas of disagreement such as fisheries, pollution control, the regime for the deep sea-bed and ocean floor and scientific research.[85]

Dissatisfied with the progress of UNCLOS III, the United States is now simultaneously developing her own deep sea-bed mining jurisdiction.[86] Dr. Kissinger, then the Secretary of State, in his opening speech at UNCLOS III, Summer 1976, threatened that should the Conference fail to reach an agreement on the issues of the deep sea-bed and ocean floor, the United States would develop the resources of these areas unilaterally. A United States company, planning to mine metal-rich manganese nodules from the ocean floor, filed a claim with the State Department for a large section of the Pacific bottom. Another American concern, insisting that the ocean bottoms are no-one's property, announced that it would take the nodules without seeking permission.[87] At present an

Administration-backed Bill to allow such mining under licence, having been developed and approved by the House of Representatives, is awaiting approval by the Senate. Mr. Elliot Richardson, on whom the Carter Administration conferred special responsibilities for law of the sea issues, explained that his Government had supported the Bill largely because "if the companies were not given the go ahead soon, they might cease investing in the projects and disperse their technology teams, which could result in no mining at all being done."[88] This Bill asserts no sovereignty claim over the deep sea-bed and ocean floor, but it aims to regulate the deep sea mining activities of the United States citizens under the principle of 'nationality' jurisdiction, i.e., a principle based on a State's authority to regulate its nationals wherever they may be.[89]

C. Canada

The coastline of Canada, measuring over 150,000 statute miles (241,402 km.), is one of the world's largest. It comprises the Canadian mainland (Pacific, Hudson Strait, Hudson Bay, and Arctic) and its islands (Atlantic, Pacific, Hudson Strait, Hudson Bay, Northwest Territories South of Arctic Circle and Arctic). The submerged continental shelf of the Atlantic at the point of its transition from continental to oceanic conditions is distinguished by great width and diversity of relief. The continental shelf in the Pacific, from the coast of the islet Strewn, extends from 50 to 100 sea miles to its oceanward limit at a depth of 200 fathoms. The sea floor drops rapidly to the Pacific depths, parts of the western slopes of Vancouver Island and the Queen Charlotte Islands'

both of these lying a few miles from the edge of the declivity. These detached land masses are the dominant features of the Pacific marginal sea. The continental shelf bordering the Arctic Ocean is merely flat to gently undulating with isolated rises or hollows. Most of it has an average slope seaward of about half a degree, with an abrupt break at the outer edge to the continental slope whose declivity is commonly six degrees or more.[90]

For two decades or so following the Truman Proclamation (1945), Canada did not issue any particular proclamation as regards its continental shelf. Canada at that time adhered to the rules of the law of the sea as practised by the United Kingdom. It was only after the Second World War that Canada began to revise the British practice with reference to her own needs.[91] In the 1960's exploration of the Arctic regions and the prospects of exploitation of the Canadian continental shelf[92] raised the question of the existing rules as regards the development of the Canadian law of the continental shelf.

The Federal Government of Canada ratified the GCCS in February 1969. It declared, however, that "the presence of an accidental feature such as a depression or a channel in a submerged area should not be regarded as constituting an interruption in the natural prolongation of the land territory of the coastal State into and under the sea."[93] The limits of the Canadian continental shelf, as provided in the Oil and Gas Production and Conservation Act, 1970, were based on the dual criteria of depth and exploitability.[94] The precise extent of the Canadian claims regarding the continental shelf is not known.[95] Canada in principle upholds that the

internatinnal-national sea-bed boundary should be fixed where the continental margin ends.[96]

Canada claims rights over the whole of the continental margin which comprises the physical continental shelf as well as the continental slope and rise.[97] The Canadian continental margin, covering an area of almost 2,000,000 square nautical miles, is second only to that of the USSR. Canada's continental margin extends much beyond 200 miles from the coasts. For instance, one third of Canada's east coast continental margin actually projects beyond the 200-mile line. There are at present oil wells which are over 200 miles from the Canadian shore.[98] Claims over the whole of the continental margin are justified since Article 76 of the ICNT does not establish a maximum outer limit for the continentalshelf. The two hundred mile limit applies only where the outer edge of the continental margin does not extend up to that distance. This means that Canada, having the largest coast line in the world, would have an enormous continental shelf. Having the second largest continental shelf in the world, Canada's interests as regards the exploitation of the sea-bed are closer to the interests of the developing States than those of the developed States.

As regards the delimitation of the continental shelf boundaries, Canada favours the equidistance method as laid down in Article 6(2) of the GCCS.[99] The Canadian continental shelf overlaps the continental shelves of the United States, Denmark (Greenland) and France (St. Pierre and Miquelon islands). In most of these cases the equidistance principle is difficult to apply and does not settle all the problems.[100] Canada and Denmark reached an

agreement on the delimitation of the continental shelf between Greenland and Canada on December 17th, 1973.[101] The agreement was based on the principle of equidistance, although a few changes were made to establish a mutually acceptable and equitable boundary.

As the result of oil exploration permits issued by the governments of Canada, France and the United States, disputes arose concerning the boundaries of the continental shelf in the regions of the Gulf of Maine, the Strait of Juan de Fuca, Dixon Entrance, the Beaufort Sea and the areas lying between the Canadian Arctic and Greenland, as well as those lying between Newfoundland and the islands of St. Pierre and Miquelon.[102] As regards the delimitation of the continental shelf boundaries between Newfoundland and the islands of St. Pierre and Miquelon the governments of France and Canada have been conducting negotiations since 1967.[103] Permits issued by Canada to explore the natural resources of the George's Bank Shelf were countered by the United States' 'diplomatic notes' in November 1969 and February 1970 disputing the ownership of the northeastern sector of the Bank.[104] According to the United States the Fundian Channel running from the north of George's Bank into the Bay of Fundy sets the continental shelf apart as a 'unique geological formation' which requires, within the 'special circumstances' clause, a boundary line other than that which could be defined by the principle of equidistance.[105]

D. France

M. Gros, the French representative at the 1958 UNCLOS (I), stated that the definition of the continental shelf, as provided in draft

article 67 prepared by the I.L.C. (1956), was unsatisfactory on account of its lack of any objective criterion.[106] This article which was eventually adopted as Article 1 of the GCCS combined the two criteria of the 200-metre isobath and exploitability. M. Gros pointed out that the limit of the continental shelf should be constant, definite and known. The French delegation, considering the lack of constancy, uniformity and certainty of the criterion of exploitability, refused to accept it.[107] Having opposed this criterion, France did not sign the GCCS until June 14th, 1965. Even then the French ratification was accompanied by several declarations and reservations.[108]

The French Law No. 68-1181 of December 30th, 1968, on the continental shelf provided the appropriate municiple law framework for the exploration of the continental shelf appertaining to France.[109] This was followed by three Decrees of June 6th, 1971, which rendered the French law more precise as regards conditions for exploiting the continental shelf.[110]

On the issue of the outer limit of the continental shelf, France opposed the appropriation of extensive areas of the sea-bed by coastal States.[111] In her Declaration of June 14th, 1965, France stated that the criterion of adjacency expressed in Article 1 of the GCCS implied a notion of geophysical, geological and geographical dependence which ipso facto would rule out an unlimited extension of the continental shelf.[112] At present, however, the French Government accepts in principle the limit of 200 miles with respect to the sea-bed.[113] As regards the deep sea-bed beyond the continental shelf, France is of the opinion

that an appropriate legal regime ought to fulfil the double requirement of economic efficiency and international equity. Accordingly France opposes any proposed exploitation activities by the I.S.A. as a body invested with considerable powers.[114] Furthermore, France (like the United States, Japan, Federal Republic of Germany and Holland) is contemplating legislation for the development of the sea-bed resources beyond national jurisdiction.[115]

The continental shelf boundary between France and the United Kingdom was disputed for 13 years until it was settled by the Court of Arbitration, June 30th, 1977. Because of its reservations towards the GCCS, France in the first place took the position that the provisions of Article 6 were not applicable in relations between the two States, and, therefore, the continental shelf between France and the United Kingdom should be delimited under international customary rules. Nonetheless, France alternatively argued that should the Court find Article 6 applicable, the position of the Channel Islands constituted a 'special circumstance'. Consequently, France asserted that the application of the equidistance method in the Channel Islands region produced results that were 'unnatural or unreasonable'.[116]

France argued for the existance of 'special circumstances' in the Channel Islands region on geographical, geological and legal grounds. Firstly, the mere geographical fact that the Channel Islands were situated within a rectangular bay of the French coast and only a few nautical miles distant from it, was asserted to constitute a 'special circumstance'. Secondly, the Channel Islands (and the sea areas between them) and the French coast

were intrinsically linked with the continental land mass of France. According to scientific information presented by France, the Channel Islands geologically formed an integral part of the physical mass of Brittany and Normandy. This geological fact could be relevant in determining the appurtenance of the continental shelf to a territory. Thirdly, the legal status of the Channel Islands was different from both ocean islands and coastal islands. The close contiguity of the Channel Islands to the mainland of France distinguished their status from that of ocean islands resting on their own continental shelf. Also their detachment from the land mass of the United Kingdom distinguished their legal status from that of the coastal islands belonging to the coast of which they are adjacent.[117]

The United Kingdom contended that Article 6 was applicable between the two States but the situation in the Channel Islands did not constitute any 'special circumstance'.[118] In case the Court should find the provisions of Article 6 unapplicable in the region, the United Kingdom asked for the application of median line under customary rules of international law.[119] The British Government, by a Note Verbale of February 18th, 1969, also held that the median lines on the continental shelf should be made from straight baselines rather than the low-water mark.[120]

The Court of Arbitration maintained that a delimitation should be equitable and justified in relation to both parties and in the light of all relevant circumstances.[121] It referred to the presence of the Channel Islands as constituting a circumstance creative of inequity, and a 'special circumstance' within the

meaning of Article 6 of the GCCS.[112] Apart from the Channel Islands the continental shelf boundary in the Channel was decided by the median line in accordance with both customary law and Article 6.[123] The Court also held that the mere reference to 'special circumstances' in Article 6 ruled out the suggestion of curtailing the use of median line along the continuous length of the shelf in the Atlantic region.[124] It was accordingly decided that the geographical features of the continental shelf in the Channel or the Atlantic regions did not disrupt the essential unity of the continental shelf and therefore the median line should be applied.[125] The Court, however, gave no clear hint as to how the future boundaries of the Western Approaches (between the United Kingdom, Ireland and Denmark) should be defined.[126]

II. DEVELOPING STATES

Developing States account for almost 75% of the world population, but for only 20% of the world income. The actions taken and policies followed by developing States on the continental shelf, as well as other issues of the law of the sea, are intended to counterbalance these economic inequities. The developing States which by the principle of 'one State one vote' have a 2/3 majority at UNCLOS III are willing to codify the international law of the sea rather than relying on a customary process developed by and for the developed States.[127]

The developing States, however, are divided in their policies on the continental shelf issues as their individual national interests dictate. The major goal of the developing coastal States in the

law of the sea negotiations is to maximize their economic returns, usually by means of expanded national jurisdiction. Many coastal States, following the movement to claim a 200-mile limit, have extended their national jurisdiction over large areas of the oceans. Naturally, such a policy is equally unacceptable to both developing and developed land-locked States. For the moment the study is confined to the policies of three groups of developing coastal States: Lating American States, Asian-African States, and the Persian Gulf States. The attitudes of the land-locked States will be discussed later in a separate Section.

A. Latin American States

The region of Latin America has a clearly characterised law of the sea. This is borne out in the Montevideo Declaration on the Law of the Sea issued by 9 Latin American States, May 8th, 1970,[128] and subsequent declarations. The predominant factor of the Latin American law of the sea is the coastal States' jurisdiction over large areas of the oceans.

Beginning in 1939, the Latin American States, for the purpose of security, proposed to set the breadth of the American continental sea at 300 miles.[129] In 1947 the Inter-American Mutual Assistance Treaty recognised an even more extensive 'maritime continental sea'.[130] Recently, following the policy of 'participation' regionalism most of the Latin American States have finally fixed their territorial waters at 200 miles. By different agreements, several Latin American States have granted each other reciprocal rights over one another's maritime zones.[131]

As regards the submarine areas, Venezuela, within the Gulf of Paria Treaty (1942), was the first Latin American State to assert exclusive rights over the sea-bed and subsoil of the submarine areas adjacent to her coast beyond the territorial sea.[132] Later, Mexico (1945), Argentina and Panama (1946), Chile and Peru (1947), Costa Rica and Nicaragua (1948), Guatemala (1949), Brazil, Ecuador, El Salvador, and Honduras (1950), the Dominican Republic (1952), Colombia (1968) and Uruguay (1969) all asserted exclusive rights over submarine areas beyond the traditional territorial sea.[133] The United Kingdom issued proclamations on behalf of Jamaica and Trinidad-Tobago (1945).[134] The continental shelf rights of Cuba and Haiti, the only two States in the region that have not adopted any express legal provision on the continental shelf, are confirmed by customary international law.[135]

The majority of the Latin American States' legislative claims, which are not identical, have asserted sovereignty over the superjacent waters in connection with the already established doctrine of the continental shelf. These claims, ranging from complete sovereignty over the adjacent seas to no direct sovereignty over the waters above the continental shelf, may be classified as follows:

(a) Some Latin American States, such as El Salvador (1950) and Brazil (1970), did actually claim territorial sovereignty over not only the submarine areas but also the superjacent waters and airspace above those waters. By the way of example, Article 7 of the Constitution of El Salvador (1950) provides that the territory of the Republic "includes the adjacent seas to a distance of two hundred nautical miles from low-water mark and comprises the

corresponding aerial space, subsoil and continental shelf".[136] This is obviously an extension of the territorial sea to 200 miles. Such claims are considered, notably by the developed States, as contrary to international law.[137]

(b) Some Latin American States, such as Chile (1947), Peru (1947), and Costa Rica (1948), have claimed national sovereignty over the adjacent sea for specific limited purposes. Chile, for instance, claimed sovereignty over the waters above the continental shelf "in order to reserve, protect, preserve and exploit the natural resources".[138] On the other hand Article 1 of the Argentine Decree of October 11th, 1946 declared that - "Argentine epi-continental sea and continental shelf are subject to the sovereign power of the nation".[139] As Dr. B. Auguste has noticed:

> "There is no definition of the 'shelf', though the reference to a continental shelf and that to the epicontinental sea indicate that they are separate concepts. In fact neither a territorial sea extension was claimed, nor was it to be construed as a contiguous zone. It was essentially a claim to sovereignty over the sea and 'shelf' as an entity, in the geological sense, independent of the concept of territorial sea and contiguous zone."[140]

It is important to note that these were not claims to 'Truman-type' rights over the continental shelf since unlike the latter, they all established claims of some kind over the waters above the continental shelf.

(c) Some Latin American States, like Mexico (1945) and Brazil (1950), did not initially claim any sovereign right over the waters above the continental shelf. The Mexican Declaration of October 29th, 1945 simply laid claim to the continental shelf and exclusive fishing zones off the Mexican coasts. It stated that "the lawful rights of third parties, based on reciprocity, or that of the rights of free navigation on the high seas" were not affected.[141] However, the waters above the continental shelf were later declared to be "national property".[142] The Brazilian Proclamation of November 8th, 1950 also made no direct claim to the waters above the continental shelf.[143] It was only in 1970 that Brazil claimed sovereignty over a belt of 200 miles in breadth extending to the airspace above the waters and the sea-bed beneath the waters.[144]

The extension of national sovereignty over the waters above the continental shelf met with protests both from major maritime States and from international lawyers. As already mentioned,[145] the Latin American States support their claims over extensive maritime zones with several economic and political arguments. The delegate from Chile at the 1958 UNCLOS insisted on the fact that the Declaration of Santiago was of a defensive nature and that its sole object was the conservation of the living resources of sea for the benefit of the inhabitants of the region.[146]

The Montevideo Declaration declared the right of the Latin American coastal States to establish the limit of their maritime sovereignty not only according to the geographical and geological characteristics, but also to the existence of "maritime resources and the need for their rational utilization."[147] As the proceedings

of UNCLOS III show, at present the Latin American States are divided as to the breadth of the territorial sea. Some States, like Brazil, favour a 200-mile territorial sea.[148] Other States, like Colombia, Mexico and Venezuela, support the 12-mile limit of territorial sea and an adjacent zone of 188 miles. The 200-mile territorial sea has no legality in international law. However, the developing EEZ concept provided at UNCLOS III establishes a 200 mile maritime zone for limited purposes of economic exploitation of the resources of the sea, along with rights of jurisdiction to control scientific research and to prevent pollution.[149]

The scope and the nature of such maritime zones as claimed by the Latin American States is a complicated problem. It is not clear if the States concerned regard the waters above the continental shelves as contiguous zones, fishing zones, EEZ or territorial seas. The sovereignty of the Latin American States over their continental shelves and epicontinental seas is said to be "a new concept in international maritime relations, viewing the two aspects, shelf and sea, as an indivisible entity based on the needs of the country and having particular geological significance".[150] However, strictly speaking, the nature of the Latin American States' claims cannot be categorised as less than territorial sovereignty under the legal regime of the territorial sea.

As to the legal definition of the continental shelf, a number of the Latin American States defined the continental shelf in geological terms. For instance, Mexico in 1945 claimed jurisdiction and control over "the whole of the continental platform or shelf adjoining its coast line".[151] Article 630 of Ecuador's Civil

Code stated that the expression 'continental or insular shelf' meant the submarine areas adjacent to the national territory to a depth of 200 metres.[152] Some other Latin American States, however, opted for the dual criteria of 200-metre isobath and exploitability as provided in Article 1 of the GCCS. For instance Article 2 of the Argentine Law of December 29th, 1966, provided that the sovereignty of Argentina extended over the adjacent submarine areas up to a depth of 200 metres, or beyond this limit up to that depth of the natural resources of those zones.[153] Similarly, Clause 1 of the Costa Rica Act No. 3977 of October 20th, 1967 states that for the purpose of the approved 1967 oil contract the continental shelf should be defined in accordance with the provisions of the GCCS.[154]

The Latin American States are divided as regards the outer limit of the continental shelf. The 1945 Mexican Proclamation defined the outer limit of the continental shelf as either 200 metres depth, or beyond that and up to the edge where the continental shelf descends steeply or gradually towards the ocean zones of median depth.[155] The claims over epicontinental seas made by Argentina (1946) and Chile (1947) implicitly put the seaward limit of the continental shelf at the end of continental margin. Costa Rica (1948) and Peru (1947) put the outer limit of their continental shelves at 200 miles. At present Chile and Mexico support the seaward limit of the continental shelf as being either the 200-mile limit or beyond that up to the limit of the natural prolongation.[156] However, Article 4 of Venezuela's Act of July 27th, 1956 stated that - "Channels, depressions or irregularities in the sea-bed of the continental shelf shall not

constitute a break in the continuity of that shelf, and banks which in position or natural conditions are related to the continental shelf shall be comprised therein".[157] The limit of natural prolongation is specified in the Nicaraguan proposal to UNCLOS III which defines the outer limit of the continental shelf as either 200 miles or the outer edge of the continental rise.[158]

The position of Latin American States with regard to the outer limit of the continental shelf is not exactly the same on the continent as in the Caribbean. The Declaration of Santo Domingo, the Special Conference of the Caribbean Countries on Problems of the Sea, June 9th, 1972, adopted the 700 metre isobath and the exploitability criteria for determining the continental shelf. However, the Declaration thought it advisable to take the outer limit of the continental rise into account for defining the continental shelf. The Santo Domingo Declaration significantly drew a distinction between oceans, whose deep bed forms part of the 'common heritage of mankind', and partially closed seas such as the Caribbean Sea. The scope of the concept of 'common heritage' in the Declaration has been modified to the extent that humanity has become in this case the Caribbean people grouped around the 'matrimonial sea'.[159]

B. African - Asian States

The majority of African coastal States, with obvious exception of South Africa,[160] did not lay any claim to the sovereignty over the continental shelf until the late 1960's. The early claims to the continental shelf in Africa was made by Ghana (1962) and Nigeria (1969). Article 1 of the Ghana's Mineral Act of 1962 declared that all minerals under and upon the continental shelf

were "vested in the President on behalf of the Republic of Ghana in trust for the people of Ghana".[161] Later the Territorial Waters and Continental Shelf Act of 1963 provided that the continental shelf of Ghana included "the sea-bed and subsoil of marine areas to a depth of one hundred fathoms contiguous to the coast and seaward of the area of land beneath the territorial waters".[162] Nigeria's Petroleum Decree of 1969 defined the Nigerian continental shelf as the sea-bed and subsoil of those submarine areas adjacent to the coast of Nigeria the surface of which lies at a depth of no greater that 200 metres or, where its natural resources are capable of exploitation, at any depth.[163]

In Asia, several coastal States asserted their exclusive rights over the areas of the continental shelf as early as 1949. Reference may be made to several Gulf States' Proclamation of 1949, the Declaration of the Governor-General of Pakistan dated March 9th, 1950, and the Indian Proclamation of August 30th, 1955.[164]

The continental shelf practice of Asian States is obviously dominated by their individual national interests. Thus, for instance, the policies of South-East Asian States (Indonesia, Malaysia, Singapore, Burma, Thailand, Laos, Cambodia, Vietman, the Phillippines), those of East Asian States (the People's Republic of China, Taiwan, Korea, Japan), and those of Near and Middle Eastern States are not the same. Nonetheless, the Asian Group of States demonstrates a considerable solidarity at UNCLOS III. This solidarity was apparent at the seventh session of the Conference (Geneva, from March 28th to May 19th, 1978) when the Group ensured the Presidency of Mr. Hamilton Shirley Amerasinghe

(Sri Lanka) who has been the President of the Conference since 1973 and whose position was disputed by other delegates.[165] However, the Asian States are divided on various areas of the law of the sea. As an example, the interests of archipelegic Indonesia are predictably different from those of Pakistan or India. Similarly the continental shelf policies of the oil producing and developing Gulf States are not the same as those of the oil importing and highly developed nation of Japan. Again the Socialist policies of the Far East States, notably China, are totally distinct from those of pro-Western Asian States. This is why the shelf policies of several Asian States are not studied here, but under other categories. For instance the Gulf States' practice is examined under an independent heading, while China's policy is included in Socialist States, and Afghanistan's under the heading of land-locked States.

One of the earliest continental shelf claims in the Asian continent was put forward by Pakistan within a Declaration of the Pakistani Governor-General, March 9th, 1950. This Declaration incorporated the criterion of 100 fathoms or 200 metres isobath as a defining factor.[166] Mr. Samad, the Pakistani representative at the 1958 UNCLOS, stated that the criterion of exploitability amounted to abolishing any definite limit to the continental shelf and replacing it by the possibility of limitless extension subject only to technical consideration.[167] On the other hand the Indian Proclamation of August 30th, 1955, included the continental shelf zones in the Indian national territory but without defining the actual area covered. However, Article 3 of the Indian Petroleum and Natural Gas Rules (1959) defined the Indian Continental shelf

as the sea-bed and subsoil of submarine areas adjacent to the coast of India including its islands but outside the territorial sea to a depth of 200 metres, or beyond that limit to where the depth of the superjacent waters admits of the exploitation.[168]

From the early 1970's onwards the African - Asian States have followed a united strategy with respect to the law of the continental shelf. This was first evidenced in the 12th meeting of the Asian African Legal Consultative Committee of January 1971, the majority of delegates to which supported the exclusive rights of the coastal States in the adjacent marine and submarine areas beyond the territorial sea.[169] Since then the majority of the African-Asian States have opted for the 200 mile economic zone first introduced by Latin American States.

The maritime policies of the African States are more unfied due to the determinations of the Organization for African Unity (OAU). The Council of Ministers of the OAU in its sixteenth session, in course of a Resolution on the Problems of the Sea-Bed, June 1971, reaffirmed the permanent sovereignty of African States over their natural resources.[170] The African States in a Regional Seminar on the Law of the Sea held in Yaounde, from 20th to 30th June 1972, recommended the establishment of an economic zone. The Economic Zone was designed to embody all economic resources comprising both living and non-living resources. The Seminar resolved that the natural resources beyond the Economic Zone should be managed by the I.S.A.[171]

To harmonize the position of the African States on issues related

to the law of the sea, the Council of Ministers of the OAU met in Addis Ababa (Ethiopia), May 14th to 17th, 1973. The Conference recognized the right of each coastal State to establish an exclusive economic zone beyond its territorial sea to an outer limit of 200 miles as measured from the baselines for its territorial sea.[172] The coastal States, the Conference resolved, would exercise "permanent sovereignty" over all living and mineral resources within the 200 mile zone, but freedom of navigation, overflight, and the laying of cables and pipelines was recognized.[173] Consequently a draft convention co-sponsored by 14 African States was submitted to the United Nations Sea-Bed Committee in favour of the 200 mile Economic Zone.[174] In 1974, subsequent to an OAU meeting in Somalia on June 6th to 11th, the OAU Declaration on the issues of the law of the sea asserted the rights fo the regional States to exploit the marine resources around the African continent for the economic benefit of "all African peoples".

C. The Persian Gulf States

The example of the United States' Proclamation of 1945 by President Truman with respect to the continental shelf,[175] was followed by all coastal States of the Persian Gulf. After the development of the natural resources of the sea-bed and subsoil of the Persian Gulf became technologically possible, the Gulf States asserted their exclusive rights to those resources.[176] The proclamations and legislation regarding the offshore areas beneath the high seas of the Persian Gulf were issued in the following chronological order: Saudi Arabia, May 28th, 1949; Bahrain, June 5th, 1949; Qatar, June 8th, 1949; Abu Dhabi, June 10th, 1949; Kuwait, June 12th, 1949; Dubai, June 14th, 1949; Sharjah, June 16th, 1949; Ras al Khaimah, June 17th, 1949; Ajman, June 20th, 1949; Umm al-Qaiwain, June (no definite date), 1949;[177] Iran, 19, 1955[178] Iraq, November 23rd, 1957;[179]

and Oman, July 17th, 1972.[180]

The legal consequences of these proclamations and legislation were that the Gulf States accepted the necessary implication of exclusive use of their respective continental shelves. This is to say that one State, having made a continental shelf claim, could not, with respect to another such State, allege that a particular submarine area might be freely exploited by either or both parties.[181]

It is noteworthy that all coastal States of the Persian Gulf left the extent of their continental shelves to be determined by future agreements on the basis of equitable principles.[182] The limits of national jurisdiction on the sea-bed have been agreed among most of the Gulf States. The offshore boundary agreements up to date have been signed with respect to continental shelf boundaries of Iran-Saudi Arabia, Iran-Qatar, Iran-Bahrain, Iran-Oman, Saudi Arabia-Bahrain, and Abu Dhabi-Qatar.[183] However, there has not yet been any demarcation of continental shelf boundaries between Iran-Kuwait, Iran-Iraq, Iran-United Arab Emirates (UAE), Iraq-Kuwait, Oman-UAE, Bahrain-Qatar, Saudi Arabia-Qatar, Saudi Arabia-UAE.

Mr. Naficy, the Iranian representative at the 1958 UNCLOS, affirmed that some of the criteria for the exploration and exploitation of the continental shelf were better designed for States bordering upon open seas than those bordering upon partially enclosed seas. He explained that these provisions could not apply to shallow waters covering submerged lands, especially if they were of a deltaic type, as in the Persian GGulf. His

delegation accordingly submitted amendments with a view to making the articles more applicable to such conditions as he had described.[184]

The Gulf States claimed sovereign rights not merely over the natural resources of the continental shelf but also over the whole sea-bed and subsoil itself.[185] It is argued that, in practice, sovereign rights over the resources of the sea-bed and subsoil necessitate sovereignty over the sea-bed and subsoil itself. This is especially valid with respect to the continental shelf of the semi-enclosed Persian Gulf.[186]

The Gulf States at present favour either a national or a regionally collective appropriation of the submarine areas of the Persian Gulf. This position is exemplified by a declaration made by Mr. Massooud Ansari the Iranian representative at the United Nations Sea-Bed Committee.[187] Saudi Arabia drew distinction between sovereignty over the sea-bed and sovereignty over sea-bed resources. In her Decree of September 7th, 1968, Saudi Arabia claimed ownership of only the hydrocarbon materials and minerals existing in the submarine areas of the Red Sea adjacent to the Kingdom's continental shelf.[188] Saudi Arabia's position, however, is not the same with respect to the submarine areas of the Persian Gulf, the entire sea-bed of which constitute a continental shelf. Dr. B. Al-Awadhi of Kuwait, assimilating the submarine areas of the Persian Gulf to those of the Gulf of Paria, argues that special geographical and geological aspects of the Persian Gulf qualify the Gulf States to claim ownership over the Gulf's submarine areas.[189] She supports this argument by reference to

several mutual agreements between the Gulf States on continental shelf boundaries. She further states that the 1945 Truman Proclamation and the 1949 Gulf Proclamations have in practice had the same effect. However, Dr. Al-Awadhi has over-looked the fact that any reference to the use of the continental shelf apart from that of exploration for and exploitation of the sea-bed resources was deliberately excluded from the Truman Proclamation.

The Gulf States are participating actively at UNCLOS III, in contrast to their performance at previous conferences. They are particularly concerned about the legal regime of the semi-enclosed seas such as the Persian Gulf. Other areas in which they show concern, are the legal status of international straits, issues related to the International Sea-Bed Area and to the continental shelf, pollution, and fishery. Some Gulf States, notably Bahrain and the United Arab Emirates are awaiting the result of UNCLOS III before adopting any further municipal regulation on law of the sea issues.[190] In the event of the Conference failing, some Gulf States like Iran and Saudi Arabia, may join a sea-bed 'mini-treaty' led by the United States to assure orderly development of the resources of the deep sea-bed and ocean floor.[191] Iran and Saudi Arabia did not support the Moratorium Resolution which was directed against the developed States.[192]

Economic groupings such as the Organization of Petroleum Exporting Countries (OPEC) have a special political orientation at UNCLOS III to safeguard the common interests of their member States.[193] The Gulf members of OPEC, namely Iran, Iraq, Saudi Arabia, Kuwait, United Arab Emirates (Abu Dhabi), and Qatar would naturally

be in harmony as far as their common interests and oil policies are concerned. All oil rich Gulf States, save the radical Iraq, are run by pro-Western conservative governments. All Gulf States, excluding Iran, are members of the Arab League, and the Arab Group has demonstrated a united front at recent sessions of UNCLOS III. These facts, added to the Gulf States' geographical position of bordering upon a semi-enclosed sea, creates a common strategy on all issues related to the continental shelf.

At the Caracas session of UNCLOS III a group of fifteen land-locked and six shelf-locked States submitted a proposal designed to break the coastal States' monopoly in the exclusive economic zones.[194] Iran strongly opposed the additional suggestion of sharing continental shelf resources with non-coastal States.[194] Instead the Iranian delegation submitted a draft Article suggesting that the revenues derived from the exploitation of the natural resources of the continental shelf should not be subject to any revenue sharing.[195]

The Gulf States, though especially anxious about issues of their immediate needs (such as the regimes of the international straits, the semi-enclosed seas, and the continental shelf) are also concerned about the international regime of the deep sea-bed and ocean floor beyond national jurisdiction and the machinery for deep sea-bed exploitation. All littoral States of the Persian Gulf are shelf-locked. This means that the extension of these States' continental shelf in the Persian Gulf adjoins one another. As the result of this geographical circumstance, the proportions of the continental shelf of the Gulf States are far less than the

200 miles adopted as the minimum limit of the continental shelf in Article 76 of the ICNT.[196] So the littoral States of the Persian Gulf are geographically disadvantaged as coastal States compared with States bordering the open seas. Neither Iran nor any of 22 Arab States in the world wants the continental shelf to exceed 200 miles.[197] The Arab Group, which has now an independent entity at UNCLOS III, submitted a proposal on the outer limit of the continental shelf at the Caracas session. The Arab proposal would limit the width of the continental shelf to 200 miles, the same as the EEZ.[197] However, this proposal did not gain enough support from other coastal States when it was finally considered at the seventh session of the Conference (Geneva, March 28th to May 19th, 1978).[199]

The national interests of the Gulf States are obvious in the context of the international development of the deep sea-bed and ocean floor beyond national jurisdiction. This is why different Gulf States' delegates at the Sea-Bed Committee expressed their support for an I.S.A. with maximum rights. For instance, the Iraqi delegate stated that a purely mercantilist laissez faire system of licensees could not be reconciled with the concept of the common heritage of mankind.[200] The delegate of Kuwait also favoured the proposal that a future I.S.A. should have absolute jurisdiction over the international sea-bed area, and be empowered to manage, administer, supervise, control, explore and exploit the resources contained.[201] Kuwait suggested the Authority should be empowered to grant licences, inspect operators, and to reject, suspend or revoke their licences.[202] Furthermore, in March 1972 the representative of Kuwait introduced a draft decision on this

issue which was sponsored by 13 developing States, including Iraq, and supported by many of the leading States in the Group of 77. The draft decision, reintroduced in August 1972, was directed against the United States and other developed States who contemplated unilateral exploitation of the resources of the deep sea-bed and ocean floor.[203] Similarly concerned Iran and Oman were among those States sponsoring a proposal on the issue of the development and transfer of technology. The proposal suggested that all States should actively cooperate with the Authority to facilitate the transfer of skills in marine science and technology.[204]

III. SOCIALIST STATES

The continental shelf policies of the Socialist States which include one of the two Major Powers of the world need particular consideration. This bloc demonstrated a common policy on law of the sea issues at the 1958 UNCLOS. Later, however, the continental shelf policies of the USSR and the majority of the Eastern European States were radically different from the policy of the People's Republic of China. While, in the 1960's, the Soviet group were generally in tune with the maritime policies of the developed States, China supported the policies of developing States. At present the USSR also supports a wide continental shelf imposing a maximum width of 300 miles. Here we first study the policies of the Soviet group following by a separate section on the continental shelf policy of China.

A. The USSR and Eastern European States

The continental shelf of the USSR comprises from five to almost ten per cent of the world shelf area, depending on what criteria are employed to determine the outer limit of the continental shelf.[205] At any rate the legal continental shelf of the USSR would be the largest in the world. The continental margine of the USSR covers an area more than 2,000,000 square nautical miles. It is, therefore, obvious that the USSR would opt for a broad seaward limit of the continental shelf so that she would appropriate a greater part of the world's sea-bed resources. While this is perfectly true in respect of the continental shelf limits, the overall interests of the USSR, as one of the two biggest maritime powers, call for the narrowest possible national jurisdictional maritime zone.

In the 1958 UNCLOS the Soviet group's support for a 12-mile territorial sea, along with their political stand of anti-colonisation, created considerable common ground between the Soviet group and the developing States as regards the law of the sea issues. The USSR representative asserted that there was a united front of the Socialist States and the developing States (including the substantial number of Arab, Asian and Latin American States). During that period of cold war, the USSR delegate demonstrated that the basic attitude of the Socialist States was to adopt such legal regimes as could protect both world peace and the need of developing States.[206]

A radical change of attitude in the USSR policy was evident as regards the legal validity of the doctrine of the continental shelf. In

1950 the USSR was opposed to any doctrine permitting States to have exclusive rights beyond the limits of their territorial water.[207] At the 1958 UNCLOS support for the legal regime of the continental shelf was manifested in all statements made by the delegations of the USSR and the Eastern European States. Coastal State interests were then heavily identified with the Soviet group and a miscellaneous group of developing States.[208]

As to national claims, on February 6th, 1968, the USSR issued a Decree on the Continental Shelf. Article 1 of this Decree, identical to the provisions of the GCCS, defined the USSR continental shelf as the submarine areas adjacent to the coast or to the islands of the USSR. The outer limit of the continental shelf was 200-metre isobath or beyond it to where the depth of the superjacent waters admits of the exploitation of the natural resources. The sea-bed and subsoil of depressions situated in the continuous massof the continental shelf of the USSR, irrespective of their depth was also claimed as part of the USSR continental shelf.[209] However, until the early 1970's, the majority of the Soviet jurists maintained that the legal concept of the continental shelf could not be deemed to exceed the geophysical shelf.[210] The USSR, Yugoslavia, Romania, Czechoslavakia and Poland all ratified the GCCS. The national claim made by the Democratic Republic of Germany also adopted the some criteria as those of the Convention.[211] Also in 1968, the Moscow Declaration on the Continental Shelf was issued in accordance with the common policy of the Soviet bloc, in order to protect the sovereignty and economic independence of the regional States of the Baltic.[212] However, this common attitude towards the law of the continental shelf disappeared by the late 1960's.

As evidended by the debates which have taken place at the United Nations Sea-Bed Committee and later at UNCLOS III, the Soviet Group followed two different policies on the continental shelf from the late 1960's onwards. The policy of the USSR, Bulgaria, the German Democratic Republic, Poland, Czechoslovakia and Hungary, similar to that of the developed States like the United States, was to limit the exclusive rights of coastal States over the submarine areas beyond the territorial sea. On the other hand the policy of Albania, Romania and Yugoslavia followed that of the developing States in seeking to widen the exclusive rights of coastal States over their submarine areas both in quantitative and qualitative terms.

By mid-1960's the USSR, being a major maritime power, opposed to any extension of coastal State rights beyond the limits of the territorial waters. She did not favour the principle of 'common heritage of mankind'. Neither did she approve of 200-mile limit of the exclusive rights of the coastal States. None of the Soviet group States was among the 46 sponsors of Resolution 2749 which contained the declaration of principles resolved by the General Assembly.[213]

As regards the outer limit of the continental shelf Poland proposed a 200 metres depth or 200 metres plus a fixed distance (not specified) as possible solution.[214] Also the USSR draft article submitted to the United Nations Sea-Bed Committee suggested a conservative limit for submarine areas subject to the national jurisdiction. The draft Article proposed to determine the outer limit of the continental shelf within the 500 metre isobath.[215]

Such a situation would ensure that the greatest possible area of the sea-bed of the world would be open for inclusive use of all States.

The conservative USSR policy on the continental shelf was radically changed at the latest sessions of UNCLOS III. The most recent USSR proposal suggests geological and geomorphological criteria for the definition of the outer limit of the continental shelf, when the continental margin extends beyond 200 miles. It however imposes a maximum width of a 300 mile distance from the coast.[216] The Eastern European States did not change their position. The motive for supporting a modest continental shelf as well as other jurisdictional zones, in the case of the two land-locked States of Czechoslavakia and Hungary is self-evident. This position also covers best the national interests of the shelf-locked Bulgaria, German Democratic Republic and Poland. However, a narrow continental shelf or EEZ is not favoured by the three other Eastern European States. Albania, Romania and Yugoslavia demanded greater submarine areas off their coasts to be subject to national jurisdiction. For instance, Dr. Antum Vratusa, the Yugoslav representative at UNCLOS III advocated acceptance of the concept of the EEZ extending up to 200 miles.[217]

B. People's Republic of China

The People's Republic of China generally supports the developing States, claiming to be one of them and refusing to be considered a superpower, even potentially. Although China has not joined the Group of 77, her continental shelf policy is almost the same as other developing States. In 1970 China began to voice strong

support for the intensifying efforts of the Latin American States to win acceptance for a 200 mile limit for their territorial waters.[218] The Chinese representative at the United Nations Sea-Bed Committee's meeting on March 24th, 1972, supporting the concept of 200-mile national limit demonstrated a common goal on behalf of developing States. He stated that the third world States, regardless of their different geographical conditions, are bound together "by their common goal of opposing imperialism and colonialism and safeguarding national independence".[219]

Theoretically China has not been in favour of the legal dectrine of the continental shelf. She has not so far entered the GCCS. Shen Wei Laiang - the Chinese representative at the Sub-Committee of the United Nations Sea-Bed Committee (speaking on April 9th, 1973) attacked the provisions of Articles 3, 4 and 5 of the GCCS. He stated that three out of the only seven articles forming the operative part of the Convention are designed to uphold the freedom of the high seas.[220] These provisions were attacked by the Chinese as prejudicial to the rights of the coastal States. In practice, China has asserted her sovereign rights over the continental shelf in the East China Sea (overlapping between China, South Vietnam, Taiwan and the Philippines), and the Yellow Sea. In the South China Sea a dispute over continental shelf jurisdiction started when in September 1973 South Vietnam declared her 'incorporation' of the Spratly Islands some of which are also claimed by China, Taiwan, and the Philippines. Early in 1974 China rejected the territorial claim and evicted the South Vietnamese by a military attack.[221]

China's continental shelf has large, but mostly undeveloped, reserves of oil and natural gas.[222] The overall area of potential oil prodiction in the Chinese continental shelf has been put at 200,000 square miles.[223] The development of the offshore oil wells of China was commenced in 1972.[224]

China has not suggested any precise criteria for an outer limit of the continental shelf. However, the People's Daily of April 12th, 1972 has defined the continental shelf in geological terms.[225] Professor Andrassy thinks it striking that despite the fact that China has one of the largest superficies and a coastline of almost 3,500 miles, she would get a smaller share of the continental shelf than some States such as Somalia, Sri Lanka or Madagascar.[226]

China submitted a working paper in 1973 to the United Nations Sea-Bed Committee regarding sea areas within the limits of national jurisdiction. It proposed that in accordance with the principle of natural prolongation, the limits of the continental shelf should be 'reasonably' defined according to the specific geographical conditions. Further, the paper did not provide any precise method for the delimitation of the continental shelf between adjacent or opposite States. It only vaguely suggested that such continental shelves should be jointly determined through consultation on an equal footing.[227]

The continental shelf boundaries between China and her neighbours are mostly unsettled. It is important to notice that though, failing to present any objective criterion for delimitation, China objected to the 1973 agreement between Japan and the Republic

of Korea regarding the joint development of their overlapping continental shelves. China objected that - "This is a new crime by the Japanese militarism in plotting agression against China and Korea with U.S. imperialist support, a serious provocation by the U.S. and Japanese reactionaries against the Chinese and Korean people".[228] China declared that - "what they call 'joint' development' is merely the established practice of the Japanese militarist pirates in viciously plundering others. The 'joint development' .... is an outright dirty deal between agressor and traitors".[229] On the issue of delimitation of offshore boundaries between China and Japan, the question of sovereignty over certain disputed islands is of primary significance. Some American international lawyers propose a fixed distance on the Chinese side for shelf determination. Accordingly only islands within 12 miles of the Chinese coast will be used to construct straight base lines.[230] A similar solution may be suggested for the South China Sea with respect to the Spratly Islands the ownership of which is also disputed.

IV. LAND-LOCKED STATES

There are 31 land-locked States in the world, most of them developing States. In the developed bloc the land-locked States are Austria, Luxembourg and Switzerland. The maritime policies of the developed land-locked States are obviously different from those of, say the tiny land-locked Kingdom of Swaziland in Southern Africa. Despite all differences of interests between developed and developing States, the interests of all land-locked States are identical as far as the legal regime of the continental shelf is concerned.[231]

As B. Buzan has indicated the land-locked group of States was the first independent 'issue-specific group' formed in law of the sea negotiations.[232] This early formation was due to previous solidarity of land-locked States at the first and second UNCLOS. However, many developing land-locked States did not participate at previous Conferences. For instance, the Afghanistani Government, in reply to the United Nations invitation to the 1958 Conference stated that Afghanistan, being a land-locked State, had no interest in law of the sea negotiations. By contrast, a substantial group of African and Asian land-locked States have been participating actively in the development of the future convention of the law of the sea since the early 1970's. It was first manifested in the Lusaka Statement on the Sea-Bed adopted by 53 non-aligned States on September 10th, 1970. The policy of the land-locked States was further clarified within the Resolution 2750B sponsored by 12 land-locked States. This called for a study of the problems of land-locked States in relation to the legal regime of the deep sea-bed and ocean floor as well as their free access to the sea.[233]

Besides the land-locked States there are twenty three shelf-locked States, most of them developing States. In the developed bloc the shelf-locked States are Belgium, Denmark, Finland, Democratic Republic of Germany, Federal Republic of Germany, the Netherlands and Sweden. The land-locked and shelf-locked States, together, have one-third of the votes at UNCLOS III. This voting strength ('blocking') is not considered as an unbalancing factor.[234]

The land-locked and shelf-locked States favour a restricted area of coastal State rights over shelf resources. The policy of this

group of States is to maximize the area of international jurisdiction over the sea-bed. They favour the adoption of the narrowest possible national zones, which would therefore leave the largest possible area as international zone. The limits of the continental shelf proposed by this group during early 1970's were criteria such as the 200-metre isobath or a distance of 40 miles. This was proposed in Article 1(A) of the preliminary working paper for international Sea-Bed Convention submitted to the United Nations Sea-Bed Committee on August 20th, 1971 (sponsored by the land-locked and geographically disadvantaged States of Afghanistan, Austria, Belgium, Hungary, Nepal, Netheralnds and Singapore).[235] This proposal was for a straight choice by coastal States between 200 metre isobath and 40 mile distance, with an additional 40 mile 'priority zone' within which the coastal State would have veto rights over any exploitation under the auspices of the I.S.A.[236]

In 1972 eleven land-locked and shelf-locked States submitted a document to the Sea-Bed Committee requesting a study on economic implications of the different proposals for the national-international boundary.[237] This resulted in a major confrontation between land-locked and shelf-locked States favouring narrow jurisdictional limits and coastal States favouring wide national zones. This dispute was carried over into the 1972 meetings of the General Assembly. There a Resolution sponsored by 31 geographically disadvantaged States requested a comprehensive study of the extent and the economic implications of the international sea-bed area which would result from each of the various proposals on the national-international boundary. The proposed study was deemed to demonstrate that excessive national claims over the

sea-bed areas would deprive the I.S.A. [illegible] almost all hydrocarbon resources which would be suitable for exploitation in near or middle term future.[238]

By 1974 most of the land-locked and shelf-locked States abandoned their fight against the 200-mile limit. Instead, the geographically disadvantaged States disputed the scope and the nature of rights of the coastal States within national jurisdictional zones. As already mentioned,[239] a group of fifteen land-locked and six shelf-locked States within their proposal of August 5th, 1974 demanded the right to participate in the exploration and exploitation of the living and non-living resources of the zones of neighbouring coastal States. As indicated by various draft articles of the S.N.T. the majority of States did not support the suggestion of sharing resources with non-coastal States. However, the land-locked States have continued their support for this proposal. In several draft articles submitted by various land-locked States, access, sovereignty, exploitation of resources and sharing of resources with the international community were canvassed.[240]

The geographically disadvantaged States maintain that the principle of 'common heritage of mankind' admits of the distribution of sea-bed resources among all States regardless of their situation with respect to the sea. The view of all land-locked States was expressed by Mr. Korchevsky of the Byelorussian Soviet Socialist Republic who explained that any extension of the rights of coastal States beyond the territorial sea would infringe the rights of the geographically disadvantaged States.[241] Similarly the representative of Zaire stated that, in the light of the

principle of 'common heritage' there are equal rights for all States, including land-locked ones, to participate in the exploitation of this common heritage.[242]

NOTES

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6. LAY, CHURCHILL AND NORDQUST, ed., 'New Directions in the Law of the Sea', New York and London: Oceana Publications, 1973, Vol. 1, p. 347.

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8. DUPUY, op cit, note 5, pp. 67 - 68.

9. For details see the following Sub-Section on the Latin American States.

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11. Ibid. Other more minor categories, defined by Gamble, fall outside the scope of this study.

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16. See Chapter II, the Development of the Law of the Continental Shelf Before 1945.

17. U.K.T.S., No. 10, 1942, Cmd. 6400, pp. 1 - 7.

18. VALLAT, F. A., 'The Continental Shelf', 23 BYBIL (1946), p. 333, at 336.

19. United Kingdom, '1942 Statutory Rules and Orders', London: H.M.S.O., 1943, at 919.

20. SLOUKA, Z. J., 'International Custom and the Continental Shelf', The Hague; Martinus Nighoff, 1968, pp. 72 - 73, 123.

21. I UNLS, 'Laws and Regulations on the Regime of the High Seas', (1950), 31, 33, 304 - 305.

22. Ibid, pp. 31 - 32. For further discussion see SLOUKA, op cit, note 20, p. 124.

23. United Kingdom, 1964, 'The Public General Acts', London: H.S.M.O., 1965, Chapter 29.

24. The Times, London, August 21st, 1978, p. 11.

25. 1964 Statutory Instruments (hereinafter S.I.), No. 697 (1964 II, p. 1340).

26. 1965 SI, No. 1531 (1965 II, p. 447.)

27. 1968 SI, No. 891 (1968 II, p. 2371).

28. 1971 SI, No. 594 (1971 I, p. 586).

29. CHURCHILL, R. R., 'United Kingdom', in CHURCHILL, SIMMONDS and WELCH, ed., 'New Directions in the Law of the Sea', New York and London: Oceana Publications, 1973, Vol III, p. 289.

30. 1974 SI, No. 1489.

31. GRANT, J. P., 'Oil and Gas', in GRANT, J. P., 'Independence and Devolution: The Legal Implications for Scotland', Edinburgh: W. Green & Son, 1976, p. 91.

32. 1976 SI, No. 1154 (1976 II, p. 3145).

33. Court of Arbitration Decision of June 30th, 1977 on the delimitation of the continental shelf boundaries between the United Kingdom and France. As Adrian Hamilton has noted the Court's decision over the Western Approaches and the Channel Islands "gave no clear hint as to how the other decisions may go". Instead it simply gave Britain a 'half' right to claim the Scillies as part of the mainland (effectively dividing the rival claims down the middle) and gave a 12-mile limit to the Channel Islands. This still leaves open the dispute between Ireland and Britain over the division of the Western Approaches off the south of Ireland and between Ireland, Denmark and Britain over the area around Rockall ...". See HAMILTON, A., 'North Sea Impact: Offshore Oil and the British Economy', London: International Institute of Economic Research, 1978, p. 14n.

34. 1977 SI, No. 1871 (1977 III, p. 5277).

35. BROWN, E. D., 'The U.N. Conference on the Law of the Sea: a progress report', 26 Current Legal Problems (1973), 131 at 143 and 162. For the text of the British Proposal see U.N. Doc. A/AC.138/26, August 3rd, 1971.

36. U.N. Doc. A/AC.138/25, August 3rd, 1970; also see the following Sub-Section on the United States.

37. BERLINS, op cit, note 14, p. 7. This position, as John P. Grant has suggested, in combination with the U.K. extensive claim stretching from the Hebrides to well beyond Rockall, is not acceptable to the international community. See GRANT, J. P., 'Scotland and its sea', Conference on Scotland in World Affairs (March 1978), p. 2.

38. U.N. Doc., A/CONF.62/WP. July 15th, 1977.

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40. Court of Arbitration, op cit, note 33.

41. For treaties see Norway, March 10th, 1965, UKTS, No. 71 (1965), Cmnd. 2757; the Netherlands, October 6th, 1965, UKTS, No. 24 (1967) Cmnd. 3254 as amended on November 25th, 1971, UKTS No. 130 (1972) Cmnd. 5173; Denmark, March 3rd, 1966, November 25th, 1971, UKTS No. 6 (1973) Cmnd. 5193, Germany, November 25th, 1971, UKTS, No. 7 (1973) Cmnd. 5192.

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47. GRANT, op cit, note 31, p. 91.

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50. 1969 ICJ Reports, p. 3, at 22.

51. U.N. Doc., op cit, note 38.

52. United Kingdom, 'The Public General Acts 1972', London: HMSO, 1973, Chapter 2, Part 1. p. 3.

53. BIRNIE, op cit, note 48.

54. U.N. Doc op cit, note 38.

55. U.N. Doc. A/CONF.62/WP.8/Part II, May 7th, 1975.

56. See SYMMONS, op cit, note 45, pp. 65 - 92.

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59. Article 2(3), of the GCCS which is now part of customary international law. For text see op cit, note 57.

60. BROWN, E. D., 'It's Scotland's oil? Hypothetical boundaries in the North Sea - a case study', Marine Policy, January 1978, p. 17; also see GRANT, op cit, note 31, p. 88.

61. Brown, ibid, pp. 12 - 16.

62. GRANT, op cit, note 31, p. 89; also the same author, note 37, pp. 6 - 7.

63. Ibid, p. 91.

64. Article 1 of Island of Rockall Act, 1972, op cit, note 52.

65. The Scotsman, Edinburgh, April 15th, 1978, p. 1.

66. Financial Times, London, April 13th, 1978.

67. For details on the U.A.E. continental shelf practice see Chapter VI.

68. The Scotsman, note 65.

69. The Court of Arbitration, op cit, note 33.

70. op cit, note 3. The Truman Proclamation was fully studied in Chapter II on the Development of the Law of the Continental Shelf during 1945 - 1958.

71. See 48 AJIL (1964), p. 110; also JUDA, 'Ocean Space Rights: Developing U.S. Policy', Prager Publishers, 1975, p. 168.

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88. The Times, London, September 19th, 1978, p. 7.

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93. As quoted in BROWN, E. D., 'The Legal Regime of Hydrospace', London: Stevens & Sons, 1971, p. 7n. For the Canadian Oil and Gas Land Regulations, Mining Regulations, Canada Oil and Gas Drilling Act see UNLS, Supra, note 72, p. 339.

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112. English translation of the French instrument of accession to the GCCS, Cmnd. 2828 - 1965, p. 10. For an account of the effect of this sort of reservation, see BROWN, op cit, note 93, pp. 15 - 16.

113. The Declaration of the French representative to the U.N. Committee on Sea-Bed, U.N. Doc. A/AC.138/CS.27, p. 39.

114. QUÉNEUDEC, op cit, note 108, p. 261.

115. The Times, London, September 19th, 1978, p. 7.

116. The Court of Arbitration Decision, note 33, para, 145 - 151.

117. Ibid, para. 157 (geographical and geological factors), para. 158 (legal facts).

118. Ibid, paras. 152 and 165.

119. Ibid, para. 154.

120. Ibid, para. 31.

121. Ibid, para. 197.

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127. GAMBLE, op cit, note 10, p. 5.

128. 9 ILM (1970), p. 1081; also 64 AJIL (1970), pp. 1021 - 1023.

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134. UNLS, ibid. For more discussion on the British practice with respect to the continental shelf of the British colonies see previous Section on United Kingdom.

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137. 1958 UNCLOS, Official Records, vol. VI, Tenth meeting, March 14th, 1958, p. 19, para. 9, statement by Miss Whiteman, the United States delegate at the 1958 UNCLOS.

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141. UNLS, op cit, note 4, p. 14.

142. AUGUSTE, op cit, note 133, p. 131.

143. UNLS, op cit.

144. 10 ILM (1971), p. 1224.

145. Chapter II, Section A(1) on Extensive Claims.

146. UNCLOS, Rec 7, U.N. Doc, A/CONF. 13/39 (1958).

147. ILM, op cit, note 128.

148. See note 144.

149. The EEZ concept was discussed in Chapter II Section on UNCLOS III.

150. AUGUSTE, op cit, note 133, pp. 109 - 110.

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159. DUPUY, op cit, note 5, p. 20.

160. UNLS (1970), op cit, note 72, p. 431.

161. Ibid, p. 359.

162. Ibid, p. 360.

163. UNLS (1974), op cit, note 7, p. 159.

164. For the Gulf States' Proclamation see UNLS (1951), note 4 above; for subsequent Pakistani and Indian legislation see UNLS (1970), note 72, pp. 319 - 476.

165. Supra, note 39.

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167. 1958 UNCLOS, Official Re., Tenth meeting, March 14th, 1958, p. 19.

168. UNLS, op cit note 72, pp. 364 - 365.

169. The Asian African Legal Consultative Committee postponed the consideration of the law of the sea subjects at its third session (Colombo, from January 20th to February 4th, 1960) in view of the 1960 UNCLOS; see' AA LCC: Report of the Third Session Accra (Ghana) 1970', New Delhi: Secretariat of AALCC, 1960, p. 236. However, in its 12th Session (January 1971), the AALCC studied the law of the sea issues despite the envisaged UNCLOS III. For a study of causes and process of formation of the Afro-Asian Group, its function, impact and objectives in the General Assembly of the U.N. see AMERI, 'Afro-Asian Tactics and Voting in the General Assembly (1955 - 1962)', Bonn: Ameri, 1970.

170. ODA, op cit, note 73, p. 362.

171. LAY (and others), op cit, note 6, p. 250.

172. G.A. Official Records, Report of Sea-Bed Committee, A/9021, Vol. II, pp. 4 - 8.

173. Ibid.

174. Ibid, Vol. III, pp. 75 - 77.

175. Supra, note 3.

176. BRITEN, J. Y., 'Jurisdiction over sea-bed resources and recent developments in the Persian Gulf', 5 Revue Egyptienne de droit International (1949), at p. 131.

177. For all these ten texts see UNLS (1951), supra, note 3, pp. 13 - 30.

178. Majmooey-i Qavanin-i Iran, 1334 (Iranian Official Gazette of 1955 - 1956), the Law of Khordad 28, 1334, pp. 79 - 81. For English text see UNLS. supra, note 7, p. 151.

179. Al-Waqai al-Iraqiyah (the Iraqi Official Gazette), No. 4069 of November 27th, 1957. For English text see UNLS (1970), supra, note 72, p. 368.

180. UNLS (1974), supra, note 7, p. 23; also Middle East Oil Laws and Concession Contracts, supp. XXXX(1972), p. 15.

181. PADWA, D. J., 'Submarine boundaries', 9 ICLQ(1960), p. 639.

182. This issue will be fully examined in Part II, Chapter VI on delimitation of the Gulf continental shelf.

183. UNLS (1951), supra, note 4, pp. 12 - 30.

184. UNCLOS, Official Records, Vol. VI, 8th meeting, March 12th, 1958, p. 14, para. 23.

185. See the 1949 Praclamations by Saudi Arabia, Kuwait and Bahrain, supra, note 4, pp. 12 - 30.

186. LIEBENSY, H. J., 'Legislation on the sea-bed and the territorial waters of the Persian Gulf', 4 Middle East Journal (1950), p. 94.

187, Declaration of Iran at the 59th session of the Sea-Bed Committee, U.N. Doc. A/AC.138/SR.59, p. 229. Iran, Iraq and Kuwait were members of the Sea-Bed Committee (1972).

188. LAY (and others), op cit, note 6, p. 119.

189. AL-AWADHI, B. A., 'al qunun al-dowali lilbihar fil Khalij-i al- Arabi' (International law of the sea in the Arabian Gulf), Kuwait: Dar al-Taleaf, 1976 - 1977, p. 82.

190. The Embassy of the State of Bahrain (London) in a letter dated March 19th, 1978, in reply to my enquiries, stated that - "...The issue of the Laws and Decrees requested is still awaiting the result of the law of the sea conference".

191. DARMAN, op cit, note 13, p. 373.

192. This Resolution was intended to have a 'chilling' effect on the deep sea-bed private enterprise.

193. SEABROOK HULL, op cit, note 15, p. 3.

194. A/CONF. 62/C.2/L.39, August 5th, 1974; also see BUZAN, B., 'Seabed Politics', New York and London: Praeger Publishers, 1976, p. 222.

195. A/CONF.62/C.2/L.84, August 26th, 1974.

196. A/CONF.62/WP.10, July 15th, 1977.

197. There is no Arab land-locked State, but they are all shelf-locked. The Arab caucusing group has been one of the few interest groups in existence operating in the U.N. ever since the San Francisco Conference. See HOVET, note 10,

p. 56. The Group of 77 provides the primary focus of the Arab Group. However, the Arab Group, for the first time, emerged as a separate entity at the Caracus session, 1974. At the Geneva (1975)and 1978)and New York (1975 - 78) sessions, the Group has held regular meetings.

198. U.N. Doc. A/CONF.62/C.2/L.44,L.62 and L.82.

199. Supra, note 39.

200. U.N. Doc. A/AC.138/SC.1/SR.45, March 30th, 1972.

201. U.N. Doc. A/AC.138/SC.1/SR.3, March 25th, 1971, p. 5.

202. U.N. Doc. A/AC.138/SC.1/SR.12, August 3rd, 1971, p. 17.

203. Ibid, 138/L.11, March 1972.

204. U.N. Doc. A/CONF.62/C.3/L.12, August 22nd, 1974.

205. BUTLER, 'Union of Soviet Socialist Republics', in CHURCHILL (and others), op cit, note 29, p. 275.

206. BUZAN, op cit, note 194, at 32, 38, 49.

207. BUTLER, 'The Soviet Union and the continental shelf', 63 AJIL (1969), p. 103.

208. BUZAN, op cit, note 194, p. 49.

209. UNLS (1970), supra, note 72, p. 441; also LAY (and others), op cit, note 6, p. 347.

210. BUTLER, op cit, note 205, p. 272.

211. See UNLS (1970), note 72.

212. 7 ILM (1968), pp. 1393 - 1394.

213. See BUTLER, W.E., 'The Soviet Union and the Law of the Sea', Baltimore; Johns Hopkins Press, 1971, pp. 42 - 45.

214. U.N. Doc. A/AC.138/44, August 3rd, 1971.

215. U.N. Doc. A/AC.138/SC.11/L.26.

216. Supra, note 39.

217. For details on Yugoslavia policy on the law of the sea at UNCLOS see SAMBRAILO, B., 'The Third United Nations Conference on the Law of the Sea', International Problems, Belgrade, 1975, p. 95.

218. COHEN, J. A., And CHIU, H., 'People's China and International Law: A Documentary Study', Princeton:Princeton U.P., 1974, pp. 487 - 489.

219. Ibid, pp. 490 - 491.

220. U.N. Doc. A/AC.138/SC.11/L.34.

221. For full discussion on the Chinese claim over these islands see COHEN and CHIU, op cit, note 218, pp. 341 - 346. For a report on conflict see BUZAN, op cit, note 194, p. 214. For the East China Sea and Yellow Sea see GITTINGS, J., 'Scramble for oil in East China Sea', The Guardian, London, December 18th, 1970.

222. The Times, London, September 29th, 1978, p. ix.

223. GITTINGS, op cit, note 221.

224. The Times, London, September 30th, 1975.

225. Above, note 218, p. 492.

226. ANDRASSY, J., 'International Law and the Resources of the Sea', New York and London: Columbia U.P., 1970, p. 105.

227. U.N. Doc. A/AC.138/SC.11/L.34. (1973), p. 3; also see Peking Review (English Edition), No. 4, January 22nd, 1972, p. 16.

228. Above, note 218, p. 347.

229. Ibid, p. 348.

230. ALLEN and MITCHELL, 'The legal status of the continental shelf of the East China Sea', 51 Oregon Law Review (1972), pp. 789 - 812.

231. U.N. Doc. A/C.1/PV.1783, December 3rd, 1970, p. 82 (Mr. Farhang (Afghanistan), Sub-Committee 1 of Sea-Bed Committee).

232. BUZAN, op cit, note 194, p. 141.

233. Ibid, p. 141 - 142.

234. LATIMER, P., 'The law of the sea: problems arising in the analysis of the rights of land-locked States', 5 International Relations (1977), p. 180 at 194.

235. U.N. Doc. A/AC.138/55, August 19th, 1971.

236. Ibid; also see BUZAN, op cit, note 194, pp. 168 - 169.

237. BUZAN, ibid, p. 18.

238. Ibid, p. 182.

239. See previous Sub-Section on the Persian Gulf States.

240. LATIMER, op cit, note 229.

241. UNCLOS III (1975), Official Records, Vol. 2, p. 205.

242. Ibid, p. 175.

CHAPTER IV

DELIMITATION OF THE CONTINENTAL SHELF BETWEEN OPPOSITE AND ADJACENT STATES

The problem of delimitation of an acknowledged continental shelf between opposite and adjacent States is one of the most important issues of the law of the sea. The equidistance method of delimitation, which is the most appropriate way of shelf delimitation in normal circumstances, may create inequitable results in special circumstances. The present Chapter is concerned with the rules and principles by reference to which the boundaries of the continental shelf should be determined between opposite and adjacent States in both normal and special circumstance.

I. THE DEVELOPMENT OF THE LAW ON THE DELIMITATION OF THE CONTINENTAL SHELF

The 1945 Proclamation of President Truman of the United States referred to the delimitation of the continental shelf of concern to more than one State in the following terms:

> "In cases where the continental shelf extends to the shores of another State or Island with an adjacent State the boundary shall be determined by the United States and the State concerned, in accordance with equitable principles."[1]

As will be seen in Chapter VI, this general formula was reproduced in the 1949 Proclamation by Saudi Arabia and the British protected

Arab Emirates of the Persian Gulf. However, the great majority of the subsequent unilateral acts by other coastal States made no provisions for delimitation of their continental shelves.[2] Despite this failure, the appropriate rules for delimitation of the continental shelf between opposite and adjacent States did systematically develop through the deliberations of the International Law Commission (ILC), and the 1958 United Nations Conference on the Law of the Sea (UNCLOS).[3]

The ILC (1950) emphasised the desirability of delimitation by agreement between the States concerned.[4] Several States in their comments on this suggestion expressed the view that leaving the delimitation of a common continental shelf to the interested States was not satisfactory. They further stated that some rules should be laid down internationally which should guide an arbitration tribunal in its decision. During the 1951 session, the ILC opted for the median line principle for delimitation between opposite States, and advocated, in the absence of agreement, delimitation between adjacent States by arbitration 'ex aequo et bono'.[5] However, Denmark, Israel, the Netherlands, Norway and the United Kingdom expressed doubts as to the advisability of arbitration 'ex aequo et bono'.[6] Moreover, the United States and Sweden suggested that previous arbitration cases, such as the Hague arbitral award of 1909 on the maritime frontier between Sweden and Norway, might possibly provide useful material for rules concerning continental shelf delimitation. In that case the Permanent Court had adopted as demarcation line, a line perpendicular to the general coastline.[7]

The debates in the ILC did not provide definite rules for the delimitation of the continental shelf between neighbouring States. The major development of the law on continental shelf delimitation was the set of provisions adopted in Article 6 of the Geneva Convention on the Continental Shelf, 1958 (GCCS).

Article 6 of the GCCS distinguishes between adjacent and opposite States, although it prescribes almost the same methods of solution in either situation. Both paragraphs of Article 6 provide that the continental shelf boundaries be defined first of all by mutual agreement. Except in special circumstances, the boundary between opposite States should be the median line, and between adjacent States should be a line equidistant from the nearest points of their baselines.[8]

The GCCS has been criticized because it lacks compulsory provisions for the settlement of disputes.[9] There is a tendency at the Third United Nations Conference on the Law of the Sea (UNCLOS III) to adopt measures in respect of the delimitation of the Exclusive Economic Zone (EEZ) and the continental shelf which would be compulsory in nature. According to Articles 61 and 70 of the 1975 Single Negotiating Text (SNT) the delimitation of the EEZ and the continental shelf between adjacent and opposite States should be agreed upon in accordance with the median or equidistant line.[10] If no agreement were reached the States concerned were to resort to the compulsory procedures for the settlement of disputes provided in Part IV of the SNT. However, the application of the median or equidistant line was rejected when the SNT was revised in 1976. Furthermore, Article 18 of Part IV of the Revised Single

Negotiating Text (RSNT) provided that disputes concerning sea boundary delimitation between adjacent and opposite States were among optional exceptions and that States might declare themselves exempt from compulsory procedures.[11]

The existence of sovereign rights exercisable over the continental shelf and the EEZ is the main reason for the exemption of these two national jurisdictional zones from compulsory procedures. Mr. A. O. Adede, of the United Nations Secretariat (the Office of Legal Affairs) notes that:

"the extent to which coastal State activities may be subject to compulsory third-party proceedings would correspond somewhat to the nature and the extent of the coastal State's competence ... There is, comparatively, more scope for third-party settlement proceedings with respect to issues over which the coastal State only exercised 'jurisdiction'; less scope for third-party settlement procedures on issues over which a coastal State exercises 'exclusive jurisdiction'; and even less scope for compulsory procedures as issues become those over which a coastal State exercises 'exclusive rights' or 'sovereign rights'".[12]

The provisions on shelf delimitation between opposite and adjacent States are the same in the Informal Composite Negotiating Text (ICNT) which is the most recent draft convention being debated at UNCLOS III. Articles 74 and 83 of the ICNT (1977) provide that the delimitation of the EEZ and the continental shelf between adjacent and opposite States should be effected "by agreement in accordance with equitable principles, employing, where appropriate,

the median or equidistance line, and taking account of all the relevant circumstances".[13] Article 74(4) provides that for the purpose of the draft Convention, "median or equidistance line" means "the line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured". Both Articles 74(3) and 83(3) provide that pending agreement or settlement, the States concerned should make 'provisional agreements'. If no final agreement can be reached the States should resort to the procedures provided for in Part XV. However, Article 297(1), similar to Article 18 of Part IV of the RSNT, states that disputes with respect to sea boundary delimitation between adjacent or opposite States may be excluded from compulsory procedure by special declaration.[14]

As is the case with any treaty, neither the provisions of Article 6 of the GCCS nor compulsory procedures of the future Law of the Sea Convention (ICNT) extend to non-parties (assuming they are not part of customary law). Furthermore, among the parties to the GCCS there are a number of States which have adhered to the Convention, with certain reservations. The same situation is inevitable as regards the future Convention. Some States party to the GCCS have also expressed individual interpretations not accepted by other parties.[15] France, Venezuela, and Yugoslavia made reservations regarding Article 6 of the Convention.[16] These reservations are most significant in respect of the legal relations between the States parties to the GCCS.

The United Kingdom and France, both parties to the GCCS, were divided

concerning the question whether Article 6 of the Convention was in force between the two States. The French position was not to comply with the application of the median line (provided by Article 6 of the Convention) because of their reservation toward Article 6.[17] The United Kingdom refused to accept these reservations. The British Government argued that Articles 1 and 2 of the GCCS were rules of international customary law and could not be affected by any reservation.[18] As regards Article 6 the United Kingdom held that firstly, the French reservations to this Article were not permissible, secondly that the reservations did not cover Article 6, and lastly that the reservations were of little practical value.[19] This difference, as will be shown,[20] was the major obstacle encountered by the Court of Arbitration which defined the continental shelf boundaries between the United Kingdom and France.[21]

The International Court of Justice (ICJ) in its ruling on the North Sea Continental Shelf Cases decided that Article 6 of the GCCS was not part of customary international law.[22] This opinion is favoured by the majority of international lawyers.[23] For instance, Professor Juraj Andrassy's analysis of this subject (in 1970) has come to the conclusion that the GCCS provisions on delimitation of the continental shelf (including that part of Article 1 which defines the outward limit of the continental shelf) have no universal binding force. The provisions of Article 6, he concludes, must not be recognized by States which are not parties to the Convention.[24] However, this opinion is disputed by some foremost contemporary authorities on the international law of the sea. Professor E. D. Brown (writing in 1970) states that the provisions expressed in Article 6(2) of the GCCS have attained the status of international

customary law.[25] So it is of primary importance to know the international customary rules relating to delimitation of the continental shelf. It is also important to consider how far the provisions of the GCCS have adopted already existing customary rules, and how far they have introduced innovations, or how far they have become customary international law after their entry into the text of the Convention.[26]

II. RULES FOR DELIMITATION.

The following study examines the principles and rules for delimitation of the continental shelf between opposite and adjacent States. It lays emphasis on the rules and principles which have developed under international customary law during the post - 1958 era. In addition to the practice of States, special reference is made to the ruling of the International Court of Justice (ICJ) in the North Sea Continental Shelf Cases, February 20th, 1969, and the decision of the Court of Arbitration in the United Kingdom - France Continental Shelf Case, June 30th, 1977.

A. Equitable Principles

Professor G. Schwarzenberger states that the movement from primitive and archaic legal systems to mature and developed legal systems tends to be accompanied by a change in emphasis from jus strictum (absolute rights which may be exercised irrespective of equitable considerations) to jus aequum (relative rights which must be exercised reasonably and in good faith).[27] Although the equity contents vary from one legal system and one branch of law to another, equity is recognised as a general principle of law in all the

world's major legal systems. Thus, equity should be considered as part of the legal order of the international cummunity as provided by Article 38 of the Statute of ICJ. The application of the concept of 'absolute equity' in international law moderates the rigour of the rules of law in order the better to carry out justice in each individual case.[28] Professor Schwarzenberger concludes that the chief function of equity is "to transform absolute rights into relative rights and thus to smooth the interplay of the rules of international law".[29]

Equitable principles have been frequently referred to as bases for delimitation of the continental shelf between adjacent and opposite States. The Truman Proclamation provided that - "In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles".[30] The same provisions were repeated in a number of the subsequent proclamations by other States on the continental shelf (such as the 1949 Proclamations of the Gulf States).[31] However, the exact content of the term 'equitable principles' in respect of shelf delimitation is far from clear.

Dr. B. Cheng, writing in 1955 notes four types of international equity: ex aeque et bono, absolute equity, equity for supplementing the law and equity in the exercise of judicial discretion.[32] Professor E.D. Brown, with reference to this division, states that the equitable principles in the Truman Proclamation point to equity in the exercise of judicial discretion.[33] This type of equity, the fourth in Dr. Cheng's categorization, is the indispensable

complement of positive law, in all systems of municipal and international law, and as such it has been applied by internationl tribunals.

The ICJ in the North Sea Continental Shelf Cases specified that the term 'equitable principles' in this context was not simply a matter of abstract justice. It was a question of "applying a rule of law which itself requires the application of equitable principles, in accordance with the ideas which have always underlain the development of the legal regime of the continental shelf in this field".[34] The Court further explained that equity, with respect to shelf delimitation, established that the continental shelf of any State must be the natural prolongation of its land territory and must not encroach upon what is the natural prolongation of the territory of another State. The Court also maintained that principles of equity constitute an obligation to enter into meaningful negotiations with a view to arriving at an agreement. Lastly the Court maintained that the States concerned are bound to act in such a way that, taking all circumstances into account, equitable principles are applied.[35]

Since the parties to the North Sea Continental Shelf Cases did not empower the ICJ to decide the case between them ex aequo et bono, the Court in no way could dispense equity so as to override actual rules of the law on delimitation of the continental shelf. It was noticed that there was no question in these cases of any decision ex aequo et bono. However, as Professor Wolfgang Friedmann noted in his critique of the Court's ruling in 1970 the Court did tend towards an ex aeque et bono decision in its judgment.[36]

Professor E. D. Brown, criticising the Court's interpretation of equity, concludes that:

> "The Court's interpretation of equity would seem to deprive the law on delimitation of the continental shelf between adjacent States of a reasonable measure of certainty and to open the door to abusive and vexatious litigation in other parts of the world. It is moreover less than clear that reference to the 'factors' enumerated by the Court will guarantee a fair delimitation."[37]

B. Delimitation by way of Agreement

Venezuela at the 1958 UNCLOS proposed that limits between adjacent States should be set only by agreement.[38] Mutual agreement was also stressed by an overwhelming majority of the coastal States within their continental shelf proclamation or legislative acts. The Truman Proclamation stated that in cases arising between the United States and another State, continental shelf boundaries should be determined by an agreement reached in accordance with equitable principles.[39] These two concepts of mutual agreement and equitable principles, were incorporated in a number of subsequent national proclamations and enactments on the continental shelf. For instance, the Saudi Arabian Pronouncement of 1949, provided that - "The boundaries of such areas will be determined in accordance with equitable principles by our Government in agreement with other States having jurisdiction and control over the subsoil and sea-bed of adjoining areas".[40] There were some States, however, which deliberately did not refer to mutual agreement as a method

of delimitation. The Iranian Law of June 19th, 1955, on the Continental Shelf ommitted any reference to mutual agreement, but authorized the Government to take the necessary diplomatic measures for defining the boundaries of the continental shelf.[41]

While in Article 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958), settlement by mutual agreement is only provided for as an exception,[42] Article 6 of the GCCS prescribes it as the first method of solution. Both paragraphs one and two of Article 6 of the GCCS favour a contractual procedure for delimitation of the continental shelf boundaries between opposite and adjacent States.[43] However, it has been suggested that such provisions are superfluous, "since the other rules for setting boundaries are, like most rules of international law, jus dispositivum, and may always be altered by agreement among interested parties".[44] This view has been incorporated in the ICNT which is the most recent draft convention being debated at UNCLOS III since July 15th, 1977. Article 280 of the ICNT provides that none of the procedures of PART XV for settlement of disputes shall impair the right of any States parties to agree at any time to settle a dispute between them by any peaceful means of their own choice.[45] This procedure is also recognized in Article 33 of the Charter of the United Nations as one of the methods for the peaceful settlement of all international disputes.[46] The language of Article 6 of the GCCS, however, implies far more emphasis on agreement as a method for delimitation than is made in general references to mutual agreement in similar conventional texts. Both paragraphs 1 and 2 of Article 6 give priority to mutual agreement as a way of delimitation over the 'equidistance-special

circumstances'. Therefore, as the ICJ in the North Sea Continental Shelf Cases observed, the party-States to the GCCS are under legal obligation to enter into meaningful negotiation to reach an agreement.[47]

As already mentioned Article 83 of the ICNT provides that the delimitation of the continental shelf shall be effected by agreement in accordance with equitable principles, employing where appropriate, the median or equidistant line, and taking account of all relevant circumstances.[48] Since there is always room for dispute over the phrases 'where appropriate' and 'taking account of all the relevant circumstances', the party-States to the anticipated Convention will be able to apply any other boundary line through mutual agreement. Furthermore, Article 83(2) of the ICNT states that if no final agreement can be reached within a reasonable period of time, the States concerned should resort to the compulsory procedures provided for in Part XV. However, Article 297 of the ICNT states that disputes concerning sea boundary delimitations between opposite and adjacent States constitute one of the exceptions whereby the party States may declare themselves free from compulsory procedure.[49]

The ICJ in the North Sea Continental Shelf Cases, having said that judicial and arbitral settlements could not be universally accepted, emphasised the fundamental importance of settling disputes by way of agreement. The Court maintained that the parties' obligation to enter negotiations merely constituted a special application of a principle which underlay all international relations. Clarifying the meaning of equity in the context of continental shelf

delimitation, the Court held that the application of equitable principles would necessitate the entry of the States concerned into meaningful negotiation with a view to arriving at an agreement.[50]

As far as the practice of States is concerned, agreements have been concluded regarding the boundaries of the continental shelf in very many parts of the world such as Europe, Middle East, Southeast Asia and the Far East. The entire sea-bed of the Baltic Sea was apportioned among the littoral States by way of mutual agreements. In the North Sea the continental shelf boundaries were settled mainly by mutual agreements with only a few instances of judicial or arbitral settlements.[51] In the region of the Persian Gulf, although there are still some undefined continental shelf boundaries, most boundaries have been defined by mutual agreements.[52] There are, however, disputes over the delimitation of the continental shelf between other States, for instance the conflict between Greece and Turkey over the submarine areas of the Aegean Sea,[53] or the clashes between China and Vietnam in the Far East,[54] or again the dispute between the United Kingdom, Denmark and the Republic of Ireland in the Atlantic,[55] which have not yet been settled through agreements.

C. Equidistance Principle

The principle of equidistance has been adopted by Article 6 of the GCCS for delimitation of the continental shelf between opposite and adjacent States. While a number of party-States to the Convention made reservations in respect of Article 6, some non-party States have expressed their adherence to the provisions of

this Article. For instance, the Kuwaiti Government, which is not a party to the Convention, has announced that Kuwait "in exercise of its sovereign right has adopted the 'median line' in delimiting the boundary of the continental shelf with its neighbours".[56]

The principle of equidistance has been adopted by Article 6 of the GCCS both as denoting the abstract concept of equidistance and as a legal principle.[57] The ICJ in the North Sea Continental Shelf Cases regarded the term 'equidistance principle' as denoting the abstract concept of equidistance. The Court defined the equidistance line as "one which leaves to each of the Parties concerned all those portions of the continental shelf that are nearer to a point on its own coast than they are to any point on the coast of the other Party".[58] The equidistance principle and/or method, as a legal principle, underlies the rules for delimitation provided in Articles 6 and 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958) and in Article 6 (paragraphs 1 and 2) of the GCCS.

The use of the equidistance method of delimitation, where 'equidistance' is invoked as an abstract concept, is a very convenient course of action. The equidistance line leaves to each coastal State all those portions of the continental shelf which are nearer to its own coast than they are to the coasts of opposite or adjacent States. Adjacency, however, is not always identical with proximity. In other words, sometimes a portion of continental shelf may well be adjacent to a particular State although it is nearer to another State.[59] The equidistance principle, however, as the ICJ has

ennunciated it, constitutes a method capable of being employed in "almost all circumstances", even though the results might sometimes appear singular.[60] The Court could only accept the equidistance method as an abstract concept. It was opposed, as E. D. Brown has pointed out, to the application of equidistance method as a legal principle.

A typical exposition of equidistance method in terms of legal principle, was submitted to the I.C.J. as follows:

> "'equidistance' is not merely a method of cartographical construction of a boundary line, but the essential element in a rule of law which may be stated as follows, - namely that in the absence of agreement by the parties to employ another method or to proceed to a delimitation on an ad hoc basis, all continental shelf boundaries must be drawn by means of an equidistance line, unless, or except to the extent to which 'special circumstances' are recognised to exist, - an equidistance line being it will be recalled, a line every point of which is the same distance away from whatever point is nearest to it on the coast of each of the countries concerned - or rather, strictly, on the baseline of the territorial sea along the coast."[62]

In the light of the Court's judgment, the argument for the equidistance rule as a legal principle is seriously weakened.[63] It is, however, evident that under the rules for delimitation provided by the Geneva Conventions on the Law of the Sea (1958) the principle of equidistance was adopted not merely as denoting the abstract

concept of equidistance but also as a legal principle. This is why the ILC (1953) frequently referred to the equidistance line as a 'general rule'.[64] Also the United Kingdom delegate at the 1958 UNCLOS stated that even in the event of 'special circumstances', the median line, being a legal principle, would provide the best starting point for negotiations.[65]

Articles 6 and 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958) state that, "failing agreement to the contrary", neither State is "entitled to extend its territorial sea beyond the median line."[66] The language of Article 6 of the GCCS indicates yet more emphasis on equidistance principle. Article 6(1), referring to the continental shelf boundary of opposite States, provides that, "(i)n the absence of agreement, and unless another line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baseline from which the breadth of the territorial sea of each State is measured". Article 6(2), referring to the continental shelf boundary of adjacent States, provides that "(i)n the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured".[67]

It must be noted that the language of Article 6(1) emphasised that, where the same continental shelf is adjacent to the territories of opposite States, and in the absence of agreement, and excluding special circumstance, "the boundary is the median line". (Emphasis added). Therefore, the shelf boundary between opposite States

parties to the GCCS may not be determined, except in special circumstances, by any boundary line other than the median, in the absence of mutual agreement. This was the core of the dispute between the United Kingdom and France, both parties to the GCCS, over the delimitation of their continental shelves. The Court of Arbitration held in this case that the discarding of the equidistance line might be justified only on two legal grounds: firstly under Article 6 which provides that if some geographical feature amounting to 'special circumstances' exist another boundary line is justified; secondly under customary international law wherever the equidistance line is rendered inequitable whereupon its discarding is considered justified.[68]

The United Kingdom and France were divided as to whether the equidistance principle was applicable to the Atlantic region. The United Kingdom held that the rules provided in Article 6 of the GCCS should be applied.[69] This meant that a median line should be constructed and that the continental shelf baseline should be the baseline of the territorial sea.[70] France submitted that under both customary law and Article 6 of the GCCS, the Atlantic region called for a method of delimitation other than that of equidistance.[71] France insisted that 'special circumstances' existed in the Atlantic region, not only because of the presence of small islands, but also on other grounds. First, that the situation westward of the Scillies-Ushant line was neither one of 'opposite' nor one of 'adjacent' States. Secondly, that the particular geographical relation of the two States would have a distorting effect, if the equidistance method were employed. Thirdly, that in constructing the boundary line, geographical,

geological and economic criteria should not be overridden by the 'equidistance principle'.[72] Fourthly, that according to principles and anologies derived from the judgment of the ICJ in the North Sea Continental Shelf Cases, the boundary should be defined in accordance with the principles of natural prolongation and equity.[73] Despite all these arguments the Court of Arbitration finally held that Article 6 should govern the delimitation of the continental shelf in the Atlantic region.[74] The Court was of the opinion that the Atlantic region fell within the terms of paragraph one rather than paragraph two of Article 6 of the GCCS.[75] Accordingly it adopted a strict median line along most of the continental shelf between the two States, departing from it only where 'special circumstances' such as the Scilly Isles, arose.[76]

Both the ICJ in the North Sea Continental Shelf Cases and the Court of Arbitration in the Channel Delimitation case stated that not only the equidistance method but also other methods may be used for shelf delimitation.[77] If the equidistance method were to be compulsorily applied in all situations, this would sometimes result in inequitable apportionment of the continental shelf. The equidistance principle is, however, universally accepted, but only in so far as it is modified by the 'special circumstances' clause. The conventional criteria of 'equidistance - special circumstances' are identical to the customary law criteria of 'equitable principles'. That is to say that the choice of the methods of delimitation has to be determined in accordance with equitable principles, employing, where appropriate, the equidistance line.

D. The Principle of Natural Prolongation

The Truman Proclamation stated that "the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it".[78] The provisions regulated in Article 6 of the GCCS for delimitation of the continental shelf made no reference to the principle of natural prolongation of land territory. However, this principle was later established as the fundamental basis for the continental shelf under international customary law. The ICJ., in the North Sea Continental Shelf Cases made it clear that a State has rights in the continental shelf because this is an area which is a physical extension of the land territory.[79] The continental shelf areas, therefore, although covered with water, may be deemed to be actually part of the territory over which the coastal State already has dominion.[80]

The principle of natural prolongation demands that the continental shelves should be apportioned between opposite and adjacent States in accordance with geological links. That is to say, the boundary line between the continental shelves of opposite and adjacent States should be drawn in such a way as to leave as far as possible to each coastal State all those parts of the submarine areas which constitute the natural prolongation of its land terrotory into and under the sea. In short, the process of delimitation of the continental shelf is one of "drawing a boundary line between areas which already appertained to one or other of the States affected."[81]

The ICJ in the North Sea Continental Shelf Cases, maintained that the continental shelf of any State must be the natural extension of its land territory and must not encroach upon what is the

prolongation of territory of another State. Therefore, "whenever a given submarine area does not constitute a natural - or the most natural - extension of the land territory of a coastal State, even though that area may be closer to it than it is to the territory of any other State, it cannot be regarded as appertaining to that State; - or at least it cannot be so regarded in the face of a competing claim by a State of whose land territory the submarine area concerned is to be regarded as a natural prolongation, even if it is less close to it."[82]

As will be seen later, Turkey establishes her claims over the continental shelf adjacent to the Greek islands on the basis of natural prolongation principle. This view has also appeared in other national interpretations concerning the definition and delimitation of the continental shelf. For instance, the attitude of the Attorney-General of the Republic of Cyprus in 1972 towards the outer limits of that State's continental shelf was based upon 'natural prolongation' as described in his legal advice:

> "The submarine areas beyond the depth of 200 metres may, in the light of the judgment of the International Court of Justice in the North Sea Continental Shelf Cases, still be considered by Cyprus as part of the continental shelf if they form part of the natural prolongation of the Cyprus land territory into and under the sea."[83]

References to the principle of natural prolongation were made in the arbitration case between the United Kingdom and France on delimitation of the continental shelf in the English Channel

and the Atlantic Ocean. Both the United Kingdom and France referred to the principle of natural prolongation to support their proposed boundary lines. France claimed continental shelf rights in accordance with the essential 'geological continuity' of the continental shelf throughout the entire area between the United Kingdom and France. The United Kingdom representative in his Counter-Memorial to the Court of Arbitration, with reference to this geological continuity, put forward that the continental shelf between the two States could be determined only by means of a median line.[84]

Despite its fundamental importance 'natural prolongation' is not an absolute principle as far as the delimitation of the continental shelf is concerned. The ICJ in the North Sea Continental Shelf Cases concluded that the shelf delimitation process "could not have as its object the awarding of an equitable share, or indeed of a share, as such, at all, for the fundamental concept involved did not admit of there being anything undivided to share out".[85] Nonetheless, the Court admitted that the delimitation had to be equitably effected.[86] This means that the continental shelf boundary may, in the interest of equitable principles, encroach upon the areas beyond the natural prolongation of a coastal State. In other words, in special circumstances the principle of natural prolongation should be qualified in order to produce a more equitable apportionment of the submarine areas.

III. SPECIAL CIRCUMSTANCES

Article 6 of the GCCS provides that in the absence of agreement, the continental shelf boundary between adjacent or opposite States

is the median or equidistant line, unless another boundary is justified by special circumstances. To argue for 'special circumstances' is highly desirable for coastal States which would be apportioned a greater area of the continental shelf in the event of applying a boundary line other than the median line. The importance of the 'special circumstances' clause, can be illustrated by the ruling of the ICJ in the North Sea Continental Shelf Cases. There, because the Federal Republic of Germany was not a party to the GCCS, the Court could only rule against delimitation by equidistance according to the general principle of equity, even though their decision was in fact influenced by the existance of special circumstances.

Although at both the ILC and the 1958 UNCLOS, mention was made of some illustrations which might constitute 'special circumstances', the GCCS did not provide the necessary criteria for these special circumstances. Thus, it seems difficult to identify what these special circumstances are. Furthermore, it is not sufficiently clear what the alternative guiding principles within the intended scope of 'special circumstances' should be; or how the existence of the special circumstances or relevant guiding principles should be ascertained. This situation was noted at the 1958 UNCLOS by the Yugoslavia delegate who stated that the "vagueness and arbitrary character" of 'special circumstances' could constitute a breeding ground for misunderstandings and dissensions.[87] The majority of delegates, however, rejected the Yugoslav proposal for the deletion of the 'special circumstances' clause.[88] Furthermore, since 1958 both the practice of States which are party oto the GCCS and the ruling of the ICJ in the North Sea Continental Shelf Cases have,

to some extent, clarified the content of 'special circumstances' clause.

It is the object of this Section to present the factors which may constitute 'special circumstances' under the terms of Article 6 of the GCCS. Professor E. D. Brown has identified as special circumstances the four main factors of (a) geographical considerations, (b) mineral and hydrocarbon deposits, (c) navigation and fishing rights, (d) historical special circumstances.[89] However, the two latter factors are very seldom relevant to the delimitation of the continental shelf. As borne out by State practice, only the following are considered as factors which may come within the scope of 'special circumstances': islands, general configuration of the coast, and mineral or hydrocarbon deposits.

A. Islands

Approximately seven per cent of the land area of the earth is encompassed by oceanic islands with a variety of geographical factors and political status.[90] The definition of continental shelf in Article 1(b) of the GCCS is expressly said to include "the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands". This concept of 'islands' when read in combination with Article 10(1) of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958) would appear to contemplate a single concept of 'islands'. However, as France has declared, owing to the almost infinite variation in the geographical circumstances of islands, there could be no single concept of islands in the law of the continental shelf.[91]

As already mentioned, the ICJ in the North Sea Continental Shelf

Cases held that Articles 1 and 2 of the GCCS represent the customary regime of the continental shelf, though the Court did not in fact consider the question of continental shelf of islands. Despite the provisions of Article 1(b) of the GCCS and the ruling of the ICJ there is a divergence of opinion as to whether all islands have their own continental shelves.

The presence of islands has been referred to as a possible case of 'special circumstances' in the commentary to draft Article 7 of the ILC (1953) Report.[92] For instance, when an island is far from the coast of the claiming State, its entitlement to a continental shelf of its own is open to question. Also it is argued that islands the natural conditions of which prove uninhabitable are not entitled to a continental shelf or EEZ of their own. As already mentioned in relation to Rockall Island,[93] this view has been incorporated in all three versions of the informal negotiating texts prepared at UNCLOS III as bases for the envisaged Law of the Sea Convention.

In the 1958 UNCLOS, there was a divergence of opinion as to the presence of islands on the continental shelf.[94] It was generally accepted that the geographical circumstances of small islands demanded departure from the equidistance principle. Also the case of an island, or a group of islands, near to the coast of States other than the claiming State, such as the Greek islands adjacent to the coast of Turkey, may be considered 'special circumstances'. In this situation, especially where the island, or group of islands, is far from the main territory of the claiming State, the propriety of applying the equidistance principle is debatable.[95] Also in

the event of islands which are not far from the coast of the claiming State but are nearer to another State's coast, the recognition of the islands' continental shelf is questionable.[96] The continental shelf of the Channel Islands is an example of such circumstances.[97]

S. W. Boggs suggests a workable rule regarding the delimitation of whether or not an island should be assimilated to the mainland. He recommends that a pair of parallel lines be drawn at a "tangent to opposite ends of sides of that island which encloses the least area of water between island and mainland - then if the land area of the island (properly planimetred from the low tide shoreline) exceeds the water area bounded by the parallel lines, the island and the mainland, the island should be reckoned as part of the mainland baseline, in laying down the median line".[98] However, for obvious reasons such a rule may not be universally applied to all islands.

It is submitted that the presence of islands might constitute a 'special circumstance' only in cases where the application of the equidistance method would produce inequitable results. However, there is no criterion established to determine which sort of islands should be included in the 'special circumstances' clause and which should be excluded. Each coastal State, obviously, advocates the application of those criteria which lead to its own advantage. The debate has been carried over to UNCLOS III and has not yet been resolved.

The different groups of opinions on the continental shelf of islands may be classified as follows:

1. Full Effect

It has been suggested that islands should be treated on their merits. This was the proposal of Commander R. N. Kennedy, member of the United Kingdom delegation at the 1958 UNCLOS.[99] It was also supported by Miss Whiteman of the United States delegation.[100] The United Kingdom, in her dispute with France over the continental shelf of the Channel Islands, supported her position under the GCCS. Article 1 of the Convention stipulates that every island is entitled to its own continental shelf. Under Article 2(3) the continental shelf attaches to the land territory as a natural appurtenance. The United Kingdom emphasized that this proposition had been recognised by the ICJ in the North Sea Continental Shelf Cases.[101] So in the opinion of the United Kingdom Government all true islands, irrespective of their location, generate their own continental shelf and only very small islands, in the context of the 'equidistance - special circumstances', may be excluded from 'full effect'.[102]

Similarly, Greece in her proposal submitted to the United Nations Sea-Bed Committee on July 16th, 1973, held that any island should be entitled to its own continental shelf.[103] In 1976, following the Turkish denial of the continental shelf of the Greek islands in the Aegean Sea, the Greek representative at the United Nations asked for a meeting of the Security Council to consider this dispute in view of the threat to peace. At the same time, Greece applied to the ICJ to settle the Aegean dispute by determining the Greek-Turkish boundary line on the continental shelf. Since Turkey had already embarked on the exploration for hydrocarbon resources within the disputed area, Greece asked the Court to issue an injunction restraining both parties equally from exploring the disputed continental shelf; to confirm Greece's sovereign and exclusive rights to explore

and exploit the continental shelf of her islands; and to declare that Turkey was not entitled to tamper with the continental shelf adjacent to the Greek islands without Greece's consent.[104] However, as it will be shown, the legal validity of such a claim over the continental shelf of all islands (irrespective of their geographical, geological and economic conditions) is open to question.

According to Hodgson,[105] the islands which are entitled to full continental shelf rights may be categorized as follows:

(a) Certain islands which constitute a mainland in consequence of their size and importance which are clearly entitled to full effect on the delimitation of a continental shelf. Cuba, Greenland, Borneo, Cyprus etc. possess all the attributes of a mainland in themselves and they should not be denied rights associated with their nature.

(b) Those islands which relate geographically to the mainland in such a way as to constitute a cohesive part thereof.

(c) A group of islands where the insular geography is identical or nearly identical.

2. No Effect

This school of argument suggests that all islands between opposite or adjacent States should be ignored in continental shelf delimitation. There are several coastal States favouring such an argument. The view was first expressed at the 1958 UNCLOS by Iran[106] and Italy[107] both of which border upon semi-enclosed seas. This extreme proposal was rejected because of the variety of size, grouping and position of the islands involved.[108] However, Commander Kennedy of the United Kingdom, stated that very small islands or sand cays on a continuous continental shelf and outside the belt of the territorial

sea might be neglected as base-point for measurement and have only their own appropriate territorial sea.[109]

At present several coastal States such as Ireland, Denmark, France and Turkey contend that not all islands are entitled to a continental shelf. Ireland and Denmark maintain that uninhabitable islands do not qualify for a continental shelf of their own. This position was previously studied in relation to Rockall Island.[110] On the other hand, France and Turkey deny continental shelf rights to certain islands which are situated near their coasts, but belonging to the neighbouring States.

In recent years some criteria have been suggested for the effect of islands on the continental shelf boundary. According to the draft articles submitted to the United Nations Sea-Bed Committee by a number of coastal States including Turkey on July 19th, 1973 the following factors should be taken into account in determining the maritime spaces of islands:

(a) the size of islands;
(b) the population or the absence thereof;
(c) their contiguity to the principal territory;
(d) whether or not they are situated on the continental shelf of another territory;
(e) their geological and geomorphological structure and configuration.[111]

It is now generally accepted that small and uninhabitable islands are not entitled to continental shelf or EEZ rights. The ICJ in its judgment on the North Sea Continental Shelf Cases stated that islets, rocks and minor coastal projection had a "disproportionately

distorting effect" on the course of the median line.[112] This comment might be viewed as supporting the 'no effect' argument in respect of small islands. As regards uninhabitable islands, Article 121(3) of the ICNT provides those islands whose natural conditions prove uninhabitable are not entitled to any continental shelf or EEZ of their own.[113] This proposal is supported by Denmark and Ireland against the United Kingdom's claim of an extensive continental shelf around the uninhabitable island of Rockall. As already said, however, the continental shelf around Rockall constitutes part of the United Kingdom's continental shelf, not on account of the British title to Rockall, but because of its geological association with the United Kingdom land mass. Furthermore, there are some British islands whose coasts are nearer to Rockall than those of the Irish islands.[114]

In Hodgson's opinion, those islands which should have no effect on continental shelf boundaries may be classified in four categories:[115]

(a) Islands which are already claimed to have no effect on continental shelf boundaries, situated in the immediate vicinity of the seaward termini of international land boundaries, or relatively distant from land.

(b) Those situated in the middle of partially enclosed seas. Generally, these islands are small and uninhabited, falling in the rock and islet categories.

(c) "Isolated islands which are not only too distant to be in contact with the contiguous zone envelope of their owner's territories,

but which are also uninhabited or support only caretakers or other tokens of the owner sovereignty, such as lighthouses or communications facilities."[116]

(d) Those islands whose 'no effect' status is mutually agreed by the interested States. As was previously mentioned,[117] the States concerned may always settle a dispute by mutual agreement. In the case of islands, several coastal States have adopted the 'no effect' theory by way of agreement. Reference may be made to the Italian Tremiti island group,[118] and several islands such as Al-Arabiyah and Farsi in the Persian Gulf.[119]

In the event of islands which are situated near to the coast of a State other than the claiming State, the application of equidistance principle would produce inequitable results. For instance, the Channel Islands belonging to the United Kingdom are located off the north-west coast of France. Also the Andaman and Nicobar Islands belonging to India, which are quite near the coasts of Burma, Thailand and Indonesia.[120] The dispute between Turkey and Greece over the Greek islands of Lesbos and Chios adjacent to the coast of Turkey is a similar situation.

The continental shelf around the Channel Islands was disputed between the United Kingdom and France until it was recently settled by arbitration. France held that the Channel Islands, being located off the French coast, were not entitled to any continental shelf right. Accordingly France contended that the median line in the Channel Islands sector should be drawn between baselines of the French landmass and the British landmass without the islands.[121] France based this argument on the cardinal principle of 'natural

prolongation' in combination with the principle of the equality of States.[122] The Court of Arbitration, while deciding that the Channel Islands did constitute a 'special circumstance', dismissed the relevance of the theory of the equality of States to the delimitation of the continental shelf boundaries. This point was also emphasised by the ICJ in the North Sea Continental Shelf Cases when it asserted that equity does not necessarily imply equality.[123]

It is suggested that, in circumstances such as those described above, the sovereign and security interests of the near-shore should be examined first to establish the bases for the more distant lines and limits.[124] This is what France put to the Court of Arbitration as regards the effect of the Channel Islands on the continental shelf boundary. France argued that in the event of the application of the equidistance method, the whole area adjacent to the French coast would be made subject to the exclusive sovereign rights of the United Kingdom.[125] The United Kingdom objected to such considerations of security, defence and navigational interests, for a number of reasons. First, they might equally be urged in favour of a continuous continental shelf between the British mainland and the Channel Islands. Secondly, Articles 3 to 5 of the GCCS adequately covered the appropriate rights of third parties within the continental shelf. Thirdly, since the area in question is an international channel of navigation, the continental shelf boundary between the United Kingdom and France would not change this situation.[126] The Court of Arbitration also disregarded these considerations because of the international status of the English Channel.[127]

It is noteworthy that several coastal States have claimed 'full effect' for a number of hitherto insignificant rocks and small isles. The prime examples are the claims by different Gulf States of full effects for numerous small islands in the Persian Gulf.[128] Also the United Kingdom base-point of April 26th, 1977 was in particular concerned with the Eddystone Rocks which, according to the French Government, had not hitherto in British practice been treated as an island, but a low-tide elevation. However, the United Kingdom clarified her position by stating that the contemporary British practice treated the Eddystone Rocks as an island for all purposes, including the use of the low-water line around it for the measurement of maritime zones.[129] The United Kingdom concluded her Note by contending that the Eddystone Rocks should be permitted to have a 'full effect' in determining the cause of a median line boundary in the Channel west of the Channel Islands.[130] The Court of Arbitration, regardless of the precise legal status of Eddystone Rock, held that it should be treated as a relevant base-point for delimiting the continental shelf boundary in the Channel.[131] The major reason given for this decision was the acceptance by the French Government in 1964 - 65 of Eddystone Rocks as a base-point for the European Fisheries Convention (1964).[132]

Turkey in a similar dispute with Greece in the Aegean Sea, contends that the relevant continental shelf should be divided by a median line between the two mainlands, leaving the Greek islands with only a territorial sea. Many islands, large and small, emerge from waters throughout almost the whole Aegean area. According to the treaties of 1924 and 1947, all the islands in the Aegean are now

under the sovereignty of Greece. The presence of all these numerous islands under the sovereignty of one of the two coastal States has created a conflict of interests.[133] Although all these islands belong to Greece, some of them, like Lesbos and Chios, are quite close to the Turkish coast.

In November 1973 the Turkish Government issued a decree awarding exploration rights to the Turkish Petroleum Office in the continental shelf of the mid-Agean Sea up to the six-mile territorial sea limits of the islands of Lesbos and Chios. Greece, claiming that these islands were entitled to a full effect of continental shelf and that the Aegean was basically a Greek sea, objected to the Turkish authorization. The dispute between the two States over the maritime status of these islands was heightened by the discovery of offshore oil in the eastern Aegean in early 1974. Later, early in August 1976, the Turks began to explore for oil between the Greek islands of Limnos and Lesbos above the continental shelf claimed by Greece. In a protest note of August 8th, 1976, Greece invited the GCCS to claim jurisdiction over the island continental shelf areas which were being explored by Turkey.[134] On the other hand, the most radical Turkish view upholds that the continental shelf of Turkey (off Anatolia) extends to the line formed by the deepest points in the Aegean sea-bed. This line follows more or less the western boundary of the area explored by Turkey in August 1976.[135] Subsequently the question of a Turkey-Greece continental shelf boundary was referred to the ICJ and has not yet been resolved.[136]

Since Turkey is not a party to the GCCS (Greece ratified the Convention in 1972) the dispute should be solved under the rules of customary international law. The ICJ in the North Sea Continental

Shelf Cases held that articles 1 and 2 of the GCCS were part of the customary law.[137] Accordingly Greece argues that the contemporary customary law, as represented in Article 1 of the GCCS, gives each island its own continental shelf. Greece, therefore, suggests that the Turkish unilateral claim of 1973 over the continental shelf areas beyond the territorial waters of the Greek islands of Lesbos and Chios would be considered contrary to the international law. In her proposals submitted to the United Nations Sea-Bed Committee on July 16th, 1973, Greece contended that any island should generate its own continental shelf.[138] However, the inclusion of the right of islands to adjacent submarine areas in the definition of continental shelf is a matter not accepted by all jurists. Furthermore, the ICJ in the North Sea cases did not in fact consider the question of the continental shelf of islands. The court was concerned solely with delimitation of the continental shelf between adjacent States. Therefore, the provisions of Article 1(b) of the GCCS as regard the continental shelf of islands are by no means part of customary international law. The uncertainty over this issue can be clearly seen in debates before the United Nations Sea-Bed Committee at UNCLOS III.[139]

The following arguments may be advanced in favour of Turkey's position that the Greek islands in the Aegean should not be granted any continental shelf right:

(a) The cardinal principle of natural prolongation supports the Turkish claim. The Turks say that since the Greek islands of Lesbos and Chios are protuberances or geological appurtenances of the Turkish continental shelf, they do not generate any continental shelf of

their own. In favour of such a contention is the position that the ICJ held in the North Sea Continental Shelf Cases. As already mentioned, the Court maintained that the fundamental rule which justifies the right of the coastal State is that which stipulates that the continental shelf constitutes a natural prolongation of its land territory into and under the sea.

(b) The mere geographical fact that certain Greek islands are located close to the Turkish mainland requires special treatment. In the words of a British publicist, the Turks feel, perhaps, as Britons might feel if the Shetland islands happened to belong to Norway.[140] Such a situation, whether under the 'special circumstances' clause or under equitable principles justifies a boundary line other than a median line between these islands as base-points and the coasts of the neighbouring State, This contention was supported by the Court of Arbitration in determining the continental shelf boundary in the similar situation of the Channel Islands.

(c) It may also be suggested that since the Greek islands are situated close to the Turkish coast, the sovereign and security interests of Turkey (the nearest coastal State) should be taken into account.[141]

(d) General considerations such as the small size, the low population and the negligible economics of the Greek islands disqualify them for a continental shelf of their own. By contrast, the Turkish coastal area in the Aegean, from the Dardanelles on the north to the vicinity of Rhodes on the south, is densely populated and economically one of the most advanced regions of Turkey.[142] As Professor Andrassy has suggested the population, economic situation of island and of both interested States must be taken into account.[143]

Such facts were specifically referred to by the United Kingdom to justify an independent continental shelf for the Channel Islands.[144]

(e) Furthermore, Turkey may argue for historical special circumstances. Indeed, the Turks, referring to the former extent of the Ottoman Empire, argue that in the past - with few exceptions - the disputed islands have always belonged to the owner of the coast (Turkey).[145] However, such historical circumstances are immaterial to a legal definition of the disputed continental shelf.

The 'no effect' argument has been favoured within numerous mutual agreements by various coastal States in defining their continental shelf boundaries. Reference may be made to the agreements between Bahrain and Saudi Arabia, February 26th, 1958; between Iran and Saudi Arabia, October 24th, 1968; between Abu Dhabi (UAE) and Qatar, March 10th, 1969; between Iran and Qatar, May 10th, 1970; between Iran and Oman, 1970;[146] between Italy and Yugoslavia, January 8th, 1968.[147] In all these cases, islands, especially those situated near coastlines, were disregarded as base-points for measurement of the continental shelf; and those near or at median line were given weight only in the delimitation of territorial sea.

The 'no effect' argument has sometimes been slightly modified in order to reach a compromise. For instance, the Italo-Tunisian Agreement of August 20th, 1971, accorded to three Italian islands only their existing 12-mile limit of territorial sea, plus a token addition of only one mile of continental shelf. Such restricted effect of more important islands is sometimes a necessary concession

in the application of the 'no effect' theory. By way of example the proponents of 'no effects' concede that the Channel Islands were justifiably granted their three-mile territorial sea added to the submarine areas of their exclusive fishing zone, since this amounted altogether to only a nine mile zone of continental shelf beyond the limits of the territorial sea.

3. Partial Effect

In delimitation of the continental shelf boundaries between opposite or adjacent States, there are some islands that can neither be ignored nor granted a full effect for the construction of equidistant lines. Two classic examples of such cases are the Kharg Island in the Persian Gulf and the Channel Islands in the English Channel; both cases will be studied in detail here.

KHARG ISLAND

Kharg is a relatively large Iranian island about 16 - 17 miles from the Iranian shore. It occupies about eight square miles and is sparsely inhabited.[148] By the Iran-Saudi Arabia agreement of January 19th, 1969,[149] the isle received a half effect, i.e. the boundary was to be delimited half-way between (a) the lines constructed with Kharg as national base-point, and (b) lines constructed without Kharg as national base-point. The status of Kharg, however, as regards the Iran-Kuwait shelf boundary is not resolved.

During continental shelf negotiations with Saudi Arabia, Iran claimed Kharg as part of the Iranian baseline and signed offshore oil agreements to this effect. On the other hand, the Saudi Arabian

offshore concessions were based on median line method between the Saudi Arabian mainland and the Iranian mainland. The everage overlap between the two proposed lines was six miles.[150]

In the course of negotiation, Iran demanded 'full effect' status for Kharg which would push the boundary approximately eight miles towards Saudi Arabia. Since the area was situated near the centre of the Persian Gulf on known petroleum deposits, Saudi Arabia did not accept the Iranian demand of 'full effect' for Kharg, but insisted on a shore-to-shore median line with 'no effect' for Kharg.[151]

A compromise was worked out and was initialled by Iran and Saudi Arabia in Teheran on December 13th, 1965. This compromise would have fixed the boundary along a line substantially equidistant between a median line giving full effect to Kharg and one giving no effect. However, the two States failed to sign or ratify this draft agreement, though it was eventually incorporated in the Agreement of October 24th, 1968. Iran was reluctant to sign the 1965 compromise because important deposits were subsequently discovered to be mostly on the Arabian side of the proposed line.[152] This oil structure was situated in an area for which both Iran and Saudi Arabia had granted concessions respectively to Iran American International Company and Aramco. If no effect were given to Kharg, as Saudi Arabia demanded, all of the oil structure would go to the Saudi Arabian portion of the continental shelf. Similarly if Kharg were considered as base-point for the measurement of the median line between the coasts of the two States, almost the whole structure would fall within Iran's sovereignty.[153] In the absence of any

agreement or legal settlement, Iran protected the oil operations in the disputed areas by the use of Iranian Naval Forces, in February 1968.[154]

Eventually, by the 1968 Agreement Kharg received a partial effect. An informal account by one of NIOC's senior legal advisors reveals that the two States, having cautiously estimated the disputed oil deposits, agreed to draw a boundary line which would divide the deposits into two equal parts.[155] Furthermore, to avoid the capture problem, both parties agreed not to drill within 500 metres of each side of the boundary line.

The legal basis for the partial effect of Kharg on the continental shelf was the concept of an 'equitable division of the oil in place'.[156] In accordance with this criterion the prevailing boundary was to be delimited half-way between the lines constructed with Kharg as national base-points and lines otherwise constructed. Compared with the 1965 compromise, the 1968 Agreement gave only a slight net gain in sea-bed to Iran, but presumably a substantial increase in Iran's share of oil reserves.[157] The concept of an equitable apportionment of oil was justified because the general location of the mid-Gulf oil fields was known. Hodgson suggests that if the exact location of oil deposits had not been known or, if they had been known to be farther to the west, the 'half way' status would not have been adopted.[158]

Another prime example of partial effect is the Channel Islands. The United Kingdom and France were in sharp disagreement regarding the role of the Channel Islands as coasts of the United Kingdom 'opposite' to those of France. By the Court of Arbitration Decision

of June 30th, 1977, the Channel Islands, to the north and west of their sea-bed and subsoil, were given a limited effect.[159] They were enclosed in an enclave formed by the boundary of a 12-mile zone.

France maintained that in this part of the Channel, the relevant 'opposite' coasts were those of the mainlands of France and the United Kingdom.[160] Therefore, she argued, the median line should be constructed between the mainlands of France and the United Kingdom from baselines, taking no account of islands.[161] France held that the Channel Islands would have their own territorial sea or contiguous zone but were not entitled to a continental shelf of their own.[162] The French Government proposed a formula restricting the Channel Islands to a six-mile enclave around the islands, consisting of a three-mile zone of continental shelf plus their three-mile territorial sea.[163]

On the other hand, the United Kingdom insisted that because the territorial sea of the Channel Islands is measured from baselines of all the islands, all of them are accordingly entitled to continental shelf rights.[164] The boundary proposed by the United Kingdom would treat the Channel Islands as the coast of the United Kingdom opposite to France and would accordingly form a deep loop around them close to the French coast.[165] The United Kingdom maintained that the presence of islets or small islands belonging to one State but nearer to the coast of an opposite State would constitute 'special circumstances', provided that these islands are not of sufficient 'political and economic importance'.[166]

The Court of Arbitration differentiated the case of the Channel Islands from that of rocks or small islands on the ground of their population, economic importance, and their constitutional status of being direct dependencies of the British Crown.[167] The Court however decided that, under the 'equidistance-special circumstances' rule, the Channel Islands constitute a 'special circumstance' justifying a delimitation other than the median line.[168] The Court adopted a twofold solution. First, that the primary boundary of the continental shelf throughout the whole length of the Channel should be a median line.[169] Secondly, the southern limit of the continental shelf should be appurtenant to France in a manner not to encroach upon the 12-mile fishing zone of the Channel Islands.[170]

In the cases of Kharg Island and the Channel Islands, the criteria for granting partial effect amount to a combination of size and/or population, geographical position, and economic considerations. Kharg, occupying about eight square miles, is certainly a large island by Persian Gulf standards. Its economic importance it Iran's oil and gas industry also supported the claim for its partial effect. The Channel Islands have a population of 130,000 and handle a substantial volume of sea traffic. Economically they represent an important centre of commerce, and enjoy an international reputation for the financial facilities which the provide. All these points were invoked by the United Kingdom who also contended that the political status of the Islands should contribute to their values as baselines.[171] In the two cases, size, political status and proximity to the coast of the non-claiming State also emerge as relevant factors. The first factor was particularly prominent

in the case of Kharg, and the other two in the case of the Channel Islands. However, both cases support Professor Andrassy's assertion that "the population, economic situation of island and of both interested countries, as well as the historical circumstances of possession and acquisition of titles must be taken into account".[172]

B. General Configuration of the Coast

The International Law Association Committee on Rights to the Sea-Bed and its Subsoil (Copenhagen, 1950), suggested that the configuration of the coastlines might be taken into account for delimitation of a common continental shelf between adjacent and opposite States.[173] To this suggestion Professor Hudson drew attention at the ILC (1950).[174] Later in 1953 the comments on draft Article 7 in the ILC Report suggested that 'exceptional configuration of coasts' should be taken into consideration.[175] As Professor Mouton has pointed out, criteria such as general configuration of the coast should not be considered as general rules for shelf delimitation.[176] It is, however, established that concavity or convexity of coast may constitute a 'special circumstance' within the terms of Article 6 of the GCCS.[177]

The primary example of such circumstances is the North Sea where the coasts of Denmark and the Netherlands are convex, but the coastline of the Federal Republic of Germany is concave. As already mentioned,[178] the Federal Republic asserted that if the median line were applied in the delimitation of her continental shelf boundaries with the neighbouring States, the result would be inequitable to the Federal Republic. This was contested by

Denmark and the Netherlands which insisted that the boundaries (both between themselves and the Federal Republic) should be delimited on the basis of the equidistance principle. The dispute was referred to the ICJ. It was disputed among the judges of the ICJ whether the configuration of the coast should affect the continental shelf delimitation. Judge Koretskii disagreed with the suggestion on the grounds that the boundary line of the continental shelf should be constructed with reference to the baseline from which the breadth of the territorial sea of each State is measured, rather than the coast. He thought that the appropriate allowance for irregularities of coastal configuration were usually made in the drawing of the baseline of the territorial sea.[179] The majority judgement, however, ruled that the geographical configuration of the coastline should be considered.[180] Furthermore, there must be a reasonable degree of proportionality between a State's length of coastline and its apportioned continental shelf. That is to say, other comparable factors being equal, in any situation where the shelf portions of the States concerned should prove markedly unequal because of some irregularity of the coastline, it is justifiable to employ a treatment "abating the effects of an incidental special feature".[181] However, one should be mindful of the geology of the continental shelf in question when determining whether the direction taken by certain configurations should influence the delimitation.[182]

The mere irregularity of the coastline in itself does not constitute a special circumstance. As Professor Andrassy has noted, the words 'special' and 'justify' in Article 6 imply that:

> "the exception should not be invoked unless the area in question has such a higher degree of unusual geographical configuration that one of the adjacent States would suffer great injustice if its portion of the continental shelf were delimited according to the principle of equidistance. Features causing a coastline to be only slightly different than an idealized norm would not warrant invocation of the special circumstances rule as not coastline is identical, and all would thus be eligible for special treatment, a situation not envisioned by the framers of the Convention. After all, if a majority were excepted from a general rule, it would be hard to say that the majority received 'special' treatment. Besides, minor geographical irregularities would not 'justify' such deviation".[183]

In some cases, such as the coasts of France and the United Kingdom, the irregularities in the coastline of each opposite State broadly offsets the effects of irregularities in the coastline of the other. As declared by the Court of Arbitration in the Anglo-French shelf delimitation case, in such areas the median line results in a generally equitable delimitation.[184] The application of the 'special circumstances' clause is only justified when the irregularity of a coastline renders the equidistance line inequitable.

In the same arbitral case, with respect to delimitation of the continental shelf of the Atlantic region between the United Kingdom and France, the Government of France proposed a median line prolonging the Channel median line in the Atlantic region out to

1,000 metre isobath, but no longer drawn from the baselines of the territorial sea. This proposed median line for the Atlantic was drawn midway between the two straight lines representing the general direction respectively of the French and British coasts on either side of the English Channel.[165] The Court of Arbitration, however, held that the Atlantic region should be delimitated by a median line under Article 6(1) of the GCCS.

C. Mineral or Hydrocarbon Deposits

It is generally agreed that economic considerations may not be disregarded in the definition of maritime boundaries. The ICJ in the Anglo-Norwegion Fisheries Case upheld economic necessity on the basis of long and evidenced usage.[166] Also Article 4(4) of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958) admits that for the determination of certain baselines, economic interests particular to the region concerned can be taken into account.[167] However, as Sir Gerald Fitzmaurice has noted in 1959 the provisions of Article 4(4),

> "make it clear that economic interests are not per se a justification for the institution of straight baselines, thus correcting a very common misapprehension about the effect of the judgment in the Norwegian case, namely that in indicated the existence of an economic interest as sufficing in itself to justify the use of straight baselines".[168]

At present, several coastal States consider the delimitation of offshore boundaries to be more of an economic problem than

a political one.[189] While the factual significance of economic interests is not disputed, the legal validity of the economic considerations with respect to the continental shelf delimitation is open to question.

The International Law Association (1950) suggested that the "economic value of proven deposits of minerals" should be considered among criteria for shelf delimitation.[190] Professor Hudson at the ILC (1950) cited this suggestion as relevant.[191] However, Professor M. W. Mouton in 1952, with some justification disputed the validity of such a suggestion.[192] Also Professor E. D. Brown concludes that it was not the intention of the ILC (1953 and 1956) to extend the concept of 'special circumstances' to cover the economic value of proven deposits of mineral or hydrocarbons.[193] It is obvious that the implications of the principle of 'natural prolongation' of the land territory does not, in pronciple, allow the apportionment of the continental shelf on the basis of economic considerations such as the economic value of proven deposits. Nonetheless, as evidenced in State practice, the existence of mineral or hydrocarbon deposits entitles a coastal State to demand a deviation from the equidistance line, whether it is regarded a 'special circumstance' or not.

The existence of common hydrocarbon or mineral deposits situated across the exact boundary might be agreed to constitute a 'special circumstance' under Article 6 of the GCCS.[194] Professor Mouton, writing in 1952, pointed out that "the dividing line should if it can be avoided not cross an oil 'pool'".[195] Later, lecturing in the Hague, 1954, he stated that no reserves which are found to

straddle established international boundaries on a continental shelf should be allowed to remain as such.[196] This view to which Commander Kennedy of the United Kingdom referred at the 1958 UNCLOS as 'special circumstances' is based on the concept of 'unité du gisement'.[197] This concept suggests that in the event of a potential common deposit, basically only one coastal State can exercise sovereign rights over it. However theoretically strong this argument may be, it could not be applied in continental shelf delimitation for the powerful practical reason that the concept of the unity of deposits renders the existing offshore boundaries subject to alteration depending on subsequently discovered deposits.[198]

W. T. Ontarto, however, thinks that it is necessary to develop an international convention and codify proven practices and procedures to solve such problems arising where several coastal States tap the same deposit.[199] He identifies some definite legal principles and rules to be considered as regards the apportionment of an international common deposit in the absence of mutual agreement. These rules, he says, provide a legally plausible and practically implementable regime of law governing the apportionment of international common petroleum deposits between States concerned. These rules are firstly that the common deposit may not be exploited unilaterally but must be the object of mutual agreement. Secondly that for sound legal reasons some rules and institutions of international law (especially the existing state practice on the question), private law, and the municipal petroleum laws, should be considered.[200] Needless to say, the most fundamental rule to be considered in any apportionment of international common petroleum reserves, is that the result of such apportionment must always be just and equitable.

The ICJ in the North Sea Continental Shelf Cases held that in continental shelf delimitation, account should be taken of "known or readily ascertainable" natural resources.[201] Professor E. D. Brown finds it unclear why this should have been included in an enumeration of factors which would contribute to an equitable solution. He thinks that the existence of even "known and readily ascertainable" deposits would scarcely constitute a 'special circumstance'.[202]

It is significant to note that almost all mutual agreements on the delimitation of the continental shelf have contemplated the possibility of incidental division of hydrocarbon or mineral deposits. They normally accept such common deposits as being the joint property of the interested States. This solution was adopted in various agreements reached as regards the continental shelves of the North Sea and the Persian Gulf. This was also accepted in the Italy-Yugoslavia agreement of 1968 and Japan-Korea of 1973.[203] Judge Jessup in his separate opinion on the North Sea Continental Shelf Cases refering to the German-Dutch agreement on the Ems Estuary as well as to agreements on the Persian Gulf recommended "joint exploitation or profit sharing". He stated that the "principle of joint exploitation is particularly appropriate in cases involving the principle of the unity of deposit", and "it may have a wider application in agreements reached by the parties concerning the still undelimited but potentially overlapping areas of the continental shelf which have been in dispute".[204]

NOTES

1. United States Department of State Bulletin, No. 327, September 30th, 1945, p. 485; also Official Documents, 40 AJIL (1946), supp., pp. 45 - 48.

2. For the text of the national proclamations and legislative acts on continental shelf in the period of 1945 - 1951 see UNLS, "Laws and Regulations on the Regime of the High Seas", New York: U.N., 1951, Vol. 1.

3. For details of different stages in the development of these rules see BROWN, E. D., 'The Legal Regime of Hydrospace', London: Stevens & Sons, 1971, pp. 47 - 61.

4. I ILC Yearbook (1950), pp. 252 -254, 306; also BROWN, op cit, note 3, pp. 52 - 53.

5. II ILC Yearbook (1951), p. 102.

6. Ibid, pp. 241 - 269; also see MOUTON, M. W., 'The Continental Shelf', The Hague: Martinus Nijhoff, 1952, p. 333.

7. ANNINOS, P., 'The Continental Shelf and Public International Law', La Haye: H. P. De Swart, 1953, p. 90n.

8. U.N. Doc. A/CONF.13/L.58.

9. BOWETT, D. W., 'The Law of the Sea', Manchester: Manchester University Press, 1967, p. 39.

10. U.N. Doc. A/CONF.62/WP.8, Part II.

11. Ibid, Part IV.

12. ADEDE, A. O., 'Law of the sea: the scope of the third-party, compulsory procedures for settlement of disputes', 71 AJIL (1977), p. 305, at 308.

13. U.N. Doc. A/CONF.62/WP.10, July 15th, 1977.

14. Ibid.

15. For instance the USSR in her ratification of the GCCS stated that accidental features such as depressions in submerged areas should not be regarded as constituting interruption in the USSR continental shelf. See Chapter III, Sub-Section on the USSR and the Eastern European States. Similarly the Canadian Declaration in its instrument of ratification of the GCCS stated that depressions or channels in submerged areas should not be regarded as constituting interruption in the natural prolongation of the land territory of the coastal State into and under the sea. The United States informed the United Nations that the Canadian Declaration was unacceptable. See BROWN, op cit, note 3, p. 7n.

16. United Nations Treaty Series, Vol. 538, p. 336; also BROWN op cit, note 3, pp. 58 - 59. Iran which has failed to ratify the GCCS also made reservations at the time of signing the Convention.

17. French Memorial submitted to the Court of Arbitration on January 20th, 1976. See the Decision of the Court of Arbitration on the United Kingdom-France shelf Delimitation, June 30th, 1977.

18. Ibid, the Decision, para. 165.

19. Ibid, the United Kingdom Oral Submission on February 9th, 1977.

20. See the following Sub-Section on Equidistance Principle.

21. The Court of Arbitration, supra, note 17, para. 30ff.

22. 1969 ICJ Reports, p. 3, para. 81; also 63 AJIL (1969), p. 591.

23. DAINTITH, GRANT, HOUSTON and SWIFT, 'Oil and Gas Law' (Materials compiled for Public Law-Honours), University of Dundee, 1975, p. A - 326.

24. ANDRASSY, J., 'International Law and the Resources of the Sea', New York and London: Columbia University Press, 1970, pp. 66 - 67.

25. BROWN, op cit, note 3, pp. 61 - 62.

26. ANDRASSY, op cit, note 24, p. 53.

27. SCHWARZENBERGER, G., 'The Dynamics of International Law', Oxon: Professional Books, 1976, pp. 56 - 57.

28. CHENG, B., 'Justice and equity in international law', 8 Current Legal Problems (1955), p. 185 at 204 - 206.

29. SCHWARZENBERGER, op cit, note 27, p. 76.

30. Above, note 1.

31. Above, note 2, pp. 22 - 30.

32. CHENG, op cit, note 28, p. 202.

33. BROWN, op cit, note 3, pp. 48 - 49.

34. Above, note 22, p. 47.

35. Ibid.

36. FRIEDMAN, W., 'The North Sea Continental Shelf Cases - a critique', 64 AJIL (1970), p. 229, at p. 236; also SCHWARZENBERGER, op cit, note 27, p. 62n.

37. BROWN, op cit, note 3, pp. 70 - 71.

38. 1958 UNCLOS, Official Records, Vol. 6 at pp. 94 - 96, 138 (A/CONF.13/42).

39. Above, note 1.

40. In addition to the Royal Pronouncement of Saudi Arabia, reference may be made to the 1949 Proclamations by the nine Arab Emirates of the Persian Gulf. For texts of all these Proclamations see above, note 2, pp. 22 - 30.

41. UNLS, 'National Legislation and Treaties Relating to the Law of the Sea', New York: U.N., 1974, p. 151.

42. LAY (and others), 'New Directions in the Law of the Sea', London and New York: Oceana Publications, 1973, Vol. I, p.1.

43. U.N. Doc. A/CONF.13/L.58.

44. ANDRASSY, op cit, note 24, p. 92.

45. Above, note 13.

46. SOHN, L. B., ed., 'Basic Documents of the United Nations', Brooklyne: The Foundation Press, 1968, p. 1.

47. Above, note 22, para. 47.

48. Above, note 13.

49. Ibid, Part XV, Section 2.

50. Above, note 22, p. 47.

51. See Chapter III, Sub-Sections on France and on the United Kingdom.

52. For details see Part II, Chapter VI of this thesis.

53. The core of this dispute is the presence of many Greek islands adjacent to the coast of Turkey. For details see the following Section on Special Circumstances, Sub-Section on Islands.

54. See Chapter III, Sub-Section on the People's Republic of China.

55. The main cause of dispute between the United Kingdom and Ireland is the British claim over the submarine areas around the uninhabitable island of Rockall. For details see Chapter III, Sub-Section on the United Kingdom.

56. Above, note 41, p. 152.

57. BROWN, op cit, note 5, pp. 71 - 72.

58. Above, note 22, p. 17.

59. Ibid, p. 30.

60. Ibid, p. 23.

61. BROWN, op cit, note 3, p. 71.

62. Above, note 22, p. 20.

63. ANDRASSY, op cit, note 24, p. 94.

64. I ILC Yearbook (1953), p. 107; for more details see ANDRASSY, op cit, note 24, p. 93n.

65. Above, note 38, p. 93.

66. Above, note 43.

67. Ibid. This has been incorporated in several mutual agreements such as Sweden-Norway Agreement of July 24th, 1968, Article 1; see note 41, p. 413.

68. Above, note 17, the Decision, para. 10.

69. Ibid, para. 210.

70. Ibid, para. 212.

71. Ibid, para. 208.

72. Ibid, para. 215.

73. Ibid, paras. 214 - 220.

74. Ibid, para. 237.

75. Ibid, para. 242.

76. Ibid, para. 244 - 245.

77. Above, note 22, p. 17.

78. Above, note 1; also note 2, p. 38.

79. Above, note 22, at p.51.

80. Ibid, p. 51, para. 43.

81. BROWN, op cit, note 3, p. 45.

82. Above, note 22, p. 51, para. 43.

83. Above, note 41, pp. 136 - 137.

84. Above, note 17, Introduction to the Decision, p. 18.

85. BROWN, op cit, note 3, p. 45.

86. Above, note 22, p. 22, para. 20.

87. 1958 UNCLOS, Official Records, Vol. 2, p. 94 (A/CONF.13/38).

88. Ibid, Vol. II, at p. 130 (A/CONF.13/c.9/L.16)

89. BROWN, op cit, note 3, pp. 63 - 70.

90. HODGSON, R. D. 'Islands: normal and special circumstances', in GAMBLE and FOTECORVO, ed., 'Law of the Sea; The Emerging Regime of the Oceans', Cambridge (Mass.): Ballinger Publication Co., 1974, p. 137.

91. Above, note 17, the Decision, para. 156.

92. I ILC Yearbook (1953), p. 128; also BROWN, op cit, note 3, p. 64.

93. See note 55 above.

94. WHITEMAN, 'Conference on the Law of the Sea', 52 AJIL (1958), p. 629.

95. ANDRASSY, op cit, note 24, pp. 103 - 104.

96. Ibid, p. 103.

97. This will be fully examined in the following Sub-Section on 'partial effect' of islands.

98. BOGGS, S. W., 'Delimitation of seaward areas under national jurisdiction', 45 AJIL (1951), supp., at pp. 257 - 258.

99. 1958 UNCLOS, Official Records, Committee IV, 32nd meeting, April 9th, 1958.

100. Ibid, p. 93.

101. Above, note 22, para. 63.

102. Above, note 17, para. 170.

103. U.N. Doc. A/AC.138/SC.II/L.29.

104. The Times, London, August 11th, 1976, p. 5.

105. HODGSON, op cit, note 90, p. 137 at 182.

106. Above, note 38, pp. 92 and 142; also BROWN, op cit, note 3, p. 64.

107. Above, note 38, p. 95.

108. Ibid.

109. Ibid.

110. Above, note 55.

111. U.N. Doc. A/AC.138/SC.II/L.43, July 19th, 1973.

112. Above, note 22.

113. Above, note 13.

114. CAMPBELL (Lord of Croy), The Times, London, February 15th, 1977.

115. HODGSON, op cit, note 90, pp. 187 - 188.

116. ELY, 'Sea-bed boundaries between coastal States: the effect to be given to islets as 'special circumstances'', ECAFE, Committee of Industry and Natural Resources, Seminar on Petroleum Legislation, Bankok (1971), p. 23

117. Chapter IV, Section B on Delimitation by way of Agreement.

118. International Boundary Study, Series A, No. 9, 'Continental Shelf Boundary', Italy - Yugoslavia (1970), US Department of State, Office of Geographer.

119. See Chaper VII, Section on Iran - Saudi Arabia continental shelf boundary.

120. ANDRASSY, op cit, note 24, pp. 103 - 104.

121. Above, note 17, Introduction to the Court's Decision (written proceedings on behalf of the French Republic translated into English by the Registry).

122. Ibid, the Decision, Para. 165.

123. Above, note 22, the Judgment, p. 49, para. 91.

124. HODGSON, op cit, note 90, at p. 188.

125. Above, note 17, para. 161.

126. Ibid, paras. 175 and 176.

127. Ibid, para. 188.

128. For details see Chapter VI, Sub-Section on the Presence of Islands.

129. Above, note 17, paras. 128 - 133.

130. Ibid, para. 133.

131. Ibid, para. 144.

132. Ibid, para. 140.

133. DRAPER, G., The Times, London, September 7th, 1976.

134. MODIANO, M., The Times, August 9th, 1976, p.4.

135. The Times, September 2nd, 1976, pp. 1, 5.

136. Neither Turkey nor Greece has accepted the compulsory jurisdiction of the ICJ under the 'optional clause' of Article 36(2) of the Court's Statute.

137. For details on this issue see Chapter II, Sub-Section on Customary Law of the Continental Shelf.

138. U.N. Doc. A/AC.138/SC.11/L.29.

139. See, for instance, Turkey's amendment to the subparagraph (b) in draft article 13 submitted to the U.N. Sea-Bed Committee by Colombia, Mexico and Venezuela concerning the continental shelf of islands. U.N. Doc. A/AC.138/SC.II/L.33.

140. The Times, London, August 14th, 1976.

141. See HUDGSON, note 90, p. 138.

142. Encyclopeadia Britanica.

143. ANDRASSY, op cit, note 24, p. 104.

144. Above, note 17, para. 171.

145. TONGE, D., The Guardian, London, September 7th, 1976, p. 3. Professor Andrassy proposes that 'the historical circumstances of possession and acquisition of titles' in such cases must be taken into consideration, see above note 24, p. 104. For a different opinion see BROWN, op cit, note 3, p. 69.

146. All these agreements will be examined in Chapter VII, Section on Settled Boundaries; also see PARK, C. H. L., 'Studies in East Asian Law', Harward Law School Reprint Series, pp. 241 - 242.

147. Above note 118.

148. On Kharg Island see, Etela'at Havaei, Teheran, Nos. 3314, 3372, 3472 and 3905.

149. Above, note 118, No. 24.

150. YOUNG, R., 'Equitable solution for offshore boundaries: the 1968 Saudi Arabia - Iran Agreement', 64 AJIL (1970), p. 152 at 154.

151. RAMAZANI, R., 'The Persian Gulf: Iran's Role', University Press of Virginia, 1972, p. 49.

152. YOUNG, op cit, note 150.

153. MOVAHHED, M., 'naft-i ma va masael-i huquqey-i an' (Our oil and its legal problems), Teheran: Kharazmi Publications, 2533 (1970), p. 239.

154. Middle East Economic Survey, No. 16, February 16th, 1968, p. 1.

155. MOVAHHED, op cit, note 153, p. 239.

156. YOUNG, op cit, p. 154.

157. Ibid, p. 155.

158. HODGSON, op cit, note 90, p. 190.

159. The continental shelf boundary of the Channel Islands to the east, south and south-west was to be between the Channel Islands and the coasts of Normandy and Brittany, see supra, note 17, the Decision, para. 202.

160. Ibid, para. 146.

161. Ibid, para. 149.

162. Ibid, para. 164.

163. Ibid, para. 198.

164. Ibid, Introduction to the Decision, the Counter-Memorial on behalf of the U.K. Government.

165. Ibid, the Decision, para. 154.

166. Ibid, para. 173.

167. Ibid, para. 184.

168. Ibid, paras. 196 and 197.

169. Ibid, para. 201.

170. Ibid, para. 202.

171. Ibid, para. 171

172. ANDRASSY, op cit, note 24, p. 104.

173. Introductory Report by the Committee on Rights to the Sea-Bed and its Subsoil, International Law Association, Copenhagen Conference, 1950.

174. ILC Yearbook (1950), p. 233.

175. II ILC Yearbook (1953), p. 213 at 216.

176. MOUTON, op cit, note 6, p. 295.

177. BROWN, op cit, note 3, p. 63.

178. See Chapter I, Sub-Section 4.2. Ruling of the ICJ.

179. Supra, note 22, p. 162. (This view is obviously unacceptable since a slight irregularity in a coastline is negligible as far as the measuring of the territorial sea is concerned, but the same irregularity is automatically magnified by the equidistance line in shelf delimitation.)

180. Ibid, p. 51.

181. ANDRASSY, op cit, note 24, p. 99.

182. Supra, note 22, p. 51.

183. ANDRASSY, op cit, note 24, pp. 95 - 96.

184. Supra, note 17, the Decision, para. 103.

185. Ibid, para. 209.

186. Supra, note 22, p. 116 at 129.

187. Ibid.

188. FITZMAURICE, G., 'Some results of the Geneva Conference on the Law of the Sea', 8 ICLQ (1959), p. 73, at p. 77.

189. See for instance the Declaration of Mr. Zegers of Chile to the 48th Session of the United Nations Sea-Bed Committee, U.N. Doc. A/AC.138/SR.48, p. 43.

190. Supra, note 173, p. 15.

191. I ILC Yearbook (1950), p. 233.

192. MOUTON, op cit, note 6, p. 295.

193. BROWN, op cit, note 3, pp. 66 - 67.

194. ONORATO, W. T., 'apportionament of an international common petroleum deposit', 26 ICLQ (1977), p. 325.

195. MOUTON, op cit, note 6, p. 295.

196. MOUTON, M.W., 'The Continental Shelf', 85 Hague Recueil des Cours (1954 - 1), pp. 420 - 421.

197. Supra, note 99, Vol. VI, p. 93; also BROWN, op cit, note 3, p. 67.

198. PADWA, D. J., 'Submarine boundaries', 9 ICLQ (1960), p. 645; also ONORATO, op cit, note 194, p. 324.

199. Ibid; also Onorato's previous article in 16 ICLQ (1968), p. 85, at 101.

200. ONORATO, obove, note 194, at 327ff.

201. Supra, note 22, p. 54.

202. BROWN, op cit, note 3, p. 67.

203. Reference to all these Agreements were made in both Chapter III and Chapter VI.

204. FRIEDMANN, op cit, note 36, at p. 230.

PART II

THE CONTINENTAL SHELF OF THE PERSIAN GULF

Part II of this thesis is concerned with the submarine areas of the Persian Gulf. It is intended to cover all issues related to the offshore boundaries of the Persian Gulf. The main scope, however, is confined to the delimitation aspects of the submarine, rather than the marine, areas of the Gulf, especially the inner and outer limits of the continental shelf. Accordingly, while Chapter V presents a comprehensive examination of the legal status of the partially enclosed Persian Gulf and its various jurisdictional zones, both Chapters VI and VII deal with the continental shelf. Chapter VI presents the practice of the Gulf States with respect to their continental shelves. Chapter VII examines both defined and undefined shelf boundaries in the Gulf.

AN INTRODUCTION TO THE PERSIAN GULF.

Here, as an introduction to Part II, we are first concerned with the name of the Gulf, then a brief account of geographical and geophysical aspects of the Gulf.

1. PERSIAN OR ARABIAN GULF?

The United Nations Conference on the Standardization of Geographical Names was held at Geneva, September 4th - 22nd, 1967. The Conference was attended by representatives and observers from fifty-five countries and several international organisations. The

Conference established four separate technical committees on national standardization, geographical terms, writing systems and international cooperation. The Conference noted in its Resolution that some features common to, or extending across the frontiers of two or more States, have more than one name applied to them.[1] A prime example of such a case is the Persian Gulf, which has recently been renamed 'Arabian Gulf'. Another well known example is the English Channel, which the French name La Manche. The 1967 Conference recommended that in such cases a common name or a common application should be established, wherever practical, in the interest of international standardization.

It is hoped that the following study on the name of the Persian-Arabian Gulf will make a contribution towards the international standardization of geographical names recommended by the 1967 Conference.

Renaming of places has been a very popular issue among all nations of the world. For instance, both New York and Capetown were founded by the Dutch, who called both the main streets Heerengracht, or Gentlemen's Walk. The English, when they acquired these cities by purchase or force, renamed the two streets respectively, Adderly Street and Broad Street.[2] Such a practice was also customary among the nations on both sides of the Persian-Arabian Gulf. It was the official policy of the Arabs to rename the places they captured. The city of Yathrib was named Medinah after the Prophet Mohammad, soon after he and his adherents migrated there from Mecca, 622. Yathrib was called Medinah al-Nabi (the City of the Prophet). The best known illustration for the Western reader is

Gibraltar - named after Tariq ibn Ziyad, a Muslim commander. This was also Iran's policy. When in 1622 Shah Abbas of Safivid Iran expelled the Portuguese from the Island of Hormuz the port of Gombroon was renamed Bandar Abbas after the victorious Shah.[3] In this century when the Caspian port of Enzeli was freed from Russian occupation and control, it was renamed Bandar Pahlavi, after Reza Shah Pahlavi of Iran.[4]

Reza Shah began the campaign of converting the names of places located in Iran. The names changed were either non-Persian or old-fashioned. The following list is confined to the towns renamed in Reza Shah's time (the names in brackets are those which were changed):

Ahvaz (Naseri), Abadan (Abbadan), Shahr-i Kord (Deh-i Kord), Mihran (Mansur Abad-i Pusht-i Kuh), Ilam (Hosein Abad-i Poushtkooh), Nazeh (Mal Ameer), Howayzeh (Howayzeh), Bandar Pahlavi (Enzeli), Riza'iyyeh (Urumiyyeh), Shahpoor (Salmas), Shah Abad-i Gharb (Haroun Abad), Babul (Bar Foroosh), Shahi (Ali Abad), Zabol (Nosrat Abad), Zahidan (Duzd Abad), Firdous (Toon), Shahdad (Faidh), Behshah (Ashraf), Kashmar (Torsheez), Gurgan (Astarabad), Arak (Sultan Abad), Bandar Shahpoor (Qur Musa), Iranshahr (Bampur), Pahlavi Dezh (Aque Qaleh), Shadgan (Falaheyyeh), Susangird (Hefachiyeh).[5]

Reza Shah even declared in 1935 that in all foreign relations, Persia should be known only as Iran, the native name of the country. Accordingly the Government addressed a note to the governments with which it maintained diplomatic relations, requesting that in

all official transactions, Iran be substituted for Persia. This was not a change of name, as far as the Iranians were concerned, but by and large had the same effect. Even the name of the 'Anglo-Persian Oil Company' was changed to 'Anglo-Iranian Oil Company', at the request of Iran, 1935.[6] The present Shah, Mohammad Reza Shah Pahlavi, however, later approved the use of both names, Persia and Iran, interchangeable for all purposes.[7]

The Iranian policy of renaming places has been continuously followed until the present day. A thorough list of renamed places in Iran, including villages, town, cities, provinces, mountains, rivers and islands must be a very long one. The most important examples of the renaming of the places were those aimed at Persionising their non-Persian (mostly Arabian or Turkish) character. The prime example is the renaming of the Shatt-al-Arab. After Iran abrogated the 1937 Treaty, April 1968, the Iranian Government announced that the native name of the Shatt-al-Arab was Arvand Rud.[8] Other similar examples are Khuzistan (for the province of Arabistan),[9] Khorramshahr (for the port of Mohammarah), Abadan (for the Port of Abbadan), Mah-Shahr (for the port of Ma'shur) etc.

The Arab States on the other hand converted many non-Arabic names into Arabic. The most apparent issue is the renaming of the Persian Gulf as the 'Arabian Gulf'. This involves all national and international bodies which maintain relations with Iran and Arab States. Furthermore, many Arab States, notably Iraq, Syria, Libya and the United Arab Republic (Egypt), influenced by different ideologies of pan-Arabism,[10] continue to call Khuzistan, the southwest province of Iran, by its previous name of Arabistan.[11] Iraq in particular

has claimed jurisdiction over this Iranian province.[12] Some Arabs even observe Khuzistan to be another Arab territory, similar to Palestine, occupied by foreign powers.[13] Colonel Ghaddafi of Libya supports the small group which, largely from outside Iran, work for the secession of so called 'Arabistan'.[14]

While all the above-mentioned controversies merit consideration, the study here is confined to the nomenclature of the Persian-Arabic Gulf.

The names of the majority of the world's water masses are usually taken from their adjacent lands. The following are only a few examples: The Gulf of Mexico, the Gulf of Oman, Arabian Sea, Strait of Hormuz, English Channel, China Sea, the Indian Ocean, the Irish Sea. This has been also the model for the naming of the Persian Gulf. The ancient Persians occupied the coasts of this gulf before any other other Asian nation. This was why the Gulf was named 'Persian' after them.[15]

In the course of history the Persian Gulf has never been known as the Arabian Gulf, though it has been periodically referred to otherwise (such as the Gulf of Basrah).[16] In the past the term Arabian Gulf has been used only in reference to the Red Sea. The ancient Greek geographers referred to the Mediterranean Sea as the Roman Gulf, to the Red Sea as the Arabian Gulf, and to the Persian Gulf as the 'Persian Gulf'. Muslim geographers, including all Arabs until very recently, have never referred to this gulf as the Arabian Gulf. Some early Muslim geographers used the term 'Persian Sea' to include not only the Persian Gulf but also the Arabian Sea

and even sometimes the Indian Ocean. No Persian or Arab author from early times until 1958 has ever accorded the title of 'Arabian Gulf' to the Persian Gulf. The only name for the Gulf which, with very few exceptions, has been constantly in use during the past 2,500 years is the Persian Gulf.[17]

The first use of the term 'Arabian Gulf' with reference to the Persian Gulf was on Baghdad (Iraq) radio in its propaganda against Iran, 1958.[18] In July 1960 when the Shah of Iran confirmed that Iran had de facto recognised Israel,[19] the United Arab Republic joined Iraq in renaming the Persian Gulf as the Arabian Gulf.[20] The British protected Arab Emirates stuck to the traditional name of the Gulf. The most important evidence is the correspondence between the ruler of Kuwait and the British Political Resident in the Persian Gulf, June 19th, 1961, which is the basis for Kuwait's independence. In this document which is registered with the United Nations, the ruler of Kuwait has made references to the Persian Gulf.[21] On July 13th - 14th, 1964, the Secretary-General of the Arab League, having sent personal messages to all rulers of the Emirates, chaired 'the League Commission to the Emirates of the Arab Gulf'.[22] The aid offered by the Arab League was also rejected by the Trucial States under British pressure.[23] By 1968, however, all Arab States, including the Gulf Emirates, passed laws and issued decrees making the use of the term 'Arabian Gulf' compulsory in all communications with the outside world.[24] Very many international bodies, however, continued to use the real historical name - the Persian Gulf. Significantly the USSR, despite her 15-year alliance treaty with Iraq, is still among those States which refuse to comply with the Arab demand for the use of the term 'Arabian Gulf'.[25]

Some writers suggest that Iran's previous territorial claim over Bahrain Islands, now an independent Arab State, created the counter-claim by the Arabs to rename the Persian Gulf.[26] There seems to be no similarity between Iran's previous claim over Bahrain and the renaming of the Gulf. Iran's claim was legally sound, whatsoever its political implications might have been.[27] The renaming of the Gulf has no legal or historical grounds whatsoever. Besides, the supposition that the use of the term 'Arabian Gulf' represents a counter-claim can no longer be justified since Iran withdrew its long-standing claim over Bahrain in 1970.[20]

Iran has constantly protested against the renaming of the Persian Gulf by the Arab States. On one occasion, the Iranian Government even withdrew ambassadors from a number of the Arab States in the Gulf over this issue.[29] The Iranian and the Arab governments now regard the name of the Gulf as a matter of national pride and prestige. This attitude has become an obstacle to the development of reasonable cooperation and coordination between Iran and other Gulf States. While it is impossible to expect the Iranians ever to refer to the Gulf as the Arabian Gulf, some Arab States, like Iraq, have refused to acknowlege any communication from the Iranian authorities referring to the Gulf as Persian! Such an inflexible stand prevents the Iranians from resigning themselves to the newly adopted name of the Gulf. Until now the only result of the re-naming of the Gulf has been deep hostility between the Iranians and the Arabs.[30] In summation the renaming of the Gulf has not served any positive purpose.

With Arab economic and political power growing in the world, both titles 'Persian' and 'Arabian' will soon be used interchangeably,

contrary to the interest of international standardization. There are now 23 Arab States[31] which insist on the use of the previously non-existent term 'Arabian Gulf'. This is more than sufficient to alter the internationally recognised term 'the Persian Gulf' about whose preservation only one State (Iran) is concerned. In any attempt by official or semi-official international bodies for standardization of the name of the Gulf, the principle of 'one nation one vote' would favour the Arabs.

Both the titles 'Persian' or 'Arabian' are now interchangeably used at all informal levels as reference to the Persian Gulf. Accordingly the joint term 'Persian-Arabian' Gulf is probably what will be officially adopted by the world organisations.

At present, members of the international community, both States and international organisations, as well as neutral observers, are confused as to how to refer to the Persian Gulf. Some tactful authorities prefer to call it 'the Gulf' without any adjective. This is not a final solution. In the context of references to different gulfs, each individual gulf must be distinguished by an appropriate name. The present writer is of the opinion that in the interest of international standardization as well as regional coordination both the Iranian and Arab States should put an end to this controversy. All legal and historical evidence entitles Iran to continue to refer to the Gulf as Persian, both at domestic and international levels. There is no justification for the Arabs thinking it offensive that Iran continues to use the historical name of the Gulf. The Arabs, while they may be allowed to use the term 'Persian (Arabian) Gulf', may in no circumstances refuse to

acknowledge the internationally recognised term 'the Persian Gulf'. Nor may they use the term 'Arabian Gulf'. In the interest of international standardization the Arabs must compromise to refer to the Gulf as Persian or resign themselves to the term 'Persian (Arabian) Gulf'. If such a compromise is reached Iran will be expected to acknowledge the term 'Persian (Arabian) Gulf'. The present writer is prepared, as an individual Iranian, to use the term 'Persian (Arabian) Gulf' even when writing in Persian.

Ironically the Arab States which campaigned for the change of the name of the Persian Gulf have always condemned the Israeli attempts to rename locations. Israel has abolished almost all Arabic place names in present Israel, replacing them with Hebrew names. A Geographical Names Committee, originally established in 1949, has revived biblical names for all locations: hills, valleys, springs, roads, towns and cities in Israel.[32] One of the major issues is the renaming of the Arab-dominated Gulf of Aqaba. The Arab States claim the entirety of this gulf as 'internal waters' on historical grounds.[33] Israel, claiming 6 miles territorial sea in the Gulf of Aqaba, has always referred to this gulf as the Gulf of Eilat. The three Arab States, the United Arab Republic, Lebanon, Libya, attending the 1967 Conference on the Standardization of Geographical Names, proposed a draft resolution to condemn the Israeli attempts to rename the Gulf of Aqaba.[34]

Finally it should be noticed that the mere name of a sea, save its obvious political significance, has no legal implication. The different bodies of water masses as well as the different parts of the open seas are subjected to their respective legal status as

established in the international law of the sea, regardless of their names. There are quite a few bodies of water named after particular people or specific lands belonging to one State or another. The following water masses, such as the Gulf of Mexico, Gulf of Oman, Persian Gulf, Arabian Sea, China Sea, The English Channel, Indian Ocean, are a few examples. None of the respective States may claim any particular or additional right on the ground of the name of the above-mentioned water masses.

II GEOGRAPHICAL AND GEOLOGICAL ASPECTS OF THE PERSIAN GULF

A. Geographical Aspects

The partially enclosed Persian Gulf lies between Shatt-al-Arab at its north-east extremity and the Strait of Hormuz at its south-east extremity.[35] Its northern side is bounded by the coast of Iran. Iraq also occupies a part of the northern edge of the Gulf. The southern side is bounded by the great promontory of Oman. The easterly side is formed by the Iranian Plateau and the western side by the Arabian Plateau. The Arabian side of the Gulf is occupied by Iraq, Kuwait, Saudi Arabia and Qatar. Bahrain lies between the peninsula of Qatar and the mainland. The United Arab Emirates extends from Qatar to the Strait of Hormuz.

The Gulf consists of 241,000 square kilometres. It extends 500 miles with a width ranging from 20 to 180 miles. It is nowhere deeper than 50 fathoms.[36] Apart from the deep narrow waters of the Strait of Hormuz leading into the Gulf of Oman and the Arabian Sea, the Persian Gulf is a shallow sea, studded, particularly on the Arabian side, with shoals and reefs.

The Persian Gulf is little affected by ocean currents because of the restricting bottleneck of the Strait of Hormuz. Deflecting movements, apart from tides, are the result of the prevailing north-west winds.[37] The natural conditions of the Persian Gulf such as its lack of depth and turbulence render the oil and gas exploitation of the entire Gulf sea-bed highly profitable. While the depths in the Persian Gulf tend to be less than 50 metres, off-shore structures installed in the Persian Gulf are unlikely to be faced with waves more than 10 metres high. It follows that the Gulf offshore fields do not need large and sturdy platform structures such as those made for North Sea conditions.[38]

B. Geophysical Aspects

There is no adequate information on the geology of the Persian Gulf geosyncline. It is a matter of dispute whether the continuous retreat of the head of the Persian Gulf has resulted from the deposition of material by the Tigris and Euphrates.[39] Nonetheless, it is agreed that the bottom of the Persian Gulf must have been a fertile plain, floored with alluvium from the united waters of the Tigris and Euphrates. As the last of the former ice sheets began to melt away, the sea gradually rose and occupied the Gulf.[40]

The Persian Gulf is considered a flooded part of the two continents (Africa and Asia) belonging to the shelf.[41] Being a shallow area between the continents, it is merely a basin much less than 100 fathoms deep. It has been argued that the submarine areas of the Persian Gulf do not qualify as continental shelf, since the shelf is generally defined as the zone around the continent, extending from the low-water line to a depth of about 100 fathoms

(or 200 metres) at which the sea-bed markedly falls to greater depth.[42] However, as will be seen below, it is established that the submarine areas of the Persian Gulf "incontestably form parts of the continental shelf".[43]

III. THE EXISTENCE OF THE CONTINENTAL SHELF IN THE PERSIAN GULF

It has been frequently said that, strictly speaking, no continental shelf exists in the Persian Gulf. This was suggested at the ILC (1950) by Hudson[44] and Brierly,[45] and was finally referred to by Francois in his first Report to the ILC (1950).[46] This view was later supported among international lawyers by Lauterpacht,[47] Richard Young,[48] M. W. Mouton,[49] G. Lenczowski,[50] R. P. Anand[51] and H. M. Albaharna.[52] Their argument is based on the geological definition of the continental shelf. They contend that the Persian Gulf lacks both the isobath criterion and the quality of 'substantial fall-off' to a greater depth, suggested as the two main geological characteristics of the continental shelf.

The denial of the continental shelf in the Persian Gulf is unacceptable since the most important criterion is the geological association of the continental shelf with the continental territory, and not the depth or the 'fall-off' criteria. As already mentioned,[53] continental shelf rights exist because the continental shelf is the natural prolongation of the coastal State's land territory. This point, although missing in the GCCS, is confirmed by the ILC (1956),[54] the judgment of the ICJ in the North Sea Continental Shelf Cases (1969),[55] and the ICNT (1977).[56]

The above-mentioned view of non-existence of a continental shelf in the Persian Gulf cannot be supported, not only because of the crucial point of natural prolongation discussed above, but also for the following reasons:

Firstly, in reply to the geological argument for the non-existence of a continental shelf in the Persian Gulf because of its lack of isobath and 'fall off' criteria, reference should be made to the views published in 'Scientific Considerations Relating to the Continental Shelf'.[57] This makes it clear that an area such as the Persian Gulf forms part of the continental shelf. In addition, the regime of the continental shelf does not necessarily follow the physical dimensions.

Secondly, in the view of the ILC (1950), there was no doubt that the right of coastal States to exercise control and jurisdiction over their adjacent submarine areas should not be dependent on the existence of a continental shelf (as understood in geology). The Report of the Commission to the General Assembly stated that the Commission had considered that protection of the resources of the submarine areas outside territorial sea, the depth of which permitted exploitation, should be independent of the concept of the continental shelf.[58] Therefore the characteristics of the submarine areas of the Persian Gulf make no difference as far as the law of the continental shelf is concerned.

Thirdly, as regards States practice, the two Gulf States of Iran and Oman have specifically followed the legal regime of the continental shelf in their claims over the submarine areas of the high seas

of the Persian Gulf, Iran's Act of June 19th, 1955, following the continental shelf theory, asserted Iranian rights over the continental shelf of Iran.[59] The Act referred to Iran's continental shelf both in the Persian Gulf - where the existence of a continental shelf in the geological sense was questionable - and in the Sea of Oman which undoubtedly contained a continental shelf. The Iranian legislation, ignoring the geological arguments, referred to the continental shelf doctrine and confirmed that the Persian term 'falat-i qarreh' had the same meaning as the term 'continental shelf' in English and 'plateau continental' in French. However, the Iranian delegation to the 1958 UNCLOS unsuccessfully argued for changing the term 'continental shelf' to some other appropriate term that would cover such disputed areas as the Persian Gulf - under the provisions of the GCCS.[60] Nonetheless, Iran finally signed the GCCS with some reservations designed to ensure her own interpretation of 'special circumstances',[61] but has failed to ratify it so far. Also the Omani Decree of July 17th, 1972 explicitly relies on the definition of the continental shelf as it is provided in Article 1 of the GCCS. Article 4 of the Decree defines the continental shelf of the Sultanate as the sea-bed and natural resources upon and beneath the sea-bed adjacent to the coast of Oman, but outside the territorial sea, to a depth of 200 metres or to such greater depth as admit of the exploitation of the natural resources.[62]

Fourthly, the sea-bed and subsoil of the Persian Gulf falls within the legal definition of 'continental shelf' as established under customary law. Furthermore, the Gulf submarine areas also fall within the conventional definition of the continental shelf as

established under customary law. Furthermore, the Gulf submarine areas also fall within the conventional definition of the continental shelf as adopted in the GCCS. Article 1 of the Convention, omitting the vital criterion of natural prolongation, provides two superficial criteria for the legal concept of the continental shelf - the depth of 200 metres and exploitability.[63] The submarine areas of the Persian Gulf enjoy both the criteria adopted by Article 1 of the Convention and the criterion of natural prolongation.

Lastly, all similar areas to the submarine areas of the Persian Gulf, like the North Sea, the Baltic Sea and the Hudson Sea are considered as continental shelf. The water depth in these seas does not exceed 200 metres, except in a few cases such as the Norwegian Trough in the North Sea. The Norwegian Trough, however, does not constitute a true shelf edge, but is merely a deep gouge in the continental shelf.[64] From the geological point of view, the underground of the North Sea is part of the continental platform on which the European Continent and the British Isles rest.[65] Therefore the entire bed of the North Sea outside the territorial waters plainly forms a single continental shelf in both the legal and the geological senses.[66] The entire submarine area of the North Sea is now apportioned among the littoral States about it. Even more significantly, the term 'continental shelf' has been used in all offshore delimitation agreements among the coastal States concerned in reference to the submarine areas of the North Sea.[67] Also the Baltic Sea is a shallow sea, 95 per cent of which has a depth of less than 200 metres.[68] The submarine areas of the Baltic Sea are regarded as representing the continental shelf as defined in Article 1 of the GCCS. Article 1 of the Declaration of

October 23rd 1968 issued by the German Democratic Republic, The Polish People's Republic and the USSR, declares that the surface and subsoil of the Baltic sea constitutes a continuous continental shelf which is subject to delimitation among the respective Baltic States.[69] The submarine areas of the Baltic were accordingly delimitated among the Baltic States by mutual agreements.[70]

NOTES

1. United Nations Department of Economic and Social Affairs, Conference on the Standardization of Geographical Names, Report of the Conference, New York, 1968, Vol. 1, p. 12.

2. WEST, R., 'Americans in Africa', Spectator, London, July 22nd, 1978, p.9.

3. For details of the expulsion of the Portugese with assistance of the English dominated East India Company, see, WILSON, Sir Arnold T., 'The Persian Gulf: An Historical Sketch from the Earliest Times to the Beginning of the Twentieth Century', London: George Allen & Unwin Ltd. 1954, pp. 141 - 152. For an Iranian account see TAHIRI, A., 'Tarikh-i ravabit-i bazargan-i va siyasi-yi Inglis va Iran as douran-i farmanravai-yi Mughalan ta payan-i ahd-i Qajariyah' (the history of the commercial and political relations of England and Iran from the Mongols to the end of Qajara), Teheran: Anjuman-i Asar-i Milli, 1354, p. 117.

4. KNAPP, W., '1921 - 1941: the period of Reza Shah', in AMIRSADEGHI, H., ed., 'Twentieth Century Iran', London: Heinmann, 1977, p. 43.

5. VAHIDNEYA, S., Vahid (Persian monthly journal), nos. 190 - 191 (2535), p. 3.

6. This has been noted by Bahman Nirumand in his critical account of the 1933 oil contract between Iran and the Anglo-Iranian Oil Company, see NIRUMAND, B., 'Iran: The New Imperialism in Action', New York and London: Monthly Review Press, 1969, pp. 32 - 34.

7. PAHLAVI, Mohammad Reza Shah, Shanshah of Iran, 'Mission For My Country', London: Hutchinson & Co. Ltd., 1961, p. 43.

8. Mr. Amir Khosrow Afshar, Deputy Minister of Iran's Foreign Affairs, in a statement made in the Iranian House of Senate on April 19th, 1969 stated that the "real and historical" name of the so-called Shatt-al-Arab was Arvand Rud, Senate Debating Proceedings, 1348. For an unofficial English translation of the above statement see, 8 ILM (1969), 481.

9. Naserodin Shah of Iran has always called the province Arabistan, see WRIGHT, Sir Denis, 'The English Amongst the Persians During the Qajar Period, 1787 - 1921', London: Heinemann, 1977, p. 71; also LAMBTON, 'The Persian Land Reform', Oxford University Press, 1969, p. 15.

10. All different ideologies of Pan-Arabism have stressed as a precondition the unification of the Arab 'homeland' stretching from Maghreb to the Persian Gulf (not specifying which side of the Gulf). The most important motivation of pan-Arabism for the conflicts with non-Arabs is to preserve the 'Arab character' of the region and Arab pre-dominance in it. This problem, though mostly a religio-cultural one, has sometimes extremely important political implications. For a non-Arab account see, ABIR, M., 'Oil, Power and Politics', LOndon: Frank Cass, 1974, p. 206.

11. Reports by Iran's Cultural Attache to Damascus, Syria, Ministry of Foreign Affairs Archives. Also an informal letter to Rahnana-yi Kitab.
KNAPP, op cit, pp. 83 (Iraq), 86 (Egypt), and Far Eastern Economic Review, 'Asia Yearbook 1978", p. 106 (Libya).

12. ARMAJANI, Y., 'Iran', Englewoud Cliffs: Prentice Hall, 1972, p. 170; also KNAPP, op cit, note 4, p. 83.

13. 'Arabistan, another Palestine?', Arab Observer, February 14th, 1966.

14. Far Eastern Economic Review, 'Asia Yearbook 1978', p. 106.

15. Iran's Ministry of Foreign Affairs, Ninth Diplomatic Department, 'Vajh-i tasmiye-i Khalij-i Fars', (Reasons for nomendature of the Persian Gulf), Teheran, 1343, pp. 2 - 15.

16. Ibid.

17. Ibid; also MASKUR, M. J., 'Khalij-i Fars va mam-i an dar tul-i tarikh (The Persian Gulf and is name in the course of history), Barresihay-i Tarikhi, Vol. 11, no. 6, pp. 1 - 22; NAFEESI, S., 'Khalij-i Fars dar motun-i yunani va Latin va tazi' (Persian Gulf in Greek, Latin, Arabic texts), Iran's Ministry of Foreign Affairs' Journal, Vol. 2, No. 8; EQTIDARIE, A., 'Khalij-i Fars' (Persian Gulf), Kanun-i Vokala, No. 94.

18. WILBER, D. N., 'Contemporary Iran', London: Thames and Hudson, 1963, 203 - 4.

19. Iran, though calling for Israeli withdrawal from the occupied Arab territories according to the U.N. Resolution No. 242 (The Shah of Iran, interviewed by Frank Giles, the Sunday Times, April 16th, 1978) continues its de facto recognition of Israel. Iran, after Israel, has the greatest Jewish population in Asia. (For details see AMIN, Seyed Hassan, 'Yahoodi yan dar Iran va jihan' (The Jews in Iran and in the world), Vahid, No. 217, October 1977, pp. 50 - 53).
Iran is the only Muslim State which maintains economic, commercial and cultural ties with the Jewish State. Iran-Israel cooperation extends to the fields of petroleum export, development projects, trade, air transport, military training,

technical assistance, the training of co-op managers and tacit political support in relation with Arab States. This position resulted in serious difficulties for Iran. In 1960 President Nasser's regime of the United Arab Republic (Egypt) broke off diplomatic relations with Iran. The UAR unsuccessfully attempted to persuade other Arab States to break diplomatic relations with Iran. The Arab League and several Muslim authorities condemned Iran's de facto recognition of Israel. It took about ten years, just before President Nasser's death, to resume diplomatic relations between Iran and UAR, in the fall of 1970. (For full story see RAMAZANI, R. K., 'The Persian Gulf: Iran's Role', University Pressof Virginia (1972), p. 37.)

According to Professor Leonard Binder in late 1960's cooperation between Iran and Israel was based on the expectation that Israel would continue to be a formidable opponent of any combination of Arab countries. Thus he suggests. Iran would not go to the aid of Israel in a conflict with the Arab States, but Israel would aid Iran in such a case. (For an accurate understanding of the reasons for Iran-Israeli cooperation and full details on the subject see, BINDER, Leonard, 'Factors Influencing Iran's International Role', The RAND Corporation, U.S.A., 1969, pp. 39 - 40; also REITA, Robert B., 'Israel and Iran: Bilateral Relationship and Effect on the Indian Ocean Basin', Praeger Publishers, New York.)

20. WILBER, op cit, pp. 203 - 204.

21. 399 United Nations Treaty Series, (1961), pp. 242 - 243.

22. Al-Jami at ad-Duwwal al-Arabiyah, Nashrat Akhbar (Arab League News-letter), No. 42, July 7th, 1965.

23. RAMAZANI, op cit note 19, at p. 39.

24. ALBAHARNA, H. M., 'The Legal Status of the Arabian Gulf States: a study of their international Problems', Manchester: Manchester University Press, 1968, at p. 1n.

25. TAHERI, A., 'Policies of Iran in the Persian Gulf', in AMIRIE, A., ed., 'The Persian Gulf and Indian Ocean in International Politics', Teheran; Institute for International Political and Economic Studies, 1975, p. 273.

26. HAWLEY, D., 'The Trucial States', London: Allen & Unwin, 1971, p. 260.

27. For a fine legal discussion see ADAMIYAT, F., 'Bahrain Islands: A legal and Diplomatic Study of the British-Iranian Controversy,' New York: Adamiyat, 1955; also for another Iranian position see QAEM-MAQAMI, J., 'Bahrain va masael-i Khalij-i Fars' (Bahrain and the Persian Gulf Questions), Teheran; Tahuri, 1341.

28. See U.N. Security Council, Draft Resolutions, Document S/9792, May 11th, 1970, and Note by the Secretary-General, Doc. S/9726, March 28th, 1970; also Arab Report Record (1970), 263.

29. Iran's Ministry for Foreign Affairs Archives.

30. This writer was astonished at reading a leaflet distributed by the Iranian Student Society, Glasgow, 1978 which referred to 'Arab Gulf'. I reckon that that leaflet has been originally composed by non-Iranians, though finally distributed by the Iranian supporters of the Dhofari Liberation movement.

31. The Arab League has 24 members (including Palestine Liberation Organisation).

32. For the Israeli paper presented at U.N. Conference on the Standardization of the Geographical names, see, E/CONF.53/L25.

33. For details of Arab position in respect to the Gulf of Aqaba see, SELAK, 'A consideration of the legal status of the Gulf of Aqaba' 52 AJIL (1958), p. 660. It is significant that the 1978 Camp David framework for an Egypt-Israel peace treaty provided that - "the Strait of Tiran and the Gulf of Aqabah are international waterways to be open to all nations ....". See the Times, September 19th, 1978.

34. op cit, note 12, pp. 20 - 21.

35. WILSON, A. T., op cit, note 3, p. 2. For more up to date information on geographical aspects of the Persian Gulf see YOUNG, R., 'The Law of the Sea in the Persian Gulf: Problems and progress, a background paper of the Conference on New Directions in the Law of the Sea', British Institute of International and Comparative Law, February 1973, p. 1. also see MARLAW, 'The Persian Gulf in the Twentieth Century', 1962, p. 1.

36. U.S. Department of State, 'Sovereignty of the Sea', 1965, p. 7.

37. WILSON, op cit, note 3, p. 6.

38. FRAZER, F., 'chances for North Sea skills', The Times, London, November 21st, 1977, p. ix.

39. HOLMES and FALCON, 'the geological history of the Mesopotamian Plains', 118 Geographical Journal (1952), p. 28.

40. HOLMES, A., 'Principles of Physical Geology', London: Thomas Nelson & Sons Ltd., 1956, p. 417.

41. UNESCO, 'Scientific Considerations Relating to the Continental Shelf', U.N. Doc. A/CONF.13/2.

42. See the definition given by the International Committee on the Nomenclature of Ocean Bottom Features, as quoted in UNESCO, op cit, note 41, U.N. Doc. A/CONF.13/2 and Add. 1, para. 6. September 20th, 1957.

43. UNESCO, Secretariat Memorandum, Supra, note 41, Official Records, Vol. 1, at p. 40; also see BROWN, E.D. 'The Legal Regime of Hydrospace', London: Stevens, 1971, p. 8n.

44. A/CN.4/SR.66, July 12th, 1950.

45. A/CN.4/SR.67, July 13th, 1950.

46. A/CN.4/17, March 17th, 1950.

47. LAUTERPACHT, 'sovereignty over submarine areas', 27 BYBIL (1950), p. 384; also see BROWN, op cit, note 43, p. 8n.

48. YOUNG, R., 'Saudi Arabia offshore legislation', 43 AJIL (1949), p. 532; also YOUNG, R., 'Further claims to areas beneath the high seas', 43 AJIL (1949), pp. 790 - 791.

49. Mouton, M.W., 'The Continental Shelf', Hague: Martinus Nijhoff, 1952, pp. 10 - 11.

50. LENCZOWSKI, G., 'Oil and State in the Middle East', Cornell University Press, 1960, 127.

51. ANAND, R. P., 'Legal Regime of the Sea-Bed and the Developing Countries', Leyden: Sitoff, 1976, p. 43.

52. ALBAHARNA, op cit, note 24, p. 287.

53. The principle of natural prolongation was fully discussed in Chapter I.

54. II. ILC Yearbook (1956), p. 298.

55. 1969 ICJ Reports, p. 3, at 22.

56. U.N. Doc. ICNT, July 15th, 1977, Article 76.

57. Supra, note 43, pp. 39 - 42, para 26.

58. R/CN.4/17, March 17th, 1950.

59. Madjmu'ch-i Qavanin (Iranian Official Gazette), 1334, pp. 79 - 91. For English text see UNLS, 'National Legislation and Treaties Relating to the Territorial Sea, The Contiguous Zone, The Continental Shelf and Conservation of the Living Resources of the Sea', N.Y.: U.N. 1971, 366 - 367.

60. Iran's Ministry of Foreign Affairs, Archives on the 1958 UNCLOS.

61. Ibid; also see BROWN, op cit, note 43, p. 65.

62. UNLS, 'National Legislation and Treaties Relating to the Law of the Sea', New York: United Nations, 1974 (ST/LEG/SER.B/16), p. 23, at p. 24.

63. U.N. Doc. A/CONF.13/L.58.

64. UNESCO, supra, note 41, vol. 1, p. 39, at pras. 20 and 34.

65. DUPUY, R. J., 'The Law of the Sea: Current Problems', New York: Oceana Publications, 1974, p 73.

66. For details on the legal regime of the North Sea see SIBTHORR, M. M., 'The North Sea: Challenge and Opportunity', London: Europa Publications, 1975, p. 85.

67. The full set of these agreements is as follows: U.K.-Norway Agreement relating to the Delimitation of the Continental Shelf between the two countries, June 25th, 1965, UKTS, no. 71 (1967) Cmnd. 2757; U.K.-Netherlands Agreement relating to the Delimitation of the Continental Shelf under the North Sea between the two countries, December 23rd, 1966, UKTS, No. 23 (1967), Cmnd. 3253; U.K.- Netherlands Agreement relating to the exploitation of Single Geological Structures extending across the Dividing Line on the Continental Shelf under the North Sea, December 23rd, 1966, UKTS, No. 24 (1967), Cmnd, 3254; U.K.-Denmark Agreement relating to the Delimitation of the continental shelf between the two countries, February 6th, 1967, UKTS, No. 35, Cmnd. 3278; U.K.-Federal Republic of Germany Agreement relating to the Delimitation of the continental shelf under the North Sea between the two countriea, Germany No. 1. (1972); Norway-Denmark Agreement June 22nd, 1966. Denmark-Netherlands Agreement August 1st, 1967; Federal Republic of Germany-Netherland Agreement September 18th, 1965; Denmark-Federal Republic of Germany Agreement, May 27th, 1966; agreement resulting from ICJ decision on the North Sea Continental Shelf Case (ICJ Reports 1969, p. 3) in New Directions in the Law of the Sea (1973) Vol. 1, 157 - 197.

68. DUPUY, op cit, note 65, pp. 19,71; for the legal status of the Baltic see JOHNSON, B., 'The Baltic', in CHURCHILL, SIMMONDS AND WELCH, ed., 'New Directions in the Law of the Sea', New York and London: Oceana Publication, 1973, Vol. III, p. 209.

69. 7 ILM (1968), pp. 1393 - 1394; also LAY, CHURCHILL and NORDQUIST, ed., 'New Directions in the Law of the Sea', New York and London: Oceana Publication, 1973, Vol 1, P. 110.

70. DUPUY, op cit, note 65, pp. 19, 71n.

CHAPTER V

THE LEGAL DIVISION OF THE PERSIAN GULF

This Chapter is concerned with the legal status of the Persian Gulf as a semi-enclosed sea, the definition of its various jurisdictional zones, and the question of international navigation through the Strait of Hormuz.

I. THE LEGAL STATUS OF THE PERSIAN GULF

The status of the Persian Gulf has been traditionally regarded the same as that of the open sea. It is now regarded as a 'semi-enclosed sea'.

A. Definition of Semi-Enclosed Seas

The term 'semi-enclosed sea' is adopted to refer to partially enclosed seas, gulfs, straits and channels along the margin of the oceans. L. M. Alexander suggests certain criteria for the definition of 'semi-enclosed seas'. They must, he suggests, have an area of at least 50,000 square nautical miles and be a 'primary'sea, rather than an arm of a larger semi-enclosed water mass. Further, he continues, 50 per cent of its circumference should be occupied by land, and the width of the connector between the sea and the open ocean must not represent more than 20 per cent of the sea's total circumference. By such a definition there are 26 semi-enclosed seas in the world including the Persian Gulf.[1]

Mr. Naficy, the Iranian representative at the 1958 United Nations Conference on the Law of the Sea (UNCLOS) stated that the Geneva Conventions on the Law of the Sea were better designed for the

States bordering the oceans than for those bordering semi-enclosed seas.[2] There were also other delegations who favoured distinct regimes for the open seas on the one hand, and the enclosed or semi-enclosed seas on the other. For instance, commenting on the provisions of Article One of the Convention on the High Seas, the delegates of Romania and Ukranian Soviet Socialist Republic expressed their support for distinct regimes governing navigation of the open seas and of the enclosed seas.[3] This view was supported by the USSR,[4] but opposed by the United States,[5] and the United Kingdom,[6] and did not eventually find its way to the Convention. However, on August 16th, 1972, the United Nations Sea-Bed Committee selected the issue of the enclosed and semi-enclosed seas to be discussed at UNCLOS III.[7]

Article 122 of the Informal Composite Negotiating Text (ICNT) defines the term 'enclosed or semi-enclosed sea' as a gulf, basin or sea surrounded by more than one State, connected to the open seas by a narrow outlet, or consisting entirely or primarily of more than one State's territorial seas and Exclusive Economic Zones (EEZ).[8] The EEZ will be a 200 mile zone subject to coastal State's jurisdiction. Thus, a greater distinction will be made between the 'enclosed and semi-enclosed seas' on the one hand, and the open seas on the other, when and if the provisions concerning the EEZ will be applied under ICNT.[9]

The major question about semi-enclosed seas concerns the type of special regimes which may be set up for such water bodies. It is feared that the littoral States of the semi-enclosed seas might establish a bilateral or multilateral jurisdiction at least for certain types of activities, thus excluding participation by non-

littoral States.[10] Coastal States about a semi-enclosed sea might claim that as a group they are entitled to determine its legal status. These coastal States would compile regulations regarding conservation needs, fisheries, management of the resources of the marine and submarine areas, navigation , etc.. By these regulations the non-littoral States might be deprived of their present rights under the legal status of the semi-enclosed seas as high seas. It is therefore suggested that it is necessary to spell out the rights of the international community within semi-enclosed seas.[11]

B. The Persian Gulf: A Semi-Enclosed Sea

The Persian Gulf falls within the definition of the term 'enclosed or semi-enclosed sea' defined in Article 122 of the ICNT. However, the Gulf States are divided into two different positions with respect to the legal status of the Persian Gulf. Iran and Oman advocate a territorial appropriation of the entire waters of the Gulf. Some Iranians have even declared the Gulf a 'closed or inland sea' or analogous to one. On the other hand, all other Gulf States favour the traditional status of the Gulf which guarantees the high sea status of the waters beyond the territorial sea and the navigation rights of the international community within the Gulf. The difference of opinion is clearly seen in different draft articles submitted by Iran[12] and Iraq[13] to UNCLOS III as regards the provisions on enclosed or semi-enclosed seas.

The Republic of Iraq occupying a narrow sector in the northern edge of the Persian Gulf has access to the open seas only through the Strait of Hormuz, between Iran and Oman. The maritime policy of Iraq is influenced by her strategic interests of navigation

through the Strait of Hormuz. Apart from these strategic influences, Iraq's maritime policy is affected by economic interests, mainly the oil resources of the Gulf submarine areas adjacent to Iraqi coasts.[14] It is on these lines that draft Article 5 of Iraq defines the term 'semi-enclosed sea which constitutes part of the high sea' as 'an inland sea, surrounded by more than one State, and connected with other parts of the high seas by a narrow outlet. Freedom of navigation, according to the Iraqi draft Articles 4 and 6, should be maintained in 'semi-enclosed seas which constitute part of the high seas' even where the establishment of a twelve mile territorial sea has the effect of enclosing areas previously considered as part of the high seas.[15] These provisions have direct effect in the Strait of Hormuz. Since both Iran and Oman have twelve mile territorial seas the entire water of the Strait of Hormuz consists of the territorial seas of Iran and Oman.[16] Almost all the oil produced in the Persian Gulf region is exported in tankers which have to traverse the Strait of Hormuz. Richard Young suggests that if the three islands of Abu Musa, Greater and Lesser Tunbs are attributed to Iran, the Iranian territorial sea will embrace most of the normal shipping routes up and down the Persian Gulf. He further suggests that potential strict controls on the traffic by Iran and Oman within their 'territorial sea Strait of Hormuz' presents a serious hazard to navigation.[17] This possibility may be highlighted by the Iranian emphasis on the exclusive responsibility of States bordering the enclosed and semi-enclosed seas, as indicated in Iran's draft articles to the UNCLOS III.[18] But one should not forget that, if the ICNT is successful, the Strait of Hormuz, though entirely consisting of territorial seas, will be under the regime of enclosed and semi-enclosed seas and not territorial sea.[19]

The Iranian draft articles submitted to UNCLOS III defines the term 'enclosed sea' as a small body of inland waters surrounded by two or more States and connected to the open seas by a narrow outlet.[20] The term 'semi-enclosed sea' is defined as a sea basin located along the margins of the main ocean basins and enclosed by the land territories of two or more States.[21] The draft articles then emphasise that the preservation and protection of the marine environment of an enclosed or semi-enclosed sea, and the management of its resources, shall be "the responsibility of the coastal States ... (which) ... may adopt regional provisions as regards the protection of resources therein." (emphases added).[22] By contrast with the above provisions, scientific research is to be concluded 'only' with the consent of coastal States concerned.[23]

As regards the legal regime of the Persian Gulf, Iran favours a national appropriation of the Gulf by the coastal States. Mr. Massoud Ansari, the Iranian representative at the United Nations Sea-Bed Committee defined 'marginal seas' as true microcosms, necessitating different regimes and thus justifying certain unilateral appropriations of marginal seas. He stated that the intrusion into these types of seas by fishing fleets from distant fishing States would create an abnormal situation which would seriously disturb the economy of the coastal region.[24] Similarly, the Iranian Minister of Foreign Affairs, Dr. A. A. Khalatbary, introducing a bill on an Exclusive Fishing Zone to Majlis (October 29th, 1973) stated that failure to adopt provisions on this area had resulted in abuse of the situation by the industrialised States.[25] The Iranian position on the regime of the Persian Gulf has been explained as follows:

"... the juridical divergence is accentuated between the regime applicable to oceanic areas and the regime applicable to marginal seas or seas of limited size, so that the first cannot be automatically applied instead of the second without harmfully affecting the interests of coastal States. Usually, the marginal seas are geologically part of the continental mass; biologically, they belong to the same ecosystem as the neighbouring land; economically, they are linked with the socio-economic framework of the coastal communities, which depend more and more on marine resources for their subsistence and their economic development."[26]

In addition to the above-mentioned reasons, one may not overlook the significant strategic interests sought by Iran in advocating the national apportionment of the entire waters of the Persian Gulf among the littoral States. This policy has been followed by Iran since the British withdrawal from the Gulf in 1971. Iran upholds that Gulf security must be guaranteed exclusively by the littoral States, thus preventing the region from becoming an arena for Major Power conflict.[27] As will be seen below,[28] one of the main objectives of the conference of Gulf Foreign Ministers on Gulf Security (Mascat, November, 1976) concerned the territorial division of the entire waters of the Gulf among the littoral States.

The territorial apportionment of the Gulf has been basically justified on economic grounds. All of Iran's oil is shipped out through the Persian Gulf. Iran also receives well over half of her imports via the same route.[29] Equally all other Gulf States are heavily dependent on the Persian Gulf for their development and prosperity. These economic interests, added to geographical,

geological, strategic and historical reasons, all call for the establishment of a special regime constituting an exception to the general rule of the freedom of the high seas.

Mr. Kazemi, the Iranian representative at the Second Committee of UNCLOS III set out the following discussion in favour of Iran's support for the territorial appropriation of the Persian Gulf:

> "Semi-enclosed seas are distributed all along the margin of the continents at varying distances from the major oceanic basin, which is why they are often called marginal seas. There are between 40 to 50 such seas in different regions of the world. Semi-enclosed seas like the Baltic, the Black Sea and the Persian Gulf fall into a special category because of the small volume of their waters and their single outlet to the ocean.
>
> The problems raised by the semi-enclosed seas with regard to the management of their resources, international navigation and the preservation of the marine environment justify granting them a particular status constituting an exception to the general rule. When worked out on a regional basis, that status would obviously have to take into account the needs and interests of all the coastal States in the region.
>
> As to the management of resources, the fact that total area of the semi-enclosed sea lie above the continental shelf of the coastal States justifies the working out of a special regime. In that connection, the delimitation of the various areas of

jurisdiction present problems which are peculiar to semi-enclosed seas and which have to be solved on the basis of principles of justice, equity and equidistance."[30]

It has long been suggested that the littoral States of semi-enclosed seas should be encouraged to join together to form regional maritime resource development agencies for individual seas, with the assistance of the international body concerned with ocean development.[31] Also Article 123 of the ICNT calls for the cooperation of States bordering enclosed or semi-enclosed seas with respect to the preservation of living resources and the marine environment, and for co-ordination of scientific research.[32]

It is obvious that the greater the number of littoral States, the more difficult it will be to achieve the above-recommended multilateral actions. Mr. Kazemi, the Iranian representative at UNCLOS III stated that the particular cases of enclosed and semi-enclosed seas raised difficult problems which could not be solved within the framework of regional or bilateral agreements. This is why, as already mentioned above, he argued that semi-enclosed seas should be granted a special status.[33]

In the regions of the Persian Gulf there are eight States, the interests and policies of which differ in most respects. Despite all grounds for closeco-operation and friendship among the coastal States of the Persian Gulf, there is a history of suspicion among them. Iraq has had a territorial claim over Kuwait and boundary disputes with Iran. There have been conflicting territorial claims between Saudi Arabia and Kuwait, Oman and the United Arab

Emirates, between Iran and Bahrain, and between most of Emirates. The conflict between the Iranian and Arabian sides of the Gulf has been historically the most serious.[34] The Irano-Iraqi boundary dispute was a classic example of hostile relations and will be studied in the following Chapter on offshore boundaries. In the 1960's many Arab newspapers carried reports of an Iranian 'invasion' or infiltration into Kuwait.[35] Also the occupation of Abu Musa, Greater and Lesser Tunbs by Iran (1971) raised serious dissatisfaction among neighbouring Arab States.[36] This added to Iran's military build-up and her military, cultural and economic ties with Israel,[37] has been the major obstacle to a genuine cooperation between the two sides of the Persian Gulf.

There has not been any significant progress on proposals for common Gulf currency, information and arms industry. There exist no organic links between the two shores of the Persian Gulf.[38] Most importantly, Iran's plans for regional defence cooperation were extremely unsuccessful.[39] This pact was intended to serve three main aims: (a) external defence and protection of the Strait of Hormuz and the Persian Gulf waters; (b) internal security of the region with mutual cooperation and assistance; and (c) economic cooperation.

Iran's aim from 1968 was to set up a Gulf and Indian Ocean pact to protect the Gulf oil resources. However, as the Times noted, the sense of Arab exclusiveness, the weight of Iranian military power, and the fear of Iranian 'imperialism' prevented such a pact from coming into being.[40] All Iran's reformulated defence approaches ranging from a tight, formal pact to a loose, informal

understanding, failed.[41] The last attempt to organize security co-ordination between the Gulf States was a conference of Gulf Foreign Ministers held in Mascat (Oman), in November 1976.[42]

The three major Gulf Powers, Iran, Iraq and Saudi Arabia endorsed in principle the idea of a conference in 1976 on defence. A six point agenda was drawn up to serve as terms of reference for the summit. The six points were: (1) how to keep foreign fleets out of the Gulf, (2) military cooperation to guarantee free navigation in the Gulf; (3) ways to relieve existing disputes of intra-regional character; (4) guaranteeing the territorial integrity of the Gulf States; (5) agreement not to provide military bases to outside powers; (6) discussion of the territorial division of the waters of the Gulf among the littoral States.[43]

The Arab States and Iran failed to agree on any formula for ensuring Gulf security.[44] Consequently, after trying for 10 years, Iran gave up the search for a joint regional defence pact. Dr. Jamshid Amouzegar, Iran's then Prime Minister, admitted in an interview on June 27th, 1978 that Iran was "tired of making proposals without receiving a reply".[45] However, the Gulf Security Pact was once again highlighted in Summer 1978 by a coup in Afghanistan and a change of government in South Yemen, which drew both of these States closer to the USSR. Chairman Hua of People's Republic of China who visited Teheran on August 31st, 1978 discussed the Gulf Security Pact both with Iran and all other Gulf States concerned.[46]

Regional arrangements among the Gulf States have been achieved in

some areas. There has been some progress on pollution, conservation, fisheries, communications, aviation and co-ordination of policies on oil issues. By means of bilateral agreements, the limits of national jurisdiction on the sea-bed have been agreed upon between most of the Gulf States. As will be thoroughly demonstrated in Chapter VII, offshore boundary agreements to date have been signed between Iran and Saudi Arabia, Iran and Qatar, Iran and Bahrain, Iran and Abu Dhabi (UAE), Iran and Dubai, Iran and Oman, Saudi Arabia and Bahrain, Saudi Arabia and Kuwait (for the Neutral Zone), Abu Dhabi and Qatar. Also the differences between Iran and Iraq have been settled within the scope of an Agreement signed in June 1975.[47] Equally important, Oman (with Iran's assistance) has won her war against PFLO in Dhofar. Diplomatic relations have been resumed between Iraq and Oman, as well as Saudi Arabia and the People's Democratic Republic of Yemen. At present Iran is more than anxious to cooperate with her Arab neighbours.[48] Furthermore, the Arab States of the Gulf have close cooperation within the framework of the Arab League.[49]

The problem of the increasing pollution of the Persian Gulf has also been a matter of concern to all littoral States. Because the Persian Gulf's waters are contained by the narrow Strait of Hormuz at the outlet to the open sea, the possibility of cleansing by sea flow is restricted. As a result the waste pumped out from factory cooling units in increasing quantities is not flushed away.[50] Another principal source of pollution is the ballast discharge from tankers loading at oil terminals around the Gulf. Pollution resulting from offshore petroleum operation is the second-worst offender.[51]

Iran, Kuwait and Oman are the only three Gulf States which have municipal legislation in force for the protection of the Gulf against pollution.[52] The International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (amended in 1962, 1969 and 1971) provides the international standards for the protection of the marine environment from oil pollution.[53] Saudi Arabia and Kuwait have ratified this Convention.[54] Not one Gulf State has as yet ratified the 1973 Convention for the Prevention of Pollution from Ships.[55] Iran, however, sponsored the draft articles submitted to UNCLOS III on the zonal approach to the preservation of the marine environment. Articles VI and VII of this proposal stipulate that the coastal State has jurisdiction in and throughout its economic zone for the purpose of protecting and preserving the marine environment and for preventing and controlling pollution.[56]

After five years of discussion among the Gulf States and several meetings under the auspices of the United Nations Environment Programme, a regional conference on pollution was proposed.[57] Eventually a multilateral convention was to be concluded among all Gulf States in a conference at Kuwait in October 1977, the outcome of which is not yet known. However, the plan included a co-ordinated programme to study pollutants and their effects on sea life, development of environmnetal management activities, water policies, protected areas, and industrial engineering. It also included a legal agreement for regional cooperation.[58]

In January 1978 a United Nations Environment Programme committee met in Monaco to adopt a treaty helping Saudi Arabia and Kuwait to keep the Gulf free from pollution.[59] The protocol called for a ban on certain substances being discharged into the sea. It was

suggested that a blacklist should be drawn up for such substances as mercury, cancer-causing substances, persistent oils, and substances containing cyanide and arsenic.[60]

As regards fishing in the Persian Gulf,[61] Iran, Iraq, Kuwait, Bahrain, Oman, UAE, and Qatar are cooperating in the form of an extensive survey team supported by the United Nations' Food and Agriculture Organisation.[62] Such a regional co-operation is of great significance. It is essential, for purposes of conservation as well as orderly planning, that more is known about fish resources before individual States embark on ambitious projects. However, it has still to be determined how far the joint venture will extend in implementing the co-operative plans. Among outstanding questions that could be resolved at meetings during the coming years will be the ownership of the new vessels needed to expand the Gulf catch. If this regional co-operation continues, one centrally-operated fleet of modern freezer trawlers may be established to replace the current project of each country developing its own fleet. Similarly, there could be agreement on the location of processing and distribution plants to avoid the present haphazard development of facilities.[63]

Regional arrangements and cooperation are also necessary to accommodate the needs and interests of the neighbouring land-locked Afghanistan. The current rules of international law are highly insufficient to explain the rights of access by land-locked States either for shipment of cargo or for basing of a fleet. These arrangements should be made through mutual and regional agreements. In the Gulf region, such an arrangement was made when Iran agreed

to give some shore facilities to Afghanistan through Bandar Abbas in the Persian Gulf.[64] However, the implementation of such an agreement is no longer favoured by Iran, now that a communist Government is in power in Afghanistan.[65]

Another important issue as regards regional cooperation is the proposed establishment of a Gulf common market. Sheikh Kalifa bin Hamad al-Thani, the ruler of Qatar, has on several occasions suggested that a common market should be established within the Gulf region.[66] This would be a means of avoiding unnecessary duplication of major infrastructural and industrial projects and other forms of development. On a far larger scale than the Persian Gulf region, it is proposed to establish an Asian common market. The desirability of the formation of such a market, stretching from Iran in the west to Bangladesh in the east, was first expressed by Mohammad Reza Pahlavi, the Shah of Iran, in April 1974.[67] The Regional Cooperation for Development Treaty established in July 1964 by Iran, Turkey and Pakistan provided close collaboration in the economic and technical spheres. The Shah, seeking the support of India and Pakistan for his proposed common market, visited the subcontinent in February 1978.[68] He proposed as the first step that an overland route be established between India and Iran, (Iran's congested ports could not cope with their vastly increased volume of cargo).[69] India offered transit facilities to Pakistan for direct trade with Bangladesh and Nepal in return for similar facilities for trade through Pakistan with Iran and Afghanistan.[70] Pakistan, which had already experienced difficulties in the Regional Cooperation for Development grouping with Iran and Turkey, was reluctant to offer transit facilities.[71]

In the wake of the 1978 visit of the Shah of Iran to India, the Indian Minister of Foreign Affairs proposed an Asian regional economic cooperation scheme, far larger than the one proposed by the Shah.[72] This new scheme proposed an uninterrupted interchange of trade extending from Iran to the Indo-Chinese peninsula.[73] It went far beyond the Shah's proposal, limited to regions bounded by Iran and Bangladesh. Iran conveniently sought to keep both the Arab and the South East Asian Socialist States out of the envisaged common market.[74] No matter what form the Asian regional cooperation takes, its main hurdle is political.[75]

Finally, as another example of cooperation between the Gulf States, mention should be made of the plan for a Gulf shipping organization. Saudi Arabia, Iraq, Qatar, The UAE, Kuwait and Bahrain all participate in planning a joint shipping organization that will have 100 vessels in service by 1980 and 150 by 1985.[76]

II. THE LEGAL DIVISION OF MARINE AREAS OF THE PERSIAN GULF

For legal purposes the marine areas of the Persian Gulf, like any other sea, are divided into different zones. Moving from land seawards, the Persian Gulf is legally divided into internal waters, territorial sea, contiguous zones and exclusive fishing zones. These legal divisions of the maritime areas are studied in detail in the following section.

A. The Internal Waters in the Gulf Area

Internal waters in the region of the Persian Gulf consist mostly of those on the landward side of the baselines used for measuring

the width of the territorial sea. The waters of regional ports, harbours, rivers and canals are also parts of the internal waters, plus the waters between islands not farther apart than the limits of the territorial sea.

The 1949 Decree of Saudi Arabia included the following waters as the 'inland waters' of the Kingdom: (a) bays along the coasts of Saudi Arabia, (b) the waters above and landward from any shoal not more than twelve miles from the Saudi Arabian mainland or its islands, (c) the waters between the mainland of the Kingdom and a Saudi Arabian island not more than twelve miles from the mainland, and (d) the waters between Saudi Arabian islands not farther apart than twelve miles.[77]

Also Article 6 of the Iranian Law of April 12th, 1959 on territorial sea proclaimed the waters between the Iranian islands not farther apart than 12 miles as internal waters.[78]

Article 4 of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958) allows the method of the 'straight baseline' to be employed in measuring the territorial sea.[79] Article 5 provides that the waters on the landward side of the baseline form part of the internal waters.[80] Since these provisions are also confirmed in Article 7 of the ICNT,[81] the implication of the 'straight baseline' method is of great significance as far as the shelf-locked States (e.g. the littoral States of the Persian Gulf) are concerned. That is to say, the drawing of baselines does not make much difference in cases of coastal States bordering the open seas, which will have an economic zone of 200 miles. But the application of the 'straight baseline' (rather than 'low-water

mark baseline') affects greatly the delimitation of the marine areas of the enclosed or semi-enclosed seas between adjacent or opposite States. An example of such a case is the Saudi Arabian Decree of February 16th, 1958. Article 2 of this decree states that the waters between the coasts of the kingdom and the shoals and islands extending out to 12 miles are 'internal waters'.[82]

Another crucial issue, with respect to internal waters, was the disagreement between Iran and Iraq concerning the borders of the Shatt-al-Arab or (as Iranians call it) Arvandrud.[83] The position of the Shatt-al-Arab is the most important frontier dispute between Iran and Iraq and affects, both politically and legally, all marine issues of concern between the two States. The position of the Shatt-al-Arab is also important to Kuwait because of her interest in the implementation of the Shatt-al-Arab water scheme.[84]

The boundaries of the Shatt-al-Arab which flows directly into the Persian Gulf are extremely important because of their effect on the delimitation of the territorial sea. This issue will be dealt with in Chapter VII under the Sub-Section on the Iran-Iraq offshore boundary. The water border between Iran and Iraq in the Shatt-al-Arab was defined according to the median line principle by the Treaty of June 13th, 1975.[85]

Finally the question of internal waters of the archipelagic State of Bahrain require some consideration. Article 50 of the ICNT provides that the archipelagic State may draw closing lines for the delimitation of internal waters. However, Article 8 of the Text expressly states that waters on the landward side of the

baseline of the territorial sea of archipelagic States do not form part of the internal waters of the State.[86] The internal waters of Bahrain, therefore, are confined to rivers, bays and ports.

B. Territorial Sea in the Persian Gulf

Coastal States have the right to exercise sovereignty over their territorial sea subject to the rights of innocent passage and the jurisdiction of flag States.[87] The width of the territorial sea, which by definition extends beyond internal waters, is one of the most controversial issues in international law. States claim territorial seas ranging from 3 to 200 miles. However, in the semi-enclosed Persian Gulf none of the littoral States claim any territorial sea beyond 12 miles.

The Council of the League of Arab States,[88] in its 31st Session (Cairo, March 1959) within a report on the Resolution of UNCLOS I recommended to its members a movement towards a 12 mile territorial sea.[89] In the area of the Persian Gulf, Saudi Arabia and Iraq had already extended the breadth of their territorial sea to 12 miles. Other Arab States in this area did not then take an interest in the recommendation - apparently because of the British protectorate influence. The aim behind the Arab League recommendation was to achieve a 12 mile territorial sea in the Strait of Tiran and the Gulf of Aqaba[90] as a security measure during the Arab-Israeli conflict. Later, significant economic intererts caused the extension to 12 miles of the traditional 3 mile limit of the territorial sea by more Arab States in the Persian Gulf; Kuwait in 1967, Sharjah in 1970 and Oman in 1972 all extended their territorial seas to 12 miles. So apart from Iraq, Saudi Arabia,

Kuwait, Sharjah and Oman, other Arab States in the Gulf had territorial seas of 3 to 6 miles until 1972.[91] At present, however, 12 miles may be regarded as the general Gulf standard.

In UNCLOS II, three coastal States of the Persian Gulf, Iran, Iraq and Saudi Arabia, were among the 'eighteen-power' developing States which proposed to fix the breadth of the territorial sea at twelve miles.[92] This proposal was rejected by 39 votes to 36 with 13 abstentions. Iraq and Saudi Arabia voted against the joint proposal of Canada and USA of a 'six plus six' formula while Iran abstained.[93]

The legal controversy over the breadth of the territorial sea has arisen because of the conflict of interests between different States. The nature of the national interests involved is obvious in the event of any extension by the coastal States of the Persian Gulf of their territorial sea. The early oil concessions in the region of the Persian Gulf such as D'Arcy (Iran 1901), IPC (Iraq 1925) and AIOC (Iran 1933) made no reference to territorial waters, and only from 1933 onwards were territorial waters included in oil concessions.[94] From the mid-1930's onwards when technological advances made the exploitation of the mineral resources of the submarine areas a reality, the coastal States in the Persian Gulf extended their territorial sea.

Iran in 1934 and Saudi Arabia in 1949 were the first among the Gulf States to extend their territorial seas to six miles. Saudi Arabia and Iraq in 1958, Iran in 1959, Kuwait in 1967, Sharjah in 1970 and Oman in 1972 extended their territorial seas to 12 miles.[95]

As a result of Oman's extension of its territorial sea, the Strait of Hormuz is now entirely contained within the territorial waters of Iran and Oman. It is , therefore, of great significance to investigate the legal status of the Strait of Hormuz.

1. The Legal Status of the Strait of Hormuz

It is generally accepted that all gulfs and bays surrounded by the land territory of more than one littoral State, are non-territorial. This well established opinion, held by the majority of international lawyers, is now disputed by a number of States who claim territorial rights over such water masses.

The matter of passage through the straits, constituted of territorial waters, needs special consideration. As Professor E. D. Brown has noted, there are 116 straits which would become entirely territorial sea if a 12-mile breadth were to be accepted.[96] These straits include the Dover Strait, the Strait of Gibraltar, the Bering Straits, Bab-el-Mandeb and the Strait of Hormuz.[97]

The passage through the Strait of Hormuz is of unique significance because of its strategic and economic importance.[98] Iran, Iraq, Saudi Arabia, Kuwait, UAE and Qatar collectively supplied about 43 per cent of the non-Communist world's demand for oil in 1975.[99] Almost all Gulf States' oil is shipped out through Hormuz. According to an announcement by Iranian officials in 1969, some 10 to 12 ships including oil tankers, passed through the Strait of Hormuz every hour.[100] Later it was estimated that an oil tanker passed through Hormuz every ten minutes.[101] Hormuz is the third or fourth busiest international strait in terms of tonnage.[102] The aforementioned

statistics demonstrate that freedom of navigation through Hormuz is vital to the national interests not only of the Gulf States, but also of the entire industrialised world, especially Western Europe and Japan.

In any military confrontation in and around the Persian Gulf, the Strait of Hormuz would be the first target.[103] During the past decade or so several outside instances (such as the Egyptian involvement in the Yemeni civil war of 1964 - 67, the pan-Arabism movement among the Gulf States, the British withdrawal first from the area east of the Suez, 1968, and later from the Gulf, 1971) all challenged the stability of the Gulf sea-lanes.[104] The major outside threat is usually thought to be the USSR. This is suggested not only by the conservative Gulf States and the West, but also by the People's Republic of China which advocates a regional Gulf Security Pact against the Soviet threat.[105] In addition to this supposed Soviet threat, there have been suggestions about the formation of a special force in the United States to intervene in the Persian Gulf if necessary.[106] There have been also reports that Israel is prepared to attack Arab oil installations in the Gulf.[107]

The major regional challenge to the freedom of navigation through the Strait of Hormuz is the build up of sophisticated shore facilities.[108] and the development of seaborne air power capabilities by the coastal States.[109] The radical Communist inclined movements in the region, supported by Iraq and People's Democratic Republic of Yemen, are also challenging the security of the southern shores of the Strait of Hormuz.[110] The most active radical movements

are the Popular Front for the Liberation of Oman and the Arab Gulf (PFLOAG) in Dhofar, Oman,[111] and the separatist Baluchistani movement on the Irano-Pakistani border.[112] The Government of Iraq has apparently withdrawn its support from these movements. On March 7th, 1976 Iraq's Foreign Minister received an Omani delegation to discuss navigation through the Strait of Hormuz, and in April an Iraqi ambassador was appointed to Oman, a move which was followed in June by severe anti-Iraq pronouncements from PDRY.[113] Despite the Iraqi-Omani diplomatic relationship, there was a successful bomb attack by the Communist local rebels on a tanker passing through Hormuz in December 1977. Hormuz was blocked for several hours before the ship could be moved. After consultations between the bordering States a further meeting was arranged in Teheran to discuss the problem.[114] Apart from the Communist local movements, other regional threats to Hormuz security include territorial disputes over certain islands between Iraq and Kuwait on the one hand, and between Oman and the UAE on the other.

Among the Gulf States the Governments of Iran and Oman, apprehensive of Soviet-Iraqi ambitions in the Persian Gulf, represent the non-Communist conservative position. They regard the 'progressive' powers such as Iraq, People's Democratic Republic of Yemen and some local liberation movements (such as PFLOAG in Dhafar, Oman) as threatening the security of Hormuz. Another view, held particularly by Communist-oriented observers, claims that it is Iran which is challenging the freedom of navigation through Hormuz. The 'progressive' Arabs also accuse Iran of threatening 'the Arab character' of the Gulf.[115]

Since both Iran and Oman have 12 mile territorial seas, the Strait of Hormuz is now within the limits of the territorial waters of these States. Furthermore, the Omani Law on Marine Pollution Control which entered into force on January 1st, 1975 extended the Sultanate's jurisdiction up to 50 miles from the coasts.[116] For practical reasons Iran and Oman, which have agreed on provisions for joint defence of the navigable channel in the Strait of Hormuz, jointly patrol in these jurisdictional waters to control pollution.[117] In 1977 the Shah of Iran paid a State visit to Oman during which he emphasized the two States' joint responsibility for the security of Hormuz.[118] It is now established that as early as 1973 Iran had gained some control over the maritime traffic through Hormuz in the name of pollution supervision.[119]

The present Irano-Omani control of the Strait of Hormuz is thought to be potentially hazardous especially to the right of freedom of navigation by non-littoral States.[120] Extreme hypotheses, such as the possibility of the irrational diverting of tankers or the 'closing' of Hormuz, make the argument more dramatic. In practice, however, such hypothetical abuses by the bordering States of Hormuz would not be tolerated by the international community (in factual terms, by the Major Powers).[121] This is evident, particularly in political terms, when the value of the Gulf's oil to Japan and the West is considered. This is why Iran has repeatedly made it clear that she would build up whatever military force would be necessary to keep the Strait of Hormuz open and safeguard the flow of oil from the Persian Gulf to 'any free country'.[122] Furthermore, all bilateral agreements and joint declarations made by Iran and Oman specifically refer to freedom of navigation through Hormuz. Also

Article Five of the Iranian Proclamation of October 30th, 1973 concerning the Exclusive Fishing Zone of Iran guarantees the right of international navigation exercised within Iran's exclusive fishing zone.[123]

The right of innocent passage through the territorial sea, provided for all States in international law,[124] and the criteria for prohibition of passage as non-innocent, are not defined. At the ILC the United States proposed that the sole test for determining innocence of passage be the security of the coastal State. Other extreme proposals referred to 'interests of the coastal States', in order to seek unlimited freedom for the coastal States to determine what those interests might be.[125] In the United Nations Sea-Bed Committee, the United States proposed (July 30th, 1971) that in straits used for international navigations all ships and aircraft should enjoy the same freedom of navigation and over-flight for the purpose of transit through and over such straits as they do on the high seas.[126] The United Kingdom, the USSR, Australia, the Netherlands, and Norway all expressed their support for this American proposal. Indonesia, on the contrary, stressed that she would not accept proposals which claimed more than existing rights for warships, submarines and military aircrafts.[127] The USSR later submitted draft articles on July 25th, 1972 which, similar to the American proposal, provided that all ships in international straits used for navigation between two areas of the high seas should enjoy the same freedom of navigation as they have on the high seas. It provided, however, that in the case of narrow straits the coastal States might designate corridors, but no State would be entitled to interrupt or stop the transit of ships.[128]

There was a sharp controversy among the littoral States of the Persian Gulf as regards the legal regime of the straits used for international navigation. Iran and Oman took the position that the regime of straits which are part of the territorial sea is the same as that of any other portion of the territorial sea. It is understandable that Iran and Oman, whose territorial waters include the entire body of Hormuz, claim sovereign rights over it. All other Gulf States held that the nature of the international straits such as Hormuz, although within the limits of the territorial waters, necessitated an entirely different legal status from that of 'territorial sea'. That is to say that all military and non-military vessels of all States have the right to free navigation through Hormuz in time of peace.[129]

Oman submitted detailed draft rules to UNCLOS III on navigation through the territorial sea, including straits which are used for international navigation.[130] The Omani proposal recognised only the right of innocent passage and not a regime of free navigation in straits used for international navigation but belonging to territorial sea. The Omani draft articles specified certain provisions as to the innocent passage of non-military vessels through international straits. These provisions sought compliance with the laws and regulations of the coastal States by foreign vessels. The Omani proposal mentioned that coastal States could require foreign military vessels in transit to give prior notification or to obtain prior authorisation for passage. This proposal, amounting to exclusive jurisdiction of the States bordering upon international straits, was supported by China,[131] but predictably opposed by all big maritime powers.

All Gulf States, excluding Iran, totally opposed the Omani proposal. The Iraqi delegation at the second Committee of UNCLOS III (Caracas, 1974) proposed an unconditional right to free navigation through international straits which join two parts of the high seas (whether open or semi-enclosed seas). Bahrain, Iraq, Kuwait, Qatar and the UAE sponsored a proposal which defined the term 'straits used for international navigation' as any strait connecting two parts of the high seas and customarily used for international navigation.[132] This proposal, similar to that of the UAE in the forth Session of UNCLOS III (April 27th, 1976), implied that claims by States bordering upon international straits to 12 mile territorial sea should not change the legal status of these straits. According to Articles 34 - 38 of the ICNT the extension of the territorial sea does not change the legal status of the international straits. The ICNT, while recognising the sovereign rights of the States bordering the strait, (Article 34 (2)), confirms, however, the 'right of transit passage' through international straits. (Article 38).[133]

The international customary rules provide the right of international navigation through international straits between one part of the high seas and another part of the high seas or the territorial seas of a foreign State. This position is based on the long established principle of the freedom of the seas and the right to innocent passage.[134] At present, however, 20 coastal States specifically require prior permission or notification from warships wishing to enter their territorial seas.[135] It is to be hoped that a study of State practice on the subject will succeed in ascertaining the objective criteria and factors for suspension of the right of innocent passage.

It may be concluded from the foregoing that the right of international navigation through international straits which are part of the territorial sea is subject to some qualification. Whatever the criteria for suspension of innocent passage may be, it is at least established that the coastal States are not actually prohibited from suspending a passage as non-innocent. This view is supported by State practice such as that of the United States (1971), Nigeria (1967) and Vietnam (1965).[136]

The suspension of passage may also be exercised within those international straits which have become entirely contained within territorial sea. Under conventional and customary rules of international law there is now no strong objection to the twelve mile limit of the territorial sea. Nor is there any established objective set of criteria to prevent the coastal States from suspending the right of passage through their territorial waters. Therefore once the juridicial status of a strait is altered by the extension of the territorial sea, the coastal States concerned may suspend passage within their territorial waters as non-innocent. Thus, if Iran and Oman do not ratify the envisaged Convention of ICNT they may well continue to claim that the freedom of navigation through the Strait of Hormuz is subject to the sovereign rights which they exercise within the limits of their territorial sea.

The majority of the Gulf States, however, do not accept the above-mentioned contention held by Iran and Oman. Saudi Arabia, Iraq, Bahrain, Qatar, Kuwait and the UAE all uphold that the extension of the territorial sea by Iran and Oman may not alter the legal status of the international Strait of Hormuz. Dr. A. Al-Awadhi, of the

University of Kuwait, suggests two solutions. First, to regard Hormuz as an international strait open to all littoral and non-littoral States, as provided under the ICNT. Secondly, to adopt specific provisions by means of a regional agreement among the Gulf States. The proposed regional convention, she suggests, should provide the right to free navigation through Hormuz for both military and non-military vessels of all Gulf States. The military and non-military vessels of the non-littoral States would be subject to the right of innocent passage.[137] Accordingly, Iran and Oman would be able to suspend the passage of only non-littoral States as non-innocent.

2. The Practice of the Gulf States with respect to the Territorial Sea

In any negotiations to determine the boundaries of the submarine areas in the Persian Gulf, the lack of uniformity between different States in the breadth of their territorial sea is of special importance. Because the continental shelf, in present legal terms, begins from the outer limit of the seabed and sub-soil of the territorial sea, the extension of the territorial sea considerably affects the division of the continental shelf between adjacent or opposite States. The breadth of the territorial sea also affects the delimitation of the contiguous zone, exclusive fishing zone, and exclusive economic zone. This means that when the breadth of the territorial sea of two opposite or adjacent States is different, the State whose territorial sea has the shorter breadth will be apportioned lesser marine and offshore areas, that is, if the equidistance principle alone is applied. Therefore disputes over the determination of marine and submarine areas give rise to a question concerning the limits of the territorial sea of any two States involved.

Professor François at the ILC made it clear that "it would be impossible to fix a boundary between two continental shelves unless agreements were forthcoming as to the demarcation of territorial waters."[138] While this attitude may often prove irrelevant to coastal States bordering upon open seas, its validity cannot be questioned in respect of such semi-enclosed seas as the Persian Gulf.

The following study is concerned with the practice of the littoral States of the Persian Gulf. It examines legislation, proclamations, and concessions regarding the limits of their territorial seas.

IRAN

Iran has passed three items of legislation defining the breadth of her territorial sea. The Law of July 19th, 1934 on the delimitation of Iran's territorial sea and zone of maritime control, defined the territorial sea of Iran as extending to six miles from the low-water mark.[139] A contiguous zone of six miles for security and defence purposes was also provided beyond the territorial sea. Later the Law of June 19th, 1955 concerning the continental shelf of Iran confirmed the enforcement of the six mile limit to the territorial sea.[140] This 'six plus six' formula was amended by a draft law submitted to the Senate on December 20th, 1958.[141] This bill was finally passed on April 12th, 1959.[142] It received the Royal Assent and was brought into force on May 2nd, 1959. Article 3 of this Law extended the territorial sea of Iran to 12 miles. It further provided that the baseline of the Iranian territorial sea will be determined by the Government "with due regard to the established rules of public international law". Despite the silence of the 1959

Law on the question, it is assumed that the provisions of the Law of 1934 regarding the baselines of the territorial sea remain in force. As provided in Article One of the 1934 Law, the low water line is the baseline for Iran's territorial sea. Also the provisions of Article 3(2) of the 1934 Law which adopt a straight baseline for certain bays and islands, are assumed to be in force. The baseline for Iran's territorial sea, namely the Iranian low-water line, was mapped accurately to determine the boundaries between onshore and offshore oil agreements granted by Iran.[143]

The 1959 Iranian Law on the territorial sea was challenged by the United Kingdom because of the latter's protectorate relationship with the Arab Emirates at that time.[144] The United Kingdom's Note of Protest, dated October 12th, 1959, was addressed to Iran's Minister of Foreign Affairs. The Note, referring to the Iranian Law of April 12th, 1959 stated that the United Kingdom Government could not recognise unilateral claims to a breadth of territorial sea greater than three miles as valid under international law. It was also stated that the British Government did not regard the Iranian unilateral extension of her territorial sea as binding upon British shipping or aircraft.[145]

The validity of the unilateral extension of the territorial sea to twelve miles was also at that time debated by some international lawyers.[146] Here it was argued that a unilateral extension of the limits of the territorial sea was not internationally valid, unless it was recognised by the other States concerned.[147] This debate will be further discussed below in the Sub-Section on Sharjah's territorial sea.

The Iranian Government, countering the United Kingdom's protest, stated that she regarded the twelve mile extension of the territorial sea as essential for national security. From 1820 onwards the presence of British warships in Iran's territorial waters and the extension of military operations by the United Kingdom towards the Iranian islands and ports had challenged the sovereignty of Iran in the Gulf.[148] In the oil nationalization of 1951 the presence of the British fleet in the Persian Gulf had been used as pressure against Iran. The British Government had sent the cruiser Mauritius to the Persian Gulf, frozen Iranian assets and seized a few tankers carrying Iranian oil.[149] The security interests of the coastal States have always been taken into account in States' practice, especially among African-Asian States, in determining the breadth of the territorial sea.[150] Regardless of the above-mentioned legal arguments the strategic and political interests with respect to the breadth of the territorial sea were considered to be in themselves 'highly important psychological factors'.[151] Similar arguments were advanced by Iran for the seizure of Abu Musa and Tunbs in 1971. If these islands were attributed to Iran, her territorial sea would extend continuously to within some 20 miles of the Arabian coast.

SAUDI ARABIA

Saudi Arabia's three-mile of territorial waters were included in Aramco consession (1933). Later the Saudi Decree of May 28th, 1949 defined Saudi Arabia's territorial sea as "including a distance of six nautical miles from the coastal sea which lies outside the inland waters of the Kingdom".[152] Mr. Ahmed Shukairy, the Chairman of the Saudi Arabian Delegation to the First and Second

UNCLOS (1958 and 1960), pressed for the adoption of a draft resolution which would extend the limits of the territorial sea to 12 miles. He advanced several arguments against the counter joint Canadian-United States proposal of the 'six plus six' formula.[153] It was on similar lines that Saudi Arabia issued a Royal Decree concerning the Territorial Sea on February 16th, 1958. Article Four of this Decree, replacing the 1949 provisions, states that the territorial sea of Saudi Arabia lies outside the inland waters of the Kingdom and extends for a distance of 12 miles. Article Three states that the inland waters of Saudi Arabia include (a) bays along the coast, (b) the waters above and landward from any shoal no more than 12 miles from the mainland or a Saudi Arabian island, (c) the waters between the mainland and a Saudi island not more than 12 miles from mainland, (d) the waters between Saudi islands not farther apart than 12 miles.[154]

IRAQ

Article Two of the Iraqi Law No. 71 of 1958 extended the territorial sea of Iraq to 12 miles measured from the low-water line of the Iraqi coast.[155] Article Three provided that in cases where the territorial sea of another State overlaps with the Iraqi territorial sea, the limits between the two territorial seas should be determined by agreement with the State concerned in accordance with the recognized rules of international law or such understanding as may be reached between the two States. Iraq has not yet settled her offshore boundaries with Iran and Kuwait. However, in 1968, following an Irano-Kuwaiti joint communiqe on this issue, Iraq further emphasised her adherence to the rules and principles of international law in respect of the delimitation of offshore

boundaries. Iraq specified that she would not recognize the proposed Iran-Kuwait offshore boundary of 1968 since it encroached upon Iraq's territorial waters and continental shelf.[156]

KUWAIT

Kuwait's territorial sea was assumed to be three miles under the British protectorate relationship. This was included in the concession granted in 1934 to Kuwait Oil Co. Ltd. The six-mile breadth of the territorial sea was fixed, long before Kuwait's independence, on June 18th, 1948. The documents then signed by the Ruler of Kuwait were intended to affect the delimitation of the territorial waters of the Neutral Zone between Kuwait and Saudi Arabia.[157] This was later confirmed in the revised concession made to the Kuwait Oil Company in 1951.[158] The Saudi Arabian Decree of February 16th, 1958 extended the Saudi Arabian territorial sea to 12 miles, but retained the six mile limit with respect to the Neutral Zone.[159]

The Ruler of Kuwait issued a Decree on December 17th, 1967 regarding the delimitation of the breadth of the territorial sea of Kuwait to 12 miles from the baselines of the mainland and of Kuwaiti islands. Article Two established the baselines of Kuwait's territorial sea as follows:

> "The baselines from which the territorial sea of the State of Kuwait is measured are established as follows:
>
> (a) Whereas the shore of the mainland or a Kuwaiti island is fully exposed to the open sea, the low-water line along the coast is the baseline;

(b) Where there is a port or harbour, the outer-most permanent harbour works which form an integral part of the harbour system are considered as forming part of the coast;

(c) Where there is a low-tide elevation situated not more than twelve miles from the mainland or from a Kuwaiti island, the outer edge of the said low-tide elevation constitutes the baseline for measuring the territorial sea of the mainland or, as the case may be, of the island off which the elevation is situated;

(d) In the case of Kuwait Bay, the waters of which are internal waters, the base-lines is the closing line across the entrance to the Bay established in AnnexIII to Law No. 12 of 1964 regarding Prevention of the Pollution of Navigation waters by Oil."[161]

BAHRAIN

Bahrain consists of an archipelago of Bahrain Island (extending some 30 miles from north to south and 10 miles from east to west) and some 30 smaller islands. Since this group of islands form an intrinsic geographical, economic and political entity, Bahrain falls within the legal definition of 'archipelagic States' as defined in various negotiating texts adopted at UNCLOS III. As will be seen below, this status is relevant to determination of the limits of the territorial sea. However, Bahrain has not yet promulgated any national legislation as regards the definition of her territorial sea.

The legal background of Bahrain's territorial sea may be outlined as follows:

The United Kingdom introduced her extra-territorial civil and criminal laws of British India into Bahrain by the Bahrain Order in Council.[162] Article 12 of this Order stated that the Foreign Jurisdiction Act, 1890 should apply to Bahrain, as if she were a British Colony or Possession. The Order which was finally brought into force in February 1919,[163] enforced the British jurisdiction within the limits of the territorial waters around Bahrain Islands. On grounds of the British practice with respect to the limits of the territorial sea, Bahrain's territorial sea, before her independence, was considered as a belt of three miles. At present, since Bahrain has not yet claimed any territorial sea rights farther than three miles, this limit must be considered as the seaward limit of Bahrain's territorial sea. However, Dr. B. Al-Awadhi, writing in 1977, argues that the 12 mile limit may be applicable to Bahrain. She contends that as established in the Abu-Dhabi Arbitration case the contemporary trend as to the breadth of the territorial sea should be considered as applicable to those States without a fixed territorial sea.[164]

The territorial waters of Bahrain and Saudi Arabia overlapped in 1958 as a result of Saudi Arabia's claim of 12 miles territorial sea. The two States, immediately defined their maritime boundaries on February 22nd, 1958.[165]

In the absence of any national legislation concerning Bahrain's territorial sea, it is necessary to discuss the relevant rules of international law of the sea with respect to the archipelagic Bahrain. The 1958 Geneva Conventions on the Law of the Sea did not differentiate between archipelagic and other States. The

currently developing law of the sea, however, has recognised specific status for archipelagic States. Article 47 of the ICNT provides that:

> "1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between one to one and nine to one.
>
> 2. The length of such baselines shall not exceed 100 nautical miles ...
>
> 3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
>
> 4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.
>
> 5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone or the territorial sea of another State.

6. The archipelagic State shall clearly indicate such baselines on charts ...

7. If a certain part of the archipelagic water of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated under agreement between those States shall continue and be respected.

8. For the purposes of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau."[166]

Article 48 of the ICNT further states that the breadth of the territorial sea, the contiguous zone, and the EEZ, as well as the limits of the continental shelf, should be measured from the baselines drawn in accordance with the aforementioned provisions of Article 47. These provisions, except those designed for oceanic archipelagos, can be regarded as applicable to Bahrain. It is, however, debatable whether the provisions of Articles 47 and 48 should apply indiscriminately to all different geographical formations of archipelagos, including those such as Bahrain located in semi-enclosed seas.

Evensen, writing in 1958, has drawn distinction between coastal archipelagos and mid-ocean archipelagos. Coastal archipelagos, such as the Norwegian Skjaergaard, are those situated so close to a mainland that they may reasonably be considered as forming an outer coastline. The mid-ocean (or outlying) archipelagos are groups of islands situated out in the ocean at such a distance from the coasts of a firm land as to be considered as an independent entity rather than forming outer coastline of the mainland.[167] Also it is obvious that the status of oceanic archipelagos such as Indonesia, Japan and the Phillipines is completely different from the tiny archipelagic Bahrain situated in the shallow semi-enclosed Persian Gulf. Therefore, the provisions adopted in Article 47 of the ICNT do not seem to provide the most equitable solution for the delimitation of offshore boundaries between Bahrain and her neighbouring States.

QATAR

Qatar has not issued any particular decree as regards her territorial sea. However, both the Qatari Proclamations, one on the continental shelf (1949)[168] and the other on the EEZ (1974),[169] have expressed that these areas are beyond the limits of Qatar's territorial sea. In the absence of any specific reference to the width of Qatar's territorial sea, it is assumed that the limit be no more than three-mile from the low-water mark on the coast. This assumption is based on the British sponsored customary rule of three-mile, supported by the Abu-Dhabi Arbitration case, 1951.[170]

Qatar's territorial sea overlapped the territorial waters of Saudi Arabia, when on February 16th 1958 Saudi Arabia extended her

territorial sea to 12 miles. Article Seven of the Saudi Arabian Decree stated that boundaries between the territorial waters of Saudi Arabia and of another State should be determined by mutual agreement in accordance with equitable principles.[171] Saudi Arabia-Qatar offshore boundaries, however, unlike those between Bahrain and Saudi Arabia, have not yet been defined due to conflicting territorial claims. There is a dispute between Saudi Arabia and Qatar over the demarcation of their common land frontiers. Saudi claims the southern shore of the Persian Gulf westerly from a point between al-Mughairah and al-Marfa on the coast of Dhafrah to a point on the southeastern coast of the Qatar peninsula.[172]

It has been argued that such States in the Persian Gulf as Qatar which still conform to the traditional three-mile limit may oppose the extension of 12-mile limit of the territorial sea by the neighbouring States.[173] This argument, advanced by Dr. Al-Baharna in the late 1960's, is not acceptable at present, since during the last decade the trend of 12-mile limit of the territorial sea has been increasingly accepted by the international community.[174] This is why, as already mentioned, Dr. Al-Awadhi favours the application of the 12-mile limit to those Gulf States, such as Qatar and Bahrain, which have not yet fixed the limits of their territorial seas.[175]

UAE

Apart from Sharjah, no other member State of the UAE has issued any specific proclamation on the extent of her territorial sea. In the absence of national legislation, and especially on the ground of the previous protectorate relationship between the Emirates and the United Kingdom, it is assumed that the three-mile limit

should apply to the UAE. This assumption would be absolutely justified on two legal bases; firstly on the ground of the internationally-recognised minimum limit of the territorial sea, secondly on the ground of the previous British practice for her protected Emirates in the Persian Gulf.

The Abu Dhabi arbitratar, in Petroleum Development (Trucial Coast) Ltd. V. Shaikh of Abu Dhabi, 1951 argued that the term 'sea waters' mentioned in the 1939 Concession could not be interpreted as 'territorial waters' and thus the territorial sea-bed was excluded from that Concession. However, Lord Asquith did not accept this argument and decided that Abu Dhabi in 1939 had had a three mile belt of territorial sea.[176] Since then the three-mile limit of territorial sea has been adopted by some Emirates within their oil concessions.[177] Despite the 12 mile standard which prevails in the Gulf, it is assumed that, except in the case of Sharjah, the territorial sea of the entire UAE remains at three miles.[178]

The extension of Sharjah's territorial sea to 12 miles is extremely important. The circumstances surrounding its institution may be outlined as follows:

The island of Abu Musa[179] which has a population of three hundred, is located thirty eight miles off the coast of Sharjah. This island as well as Greater and Lesser Tunbs has been disputed between Iran, Sharjah and Ras al-Khaymah.[180] A map prepared by the Royal Geographical Society, 1892, showed the islands as Iranian territory.[181] However, following the appointment of an Iranian Governor of Lingeh, the Qasimi Shaikhs crossed to the Arab shore and the British

claimed that the sovereignty over these islands lay with Shaikhs of Ras al-Khaimah and Sharjah. Because of British pressure, therefore, the Iranian attempts to establish customs ports and hoist their flag on Tunbs and Abu Musa was short-lived.[182] In practical terms the island of Abu Musa was under Sharjah's control. In 1964 Sharjah and Umm al-Quwain delimited their boundaries, and it was agreed that Sharjah held Abu Musa and its territorial sea of three miles. In December 1969 Buttes Gas and Oil Company obtained a concession from the ruler of Sharjah to explore and drill for oil within all his territories including the three mile sea-bed areas adjacent to the coast of Abu Musa. In February 1970 the Occidental Petroleum Corporation which held a similar concession from Umm al-Quwain discovered a very promising deposit nine miles off the coast of Abu Musa. Towards the end of March 1970 the ruler of Sharjah issued a decree, which was dated September 10th, 1969, declaring that his territorial waters extended up to 12 miles from Abu Musa. It would mean that the area discovered by Occidental would no longer belong to Umm al-Quwain, but would now belong to Sharjah. Then on April 5th, 1970 a supplementary decree was issued by the ruler of Sharjah extending the territorial waters of Sharjah to 12 miles.[183]

The United Kingdom's political agent in the Persian Gulf did not agree with Sharjah's unilateral extension of her territorial sea to 12 miles. However, a representation by Sharjah to Iran resulted in Iran's informing the United Kingdom that in their view Abu Musa and its 12 mile territorial sea were under the sovereignty of Iran. Then the United Kingdom recommended that the ruler of Umm al-Quwain should no longer permit Occidental to operate within a 12 mile

radius of Abu Musa's territorial waters. When the ruler of Umm al-Quwain did not accept the recommendation, the United Kingdom took military action to halt the operation on June 1st, 1970.[184] Although the conflicting territorial claims by Iran and Sharjah over Abu Musa remain unsolved, the two States reached an agreement (November 30th, 1971) to equally benefit from the oil exploitation in the 12 mile territorial sea-bed of Abu Musa.[185]

OMAN

In the 18th century the Omanis ruled the sea-lanes of the Persian Gulf. Oman's maritime supremacy and footholds in East Africa brought the country into conflict, then into accomodation, with the British Empire. Eventually from 1798 until 1971, Oman permitted the British to control all issues related to Omani seas. The territorial sea of Oman, was considered as three miles under British sponsorship. The Sultan of Oman issued a Decree concerning the territorial sea, the continental shelf, and the exclusive fishing zone of the Sultanate on July 17th, 1972.

Article Two of the 1972 Omani Decree defines the territorial sea of Oman as extending 12 miles seaward, measured from the following baselines:

> "The territorial sea of the Sultanate extends twelve nautical miles (22,224 metres) seaward, measured from the following baselines:
>
> (a) The low-water line of the coast of the mainland or of an island, rock, reef or shoal more than twelve nautical miles distant from the mainland or another island, rock reef or shoal, where the coast faces Open sea;

(b) Straight lines, not exceeding twenty-four nautical miles in length, connecting the low-water marks of the entrance points to bays or gulfs.

(c) Straight lines connecting the nearest point on the mainland with the outermost extremities of an island, rock, reef or shoals, less than twelve nautical miles distant from each other, if any part of such island, rock, reef or shoal or group of islands, rocks, reefs or shoals lies within 12 nautical miles from the mainland.

(d) Straight lines connecting the outer-most extremities of islands, rocks, reefs or shoals, more than 12 nautical miles distant from the mainland, but less than twelve nautical miles distant from each other."[186]

As already mentioned,[187] the 12 mile extension of Oman's territorial sea created a very significant change in the status of the Strait of Hormuz. The waters of Hormuz, which were previously part of the high seas now consisted of the territorial waters of Iran and Oman. Under the future Convention on the Law of the Sea, as drafted in the ICNT, the extension of the territorial sea does not change the legal status of the international straits. However, in practice, apart from the obvious political implications, there is little guarantee under international law of the right to passage through Hormuz if both Iran and Oman regard any instance of passage as non-innocent. Indeed, the Omani Marine Pollution Control Law imposes some severe restrictions on all non-Omani vessels which navigate within the territorial waters of Oman. For instance, Article 5(4) expressly permits the enforcement of a prohibition on the transfer of oil or other pollutants to or from vessels in the Omani territorial waters between the hours of 6.00 p.m. and 6.00 a.m.

Again Article 5(8) empowers Omani pollution control officers to detain or seize a vessel within the 50-mile limit of the 'pollution-free zone' of Oman.[188]

As regards the offshore boundaries, Article 7 of the Omani Decree of 1972 provides that where the coast of another State is opposite or adjacent to the coast of Oman, the offshore boundaries should be determined in accordance with the equidistance principle. It specifically states that Oman's exclusive fishing zone shall not extend beyond a median line every point of which is equidistant from the nearest base-points of Oman's territorial sea.[189] Oman defined her offshore boundaries with Iran on July 25th, 1974, but the Oman-UAE offshore boundary is still undefined.

C. The Contiguous Zones

As early as 1835, the British Empire claimed a contiguous zone for certain security and legal purposes in the high seas of the Persian Gulf adjacent to the territorial waters of the British protected Arab Emirates. Major Morrison, the British Political Agent, divided the entire Persian Gulf between Iran and the British protected States, by means of 'Restrictive Lines' drawn in the mid-Gulf in accordance with the general configuration of the coast lines. These Restrictive Lines were intended to define the marine areas of the high seas over which the United Kingdom could exercise exclusive sovereign rights without Iran's consent.[190]

1. Customary Rules

At present only three Gulf States (Saudi Arabia, Iraq and Kuwait) claim contiguous zones beyond the 12-mile limits of their territorial

sea. As already mentioned,[191] Iran's Law of July 19th, 1934, which provided a six mile contiguous zone for security purposes beyond the six-mile limit of territorial sea, was replaced by the Act of April 12th, 1959 which extended Iran's territorial sea to 12 miles.

Article Eight of the Saudi Arabian Decree of February 16th, 1958 provided a six mile contiguous zone beyond the 12 mile territorial sea "with a view to assuring compliance with the laws of the Kingdom relating to security, navigation, fiscal and health matters".[192]

Both Iraq and Kuwait, however, claim undefined areas of contiguous zones. The Iraqi Proclamation of April 10th, 1958 asserts that all constructions and installations undertaken in the marine zone encompassing the waters contiguous to Iraq's territorial sea are subject to Iraq's sovereignty.[193] Later Article 4 of the Law No. 71 of 1958 stated that its provisions should not infringe Iraq's rights in her contiguous zone.[194] Similarly the Kuwaiti Decree of December 17th, 1967 claims an undefined marine zone beyond the 12-mile limits of Kuwait's territorial sea. Article Six of this Decree states that - "Nothing in the provisions of this Decree shall prejudice the rights of the State of Kuwait to an area contiguous to its territorial sea to be delimited later on, or to the exploitation of fish resources".[195]

D. .Exclusive Economic/Fishing Zones

Article Seven of Iran's Act of April 12th, 1959, which extended Iran's territorial sea to 12 miles, specified that "fishing and

other rights of Iran beyond the limits of its territorial sea" should remain unaffected.[196] However, despite the traditional fishing activities of the coastal communities in the high seas adjacent to territorial waters, Iran did not specifically claim any fixed exclusive fishing zone until 1973. On similar lines, the 1949 Proclamations issued by the Gulf States asserting their continental shelf rights, specified that these did not affect the traditional rights of fishing and pearling in the superjacent waters above the continental shelves.[197]

It was generally submitted that the fishing activities in the Persian Gulf were "governed by customs and usages of immemorial standing".[198] However, the nature and the scope of these traditional rights and customs are not precisely defined. The 1949 Proclamations, not unlike the Saudi Arabian Proclamation of 1958, effectively conceded that fishing rights were accorded equally to all the various peoples of the Persian Gulf and only to them.[199] Foreign nationals had no fishing rights in the area. Intrusion by outsiders, except possibly kinsfolk of the coastal people of the Gulf, has always been resented and was discouraged by the British prior to their 1971 withdrawal from the Gulf. However, the British protection of 'pearling' has been based on British political and naval predominance in the Gulf and beyond, rather than on any legal authority.[200]

A survey team under the auspices of the United Nations' Food and Agriculture Organization (FAO), has been set up to look at the non-oil reserves available in the Persian Gulf and the Indian Ocean.[201] Iran, Iraq, Kuwait, Bahrain, Oman, the UAE and Qatar all cooperate

in the above-mentioned survey, the centre of which is based in Doha (Qatar).[202]

2. Municipal Legislation

Oman was the first State in the Gulf region to claim an exclusive fishing zone. Article Five of the Omani Decree of July 17th, 1972 states that Oman exercises sovereign rights over the exclusive fishing zone of the Sultanate for the purposes of exploring, developing and exploiting its living resources, including but not confined to fish. Article Six provides that the exclusive fishing zone of Oman extends 38 miles seaward, measured from the outer limits of the territorial sea of the Sultanate.[203] This was altered when Sultan Qabus issued a decree on June 16th, 1977 which extended Oman's exclusive fishing zone to 200 miles.[204] It is assumed, however, that the provisions of Article Seven of the 1972 Decree on overlapping jurisdiction remain in force. Accordingly, where the coast of another State is opposite or adjacent to the coast of Oman, the outer limit of Oman's exclusive fishing zone may not extend beyond the median line every point of which is equidistant from the nearest points on the baselines of the territorial sea.[205]

Soon after Oman's claim of an exclusive fishing zone in 1972, Pakistan put forward a similar claim to an exclusive fishing zone of 50 miles from the coastline (March 20th, 1973).[206] At the same time, Summer 1973, Iran's Council of Ministers decided to extend Iran's exclusive fishing zone within both the Persian Gulf and the Sea of Oman.[207] This decision was manifested a few months later in the Proclamation of October 30th, 1973 concerning the Outer Limit of the Exclusive Fishing Zone of Iran in the Persian Gulf and the Sea of Oman, (some readers may dispute my reference to

this as Sea of Oman and not the Gulf of Oman. In Iranian legislation it is always referred to as 'the Sea of Oman) which was delivered by Mr. A. A. Hovayda the then Prime Minister.[208] The Iranian Proclamation, similar in outline to the Declaration of Pakistan, justified the claim to an exclusive fishing zone on historical, economic and legal grounds. It stated that:

> "Whereas the coastal communities of Iran have throughout history been engaged in fishing activities in the seas adjacent to the Iranian coast; and
> Whereas under Article 7 of the Law of 12th April 1959 on the territorial sea of Iran, fishing and other rights of Iran beyond the limits of its territorial sea have been reaffirmed; and
> Whereas the natural resources of the seas adjacent to the Iranian coast are of vital importance to the economic and social progress of Iran;
> Now, therefore, in order to safeguard the fishing rights and interests of Iran in the seas adjacent to its coast and the coasts of its Islands, it is hereby declared ...".

Article One of the Proclamation fixed the outer limit of Iran's exclusive fishing zone at the outer limits of Iran's continental shelf in the Persian Gulf, and at 50 miles from the base-points of the territorial sea in the Sea of Oman. Article One(a) provided that where the shelf boundaries of Iran with the neighbouring States had been demarcated, the outer limit of Iran's fishing zone would be the superjacent waters of the same boundaries as specified in mutual agreements. The principle of median line was adopted,

in Article One(b), for the delimitation of Exclusive Fishing Zone boundaries with those States whose shelf boundaries were not yet determined. As already mentioned above, the 50-mile limit claimed by Iran with respect to the Sea of Oman (in Article Two) was at that time identical to that claimed by Oman and Pakistan, Iran's two neighbours in the Sea of Oman. Article Two provided that where Iran's exclusive fishing zone overlapped those of other States, the boundary line should be a median line.

The proclamation was submitted to Majlis, Iran's lower House of Parliament, by Dr, A. A. Khalatbary, then Iran's Minister of Foreign Affairs, October 29th, 1973. Introducing the bill to Majlis, he said that failure to adopt provisions by the developing States on exclusive fishing zones has resulted in abuse of the situation by the developed, industrialized States. However, Article Five of the 1973 Proclamation specifically guaranteed freedom of navigation through the marine areas of the Iranian exclusive fishing zone.

Iran's Council of Ministers issued a second Pronouncement on May 22nd, 1977, which further extended Iran's exclusive fishing zone.[209] This extension was, however, confined to the Iranian fishing zone in the Sea of Oman. The Pronouncement, referring to the previous Proclamation of October 30th, 1973, stated that the outer limit of Iran's exclusive fishing zone extended up to the limits of a median line every point of which was equidistant to the base-points of the territorial waters of Iran to one side and of Oman to the other. It was not confirmed whether Oman has recognized Iran's exclusive sovereignty over certain small rocks and reefs hitherto considered as 'terra nullius". Nor was it clarified

whether some 'insignificant' Iranian islands in the Sea of Oman were claimed as base-points for Iran's exclusive fishing zone. It is, however, understood that, with Oman now claiming an exclusive fishing zone of 200 miles, Iran and Oman are acting in collaboration to prevent foreign vessels from fishing in their overall undefined exclusive fishing zones.

After Oman and Iran, other Gulf States put forward similar claims with respect to fishing. In May 1974, Saudi Arabia issued a Royal Pronouncement which fixed the Kingdom's exclusive fishing zone in the Persian Gulf (as well as in the Red Sea).[210] This Pronuncement contained no fixed limit up to which Saudi Arabia's exclusive fishing zone extended. However, it stated that for the purpose of determining the boundaries of the fishing zones between Saudi Arabia and adjacent or opposite States the median line would be used as the method of delimitation.[211]

A month later Qatar's Ministry of Foreign Affairs issued a Pronouncement on June 2nd, 1974 which fixed Qatar's EEZ. The Pronouncement stated that the outer limit of Qatar's EEZ would be delimited by mutual agreements with the neighbouring States. Pending an agreement, Qatar's EEZ would extend up to the outer limits of Qatar's continental shelf or to a median line. Article Two of the Pronouncement claimed exclusive rights for the State of Qatar to control, search, explore, exploit, fish and construct installations within the waters of the Persian Gulf adjacent to Qatar's territorial sea up to the limits of Qatar's continental shelf.[212]

NOTES

1. ALEXANDER, L. M., 'special circumstances: semi-enclosed seas', in GAMBLE and PONTECORVO, ed., 'Law of the Sea: The Emerging Regime of the Oceans', Cambridge (Mass): Ballinger Publishing Company, 1974, pp. 201 - 202.

2. 1958 UNCLOS, Official Records, Vol. VI, 8th meeting, March 12th, 1958, at p. 14, para. 23.

3. U.N. Doc. A/CONF.13/C.2.L.26, IV, Official Records, at 123.

4. BUTLER, W. E., "The legal regime of Russian territorial waters", 62 AJIL (1968), 56 - 58.

5. KNIGHT, 'The Law of the Sea: Cases, Documents and Readings', Washington D. C.: Nautilus Press, 1976, at 372 - 373.

6. Ibid.

7. Ibid, Annex F, at 4.

8. U.N. Doc. A/CONF.62/W.P.10, July 15th, 1977.

9. Ibid, Articles 56 and 57, for more information on the EEZ concept see PHILLIPS, J. C., 'The Exclusive Economic Zone as a concept in international law', 26 ICLQ (1977), p. 585.

10. ALEXANDER, op cit, note 1, p. 208.

11. Ibid, 208 - 212.

12. For original English draft articles of Iran see A/CONF.62/C.2/L.72 August 21st, 1974.

13. For Iraqi draft articles see A/CONF.62/C.2/L.71/add 2. August 21st, 1974.

14. For a study on Iraqi oil see AL-SALAM, A. W., 'Question of Iraq Petroleum', Cairo: Arab Katib Publishing House, 1967.

15. Supra, note 13.

16. See Section B on the Territorial Seas in the Persian Gulf.

17. YOUNG, R., 'The Persian Gulf', in CHURCHILL (and others), 'New Directions in the Law of the Sea', N.Y.: Oceana P., Vol. III, p. 240; also YOUNG, R., 'commentry', in GAMBLE and PONTECORVO, op cit, note 1, p. 237.

18. Supra, note 12.

19. Supra, note 8, ICNT, Article 122.

20. Article 1(a), supra, note 12.

21. Ibid, Article 1(b).

22. Ibid, Article III.

23. Ibid, Article IV.

24. Declaration of Iran at the 59th Session of the U.N. Sea-Bed Committee, U.N. Doc. A/AC.138/SR.59, p. 229.

25. Suratjalisat-i Majlis, October 29th, 1973.

26. Mr. Ansari at U.N. Sea-Bed Committee, supra, note 24.

27. AMIRIE, A., 'Iran's foreign policy posture toward the Persian Gulf and the Indian Ocean', Second New Zealand Conference on Asian Studies at Christchurch, New Zealand, May 14th, 1977, p. 8.

28. See infra, p.244 on the regional cooperation on Gulf security.

29. AMIRIE, op cit, note 27, p. 5n.

30. UNCLOS III, 2nd Committee, 38th meeting, August 17th, 1974.

31. ALEXANDER, op cit, note 1, p. 214.

32. Supra, note 8.

33. Supra, note 27.

34. This mutual suspicion has religous and cultural roots. Apart form the language differences, after the rise of the Safavid dynisty most of Iranians were converted into Shi'ism, while the overwhelming majority of Arabs are Sunni. Almost all residents of the areas in the borders between Iran and her neighbours are still Sunni.

35. Interview with Shaikh Sa'd Abdallah Sabah, Kuwaiti Minister of Defence, September 6th, 1965, '1965 Arab Political Documents', American University of Beirut, 1965, p. 327.

36. AMIRIE, op cit, note 27, p. 6; also the Times, April 24th, 1978, p. II.

37. For details see note 19.of 'An Introduction to the Persian Gulf', above, pp.230 - 231

38. TAHERI, A., Kayhan International, April 11th, 1976.

39. The Shah of Iran, interviewed by Frank Giles, the Sunday Times, London, April 16th, 1978, p. 11.

40. The Times, London, June 28th, 1978, p. 9.

41. For details see CHUBIN, S., 'Iran's foreign policy 1960 - 1976: an overview', in AMIRSADEGHI, H., 'Twentieth Century Iran', London: Henemann, 1977, p. 205.

42. HALLIDAY, F., 'Iran and Gulf', Middle East International, No. 77, November 1977, p. 10; also the Times, London, April 24th, 1978.

43. ABDUL-LATEEF, 'a security pact in the Gulf', Middle East International, January 1976, p. 21, at pp. 22 - 23.

44. On the day the Conference opened an Iranian F.14 Phantom jet was shot down over South Yemeni territory. See HALLIDAY, note 39.

45. The Times, London, June 28th, 1978, p. 9.

46. For details see, Financial Times, September 2nd, 1978, p. 2.

47. For details on all offshore boundaries in the Gulf see Chapter VII.

48. RAMAZANI, R. K., 'Iran's search for regional cooperation', 30 Middle East Journal (1976), pp. 173 - 186.

49. See, for instance, Joint Kuwaiti-Iraqi Communique, March 28th, 1965, supra, note 35, pp. 131 - 132.

50. Report of the Kuwaiti Technical Meeting on Coastal Area Development and Protection of the Marine Environment, June 1977; also see LIPPMAN, T. W., 'Kuwait officials are worried by frowing pollution of Gulf', International Herald Tribune, June 25th - 26th, 1977, p. 5.

51. Ibid.

52. United Nations Legislative Series (UNLS), 'National Legislation and Treaties Relating to the Law of the Sea', New York: U.N., 1976, p. 79; also see Kuwait (a bulletin published by the Embassy of Kuwait in London), No. 25, February 1978.

53. LAY, CHURCHILL and NORDQUIST, ed., 'New Directions in the Law of the Sea', New York and London: Oceana Publications, 1973, Vol, II, pp. 557 - 591.

54. Supra, Kuwait bulletin, note 52.

55. 12 ILM (1973), p. 1319.

56. A/CONF.62/C.3/L.6, July 31st, 1974.

57. WARROL, J., 'Plan to fight Gulf pollution', Financial Times, June 16th, 1977, p. 6.

58. Ibid.

59. Kuwait bulletin, supra, note 52.

60. Ibid.

61. It is estimated that the Persian Gulf is capable of yielding at least ten times the 50,000 tons a year it is estimated that

commercial fishing produces at present. See the Scotsman, February 22nd, 1978.

62. Ibid.

63. Ibid.

64. TAHERI, A., 'policies of Iran in the Persian Gulf region', in AMIRIE, A., ed., 'The Persian Gulf and Indian Ocean in International Politics', Teheran: Institute for International Political and Economic Studies, 1975, p. 270.

65. AHMED, N., 'Afghanistan shakes South Asia', The Times, May 2nd 1978, p. 4.

66. The Times, September 3rd, 1976.

67. Kayhan International, April 3rd, 1974.

68. Financial Times, February 2nd, 1978.

69. Ibid.

70. Financial Times, January 31st, 1978.

71. Ibid.

72. Ibid.

73. The Times, January 30th, 1978.

74. Supra, note 68.

75. Ibid.

76. The Times, September 3rd, 1976.

77. Arabic text, Royal Decree No. 6/4/5/3711, Umm al-Qura, Supp. No. 1263, Sha'ban 2, 1368. For English translation see 43 AJIL (1949), supp., Official Documents, p. 154.

78. Majmu'eh-i Qavanin (Iranian Official Gazette), 1338, the Law of Farvardin 22, 1338, pp. 3 - 4. For English text see UNLS, 'National Legislation and Treaties Relating to the Law of the Sea', New York: U.N., 1974, p. 18.

79. U.N. Doc. A/CONF.13/L.52 - 1.55.

80. Ibid.

81. U.N. Doc., supra, note 8.

82. Umm al-Qura, No. 1706, Sha'ban 3, 1377 (February 21st, 1958). For Englsih text see Middle East Economic Surbey, supp. No. 11, January 18th, 1963; also UNLS (1970), supra, note 78, pp. 114 - 116.

83. Mr. Amir Khosrow Afshar, Deputy Minister of Iran's Foreign

Affairs, in a statement made in the Iranian House of Senate on April 19th, 1969 stated that "the real and historical" name of the so called Shatt-al-Arab was Arvandrud. Suratjalasat-i Majlis-i-Sena, 1348. An unofficial English translation of this statement was reproduced in 8ILM (1969), 481.

84. See Sir Alexander Gibb and Partner's Final Report on the Shatt-al-Arab Scheme, September 1954. Also see AL-FEEL, M. R., 'al-Jughrafiyat al-tarikhiayh l-il-Kuwait' (The historical geography of Kuwait), Kuwait: Kuwait University, 1972, pp. 218 - 225.

85. 14 ILM (1975), p. 1133.

86. Supra, note 8.

87. Supra, note 79.

88. For all legal aspects of the League of Arab States see AL-GHUNAIMI, M. T., 'jameat-at-doval-al-Arabbiyah', (The League of Arab States), Alexandria, 1974; also ANTABAWI, M. F., 'The Arab Unity in Terms of Law', The Hague, 1963.

89. MACDONALD, R. W., 'The League of Arab States', 1965, Princeton U.P., Appendix G, p. 363 - 4.

90. Arab States claim the entire Gulf of Aqaba as 'internal' waters on historical grounds. The Arab League recommendation was made to secure the Arab security interests if the first position could not be accepted. See SELAK, 'A consideration of the legal status of the Gulf of Aqaba', 52 AJIL (1958), 660.

91. LAY (and others), op cit, note 50, pp. 852.- 853.

92. U.N. Doc. A/CONF.19/C.1/L.2, Rev. 1 of April 11th, 1960.

93. A/CONF.19/c.1/L10 of April 18th, 1960.

94. CATTAN, H., 'The Evolution of Oil Concessions in the Middle East and North Africa', Dobbs Ferry: Oceana Publication, 1967, at 14 - 15.

95. The breadth of the territorial sea of individual Gulf States is studied in next Section, infra, p. 262

96. BROWN, E. D., 'The U.N. Conference on the Law of the Sea: a progress report', 26 CLP (1973), 131, at 135.

97. Ibid, at p. 135.

98. On the importance of the Strait of Hormuz see Interplay, September 1970.

99. See Petroleum Economist, London, July 1976 for world demand; and the Economist, London, July 31st, 1976 for Gulf production.

100. TAHERI, op cit, note 64, p. 260.

101. GROISSANCES, 'Iran', p. 32.

102. YOUNG, op cit, note 17, p. 237.

103. TOWNSEND, J., 'Oman', London: Croom Helm Ltd., 1977, p. 174.

104. AMIRIE, op cit, note 27, pp. 6 - 7.

105. See above, note 46.

106. The Times, London, April 24th, 1978, Special Report, p.II.

107. Ibid.

108. These facilities are sometimes far more extensive than needs, such as the development of the port of Umm-Qasr in Iraqi coast by Soviets. SeeABIR., M., 'Oil, Power & Politics', London: Frank Cass, 1974, p. 6.

109. AMIRIE, op cit, note 64, p. 3.

110. The Shah of Iran, supra, note 39; also TOWNSEND, op cit, note 103, p. 183.

111. HALLIDAY, F. 'Arabia without Sultans', Harmondsworth: Penguin Books, 1974.

112. Iran has repeatedly made it clear that she could not remain indifferent to a political convulsion in Baluchistan which might affect the interests of Iran in the Persian Gulf. See The Times, May 2nd, 1978, p.4.

113. 218 The Annual Register (1976), p. 191.

114. The Times, London, April 24th, 1978, Special Report, p. II.

115. Al-Sayyad, Lebanon, March 25th, 1971.

116. Supra, UNLS (1976), note 52, p. 74.

117. CHUBIN, S., op cit, note 41, p. 266.

118. Kayhan, Teheran (Airmail Edition), No. 256, December 14th, 1977.

119. ABIR, op cit, note 108, p. 32.

120. YOUNG, op cit, note 17, p. 237.

121. DARMAN, R. G., 'the law of the sea: rethinking U.S. interests', Foreign Affairs, January 1978, p. 373, at 382.

122. ROWAN, C., 'superman of new Iran', Reader's Digest, March 1976, p. 101, at 104.

123. Supra, UNLS (1976), note 52, p. 334.

124. Supra, note 79, Article 14 of the Geneva Convention on the Territorial Sea (1958). Also the ruling of the ICJ in Corfu Channel Case, 1949.

125. McDOUGAL and BURKE, 'The Public Order of the Oceans', Yale University Press, 1962, pp. 251 - 252.

126. A/AC.138/SC.II/L.4

127. ODA, 'The Law of the Sea on Our Time - II, the U.N. Sea-Bed Committee 1968 - 1973', Leyden: Sijthoff, 1977, pp. 195 - 196; also see 'New Directions in the Law of the Sea', Vol IV, P. 330.

128. A/AC/138/SC.II/L.7, July 25th, 1972.

129. For details see AL-AWADHI, B., 'al-quanun al-dowali lil-bihar fil Khalij el-Arabi', Kuwait: Dar al Ta'lif, 1977, pp. 52 - 58.

130. A/CONF.62/L.16, July 22nd, 1974.

131. A/CONF.62/C.2/L.16, July 23rd, 1974.

132. A/CONF.62/C2/L.44, August 7th, 1974.

133. U.N. Doc., Supra, note 8.

134. Hugo Grotius defended the freedom of the seas for navigation by the Dutch against the Portugese who claimed exclusive sovereignty over the East Indies and the Indian Ocean. For full discussion on the freedom of the seas according to Grotius see MAGOFFIN, R. V. D., 'The Freedom of the Seas: A Dissertation by Hugo Grotius', New York: Oxford University Press, 1916, especially p. 7.

135. DARMAN, op cit, note 121, at p. 378.

136. For the texts of these three national announcements on temporary suspension of innocent passage see KNIGHT, op cit, note 5, pp. 344 - 345.

137. AL-AWADI, B., Supra, note 129.

138. ANNINOS, P., 'The Continental Shelf and Public International Law', La Hague: H. P. De Swart, 1953, p. 93.

139. Iranian Official Gazette of the Year 1313, the Law of Tir 24, 1313. For English text see UNLS (1951), 'Laws and Regulations on the Regime of the High Seas', U.N. Doc. ST/LEG/SER.B/1 at p. 81; also UNLS (1957), p. 24.

140. Iranian Official Gazette of the year 1334(1955), the Law of Khordad 28, 1334 (on the continental shelf), Art. 4.

141. Iran Press, No. 280, December 21st, 1958.

142. Supra, note 78.

143. DANISHVAR and PERRET, 'identification dellimites dans les eaux territorials Iraniennes du Gulfe Persique', paper given at Conference on Petroleum and the Sea, Monte Carlo, May 1965.

144. Iran's Ministry of Foreign Affairs' Archives; also see MEHR. F., "falati guarreh dar huquq-i bainol milal va Iran", Kanun-i Vokala, Vol. II, No. 3 (1338), PP. 1-19.

145. Ibid.

146. DEAN, A. H., 'The Geneva Conference on the Law of the Sea', 52 AJIL (1958), p. 610.

147. DEAN, A. H., 'the second Conference on the Territorial Sea', 54 AJIL (1960), p. 760.

148. ADAMIYAT, F., 'Bahrain Islands: A Legal and Diplomatic Study of the British - Iranian Controversy', New York: Frederick A. Praeger, 1955, pp. 81 - 102.

149. ARMAJANI, Y., op cit, pp. 164 - 165. For a collection of documents with reference to British intervention in Iran's internal affairs see MAKKI, H., 'kitab-i Siah', Teheran (1239).

150. For a recent example of such policies see the Announcement made by Libyan Arab Republic concerning the jurisdiction of the Gulf of Surt. It states that - "Because of the Gulf's geographical location ... it is, therefore, crucial to the security of the Libyan Arab Republic. Consequently, complete surveillance over its area is necessary to insure the security and safety of the State". (UNLS (1976), supra, note 52, p. 26). For general discussion see AKEHURST, M., 'A Modern Introduction to International Law', 3rd ed., at 166.

151. The Delegate of Iran in U.N. Doc A/CONF.19/c.1/SR.17, p. 9.

152. Royal Decree No. 6/4/5/3711, Umm al-Qura, 1263, Sha'ban 2, 1368. For English text see 43 AJIL (1949), supp., Official Documents, p. 154.

153. See SHUKAIRY, A., 'Territorial and Historical Waters in International Law', Beirut: PLO Research Centre, 1967, pp. 5 - 6.

154. UNLS (1970), p. 114.

155. Ibid, p. 89.

156. UNLS (1976), p. 25.

157. UNLS (1970), Supra, note 150, p. 97n. Also see ALBAHARNA, H. A., 'The Legal Status of the Arabian Gulf States: A Study of their Treaty Relations and their International Problems', Manchester: Manchester University Press, 1968, p. 281n(4).

158. Middle East Economic Survey (MEES) No. 11, January 11th, 1963.

159. See supra, as discussed under Saudi Arabia's territorial sea.

160. UNLS (1970), supra, note 150, pp. 96 - 98.

161. Ibid.

162. For the text of the Bahrain Order in Council see British and Foreign State Papers, Vol. 106, pp. 549 - 573.

163. As Dr. F. Adamiyat (Supra, note 148) reports the Bahrainis

strongly objected to the provisions of the Order in Council; thus it could not be brought into force for several years.

164. AL-AWADHI, op cit, note 137, pp. 73 - 74.

165. Umm al-Qura, No. 1708, Sha'ban 17, 1377.

166. Supra, note 8.

167. As quoted in KNIGHT, op cit, note 5, p. 183.

168. UNLS (1951), Vol. 1, pp. 22 - 30.

169. AL-AWADHI, op cit, note 137, p. 158.

170. 1 ICLQ (1952), p. 247; also 1951 ILR (1957), p. 151.

171. Supra, note 154.

172. ALBAHARNA, op cit note 157, p. 263.

173. Ibid, p. 283.

174. KNIGHT, op cit, note 5, Chapter on Territorial Sea.

175. AL-AWADHI, op cit, note 137, p. 164.

176. Supra, note 170.

177. CATTAN, op cit, note 94, p. 103.

178. LAY (and others), op cit, note 53, p. 852 - 853; also SEABROOK HULL, E. W., op cit, p. 4.

179. An Iranian historian, Mr. A. Eqtidarie, has recently written an article on Abu Musa. He calls the island 'Bu Musa', apparently to Persianise the obvious Arabic name 'Abu Musa'. See EQTIDARIE, 'Sargozasht-i tarikhy-i chihar jarereh dar khalij-i fars' (the history of four islands in the Persian Gulf), Yaghma, Teheran, No. 355, Farvardin 2537, p. 48.

180. For details see ALBAHARNA, op cit, note 157, pp. 304 - 305.

181. CURZON, 'Persia and Persian Question', 1892. Iran has always regarded the island of Abu Musa, as well as Sirri, Greater and Lesser Tunbs as her own territory. See MUKHBIR, M. A., 'marzhay-i Iran' (Iran's frontiers), Teheran, 1945, at 115 - 118; also RAZM-ARA, H. A., 'jazair-i khalij-i fars' in Khalij-i Fars Seminar, Teheran, 1342, Vol. 1, pp. 51 - 83. For further information on all Gulf islands see LORIMER, J. G., 'Gazetteer of the Persian Gulf, Oman and Central Arabia'; this book has been translated into Arabic by al Macktab al Thaqafi li Hakim Qatar, 'Dalil al-Khalij', Beirut: Dar al Arabiyah, 1969.

182. WRIGHT, D., 'The English Amongst the Persians', London, 1977, p. 68.

183. Buttes Gas and Oil Co. V. Hammer and another; Occidental Petroleum Corporation V. Buttes Gas and Oil Co. and another, (1975) 2 AELR p. 51. Also see YOUNG, R., 'The Persian Gulf', in 'New Directions in the Law of the Sea', Vol. III, 234.

184. (1975) 2 AELR, p. 51.

185. For the text see 15 MEES Supplement (1972); also the Shah of Iran, Press interview, Kayhan, January 29th, 1972 and the Ruler of Sharjah, Agreement on Abu Musa, November 30th, 1971 (FBIS, Daily Report, Middle East and Africa, V, No. 230).

186. UNLS (1974), op cit, p. 23.

187. Supra Sub-Section on the Strait of Hormuz.

188. UNLS (1976), op cit, note 52, p. 80 - 82.

189. Supra, note 186.

190. EQTIDARIE, op cit, note 179, p. 46.

191. Supra, Iran's Territorial Sea, p.263.

192. UNLS (1970), supra, note 157, p. 316.

193. Ibid, p. 369.

194. Ibid, p. 90.

195. Ibid, p. 98.

196. UNLS (1974), supra, pp. 10 - 11.

197. ALBAHARNA, op cit, note 157, p. 280.

198. U.N. Doc. A/CONF.4/42, p. 56.

199. Saudi Arabian Mission to the United Nations, N.Y., 1958, Appendix, Article 9, p. 42.

200. Supra, note 198, p. 59.

201. The Scotsman, February 27th, 1978.

202. Ibid.

203. UNLS (1974), supra, p. 24.

204. 31 Middle East Journal (1977), p. 478.

205. UNLS (1974) supra, p. 24.

206. UNLS (1976), supra, note 52, p. 344

207. Keyhan, Aban 9, 1352.

208. The original Persian text was published by Iran's Ministry of Foreign Affairs, 9th Diplomatic Department, October 30th, 1973; press report was appeared in Keyhan, Aban 8, 1352 (October 30th, 1973). For English text see UNLS (1976), supra, note 52, p. 334.

209. Kayhan, Khordad 21, 2536.

210. Okadh, May 1st, 1974, at p. 4. The text was published only in Arabic. Okadh is a weekly newspaper published in Jeddah, Saudi Arabia. The London School of Oriental and African Studies regularly receives this paper.

211. Ibid.

212. ALAWADHI, op cit, note 137, p. 158.

CHAPTER VI

THE CONTINENTAL SHELF OF THE PERSIAN GULF

The submarine areas are divided for legal purposes into different zones each of which is subject to a different legal regime. Moving outwards from land, they are (a) the sea-bed and subsoil of internal waters; (b) the sea-bed and subsoil of territorial waters; (c) the continental shelf; (d) the deep sea-bed and ocean floor beyond limits of national jurisdiction. In the case of semi-enclosed seas such as the Persian Gulf where there is no 'deep sea-bed' to be beyond national jurisdiction, the submarine areas are divided into (a) sea-bed and subsoil of internal waters; (b) territorial sea-bed, (c) the continental shelf.

The legal division of the maritime zones of the Persian Gulf was studied in Chapter IV. There it was pointed out that the internal and territorial waters as well as their sea-bed and subsoil are under the sovereignty of the State concerned. There is no need, therefore, for a separate study of the submarine areas of the internal and territorial waters of the Gulf. By contrast, the legal status of the marine areas beyond the limits of the territorial sea is different from that of their submarine areas. While the continental shelf inherently belongs to the coastal State, its superjacent waters are in principle part of the high seas. This distinction can be clearly seen in the case of those Gulf States which do not claim any EEZ beyond their territorial waters (like United Arab Emirates (UAE) and Bahrain) or beyond their contiguous zone (like Iraq).

This Chapter is devoted to the position of the continental shelf in the Persian Gulf, namely the submarine areas beyond the limits of territorial sea-bed. It is divided into two main Sections. Section I represents a detailed study on the practice of individual Gulf States concerning the continental shelf. Section II deals with major issues which create difficulties in the course of the delimitation of the continental shelf between different Gulf States.

I. STATE PRACTICE ON THE GULF CONTINENTAL SHELF.

The continental shelf policies of the Gulf States, as a regional oil producing group of States bordering a semi-enclosed sea, were studied in Chapter III. This Chapter deals in more detail with their practice with respect to their own continental shelves. It is intended to examine the practice of each individual State concerning all issues related to the continental shelf. The inclusion of the offshore concessions granted by the Gulf States within the scope of State practice requires some justification. It is controversial whether an oil concession should be considered a treaty, or analogous to one, or a State contract, or just a simple commercial agreement. Admittedly, the predominant feature of oil concessions is commercial, though such concessions under public law have often given rise to judicial precedents in various questions of international law.[1]

It is again disputed whether concessions should be construed in accordance with public international law or with the municipal law of the contracting parties, and if according to the latter whether to apply the host country's municipal law (Islamic law) or

the one applicable to concessionaries (mostly English or American laws).[2] The majority of oil concessions in the Middle East and North Africa are unspecific on this question and refer merely to general principles of law as applicable to the parties involved. However, some oil concessions such as the Anglo-Iranian Oil Company's concession (1933) have embodied an arbitration clause which has envisaged the application of public international law. Article 22 of the 1933 Anglo-Iranian Concession stated that the arbitral award should be based on the judicial principles contained in Article 38 of the Statute of the Permanent Court of International Justice. Also the Iranian Petroleum Act (1957) defined 'force majeure' in Article 13 as meaning 'occurrences which are recognized as such by the principles of international law'.[3]

In view of such precedents, the present Section covers all municipal legislation and proclamations as well as offshore oil concessions in reference to the Gulf States' practice on the continental shelf. However, the continental shelf practice of the United Kingdom is examined first because of ther protectorate relationship with a number of Gulf States prior to 1971.

A. United Kingdom

The practice of the United Kingdom as regards the continental shelf is of great significance to this study because of her previous maritime predominance in the Persian Gulf. It is necessary to draw distinction between the United Kingdom practice with respect to the continental shelf off her own mainland and the British practice in respect of the Colonies and Protectorates. By the time that the 1964 Continental Shelf Act and its subsequent

legislation provided a municipal law framework for the utilization of the United Kingdom continental shelf, the British were making arrangements to eliminate their commitments in the Persian Gulf. The British practice and policies with respect to the continental shelf off the coasts of the United Kingdom was studied in Chapter III. This Sub-Section presents the British policies and involvement with regard to the continental shelf of the Persian Gulf from 1949, when the United Kingdom sponsored the Continental Shelf Proclamations of the various protected Gulf States, till 1971, when the United Kingdom involvement in the Persian Gulf officially ended.

The various Arab States in the lower side of the Persian Gulf have been in special treaty relationship for more than a century with the British Government, which as the protecting Power, exercised extra-territorial jurisdiction by Order in Council within these States. However, the British practice with regard to these protected States differed from the State to another. For instance the Sultan of Oman and Muscat retained almost full sovereignty over his territory. The Omani Government's policy until 1970 was based on strict isolationism. On the other hand some other States were under absolute British control. In Bahrain, for instance, even the British Indian civil and criminal jurisdiction was in force. Despite all these internal variations, the external affairs of all the protected Gulf States were, both in law and in fact, dominated by the United Kingdom. Excluding Iran, Iraq and Saudi Arabia, all the other Gulf States which are now independent, were under the international responsibility of the United Kingdom.

As already mentioned,[4] the Bahrain Order in Council, 1913 enforced

the British foreign jurisdiction in Bahrain. This was allegedly necessitated by the lack of 'satisfactory legal and judicial systems' in Bahrain and other British protected States.[5] Most Gulf States, however, were in fact satisfied with the operation of the Islamic legal system. The position of the continental shelf within the Islamic legal framework may be consdiered as 'no-man's land', capable of exclusive appropriation only by 'effective occupation'. However, on the advice of the United Kingdom, all protected Gulf States issued in 1949 separate Proclamations asserting exclusive rights over the continental shelf adjacent to their coasts.[6]

The operative clauses of all these British sponsored Proclamations were virtually identical: each State declared the respective adjacent continental shelf to be subject to its exclusive sovereignty and jurisdiction. However, the Proclamations stated that there was nothing in them that might be interpreted as affecting dominion over the islands, or the status of the sea-bed and subsoil underlying any territorial waters. Furthermore, the Proclamation, it was specified, should not be interpreted as affecting the character of the high seas in the waters of the Persian Gulf beyond the limits of territorial sea, or the status fo the airspace above the continental shelf, or fishing activities.

All Gulf Proclamations on the continental shelf declared that the seaward boundaries should be determined after consultation with the neighbouring States in accordance with the principles of justice and equity. The United Kingdom made immediate efforts to define the continental shelf boundaries of various British dominated

States in the Gulf. For instance the first major round of negotiations in respect of Bahrain-Saudi Arabia continental shelf boundary was held in London in 1951. However, no effort was made to define the offshore boundaries between various protected States. In the case of the Trucial States, only land boundaries were defined according to British dictates. After due delimitational enquiry and survey, the boundaries between the seven Trucial States were settled without much difficulty in the late 1950's. As regards the continental shelf boundaries between the Trucial States and the neighbouring States, the United Kingdom entered into negotiations with Iran and Saudi Arabia in the mid-1960's. Whereas the negotiations with Saudi Arabia were basically conducted by the rulers of the respective Emirates, who were allowed to make their own arrangements with Saudi Arabia, British diplomacy was essential for all negotiations between Iran and the British Protected States. Usually the arrangements made by the United Kingdom were more favourable to the protected States than those arrangements made by the rulers themselves. For instance, the British delegation representing Bahrain in 1951 proposed a far better deal for Bahrain-Saudi Arabia continental shelf boundary than the one accepted by the ruler of Bahrain in 1958.

During Anglo-Iranian negotiations started in 1966, the United Kingdom succeeded in reaching a general compromise with Iran as to the method of continental shelf delimitation. It was mutually agreed that the continental shelf in the Persian Gulf should be delimited in accordance with the equidistance principle. The main obstacle arose through conflicting territorial claims which resulted in disputes over the base-points proposed for the construction of

the median line. The most significant achievement for the British was the fact that during negotiations conducted by Sir William Luce, the British Government special representative, Iran agreed to withdraw her territorial claim to Bahrain. The United Kingdom, on the other hand, made the token concession of recognising Iran's title over the three strategically important islands of Abu Musa, and Greater and Lesser Tunbs. This agreement between the two parties was not made public, although it was strongly hinted at by Senator Abbas Nas'udi of Iran several years later. He also stated that the negotiations between the Governments of Iran and of the United Kingdom achieved an agreement between Iran and Sharjah over the joint exploitation of the disputed submarine areas around the island of Abu Musa.[8] However, no other agreement was concluded as far as the delimitation of the continental shelf was concerned.

B. Saudi Arabia

It was on October 10th, 1948 within a Letter Agreement that Saudi Arabia first confirmed the rights of the Arabian American Oil Company (Aramco) over the submarine areas of the Persian Gulf adjacent to the Saudi Arabian coast.[9] This Letter granted Aramco concession rights over the sea-bed and subsoil of Saudi Arabia's north-eastern coast on the Persian Gulf which extended from the Saudi Arabia-Kuwait Neutral Zone southward.[10] The continental shelf rights of Saudi Arabia was officially asserted on May 28th, 1949 within a Royal Pronouncement,[11] similar in form to the Truman Proclamation, issued by King Abdul Aziz.

The 1949 Saudi Arabian Pronouncement declared the continental shelf of the Persian Gulf seaward from the coast of Saudi Arabia but

contiguous to her coast to appertain to Saudi Arabia and subject to her jurisdiction and control. The Pronouncement was justified on the grounds of self-protection and that the exercise of jurisdiction over the continental shelf resources by contiguous coastal State was 'reasonable and just'. It went on to state that the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore.

The Pronouncement recognised as high seas the superjacent waters and the appropriate legal character of the airspace above those waters. It also confirmed the freedom of navigation and fishing rights in the superjacent waters to be unaffected. Besides, it confirmed that 'the traditional freedom of pearling of the people of the Gulf' should be unaffected.[12] It is noteworthy that the Saudi Arabian Pronouncement was not exactly a Truman type declaration. As already mentioned in both Chapters I and II, in the Truman Proclamation the United States jurisdiction and control had been declared to be concerned merely with 'the natural resources of the sea-bed and subsoil'. By contrast the Saudi Arabian Pronouncement stated that the whole 'sea-bed and subsoil', and not merely the resources therein, were subject to the Saudi Arabia jurisdiction and control.[13]

The first submarine field off the coast of Saudi Arabia (Safaniya) was discovered and exploited by Aramco in 1951. This field, which has estimated resources of nearly 12,000 m. barrels of oil, is believed to be the largest offshore oil field in existence.[14] At present, Aramco has control over more than a dozen offshore discoveries in the Saudi Arabian sector of the Persian Gulf.[15]

In 1976 Aramco discovered the offshore field of Hasbah which lies about 25 miles south east of the Marjan and Zuluf (offshore) marine production complexes.[16] Both Marjan andZZuluf were shut down in 1976, but the latter was brought back on stream in 1978 and the former is expected on stream shortly.[17] In addition Aramco has been evaluating a potential offshore discovery named Quhqub. As will be seen in Chapter VII, Bahrain shares half of the revenue from the Saudi Arabian-operated Abu Saafa field that lies off the coast of the two States.

C. Bahrain

Soon after the Saudi Arabian Pronouncement, Slaman Ibn Hamad al-Khalifah, the ruler of Bahrain, issued a Proclamation asserting Bahrain's right to her adjacent continental shelf (June 5th, 1949). The Proclamation decreed that the submarine areas of the high seas of the Persian Gulf contiguous to the territorial waters of Bahrain belonged to Bahrain, and were subject to Bahrain's 'absolute authority and jurisdiction'.[18] This claim was justified by specific reference to the international practice brought about through the actions taken by other coastal States to exercise sovereignty over the natural resources of the continental shelf in the vicinity of their shores. However, the Bahraini Proclamation in fact not only proclaimed sovereignty over the natural resources of the continental shelf, but also over the entire continental shelf itself. Furthermore, the use of such words as 'belong' in reference to the continental shelf implied a sense of ownership rather than sovereignty, designed perhaps to preempt any Iranian territorial claim over Bahrain at that time.[19] The Proclamation went on to state that precise continental shelf boundaries with the

opposite and adjacent States would be determined in accordance with 'the principles of justice' after due negotiations with the neighbouring States.

As regards oil concessions the ruler of Bahrain had guaranteed in 1914 neither to develop Bahrain's petroleum resources himself nor to entertain overtures from any quarter seeking an oil concession without the approval of the British Government.[20] Iran registered a protest with the United Kingdom on July 23rd, 1930 against the establishment of any concession with Bahrain not granted directly by Iran.[21] However, Iran was not consulted when Bahrain's first commercial production well went on stream in 1932, this being the first on the Arab side of the Persian Gulf.[22] The ruler signed supplementary concession contracts with the Bahrain Petroleum Company in 1940 and 1942 which extended the 'exclusive area' of the 1934 Concession to all 'present and future' land and marine territories under his sovereignty.[23]

After the Bahraini Proclamation of June 5th, 1944 the question arose as to whether Bahrain's continental shelf was included in the oil concessions previously granted. It was established in the arbitrations between the rulers of Abu Dhabi and Qatar and their respective oil companies that previous concessions did not extend beyond the sea-bed and subsoil of the territorial sea. However, the continental shelf of Bahrain was regarded as being covered by the 1934 Agreement between the Ruler of Bahrain and the Bahrain Petroleum Company.[24] This was mostly due to the wordings of supplement contracts of 1940 and 1942 which expressly referred to all 'future' Bahraini marine territories.

The Bahrain Petroleum Company relinquished an offshore area of 2,500 square kilometres, lying northeast of the Island between Abu As'fa field and the adjoining Qatar offshore acreage, including the Fasht-al-Jarim area north of Bahrain and the Huwar islands and their surrounding waters. This area was granted by Bahrain to a subsidiary of the Continental Oil Company, on September 20th, 1965. The NIOC (Iran) protested to the American ambassador in Teheran about the acceptance of an oil concession by the American oil company from Bahrain.[25]

A s will be seen in Chapter VII Iran later withdrew her territorial claim over Bahrain and subsequently defined her continental shelf boundary with Bahrain. The Bahrain-Saudi Arabia offshore boundary was also defined. Bahrain has a half share of the offshore field of Abu Saafa that lies between Bahrain and Saudi Arabia. Production at Abu Saafa is exclusively Saudi, with no participation by Bahrain, and the arrangement depends only on the Saudi pledge to share its revenue.[26] However, there is a dispute between Bahrain and Qatar over possession of Huwar island which lies in the straits between the two States.

Bahrain's oil field is mostly in shallow zones which lie about 2,300 feet below the surface, However, about 8,000 feet farther down lies what is known as the Kuff zone, the main source of Bahrain's natural gas. Bahrain's reserves have never been big enough compared with other Gulf States. Reserves are now estimated at between 7,000 bn. and 9,000 bn. cubic feet, and current production is averaging about 332 m. cubic feet per day. The Bahrain Petroleum Company, a subsidiary of Caltex of the United States concluded a 60 - 40 takeover agreement in 1975. It was

announced in 1978 that the Government of Bahrain will take over 100 per cent ownership and control of the oil industry.[27]

B Qatar

The ruler of Qatar issued a Decree on June 8th, 1949 which asserted the rights of Qatar to her continental shelf.[28] Subsequently he granted joint offshore concessions to the Superior Oil Company and the Central Mining and Investment Corporation of London to operate within 12 mile submarine areas around the Qatar Peninsula.[29] Since the territorial sea of Qatar is only three miles, the area granted would cover nine miles of Qatar's continental shelf areas beyond the territorial sea. The validity of this offshore concession was challenged by Petroleum Development (Qatar) Limited which held concession rights over Qatar.

In May 1935, Shaikh Abdullah bin Qasim al-Thani, the ruler of Qatar had granted a 75 year oil concession to the Anglo-Persian Oil Company. Article Two of that Concession (which was transferred to Petroleum Development (Qatar) Limited, in 1946) provided that the Company could operate in the whole area over which the ruler of Qatar ruled.[30] The dispute over the extension of the area subject to the 1935 Concession was submitted to arbitration by the ruler of Qatar and Petroleum Development (Qatar) Limited.

Qatar took the position that the 1935 concession being merely a commercial contract could not operate as a treaty in international law, and therefore was only applicable to what was specifically mentioned. On the other hand the Compan's Arbitrator argued that the Concession was not a simple commercial contract, but neither was

it a treaty in the technical sense. However, since the Concession involved the State's vital interests it was in real terms more important even than an international treaty. In addition to that, even in a commercial contract, when expressions of international law are used, they must be interpreted with their particular meanings. Under international law words such as those used in the 1935 Argreement are considered to cover all areas including the continental shelf over which Qatar exercises jurisdiction. In other words, although in 1935 neither party thought of the submarine areas beyond territorial waters, these areas became included in the Agreement as soon as they were proclaimed part of the State territory in 1949. These arguments were contested by Qatar's Arbitrator on two grounds. First that in 1935 it would have been considered contrary to international law to proclaim sovereignty without effective occupation. Secondly, it would be absurd to consider the Agreement applicable to any land Qatar obtained in future.[31]

Lord Radcliffe, the third arbitrator, in April 1950 concluded that the doctrine of the continental shelf had not as yet assumed the hard lineaments of a rule of law. He gave an award in formal terms unaccompanied by reasons. It was submitted, however, that the umpire had to apply 'principles of law recognised by civilised nations'.[32] The decision was to the effect that the 1935 Concession included the sea-bed and subsoil of the territorial sea of Qatar, but not the sea-bed and subsoil or any part beneath the high seas of the Persian Gulf contiguous to Qatar's territorial sea.[33]

The same question also arose in other British protected Gulf States; Kuwait, Dubai, Abu Dhabi and Bahrain. All the respective

oil concessions stipulated the inclusion of all the territory, islands and waters of a State, and it was disputed whether they covered the State's continental shelf. Sir Hersch Lauterpacht, who was officially involved in problems connected with the continental shelf in the Gulf region, stated that the continental shelf (being ipso jure subject to the sovereignty of the coastal State) was covered by the oil concessions previously granted.[34] As already mentioned above,[35] this view prevailed with respect to Bahrain's continental shelf. A contrary view was developed by Sir Humphrey Waldock who maintained that the previous oil concessions did not include the continental shelf areas.[36] This opinion was upheld by the umpires in both arbitral cases concerning the continental shelves of Abu Dhabi and Qatar.

In 1952 Qatar granted an offshore concession to the Shell Overseas Exploration Company (later known as the Shell Company of Qatar) owned by Royal Dutch/Shell (80%) and Ente Nationale Incocarubur - Italian Company (20%). This concession covers an area of approximately 10,000 square miles of marine areas and it expires in 2027. The operating company, the Shell Company of Qatar Ltd., started exploration in 1953, but lost their original drilling platform in a storm in 1956. This was replaced and drilling operations recommenced in December 1959.[37] The production of Shell operating in Qatari offshore was 9.9 million tonnes in 1971,[38] 12.390 m.LT (13,921 m.LT) in 1975,[39] and averaged 230,000 b/d in 1977.[40] However, installed production capacity is considerably greater at 370,000 b/d from the three offshore fields operated by Shell Company of Qatar: Idd al-Shargi (30,000 b/d), Maydan Mahzam (180,000 b/d), and Bul Hanine (160,000 b/d). These fields are linked into an export terminal on the island of Halul.[41]

The Shell Company of Qatar relinquished about 60 per cent of its original concession area including nearly all areas off the Qatari east coast out to longitude 52 degrees, in 1962 - 1963.[42] Subsequently an offshore oil concession was granted to the International Maritime Oil Company in 1963.[43] At the same time the Continental Oil Company of Qatar was granted a concession over land and offshore areas relinquished by the Qatar Petroleum Company and the Shell Company of Qatar.[44] In March 1969 a Japanese consortium was granted an exploration concession in the southeastern offshore area, but later discontinued its search.[45]

The recoverable Qatari reserves offshore, at an estimated 1.6 bn. barrels, are about equal to those onshore.[46] It has been estimated that there could be between 40 and 60 trillion cubic feet of reserves. Qatar's vast quantities of petroleum-associated and non-associated gases are more important in the long run than oil.[47]

The Qatar General Petroleum Corporation was set up in 1974 to supervise the overall development of the Qatar's oil industry. In October 1976 the Qatar Petroleum Producing Authority was set up to have overall responsibility for the oil and gas industry in all aspects.[48] In autumn 1976 Qatar bought out the assets of the Qatar Petroleum Company. In February 1977 Qatar took full possession of her oil industry with the signing of an agreement whereby it acquired Shell's remaining 40 per cent share in the offshore operating venture.[49]

As will be seen in Chapter VII, Qatar's offshore boundaries with both Bahrain and Saudi Arabia are still undefined. In conjunction

with these disputes Qatar's Ministry of Foreign Affairs issued a Pronouncement on June 2nd, 1974 which fixed all Qatari offshore boundaries. Section One of this Pronouncement adopted as the outer limit of Qatar's continental shelf a median line every point of which would be equidistant from the base-points accepted in international law.[50]

E. United Arab Emirates

The Emirates of Abu Dhabi, Ajman, Dubai, Al-Fugarah, Ras al-Khaymah and Umm al-Qaiwain were under British protection before the establishment of the federal State of the United Arab Emirates (UAE) in 1971)[51] These Emirates asserted their rights in the continental shelf on the advice of the United Kingdim as early as 1949. The rulers of Abu Dhabia (on June 10th, 1949), Dubai (on June 14th, 1949), Sharjah (on June 16th, 1949), Ras al-Khaymah (on June 17th, 1949), Ajman (on June 20th, 1949), and Umm al-Qaiwain (June, no definite date, 1949), issued similar decrees proclaiming their exclusive rights to the continental shelves adjacent to their coasts.[52]

The long-standing British policy in the Persian Gulf fossilised the status of different protected Arab Emirates as separate and permanent entities. Against such a background the Rulers of the seven Emirates maintained the identity of their individual States within the federation of the UAE which was established after the British withdrawal from the Persian Gulf in 1971.[53] This is why there is no federal policy on the issues related to the law of the sea, and similarly with policies on oil, on defence, and on development. A classic example of this division is the case of Sharjah which

claims a 12-mile limit of territorial sea, while other member States of the UAE have only a three-mile territorial sea.

Within the constitutional arrangement of the UAE the power to define territorial waters is conferred to the federal State, but each Emirate maintains her exclusive sovereignty over the continental shelf resources. The problems involved with respect to the UAE continental shelf are, therefore, concerned with constitutional as opposed to international law. These constitutional questions are particularly problematic with regard to the delimitation of the continental shelf between different member States of the UAE. These second-order boundaries fall outside the scope of international law. The situation is similar to the dispute between the United States and California, 1947, Louisiana, 1950, and Texas, 1950. The American Supreme Court established that the Federal Government rather than individual federated States had control of the bed of the sea underlying territorial waters.[54]

The practice of Abu Dhabi and Sharjah with respect to the continental shelf needs special consideration.

1. Abu Dhabi

Abu Dhabi was the first among the Arab Emirates which asserted its own continental shelf rights. The ruler of Abu Dhabi signed a Decree on June 10th, 1949 claiming exclusive jurisdiction and control over the sea-bed and subsoil lying beneath the high seas of the Persian Gulf adjacent to Abu Dhabi's territorial waters.[55] After this Proclamation the ruler undertook to transfer his asserted rights in the continental shelf to the Superior Oil Corporation.[56]

This undertaking gave rise to the question of the effects of the 1949 Proclamation on any concession previously granted.

Other Gulf States and interested oil companies shared this concern about the seaward limits of previously granted oil concessions. As has been mentioned above, it was decided that the continental shelves of all Gulf States including that of Abu Dhabi but excluding Bahrain were excluded from concessions previously granted. The legal history of Abu Dhabi's position with respect to this dispute may be outlined as follows:

Shaikh Shakhbut Ibn Sultan Ibn Zayed, the ruler of Abu Dhabi, entered into a contract with Petroleum Development (Trucial Coast) Ltd., a British company, on January 11th, 1939. Articles Two (a) and Three of the Contract text which was in Arabic granted an 'exclusive' oil concession for 75 years. It covered the whole territory subject to the Shaikh's rule, its dependencies, and all the islands and 'sea waters'. Following the 1949 Abu Dhabi Proclamation, the Company took the position that the continental shelf of Abu Dhabi was included in the 1939 concession. On the other hand, Abu Dhabi argued that the concession covered neither the subsoil of territorial waters, nor the continental shelf beneath the high seas the subject of the 1949 Proclamation.

Article 17 of the 1939 concession provided that the parties should execute this Agreement in a spirit of good intentions and integrity, and to interpret it in a reasonable manner.[57] It further provided that any dispute should be referred to two arbitrators for decision with further provisions for an umpire if they disagreed. Accordingly

the dispute was referred to arbitration for a decision.

The Umpire, Lord Asquith of Bishopstone, had to decide whether the ruler of Abu Dhabi had had any exclusive rights over the submarine areas outside Abu Dhabi's territorial waters in 1939, or had acquired rights as a result of the 1949 Proclamation. If the Umpire confirmed that rights were held at either of these times he was then to decide whether the 1939 Agreement transferred such original or acquired rights to the Petroleum Development Company.

Lord Asquith stated that the expression 'sea waters' in the 1939 Agreement was identical to the limits of the territorial waters. Thus, he decided, that the 1939 concession included the bed and subsoil of the territorial waters. He decided, however, that the submarine areas outside the territorial sea were not included in the concession, and therefore might be subject to jurisdiction and control of Abu Dhabi.[58]

The most significant aspect of this Arbitration was the judicial test of the doctrine of the continental shelf. Lord Asquith gave a brief account of the developments achieved since 1945, summarising State practice and stressing the fact that no protests were registered by other members of the international community. He argued, furthermore, that neither the practice of States nor the pronouncements of jurists gave any certain or consistent answer to the concept of continental shelf. He mentioned that there were "so many ragged ends and unfilled blanks, so much that is merely tentative and exploratory, that in no form can the doctrine claim as yet to have assumed hitherto the hard lineaments of the definitive status

of an established rule of international law".[59] He, therefore, denied that Proclamations such as the one of Abu Dhabi on June 10th, 1949 had the legal effect of establishing for the ruler of Abu Dhabi such rights over the continental shelf as were already transferred to the Petroleum Development Company. Furthermore, he regarded draft articles on the legal regime of the continental shelf adopted by the ILC (1951) as a draft convention "on subjects which have not yet been regulated by international law, or in regard to which the law has not yet been defined".[60]

2. Sharjah

As already discussed,[61] Sharjah granted an offshore concession to the Buttes Oil and Gas Company in 1969. Occidental, another American company which held a similar concession from Umm al-Qaiwain, discovered a promising oil structure about nine miles off the coast of Abu Musa, an island the possession of which was disputed between Iran and Sharjah. Then the ruler of Sharjah issued a decree in March 1970, but dated September 10th, 1969 extending his territorial waters around Abu Musa to 12 miles. This would have meant that the discovered deposit was within Sharjah's territorial waters.

The British Political Resident of the Persian Gulf,[62] as well as Occidental and Umm al-Qaiwain, refused to acknowlege the validity of such a unilateral extension of Sharjah's territorail sea. However, following Iran's claim of sovereignty over Abu Musa and its 12-mile territorial sea, the United Kingdom instructed Umm al-Quwain to withdraw her claim over the disputed submarine areas.

As previously mentioned in Chapter V with regard to Sharjah's territorial sea, this extension of the territorial sea resulted in an action being brought at the English courts. Buttes argued that the English courts were not competent to deal with the conflicting territorial claims since they were acts of the States of Sharjah, Iran and the United Kingdom. The case based on the circumstances of 1970 did not affect the Buttes operation within the 12-mile territorial sea of Abu Musa especially following Iran's seizure of Abu Musa and two other islands (Greater and Lesser Tunbs) in 1971. The Governments of Iran and Sharjah reached an agreement on the submarine areas around Abu Musa, on November 30th, 1971. This 'Memorandum of Understanding' provided that the income from the natural resources of Abu Musa and its territorial sea should be equally shared between Iran and Sharjah. As far as the English Court action was concerned, Master Warren in Chambers decided on June 11th, 1973 that the English courts should not exercise jurisdiction in respect of 'acts of States'. Dr. Hammer and Occidental appealed against the order, but the details of the ruling of the Court of Appeal are not yet known.[63]

Since the validity of the Iran-Sharjah Agreement on Abu Musa has been questioned it is necessary to present an account of the developments which have occurred in respect of Abu Musa. In 1970 a representation by the ruler of Sharjah in Teheran resulted in a communication by Iran to the United Kingdom that in the Iranian Government's view the island of Abu Musa and its territorial waters to a distance of 12 miles were under the sovereignty of Iran. As a result the United Kingdom told the Umm al-Qaiwain ruler that he would have to impose limits on Occidental. The ruler eventually

complied with this ultimatum and told Occidental that they must not operate within the 12-mile territorial sea around Abu Musa.

On November 30th, 1971, the Iranian Armed Forces landed on the islands of Abu Musa, Greater Tunb and Lesser Tunb.[64] According to the official Iranian report, Iran was merely recapturing her own islands since these had been occupied for 80 years by British Imperialist Forces. The Arab version was understandably different, describing the incident as an act of aggression by military occupation of Arab territories.[65] The landing was effected peacefully in Abu Musa (on which an agreement had been reached). However, there was opposition to the landing in the Tunbs as the ruler of Ras al-Khaymah had sent in troops to oppose it. Three Iranians and one Arab died in the ensuing engagement.[66] Neither the British nor the UAE federal Government took any effective step.[67] The real interest of Iran has been to ensure her naval demination in the Strait of Hormuz and the Government has been active in developing Abu Musa and Tunbs as military bases.[68]

The Iranian Senator Abbas Masudi, the late chief editor of Ettela'at, argued several reasons for Iran's annexation of the Tunbs. Firstly, all geographical maps, including a comprehensive one printed by the USSR, showed the Tunbs in the same colour as other parts of Iranian territory.[69] Secondly the Tunbs are more than 40 Kilometres closer to Iran than to Ras al-Khaymah. Thirdly, the constant diplomatic protest by Iran against the British occupation of the islands has never been entirely rejected. Fourthly, the final diplomatic consultations between the Iranian and the British Governments were based on Iran's rights to these

islands after Iran withdrew her territorial rights to Bahrain. Lastly, Senator Mas'udi stated, regardless of Iran's title to the islands they had in any case to be Iran's possession because of their strategic importance to Iran and the region.[70]

Iran's military acquision of the islands resulted in an unsuccessfull complaint to the United Nations Security Council by Iraq and four other Arab States.[71] The arguments put forward before the Council, however, merit consideration. Iran's representative defended his country's position on several different grounds. Firstly that the islands had historically belonged to Iran before British occupation. Secondly, that all official British charts since 1870 showed the islands as part of Iran. Thirdly, the islands are geographically connected with other Iranian islands. Fourthly, Iran has been constantly protesting through diplomatic channels against the British occupation of the islands. Lastly, Iran's rights were asserted in Abu Musa within an agreement reached between Iran and Sharjah. Besides these points raised by Iran at the Security Council, Iran argued that the strategic position of these islands, located at the entrance of Hormuz, rendered their annexation to Iran essential for the sake of national security.[72]

The 1971 Iran-Sharjah 'Memorandum of Understanding' provided that the oil revenues gained from the submarine areas adjacent to the disputed island of Abu Musa should be equally shared between Iran and Sharjah. It did not, however, settle the two States' opposing claims of sovereignty over the island and its 12-mile

territorial sea.[73] The latest Iranian literature on Abu Musa indicates that an informal compromise has been reached. It is reported that all strategic locations within Abu Musa are exclusively occupied by the Iranian Armed Forces which command the Strait of Hormuz. The residential area of Abu Musa as well as all its land-based economic activities have remained under Sharjah's exclusive jurisdiction.[74]

The legal validity of the Iran-Sharjah Agreement on Abu Musa has been disputed by a number of Arab lawyers. They consider the Agreement legally invalid, since, it is alleged, the ruler of Sharjah was compelled to sign the Agreement under the constant Iranian threats of military occupation. This argument would certainly be developed further if the alleged circumstances were proven, and if the Government of Sharjah were to abrogate the Agreement. It was partly on a similar basis that in 1969 Iran abrogated the 1937 Iran-Iraq Treaty on the Shatt-al-Arab. Iran justified her abrogation on the grounds of British pressure upon Iran at the time the Treaty was signed.[75] However, under the present circumstances the alleged invalidity of the Iran-Sharjah Agreement is unacceptable since both parties seem to be standing by it. All necessary steps have been taken for practical implementation of the Agreement. For instance, the Concession originally granted by Sharjah to Buttes Gas and Oil Company (of the United States) was changed so that it would be in line with Iranian laws.[76] Furthermore, the Buttes concession was later transferred to Crescent Petroleum which at present develops an offshore field within Abu Musa's territorial waters, and whose proceeds are equally shared between Iran and Sharjah.

Professor A. M. Qatifi of Baghdad University disagrees with the conclusive validity of the arguments raised by Iran. In his analytical study of the case, Qatifi concludes that Iran's occupation of the 'Arab islands' could not constitute any sovereign right for Iran. He states that Iran's military action was contrary to three principles of international law; (a) the legal obligation of peaceful settlement of international disputes; (b) the prohibition of acts of aggression; (c) the generally accepted rules of decolonisation. Qatifi regards the Iranian action as a classic violation of the contemporary rules of international law. He holds the Government of Iran, as well as individual Iranian officials, responsible for a breach of international peace, in contravention of the principles set by the Nuremberg Court, 1946. Furthermore, he justifies any individual or collective military action by Arab States against Iran on the grounds of self defence, within the framework of Article 51 of the United Nations Charter.[77]

While Qatifi's conclusion on Iran's military action is reasonable, his legal analysis of the Iranian position with respect to sovereignty over the islands is not accurate. He analyses the various points argued by Iran separately and he respectively concludes that none of those points, in its own merits, constitutes any sovereign right. In doing so he unjustifiably fails to acknowlege the overall impact of the various arguments. It seems that the above-mentioned arguments raised by Iran, taken collectively, constitute a sound legal basis for Iran's sovereignty over the islands.

F. Kuwait

Kuwait, on the recommendation of the United Kingdom, proclaimed

exclusive rights over her continental shelf on June 12th, 1949.[78] The ruler of Kuwait signed an Oil Concession Agreement with the Kuwait Shell Development Company Ltd. on January 15th, 1961. Kuwait's continental shelf as established by the 1949 Proclamation was defined as the concession area in Article One of the 1961 Concession Agreement. The Agreement drew up by use of co-ordinates the precise boundaries of Kuwait's continental shelf. Included within the boundaries were all islands, islets and shoals which fall within the jurisdiction of Kuwait excluding certain specified islands.[79]

As will be seen in Chapter VII, Kuwait has as yet defined her continental shelf boundaries neither with Iran nor with Iraq. However, Kuwait has repeatedly declared her adherence to the 'median line' in delimiting the boundaries of her continental shelf. As regards Kuwait-Saudi Arabia offshore boundaries there was a Neutral Zone between the two States before partition was eventually effected in the mid 1960's. Both Kuwait and Saudi Arabia granted separate concessions for their as yet undivided half of the offshore area which constituted the Neutral Zone.

Petroleum exploitation has been highly productive both off the shores of Kuwait mainland proper and off the shores of the now partitioned Neutral Zone. The Kuwait Shell Petroleum Company operates within the submarine areas of Kuwait beyond the original six-mile, but within the current 12-mile territorial sea.[80] The current exploitation programme of the Kuwait Oil Company is concentrated on a wild cat well which is being drilled to a depth of up to 20,000 feet in the Kuff Zone where Kuwait's newly discovered

hydrocarbon resources lie. The offshore development's revolving mooring point (similar to those used in the North Sea) is projected to be operational in early 1979.[81] Kuwait moved to full ownership of her oil and gas industry in a process begun in 1974 - 75 and completed in 1977.[82]

G. Iran

Iran proceeded to enact legislation with regard to her continental shelf both in the Persian Gulf and the Sea of Oman in 1949. A draft bill was prepared after consultation with Professor Gidel of France.[83] The bill, having been approved by the Council of Ministers, was first submitted to Majlis, the Iranian lower House of Parliament, on May 19th, 1949.[84] The draft legislation lay before Majlis for several years,[85] and was eventually passed as the Law of Khordad 28, 1334/ June 18th, 1955.[86] The Law, consisting of five articles, gave no definition of the concept of 'continental shelf'. However, Article One stated that the Persian term 'falat-i qarreh' as used in the Law would have the same meaning as the English term 'continental shelf' and the French term 'plateau continental'.

Article Two of the 1955 Law provided that the continental shelf extending from the coast of the Iranian mainland and the coasts of the Iranian islands belonged to Iran and was under Iran's sovereignty. Thus, while the Law employed the term 'continental shelf', the rights claimed over the submarine areas seemed to be beyond the continental shelf doctrine. According to Article Two of the GCCS the coastal State exercises, over its continental shelf, only 'sovereign rights for the purpose of exploring it and

exploiting its natural resources.[87] The language of the Iranian Law characterises these rights as 'absolute sovereignty'. Furthermore, Article Two of the Iranian Law states that 'the submarine areas', and not merely the natural resources thereof, 'belong to Iran'. This implies the State's ownership of its continental shelf which is far from the continental shelf doctrine which merely provides an exclusive right for developing the resources of the continental shelf.

The Note to Article Two states that with respect to the Caspian Sea the international rules of inland seas will be applied. It is noteworthy that the Caspian, the greatest inland sea in the world, is very rich in minerals including oil. Soviet sources state that the total reserves of offshore petroleum in the Caspian are 'enormous'.[88] The USSR, having exploited several oil fields of the Caspian for years, has recently developed deep-water exploitation there. The Soviet authorities in 1978 discussed with British Petroleum the possibilities of joint drilling agreements for oil exploration in the Caspian. This included a possible involvement in the construction of an oil platform fabrication yard on the shores of the Caspian.[90] However, in the Iranian portion of the Caspian, no oil extracting has occurred.

The Iranian Act on Survey, Exploration and Exploitation of the Oil Resources (July 31st, 1957) is said to rank as one of the first well thought-out and comprehensive laws promulgated by oil producing States.[91] The previous Petroleum Law of December 2nd, 1944 had forbidden any cabinet minister to enter into negotiation for an oil concession or to grant it without prior authorization from the

Majlis. The 1957 Act recognised the National Iranian Oil Company (NIOC) as the owner of all Iran's oil resources and authorised it to divide Iran's on-shore and offshore areas into districts each of which should not consist of more than 80,000 square kilometres (Article Five). Furthermore, the NIOC was to ensure that at least one-third of the total exploitable districts including the continental shelf be set aside as National Reserves.

The NIOC was authorised to negotiate with competent bodies for oil exploitation both in land territory and offshore. According to Article 2 of this Act, the NIOC was enabled to make arrangements and sign agreements with any person whose technical and financial competence proved satisfactory. Any agreement signed by the NIOC should be submitted to the Council of Ministers. If the Council confirmed the signed agreement, it would be placed before the Legislature. Agreements would be enforceable only after approval by the Legislature and with effect from the date of such approval. The agreements approved by Legislature, together with the relevant laws and regulations, provided the body of rules which govern Iran's actions and policies with respect to matters related to the law of the sea.[92]

The area of concern of the 1957 Act, as described in Article One, was the whole territory of Iran as well as its continental shelf in the Persian Gulf and the Sea of Oman, excluding that part of the Iranian territory defined as the area of the NIOC-Consortium Agreement. As mentioned above, the Consortium rights in the Persian Gulf were limited to three miles of the territorial waters of the Iranian mainland and certain Iranian islands. Therefore, the whole

area of the continental shelf - as well as nine out of the twelve miles of the territorial sea-bed - were outside the Consortium agreement of 1954.

Accordingly the NIOC entered into agreements with a number of oil companies with a view to the exploitation of different zones of the continental shelf of the Persian Gulf. On August 12th, 1957, the Majlis ratified the joint venture agreement reached between the NIOC and the government owned Italian concern Agip Mineraria.[93] The total area under the Agreement was 22,700 square kilometres, covering considerable stretches of Iran's continental shelf.[94] The Agreement area consisted of offshore zones, two at the northern end of the Persian Gulf (partly on the coast but mostly offshore east of Abadan), and the others at offshore areas of the Sea of Oman.[95] Offshore oil exploration indicated the probable presence of large reserves, lying well out towards the centre of the Gulf.[96]

In accordance with the 1957 Act, the NIOC opened 'District One' for international bidding, 1958. Eventually the Pan American Petroleum Corporation, a wholly owned subsidiary of the Standard Oil Company of Indiana, reached an agreement with the NIOC to exploit the Iranian submerged resources, April 24th, 1958.[97] The Agreement area was an offshore zone of 16,000 square kilometres beneath the Persian Gulf. It was divided into two parts (a) north side of the Agip zone, (b) a zone adjoining the Agip to the south and extending to the median line of the Persian Gulf (excluding the consortium area). The Shah of Iran, pleased at achieving a 75/25% ratio of profit sharing within this accord, gives one of the most comprehensive accounts of the Pan American activities in the Gulf.[98] The Agreement called for the creation of a jointly owned company

called the Iran-Pan American Oil Company which started producing commercial quantities of oil in 1961 and proved a great success.[99]

Lack of information about the structure of the areas offered for bedding was a very serious problem. On June 22nd, 1958 Sapphire Petroleum Ltd., a Canadian Corporation, was granted an agreement to explore and exploit the Iranian offshore areas.[100] This proved to be a commercial failure and was cancelled by mutual agreement.[101] In 1963 the NIOC declared additional offshore areas open for bidding and in 1965 signed several joint ventures. An agreement was signed between the Farsi Petroleum Company and the NIOC in January 1965 to exploit offshore resources in Iran's continental shelf. The NIOC also signed two Joint Structure Agreements with Bataafse Petroleum Maatschappij N.W. (January 16th, 1965) and the Iranian Marine International Oil Company (January 17th, 1965).

In August 1966, the NIOC, the 'Enterprise de Recherches et d'Activities Petrolieres' (ERAP), a French State Agency, and one of its subsidiaries, Societe Francaise Des Petroles D'Iran (SOF IRAN) which acted as the general contracter, signed an offshore agreement.[102] This Agreement represented a new pattern in the Government-Company relationship, departing substantially from the traditional 50/50 profit-sharing system and the joint-venture type of agreement. The original offshore area as referred to in this Agreement includes the Iranian territorial waters and continental shelf. It includes also the area of the territorial water and continental shelf of any Iranian island situated within the boundaries described, except the islands of Kish, Kendurabi, Qishm and Hengan as well as their territorial waters. The boundaries are fully described in Schedule A of the Agreement as follows:

"From a point 19, defined below, the western boundary follows, in due south direction, along the meridian of 53°34'00" east longitude as far as its intersection with the boundary line of Iranian continental shelf.

The point 19 is the intersection of the said meridian with the three mile Seaward Boundary of the Agreement Area of the Iranian Oil Operating Companies. Its approximate geographical co-ordinates are:

53°34'00" east longitude
26°38'00" north latitude.

From the point 19, the northern boundary follows the three mile Seaward Boundary defined above, to its intersection (Point T) with the meridian of 26°00'00" east longitude, The approximate geographical co-ordinates of Point T are:

26°00'00" east longitude
26°40'15" north latitude.

Then from Point T, the eastern boundary follows in due south direction along the meridian of 56°00'00" east longitude as far as its intersection with the boundary line of the Iranian continental shelf."[103]

The Iranian offshore agreements - like most of the oil concessions agreements regarding mineral developments - embodied the so-called 'operating obligation clause'.[104] The NIOC emphasised that operating companies should carry out the due surveys within a given period of time. As a general rule, this period was not to be more than six months. Iran's policy was to discover and develop her petroleum resources to the maximum extent with all possible speed.[105]

The NIOC is entitled to terminate the oil agreements if concessionaries fail to relinquish their rights to parts of the assigned areas or to carry out drilling obligations.[106]

On July 27th, 1971 the NIOC signed a joint-venture with Amerada Hess Corporation, an American independent oil company. The allocated area was 3,715 square kilometres of Block I Bushehr offshore area. Another joint-venture company, named Hormuz Petroleum Company, was allocated 3,500 square kilometres of the Block II offshore Hormuz Strait. These new agreements constituted important differences from the previous types of partnership agreements, particularly as they would be governed by and interpreted according to the laws of Iran.[107]

In the Summer of 1974, the Majlis passed a new Petroleum Act as well as a new NIOC constitution, neither of which provided radical changes. The 1974 Act lays down regulations governing 'exploration and development' agreements not envisaged in the 1957 Act.[108] Accordingly in 1974 NIOC opened up new areas both onshore and offshore, the details of which are not as yet known.

H. Iraq

The Kingdom of Iraq asserted her claim over the continental shelf contiguous to Iraq's territorial sea in the Persian Gulf by an Official Proclamation issued on November 23rd, 1957.[109] It is suggested that the timing of this Proclamation was "directly related to the increased Iranian interests in the offshore zones".[110] After Iran announced certain submarine areas adjacent to her coast as 'open' for international bidding (spring 1958), Iraq issued a

new Proclamation on April 10th, 1958 which reasserted Iraq's rights to marine and submarine areas of the Persian Gulf adjacent to the Iraqi coast.[111] This Proclamation declared that Iraq automatically considered that the equidistance principle would govern the delimitation of her continental shelf boundaries in the absence of an agreement oroof special circumstances justifying another boundary line.[112]

After the 1958 Revolution, the Decree of November 4th, 1958 which extended the limits of Iraq's territorial sea to 12 miles, stated that the Decree provisions did not affect the Iraqi rights over the continental shelf beyond the territorial sea.[113] Again, when Iran and Kuwait in 1968 issued a joint communique on the delimitation of their continental shelves, Iraq issued a Declaration that she would not recognise the proposed Iran-Kuwait boundary line.[114]

As regards the Iraqi legislation on oil industry relevant to continental issues, reference must be made to the following laws:

The Government of General Qasim nationalised Iraq's oil industry on December 10th, 1961. Law no. 80, which expropriated 99.5 percent of concession areas held by foreign oil companies, confirmed Iraq's sovereignty over her 'submerged or non-submerged' oil fields.[115] The Law defining the exploitation areas of oil companies bound them to abide by Iraqi laws. The 1962 Statute granted the Iraqi National Oil Company full and exclusive right to exploitation of oil and gas in all Iraqi territories except for the areas covered by Law no. 80 of 1961.[116] Later, Law no. 97 of 1967, prohibiting any new oil concession, confirmed the 1962 allocation of oil deposit areas outside the coverage of Law no. 80 of 1961

to the Iraqi National Oil Company.[117] The operations of the Iraq Petroleum Company Ltd. in the areas defined under Law no. 80 of 1961 were finally nationalised by Law no. 69 of June 1st, 1972.[118] Also a State-owned company was established under the name of 'Iraqi Oil Operations Company' to develop all Iraqi oil resources.[114]

The only offshore agreement known to be granted by Iraq is a service contract signed in 1968 with Enterprise Des Recherches D'Activites Petroliers (ERAP). The offshore development of Iraq's continental shelf resources is subject to some complex arrangements since Iraq has not as yet defined her continental shelf boundaries with Iran and Kuwait. However, ERAP is putting three fields into production: Buzargan, Abu Ghrub and Fuka. A fourth find at Siba is gaseous and small.[120]

I. Oman

Oman asserted her continental shelf rights for the first time in June 1968.[121] Oman later fixed her continental shelf, as well as her territorial sea and exclusive fishing zone, in a Decree issued by the Sultan of Oman on July 17th, 1972.[122] Article Seven of this Decree provides that where the coast of another State is opposite or adjacent to Oman, the outer limit of the Oman continental shelf shall not extend beyond 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 Oman and the territorial sea of another State is measured.

The offshore exploration by Petroleum Development (Oman) Ltd, in 1968 and Wintershall A.G. in 1972 revealed no commercial quantities

off the northern coast of Oman.[123] Sultan Sa'id bin Taimur of Oman granted a 450-mile offshore concession to Wendell Phillips, an independent American oil man, in March 1971.[124] In October 1971 Robert Anderson received a concession on all offshore and land areas not already ceded to Petroleum Development (Oman) Ltd. and Wintershall, including those taken from Wendell Phillips.[125] Finally in 1973 an offshore oil consortium was granted a concession, but did not find oil reserves.[126] Further exploration is continuing offshore near Masirah, and in the Strait of Hormuz. Although some oil has been found in the Strait of Hormuz there is as yet no guarantee that the fields will ever be brought into production.[127]

II. THE DELIMITATION OF THE CONTINENTAL SHELF IN THE PERSIAN GULF

It is established that the entire submarine area of the high seas of the Persian Gulf constitutes a continental shelf. Thus the question of the national-international sea-bed boundary does not arise in the Persian Gulf. The chief difficulty in such cases as the Gulf is the delimitation of the continental shelf between adjacent and opposite States. The present Section deals with the rules of law applicable to the delimitation of the continental shelf in the Persian Gulf.

A. General Rules

As mentioned in Chapter IV, Article Six of the GCCS provides that in the absence of mutual agreement the boundary line between adjacent and opposite States should be a median line unless 'special circumstances' justify another boundary line. The ICJ,

however, in the North Sea Continental Shelf Cases established that the provisions of Article Six were not part of customary law and therefore were not in force against non-party States.[128] Since none of the Gulf States has ratified the GCCS (Iran alone has signed the Convention but has not yet ratified it), they seem not to be bound by the principle of 'equidistance - special circumstances' adopted in Article Six. It is, therefore, of great importance to examine the customary law on delimitation of such semi-enclosed seas as the Persian Gulf, especially in the light of State practice.

F. A. Vallat, writing in 1946, with specific reference to the Persian Gulf emphasised that the 'Truman-type' solution for the continental shelf definition and delimitation could not be applied to such narrow seas bordered by several States.[129] He further suggested that:

> "Perhaps the most equitable solution would be to divide the submarine areas outside territorial waters among the contiguous States in proportion to the length of their coastlines".[130]

J. M. Py critised Vallat's proposed delimitation of the continental shelf in accordance with coastline length for the following reasons:

> "a) favouring unduly States with a long coastline, b) separating some points of the continent from the continental shelf, although they might be dependent on one and form an organic whole, c) not providing the boundary line of the frontiers in accordance with which the division would be made."[131]

Py, instead, favours the median line principle as the best solution for delimitation where more than one State is on the same continental shelf.[132] However, both Py and Vallat admit that their proposed solutions may well not provide a satisfactory answer and advocate negotiations between the States concerned with a view to reach an agreement.

As to the practice of Gulf States, no precise definition regarding the outer limit of the continental shelf has been given in the proclamations and legislative acts adopted by the various Gulf States. However, most of these unilateral acts suggest that the boundaries of the continental shelf with the adjacent and opposite States should be determined by mutual agreement in accordance with equitable principles. Furthermore, some Gulf States such as Iraq, Kuwait, Oman and Qatar have expressly declared their adherence to the principle of median line as the method of shelf delimitation.

1. Mutual Agreement

The Saudi Arabian Royal Pronouncement of 1949 stated that:

> "The boundaries of such areas will be determined in accordance with equitable principles by our Government in agreement with other States having jurisdiction and control over the subsoil and sea-bed of adjoining areas."[133]

As already mentioned in the previous Section most other Gulf States referred to mutual agreement as the rule for the delimitation of their continental shelves. Particular emphasis has been given to mutual agreement which should be in accordance with equitable

principles. As will be seen in Chapter VII, the continental shelf boundaries of the Persian Gulf have been mostly determined by bilateral agreements. However, Iran and Iraq, whose continental shelf boundary is still undefined, both failed to refer to mutual agreement as the primary solution for continental shelf delimitation. The Iraqi Law of April 10th, 1958 omitted any specific reference to mutual agreement. Iraq simply declared her adherence to international practice on continental shelf delimitation and to the principle of equidistance.[134] Similarly Article Three of the Iranian Law adopted that the delimitation of continental shelf should be determined "in conformity with equity". Furthermore, the Government was to take "the necessary diplomatic measures" in any case where disputes arose in defining continental shelf boundaries.[135] The Law omitted any mention of agreements to be negotiated, though such negotiations are obviously covered by the vague reference to "diplomatic measures". In practice, however, Iran has put much emphasis on mutual agreement as the basis for continental shelf delimitation. This is borne out in Iran's practice during the past two decades. As will be discussed in Chapter VII, Iran has chiefly established her continental shelf boundaries in the Persian Gulf through agreements with neighbouring States.

2. Equitable Principles

Almost all regulations promulgated by various Gulf States adopt the concept of equitable principles for the purpose of the delimitation of the continental shelf. For instance, Article Three of the Iranian Law on the Continental Shelf (June 18th, 1955) states that the delimitation of the continental shelf should be determined "in conformity with equity".[136] In addition to such expressions

made in the national legislation of individual Gulf States, the concept of equitable principles has always been the unquestionable basis for continental shelf delimitation in all negotiations conducted by the Gulf States. Reference may be made to the Geneva meeting of Octover 1963 where the representatives of Iran, Iraq, Kuwait and Saudi Arabia expressed their agreement on working together to reach equitable settlement of offshore boundary disputes.[137]

However, as mentioned in Chapter IV, the exact content of equity in the context of continental shelf delimitation is not clear. It is established that equitable principles do not always require the application of the equidistance method. Whatever method is applied for delimitation, it is essential that the result must be equitable.

3. Equidistance Principle

The 1949 Proclamations did not expressly utilise the equidistance principle as a basis for the delimitation of the continental shelf. Since then, however, some Gulf States such as Iraq (1958), Kuwait (1971), Oman (1972) and Qatar (1974) have expressly declared their adherence to equidistance principle. The Iraqi Government within the Proclamation of April 10th, 1958 declared that Iraq's continental shelf boundaries should be delimited in accordance with equidistance principle.[138] Similarly Article Seven of the Omani Decree of July 17th, 1972 adopted the median line as the only basis for all Oman's offshore boundaries.[136] Again, the Government of Kuwait in its 'Information Concerning the Boundary of the Continental Shelf' has stated that:

> "Kuwait is not a party to the Geneva Convention on the Continental Shelf. However, Kuwait is aware of the provisions

> of the Convention and in exercise of its sovereign right has adopted the 'median line' in delimiting the boundary of the continental shelf with its neighbours."[139]

It is generally accepted that the median line is the most applicable boundary in the Persian Gulf in all cases where there is failure to reach agreement. Dr. H. M. Al-Baharna, writing in the early 1960's, stated that all coastal States of the Persian Gulf had already by then accepted the codified rules of the GCCS concerning the median line as a valid expression of international practice.[140] It should not be overlooked, however, that at that time apart from Iraq other Gulf States failed to express their adherence to the median line principle. Until then most national proclamations and legislation usually referred to mutual agreement and equitable principles, rather than the median line. Nonetheless, it is undeniable that the Gulf States have in practice come to consider the equidistance principle as a rule of custorary international law.[141]

The median line norm has been universally applied in the Persian Gulf for continental shelf delimitation, but frequently with modifications. Such modifications have been inevitable as a result of the obvious special circumstances which exist in the Gulf. The most important occurrences of partial departure from the median line are due to the presence of islands and the unity of deposits, as well as political, economic and strategic considerations. These will be discussed in the following Section as major difficulties in the delimitation of the continental shelf of the Gulf. Here, by way of example, reference may be made to the Abu Dhabi - Qatar

Agreement whereby the median line was modified to preserve the unity of known deposits. On the other hand, the Iran-Saudi Arabia Agreement is an example of a modification of the median line necessitated by the presence of islands.

B. Major Difficulties in the Delimitation of the Gulf Continental Shelf

None of the coastal States in the Persian Gulf region is party to the GCCS.[142] Iran signed the Convention subject to the reservation that she regards the Persian Gulf as one of the special circumstances referred to in Article Six. Iran has not yet ratified the Convention. In the absence of any multilateral or bilateral convention governing the delimitational issues among the Gulf States, their continental shelf boundaries should be determined under customary rules of international law. As established in the previous Sub-Section, the Gulf States have considered the equidistance principle as a rule of customary international law. This general rule, however, has sometimes been modified in the Gulf region in order to provide equitable results.

Three major factors influence objectively the application of equidistance principle in the Persian Gulf. First is the presence of islands on the continental shelf; second, the determination of the base-points for the measurement of the continental shelf; third, the preservation of the unity of hydrocarbon or mineral deposits. In addition to these major factors, there are some historical, political and strategic considerations which influence the apportionment of the continental shelf between respective Gulf

States. For instance, the Iran - Sharjah Agreement on the submarine areas around Abu Musa was signed mainly on a political and strategic basis. Again, token concessions were made by both sides in the Iran - Bahrain Agreement basically on historical grounds. Such political or historical considerations, however, do not constitute any major problem concerning the delimitation of the Gulf continental shelf.

1. Presence of Islands

One of the main difficulties with respect to determining the continental shelf boundaries in the Persian Gulf is the presence of numerous islands. Most of these 130 islands and islets are usually uninhabited and small.[143] For instance, there are many low-lying islands to the north of the western part of the Trucial coast. These islands are salt-plugs, formed during the gigantic folding movements which created the Zagros and Hajar ranges in the Pliocene and Cretaceous periods.[144] All these small islands and rocks are extremely important in respect of offshore boundaries since they are assumed to generate their own territorial waters. The territorial sea-bed for these small islands in itself amounts to a substantial area of the narrow sea of the Persian Gulf. Yet the Gulf States claim continental shelf rights for a considerable number of islands in addition to their territorial waters.

The claim of a separate territorial sea for small islets and rocks is not, strictly speaking, legal in international law. However, the Gulf States claim territorial sea rights for all 'islands' regardless of their size and natural conditions. For instance, Article One of the Saudi Arabian Decree of February 16th, 1958

defines the term 'island' as any islet, reef, rock, bar or permanent artificial structure not submerged at lowest tide.[145] Similarly Article One of the Kuwaiti Decree of December 17th, 1967 claims territorial sea rights for all Kuwaiti islands. Here the term 'island' is defined as "a naturally formed area of land surrounded by water, which is above water at mean high-water tides". However, Article Two considers all low-tide elevations (submerged at high tide) situated not more than 12 miles from the mainland or from Kuwaiti islands as the baseline for the territorial sea.[146] Again, Article One of the Omani Decree of July 17th, 1972 states that the territorial sea of Oman should be measured from the low-water line of the coast of the mainland or of "an island, rock, reef or shoal more than twelve nautical miles distant from the mainland or another island, rock, reef or shoal".[147]

As already discussed, the extent to which islands and islets affect the continental shelf boundaries is disputed.[148] There are three main attitudes which respectively advocate either full or partial effect or no effect for islands on the continental shelf boundaries. In the Gulf region, Iran formerly maintained that no effect should be given to islands in the Persian Gulf. The Iranian proposal in respect of the continental shelf of islands, submitted to the 1958 UNCLOS reads as follows:

> "Where an island or islands exist in a region which constitutes a continuous continental shelf, the boundary shall be the median line and shall be measured from the low-water mark along the coasts of the countries concerned, provided, however, that where special circumstances so warrant, the median line shall

be measured from the high-water mark along the coastline of the countries concerned."[149]

Mr. Rouhani, a member of the Iranian delegation in the Fourth Committee of the 1958 UNCLOS explained that:

> "The question that arises, however, is how to trace the median line in relation to islands. It is clear that, if they are to be taken into account, serious complications will arise and the benefit of having adopted the median rule will be lost by the diffuculty of applying it. It is because such difficulties are always encountered that the Delegation believes that the most convenient and most equitable solution is ... not to permit islands situated much farther out than the territorial sea to have any influence on the boundary."[150]

The Iranian proposal in the 1958 UNCLOS was defeated by two votes in favour (Iran and Italy), 33 against, and 21 abstentions. The United Kingdom delegation noted that the case of any island should be individually considered and be accordingly treated.[151] Then Mr. Rouhani, the Iranian representative, pointed out that the median line principle could in no way infringe the Iranian sovereignty over any island situated on a median line which might be established in the Persian Gulf.[152]

Since 1958, Iran has abandoned her support for the 'no effect' argument, claiming continental shelf rights for a number of Iranian islands in the Persian Gulf. In the 1960's, Iran maintained that the baseline for measuring the median line in the Gulf should be

fixed from the southern edge of the Iranian island of Qeshm. Again the Iranian island of Kharg was given a partial effect on continental shelf delimitation in the 1968 Iran-Saudi Arabia Agreement. However, Dr. A. Movahhed, one of Iran's negotiators on continental shelf delimitation, has recently expressed the view that no island in the Persian Gulf should be given any continental shelf rights. He, exceptionally, asserts that the Iranian island of Kharg merits a full continental shelf because of its particular individual characteristics.[153] This is the official Iranian position with respect to the Iran - Kuwait continental shelf boundary.

In the absence of any recognised criterion in contemporary international law regarding the effects of islands in continental shelf delimitation, the Gulf States have solved such problems by diplomatic negotiations. The trend in the Persian Gulf has been to ignore all islands lying in the centre of the Gulf. In most boundary agreements the equi-distance principle has been adopted between the coasts of mainlands, but, owing to respective consideration, certain islands have been given full effect or partial effect. Thus, in the drawing up of the Iran - Qatar, Iran - Abu Dhabi and Iran - Oman continental shelf boundaries the existence of all islands has been ignored.[154] Similarly in the Abu Dhabi - Qatar offshore boundary agreement (1969) the presence of Abu Dhabi's island of Dayyinah was ignored. On the other hand, in the Iran - Saudi Arabia Agreement (1968) the island of Kharg was given half effect. Also, in the Bahrain - Saudi Arabia Agreement (1958), only some islands were taken into account while others were totally ignored. Sometimes the islands were granted a belt of territorial sea but not any continental shelf rights. By way of example, the Saudi Arabian island of Al-Arabiyah

and the Iranian island of Farsi were given only a 12-mile territorial sea in the Iran - Saudi Arabia Agreement. Also in the Abu Dhabi Qatar Agreement, it was recognized that Abu Dhabi's island of Dayyinah was entitled to a territorial sea of three miles.

2. Baseline

One of the major difficulties with respect to the delimitation of the Gulf continental shelf is the problem of drawing a baseline from which the median line could be measured. As already mentioned in Chapter V in respect of the territorial waters in the Gulf, the normal baseline is the low-water line along the coast.[156] However, as demonstrated in the 1958 UNCLOS, Iran sought to establish that semi-enclosed seas such as the Persian Gulf were subject to the 'exceptional circumstances' clause as provided in Article Six of the GCCS. Iran proposed to have it specifically provided in Article 72 of the ILC (1957) draft convention that the median line in such cases could be measured from the high-water mark of the coasts of the mainlands of the States concerned. Its proposal defeated, the Iranian Delegation to the 1958 UNCLOS advocated retention of the wording when Article 72 came before the plenary session of the Conference. Dr. Ahmad Matin-Daftary, the distinguished Iranian lawyer and statesman, had to acknowlege that - "Every law which is too strictly worded is inevitably broken".[157] Mr. Bartos of Yugoslavia opposed the words "unless another boundary line is justified by special circumstances" incorporated in Article 72 as not being backed up by any manual of international law. To this comment Dr. Matin-Daftary (Iran) replied that there was no mention of the 'special circumstances' clause in international law manuals because the continental shelf itself was a new subject.[158]

The most significant advantage that Iran sought by her proposal at the 1958 UNCLOS was the departure from the general rule which provides for the construction of a median line drawn from the low-water mark. Iran held that the application of this general rule would create inequitable results in the delimitation of the continental shelf between Iran and her neighbouring States. This inequitable result would be created firstly because of the presence of several small non-Iranian islands in different parts of the Persian Gulf; and secondly, because of particular geographical features of the Iranian coast. It was demonstrated that the identification of the low-water line of the Iranian coast was difficult. To reach an equitable delimitation Iran favoured ignoring all islands on the continental shelf.[159] Accordingly the base-points for the median line would be the coastline of the mainlands of the States concerned. Furthermore, Iran proposed that the baseline for the execution of the median line should be measured from the high-water mark.[160]

The practice of the Gulf States varies as to determining the base-points for the application of the median line. In the Iran-Qatar Agreement (1970) as well as the Iran-Abu Dhabi Agreement (1971) the boundary is an equidistant line between the coasts of the two opposite States. But in the three other accords of Abu Dhabi-Qatar, Iran-Bahrain and Iran- Oman the base-points are certain points mutually agreed upon. An example of the problem of determining the exact baseline of the continental shelf boundary between adjacent States is the Neutral Zone between Saudi Arabia and Kuwait. As already mentioned in the previous Section, both Saudi Arabia and Kuwait have adopted that their continental shelf boundaries should be determined by mutual agreement. Furthermore, they have both

acknowleged the principle of median line as the basis for the delimitation of their continental shelf. However, as will be seen in Chapter VII, the two States have disagreed over the exact base-points from which a median line should be drawn.

In summation, the 1958 Iranian proposal to adopt the high-water line has been abandoned in all continental shelf negotiations conducted by the Gulf States. The baselines for the determination of the continental shelf boundaries have been mutually agreed with due consideration given to each individual circumstance. The low-water mark has been widely accepted as the baseline, especially in all agreements which involve the territorial sea boundaries of the States concerned. For instance, Article One of Iran-Saudi Arabia Agreement (1968) specfies that the two islands of Al-Arabiyah and Farsi possess a 12-mile belt of territorial sea "measured from the line of lowest low-water on each of the said islands".[161]

3. Oil and Gas Deposits

As previously mentioned in Chapter IV, the existence of substantial mineral or petroleum deposits across the boundary line of the continental shelf may constitute a 'special circumstance' under the terms of Article Six of the GCCS. Some early authorities on continental shelf issues, such as M. W. Mouton have also suggested that the strict application of the equidistance principle may involve the danger of a petroleum-pool being divided between different States.[162] Theoretically, the fact of the coastal State's exclusive authority over the natural resources of the continental shelf requires that the 'unity of deposits' should always be considered.[163] Accordingly it is suggested that a boundary line other than a median line be drawn in order to preserve the unity of deposits. However, this

concept undermines the permanent character of existing offshore boundaries by considering them contingent on possible future discoveries of deposits across the boundaries. It is, therefore, undesirable to consider the preservation of the unity of deposits as fundamental in continental shelf delimitation. Instead, as already suggested in Chapter IV, appropriate legal criteria should be identified for the apportionment of such deposits straddling the continental shelf boundaries between the States concerned.

In the Persian Gulf several oil fields along and across the international boundaries belong to the same geological structure. Two oil fields between Iran and Iraq, one field between Saudi Arabia and Bahrain and other fields between Saudi Arabia and Kuwait (in the Neutral Zone) and between Abu Dhabi and Qatar, lie across the international offshore boundaries.[164] Such situations give rise to the problem of 'capture' in the course of exploitation of oil and gas. A major example of oil capture occurred in May 1963. It happened in the overlapping submarine areas between Saudi Arabia and Kuwait as a result of the exploitation of two adjoining fields. The Safaniya field which fell within Saudi Arabia's jurisdiction and was operated by Aramco, reportedly inclined towards the Japanese-held acreage in the Neutral Zone. The Japanese production threatened to drain away Aramco's Safaniya field.[165]

Needless to say, arrangements for orderly development of fields such as that of Safaniya, should be made on a sound and permanent basis. In the Safaniya case as a practical solution to the capture problem, Aramco increased the producing capacity of this field to meet the urgent need to offset Japanese production.[166] The legal

solution in such circumstances is either to agree to share the resources without regard to sovereignty over the place of production, or to apply methods of delimitation other than equidistance principle.

In the Saudi Arabia-Bahrain Agreement (February 22nd, 1958) it was stipulated that the exploitation of the oil resources of the hexagonal area of Abu Sa'fa would be carried out by Saudi Arabia on condition that one half of the net revenue accruing to Saudi Arabia from such exploitation would belong to Bahrain.[167] Again, the same conclusion was reached in the Kuwait-Saudi Arabia Agreement (1965) concerning the submarine areas adjacent to the now partioned Neutral Zone.[168] Similar arrangement was made regarding the offshore field of Hagle Elbundng straddling the offshore boundary of Qatar and Abu Dhabi (1969).[169] With respect to Saudi Arabia's practice in such circumstances one cannot overlook the arrangements made in the Saudi Arabia-Sudan Agreement of May 16th, 1974 concerning the submarine areas of the Red Sea.[170] There, by Articles Three and Four, each party recognised the other's exclusive sovereign rights over its continental shelf area which in either case lies adjacent to the coast and extends seaward to a line where the depth of the superjacent waters is uninterruptedly 1000 metres. The two Governments according to Article Five, recognized the submarine areas lying beyond 1000 metre depth as a 'common zone' where the two States have 'equal sovereign rights in all the natural resources.' It is also significant that the two States have accepted the compulsory jurisdiction of the ICJ in respect of any dispute arising from the Agreement (Article XVI).

On the other hand, Article Four of the Iran-Saudi Arabia Agreement (1968)

provided that no oil/gas drilling operations should be conducted by either party within a Prohibited Area, extending to 500 metres in width on each side of the boundary line.[171] Furthermore, within a letter dated October 24th, 1968 both Saudi Arabia and Iran agreed that the operations prohibited by Article Four of the Agreement should include not only direct expolitation from the 1000 metre Prohibited Area but also extend to "all drilling operations which could be carried out within the Prohibited Area from installations which are themselves located outside it."[172] Similarly Article Two of the Iran-Qatar Agreement (1969) prohibits any drilling operation on either side of the boundary line within a zone of 250 metre in width.[173] The same provisions have been stipulated in Article Two of the Iran-Bahrain Agreement (1971)[174] and in Article Two of the Iran-Oman Agreement (1974).[175] All these Agreements have provided a broad framework for future mutual agreements with respect to the oil or mineral deposits straddling the boundary lines.

Notes

1. For legal rules and principles relative to oil concessions see CATTAN, H., 'The Law of Oil Concessions in the Middle East and North Africa', New York: Oceana Publications, 1967, pp. 1 - 15. For issues related to the legal nature of oil concessions see ibid, pp. 20 - 27; MAGHRABY, M., 'Permanent Sovereignty Over Oil Resources: A Study of Middle East Oil Concessions and Legal Change', Beirut: Middle East Research and Publishing Centre, 1966; also MANSOURI-NARAQI, M., 'naft', Teheran, 1971, Persian text.

2. ANNINOS, P., 'The Continental Shelf and Public International Law', La Haye: H. F. De Swart, 1953, p. 125.

3. CATTAN, op cit, note 1, p. 69.

4. See Chapter V, Sub-Section on Bahrain's Territorial Waters.

5. This was argued by the Lord Privy Seal when he was questioned in the British Parliament in 1963 as to how long the United Kingdom was going to maintain responsibility for these States. It was mentioned that the United Kingdom would give these

States all assistance to develop and improve their jurisdiction.

6. United Nations Legislative Series (UNLS), 'Laws and Regulations on the Regime of the High Seas', 1951, Vol. 1, pp. 22 - 30.

7. ANNINOS, op cit, note 2, p. 33.

8. MAS'UDI, A., 'Khalij-i fars dar dowran-i sarbolandi va Shokuh' (The Persian Gulf in its heyday), Teheran: Ettela'at, 2532, pp. 87 - 89. Iran and Saudi Arabia had already agreed on this insular exchange.

9. CATTAN, H., 'The Evolution of Oil Concessions in the Middle East and North Africa', New York: Oceana Publications, 1967, p. 17.

10. ALBAHARNA, H. M., 'The Legal Status of the Arabian Gulf States', Manchester University Press, 1968, p. 291.

11. UNLS (1951), supra, note 6, p. 22.

12. The Pearl fishing falls undoubtedly within the natural resources of the continental shelf. Since Paragraph Four of Article Two of the GCCS defines natural resources to consist of the mineral resources together with living organisms belonging to sedentary species, the pearling comes in law as the exploitation of a sedentary species. See YOUNG, R., 'the Persian Gulf' in LAY, CHURCHILL AND NORDQUIST, ed., 'New Directions in the Law of the Sea', New York: Oceana Publication, 1973, Vol. III, p. 236.

13. YOUNG, R., 'Saudi Arabia offshore legislation', 43 AJIL (1949), supp., at p. 530.

14. Standard Oil Company of Califirnia Bulletin, July 1958.

15. FRAZER, F., 'chances for North Sea skills', The Times, London, November 21st, 1977, p. I.X.

16. SHIRREFF, D., 'power house for new industry', supra, note 15, p. I.

17. McDERMOTT, A., 'oil production', Financial Times, April 17th, 1978, p. 19.

18. UNLS (1951), supra, note 6; also Official Doc., 43 AJIL (1949), supp., pp. 185 - 186.

19. Especially because the Iranian draft legislation of May 19th, 1949, employed the same expressions. See UNLS (1957), p. 25.

20. ADAMIYAT, F., 'Bahrain Islands', New York, 1957, p. 197.

21. Ibid.

22. Financial Times, April 3rd, 1978.

23. ELY, N., 'Summary of Mining and Petroleum Laws of the World' (1961); Chapter 6 on Arabian Peninsula Countries, as supplied by ALBAHARNA, op cit, note 10, p. 300.

24. HAY, R., 'The Persian Gulf States', Washington, D.C.: The Middle East Institute, 1959, p. 62.

25. ALBAHARNA, op cit, note 10, p. 301.

26. Financial Times, April 3rd, 1978.

27. Ibid.

28. UNLS (1951), supra, note 6.

29. LENCZOWSKI, 'Oil and State in the Middle East', Cornell University Press, 1960, p. 131.

30. (1951) ILR, p. 161.

31. ANNINOS, op cit, note 2, pp. 125 - 127.

32. Ibid, p. 128n.

33. (1951) ILR, p. 161.

34. LAUTERPACHT, E., ed., 'International Law: Collected Papers of Hersch Lauterpacht', Cambridge University Press, 1977, Vol III, p. 143.

35. Supra, Bahrain's practice on the continental shelf, p. 304 - 307

36. WALDOCK, H., 'the legal basis of claims to the continental shelf' in Grotius Society, 36 (1950), p. 115.

37. Aramco Handbook, Oil and the Middle East, 1968, note 12, at 87.

38. JABRIL, 'oil of the Arabian Peninsula', unpublished paper, Department of Mining Engineering, University of Strathclyde, 1974.

39. The Times, London, September 3rd, 1976.

40. Financial Times, February 22nd, 1978,

41. The Times, London, September 3rd, 1976.

42. ALBAHARNA, op cit, note 10, p. 301.

43. Cattan, op cit, note 9, p. 17.

44. Supra, note 37.

45. 'Middle East and North Africa, 1976 - 77'; London: Europa Publication, 1976, p. 585.

46. Financial Times, February 22nd, 1978.

47. The Times, London, September 3rd, 1976.

48. The Scotsman, February 27th, 1978,

49. Financial Times, February 22nd, 1978.

50. Iran's Ministry of Foreign Affairs. For original Arabic text see AL-AWADHI, B., 'al-quanun al-dowali lil-bihar fil Khalij-el-Arabi', (international law of the sea in the Arabian Gulf), Kuwait: Dar al Ta'lif, 1977 - 78, p. 158.

51. For the United Arab Emirates see HAWLEY, D., 'The Trucial States', London: Allen and Unwin, 1971.

52. Supra, note 6.

53. Financial Times, June 26th, 1978, pp. 11 - 12.

54. ANNINOS, op cit, note 2, pp. 50 - 56; also see BISHOP, 'International Law: Cases and Materials', Boston and Toronto: Little, Brown & Company, 1971, pp. 641 - 643.

55. Supra, note 6.

56. The Superior Oil Corporation was associated with the Central Mining Corporation of London, though its operations in the Persian Gulf were carried out by the International Marine Oil Company registered in Canada.

57. ICLQ (1952), pp. 248 - 250.

58. Ibid.

59. Ibid.

60. Ibid.

61. See Chapter VI, Sub-Section on Sharjah's territorial water, p.274

62. The duties of the Political Resident of the Persian Gulf were primarily concerned with upholding the 'Pax Britannica' in the Persian Gulf which was to endure until 1971. The Resident was an important political figure able, with the help of naval forces stationed in the Gulf, to assert the authority with which he was entrusted. For details see WRIGHT, D., op cit, p. 65.

63. (1975)AELR, 2, p. 51.

64. Statement of the then Iran's Premier A. A. Hoveyda to the Majlis, Persian text, Majlis proceedings November 30th, 1971; also Iran's Ministry of Foreign Affairs, 'ravabit-i Khariji-i Iran dar sal-i 1350', pp. 412 - 413. For English text see FBIS, Daily Report, Middle East and Africa, V. No. 230 (November 30th, 1971). For full account of the instance see RAMAZANI, R. K., 'The Persian Gulf: Iran's Role', University Press of Virginia, 1972, pp. 56 - 58; also ABIR, M., 'Oil, Power and Politics: Conflict in Arabia, the Red Sea and the Gulf', London: Frank Cass, 1974, pp. 19 - 20.

65. For an Arab version of the case see AL-QATIFI, Dr. Abdol Hossein, 'Qazziyyato jozar Abu Musa va Tunbain fil quanun i dubalil',

Revued Droit Compare, (Majellat al Qanun al Muquaren), Vol. 4 et 5 (1972), Faculty of Law and Political Science, University of Baghdad, p. 53.

66. MAS'UDI, op cit, note 8, pp. 87 - 89.

67. SHAIKH SAQR, the ruler of Ras al-haymah, interviewed by Geoffry Weston, The Times (London), April 24th, 1978, Special Report p. XVIII.

68. HALLIDAY, 'Arabia Without Sultan', London, map no. 15; also see 'Middle East and North Africa', supra, note 45.

69. Also in a map drawn in 1881 by the U.K. Ministry of Defence the islands had the same colour as Iran's territory, this was changed later. An unpublished M.s. research done by students of Political Science and Party Affairs (Iran), 1350. (A copy of the work is kept in the Ministry of Foreign Affairs, Students Department).

70. MAS'UDI, op cit, note 8, pp. 87 - 89.

71. U.N. Security Council, 9 - 12 - 1971.

72. The Shah of Iran, Figaro, September 28th, 1971.

73. 15 MEES Supplement (May 5th, 1972). also The Announcement of Shaikh of Sharjah (November 30th, 1971) on Abu Musa Agreement, FBIS, Daily Report, Middle East and Africa, V. No. 230. Also the Shah of Iran, press interview, Kayham, January 29th, 1972.

74. EQTIDARIE, A., 'sargozasht-i tarikh-i chihar jazira dar khalij-i fars', Yaghma, No. 355, Farvardin 2537/1978, p. 49.

75. For details see Chapter VII, Sub-Section on the Iran-Iraq continental shelf boundary.

76. Shah of Iran, supra, note 73.

77. QATIFI, op cit, note 65, p. 101.

78. Supra, note 6, p. 26.

79. For both Arabic and English texts see al-Kuwait al-Youm, No. 311, January 22nd, 1961, at p. 68; also UNLS (1970), supra, p. 374.

80. 'Kuwait in Pictures', Visual Geography Series, USA (1972), p. 57.

81. Financial Times, February 27th, 1978.

82, WALTERS, D., 'Kuwait: a sound legacy', Middle East International, No. 82, April 1978, p. 15.

83. The Iranian legal system is based on the GFrench system, and most prominent Iranian lawyers are French educated. I came across this piece of information about Professor Gidel's advice on

Iran's continental shelf in a Persian book written by Nurzadeh-Bushihrie, E., 'falat-i quarreh va jazayer-i Khalij-i fars' (the continental shelf and islands of the Persian Gulf), Teheran: Tabish, 1338, p. 96.

84. Sourat jalisat-i Majlis (Majlis Debating Proceedings), 1328 (1948 - 49).

85. The delay was entirely due to Iran's internal political situation and had no bearing on the contents of the bill on the continental shelf. Majlis was engaged with the nationalization of oil industry in Iran: Law of March 20th, 1951 on Oil Nationalization; Law of May 2nd, 1951 on Regulating Nationalization of Oil Industry. The 1951 nationalization of Anglo-Iranian Oil Company ended up in a three and a half year deadlock, until arrangements with an international consortium (Iranian Oil Participants, Ltd.), on October 25th, 1954. (Madjmoo'eh-i Qavanin-i Iran) For English texts see Iranian Embassy, Washington D.C., 'Some Documents on the Nationalization of Oil Industry in Iran' (Washington n.d.). The 1954 Agreement (Scheduled to run till 1994) was terminated in May 1973 when Iran required the ownership of her fields and of the refinery.

86. Majmueh-i quavanin-i Iran (Iranian Official Gazette), 1334, the Law of Khordad 28, 1334, pp. 79 - 81. For English text see UNLS (1974), supra, p. 151; also CHURCHILL and NORDQUIST, ed., 'New Directions in the Law of the Sea', New York: Oceana Publication, 1973, Vol. 1, p. 307.

87, GCCS Article Two, as was discussed in Chapter II.

88. ALBERS, J. P., 'offshore petroleum: its geography and technology', in GAMBLE and PONTECORVO, ed., 'Law of the Sea: The Emerging Regime of the Oceans', p. 293 at 300.

89. LASCELLES, 'tapping the riches of the Caspian', Financial Times, February 3rd, 1977, p. 5.

90. Financial Times, June 22nd, 1978, p.1.

91. Majmu'eh-i qavanin (Iranian Official Gazette), no. 3642 (1336), pp. 154 - 166. For English translation of articles relevant to the sea-bed activities see UNLS (1970), supra, p. 367; also CHURCHILL (and others) ed., op cit, note 86, Vol I, p. 309.

92. Explanatory remarks made in the note of June 20th, 1968 from the Permanent Representative of Iran to the United Nations. See CHURCHILL (and others), above, note 91, Vol. I, p. 309.

93. The Act of Sharivar 2, 1336 regarding NIOC - Agip Mineraria Agreement, Majmu'eh qavanun (Iranian Official Gazette), 1336 (1957), pp. 201 - 242.

94. FESHARAKI, op cit, p. 70.

95. Supra, note 93; also LENCZOWSKI, op cit, p. 12.

96. ODA, 'boundary of the continental shelf', 12 Japanese Annual of International Law (1968), p. 264 at 265 - 272

97. Iranian Official Gazette, 1337; also TADJ-BAKHSH, op cit, p. 106.

98. Pahlavi, M. R., the Shah of Iran 'Mission for my Country', op cit, pp. 280 - 285.

99. FESHARAKI, op cit, pp. 71 - 72.

100. Iranian Official Gazette, 1337, pp. 45 - 52.

101. FESHARAKI, op cit, p. 94n.

102. Selected Documents of International Petroleum Industry, 1966, Opec, p. 132.

103. Ibid, pp. 173 - 174.

104. The 'operating obligation clause' contain obligations concerning the work performance, the safety of the equipment and personnel, safeguarding the rights of others and protecting the maritime pollution.

105. See, for example, Selected Documents of International Petroleum Industry, Opec (1971) p. 55. Article 12 (1) of Agreement between INOC and Amerado Kessi Corporation (Busher Petroleum Company), July 27th, 1971. Also Article 13(7) of Farsi Petroleum Company of 1965, Petroleum Legislation, 1966, p. 19.

106. For main features of the Iranian offshore agreements see, LENCZOWSKI, op cit, at pp. 82 - 84. For an illustration see Joint Structure Agreement between NIOC and Mobil Oil Corporation (MOPECO), 1971 (Selected Documents of International Petroleum Industry, 1971).

107. FESHARAKI, op cit, pp. 76 - 78.

108. majmueh-i qavanin (Official Gazette), 1974.

109. al-waqai'al-Iraqiyah (Iraqi Official Gazette), No. 4069 of November 27th, 1957. For English text see UNLS (1970), op cit, p. 368.

110. LENCZOWSKI, op cit, note 29, p. 129.

111. UNLS (1970), op cit, p. 369.

112. Ibid; also North Sea Continental Shelf Cases, separate opinion of Judge Ammoun, 41 ILR (1970), p. 136.

113. UNLS (1970), op cit, p. 89.

114. For details see Chapter VII, Sub-Section on Iran-Iraq continental shelf.

115. AL-MOSAWI, M., 'Iraq's Oil', (translated into English by IBRAHIM, S. J.), Baghdad: Iraq's Ministry of Information, 1973, pp. 98 - 100.

116. Ibid.

117. HASSAN, M. S., 'Towards Nationalization of Iraq's Oil', Baghdad, 1971, p. 95.

118. 'Naftona: min mohavelat-al eltifat el al-ta mim', Baghdad, 1972; for English text see AL-MOSAWI, op cit, note 115, p. 173; also 11 ILM (1972), p. 846.

119. Ibid.

120. 'Middle East and North Africa', op cit, p. 101.

121. Offshore Activity Petroleum Press Service, June 1968, p. 204.

122. UNLS (1974), op cit, p. 23.

123. HALLIDAY, op cit, note 68, p. 291.

124. Ibid; also TOWNSEND, 'Oman', p. 21.

125. HALLIDAY, op cit, p. 297.

126. Ibid, p. 291.

127. TOWNSEND, op cit, p. 19.

128. For details see Chapter IV.

129. VALLAT, F. A., 23 BYBIL (1946), p. 335.

130. Ibid, pp. 336 - 337.

131. U.N. Doc A/CN.4/32, July 14th, 1950, p. 108.

132. U.N. Doc A/CN.4/SR.69, July 17th, 1950.

133. UNLS (1951), Vol. I, p. 22.

134. UNLS (1970), op cit, p. 369.

135. Supra, note 86.

136. Ibid.

137. MEES, No. 51, October 25th, 1963, as quoted in ALBAHARNA, op cit, note 10, p. 244.

138. UNLS (1974), supra, p. 27.

139. Ibid, p. 152.

140. AL-BAHARNA, op cit, note 10, p. 289

141. BROWN, E. D., 'The Legal Regime of Hydrospace', London: Stevens, 1971, pp. 41 - 74.

142. Treaties in Force, U.S. Department of State, Pub. No. 8847, January 1st, 1976.

143. YOUNG, R., op cit, note 12.

144. HAWLEY, op cit, note 51, Appendix A, p. 272.

145. UNLS (1970), supra, p. 114.

146. Ibid, pp. 97 - 98.

147. UNLS (1974), supra, p. 23.

148. See Chapter IV, Section on Islands.

149. U.N. Doc. A/CONF.13/C.4/L.25/Rev.1, at p. 133.

150. UNCLOS, 1958, Official Records, Vol. VI, Forth Committee, 33rd meeting, Para. 2, at p. 96.

151. Ibid, p. 92 and 142.

152. Ibid.

153. MOVAHHID, M. A., 'naft-i ma va masael-i huquqi-i an' (our oil and its legal problems), Teheran: Kharazmi, 1970, p. 237.

154. For details see Chapter VII.

155. UNLS (1976), supra, p. 403.

156. Article Three of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958).

157. U.N. Doc. A/CONF.13/SR.9.P.3.

158. Ibid.

159. UNCLOS 1958, supra, note 150, pp. 92 and 142.

160. Ibid, p. 92; also BROWN, op cit, note 141, p. 64.

161. UNLS (1976), supra, p. 404.

162. MOUTON, The Hague Recueil, op cit, pp. 420 - 421.

163. GIDEL, 'Reports on the Continental Shelf of ILC', IIYILC (1950), p. 112.

164. CATTAN, op cit, note 9, p. 11.

165. MEES, No. 38, July 26th, and No. 32, June 14th, 1963.

166. Ibid.

167. UNLS (1974), supra, p. 413.

168. For details see Chapter VII.

169. Ibid.

170. UNLS (1976), supra, p. 452.

171. UNLS (1976), p. 404.

172. Ibid, p. 406.

173. UNLS (1974), p. 416.

174. Ibid, p. 428.

175. AL-AWADHI, op cit, p. 167.

C H A P T E R VII

THE CONTINENTAL SHELF BOUNDARIES IN THE PERSIAN GULF

The aim of this Chapter is to present a detailed background to all continental shelf boundaries, whether actual or potential, in the Persian Gulf. It is divided into two main Sections: defined boundaries and undefined boundaries.

I. DEFINED CONTINENTAL SHELF BOUNDARIES

The greater part of the line which contains the continental shelf boundaries of the Persian Gulf has been formed as a result of delimitation between Gulf States over the past two decades. The delimitation has always been achieved through mutual agreement and never by judicial or arbitral procedures. An early definition of international offshore boundaries was essential in the Gulf region because the concession areas had overlapped at various points. Thus, the settlement of such disputes was of great importance, not only to the Gulf States, but also to giant oil companies which played a major role in early offshore boundary settlement in the Persian Gulf.

This Section presents a legal analysis of the defined offshore boundaries in the Persian Gulf. The study has been arranged in chronological order to demonstrate the developing trends pursued by the Gulf States in respect of continental shelf delimitation.

A. Bahrain-Saudi Arabia

The first offshore boundary agreement in the Persian Gulf region

was concluded between Bahrain and Saudi Arabia on February 22nd 1958.[1] The provisions adopted in this Agreement were considered of great significance since they could be regarded as the leading precedent for offshore boundary agreement in the Gulf region. Unique status was also attached to this Agreement in formal terms as it was signed personally by the King of Saudi Arabia and the Ruler of Bahrain.

Paragraphs 1 to 15 of the First Clause of the Agreement described in detail 15 specific geographical locations which, joined together, would form the boundary line between Saudi Arabia and Bahrain. All these directions were based on an approximation of the median line or a 'middle line' as the original Arabic text suggests. Paragraph 16 stated that everything that is situated to the left of 'the middle line' belongs to Saudi Arabia and everything to the right of that line belongs to Bahrain. However, the Second Clause of the Agreement provided that the irregular hexagonal zone of Abu Saafa, located on the high seas of the Persian Gulf to the left of the dividing line, was subject to special reservation. Paragraph One to Six of the Second Clause described this zone as residing within six defined sides, giving their latitudes and longitudes. The average distance between the six points of the above-mentioned area is 14.21 nautical miles with a minimum and maximum distance varying between points of 0.5 and 26.25 mautical miles respectively.[2] This area, situated north of Bahrain, was mutually agreed to be part of the portion falling to Saudi Arabi and thus subject to Saudi Arabia's exclusive jurisdiction. It was, however, agreed that the oil resources of this area should be subject to an equal division of profit, even though the resources were to be developed as Saudi Arabia would see fit. A Commission was designated

(in the Fourth and Fifth Clause) to carry out the necessary surveys for the establishment of the boundary as provided in the Agreement.[3]

An analysis of the Bahrain-Saudi Arabia Agreement by the United States Department of State (Office of Geographer) has stated that:

> "The delimitation of the continental shelf boundary (CSB) between the two countries employs a variation of the equidistance principle. The CSB is not a median line based on the configuration of the coastline, but rather a line midway between predetermined landmarks on both Bahrain and Saudi Arabian territory. Examples of this latter principle are Points 1 - 6, 10 and 11 of the CSB which are equidistant between fixed landmarks onthe respective territories. An additional variation of the principle involved in determining a median line, is that in the case of Points 1 - 4, and 7, small islands between the coasts were not utilized in determining the midpoints between Bahrain and Saudi Arabian territory."[4]

Another major feature in the Bahrain-Saudi Arabia Agreement is its unique legal arrangement for the development of Shaft Abu Sa'fah. This hexagonal area, which has been allocated to Saudi Arabia, was originally claimed to belong to Bahrain. The area was covered by the 1941 concession granted by Bahrain to the Bahrain Petroleum Company, but the drilling was suspended owing to Saudi Arabia's objection. The two States agreed in 1954 to divide the Fasht into two parts: a western part which should belong to Saudi Arabia and

an eastern part which should belong to Bahrain. In subsequent negotiations, however, they failed to agree on a principle for drawing the dividing line of the Fasht.[5] Attempts to make a geographical division were abandoned in later rounds of negotiations, which took place in 1957. Eventually in 1958 the Ruler of Bahrain agreed to withdraw his claim to sovereignty over the Fasht subject to an agreement on revenue sharing. The Second Clause of the 1958 Agreement provided that this area should be under the exclusive sovereignty of Saudi Arabia, but that revenues received from the exploitation of the natural resources should be evenly divided between the two States.[6]

As soon as the Bahrain-Saudi Arabia Agreement was signed, Iran lodged protests with both the United Kingdom and Saudi Arabia. As already mentioned, the median line method of delimitation was not strictly applied in this Agreement. Assuming that the median line is part of customary international law, the Agreement could not be binding against neighbouring States such as Iran. However, Iran's protest was made not in respect of the direction of the continental shelf boundary between Bahrain and Saudi Arabia, but only in respect of Iran's territorial claim over Bahrain at that time. The British and the Saudi Arabian reactions to the Iranian protest were negative.[8] The United Kingdom's policy towards the protest was based on her relationship with Bahrain as a protected State. On the other hand, the Saudi Arabian reaction to Iran's protest was based on the assertion that Bahrain was a country which had 'its own foreign status'.[9] This claim by Saudi Arabia did not have any legal basis since Bahrain could hardly have any 'foreign status' on her own. The United Kingdom-Bahrain

Treaty of December 22nd, 1880 which was in force until 1971 stated that:

> "I, Isa bin Ali Al-Khalifeh, Chief of Bahrain, hereby bind myself and successors in the Government of Bahrain to the British Government to abstain from entering into negotiations or making treaties of any sort with any State or Government other than the British without the consent of the said British Government," [10]

The terms of the aforementioned Treaty would totally deny any kind of 'foreign status' for the Government of Bahrain prior to 1971. Furthermore, not only was the United Kingdom responsible for all Bahrain's international affairs, but also British foreign laws were enforced in Bahrain by Bahrain's Order in Council.[10] Moral principles were the only grounds for such a statement by Saudi Arabia.

B. Iran-Saudi Arabia

The upper area of the Persian Gulf lying between Iran and Saudi Arabia is about 120 nautical miles in length, 95 to 125 nautical miles in width and no more than 75 metres in depth. Since the longest single offshore boundary in the Gulf is the one between Iran and Saudi Arabia, its impact on other Gulf offshore boundaries is obvious.

The history of the negotiations between Iran and Saudi Arabia regarding the boundary between their offshore areas dates back to very early actions taken by the two States in respect of their continental shelves. From 1948 onwards the two States began to

sign oil agreements for the exploration and exploitation of their continental shelf resources. These offshore concession agreements overlapped. Saudi Arabia objected to the concession area of the agreement between the National Iranian Oil Company (NIOC) and Pan-American Petroleum Corporation, signed in April 1958. This concession area, Saudi Arabia claimed, constituted ' an infringement of the legitimate rights of Saudi Arabia in respect of natural resources in the offshore areas opposite Saudi Arabia's territorial waters or territorial waters of the Saudi Arabia-Kuwait Neutral Zone.'[11] Later, in 1963, when the NIOC announced two areas of Iran's continental shelf open for bidding, Saudi Arabia objected against 'Area 2, District 1' which lies to the south of the IPAC concession. Saudi Arabia claimed that both the IPAC concession of 1958 and 'Area 2 District 1' of the 1963 Iranian Pre-Announcement constituted an infringement of the Aramco area of 1948.[12] The disputed area also contained the two islands of Farsi and al-Arabiyah, the sovereignty over which was disputed between Iran and Saudi Arabia. Another significant issue was the legal status of the large Iranian island of Kharg proximate to the mainland. These conflicts become serious obstacles to orderly resource development by both Iranian and Saudi Arabian concessionaries.[13]

In April 1964 Iran and Saudi Arabia agreed to refer their offshore boundary dispute to a jointly appointed 'committee of experts' which would recommend an equitable basis for resolving the dispute.[14] A compromise was worked out, accepting the principle of the median line as the basis for delimitation. To establish this compromise King Faisal of Saudi Arabia paid a visit to Iran in December 1965. The Joint Iranian-Saudi Arabian communique specifically

referred to the outstanding questions between the two States concerning their offshore boundary. It further announced that the two States had agreed to settle their differences 'in relationship to the area of sea lying between them and the two islands therein called Farsi and al-Arabiya'.[15] Accordingly the two States initialled an offshore boundary agreement on December 13th, 1965.

The 1965 Iran-Saudi Arabia draft agreement (which after some alterations was eventually ratified in 1968) resolved the three main disputes between the two States in respect of their offshore boundary. Firstly, with respect to the disputed islands of Farsi and Al Arabiyah, it recognised Iran's sovereignty over the former and Saudi Arabia's sovereignty over the latter. Secondly, it was mutually agreed that the median line should be measured from the 'lowest low water' mark along the coasts of the two mainlands, giving no effect to the islands lying not more than 12 miles from each mainland. Thirdly, it was decided that the Iranian island of Kharg (which lies more than 12 miles from the Iranian mainland), should have only a partial effect on continental shelf boundary. Namely, two lines were to be laid out, one equidistant from the mainlands and the other equidistant from the line of lowest low water on Kharg and the coastline of Saudi Arabia. The boundary line in this area was to be a line equidistant between the two aforementioned lines.[16]

Iran refused to ratify the 1965 draft agreement after new discoveries of oil deposits in the northern zone of the 1965 proposed delimitation. Consequently further negotiations were conducted on the basis of equal division of known resources between Iran and Saudi

Arabia. The two States eventually signed an agreement concerning the delimitation of the boundary line separating their submarine areas on October 24th, 1968.[17] The 1968 boundary crosses and recrosses the 1965 proposed line, without a great deal of deviation. However, the sea-bed resources apportioned to Iran by the 1968 boundary were far greater than those which would have been apportioned to her by the 1965 boundary. Ratifications were exchanged on January 29th, 1969, from which time the 1968 Agreement came into force.

Neither Iran nor Saudi Arabia is a party to the GCCS. Nor do they otherwise adhere to the 'equidistance - special circumstances' clause as provided by Article 6 of that Convention. However, both the Saudi Arabian Proclamation of 1949[18] and the Iranian Continental Shelf Act of 1955[19] have demonstrated that their continental shelf boundaries should be settled in accordance with 'equitable principles'. Within the 1968 Agreement the two States expressed their desire to determine in 'a just and accurate manner' their boundary. They also demonstrated their due respect to principles of international law and particular circumstances. The Agreement, however, says little of the criteria employed in determining the boundary. The 'just and accurate manner' and 'principles of law' are too unspecific to identify the actual factors influencing the definition of the boundary line. Mr. R. Young has expressed the view that the 'particular circumstances' seem to be the master key of the Iran-Saudi Arabia Agreement.[20] But the parties do not give any clue of such circumstances in particular.

The Iran-Saudi Arabia Agreement (1968) made no reference to the term 'continental shelf'. It seems that the Parties thought that the accepted continental shelf concept would not be applicable in submarine areas of shallow seas such as the Persian Gulf. However, it is clear that only Saudi Arabia has traditionally avoided the use of the term 'continental shelf'. Saudi Arabia since her early Proclamation of May 28th, 1949 has always relied upon the contiguity concept, instead of the legal doctrine of the continental shelf. The unusual appearence of the term 'continental shelf' in some official documents (such as the 1958 Saudi Arabian-Bahrain Agreement) does not go beyond the establishment of the contiguity concept upon which Saudi Arabia's approach relies. By contrast, Iran's claim to the submarine areas of the Persian Gulf and the Sea of Oman was based on the legal doctrine of the continental shelf.[20] Iran has never avoided using the term 'continental shelf' in her municipal laws or international agreements. This is, far instance, illustrated in the Iran-Qatar Agreement on continental shelf delimitation (September 20th, 1969).[21]

The 1968 Iran-Saudi Arabia Agreement is of great significance in terms of the development of the law of continental shelf delimitation, not only within the Gulf region but also beyond. Since it defines the longest offshore boundary in the Gulf, its impact on other Gulf offshore boundaries is obvious. Beyond the Gulf, the Agreement can serve as a model indicating how to divide amicably the submarine areas in narrow seas between opposite States. The Agreement therefore merits a legal analysis in more detail.

Three issues should be distinctly identified within the Iran-Saudi

Arabia Agreement as being of primary concern during the negotiations. These were, first, the adoption of a baseline from which the continental shelf boundary was to be drawn. Secondly, the inclusion or exclusion of several islands on both the Iranian and Saudi Arabian sides of the line. Thirdly, the adoption of an agreed method of delimitation.

1. Baseline

An initial problem in delimiting the continental shelf boundary between Iran and Saudi Arabia was obtaining an accurate map of the coastlines of the two countries. To solve this problem, Iran and Saudi Arabia requested the United States to survey the respective coastlines and identify basic reference points for the delimitation of the continental shelf.[22] Subsequently, the 1968 Agreement adopted different baselines for the measurement of different parts of the continental shelf.

Through the first segment running from the southerly terminus up the Persian Gulf to the vicinity of Al-Arabiyah, a median line was drawn between the opposite mainland coasts. In the vicinity of Farsi and Al-Arabiyah islands which were divided by their territorial waters, the boundary line separating the submarine areas was determined by a straight line between the points whose latitude and longitude were specified in Article Three of the Agreement. The Agreement reveals little of the criteria employed in determining these points. The boundary line in this segment not only divided the continental shelf but also marked off the territorial sea from the high sea and the two territorial seas from each other.[23] Finally, the boundary line extended towards the

northernmost sector where the Iranian island of Kharg was given a 'half-way' status. The boundary line ran some 32 miles above Farsi in a northwesterly direction until it intersected the offshore boundary between the Kuwait-Saudi Arabia Neutral Zone.

2. Islands

The important contribution of the Iran-Saudi Arabia Agreement was the method employed in delimiting the continental shelf in the presence of offshore islands located many miles from the mainland. Also, the method employed in deciding the 'effect' of a large island proximal to the mainland was of significance. The two islands of Farsi and al-Arabiya, which were granted only territorial seas, exemplify the first method. The workings of the second method are seen in the case of the island of Kharg, which was given a partial effect on the continental shelf boundary. All other islands and islets situated between Iran and Saudi Arabia were totally disregarded for the purpose of continental shelf delimitation.

The issues related to the effects of islands on continental shelf boundaries, including the case of Kharg, were studied in Chapter IV. The study here, therefore is confined to the case of al-Arabiyah and Farsi (or Al-Farsiyah).

There was a dispute between Iran and Saudi Arabia regarding sovereignty over the islands of Al-Arabiyah and Farsi. These islands are about 13 miles apart, lying towards the middle of the Persian Gulf. They are small, waterless and normally uninhabited. The nearer of the two islands to Iran is Farsi, on which an Iranian garrison was stationed, as was a Saudi Arabian garrison on

Al-Arabiyah. The conflicting territorial claim over these islands was a major obstacle during Iran-Saudi Arabia negotiations concerning the continental shelf delimitation. After due consultation the two States agreed to recognize the exclusive sovereignty of Iran over Farsi and the exclusive sovereignty of Saudi Arabia over Al-Arabiyah. It is obvious that if both islands had gone to one State, the application of the median line principle would have produced inequitable results. Since it was recognised that the 12 mile territorial sea of each island would overlap, a median line was adopted to separate the two islands' territorial sea.[24]

3. Method of Delimitation

The 1968 Iran-Saudi Arabia boundary is a modification of the straight median line adopted in the 1965 draft Agreement. The 1965 boundary line was revised between points 8 and 14, but without a great deal of deviation. Therefore, the 1968 boundary was again basically determined according to the equidistance principle, and only with the implementation of selected modifications. Where these modifications were made, an equitable apportionment of the sea-bed resources was accepted as the major criterion for continental shelf delimitation.[25]

C. Qatar-United Arab Emirates

In December 1971, a federal State called United Arab Emirates (UAE) was created in the Persian Gulf, composed of the seven separate Emirates that had previously been known as the Trucial States.[26] Qatar is bound in its eastern extremity by Abu Dhabi, now one of the member States of the UAE.

There was a dispute between Qatar and Abu Dhabi over the ownership of Halul and other smaller islands. The United Kingdom which was responsible (until 1971) for the international affairs of the two States appointed in 1961 a commission of two experts to examine the conflicting claims. Following this, the United Kingdom decided that the largest of the islands, Halul, belonged to Qatar, but confirmed that other smaller islands in this portion of the Persian Gulf belonged to Abu Dhabi.[27] Consequently the Ruler of Qatar issued a Decree on March 10th, 1962, declaring concurrence with the British decision regarding the establishment of Qatar's sovereignty over Halul.[28] However, the dispute over the smaller islands of Dina, Lashat and Shraho remained unresolved.

The definition of the Abu Dhabi-Qatar offshore boundary was subject to the settlement of their conflicting territorial claims over the three aforementioned islands. This issue was of concern to both the United Kingdom and the two Emirates themselves. The conflict was eventually settled after a period of negotiations over a number of years. The Abu Dhabi-Qatar Agreement of March 30th, 1969[29] recognised Qatar's sovereignty over the islands of Lashat and Shraho while confirming Abu Dhabi's sovereignty over Dina. This Agreement also settled the maritime boundary between Qatar and Abu Dhabi. The 1969 boundary should now be regarded as the established offshore boundary between Qatar and the UAE by the law of succession as Abu Dhabi joined the federation of the UAE in December 1971. The federal State is, therefore, bound by Article Three of the Agreement which states that Qatar and Abu Dhabi will have no further national claims against each other in islands and waters beyond the 1969 maritime boundary.

The United States Department of State (Office of Geographer) has conducted an analysis of the 1969 Abu Dhabi-Qatar Agreement.[30] The main points of this analysis can be outlined as follows: The continental shelf boundary extends for a distance of 115 nautical miles. There are four terminal or turning points on the boundary and the average distance between the points is 38-3 nautical miles. The boundary is comprised of straight-line segments except for 15 nautical miles around the island of Dina. The analysis further reveals that the seaward extent of the boundary line (Point A) is the trisection point which is equidistant from the mainlands of Abu Dhabi, Qatar and Iran. Similarly Point D is equidistant from the coasts of both Qatar and Saudi Arabia. However, the boundary line does not conform to the strict application of the equidistance principle. That is, Point C is simply the intersection of lines B and D, and not a point equidistant from Abu Dhabi and Qatar. Again, Point B was designated to coincide with the location of the offshore field of Hagle Elbundug and was selected independently of any consideration of equidistance principle.

The legal status of the offshore field of Hagle Elbundug straddling the maritime boundary of Qatar and Abu Dhabi merits special consideration. This has obviously been a situation where a special circumstance has modified the delimitation of the continental shelf. The two States have disregarded the strict application of a median line so that the sea-bed resources would be equally shared between them. According to Article Six the two States will have equal rights of ownership over 'Hagle Elbundug' and will have to consult each other in all matters concerning its exploitation.

Furthermore Article Seven provides that 'Hagle Elbundug shall be exploited by ADMA in accordance with the terms of the concession granted to ADMA by Abu Dhabi, but that all revenues, profits and benefits derived from such exploitation shall be divided in equal shares by Qatar and Abu Dhabi.[31] The concession rights, however, were later transferred to the al-Bundug Company Ltd.[32] Production got underway in this area late in 1975 and has been steadily increasing, reaching 30,000 barrels daily in 1976.[33]

D. Iran-Qatar

The settlement of the continental shelf boundaries between Iran and various British protected Gulf States, including Qatar but excluding Bahrain, was the main purpose of the Iran-United Kingdom negotiations conducted during the 1960's. Several meetings held between the British Foreign and Commonwealth Office, on behalf of the lower Gulf States, and Iran's Ministry of Foreign Affairs in London and Teheran resulted in a mutual understanding in which the median line was accepted as the method of continental shelf delimitation. As already mentioned the main question concerned the base-points for the construction of the median line. In other words, it was disputed whether islands could be considered for the purpose of fixing the base line for continental shelf delimitation.[34] However, as far as the Iran-Qatar boundary was concerned, it was agreed that the presence of all islands should be disregarded.

Accordingly, Iran and Qatar signed an agreement concerning the boundary line dividing their continental shelf on September 20th, 1969.[35] The Agreement does not give any clue to the bases and methods according to which the boundary line has been determined.

The Parties, however, express their desire to establish the boundary 'in a just, equitable and precise manner'. An analysis of the Agreement made by the United States Department of State (Office of Geographer) reveals that the turning points on the Iran-Qatar boundary are all equidistant from the mainlands of the two States.[36] Article One of the Agreement describes the six turning points within geodetic lines, that is lines dividing the continental shelf without making reference to equidistance principle. By Article Four, any change in the status of the superjacent waters or airspace above any part of the continental shelf was fully disclaimed.

Article Two provides detailed provisions for any petroleum or mineral deposit extending across the boundary line which can be wholly or in part exploited from the other side. Paragraph (a) states that no well shall be drilled in such cases on either side of the boundary line in such a way that any producing section thereof is less than 125 metres from the boundary, except by mutual agreement. Paragraph (b) states that the two Governments shall endeavour to reach agreement as to the manner in which the operations on both sides of the boundary line may be co-ordinated or unified.[37]

E. Bahrain-Iran

Up to 1970 Iran had a territorial claim over the Bahrain Islands and counted Bahrain as the fourteenth Iranian province. An enormous quantity of documents, official correspondences, and literature was presented by the Iranians, Arabs and the British over the 150 year period of British rule in Bahrain.[38] Disregarding all those historical, political and legal agruments for and against the Iranian claim over Bahrain, one may not dispute that the political

scenario of the second half of the twentieth century undermines such territorial claims.

As far as the continental shelf between Iran and Bahrain is concerned, the 1949 Iranian draft bill on the continental shelf[39] was intended to cover the submarine areas off the coasts of Bahrain.[40] Bahrain's 1949 Proclamation, however, stated that the seabed and subsoil of the high seas of the Persian Gulf adjacent to the territorial waters of Bahrain 'belonged' to Bahrain and were subject to Bahrain's 'absolute authority and jurisdiction'.[41] The Iranian Parliament in 1953 discussed the possibilities of the implementation of the Iranian Oil Nationalization Act within the Bahrain Islands.[42]

With Iran continuing her territorial claim over Bahrain, the possibility of the demarcation of their offshore boundary was out of the question. When an agreement was signed between Bahrain and Saudi Arabia, Iran lodged a protest with Saudi Arabia. As a result of Saudi Arabia's disapproval of Iran's claim over Bahrain, relations between the two monarchical States cooled. Paradoxically this led to Saudi Arabia's mediation between Iran and Bahrain. Towards the end of 1960's the Shah of Iran and King Faisal of Saudi Arabia agreed on an insular exchange in the Persian Gulf. Accordingly, Iran's annexation of the three islands of Abu Musa, Greater and Lesser Tunbs was recognised, in return for surrendering claims to Bahrain.[43]

The long-standing claim by Iran over Bahrain was finally relinquished in 1970 when Iran and the United Kingdom formally requested the good offices of the United Nations Secretary-General. The United Nations mission to Bahrain found that the people of Bahrain wanted a 'fully

independent sovereign State' with closer relations with other Gulf States, including Iran.[44] Accordingly Iran withdrew her claim of sovereignty over Bahrain, and recognised the State of Bahrain.[45]

Iran and Bahrain signed an agreement concerning the delimitation of the continental shelf on June 17th, 1971.[46] The Agreement expressed the desire of both States to establish their continental shelf boundary 'in a just, equitable and precise manner'. The boundary line consisted of geodetic lines between points whose latitude and longitude were specified in Article One. No effect was given to the islands situated on either side. It is not known how far the archipelagic status of Bahrain was taken into account in adopting the coastlines of the two States. As Article 47 of the ICNT provides, an archipelagic State may draw straight archipelagic baselines joining the outermost islands of the archipelago.[46] The Iran-Bahrain Agreement is unspecific on the whole issue of the criteria for the selection of the base-points of the continental shelf boundary. The agreed boundary line, however, having been illustrated on the British Admiralty Chart No. 2647, was attached to the Agreement.

Article Four stated that the Agreement would in no way effect the status of the superjacent waters or airspace above any part of the continental shelf. Furthermore, detailed provisions were agreed upon for any petroleum or mineral structure which might extend across the boundary line in such a way that part of it situated on one side of the boundary line could be exploited from the other side. In such cases, Article Two provided that, except by mutual agreement, no well should be drilled on either side of the boundary line so

that any producing section would be less than 125 metres from it. The Article went on to state that in such circumstances both Parties should use their best endeavours to reach agreement as to the manner in which operations on both sides of the boundary line could be co-ordinated or unified.

F. Iran-Oman

Continental shelf delimitation in cases of States lying on opposite sides of straits is comparatively uncomplicated. In those cases where a narrow water space separates the two States, two existing rules of international law can be applied, the 'thalweg' or the median line.[49] While the 'thalweg' is most common and best applied in navigable waters and especially in rivers or channels,[50] the median line is the best solution in the case of continental shelf delimitation. The median line, therefore, should be applied under customary international law for the delimitation of the respective continental shelves of Iran and Oman, since these two States lie on opposite sides of the narrow Strail of Hormuz.

Iran and Oman entered into direct negotiations concerning their offshore boundaries as soon as the British withdrew from Oman in 1971. The two States had already acknowleged their adherence to the median line principle as the basis for continental shelf delimitation. While Iran had only customarily utilised the median line in her previous continental shelf agreements, Oman expressly referred to this principle in the Decree of July 17th, 1972. Article Seven of the Omani Decree states that where the coast of another State is opposite or adjacant to the coast of Oman, the outer limit of Oman's continental shelf should not extend beyond 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 States concerned is measured.[51] Since both Iran and Oman claim a 12-mile territorial sea measured from the low-water mark, the application of the median line was accepted as most equitable. The precise direction of the median line, however, was subject to difference of opinion between Iran and Oman due to the presence of several islands on both sides.

Qaboos Bin Said, Sultan of Oman paid a state visit to Iran on March 2nd, 1974. As the Joint Irani-Omani Communique of March 7th, 1974 indicates the two Heads of State expressed their belief in 'full cooperation between Iran and Oman in all fields aimed at the maintenance of stability in the region and the free passage of ships and freedom of movement through the Hormuz Strait and adjoining seas'. The Joint Communique expressly states that the two Heads of State 'reached an understanding on the delimitation of the continental shelf between the two countries and it was agreed that experts from both countries should study the technical points involved and prepare an agreement on the continental shelf to be signed by the Representatives of the two Governments.'[52]

The close cooperation between Iran and Oman on issues related to the security of the Strait of Hormuz influenced other areas of mutual concern including offshore boundaries. As a result the two States signed an Agreement on July 25th, 1974 which defined their continental shelf boundary.[53] The delimitation was agreed according to the principle of median line. As already mentioned the existence of several small islands present on both sides of the Strait of

Hormuz was the source of disagreement between the two States concerning the determination of the baseline employed in laying down the median line. Within the 1974 Agreement no effect was given to these islands.

The geodetic line between the points specified in Article One of the Agreement defined the line dividing the continental shelf lying between Iran and Oman. This boundary line, having been illustrated on the British Admiralty Chart No. 2888, was attached to the Agreement. Article Four stated that nothing in the Agreement would affect the status of the superjacent waters or airspace above any part of the continental shelf.

Article Two of the Iran-Oman Agreement adopted provisions regarding mineral structures which extend across the boundary line. It forbade any drilling in circumstances where any single mineral situated on one side of the boundary line could be exploited wholly or in part by directional drilling from the other side. It further called for an agreement between the two States to be reached as to the manner in which the operations on both sides of the boundary could be co-ordinated or utilized.[53] These provisions are of practical significance since discoveries have been made by Elf Aquitaine at Henjam on the Iran-Oman boundary line.[54]

II. UNDEFINED CONTINENTAL SHELF BOUNDARIES

Many land boundaries in the region of the Persian Gulf have either not been demarcated at all, or only inadequately demarcated. This

is especially true in the case of the Gulf States located on the Arabian side of the Gulf. This can be clearly seen in the undefined boundaries of Iran-Iraq, Iraq-Kuwait, Kuwait-Saudi Arabia. While the Irano-Iraqi frontier dispute stems from opposed interpretations of various international treaties, the land boundary disputes between the Arab States of the regions are not usually based on terms of any treaty or adjudication. Those arising between Saudi Arabia and the UAE on the one hand and the UAE and Oman on the other, are classic examples. These counter-claims on the frontier are merely related to the allegiances of different tribes in relation to traditional structures of local control.[55] A legal examination of such unsettled offshore boundaries, therefore, is most difficult since the land boundaries are not demarcated.

This Section is devoted to the undefined offshore boundaries in the Persian Gulf. It includes the continental shelf boundaries between Iran and Iraq, Iran and Kuwait, Iraq and Kuwait, Saudi Arabia and Kuwait, Bahrain and Qatar, Saudi Arabia and Qatar, Iran and the UAE, Saudi Arabia and the UAE, and Oman and the UAE.

A. Iran-Iraq

The marine and submarine boundaries between Iran and Iraq are not yet settled. The Iran-Iraq offshore boundary is complicated by the conflict over the frontier between the two States in the Shatt-al-Arab. This is the most important frontier dispute between Iran and Iraq and it affects, both politically and legally, all marine issues of concern between the two States. Apart from this crucial issue, there is the Iraqi claim of sovereignty to the Iranian coastline of the Persian Gulf. Iraq, referring to the Iranian

province of Khuzistan as 'Arabistan' has claimed jurisdiction over this province, including a good deal of the coastline north of the Gulf. Furthermore, the Iraqi territorial claim over a number of Kuwaiti islands also affects the Iran-Iraq continental shelf boundary.

The following study is intended to give a detailed background of the unsettled Iran-Iraq continental shelf boundary. The Shatt-al-Arab dispute will also be studied because of its effects on the measurement of the offshore boundaries.

'Shatt-al-Arab' is the name given to the confluence of the Tigris and Euphrates rivers before they disgorge into the Persian Gulf. The utilization of the Shatt-al-Arab has been disputed between Iran and the other Powers concerned (first the Turkish and British Empires and later Iraq). The Treaty of Erzerum (1847) allocated the whole Shatt-al-Arab to the Ottoman Empire.[56] This was confirmed by several subsequent diplomatic instruments including the Teheran Protocol (1911).[57] Later, the Constantinople Delimitation Protocol (1913)[58] between Iran and the Ottoman Empire adjusted the frontier line of the Shatt-al-Arab to place anchorage at the port of Mohammarah (now known as Khorramshahr) in Iranian territory.[59]

From the early nineteenth century onwards the United Kingdom was highly involved in Iraq and in the Persian Gulf because of her commercial and strategic interests.[60] The British and Ottoman Empires formally defined their respective spheres of influence in the Persian Gulf region on July 29th, 1913.[61] As far as the Shatt-al-Arab was concerned, the right of the U.K. to buoy, light

and police this waterway was recognised by the Ottoman Empire within Agreements signed, July 24th, 1913.[62] The Frontier Commission of 1913-1914, again, confirmed that the border in the Shatt-al-Arab should run to the eastern low water.[63]

After the establishment of the British dominated Kingdom of Iraq,[64] it was assumed that Iraq, as the successor of both the Ottoman and British Empires, was entitled to exercise sovereign rights over the whole of the Shatt-al-Arab. It is generally accepted that boundary treaties, being prime examples of 'dispositive treaties' survive changes of sovereignty,, This applies to the treaties and other diplomatic instruments previously in force between Iran and the British or Ottoman Empires as regards the Shatt-al-Arab. The Iraqi Kingdom, having attained independence from the two Imperial Powers, should duly inherit the latter's sovereign rights over the Shatt-al-Arab.[65] However, Iran objected to this practice and insisted on a new demarcation of her border with Iraq in the Shatt-al-Arab. For a number of years, the United Kingdom, Iran and Iraq conducted negotiations with the purpose of concluding a convention to establish a tripartite Conservancy Board.[66] Since the nature of the negotiations and the progress made was not satisfactory, Iraq raised the question of her frontier with Iran before the Council of the League of Nations, November 29th, 1934.[67] The appeal took the form of a request under Article 11, paragraph 2, of the Covenant. Apart from Shatt-al-Arab the territorial dispute included the alleged erection of Iranian police-posts on Iraqi territory; the ownership of a parcel of land with was contested between Iran and Iraq, and the disposal of the waters of the Gunjan Cham River.

While Iraq claimed 'de jure' control over the whole body of Shatt-al-Arab, Iran requested that the border should run down the centre of the Shatt-al-Arab.

The Government of Iraq argued for its jurisdiction over the whole body of the Shatt-al-Arab on the grounds of treaty-rights as well as equity. The Iraqi plea for equity in regard to the control of the Shatt-al-Arab was not unlike Belgium's plea in regard to the control of the estuary of the Scheldt.[68] In both cases the scope of equity was limited by the existence of diplomatic instruments which, if they were valid, would override the claims of equity.[69]

Regarding treaty-rights, Iraq is the successor of both the Ottoman and the British Empires. Therefore, the latter's rights over the Shatt-al-Arab, as confirmed in the Treaty of Erzerum (1847), the Teheran Protocol (1911) and the Constantinople Protocol (1913), should be assigned to Iraq.[70] Iran regarded these diplomatic instruments as 'non-existent', claiming that they were not based on joint consent.[71]

Regarding equity, it is well established that concepts such as justice, equity and similar moral values are universally recognised in the world's major legal systems. Equity, therefore, should be considered as part of 'the general principles recognised by civilised nations' in the terms of Article 38 of the Statute of the ICJ.[72] Yet international judicial practice shows a marked reluctance to apply such general principles of law.[73] Iraq, however, justified her claim to the Shatt-al-Arab with particular reference to equity. Iraq argued that the Shatt-al-Arab constitutes Iraq's only access to

the sea, while Iran has a coast-line of about 2,000 kilometres. The Iraqi representative stated before the League Council that Iraq's only port was Basrah, 100 kilometres from the mouth, whereas Iran possessed a deep-water harbour in the Khar Musa, only 50 kilometres east of the Shatt-al-Arab. Therefore, he argued, Iraq's claim of jurisdiction was justified on the basis of equity.[74] Iran's representative countered that there were other States similar to Iraq and that such reasoning on the part of Iraq could not justify her claim of sovereignty over the whole course of the river to the sea.[75]

Since the hearing before the Council of the League of Nations ended with no result, the case was removed, at the request of Iraq, from the agenda of the Council.[76]

After the relations between Iran and Iraq had improved, following the solution of other problems,[77] they signed a boundary treaty on July 4th, 1937.[78] This provided the frontier between the two States as well as the regime of the Shatt-al-Arab. As regards the frontier, Article One of the Treaty recognised both the 1913 delimitation protocol between Iran and the Ottoman Empire and the minutes of the 1914 meetings of the Commission on Frontier Delimitation. Article 2 dealt more specifically with the geographical points of the boundary line. The frontier followed basically the lines set out in 1913-1914, with the proviso that at the extreme point of the island of Chateit the frontier should run perpendicularly from the low-water mark to the 'thalweg' of the Shatt-al-Arab and should follow the latter as far as a point opposite Jetty No. 1 at Abadan. From this point it should return to the low-water mark

and follow the frontier line indicated in the 1914 minutes.[79] Both Articles 1 and 2, taken together, modified at certain points the 1913 Protocol in favour of the application of the 'thalweg' principle.

The Treaty also adopted provisions regarding the legal regime of the Shatt-al-Arab. The river was to be open on equal terms to the trading vessels of all States, but only open to Iran and Iraq for passage of vessels of war. Article 4 of the Treaty confirmed that the fact that the frontier would sometimes follow the low-water mark and sometimes the 'thalweg' should not in any way affect the two contracting parties' rights along the whole length of the Shatt-al-Arab. Article 5 of the Treaty called for a convention to deal with the maintenance and improvement of navigability in the Shatt-al-Arab and with other questions concerning navigation, such as dredging, pilotage, collection of dues, health measures and measures for preventing smuggling. The proposed convention was never formally adopted. The draft convention envisaged an Advisory Commission to ensure the maximum uniformity of administration and regulations by Iran and Iraq in their respective territory.[80] The Commission was to consist of one Iraqi and one Iranian with a chairman, chosen by Iran and Iraq, who was to be a national of that third State which had the greatest tonnage of commercial sea-going shipping on the river.[81]

Iraq did not fulfil the obligations required by the 1937 Treaty. Abbas Aram, Iran's Foreign Minister made a statement to the Majlis on the Shatt-al-Arab, December 10th, 1959.[82] He charged that Iraq, contrary to the provisions of the Treaty and the attached protocol,

had for twenty-two years collected dues unilaterally and had expended them in a manner prejudicial to the interests of Iran.[83] The Government of Iraq undertook in the Treaty of 1937 to 'keep, through annual communication, the Imperial Iranian Government informed of the work executed, the dues collected, the expenses made and of all other measures undertaken'.[84] Iran's Ambassador to the United Nations stated that no such communication has ever been made.[85] The 1959 revolutionary Government of Iraq denounced the 1937 Treaty on the grounds that Iraq in 1937 (a year after the coup d'etat of General Bakr Sidqi) had concluded it under pressure.[86] Such a statement by Iraq is in line with the Iranian position in 1969 claiming that the 1937 Treaty had not been based on joint consent.

Iraq regarded the Shatt-al-Arab as 'an integral part of Iraqi territory'[87] and as 'an indivisible part of Iraq's internal jurisdiction.'[88] On this assumption Iran continued to control the piloting of vessels to the Iranian ports of Abadan and Khorramshahr. In the early 1960's Iraq repeatedly challenged free access of oil tankers to Iran's major oil refinery on Abadan Island deep in the Shatt-al-Arab. Early in 1961, the Iraqi-managed Basrah Port authority refused to pilot any tankers from the Persian Gulf to Abadan, and the Iraqi berthing masters refused to help them anchor at the Abadan refinery. This resulted in a cessation of the movement of oil tankers to Abadan for a period of several weeks. The resultant sharp reduction in refinery operations forced Iran after two months to yield to the Iraqi terms.[89]

Relations between Iran and Iraq worsened in 1969. On April 15th, 1969 the under-secretary of Iraq's Ministry of Foreign Affairs summoned

Iran's Ambassador to Baghdad demanding the withdrawal of all ships under the Iranian flag from the Shatt-al-Arab.[90] Four days after this ultimatum, Iran's under-secretary of Foreign Affairs made a statement in the Iranian Senate announcing the abrogation of the 1937 Treaty with Iraq on the Shatt-al-Arab.[91] Further, Iran's Ministry of Foreign Affairs confirmed the abrogation in its announcement of April 27th, 1969, though it expressed Iran's desire for a new treaty based on the principles of international law.[92]

The main reasons for the abrogation of the 1937 Treaty were political and strategic. Only a few days before the abrogation, Iraq summoned Iran's Ambassador and threatened not to allow the navigation of any ship through the Shatt-al-Arab which was destined for Iranian ports. To this ultimatum was added, according to Iranian sources, the assertion that Iraq would do this by use of force whenever necessary.[93] Despite the relocation of the port facilities of Abadan at Bandar Mah Shahr, the Shatt-al-Arab continued to be of great strategic and economic significance to Iran. Khuzistan's oil fields, its Dez Dam project, and its refining, tanker-loading and petrochemical complexes in Abadan were all within reach of Iraqi artillery or planes.[94] The sovereignty of Iraq over the whole of the Shatt-al-Arab meant that the Iranian Navy depended on Iraqi good-will for an outlet to the sea. Furthermore, the changing power positions of Iran and Iraq, the increase of Soviet and American arms in the Persian Gulf, and the British scheduled withdrawal from the Gulf were additional causes for concern.[95] Finally the economic interests of Iran would obviously be better served if she could exercise sovereign rights

in sectors of the Shatt-al-Arab adjacent to her territory. It is undeniable that the increasing economic significance of the Shatt-al-Arab for both Iran and Iraq contributed to the gravity of the problem.[96]

The legal grounds argued by Iran for abrogation of the 1937 Treaty need more consideration. The first basis was the inequality of the parties to the Treaty, because of British pressure upon Iran.[97] In 1937 the United Kingdom had extremely important economic and security interests in the Shatt-al-Arab. The extent of her economic interests is seen in the fact that over 90 per cent of the shipping in the area was British, while over 80 per cent of the port traffic was provided by the loading at nearby Abadan of British owned oil from Iran. The security interest of the United Kingdom derived primarily from the United Kingdom-Iraq treaty according to which the United Kingdom undertook to assist Iraq in the event of war. The United Kingdom also had the right to maintain an air force and military bases in Iraqi territory to service and protect her comminications in the area.[98] Iran argued on the basis of the doctrine of 'rebus sic stantibus' (fundamental change of circumstances) that the 1937 Treaty was invalid under international law.[99]

The second point argued by Iran to justify the abrogation, was the failure of the Treaty to apply the 'thalweg' or median line principle.[100] This principle provides that a frontier river should be divided into two equal sectors between neighbouring States.[101] However, one should consider the counter-argument that the Shatt-al-Arab could not be divided equally between the two States, because

the 'thalweg' did not follow the midstream line but crossed from one bank to the other and was, moreover, constantly shifting.[102] After the abrogation, Iran required the application of either the 'thalweg' or the median line principle as regards the sovereignty of the whole of the Shatt-al-Arab.[103]

The third legal point argued by Iran was that the Government of Iran had not agreed to extend the treaty when the convention required by Article 5 was not formally adopted.[104] Besides, Iraq, contrary to the provisions of Articles 4 and 5 of the Treaty and Article 2 of the attached protocol on joint administration, had monopolized the administration of the Shatt-al-Arab.[105]

Iran asserted its 'sovereign rights' in the Shatt-al-Arab when, on April 22nd 1969, the 1,300-ton Iranian merchant ship Ebn-i Sina, escorted by an umbrella of jet fighters, traversed the Shatt-al-Arab on her way to the Persian Gulf. Three days later another freighter, flying the Iranian flag, sailed through the Shatt-al-Arab.[106]

The response to the unilateral abrogation of the 1937 Treaty by Iran was predictably one of outrage in the Arab world. The acting permanent representative of Iraq to the United Nations addressed a letter to the Security Council on April 29th, 1969. He stated that Iran's action constituted 'a clear violation of the rules of international law', and 'a clear contravention of Paragraphs 3 and 4 of Article 2 of the United Nations Charter'. He further argued that the effect of a boundary treaty could not be extensive in time, but must take place once and for all.[107]

These arguments have also been advanced by individual Arab lawyers.[108]

In 1970 Iraq and Pakistan jointly proposed some draft articles on the law of the international rivers to the 11th session of the AALCC held in Ghana. Draft article Nine of the proposal stated that:

> "States are under an obligation to settle international disputes as to their legal rights or other interests by peaceful means in such a manner that international peace and security, and justice are not endangered. In the case of disagreement between two or more States, it is not permissible for one of three States to act as judge in its own cause and take unilateral and arbitrary action.
>
> The States shall refer the dispute within reasonable time to arbitration and shall abide by its decision."[109]

In 1971 when Iran occupied the three islands of Abu Musa, Greater and Lesser Tunbs, Iraq broke off diplomatic relations with Iran.[110] Relations between the two States were resumed in 1973, but before long military tensions on the Iran-Iraq border led to Iraq protesting to the Security Council against Iran's alleged invasion. The Security Council in its Resolution No. 348 called for mutual negotiations. Accordingly, Iranian and Iraqi delegations met in Istanbul (Turkey) in 1974, but to no avail. This meeting was followed by unsuccessful discussions between the two States' Ministers of Foreign Affairs, first in New York

(October 1974), and later in Istanbul (January 16 - 20th, 1975).[111] Meanwhile the regular tension between the two States' Navies within the Shatt-al-Arab continued to pose the threat of an outbreak of formal hostilities between the two States.[112]

The Shah of Iran and Saddam Hossein, Iraq's Revolutionary Command Council Vice-President, attended an OPEC summit in Algiers, March 1975. Thanks to the good offices of President Boumedienne of Algeria, the Shah and Saddam Hossein met twice and they compromised to end years of intermittent hostility between Iran and Iraq. The joint communique of March 6th, 1975 announced the 1913-1914 diplomatic instruments as the basis for the definitive land boundary and the 'thalweg' line as the basis for defining the river frontier.[113] Following this resolution the Iranian and Iraqi Ministers of Foreign Affairs, in the presence of Algeria's Foreign Secretary, met in Teheran and signed a protocol which comprised the principles agreed upon by Iran and Iraq, March 15th, 1975.[114] After two other joint ministerial meetings of April 19th-20th, 1975 in Baghdad and of May 18th - 20th, 1975 in Algeria, Iran and Iraq signed a treaty and three appended protocols concerning international borders and good neighbouring relations, June 13th, 1975. Furthermore, Iran and Iraq signed five protocols two of which concerned navigation in the Shatt-al-Arab and the utilisation of other frontier rivers, December 26th, 1975.[115] All these documents, after being ratified by both countries' legislatures were exchanged between Iran and Iraq in Teheran, 1976.[116]

The Treaty and its three appended Protocols of June 13th, 1975 concerning International Borders and Good Neighbouring Relations

between Iran and Iraq are highly significant.[117] The Treaty adopts the 1913 Delimitation Protocol between Iran and the Ottoman Empire as well as the minutes of the 1913 - 1914 Frontier Commission as the basis for defining the land boundary between Iran and Iraq. As regards the water border, the Treaty adopted the median line principle. The border line at the Shatt-al-Arab, therefore, was to follow the median line of the main channel, where it is navigable when the water level is at its lowest navigation level, beginning from the point where territorial border line is projected at the Shatt-al-Arab, through the sea.

Protocol I deals with measures to be taken against the movement of 'subversive elements' into either of the two countries.[118] Protocol II and III are concerned with a new demarcation of land borders and water borders respectively.[119] The new demarcation of the Shatt-al-Arab was agreed upon in Article Two of the Treaty and was to proceed in accordance with the provisions of Protocol III, which indicated the specific points of the boundary line between the territorial waters of each State.[120]

The Algiers Agreement ushered in a period of 'entente' which was welcome to the three major Gulf States: Iran, Iraq and Saudi Arabia. Following the Shah of Iran's visit to Saudi Arabia in April 1975, President Boumedienne of Algeria, architect of the Iran-Iraq Agreement, visited Saudi Arabia to consolidate the Arab-Iranian 'rapprochement' and to work for further harmonisation of relations in the Gulf. At the same time, following Iran's premier Hovayda's visit to Iraq, Saddam Hossein, Iraq's Revolutionary Command Council Vice-President, began an official visit to Iran

(April, 1975).[121] The Iran-Iraq accord resulted in attacks on both States by the UAE for moving towards an organized domination at the expense of other coastal States. Also Iraq was attacked by some radical Arab Governments such as Syria and the People's Democratic of the Yemen for 'selling out' Arab land.[122] However, the Iran-Iraq Treaty was ratified by both States and its implementation went ahead with considerable smoothness.[123] Convergence of the following factors have produced a degree of harmony of interests between Iran and Iraq. R. K. Ramazani has identified these factors as follows: "The greater Iranian willingness to pressure Israel toward a more conciliatory attitude in peace negotiations was welcomed in Iraq; the greater Iraqi desire to break out of its own self-imposed isolation within the Arab world coincided with the Iranian determination to widen the circle of supporters for its own policies within the Arab Middle East, and the emerging Iraqi disappointment with the Soviet Union and informal overtures towards the U.S. fitted Iran's campaign to neutralize Soviet influence in the area and to strengthen the forces of moderation." Ramazani suggests that the paramount considerations underlying the 1975 Iran-Iraq Agreement were two: (a) concern about greater consideration of domestic power, and (b) greater need for unity within OPEC.[124]

The boundaries of the Shatt-al-Arab, which flows directly into the Persian Gulf, are extremely important because of their effect on the delimitation of the territorial sea. The baseline for measuring the breadth of the territorial sea is also the baseline for determining the breadth of the contiguous zone,[125] the

exclusive economic zone,[126] and, in future, the continental shelf.[127]

Article 13 of the 1958 Geneva Convention on Territorial Sea and the Contiguous Zone, which has been incorporated in Article 9 of ICNT, provides the automatic 'closure' of rivers.[128] 'Closure' signifies that the baseline from which the breadth of the territorial sea is measured would be a straight line across the mouth of river between points on the low-tide line of its banks. The only specific proviso noted is that the river must flow directly into the sea, i.e. not through a bay or estuary.

A straight baseline should meet three specific qualifications, as established by International Court of Justice in the Anglo-Norwegian Fisheries Case.[129] It must not, firstly, depart to any appreciable extent from the general direction of the coast. Secondly, it must enclose sea areas which are sufficiently closely linked to the land domain to be subject to the regime of internal waters. Finally, in drawing a straight baseline, all economic interests peculiar to a region and evidenced by long usage must be taken into account.[130]

In addition to the legal implications of the Shatt-al-Arab for defining the Iran-Iraq offshore boundary, mention should be made of a token territorial claim by Iraq over Khuzistan. This southwest Iranian province was formerly known as Arabistan, and a sizable percentage of its population is Arab. Arab communities in Khuzistan are Sunni (Shafi'it), and this religous difference from Persian communities reinforces ethnic ideological conflict. In the early 1960's Iraq publicly claimed jurisdiction over

Khuzistan. In 1963 - 64 Iraq and UAR (Egypt) jointly launched a campaign for the Arab annexation of Khuzistan. After the 1975 Iran-Iraq Treaty this territorial claim has not been repeated by Iraq, though some other Arab States, such as Libya and Syria, continue their support for Khuzistan's secession. As far as Iraq is concerned, the Iran-Iraq boundary is settled, since the 1975 Treaty adopts the 1913 Delimitation Protocol between Iran and the Ottoman Empire, coupled with the munutes of the 1913 - 14 Frontier Commission, as the basis for defining the land boundary between Iran and Iraq.[131] These diplomatic instruments are inconsistent with any Iraqi claim of sovereignty over Khuzistan and/or any part of the coastline north of the Persian Gulf.

Although the Irano-Iraqi disputes over the Shatt-al-Arab and Khuzistan are now settled, the actual boundary line dividing the continental shelves of the two States is still undefined. The Iran-Iraq Treaty of July 24th, 1937, which is still in force, provided that any unsettled dispute should be submitted to the Permanent Court of International Justice unless such a dispute (a) had arisen prior to the Treaty, (b) was by international law reserved to exclusive competence of the Parties, or (c) was concerned with the territorial status of one of the Parties.[132] The continental shelf boundary dispute between Iran and Iraq, therefore, should be submitted to the ICJ. This requirement, however, has not been fulfilled owing to political circumstances.

The background of the Iran-Iraq disagreement over the delimitation of their offshore boundary may be outlined as follows.

The NIOC's announcement of April 1st, 1963, which declared two areas of continental shelf adjacent to the Iranian mainland open for bidding, met with Iraq's protest. Iraq in a protest dated May 1st, 1963 claimed most of the aforementioned areas as 'exclusively Iraqi territorial waters'.[132] The Iranian Pronouncement defining the IPAC concession area together with an additional area of 380 sq. miles as Area 1 district 1, was claimed to constitute an infringement of the Iraqi territorial sea at the head of the Gulf. The protest emphasised that the parties concerned had to ascertain the ownership of these areas before seeking to grant or acquire any oil exploration concession in them.[134] Despite its protest to the Iranian Pronouncement, Iraq was not invited to several meetings held by Iran, Saudi Arabia and Kuwait in Copenhagen, London, Teheran and Kuwait, regarding the delimitation of the Gulf continental shelf.[135]

Iran and Iraq reached an understanding that joint exploration of oil resources located in the disputed offshore areas would be in the interest of both States.[136] The representative of Iraq joined the Iran-Saudi Arabia-Kuwait meeting held in Geneva, October 1963, in which all four States agreed to settle their offshore boundary disputes.[137] In November 1963, an Iranian delegation visited Iraq where it held discussions on offshore boundaries. The two States, it was announced, agreed on a basis for joint exploration of oil in the disputed areas, whereby the interests of both parties would be observed.[138] No agreement to this effect, however, was ever signed. On March 19th, 1967, following a State visit by President Aref of Iraq to Teheran, it was agreed that the demarcation of the continental shelves of

Iran and Iraq would be worked out by a joint committee.[139] Unfortunately, the joint committee made no progress in this area.

In 1968, following an Irano-Kuwaiti joint communique on January 13th, the Iraqi Ministry of Foreign Affairs issued a 'Statement Concerning the Sovereignty over Iraq's Territorial Waters and its Continental Shelf'.[140] It stated that:

> "Since the Government of the Republic of Iraq did not participate in the negotiations held between the Iranian and the Kuwaiti Governments, and in view of Iraq's rights in the area and the interjacence of its territorial waters and continental shelf with those of the neighbouring countries, the Government of the Republic of Iraq declares that it shall maintain its full sovereignty over Iraq's territorial waters, and the air-space above it, its continental shelf and the subsoil thereof, and affirms that all works and installations, already undertaken or which may be undertaken in future in the said area are subject to Iraqi sovereignty. While the Iraqi Government declares this affirmation of Iraq's rights, it wishes to emphasize its full adherence to the rules and principles of international law, but at the same time it will not recognize any communique, declaration, legislation or plan of any neighbouring State which infringes upon Iraq's territorial waters and continental shelf in contravention with Iraq's sovereign rights".

It is suggested that the offshore boundary between Iran and Iraq

resembles the North Sea situation dealt with in 1969 by the ICJ.[141] This comparison is apparently made on the grounds of the length and outline of the Iraqi coast. It is obvious that if the median line principle is strictly applied in determining the Iran-Iraq boundary, the continental shelf of Iraq will be decidedly small. However, the legal grounds upon which Iraq may claim a larger portion of the continental shelf are not evident. Unlike the Federal Republic of Germany, which argued on equitable grounds against the equidistance principle, Iraq had repeatedly declared her adherence to the equidistance principle. Of particular significance is the Iraqi Declaration of April 9th, 1958 which automatically considered that the equidistance principle would govern the delimitation of her continental shelf in the absence of an agreement or of special circumstances justifying another boundary.[142]

There is a possibility that Iraq may argue for more areas of the continental shelf on the ground of the legal equality of States. This legal doctrine, better termed the 'equal capacity for rights', means that no State has a right to a special position, except after an evaluation of relevant factual data.[143] Iraq may accordingly claim an 'equal capacity' for continental shelf rights. Iraq, as already discussed,[144] advanced a similar argument before the League of Nations Council in support of her claim over the Shatt-al-Arab. Such an argument was considered irrelevant by the Court of Arbitration in the France - United Kingdom continental shelf delimitation.[145]

Similarly, the 'socialist' argument that the legal definition of

boundaries should be based on consideration of economics is of little legal importance as far as continental shelf delimitation is concerned. Economic considerations are relevant to the demarcation of fishing zones only when they are established by long usage. This is not the case in continental shelf delimitation, since continental shelf rights are based on the principle of natural prolongation of land territory. Such extra-judicial arguments as economic consideration, may be accepted as moral pronouncements but not as legally significant.

Iraq cannot claim any greater portion of the continental shelf merely on grounds of moral and political considerations. The conclusion drawn by the ICJ in the North Sea Continental Cases as well as the provisions adopted in ICNT confirm the principle of natural prolongation as the basis of continental shelf entitlement. In accordance with this basic concept, as the ICJ concluded, the process of delimitation of continental shelves is essentially one of drawing a boundary line between areas which already appertain to one or other of the States affected.[146] That is to say that by virtue of the principle of natural prolongation there is no undivided submarine areasbetween Iran and Iraq to be shared out. To draw a continental shelf boundary line does not mean to award an equitable share to adjacent States, but merely to identify the boundary line between areas which already appertain to either Iran or Iraq.[147] The established principle of natural prolongation requires that the continental shelf of any State must be the prolongation of its own land territory and must not encroach upon what is natural prolongation of the territory of another State.[148]

Having settled their dispute over the Shatt-al-Arab, it is hoped that Iran and Iraq will be more amenable to defining their offshore boundary in the Persian Gulf by mutual agreement. Both the conventional and customary rules of international law require States to enter meaningful negotiations aiming at mutual agreement as regards any dispute over their continental shelf boundaries. In the absence of agreement, as already mentioned, Iran and Iraq are obliged under the provisions of the 1937 Treaty on Peaceful Settlement of Disputes to submit their continental shelf boundary dispute to the ICJ.

B. Iran-Kuwait

The concession areas of the sets of offshore agreements of 1957 - 58, which were granted by Iran and Kuwait, overlapped. Also the IPAC concession of 1958 granted by Iran had interfered with the Japanese AOC concession of 1957 in respect of the Kuwait-Saudi Arabia Neutral Zone.[149] The Government of the United Kingdom, which was responsible for all the international affairs of Kuwait, took the initiative in trying to solve the Iran-Kuwait dispute. Detailed discussions between the Iranian and Kuwaiti authorities took place in London under the auspices of the British Foreign and Commonwealth Office.[150] A compromise was reached on the equidistance principle as the method of delimitation. Furthermore, it was agreed by both Iran and Kuwait that a British delegation should visit Iran in order to deal with the more specific problems of drawing the median line in the Gulf.[151] However, the negotiations could not be finalized because of the implication of the proposed median line between Iran and Kuwait for the definition of their offshore boundaries with Iraq.

A further aggravation of the Iran-Kuwait offshore boundary dispute occurred in 1961 when Kuwait granted an offshore concession to the Kuwait Shell Company.[152] Iran asserted that the Kuwait Shell concession area had very greatly interfered with both the SIRJP and the IPAC concessions granted by Iran in 1957 and 1958 respectively.[153] Kuwait Shell informed the Kuwaiti Government of its decision to suspend its drilling operations within the concession area pending the settlement of the Kuwaiti-Iranian dispute. The best drilling prospect, it was announced by Shell, lay in the south-eastern part of the concession area, which was nearer to the IPAC's Cyrus field.[154] Since no agreement was reached on the Iran-Kuwait continental shelf boundary, the development of this promising gas field (discovered by Shell on behalf of Kuwait) had to be curtailed.

On April 1st, 1963, the NIOC announced two areas of the continental shelf of the Persian Gulf as open for international bidding. Area 1 of District 1 is located north of the two areas and it comprises of the concession area which was originally held by the IPAC, but with an additional area of 380 sq. miles. Area 2 of District 1 is located to the south of the IPAC area but separated from it by a wedge of some 15,000 sq. kilometres.[155]

Kuwait condemned the action of the NIOC within a statement issued on June 4th, 1963. The statement asserted that the IPAC concession area, constituted an infringement on the continental shelf of Kuwait, held by the Kuwait Shell Company.[156] This dispute was referred to in a joint communique, signed by the Foreign Ministers of Iran and Kuwait (Kuwait, 1964). The communique announced the

agreement to establish a joint 'committeeoof experts' whose task was to study, on an equitable basis, the problems of the division of the continental shelf between the two States.[157]

The problem of demarcating the border of the continental shelf contiguous to the opposite coasts of the Kuwait-Saudi Arabia Neutral Zone and Iran was also discussed by the three States concerned, in Summer 1966. Kuwait and Saudi Arabia disagreed with Iran's proposed median line dividing the latter's continental shelf from the offshore areas adjacent to the Neutral Zone. The disagreement was due to the effects of some offshore islands on both sides on the continental shelf boundary.[158] As will be discussed, the most controversial issue was the status of Kharg island which Iran considered as the base-point for the delimitation of the continental shelf. Kuwait, on the other hand, demanded the same status for Faylakah.

Iran has insisted that Kharg, as the base-point for determining the Gulf median line, is entitled to 'full effect' as regards the continental shelf. The Kuwaitis were understood, in early rounds of negotiations, to accept this, provided that equivalent status were acknowledged for the Kuwaiti island of Faylakah.[159] However, Saudi Arabia did not agree to full effect for either Kharg or Faylakah.

Following the unsuccessful Copenhagen meeting between the representatives of Iran, Kuwait and Saudi Arabia in 1966, Shaikh Zaki Yamani, Saudi Arabia's Oil Minister, and Abdul Aziz Abdullah Zaraghavi, Kuwait's Minister of Works and Social Affairs, held

discussions on continental shelf delimitation with Iranian authorities, (Teheran, August 1966).[160] It was agreed that further discussion was necessary before reaching final agreements.

In 1968 visits were exchanged between the Shah of Iran and the Amir of Kuwait. On the occasion of the official visit of the Amir of Kuwait to Iran in January 1968 the heads of the two States jointly issued a communique which affirmed their mutual agreement on the issue of continental shelf delimitation in accordance with the median line principle.[161] This communique was opposed by the Government of Iraq which had not participated in the negotiations.[162] Kuwait later, in 1971, officially announced that she had adopted 'the median line' in delimiting the boundary of the continental shelf with her neighbours.[163] However, the Iranian-Kuwaiti informal agreement on median line did not shape a legally binding instrument.

The basic dispute over the Iran-Kuwait continental shelf boundary is centered on the selection of mutually agreed basepoints on both sides. As already mentioned, Iran's claim that Kharg island formed part of her coastline was disputed by Saudi Arabia and Kuwait. The 1968 Iran-Saudi Arabia Agreement gave partial effect to Kharg.[164] However, as indicated by Dr. M. A. Movahhed, one of Iran's negotiators on continental shelf delimitation, Iran still insists on a full continental shelf around Kharg in respect of the Iran-Kuwait boundary.[165] Movahhed justifies Iran's claim on geographical and historical grounds as well as the practical consideration of Kharg's link by pipelines to the Iranian mainland. Kharg is situated 17 miles off the coast of Iran in the

middle of the Persian Gulf. Since 1960, Kharg has been connected by a pipeline some 100 miles long to an oil producing field on the mainland (25 miles of the pipeline is under water). It is the world's largest terminal, with facilities to handle tankers up to 250,000 tons. Regardless of Movahhed's reasoning, Kharg's status as Iranian coastline has been totally rejected by Kuwait in later rounds of talks.

Dr. B. Al-Awadhi, of Kuwait University, considers that no Iranian claim of any effect for Kharg is justified. She argues this on two main grounds: (a) Iran's proposal at the 1958 UNCLOS to ignore the presence of islands on the continental shelf; (b) Iran's practice with regard to delimitation of her continental shelf with other neighbouring States.[166] However, these arguments are not entirely fool-proof. With respect to Iran's 1958 proposal, it is necessary to mention that soon after it was defeated, Iran's delegation affirmed Iran's sovereign rights over 'all Iranian islands' in the Gulf.[167] Similarly, with respect to Iran's practice on continental shelf delimitation, it should be recalled that the 1968 Iran-Saudi Arabia Agreement gave a partial effect to Kharg.

The legal status of Failakah, as a basepoint for the Iran-Kuwait boundary is also disputed. The Kuwaiti island of Failakah, which lies seven miles off the coast of Kuwait, is surrounded by shallow waters, especially around its western and southern shores, where soundings from a half, to one, fathom are typical. The island is nine miles long and 3½ miles wide, and its population numbered 2,442 in 1957.[168] The Government of Kuwait maintains

that Failakah must be considered as a part of Kuwait's coastline and, thus, in possession of territorial sea and continental shelf.[169] Saudi Arabia has publicly rejected Faylakah's status as Kuwait's base-point for the division of the territorial sea, especially since 1967 when Kuwait extended her territorial sea to 12 miles. Similarly, Iran rejects the idea that the Iran-Kuwait continental shelf boundary should be measured from the outer limit of Faylakah.

In summation, the status of the two islands of Kharg and Faylakah is the main issue in the Iran-Kuwait boundary negotiations. It is mutually submitted that the continental shelf boundary between the two States must be a median line measured, broadly, from the coasts of the two mainlands, with only selected modifications around Kharg and Faylakah. The envisaged agreement is assumed to employ criteria similar to those of the 1968 Iran-Saudi Arabia Agreement. However, the actual continental shelf delimitation has remained suspended in view of Kuwait's boundary dispute with Iraq.[170]

C. Iraq-Kuwait

Iraq's claim to sovereignty over Kuwait is a long-standing one.[171] This dispute has lingered on since the Iraqi threats of 1961, made by General Qasim.[172] In 1963, Iraq formally recognised the State of Kuwait, though the border between the two States has never been demarcated. One of the problems with the desert boundaries of Kuwait is that the actual frontier lines can be, to say the least, indeterminate. Such lack of definition is a permanent temptation to any neighbouring State anxious to expand its territory.[173] In such a situation the Iraqi Armed Forces

crossed into Kuwait territory on March 20th, 1972 and withdrew by April 7th, 1972.[174] As a result, Kuwait's border with Iraq was closed until 1977.

The Iraq-Kuwait continental shelf boundary is also unsettled. It is noteworthy that while Kuwait occupies a tiny land territory, her sea frontage is considerable. By contrast, the portion of the submarine areas due to be allotted to Iraq is the smallest among all Gulf States, despite the fact that Iraq's land territory is very large (the largest in the Gulf region after Iran and Saudi Arabia). Again, Iraq is the second most populous country in the Gulf region (after Iran), while Kuwait's population is still less than one million. Other geographical, economic, political, strategic and historical arguments likewise support Iraq's demand for a greater portion of the continental shelf compared with Kuwait. However, the legal validity, if any, of such extra-juridical arguments, is negligible where continental shelf delimitation is concerned.

The core of the dispute over the Iraq-Kuwait offshore boundary revolves around the adoption of the basepoints for the construction of a median line dividing the marine and submarine areas of the two States. The conflicting territorial claims of the two States over the islands off their coasts, at the head of the Persian Gulf, are the main obstacles to determining these basepoints. Iraq's disconcerting claim of territorial sovereignty over the two strategically important Kuwaiti islands of Warba and Bubiyan remains unresolved.[175] In 1975 Saudi Arabia agreed in principle

on the necessity for Iraq to establish naval defence facilities on these islands, which will be vitally important to the Umm Qasr naval base.[176]

After the 1975 Iran-Iraq border agreement, the main focus of attention moved to the settlement of the Iraq-Kuwait border. Although Kuwait had originally proposed a Gulf Security Pact, she held back from participating in the 1975 Gulf Security Pact Conference, in order to pressurise Iraq into reaching an agreement on their disputed border.[177] Subsequently, Iraq and Kuwait agreed (July 1977) to withdraw their forces from the border. Upon the visit by Shaikh Alld al-Abdullah as-Sabah, then Kuwait's Defence Minister, to Baghdad, it was agreed that a joint committee should meet regularly to continue the talks. No regular meetings of the joint ministerial committee was held, and prospects for a solution appeared to have receded.[178] An Iraqi military and civilian ministerial mission, however, visited Kuwait (May 1978) for further talks.[179]

There will be no agreement on the Iraq-Kuwait continental shelf until Iraq's territorial claim to the Kuwaiti isalnds is settled.[180] Having settled these territorial claims, the offshore boundary between the two States would be a median line with necessary modifications by their mutual agreement. The median line has been, in principle, agreed upon by both Iraq and Kuwait within their national legislation. The Iraqi statement of April 9th, 1958 declared that Iraq automatically considered that the equidistance principle would govern the delimitation of her continental shelf in the absence of an agreement or of special circumstances

justifying another boundary line.[181] Similarly, the Kuwait Government has issued a Statement in 1971 which announces that Kuwait 'in exercise of its sovereign rights' has adopted the median line as provided in Article Six of the GCCS in delimiting the boundary of the continental shelf.[182] It is, therefore, established that the dispute between Iraq and Kuwait over their continental shelf boundary is not concerned with the method of delimitation, but with establishing basepoints for the measurement of a median line.

D. Kuwait-Saudi Arabia

According to the Boundary Convention of Al Uqair, dated December 2nd, 1922, Najd (now Saudi Arabia) and Kuwait have equal rights over a Neutral Zone bordering the two States.[183] Although this Neutral Zone has been equally divided between the two States by the Partition Agreement of July 7th, 1965,[184] the equal rights of the two Parties have been fully preserved in the whole partitioned Zone. There has been no demarcation of the offshore boundaries between Kuwait and Saudi Arabia. Therefore, the undefined submarine areas off the partitioned Zone remain under the original legal status decided by the Al Uqair Convention, namely, subject to equal rights of the two Parties. This status is established in accordance with that principle of international law which considers the maritime territory as a necessary appurtenance to the land territory.[185] This principle has also been the basis upon which both Saudi Arabia and Kuwait have conducted their practice.

Saudi Arabia and Kuwait both granted separate concessions in

respect of the continental shelf areas contiguous to the then Neutral Zone. First Saudi Arabia signed a 40-year concession agreement with the Japan Petroleum Company (known as Arabia (Japanese) Oil Company) on December 10th, 1975. According to Article Two of this Agreement the concession area included Saudi Arabia's undivided share in all that offshore area adjacent to the Neutral Zone (outside the limits of the territorial sea) over which she exercised jurisdiction.[186] A few months later, on July 13th, 1958, Kuwait granted a concession to the same company.[187] Article One of this concession agreement stated that the 'Concession Area' included the sea-bed and subsoil of the Neutral Zone with the exception of the sea-bed and subsoil beneath the 'Concessionary Waters'. The 'Concessionary Waters' were (a) the waters contiguous to and extending from the mainland of the Neutral Zone up to a distance of six nautical miles from the low water baseline or base points used on June 28th, 1948 for delimiting the territorial waters of the Neutral Zone, (b) the waters contiguous to and extending from the islands of Qaura and Umm al Maradin up to a distance of three nautical miles from the low water base line or base points used in June 22nd, 1949 for delimiting the territorial waters of these islands.[188] Kuwait now shares with Saudi Arabia half of the out-put of the 28 degree API gravity crude oil produced off-shore in the Neutral Zone by the Japanese-owned Arabian Oil Company.[189]

Following the above-mentioned concession agreements, the definition of the offshore boundaries of the Neutral Zone caused a conflict of interests between Saudi Arabia and Kuwait. Neither the southern offshore border of the Neutral Zone (between Saudi Arabia and the Zone) nor its northern border (between Kuwait and the Zone)

was defined. The segment nearer the shore of the southern line, which runs through the Safaniya and Khafji offshore oil fields, was established de facto in the late 1960's.[190] It was the northern line which proved more problematic.

Saudi Arabia and Kuwait gave different definitions of the offshore boundaries of the Neutral Zone. The London Representative of the Ruler of Kuwait in a letter addressed to the Japanese concessionary, dated April 3rd, 1958, outlined an approximation of the extent of the continental shelf areas adjacent to the Neutral Zone subject to Kuwait's jurisdiction. This letter stated that Kuwait's portion of the continental shelf at the northern end of the Gulf should amount to about 1,250 square nautical miles. It further explained that the area of concern was enclosed by a line joining the following points:

1. The seaward end of the boundary between Kuwait and Iraq in the Khor Abdullah;
2. A point 29 degrees 08 minutes 36 seconds north, and 49 degrees 17 minutes 48 seconds east;
3. The seaward end of the boundary between Kuwait and the Neutral Zone.[191]

Later, in 1961, Kuwait signed a concession agreement with the Kuwait Shell Petroleum Development Company for the submarine areas off the Kuwaiti mainland. According to Saudi Arabia this concession overlapped the submarine areas of the Neutral Zone, the subject of the 1957 AOC concession granted by Saudi Arabia.[192] This overlap was the inevitable consequence of the previous

concessions granted by Saudi Arabia and Kuwait to AOC in the undivided offshore areas of their Neutral Zone; i.e. the 1957 concession area granted by Saudi Arabia extended further northward towards the Kuwaiti mainland than the 1958 concession area granted by Kuwait.[193]

In 1964 a Saudi Arabian delegation (headed by Shaykh Ahmad Zaki Yamani, Saudi Arabia's Minister of Petroleum and Mineral Resources) visited Kuwait at the invitation of Kuwait's Minister of Finance and Industry. The two delegations held discussions on the legal status of the Neutral Zone. The negotiations resulted in a mutual agreement concerning the division of the Neutral Zone and stipulating the jurisdiction of the two States.[194] Thereupon, the two States signed an agreement (July 7th, 1965) which partitioned the Neutral Zone into two equal parts.[195] It was agreed that henceforth the Neutral Zone would be called the Partitioned Zone.

Article One described the boundary line between the two sections of the Zone as a line dividing them into two equal parts. The part lying to the north of this line was annexed to Kuwait as an integral part of her territory, and the part lying to the south of the line was annexed on the same basis to Saudi Arabia. Article VII provided that the same rights exercised by each Party over its annexed part of the Partitioned Zone also apply to the territorial waters which adjoin that jpart. Furthermore the Article forsaw an agreement to determine the boundary line separating the territorial waters which adjoin the Partitioned Zone.[197] At present, however, Saudi Arabia disputes the Kuwaiti assertion that

certain Kuwaiti islands such as Bubiyan and Faylakah form part of the base line for the measurement of Kuwait's territorial sea. With regard to the provisions of Article VII of the 1965 Agreement it is significant to note that, although Saudi Arabia has claimed a 12-mile territorial sea belt since 1958, Article VII of the 1965 Agreement stipulates that not more than six miles of the territorial sea-bed adjacent to the Partitioned Zone should be annexed to Saudi Arabia's mainland. This arrangement was made firstly because Kuwait before 1967 had only a six mile territorial sea, and secondly because both the Saudi Arabian (1957) and Kuwaiti (1958) concessions to the AOC had excluded only their six-mile territorial sea from the respective agreements.

The status of the submarine areas beyond the six-mile limit mentioned in Article VII is described by Article VIII. This Article, which covers the whole of the continental shelf areas appertaining to the Partitioned Zone plus the six-mile seaward portion of the 12-mile territorial seas, reads as follows:

> "In determining the northern boundary of the submerged area adjoining the Partitioned Zone, it shall be delineated as if the Zone has not been partitioned and without regard to the provisions of this Agreement.
>
> The two Contracting Parties shall exercise their equal rights in the submerged area beyond the aforesaid six mile limit mentioned in the preceeding article by means of joint exploitation, unless the two Parties agree otherwise."[197]

Accordingly, the submerged areas beyond the six-mile limit, mentioned in Article VLL, have not been partitioned. Consequently, the two States exercise their original equal rights in the whole submarine areas outside the six-mile limit adjacent to the Partitioned Zone. The provisions of Article VIII were influenced by two main factors. First, the joint exploitation of the submarine areas beyond the six-mile limit which was operated by the AOC since the late 1950's was reasonably satisfactory, and there was no need for a change of legal arrangements. Secondly, the delimitation of the maritime frontiers of the Neutral Zone was far more complex that that of its land borders, and the two States could not reach an agreement concerning maritime boundaries.

The status of the three islands of Kubr, Qaru and Umm al-Maradim, lying offshore from Kuwait and Saudi Arabia is one of the main obstacles in the process of the delimitation of the north-eastern boundary separating the Partitioned Zone offshore from that of Kuwait. There appears to be no dispute over Kuwait's sovereignty over Kubr which lies off the coast of the Kuwaiti mainland. What is disputed is the sovereignty over Qaru and Umm al-Maradim which lie off the coast of the Partitioned Zone. Saudi Arabia maintains that these two islands are subject to the co-sovereignty status of the original Neutral Zone.[198] Kuwait has always claimed full sovereignty over these three islands. The Ruler of Kuwait even granted a subsidiary of 'Aminoil' (Known as the American Oil Company of California) a concession covering these three islands and their three-mile limit of territorial sea. No drilling operation took place, apparently because of a potential protest by Saudi Arabia.[199] It is reported that although Kuwait insists on her

exclusive sovereignty over Qaru and Umm al-Maradim, she is prepared to concede to Saudi Arabia the half-share ownership of any oil revenue accruing from the two islands.[200] However, the Saudi Arabia-Kuwait dispute over these two islands is not yet settled.

As already mentioned above, Article VIII of the 1965 Partition Agreement viewed the northern boundary of the submarine areas beyond the six-mile limit but appertaining to the Partitioned Zone as if the Zone had not been partitioned. Accordingly, unless the two States agree otherwise, they shall exercise equal rights in the exploitation of natural resources within these undivided submarine areas. Robert D. Hodgson has noted that if these three disputed islands were to come under Saudi Arabian sovereignty it would constitute an obvious example of 'special circumstance' under Article Six of the GCCS. He states that if these islands were to have their own 12-mile limit of Saudi Arabia's territorial sea then the potential application of equidistance principle would be most inequitable to Kuwait.[201] This possibility that all three islands would go to Saudi Arabia is highly hypothetical.

Concerning the ultimate delimitation of the continental shelf between Kuwait and Saudi Arabia, the latter has taken the position that the northern line of the Partitioned Zone should be approximately a straight line commencing from the point where the northern land boundary of the Zone hits the low-water mark on the coast of the Persian Gulf, and should extend straight to certain points (28° 50' 40"). The prolongation of that line goes to the north-east of the Gulf as defined by the Saudi Arabian Decree of May 28th, 1949 on territorial sea.[202] It should be noted, however, that to

extend the last straight section of the land boundary in the same direction through the water would create an unusual case in connection with the northern line.[203] Kuwait's border at this point is the arc of a circle whose prolongation into the sea would severely limit her portion of continental shelf. Alternatively, to draw a line perpendicular to the general direction of the coast, produces a line only slightly south of the straight line tangential to the circle and does little to rectify this inequitable demarcation.

In summation, if Saudi Arabia and Kuwait fail to come to a mutual agreement, the two States should submit their offshore boundary dispute to international arbitration. The criteria employed in mutual agreements by Gulf States on continental shelf delimitation can serve as precedents. Thus, the basic method for delimiting the maritime borders of the Partitioned Zone, similar to all other Gulf shelf boundaries, should be the equidistance principle. However, special circumstances, such as the presence of islands and oil or mineral resources would justify any necessary modification of the median line. In the light of provisions adopted by Article VIII of the 1965 Partition Agreement it may be suggested that the principle of an equal division of natural resources should prevail wherever the application of the equidistance principle produces inequitable results.

E. Other Undefined Boundaries

Other undefined continental shelf boundaries in the Persian Gulf include Bahrain-Qatar, Saudi Arabia-Qatar, Iran-UAE, Saudi Arabia-UAE, and Oman-UAE. Although all Gulf States adhere to the

equidistance principle, the aforementioned boundaries are undefined because of disputes between the respective adjacent or opposite States over the proposed basepoints for the construction of a median line in the Gulf. These disputes, less important than ones previously mentioned, have been very thinly documented and consequently this Sub-Section can deal with these issues in only a very general way.

1. Bahrain-Qatar

The continental shelf boundary between Bahrain and Qatar has not been settled. This is mainly because of their dispute over the ownership of some offshore islands and reefs. The largest disputed island is the Howar Island, situated very close to the Qatar Peninsula. This island has for a long time been recognized as belonging to Bahrain, but Qatar regards it as part of her own territory. Qatar also objects to Bahrain's claim to the possession of a territorial sea around such small islands.[204]

Despite their mutual willingness, the dispute between Bahrain and Qatar over the sovereignty of Howar has not yet been resolved.[205] Negotiations have been in progress since the early 1960's when the drilling operations in the disputed offshore areas began. On September 20th, 1965 Bahrain granted an offshore concession to the Continental Oil Company. The Concession area covered the Howar islands and their surrounding waters southeast of Bahrain.[206] The drilling operations took place in areas which are very close to the Qatar Peninsula and were, therefore, challenged by Qatar. The major dispute is not the ownership of the islands but, more importantly, the consequent rights over the surrounding waters

and submarine areas. Thus, Qatar, with some justification, objects to Bahrain's assertion that such small islands generate a territorial sea or continental shelf.

In addition to the Bahrain-Qatar dispute over the above-mentioned islands, Bahrain also claims certain rights over the village of Zubarah, on the north-western coast of the Qatar Peninsula. This long-standing claim is based on two grounds. First, Zubarah has been the ancestral home of the ruling Al-Khalifah family of Bahrain. Secondly, the village is inhabited by the Nu'aim tribe who owe the Ruler of Bahrain their allegiance.[207] On the Arab side of the Persian Gulf there have been no formal frontiers between different Arab powers and the allegiance of tribes has been the main factor for determining the jurisdictional conflicts between rival powers. This explains why in 1922 King Ibn Saud of Saudi Arabia fought hard in his negotiations with the British for 'tribal boundaries' instead of an artificial line which would cut across the range of numerous nomadic tribes in quest of water, grazing and barter, and would not be understood or enforceable.[208] Since the Bahraini claim to Zubarah is short of being a territorial claim it does not legally affect the demarcation of the Bahrain-Qatar offshore boundary. However, it may well be taken into account by both States involved as creating a 'special circumstance' of an historical nature.

In the 1960's the British Foreign and Commonwealth Office presented a tentative plan for dividing the Bahrain-Qatar continental shelf on an equitable basis while shelving for the time being the question of Bahrain's claim to Zubarah. Bahrain, however, presented a

counter-plan claiming much greater areas than those embodied in the British plan.[209] The Qatari contention that Howar islands create no continental shelf can be justified on several grounds. First, the size of these tiny islands should not allow them to have any significant impact on maritime boundaries. Secondly, the geographical fact that the Bahraini islands of Howar are located very close to the Qatar Peninsula supports the view that the submarine areas adjacent to these islands constitute the natural prolongation of Qatar's own land territory. The situation is analogous to that of the Greek islands in the Aegean Sea close to Turkey and also that of the Channel Islands belonging to the British Crown, close to the coast of France. The Greco-Turkish dispute has not yet been settled, but the Channel Islands case, settled in 1977, can be referred to as a precedent. The Court of Arbitration established that the Channel Islands did not generate a surrounding continental shelf and that as a consequence their effect on maritime boundaries was confined to a 12-mile exclusive fishing zone. By analogy to this case the Howar islands should not be allowed a continental shelf; only a limited effect can be permitted namely nothing beyond the three mile territorial sea already pertaining to Bahrain.

As already mentioned, the contemporary international law of the sea, in process of further development at UNCLOS III, permits the drawing of 'archipelagic waters' measured from the low-water mark of the outermost islands of an archipelagic State. According to Article 47 of the ICNT all the islands of these archipelagic States have an equal effect on the maritime boundaries of the State irrespective of geographical distribution. However, the effect of the outermost

islands of any archipelago on the continental shelf (especially in semi-enclosed seas) should not be exaggerated, since such islands are usually of insignificant land-mass.

2. Saudi Arabia-Qatar

Qatar shares undefined offshore boundaries with Saudi Arabia. Saudi Arabia claimes the southern shore of the Persian Gulf from a point between al-Nughairah and al-Marfa on the coast of the Dhagrah to a point on the southeastern coast of the Qatar peninsula. This claim includes about 23 miles of coast line southeast of Qatar. It was reported in December 1965 that an agreement defining both the onshore and offshore boundaries of Saudi Arabia and Qatar was concluded without the participation of the United Kingdom.[210] This boundary agreement, the validity of which was challenged by the United Kingdom on behalf of Abu Dhabi, has not been put into effect, and the boundaries concerned have not yet been demarcated.[211]

3. Iran-UAE

The United Kingdom and Iran agreed to construct a median line in the Persian Gulf which would cover the Iran-UAE continental shelf boundary. However, the basepoints for the construction of the median line were disputed between Iran and the Emirates, a situation which provided a typical Gulf region deadlock. Abu Dhabi claimed the island of Bani Yas as part of her coastline.[212] This was rejected by Iran. An offshore boundary agreement between Iran and the UAE was initialled in 1971 but has not yet been ratified (1978). This draft agreement was based on a median line measured from the coastlines of the two mainlands, without giving any effect to

the islands situated on either side.[213] In the absence of any formal agreement, the boundary line has been de facto established in order to allow orderly development of the resources of the continental shelf. At present, for instance, the Abu Al-Bukoosh offshore field, towards the maritime border between Iran and Abu Dhabi, is developed by the Abu Al-Bukoosh Oil Company on behalf of Abu Dhabi and without Iran's objection.[214]

The Iran-Sharjah offshore boundary was de facto established according to a Memorandum of Understanding which was declared in 1970 when Iran occupied the three islands of Abu Musa, Greater and Lesser Tunbs. The Iran-Sharjah agreement provided, inter alia, that all offshore revenues of Abu Musa would be divided equally between the two States, Sharjah would receive about $3.5 million annually in Iranian aid over the next nine years, and Iran would be permitted to establish a military post on the island although Sharjah would retain control over Abu Musa's civil affairs.

The Iran-Ras al Khaymah offshore boundary is disputed because of their conflicting territorial claim over Greater and Lesser Tunbs.

4. Saudi Arabia-UAE

The Saudi Arabia-UAE frontier dispute dates from the Buraimi confrontation which arose in the early 1930's.[215] The British representative at the Damman Conference (1952) proposed the Saudi Arabia-Abu Dhabi frontier as beginning at 'a line drawn from Sa'uda Nathil to the southernmost tip of Sabkhat Matti, including within Abu Dhabi Aqlat al-Rimth and Batr al-Tarfa; then a line from the southernmost tip of the Sabkhat Matti to al-Qaraini and thence to Umm al-Zamul'.[216] This proposal was rejected by Saudi

Arabia, but both States agreed to submit their dispute to an arbitration tribunal (July 30th, 1954). The Geneva Arbitration of 1955 lapsed because of the alleged 'partiality' of the Saudi Arabian member of the Tribunal. In 1960 Saudi Arabia and the United Kingdom formally requested the good offices of the United Nations Secretary-General, but despite United Nations participation no settlement was reached.[227] In 1971 the United Kingdom withdrew from the Persian Gulf, and no further negotiations have taken place.

Following the creation of the Federation of the UAE (December 1971), the federal State resumed direct negotiations with Saudi Arabia. Consequently, in 1974 the two States initialled an agreement in which both sides made territorial adjustments.[218] However, the draft agreement which appeared to offer a final solution to the Saudi Arabia-UAE border dispute, has not yet been ratified.

So long as the land boundary between Saudi Arabia and the UAE remains undefined, their offshore boundary cannot be established. However, when the base-points on the shores of both States are agreed, their maritime boundary will be delimited in accordance with the equidistance principle.

5. Oman-UAE

Oman's claim to substantial parts of Ras al-Kaymah (one of the member States of the UAE) is a long-standing one. The land borders between Oman and the other British-protected Emirates were drawn in 1952 by two British officials who simply travelled the Musandam Peninsula and asked the tribesmen to state to whom they owed allegiance.[219] The question of the Oman-UAE offshore boundary

arose mainly after the beginning of oil exploration in the disputed submarine areas (this exploration mainly occurred after British withdrawal from the Persian Gulf in 1971). The dispute was highlighted in 1977 when test drilling for oil and gas structures took place on the northmost fringe of Ras al Khaymah. Oman claimed sovereignty over Ras al Khaymah's morthern coast, that is, all territory north of Rams.[220] However, tension cooled when it became clear that oil wasnnot to be found in commercial quantities in the disputed areas. It was only after the Shah of Iran's visit to Oman in 1978 that Oman renewed her claim to the disputed offshore areas by a show of naval strength.[221]

NOTES

1. For English text see UNLS, 'National Legislation and Treaties Relating to the Law of the Sea', N.Y: U.N., 1974 (ST/LEG/SER.B/16), p. 409; also 7 ICLQ (1958), p. 518.

2. U.S. Department of State, Office of Geographer, Continental Shelf Boundary: Bahrain-Saudi Arabia, International Boundary Study, Series A, Limits in the Seas, No. 12, March 10th, 1970, Analysis.

3. Supra, note 1.

4. Supra, note 2.

5. ALBAHARNA, H. M., 'The Legal Status of the Arabian Gulf States', Manchester University Press, 1968, pp. 308 - 309.

6. UNLS (1974) supra, note 1.

7. Iran's Ministry of Foreign Affairs Archives, Bahrain File.

8. Ibid; also LENCZOWSKI, 'Oil and State in the Middle East', Cornell U.P. 1960, p. 135.

9. Umm al-Qura, No. 1208, Sha'ban 17, 1377/ March 7th, 1958.

10. For English translation of this Agreement see ALBAHARNA, op cit, p. 313. For full account see Chapter VI Sections on the United Kingdom and on Bahrain.

11. ALBAHARNA, op cit, note 5, p. 293.

12. Ibid.

13. YOUNG, R. 'equitable solution for offshore boundaries: The 1968 Saudi Arabia-Iran Agreement', AJIL (1970), p. 153.

14. ALBAHARNA, op cit, note 5, p. 295.

15. '1965 Arab Political Documents', The American University of Beirut, 1965, p. 449.

16. Iran's Ministry of Foreign Affairs Archives; also ALBAHARNA, op cit, note 5, pp. 310 - 311.

17. UNLS, 'National Legislation and Treaties Relating to the Law of the Sea', New York: UN, 1976 (ST/LEG/SER.B/18), p. 403. The English text has been also provided in International Boundary Study, Series A, No. 24, Continental Shelf Boundary: Iran-Saudi Arabia, July 6th, 1970, U.S. Department of State, Office of Geographer; also ODA, "Law of the Sea", Vol. 1, P. 415

18. UNLS (1951), Vol. 1, p. 22; also Official Documents, 43 AJIL (1949), supp., pp. 156 - 157.

19. Majmueh-i qavanin (Iranian Gazette) Act of Khordad 1334, (June 19th, 1955), pp. 79-81; For English text see UNLS (1974) supra, note 1 p. 151.

20 YOUNG, op cit, note 13, at 153.

21. For details see next Section on Iran-Qatar continental shelf boundary.

22. U.S. Dept. of State, Office of Geographer, Continental Shelf Boundary: Iran-Saudi Arabia, Internatioanl Boundary, Series A, Limits in the Saa.

23. YOUNG, op cit, note 13, p. 154.

24. Ibid, p. 152.

25. Supra, note 22.

26. For a fine discussion on the UAE see ANTHONY, J. D., 'The Union of Arab Amirates', 26 Middle East Journal (1972), pp. 271 - 287.

27. HAWLEY, op cit, pp. 289 - 290; also ALBAHARNA, op cit, 303 - 304.

28. Qatari Official Gazette, No. 2, April 2nd, 1962.

29. UNLS (1974), supra, p. 403.

30. International Boundary Study, Series A, Limits in the Seas, No. 18, May 29th, 1970.

31. UNLS (1974), supra, p. 403.

32. Financial Times, February 22nd, 1978.

33. The Scotsman, February 27th, 1978; and The Times, September 1976.

34. ALBAHARNA, op cit, pp. 305 - 306.

35. UNLS (1974), supra, p. 416.

36. International Boundary Study, Series A, Limits in the Seas, No. 25, July 9th, 1970.

37. UNLS (1974), p. 416.

38. For Arab versions of Iran's claim over Bahrain see ALBAHARNA, op cit, note 5, pp. 167 - 197; also KHADDURI, M., 'Iran's claim to the sovereignty of Bahrayn', 45 AJIL (1951), supp., p. 631. For Iran's position prior to 1970 see ADAMIYAT, F., 'Bahrain Islands: A legal and Diplomatic Study of the British Iranian Controversy', New York, 1955; also QAEM-MAQAMI, J., 'Bahrain va masael-i khalij-i fars' (Persian text), Teheran: Tahuri, 1348.

39. This legislation was pending before Majlis (Iran's lower House of Parliament) for six years. It was finally passed as the Law of June 19th, 1955. For English translation of this Law see UNLS (1974), supra, note 1, p. 151.

40. KHADDURI, op cit note 38, p. 631; ADAMIYAT, op cit, note 38, p. 201; RAMAZANI, R. K., 'The Persian Gulf: Iran's Role', University Press of Virginia, 1972, p. 45.

41. UNLS (1951), supra, Vol. 1, pp. 22 - 30.

42. Majlis Debating proceedings, 1953.

43. HUREWITZ, J. C., 'Iran in world and regional affairs', in YAR-SHATER, E., ed., 'Iran Faces the Seventies', N.Y., London: Praeger Publishers, 1971, p. 139.

44. U.N. Security Council, Draft Resolutions, Doc. S/9792, May 11th, 1970 and Note by the Secretary-General, Doc. S/9726, March 28th, 1970.

45. For full details on the United Nations mission to Bahrain (1970) and Iran's withdrawal of her claim over Bahrain see, MOQTADIR, H., 'enseraf-i Iran az ede'ayeh khod bar Bahrain: naghsh-i suziman milal-i motahhid' (Persian text), The Journal of the Faculty of Law and Political Science, University of Teheran, No. 13, Spring 1352, pp. 149 - 171. Also see Arab Report record (1970), 263.

46. UNLS (1974), supra, p. 428; also Middle East Basic Oil Laws and Concession Contracts, supp. 5, Petroleum Legislation; also ODA, op cit, Vol. 1, p. 420.

47. Ibid; also see ODA, op cit, Vol. 2 (1975), p. 63.

48. See Chapter V, Section on Bahrain's Territorial Waters.

49. ANNINOS, op cit, pp. 94 - 95.

50. See next Section, Subsection on Iran-Iraq continental shelf boundary, dispute over the Shatt-al-Arab.

51. UNLS (1974), p. 23 at p. 24.

52. 28 Middle East Journal (1974), p. 305.

53. Iran's Ministry of Foreign Affairs, the Ninth Political Department Journal, Shahrivar 2535, p. 115; for English text see AL-AWADHI, op cit, p. 167.

54. The Times, London, April 24th, 1978, Special Report, p. VI.

55. LUARD, E., 'The International Regulation of Frontier Disputes', London: Thames and Hudson, 1970, pp. 15, 236.

56. For the text of the Treaty, see League of Nations Official Journal, 1935, pp. 237 - 40.

57. For the text of the Teheran Protocol, See ibid, p. 234.

58. For the text of Constantinople Protocol, see ibid, pp. 201 - 6.

59. MANCE, 'International Rivers and Canal Transport', Oxford University Press (1944), at pp. 78 - 79.

60. For full study of the growth of the British interests in the Persian Gulf and in the Tigris and Euphrates valleys see, IRELAND, P. W., 'Iraq: A Study in Political Development', London (1937), p. 31

61. HUREWITZ, J. C., 'Diplomacy in Middle East: A Documentary Record', 1535 - 1914, Vol. 1, Princeton, New Jersey; also see KELLY, J. B., 'Eastern Arabian Frontiers', London (1964), 107

62. IRELAND, 'Iraq: A Study in Political Development', London (1937), at p. 56.

63. For early accounts of the dispute see, KHADDURI, M., 'Independent Iraq: A Study in Iraq: Politics since 1932', Oxford University Press, 1951, pp. 240 - 6.

64. After World War I, Iraq was entrusted to the U.K. as Mandated Territory, April 25th, 1920. The Kingdom of Iraq was established on August 23rd, 1921. AL MARAYATI, 'Middle Eastern Constitutions and Electoral Laws', New York (1968), at p. 44. For a full study of the early political development of Iraq see, IRELAND, P. W., 'Iraq: A Study in Political Development', London (1937).

65. For effects of independence on such treaties see The International Law Association, 'The Effect of Independence on Treaties', London: Stevens, 1965, pp. 361 - 367 and 352.

66. Iran's Ministry of Foreign Affairs. Arvand Rud file.

67. The appeal was presented in a letter of November 29th, 1934, from the Iraqi Minister of Foreign Affairs to the Secretary-General of the League. Text in League of Nations Official Journal, February 1935, pp. 196 - 197.

68. TOYNBEE, A. J., 'the Irani-Iraqi frontier dispute', 1936 Survey of International Affairs, Oxford University Press, 1937, p. 797.

69. Ibid.

70. League of Nations Official Journal, 1953, pp. 113 - 117.

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GENERAL CONCLUSION

The legal regime of the continental shelf is based on the cardinal principle of 'natural prolongation of the land territory'. This principle has been supported by the ILC (1956), the ICJ (1969) and UNCLOS III (1973 - 78). It follows that the title of the coastal State to its continental shelf is based on the fact that the continental shelf area is deemed to be actually part of the territory over which the coastal State already has dominion. In accordance with this principle, neither occupation nor declaration is essential to establish the exclusive rights of the coastal States over the areas of the continental shelf.

Regarding the outer limit of the continental shelf, the principle of natural prolongation provides that the entire continental margin, being geologically connected with the continents, should be subject to the coastal States' sovereign rights under the legal regime of the continental shelf. The deep sea-bed and ocean floor beyond the limits of the legal continental shelf is recognized as 'common heritage of mankind' and is regarded as subject to an international regime to be decided by the envisaged Convention on the Law of the Sea, which is in process of formation at UNCLOS III. The attitudes and policies adopted by nation States, which now number 151, in respect of the national-international sea-bed boundary are wholly dominated by the national interests of those individual States, and an examination of State practice (Chapter III) reveals that all legal and political principles and doctrines have ultimately been dominated by calculations of these national self interest, in its various forms.

With respect to the method of delimitation of the continental shelf between opposite or adjacent States, it is universally accepted that under customary international law equitable principles are the overriding criteria governing all rules and methods to be employed in the process of delimitation. The conventional solution provided by the 'equidistance - special circumstances' rule, as adopted in Article Six of the GCCS, is, in practical terms, identical to that provided by the equitable principles. The general rule for delimitation in both customary and conventional law is the equidistance principle, but the foregoing study has demonstrated that wherever the application of equidistance method produces inequitable results, other methods aiming at equity should be employed.

The study has also shown that in the region of the Persian Gulf, although none of the coastal States is a party to the GCCS, the principle of 'median line' has been considered by all Gulf States as constituting the customary international rule for continental shelf delimitation. Four out of the eight Gulf States (Iraq, Kuwait, Oman and Qatar) have separately declared their complete adherence to the principle of 'median line' within their municipal legislation. Those Gulf States which have not done so (Bahrain, Iran, Saudi Arabia and the United Arab Emirates) have in practice acknowleged the median line norm as part of the customary international law in the course of their offshore boundary agreements. In the case of undefined continental shelf boundaries, the equidistance principle has also been universally accepted in the Gulf region as the starting-point for negotiations.

The median-line principle, however, has been modified in the Gulf region owing to special circumstances such as the presence of islands and oil deposits, the general configuration of the coast, and other minor geographical, historical, political and strategic factors.

Two sets of special circumstances arising in the Persian Gulf are of particular importance, since they have led to a significant departure from the equidistance principle which may well be repeated in future definitions of continental shelf boundaries. These are (1) the presence of islands in the semi-enclosed sea and (2) the existence of oil or mineral resources across the equidistant line.

1. The status of various islands in the Persian Gulf can be classified as follows: (a) Small outlying islands which have generally been disregarded. (b) Large islands such as Kharg which have been granted a partial effect on the continental shelf boundary (the Iran-Saudi Arabia Agreement, 1968). (c) Islands on or near the boundary line (such as Dayyinah, Al-Arabiyah, and Farsi) which have been granted territorial sea rights, but no continental shelf rights. (d) Those islands located in constricted waters where there is no room for a territorial belt (such as on the Bahrain-Saudi Arabia boundary, 1958). In such cases two points on the line have been located on the tips of islets, the islets themselves being allocated one to each State.

2. The concept of 'equal division of the natural resources' has been considered as a factor justifying the modification of the

equidistant line. This concept has influenced both the Iran-Saudi Arabia and the Abu Dhabi-Qatar continental shelf boundaries.

The manner in which the above-mentioned special circumstances has been resolved can serve as precedents for continental shelf delimitation in other similar regions.

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