

2. For the purpose of these articles, an archipelago is a group of islands, including parts of islands, with inter-connecting waters and other natural features which are so closely inter-related that the component islands, waters and other natural features form an intrinsic geographical, economic and political entity or which historically have been regarded as such.

Commentary

This Article is based on Article 1 of the proposals of Fiji, Indonesia, Mauritius and the Philippines (A/Conf.62/C.2/L.49), Article 5 of the Working Paper (A/Conf.62/L.4), Article 1 of the Draft Articles presented by Bahamas (A/Conf.62/C.2/L.70), and Formula 'A' in provision II of the Informal Working Paper No. 8 of the Sea-Bed Committee — Article 1-2 of the Draft presented by Bulgaria, G.D.R. and Poland (L.52) also conveys the same meaning as in the above formulations.

Formula 'B' in Provision II of the Informal Working Paper, which is wholly based on the United Kingdom Draft Articles (A/AC.138/SC.II/L.44) does not appear to have received much support within the Asian-African countries.

Article 2

(Baselines)

1. An archipelagic State may employ the method of straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago in drawing the baselines from which the extent of the territorial sea, economic zone and other special jurisdictions are to be measured. The same method may be followed also in the case of archipelagos forming part of any other State.

2. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

3. Baselines shall not be drawn to and from low-tide elevations unless light houses 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.

4. The system of straight baselines shall not be applied by an archipelagic State in such a manner as to cut off the territorial sea of another State.

5. An archipelagic State shall clearly indicate its straight baselines on charts to which due publicity shall be given.

6. An archipelagic State may draw baselines in conformity with Articles.....(bays) and..... (river, mouths) of this Convention for the purpose of delimiting internal waters.

Commentary

The first sentence of clause (1) is the same as formula A of Provision III of Informal Working Paper No. 8, Article 2-1 of the joint proposal (L.49) and Article 6.1 of the Working Paper (L.4). The proposal in the Draft Article 2.1 introduced by Bahamas is also similar. The second sentence of this clause has been added in order to incorporate the principles embodied in formula B of Provision III of the Informal Working Paper No. 8, Article 9 of the Working Paper (L.4) and the Ecuador proposal (L.51).

Clauses 2, 3, 4, 5 and 6 of this Article are substantially the same as Provisions IV to VIII of Informal Working Paper No. 8; Articles 2.2, 2.3, 2.4 and 2.6 of the joint proposal (L.49) are similar to clauses 2, 3, 4 and 5 above.

Article 3

(Archipelagic Waters)

The waters enclosed by the baselines, which waters are referred to in these Articles as archipelagic waters, regardless of their depth or distance from the coast belong to, and are subject to the sovereignty of, the archipelagic State to which they

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

Commentary

The text of this Article is the same as formula B of Provision IX. The first sentence of the Article is based on Article 3.1 of the joint proposals (L.49), Article 1.3 of the Bulgarian, G.D.R. and Poland Draft (L.52), Article 3.1 of the Bahamas Draft (L.70), and Article 7.1 of the Working Paper (L.4). The second sentence of the Article is based on Article 1.5 of the Draft (L.52).

Article 4

(Sovereignty over air space etc.)

The sovereignty and rights of an archipelagic State extend to the air space over its archipelagic waters as well as to the water column and the sea-bed and sub-soil thereof, and to all of the resources contained therein.

Commentary

The text of this Article is the same as Provision X in the Informal Working Paper No. 8, Article 3.2 of the proposals contained in Doc. L.49, Article 3.1 of the proposal contained in Doc. L.52, Article 3.2 of the Bahamas proposal (Doc.L.70) and Article 7.2 of the Working Paper (L.4).

Article 5

If the drawing of the baselines in the manner provided in these Articles has the effect of enclosing a part of the sea which has traditionally been used by an (immediately) adjacent neighbouring State for direct access and communication including the laying of submarine cables and pipelines, between one part of its national territory and another part of such territory, the continued right of such access and communication shall be recognised and guaranteed by the archipelagic State.

Commentary

The text of this Article is based on Formula A of Provision XI in Informal Working Paper No. 8; Article 2.5 of the proposals contained in Doc. L.49; the Malaysian amendment contained in Doc. L.64; Article 2.2 of Bahamas draft (L.70) and Article 6.2 of the Working Paper (L.4).

Article 6

In any situation where the archipelagic waters, or territorial waters measured therefrom, of an archipelagic State include areas which previously had been considered as high seas, that archipelagic State, in the exercise of its sovereignty over such areas, shall give special consideration to the interests and needs of its neighbouring States with regard to the exploitation of living resources in these areas, and, to this effect, shall enter into an agreement with any neighbouring State, at the request of the latter, either by regional or bilateral arrangements, with a view to prescribing modalities entitling the nationals of such neighbouring State to engage and take part on an equal footing with its nationals and, where geographical circumstances so permit, on the basis of reciprocity, in the exploitation of living resources therein.

Commentary

This Article is based on the proposal of Thailand contained in Doc. L.63 and is the same as Formula B of Provision XIII.

Article 7

Subject to the provisions of Articles 8, 9 and 10, ships of all States shall enjoy the right of innocent passage through archipelagic waters.

Commentary

This Article incorporates with certain modifications the provisions of Article 4 in Doc. L.49 and Formula A of Provision XIII in Informal Working Paper No. 8.

Article 8

1. An archipelagic State may designate sealanes suitable for the safe and expeditious passage of foreign ships through its archipelagic waters, and may restrict the passage of such ships, or any types or classes of such ships, through those waters to any such sealanes.

2. An archipelagic State may, from time to time, after giving due publicity thereto, substitute other sealanes for any sealanes previously designated by it under the provisions of this Article.

3. An archipelagic State which designates sealanes under the provisions of this Article may also prescribe traffic separation schemes for the passage of such ships through those sealanes.

4. In the designation of sealanes and the prescription of traffic separation schemes under the provisions of this Article an archipelagic State shall, *inter alia*, take into account:

- (a) the recommendations or technical advice of competent international organisations;
- (b) any channels customarily used for international navigation;
- (c) the special characteristics of particular channels; and
- (d) the special characteristics of particular ships.

5. An archipelagic State shall clearly demarcate all sealanes designated by it under the provisions of this Article and indicate them on charts to which due publicity shall be given.

Commentary

This Article is in identical terms with Article 5, paragraphs 1 to 5, of the proposals contained in Doc. L.49 and Provision XIV of the Informal Working Paper No. 8.

Article 9

All ships shall, however, enjoy equal freedom of passage in archipelagic straits, the approaches thereto, and those areas in the archipelagic waters of the archipelagic State along which normally lie the shortest sealanes used for international navigation between one part and another part of the high seas.

Commentary

This Article is based on the provisions of Article 4 of the proposals contained in Doc. L.52. This Article has been incorporated in order to provide that though the normal right of ships is only of innocent passage through the archipelagic waters, in certain areas free passage may have to be conceded especially if the right of free passage is accepted in straits used for international navigation.

Article 10

In addition to the right of passage through the sealanes designated for international navigation, an archipelagic State shall recognize, for the sole benefit of such of its neighbouring States as are enclosed or partly enclosed by its archipelagic waters for the purpose of gaining access to and from any part of the high seas by the shortest and most convenient routes.

To this effect, an archipelagic State shall enter into arrangements with any such neighbouring States at the request of the latter.

Commentary

This Article is based on Thailand's proposal contained in Doc. L.63.

Article 11

1. An archipelagic State may make laws and regulations, not inconsistent with the provisions of these Articles and having regard to other applicable rules of international law, relating to

passage through its archipelagic waters, or the sealanes designated under the provisions of this Article, which laws and regulations may be in respect of all or any of the following:

- (a) the safety of navigation and the regulation of marine traffic;
- (b) the installation, utilization and protection of navigational aids and facilities;
- (c) the installation, utilization and protection of facilities or installations for the exploration and exploitation of the marine resources, including the resources of the sea-bed and subsoil, of the archipelagic waters;
- (d) the protection of submarine or aerial cables and pipelines;
- (e) the conservation of the living resources of the sea;
- (f) the preservation of the environment of the archipelagic State, and the prevention of pollution thereto;
- (g) research in the marine environment, and hydrographic surveys;
- (h) the prevention of infringement of the fisheries regulations of the archipelagic State, including *inter alia* those relating to the stowage of gear;
- (i) the prevention of infringement of the customs, fiscal, immigration, quarantine, sanitary and phytosanitary regulations of the archipelagic State; and
- (j) the preservation of the peace, good order and security of the archipelagic State.

2. The archipelagic State shall give due publicity to all laws and regulations made by it under the provisions of this Article.

Commentary

The text of this Article is identical with the provisions of paragraphs 6 and 7 of Article 5 in the proposals contained in Doc. L.49 and Provision XV in Informal Working Paper No. 8.

Article 12

Foreign ships exercising the right of innocent or free passage through the archipelagic waters or the sealanes designated under the provisions of this Article shall comply with the relevant laws and regulations made by the archipelagic State under the provisions of this Article.

Commentary

This Article contains a modified version of paragraph 8 of Article 5 of the proposals contained in Doc.L.49. Provision is made for compliance of laws and regulations, both in the case of innocent and free passage. The modification is necessitated by reasons of the provisions of Article 9 wherein free passage is contemplated in certain cases.

Article 13

All ships passing through the straits and waters of archipelagic States shall not in any way endanger the security of such States, their territorial integrity or political independence. Warships passing through such straits and waters may not engage in any exercises or gunfire, use any form of weapon, launch or take on aircraft, carry out hydrographic surveys or engage in any similar activity unrelated to their passage. All ships shall inform the archipelagic State of any damage, unforeseen stoppage, or of any action rendered necessary by *force majeure*.

Commentary

This Article is identical with Formula B of Provision XVII in Informal Working Paper No. 8.

Article 14

If any foreign warship does not comply with the laws and regulations of the archipelagic State concerning its passage through the archipelagic waters or the sealanes designated under the provisions of this Article and disregards any request for compliance which is made to it, the archipelagic State may suspend the passage of such warship and require it to leave the archipelagic waters by such safe and expeditious route as may be designated by the archipelagic State.

Commentary

This Article is based on paragraph 9 of Article 5 of the proposals contained in L.49.

Article 15

Subject to the provisions of paragraph of this Article, an archipelagic State may not suspend the innocent passage of foreign ships through sealanes designated by it under the provisions of this Article, except when essential for the protection of its security, after giving due publicity thereto and substituting other sealanes for those through which innocent passage has been suspended.

An archipelagic State may not interrupt or suspend the transit of ships through the archipelagic straits or waters as contemplated by Article 9 herein except in times of war or national emergency.

Note: These draft propositions do not in any way reflect the viewpoint of the A.A.L.L.C. Secretariat but have been put forward to serve as an aid to discussions.

(iii) SUMMARY RECORD OF DISCUSSIONS HELD DURING THE SIXTEENTH SESSION

The discussion on the subject of the "Law of the Sea and the Sea-Bed" during the Tehran Session of the Asian-African Legal Consultative Committee was a continuation of the work which began in the Committee at its Colombo Session (1971) and continued through its sessions held in Lagos (1972), New Delhi (1973) and Tokyo (1974) as also in inter-sessional meetings of its Sub-Committee of the Whole and Working Groups during the past five years. During the Tehran Session, the subject was discussed in the plenary meetings held on 27th to 29th January and 1st February, 1975 as also in the meetings of the Sub-Committee of the Whole organised during the session.

The Secretary-General of the Committee initiated the discussion by making a statement on the organisation of the work during the session and the scope of discussions on the subject in the plenary meetings. He suggested that in view of the shortage of time at the disposal of the Committee, it would be desirable to limit discussion on the following specific issues:

(a) *Exclusive Economic Zone/Patrimonial Sea* —

pollution control, scientific research, the rights and interests of land-locked States to a share of the resources and the rights of other States in the zone;

(b) *Straits used for International Navigation* —

passage through straits used for international navigation which connect two parts of the high seas;

(c) *Land-locked States* —

share in the non-living/non-renewable resources of the economic zone, and collaboration with other

States or their nationals for technical assistance in the matter of enjoyment of their right in the share of the resources of the economic zone;

(d) *Archipelagos*;

(e) *Fisheries* —

the terms and conditions on which other States may be allowed to fish within the economic zone and the appropriate conservation measures that may be taken both within the economic zone and on the high seas for different species of fish;

(f) *Enclosed and semi-enclosed seas*;

(g) *Regime of Islands*;

(h) *Continental Shelf* —

The question whether the concept of the continental shelf should be absorbed in or replaced by that of the exclusive economic zone;

(i) *International Sea-Bed Authority*;

(j) *Pollution* —

Nature and extent of the rights and obligations of States in relation to preservation of marine environment.

The Secretary-General also suggested that the discussion might be held in the background of the views expressed at the Caracas meeting with a view to prepare for the Geneva meeting of the Third Law of the Sea Conference. The suggestions of the Secretary-General were accepted by the Committee.

The Rapporteur/Chairman of the Working Group on the Law of the Sea made a statement reviewing the work done at

the Caracas Session of the Third Law of the Sea Conference. He summed up the trends emerging from the deliberations of the three main committees at the Caracas Session as follows:

(i) *Territorial Sea* — There was broad agreement on a twelve-mile territorial sea as more than 80 States had supported it.

(ii) *Economic Zone* — The concept of economic zone and its extent upto 200 nautical miles had received almost universal affirmation. However, the divergence of views in that regard had centred around: (a) the content of coastal jurisdiction in the economic zone; (b) the extent of other States' interests in the said zone; (c) the interests of land-locked States in this zone; and (d) the question whether the concept of economic zone should subsume the concept of continental shelf or whether the latter as traditionally understood should subsume the concept of continental shelf or whether the latter as traditionally understood should survive the former.

(iii) *Archipelagos* — Three aspects of this question deserved consideration, namely (i) coastal archipelagos like Norway and Chile; (ii) archipelagos belonging to States like India or Ecuador; and (iii) archipelagos constituting a single State like Indonesia, Philippines etc.

(iv) *Regime of Islands* — This question had presented a ticklish problem, particularly in the case of islands which did not constitute an archipelago.

(v) *Land-locked States* — The land-locked States at the Caracas Session had laid stress on three aspects: (i) establishment of economic zones on regional or sub-regional basis; (ii) protection of their interests in regard to exploitation of living resources on a footing of equality with the coastal States concerned; and (iii) equal rights over the non-renewable resources in the economic zone.

(vi) *Enclosed and semi-enclosed States* — This question was not considered intensively at the Caracas Session and,

therefore, would have to be considered further at the Geneva Session.

(vii) *Regional Arrangements* — Regional arrangements concerning exploitation of fishery resources and for regulating pollution control within the enclosed seas would require further consideration.

(viii) *Marine Pollution and Scientific Research* — Whilst not much progress had been made on the question of scientific research, considerable progress was made on the question of marine pollution. Although a sizeable area of agreement had been reached on a number of issues relating to marine pollution, questions like whether there should be a pollution control zone wherein the concerned coastal State would exercise jurisdiction, whether this zone should coincide with economic zone or whether there could be some other zone, the question of standards to regulate marine pollution, and the question of liability for pollution damage could not be resolved.

(ix) *International Sea-Bed Area* — The Caracas Session had dealt with the question of the regime of the international sea-bed area, the conditions of exploitation of the sea-bed resources and the economic implications of sea-bed exploitation. However, the Conference could not start its work on the composition, functions and powers of the international machinery to govern the international sea-bed area.

The Rapporteur, finally, observed that many of the aforesaid issues, which were highly sensitive and complicated, would require tactful handling.

The *Special Representative of the United Nations Secretary-General* referred to the various issues of the Law of the Sea which the international community would have to resolve at the forthcoming Law of the Sea meeting at Geneva. In his view, those issues included the territorial sea, the continental shelf, straits used for international navigation, archipelagic States, fisheries and other living resources of the economic zone, rights and interests of land-locked States, scientific research, marine pollution and the international regime and machinery for the sea-bed. He expressed the fervent hope that it was through meeting and consultations and not by confrontation and by pursuit of the interests of international community rather than of national interests that a new legal order for the sea would evolve.

The Delegate of *Iran* advocated conclusion of regional arrangements especially in the case of countries bordering enclosed or semi-enclosed seas as, in his view, regional requirements often led to common stands on a number of issues. He laid stress on the concept of unity and oneness of the sea as activities in one part of the sea could not be conducted without affecting the other part. In his view, the ocean in its totality was a living organism which formed one ecological system and therefore the approach towards it should be global and integrated. He felt that from the deliberations of the Caracas meeting one drew the conclusion that there could be a clear-cut separation between the different functions of the sea, but he wondered how could the various jurisdictions and authorities envisaged for the different zones and areas of the sea be separated from one another, especially in regard to questions on pollution, scientific research, fishing and navigation. Although the proposed International Sea-Bed Authority would be mainly concerned with the international sea-bed and various other authorities had been envisaged for other matters, in his view, it would be most practicable to combine all these functions and competences in a single international authority. He felt that in this respect the Draft Articles proposed by Malta might provide necessary inspiration, and the terms of reference of the proposed International Sea-Bed Authority be extended to comprise the management of superjacent waters.

The Delegate of *Pakistan* concerned himself with two issues, namely territorial sea and the right of free access to and from the sea of land-locked States. Although Pakistan had proposed a 12-mile territorial sea in the U.N. Sea-Bed Committee, that was based on the understanding that the concept of economic zone as understood by his country would be accepted at the Caracas meeting. But since no agreement was reached in that regard, his country contemplated extending its territorial sea to 50 miles. However, his Government was still prepared to accept a 12-mile territorial sea if economic zone as understood by it was accepted.

As regards land-locked States, the Delegate observed that although his Government fully appreciated the aspirations of land-locked States and recognised their need for a free access to and from the sea, law, reason and pragmatism decreed that the claims of land-locked countries could not exist independently of suitable agreements with the concerned transit States. The Delegate believed that transit by land-locked States was an encroachment on the sovereignty of the transit States and therefore only the latter could determine the extent of transit rights. Further, in his view, transit States might in lieu of the transit facilities accorded to the land-locked States require them to grant similar facilities. Such arrangements, the Delegate added, would meet the legitimate needs of land-locked States and although they could be modified from time to time to reflect the changing conditions, there was no reason to change the existing equitable principles applicable in that regard. Referring to the Charter of Economic Rights and Duties of States, adopted by the U.N. General Assembly, he said that the provision contained in sub-para (O) of Chapter I of that document reflected the aforesaid position.

The Observer for *Cyprus* stated that his country supported the principle that the resources of the sea-bed beyond national jurisdiction constituted the common heritage of mankind and therefore Cyprus favoured creation of a meaningful machinery under the U.N. system for administering those resources. On the question of straits used for international navigation, the Observer stated that Cyprus supported the concept of innocent passage

subject to objective criteria which struck a right balance between the needs of the international community and the legitimate concerns of the concerned coastal State. Touching upon the principle of median line, which was affirmed by customary international law and codified in the 1958 Territorial Sea Convention, the Observer said that the said rule catered to the interests of small and weak States for it provided a residual rule which could apply in the absence of freely negotiated agreement and would thus discourage any temptation on the part of stronger States to claim the lion's share in unequal negotiations. In his view, the principle *mutatis mutandis* could also be applied to the delimitation of the continental shelf and economic zone in the case of coastal States opposite or adjacent to the other. Dealing with the regime of islands, the Observer said that islands were in the same position as continental territories in so far as jurisdictional zones like territorial sea, continental shelf, economic zone etc. were concerned, and as such no artificial distinction should be created between the two. If at all any distinction was to be created, it should be in favour of the islanders who were more dependent on the resources of the sea than the populations of continental territories which could in any case rely on the sources of their hinterland.

The Observer for *Poland* stressed that all problems of the law of the sea should be solved in a spirit of cooperation and mutual understanding and not by confrontation, and that legitimate interests of all States should be safeguarded. He pointed out that because of Poland's geographical situation which disabled it from extending its economic zone, it fell within the category of geographically disadvantaged States. On the question of straits used for international navigation, the Observer stated that Poland favoured the right of all coastal States to free and unimpeded passage through such straits. However, he added, such passage should not endanger the security of the concerned coastal States and consequently it ought to conform to international rules concerning prevention of collision and pollution of waters and shores of a coastal State. Further, the Observer pointed out that although Poland had accepted the establishment of 200-mile economic zones and recognised the right of every developing State to reserve to itself a part of the

maximum sustainable yield which it could land and the right to regulate fishing in that zone, other States should be entitled to fish for the unreserved part of the fisheries. Poland, he added, keeping in view the interests of developing coastal States was even prepared to agree to imposition of a reasonable licensing fee by the concerned coastal States for fishing in their economic zones. However, he added, at the same time Poland favoured broadest international cooperation for the proper conservation and rational utilisation of the resources of the sea. This co-operation should be manifested at both bilateral and international levels. Finally, the Observer expressed the hope that the recognition of the sea-bed and ocean floor beyond national jurisdiction as the common heritage of mankind and the principle of equitable sharing of its benefits would be realised in such a way that interests of each of the groups of States would be accommodated.

The Observer for *U.S.S.R.* expressed the hope that the new legal order of the sea would meet a situation where the world ocean would unite rather than divide peoples and where it would never again become an arena of struggle and conflict. Keeping in view its close friendly relations with developing countries, the Observer pointed out that the Soviet Union had supported in principle the establishment of 200-mile economic zones by them but it felt that such States should not allow under-exploitation within their economic zones of the living resources badly needed for mankind. He felt that if a coastal State did not take 100 percent of the allowable catch within its economic zone, it must permit fishing by other countries in its zone on reasonable terms. The Observer referred to the Draft Articles on Economic Zone proposed by *U.S.S.R.* at Caracas and said that they contained appropriate provisions in that regard. On the question of straits used for international navigation the Observer stated that such straits were major sea routes of global significance and most important transport arteries and therefore navigational regime in such straits must fully conform to the role which these straits played in contemporary international life. In his view, it was not the innocent passage regime which corresponds to this role but only the regime of free and unimpeded passage of all ships through such

straits. He felt, however, that the principle of free passage through such straits was inextricably linked with the reliable safeguards for the legitimate interests of a coastal State. The Observer drew attention to the proposals submitted by the *U.S.S.R.* and other socialist countries which, in his view, envisaged a series of measures designed to safeguard the security of strait States, their territorial inviolability or political independence.

The Delegate of *Nepal* observed that on account of the land-locked countries being poorly endowed by Nature in respect of mineral resources and on account of their situational distance from the sea, it was natural for those countries to press their right to free access to and from the sea and also their share in the sea resources. The Delegate felt that the right of free access was a right and not a privilege, and that the right could not be made subject to any bilateral agreement with the transit State laying down the modalities of the exercise of transit. Further, he felt, the right was also not dependent or subject to any reciprocity clause. On the question of sharing of sea resources, the Delegate stated that it ought to be realised that the concept of economic zone or fishing zone benefited only the coastal States and that is why it was supported even by developed States. So far as the land-locked States were concerned, the Delegate felt, they would be the real sufferers as the establishment of any such zone would contract the area of the high seas and the international sea-bed area. It would thus result in the abrogation of the existing rights of the land-locked States without *quid pro quo*. In so far as non-living resources were concerned, establishment of any such zone would seriously jeopardise the economic viability of the left-over international sea-bed area. Further, according to him, such exclusive zones would not only aggravate the already growing income disparity but also aggravate the energy and other resources disparity between nations.

The Observer for *Ecuador* drew the following inferences from the deliberations held at the Caracas meeting: (i) A great majority were in favour of a broad zone wherein the coastal State could exercise sovereignty or jurisdiction. There