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A Handbook
on the New
Law of the Sea

2

EDITED BY

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The views hereafter expressed are those of the authors and do not necessarily reflect those of administrations and services for which they worked at the time of the Conference.

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Peaceful Uses of the Sea, Denuclearization and Disarmament

SECTION 1 GENERAL TOPICS

Subsection 1 SEA, AN AREA OF PEACE?

Division A USES OF THE SEA AND THE USE OF FORCE

Paragraph 1 General Remarks

The satisfaction of man's needs has always been closely related to his desire to thwart another man's satisfaction of these same needs. Throughout history tribes, nations and States have engaged in conflicts to ensure nourishment, shelter, routes of communication, raw materials, etc. Even when there was enough wealth and space for everyone nations and States competed – the fact which is well confirmed by the race for unexplored areas, colonies and spheres of influence.

Thus, as far as maritime areas and their resources are concerned, the most important maritime Powers insisted on obtaining the privileged position for themselves, trying to hamper or even prevent other nations and States from the use of the sea for fishing or navigation. To this purpose they applied all available forms of pressure, threat or force. Hence, in order to exclude others, force was used even in activities which were otherwise in themselves peaceful. However, apart from the competition between the States in respect of the use of the sea itself, force was also used at sea in the majority of wars between States, the causes of which very often had nothing to do with seas themselves.

Seen in such a historic perspective, the present situation seems unfortunately even more dangerous than any other in the past. Whereas in the past the sea seemed to be an inexhaustible source of fish and an indestructible route of communication for a relatively limited number of States, today, although over-exploited and polluted, it needs to satisfy the requirements of 160 States as for their fishing, mineral resources and navigation. On the

other hand, the unrestrained nuclear arms race, extremely dangerous to the survival of humanity, brought about an unprecedented importance of navies. The super-Powers are, namely, convinced that the ballistic missile nuclear submarines are essential to the maintenance of strategic stability and as such the deterrence factor in respect of the first nuclear strike.

Paragraph 2 **Scope of this Chapter**

The fifteen years of hard efforts on the part of the United Nations to come to the conclusion of the Law of the Sea Convention (LOS Convention) and its voluminous and complex contents prove the present importance of the sea and of the regulation covering all activities in the ocean space. Yet, in the Convention there is an obvious disproportion between the provisions covering economic, scientific and other civil uses of the sea and the provisions covering the use of the sea for military purposes. The scarce and ambiguous provisions on military uses of the sea are due to the attitudes of the vast majority of the participants at the Third United Nations Conference on the Law of the Sea (UNCLOS III) who had, during the Conference, tried to minimize the controversy on that issue¹. However, it should be emphasized that many of the provisions of the Convention (as well as other rules of the law of the sea) apply to a number of activities irrespective of their civil or military character. In some instances the distinction between civil and military activities was left vague. Moreover, even determining the scope of the term “military activities” on the basis of the LOS Convention causes difficulties (see *infra*, Subsec. 3).

All the extractive, transportation, scientific and other civil uses of the sea and their legal regulation are dealt with in other Chapters of the present book. Although many of the civil activities at sea, such as navigation, marine scientific research or the exploration of the Area, have also “strategic” or “military” implications, in this Chapter they will be mentioned only incidentally. The scope of this Chapter is to scrutinize international rules concerning military uses (military activities) of the sea in times of peace (international rules concerning war at sea are dealt with in the Chapter that follows).

As already mentioned, the military uses of the sea in times of peace are a neglected issue in the contemporary development of the law of the sea. There are not many international rules on this issue; a number of them were adopted a long time ago and it is doubtful whether some of them are still in force. They are not systematic and very often they apply to small areas only and to a restricted number of States. Many of the rules within

1. See M. R. Shyam, “The U.N. Convention on the Law of the Sea and Military Interests in the Indian Ocean”, *Ocean Development and International Law (ODIL)*, Vol. 15, 1985, No. 2, p. 149.

the scope of this Chapter, besides regulating a certain military activity, contain some restrictions of these activities (e.g., the passage of warships through the Turkish straits); others completely prohibit certain activities (e.g., the emplacement of nuclear weapons in or on the sea-bed and the ocean floor).

Division B RESERVATION OF THE SEA FOR PEACEFUL PURPOSES

Paragraph 1 Origin of the Principle

The notion of the reservation of an area exclusively “for peaceful purposes” has been introduced in the law of the sea only at the time of its recent revision. This term was first explicitly used in the Antarctic Treaty of 1 December 1959 (Art. 1, para. 1)² and in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space including the Moon and Other Celestial Bodies of 27 January 1967 (Art. 4, para. 2)³. These two Treaties, the purpose of which was to establish international co-operation regarding scientific exploration of the new spaces, imposed simultaneously with the proclamation of the principle of their use exclusively for peaceful purposes the demilitarization of these spaces. However, although demilitarization – meaning the interdiction of military installations and activities – is a condition for the reservation of a space for peaceful purposes, the only total demilitarization is the one in Antarctica⁴. Apart from the celestial bodies, outer space is only partially demilitarized: the 1967 Treaty prohibits only placing in orbit around the earth “any objects carrying nuclear weapons or any other kinds of weapons of mass destruction ...” (Art. 4, para. 1).

Paragraph 2 Law of the Sea

The idea of reserving an area for peaceful purposes has been introduced into the law of the sea through the initiative of the Maltese Ambassador Arvid Pardo, who in 1967 requested the inclusion into the

2. United Nations, *Treaty Series (UNTS)*, Vol. 402, p. 71.

3. *UNTS*, Vol. 610, p. 205.

4. See J.-P. Quéneudec, “Le statut international des espaces et les armes”, *Le droit international et les armes*, Société française pour le droit international, Colloque de Montpellier (juin 1982), 1983, pp. 250-254. See also R. Wolfrum, “Restricting the Use of the Sea to Peaceful Purposes: Demilitarization in Being”, *German Yearbook of International Law*, Vol. 24, 1981, pp. 201-202. P. Merciai distinguishes four different meanings of the notion of the reservation of the seabed for peaceful purposes: from the complete interdiction of military activities to the permissibility of all activities lawful under general international law; P. Merciai, “La démilitarisation des fonds marins”, *Revue générale de droit international public (RGDIP)*, Vol. 88, 1984, No. 1, pp. 48-52.

agenda of the twenty-second session of the United Nations General Assembly of an additional item the title of which modified by the General Assembly read as: “Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interest of mankind.”⁵ Both Committees established for the study of this question (*Ad Hoc* Committee in 1967 and Sea-Bed Committee in 1968) were entrusted with peaceful uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction⁶. The Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, the most important outcome of their work, declared the principle that the international sea-bed area shall be “open to use exclusively for peaceful purposes” (fifth principle). The same idea was elaborated further in the eighth principle:

“The area shall be reserved exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to a broader area.”

Moreover, the conclusion as soon as possible of one or more international agreements was envisaged “in order to implement effectively this principle and to constitute a step towards the exclusion of the sea-bed, the ocean floor and the subsoil thereof from the arms race” (eighth principle)⁷. The 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof (Sea-Bed Treaty) should be considered as an agreement of the kind envisaged in the eighth principle of the 1970 Declaration⁸.

The list of subjects and issues relating to the law of the sea which had to be dealt with by UNCLOS III, formally approved by the Sea-Bed Committee on 18 August 1972, included the following item: “22. Peaceful uses of the ocean space; zones of peace and security.”⁹ While allocating the

5. *Official Records of the General Assembly, Twenty-second Session, Supplement No. 16 (A/6716)*, p. VII, agenda item 92. Pardo's original proposal in A/6695, 18 August 1967.

6. Resolution 2340 (XXII) adopted by the General Assembly on 18 December 1967 and resolution 2467 (XXIII) of 21 December 1968.

7. General Assembly resolution 2749 (XXV) adopted on 17 December 1970.

8. Concluded at London, Moscow and Washington on 11 February 1971; *UNTS*, Vol. 955, p. 115.

9. *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 (A/8721)*, p. 8, para. 23. The Sea-Bed Committee was instructed to prepare the list of subjects and issues by General Assembly resolution 2750 C (XXV) of 17 December 1970.

items to the various organs of the Conference, it was decided that this item should be considered directly by the Plenary and also by each Main Committee in so far as it is relevant to their mandates¹⁰.

The Plenary of the Conference dedicated three meetings to this item in April 1976¹¹. Although there were suggestions that this item should be elaborated in the framework of the Conference and that more precise provisions should be inserted in the LOS Convention, the item itself did not attract much attention: only 17 delegations participated in the discussion. The view that problems concerning the peaceful uses of the sea and its demilitarization should be discussed in other fora prevailed¹². The only original contribution of the Plenary in respect to this item is the statement in the fourth operative paragraph of the Preamble to the Convention (drafted in 1980), where the promotion of "peaceful uses of the seas and oceans" has been recognized as one of the purposes of the legal order for the oceans established through the Convention¹³.

The Main Committees were more productive: even before the short debate in the Plenary the first informal draft – the Informal Single Negotiating Text (ISNT), established in 1975 – contained already almost all the provisions on the subject eventually included in the LOS Convention¹⁴.

The final text of the Convention confirms the principle that the Area "shall be open to use exclusively for peaceful purposes by all States" (Art. 141). Moreover, the Review Conference, convened for the review of Part XI of the Convention, has to ensure, *inter alia*, the maintenance of the principle of "the use of the Area exclusively for peaceful purposes" (Art. 155, para. 2). Two additional rules limit marine scientific research in the Area and the use of installations for carrying out activities in the Area exclusively to peaceful purposes (Art. 143, para. 1; Art. 147, para. 2 (d)).

10. A/CONF.62/28 of 20 June 1974 and A/CONF.62/29 of 2 July 1974. See also the explanation of the President of the Conference in UNCLOS III, *Official Records*, Vol. I, p. 40, para. 9.

11. 66th, 67th and 68th meetings of the Plenary, held on 19, 23 and 26 April 1976; UNCLOS III, *Official Records*, Vol. V, pp. 54-68.

12. The delegations of China, Ecuador, Iraq, Madagascar, Pakistan, Peru, Philippines, Romania and Somalia favoured the incorporation in the future convention on the law of the sea of measures aimed at limiting military activities at sea. On the other hand, Bulgaria, Cuba, USSR and the United States of America did not want any negotiations in this respect at UNCLOS III; *ibid.* See also, R. W. G. de Muralt, "The Military Aspects of the U.N. Law of the Sea Convention", *Netherlands International Law Review*, Vol. 32, 1985, No. 1, p. 79.

13. See para. 5 (b) in the Report of the President on the work of the Informal Plenary Meeting of the Conference on the preamble, A/CONF.62/L.49/Add.2 of 29 March 1980 in UNCLOS III, *Official Records*, Vol. XIII, p. 79.

14. Art. 8, paras. 1 and 2; Art. 10, para. 1; Art. 16, para. 2 (iv) in A/CONF.62/WP.8/Part I of 7 May 1975; Art. 74 in A/CONF.62/WP.8/Part II of 7 May 1975; Art. 4 (a) and Art. 8 of Part II in A/CONF.62/WP.8/Part III of 7 May 1975; reproduced in UNCLOS III, *Official Records*, Vol. IV, pp. 137 *et seq.*

Moreover, the conduct of marine scientific research exclusively for peaceful purposes has been proclaimed as a general principle (Art. 240 (a)). States and competent international organizations are obliged to “promote international co-operation in marine scientific research for peaceful purposes” (Art. 242, para. 1). Restriction exclusively to peaceful purposes has also been envisaged in respect of marine scientific projects by other States and competent international organizations in foreign exclusive economic zones (EEZs) or on the foreign continental shelves (Art. 246, para. 3).

On the basis of a working paper submitted by Ecuador, Panama and Peru to the Sea-Bed Committee in 1973, UNCLOS III proclaimed also that “the high seas shall be reserved for peaceful purposes” (Art. 88 of the LOS Convention)¹⁵. In accordance with Article 58, paragraph 2, this provision applies to the EEZ as it is not incompatible with the specific provisions of its legal régime (Part V).

Reservation of some marine areas or activities at sea for peaceful purposes, and particularly the quoted statement in respect of the high seas, raises the question of the relevance of the adoption of this new principle in the law of the sea. The question is whether this means that henceforth it would not be permitted to use the high seas, the EEZ and the Area for military activities and that marine scientific research could not be conducted for military purposes. It is quite obvious that States could not have accepted the prohibition of military activities at sea in the LOS Convention while at the same time all the coastal States carry out such activities at sea and many of them count on the sea as an area of warfare.

The Convention itself confirms that military activities at sea are not forbidden. General provisions regarding navigation and overflight apply to warships and military aircraft too. Moreover, by forbidding some specific military activities of foreign warships in the territorial sea (Art. 19, para. 2), the Convention implicitly permits such activities beyond the limits of the foreign territorial sea. Finally, military activities are mentioned in the Convention’s provisions regarding settlement of disputes (Art. 298, para. 1 (b)); see *infra*, Subsec. 3).

Does this mean that all these references to military activities show the reservation for peaceful purposes in the LOS Convention to be barely a slogan bearing no consequences on the behaviour of States? Although the Convention does not contain a definition of “peaceful purposes”, a clarification of the issue may be found in Article 301, where it was stated under the heading “Peaceful uses of the seas”:

“In exercising their rights and performing their duties under this

15. A/AC.138/SC.II/L.27 and Corr.1 and 2, dated 13 July 1973; reproduced in *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21 (A/9021)*, Vol. III, p. 30.

Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.”¹⁶

As a consequence of this general provision (applicable to all the sea areas and to all maritime activities) it can be said that the principle of reservation of the sea for peaceful purposes represents the explicit application to the law of the sea of some basic principles of general international law and of the principles of the United Nations Charter (particularly Art. 2, para. 4). The principle neither limits nor forbids any particular military activity at sea as long as this activity is not contrary to the principles mentioned in Article 301¹⁷. Specific limitations or prohibitions of the military uses of the sea are either provided for in the Convention itself (e.g., provisions on innocent passage), or they may be agreed upon by international agreements (e.g., as envisaged in respect of the sea-bed and its subsoil in the 1970 Declaration of Principles and realized by the 1971 Sea-Bed Treaty) or they may be established on the basis of customary international law (e.g., the prohibition of nuclear tests on the high seas).

Division C ZONES OF PEACE

Paragraph 1 Initiatives

Simultaneously with the affirmation in international law of the principle of the reservation of some areas exclusively for peaceful purposes, efforts have been made in order to proclaim some areas – marine areas in particular – as “zones of peace”. Such attitudes were reflected in

16. Article 301 is a modification of doc. GP/1 of 21 March 1980, the informal proposal of Costa Rica *et al.*, a group of States which only a day earlier proposed the addition of the same text to Article 88 (C.2/Informal Meeting/55 of 20 March 1980); see Report of the President on the work of the Informal Plenary Meeting of the Conference on general provisions, A/CONF.62/L.58 of 22 August 1980 in UNCLOS III, *Official Records*, Vol. XIV, p. 128. For the claim that the implications of the “peaceful purposes” clauses are determined in Article 301, see A/40/535 (*The Naval Arms Race*, United Nations publication, Sales No. E.86.IX.3), para. 188; B. Kwiatkowska, “Military Uses in the EEZ – a Reply”, *Marine Policy*, Vol. 11, 1987, No. 3, p. 249.

17. In this sense: A/40/535 (*The Naval Arms Race*), para. 188; B. H. Oxman, “The Regime of Warships under the United Nations Convention on the Law of the Sea”, *Virginia Journal of International Law*, Vol. 24, 1984, No. 4, pp. 831-832; Kwiatkowska, *op. cit.*, p. 250. D. Larson denies any practical effect of reserving the high seas for peaceful purposes, D. L. Larson, “Security Issues and the Law of the Sea: a General Framework”, *ODIL*, Vol. 15, 1985, No. 2, p. 116. A very thorough analysis not suggesting a definite answer, T. Treves, “La notion d’utilisation des espaces marins à des fins pacifiques dans le nouveau droit de la mer”, *Annuaire français de droit international (AFDI)*, Vol. 26, 1980, pp. 687-699.

the inclusion of item 22 entitled “Peaceful uses of the ocean space; zones of peace and security” in the list of subjects and issues relating to the law of the sea to be dealt with by UNCLOS III (see *supra*, Div. B). Discussing this item in the Plenary of the Conference several delegations supported the concept of “zones of peace and security”, but only Ecuador, Iraq, Madagascar, Philippines and Somalia proposed to deal with such zones in the LOS Convention¹⁸. As a consequence of this meagre response, contrary to the “peaceful uses of the ocean space”, there is no trace of the second part of item 22 in the Convention.

Suggestions to establish “zones of peace” have been made and discussed not only within the framework of the United Nations, but also within the Movement of Non-Aligned Countries, at the meetings of the Conference on Security and Co-operation in Europe (CSCE), etc. These suggestions are motivated by the same considerations which underlie the proposals to reserve marine areas for peaceful purposes: the wish of the vast majority of States to put an end to the ever-increasing militarization of the ocean space and to the dangerous confrontation of the maritime Powers which extends to almost all the seas. This uniformity of motives causes the same difficulties in realizing the idea of a zone of peace at sea: maritime Powers are not disposed to retire or even limit their navies in any part of the sea which, in their view, is of strategic importance.

In respect to the zones of peace in general the 1978 Final Document of the first special session of the General Assembly on disarmament stated:

“The establishment of zones of peace in various regions of the world under appropriate conditions, to be clearly defined and determined freely by the States concerned in the zone, taking into account the characteristics of the zone and the principles of the Charter of the United Nations, and in conformity with international law, can contribute to strengthening the security of States within such zones and to international peace and security as a whole.” (Para. 64).¹⁹

Zones of peace have been declared by the United Nations General Assembly and some other international bodies; mainly they are located in marine areas. As for the time being there is no international agreement establishing any zone of peace, the 1978 special session of the General Assembly on disarmament called the existing actions in this respect “Proposals for the establishment of zones of peace” (para. 64 of the Final Document). These proposals vary in their conception; in various texts the term “zones of peace” appears also as “zones of peace and security”, “zones of peace and co-operation”, “regions of peace, security and co-

18. UNCLOS III, *Official Records*, Vol. V, pp. 54-68.

19. General Assembly resolution S-10/2 of 30 June 1978.

operation”, “zones of peace, freedom and neutrality”, etc. Such varying terms and concepts are likely to result in different legal contents of the proposed zones.

Paragraph 2 Indian Ocean

The idea of proclaiming the Indian Ocean a zone of peace was first adopted at the Third Conference of Heads of State and Government of Non-Aligned Countries (Lusaka, 8-10 September 1970)²⁰. On 16 December 1971 the United Nations General Assembly adopted in resolution 2832 (XXIV) a Declaration stating that “the Indian Ocean, within limits to be determined, together with the air space above and the ocean floor subjacent thereto, is hereby designated for all time as a zone of peace” (first operative paragraph)²¹. The Assembly called upon the great Powers to enter into immediate consultations with the littoral States of the Indian Ocean to halt further escalation and expansion of their military presence and eliminate from the area all bases, military installations, logistical supply facilities, the disposition of nuclear weapons and other weapons of mass destruction. In addition, the General Assembly called upon all the interested States to enter into consultations with a view to the implementation of the Declaration and to ensure that: (a) warships and military aircraft would not use the Indian Ocean for any threat or use of force against any littoral or hinterland State; (b) the right to free and unimpeded use of the zone by the vessels of all nations would be unaffected; and (c) appropriate arrangements are made to give effect to any international agreement that may ultimately be reached for the maintenance of the Indian Ocean as a zone of peace.

In 1972 the Assembly established an *Ad Hoc* Committee on the Indian Ocean to study the implications of the 1971 Declaration²². Although the Assembly had decided to convene a conference on the Indian Ocean at Colombo as early as in 1981 – as a necessary step for the implementation of the Declaration – the conference has not yet been held²³. The bilateral Soviet-American talks held in 1977 and 1978 concerning possible limitations of military activities in the Indian Ocean were suspended and the

20. Para. 8 (6) of the resolution on the United Nations adopted in Lusaka, *Review of International Affairs*, Vol. 21, 1970, No. 491, p. 33.

21. 61 delegations voted in favour, none against, with 55 abstentions among them all the major military Powers, *UN Press Release*, GA/4548 of 28 December 1971, reproduced in *International Legal Materials (ILM)*, Vol. 11, 1972, No. 1, p. 217.

22. Resolution 2992 (XXVII) of 15 December 1972.

23. Resolution 34/80 B of 11 December 1979; on the evolution until 1983 see H. Labrousse, “L’océan Indien ‘zone de paix’”, *Le droit international et les armes*, *op. cit.*, pp. 258-291.

Western States did not agree to convene a conference until the necessary harmonization of views on the substantive issues has been achieved²⁴.

Alarmed by the continuous escalation of the great Powers' military presence in the Indian Ocean the non-aligned countries insisted on many occasions on holding the Colombo Conference and eventually the 1986 Eighth Conference of Heads of State or Government of Non-Aligned Countries asked that the Conference on the Indian Ocean be convened not later than 1988²⁵. The same decision was taken by the fortieth and forty-first sessions of the General Assembly. The forty-second session requested the *Ad Hoc* Committee to enable the convening of the Conference not later than 1990²⁶.

Paragraph 3 **Mediterranean**

Immediately after the establishment of the two military alliances, the Mediterranean became the area of their confrontation. However, at the same time as the rivalries and competitions in the Mediterranean increased, there were suggestions whose aims were directed at the reduction of military forces in the Mediterranean, at the attenuation of tension, at the peaceful settlement of disputes and at the development of the co-operation between the coastal States. Aware of the link between peace and security in Europe and that in the Mediterranean, the States participating in the CSCE adopted a special Chapter dedicated to the "Questions relating to the Security and Co-operation in the Mediterranean" in the Final Act of the Conference (Helsinki, 1 August 1975). They declared their intention to promote the development of good-neighbourly relations and co-operation with the non-participating Mediterranean States with the purpose of contributing to peace, reducing armed forces in the region, strengthening security and lessening tensions in the region²⁷. The ways and means for the implementation of these intentions have been discussed at the follow-up meetings of the CSCE in Belgrade (October 1977-March 1978), Madrid (November 1980-September 1983) and Vienna (November 1986-January 1989)²⁸. However, the measures agreed upon at the Stockholm Conference on Confidence- and Security-Building Measures and Disarmament in Europe in September 1986 do not apply to the

24. *The United Nations and Disarmament: 1945-1985* (United Nations publication, Sales No. E.85.IX.6), pp. 105-106.

25. Paragraphs 194-197 of the Political Declaration which is contained in the Final Document of the Eighth Conference, held in Harare, 1-6 September 1986, *Review of International Affairs*, Vol. 37, 1986, No. 875, p. 55.

26. Resolution 40/153 of 16 December 1985; resolution 41/87 of 4 December 1986; resolution 42/43 of 30 November 1987.

27. *ILM*, Vol. 14, 1975, No. 5, pp. 1312-1313.

28. See R. Vukadinović, *Mediterran između rata i mira*, 1986, pp. 188-190.

Mediterranean as a whole but only to those parts of the Mediterranean that belong to Europe²⁹.

The transformation of the Mediterranean into a zone of peace, security and co-operation has been proposed by the Heads of State or Government of Non-Aligned Countries since their Fourth Conference in Algiers in 1973³⁰. Further efforts in this respect are requested also in resolution 36/102 of the General Assembly, which since 1983 has considered an item entitled "Strengthening of security and co-operation in the Mediterranean region"³¹.

Paragraph 4 South Atlantic

At the request of Brazil, an item concerning the proclamation of a zone of peace and co-operation of the South Atlantic was included in the agenda of the forty-first session of the General Assembly. On 27 October 1986 the General Assembly adopted resolution (declaration) 41/11 solemnly declaring the Atlantic Ocean, in the region situated between Africa and South America, a "zone of peace and co-operation of the South Atlantic"³².

Although the resolution refers also to the broader context of political and economic relations in the region and to the main principles of the United Nations Charter, the thrust of the text concerns the relations of States in respect to the South Atlantic itself. The General Assembly invokes the need to preserve the region from measures of militarization, the arms race, the presence of foreign military bases and nuclear weapons. In recalling the principles and norms of international law applicable to the ocean space, it mentions in particular the principle of the peaceful uses of

29. See paragraphs 24 and 29, and Annex I, Document of the Stockholm Conference on Confidence- and Security-Building Measures and Disarmament in Europe Convened in Accordance with the Relevant Provisions of the Concluding Document of the Madrid Meeting of the Conference on Security and Co-operation in Europe, in *SIPRI Yearbook 1987: World Armaments and Disarmament (SIPRI Yearbook)*, pp. 357 and 367-368.

30. Para. 65 of the Political Declaration, *Review of International Affairs*, Vol. 24, 1973, No. 563, p. 22. The Eighth Conference once more repeated the proposal in paragraph 209 of the Political Declaration contained in the Final Document of the Conference, *ibid.*, Vol. 37, 1986, No. 875, p. 56.

31. General Assembly resolutions 36/102 of 9 December 1981, 37/118 of 16 December 1982, 38/189 of 20 December 1983, 39/153 of 17 December 1984, 40/157 of 16 December 1985, 41/89 of 4 December 1986 and 42/90 of 7 December 1987. See also A. K. Abbadi, "Security and Co-operation in the Mediterranean Basin", *Prinosi za poredbeno proučavanje prava i međunarodno pravo, Essays on the New Law of the Sea*, Vol. 18, 1985, No. 21, pp. 441-456.

32. 124 delegations voted in favour of the resolution, 8 abstained, and only the United States of America voted against it, *UN Press Release GA/7463* of 12 January 1987, pp. 15-16.

the oceans. All States of the zone are called on to promote further regional co-operation, *inter alia* for the protection of the environment, the conservation of living resources and the peace and security of the whole region. “States of all other regions, in particular the military significant States” are called

“scrupulously to respect the region of the South Atlantic as a zone of peace and co-operation, especially through the reduction and eventual elimination of their military presence there, the non-introduction of nuclear weapons or other weapons of mass destruction and the non-extension into the region of rivalries and conflicts that are foreign to it” (third operative paragraph).

The General Assembly discussed the implementation of resolution 41/11 at its forty-second session and decided to include the same item in the provisional agenda of its forty-third session³³.

Paragraph 5 **South-East Asia**

On 27 November 1971, at a meeting held in Kuala Lumpur the foreign ministers of States belonging to ASEAN adopted the Declaration on South-East Asia as a Zone of Peace. The foreign ministers of Indonesia, Malaysia, the Philippines, Singapore and Thailand stated their determination

“to exert initially necessary efforts to secure the recognition of, and respect for, South-East Asia as a zone of peace, freedom and neutrality, free from any form or manner of interference by outside Powers”³⁴.

The Movement of Non-Aligned Countries supports the initiative of the ASEAN States, the majority of which belong to the Movement. The Eighth Non-Aligned Summit (Harare, 1-6 September 1986) “noted with approval the efforts being made for the early establishment of a zone of peace, freedom and neutrality” in South-East Asia³⁵.

33. Resolution 42/16 of 10 November 1987. States of the Zone of Peace and Co-operation of the South Atlantic held their first meeting at Rio de Janeiro from 25 to 29 July 1988. In paragraph 9 of the Final Document the meeting stressed the importance of the LOS Convention “as an essential pillar in the process of strengthening co-operation and peace in the South Atlantic region”, A/43/512, 9 August 1988.

34. *ILM*, Vol. 11, 1972, No. 1, p. 184.

35. Final Document, Political Declaration, para. 140, *Review of International Affairs*, Vol. 37, 1986, No. 875, p. 50.

Subsection 2 THE SEA AND CONTEMPORARY STRATEGY**Paragraph 1 Introduction**

Once the means for maritime navigation developed, men started using the seas as areas of warfare. Navies were confronted in naval combats; the sea also served for the transportation of troops to foreign territories. Throughout the centuries the use of the ocean space for military purposes became more varied: the enemy is prevented from exploiting the resources of the sea; he is hampered in his use of the sea as a means of communication; neutrals are impeded in maintaining commercial relations with the adversary, etc. However, military force at sea has not been used for war purposes only; navies also serve as support to a policy of power and pressure in times of peace. The role of the mere presence of the navies was to facilitate colonial conquests and the establishment of the spheres of influence, to support friendly Governments and to help the fall of unacceptable régimes, to impress and control small coastal States, to ensure important shipping routes, etc.

Paragraph 2 Naval Strategy Today

Because of the increased number of independent coastal States, the existing differences between them and the development of naval capabilities of many of them, it is today impossible to speak about a single naval strategy. The naval strategy of every State is determined by many unchangeable as well as many variable factors, such as the geographical position of a State, the level of its economic development, maritime traditions, its military alliances, etc. The world's navies are therefore of different sizes, strengths and compositions, reflecting primarily the different strategies of their respective States. A report of the Secretary-General of the United Nations considers navies to be at three levels:

- (a) world-wide navies – deployed in most oceans of the globe on a continuous basis and belonging to the United States and the USSR;
- (b) “blue-water” navies – “normally deployed in waters surrounding the State concerned, although often out to a significant distance from shore, and which also possess the capacity to conduct occasional deployments and limited operations in force distant from bases at home”; some 15 navies may be considered to belong to this category;
- (c) coastal navies – “almost exclusively deployed in waters immediately adjacent to a nation’s land territory executing traditional naval tasks

such as maritime self-defence, protection of sovereign interests in territorial waters...”; most navies are at this level³⁶.

Although individual States may be particularly preoccupied with the naval strategy of some of their neighbouring States or other rivals, on the global level the naval strategy of the two super-Powers and their allies is of greatest importance. Notwithstanding some recent reconsideration of the different maritime missions of their navies³⁷, the main reason for their enormous development is the belief of the maritime Powers that their nuclear naval capabilities are essential to the maintenance of strategic stability and that these nuclear naval capabilities provide strategic deterrence against a nuclear-armed aggressor. This conviction is based on the fact that underwater detection of nuclear-powered ballistic-missile submarines (SSBNs) is as yet very difficult and on the assumption that communications with the SSBNs would be reliable even after the outbreak of a nuclear war³⁸. Therefore, the nuclear Powers believe that the submarine-launched ballistic missiles (SLBMs) and sea-launched cruise missiles (SLCMs) carrying nuclear warheads are less vulnerable than land-

36. A/40/535 (*The Naval Arms Race*), para. 69. Taking into account the interests and capabilities of their navies, D. Larson distinguishes five main categories of States: (a) the *super-Powers* (the United States and the USSR), which have global interests and global naval capabilities; (b) the *major Powers* (United Kingdom, France and China), which have some global interests and limited naval capability; (c) the *regional Powers* (such as Canada, Brazil, India and Japan, *inter alia*), which have regional interests and regional capabilities; (d) the *minor Powers* (such as Norway, Indonesia, Philippines and Mexico, *inter alia*), which have local interests and local capabilities; (e) the *embryonic or developing Powers*, which are acquiring naval weaponry: D. L. Larson, “Naval Weaponry and the Law of the Sea”, *ODIL*, Vol. 18, 1987, No. 2, p. 127. On different military interests and strategies see also R. Huiskens, “Naval Forces”, *Ocean Yearbook 1*, 1978, pp. 412-435; A. Karkoszka, “Naval Forces”, *Ocean Yearbook 2*, 1980, pp. 199-225; C. F. Barnaby, “Superpower Military Activities in the World’s Oceans”, *Ocean Yearbook 5*, 1985, pp. 223-239; Shyam, *op. cit.*, pp. 147-170; C. C. Joyner, “Security Issues and the Law of the Sea: The Southern Ocean”, *ODIL*, Vol. 15, 1985, No. 2, pp. 171-195; F. Laursen, “Security Aspects of Danish and Norwegian Law of the Sea Policies”, *ODIL*, Vol. 18, 1987, No. 2, pp. 199-233; M. A. Morris, “Southern Cone Maritime Security after the 1984 Argentine-Chilean Treaty of Peace and Friendship”, *ibid.*, pp. 235-254.

37. R. Fieldhouse, “US Naval Strategy and Nuclear Weapons”, in C. G. Jacobsen (ed.), *The Uncertain Course: New Weapons, Strategies and Mind-sets*, SIPRI, 1987, pp. 167-186; C. G. Jacobsen, “Soviet Strategy: the Naval Dimension”, *ibid.*, pp. 187-197.

38. See *Tactical and Strategic Antisubmarine Warfare*, SIPRI, 1974, pp. 43-48; M. T. Klare, “Superpower Rivalry at Sea”, *Foreign Policy*, 1975-1976, No. 21, pp. 86-96 and 161-167; S. Turner, “The Naval Balance: Not Just a Numbers Game”, *Foreign Affairs*, Vol. 55, January 1977, No. 2, pp. 339-354; G. J. Mangone, *Marine Policy for America*, 1977, pp. 43-73; O. Wilkes, “Ocean-based Nuclear Deterrent Forces and Antisubmarine Warfare”, *Ocean Yearbook 2*, pp. 226-249.

based ballistic missiles. However, as the ultimate goal of the super-Powers is not the balance of nuclear power, nor any other balance, they constantly improve their detection devices (particularly the sound surveillance system – SOSUS) and anti-submarine warfare (ASW)³⁹. They develop new nuclear weapon systems improving at the same time the existing ones. As concerns the SSBNs, they are now increasingly less dependent on their return to bases; the time they can spend submerged has become longer; their SLBMs, with multiple independently targetable re-entry vehicle (MIRV) capabilities are being constantly improved. Moreover, fixed underwater military installations, including launchers for ballistic missiles are being planned⁴⁰.

All these developments have forced R. Fieldhouse to conclude that “Naval forces armed with nuclear weapons pose special risks for the outbreak of war and for the escalation of naval war to a nuclear war.”⁴¹ In his opinion, nuclear war is more likely to start at sea than on land.

Subsection 3 THE LAW OF THE SEA AND MILITARY ACTIVITIES

As already said (see *supra*, p. 1234), UNCLOS III treated the military activities at sea only marginally. As a consequence thereof, the LOS Convention does not provide a systematic regulation of military activities⁴². In fact, the term “military activities” is mentioned in the LOS Convention only once. Namely, under Article 298, paragraph 1 (b), “disputes concerning military activities” are one of the categories of disputes in respect of which a State may declare that it does not accept any one or more of the compulsory procedures entailing binding decisions provided for in the Convention (Sec. 2, Part XV). Unfortunately, “military activities” have not been defined either in this provision of the Convention or in the States’ declarations rejecting the compulsory procedures entailing

39. *Tactical and Strategic Antisubmarine Warfare, op. cit.*; F. Barnaby, “Strategic Submarines and Submarine Warfare”, *Ocean Yearbook 1*, pp. 376-379; F. Barnaby (ed.), “The ASW Problem: ASW Detection and Weapons Systems”, *ibid.*, pp. 380-385; D. Larson, P. Tarpgaard, “Law of the Sea and ASW: National Security versus Arms Control”, *Marine Policy*, Vol. 6, 1982, No. 2, pp. 90-102; Larson, “Naval Weaponry and the Law of the Sea”, *op. cit.*, p. 153.

40. Larson, “Naval Weaponry and the Law of the Sea”, *op. cit.*, p. 135.

41. Fieldhouse, *op. cit.*, p. 167.

42. See “Security Aspects in the Law of the Sea Debate”, *SIPRI Yearbook 1975*, pp. 593-603; “Military Issues in the Law of the Sea”, *Law of the Sea: Neglected Issues*, Proceedings, Law of the Sea Institute, Twelfth Annual Conference, 23-26 October 1978, The Hague, 1979, pp. 325-421; de Mural, *op. cit.*, pp. 78-99.

binding decisions in respect of military activities⁴³. Some light on the meaning of this term has been thrown by the drafting history of that provision and by Article 298, paragraph 1 (*b*), itself.

The first informal draft – the ISNT – provided for an optional exception of some or all of the procedures for the settlement of disputes specified in the Convention with respect to *inter alia*:

“Disputes concerning military activities, including those by Government vessels and aircraft engaged in non-commercial service, it being understood that law enforcement activities pursuant to the present Convention shall not be considered military activities.”⁴⁴

At the insistence of the coastal States since the Informal Composite Negotiating Text (ICNT) some of the “law enforcement activities” were expressly mentioned apart from the “military activities”, thus providing the structure of the provision retained also in the definite text of Article 298, paragraph 1 (*b*), of the LOS Convention:

“disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3”⁴⁵.

It results from these developments at UNCLOS III that military activities can be undertaken by warships and military aircraft as well as by “government vessels and aircraft engaged in non-commercial service”. It is also clear that “law enforcement activities” are not considered military activities, even when undertaken by warships or military aircraft. This applies to the enforcement of both international and municipal law.

A separate category of disputes in respect of which optional exceptions are permitted are only those disputes concerning the law enforcement activities mentioned in Article 298, paragraph 1 (*b*). Disputes concerning activities of enforcing all other rules of municipal as well as international law cannot be subject to optional exceptions under Article 298⁴⁶. Thus, as

43. Such declarations in respect of disputes concerning military activities were made by the Byelorussian SSR, the German Democratic Republic, the Ukrainian SSR and the USSR at the time of signature of the Convention, and by Cuba, Guinea-Bissau, Tunisia and Cape Verde upon their ratification, *Law of the Sea Bulletin*, Office for Ocean Affairs and the Law of the Sea, United Nations (*LOS Bulletin*), No. 5, July 1985, pp. 60-61; Special Issue I, March 1987, pp. 2-9; No. 10, November 1987, pp. 8-9.

44. Art. 18, para. 2 (*c*) of A/CONF.62/WP.9, 21 July 1975, reproduced in UNCLOS III, *Official Records*, Vol. V, p. 115.

45. Art. 297, para. 1 (*b*) of A/CONF.62/WP.10, 15 July 1977, reproduced in UNCLOS III, *Official Records*, Vol. VIII, p. 48.

46. Cf. Oxman, *op. cit.*, p. 823.

far as it concerns, for example, the activities of enforcing international rules concerning piracy (Art. 107), the right of visit (Art. 110), the right of hot-pursuit (Art. 111) and the exercise of powers of enforcement in respect of violations of anti-pollution rules (Art. 224), there is no possibility of optional exceptions.

However, the contribution of this entire analysis to the better understanding of the term "military activities" is very modest. It can only be said that "military activities" do not include "law enforcement activities", and therefore they are limited to activities the purpose of which is to increase the readiness of a State for war which are undertaken either by warships and military aircraft or by "government vessels and aircraft engaged in non-commercial service". Taking into account the already discussed principle of the "reservation of the seas for peaceful purposes", it could be added that the proper implementation of this principle would require progressive reduction of "military activities" at sea, while "law enforcement activities" are indispensable for a secure legal order of the oceans.

Only Part II (Territorial Sea and Contiguous Zone) of the LOS Convention contains some provisions in which specific military activities are mentioned (see Division B of this Subsection). The scarce and ambiguous provisions of the Convention concerning the military activities are susceptible of different interpretations, very often based on customary international law or some treaties of a restrained scope *ratione materiae* as well as *ratione personae*. However, in these introductory remarks the analysis will be confined to the provisions of the LOS Convention – the constitutional basis of the new law of the sea. These provisions deal with navigation, man-made structures at sea and marine scientific research. Although mostly in an implicit manner, they relate to several military activities, such as patrolling of warships, naval manoeuvres and weapons exercises, emplacement of sea-based weapons and surveillance devices, and military research⁴⁷.

Finally, it should be stressed that military activities undertaken by different means placed or launched beyond the ocean space (e.g., land-based missiles, ocean-surveillance satellites), even if they have repercussions for the oceans, are beyond the scope of this study.

Division A WARSHIPS

Paragraph 1 Definition

The definition of warships from the Geneva Convention on the High Seas (Art. 8, para. 2) has been taken over into the LOS Convention (Art. 29); some minor changes enable ships belonging to other

47. A list of military activities at sea, see in Wolfrum, *op. cit.*, pp. 205-206.

branches of the armed forces than the navy to be also considered “warships”. According to this definition the term “warship” means:

“a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline”.

Contrary to the Geneva codification, where this definition concerned only the high seas⁴⁸, it is now to be applied to the entire matter regulated by the new Convention.

This definition is inspired by the wish to accord the status of a warship, which gives some rights and privileges to the ship (particularly on the high seas), to a restricted number of ships, i.e., only to ships in respect of which their States satisfy all the four formal conditions required by the definition. Yet, according to international law, in some situations the position of warships, due to their very purpose, is less favourable than that of other ships (e.g., in respect of navigation in the internal waters and in the territorial sea). It would, therefore, be preferable to base the definition on functional criteria such as the real characteristics of ships (e.g., the presence of armament), their purpose and tasks. The coastal State should be entitled to apply its laws and regulations concerning navigation of warships in its internal waters or its territorial sea to any armed ship or a ship on a military mission, irrespective of the question of its formal belonging to the armed forces of its own State or its external marks.

Paragraph 2 Immunities

The LOS Convention has confirmed the “complete immunity” of warships “from the jurisdiction of any State other than the flag State” on the high seas (Art. 95). Pursuant to Article 58, paragraph 2, this immunity also applies in the exclusive economic zone. Contrary to the 1958 Convention on the Territorial Sea and the Contiguous Zone, the 1982 Convention expressly recognizes immunities to warships exercising the right of innocent passage through the territorial sea (Art. 32). However,

48. However, this definition of warships, drafted by the International Law Commission, was part of a single set of Articles on the entire law of the sea (Art. 32, para. 2), and was intended to apply to the whole sea, not to the high seas only, *Official Records of the General Assembly, Eleventh Session, Supplement No. 9 (A/3159)*, p. 26. See also Oxman, *op. cit.*, note 7 at pp. 7-8.

these immunities are restricted by the obligation of warships to respect the rules of the Convention regarding the regulation of innocent passage applicable to all ships⁴⁹ and their duty to leave the territorial sea if so required by the coastal State as a consequence of their disregard of the coastal State's request for compliance with its laws and regulations (Art. 30). The Convention mentions another "exception" from warships' immunities: the international responsibility borne by the flag State for any loss or damage to the coastal State caused by its warships. Although responsibility has been mentioned with respect to innocent passage (Art. 31), this principle should be applied to the activities of warships in the whole ocean space.

Apart from this "immunity from jurisdiction" of other States, with respect to the protection and preservation of the marine environment warships enjoy "sovereign immunity": Part XII of the Convention does not apply to any warship or naval auxiliary. However, States are required to adopt appropriate measures, "not impairing operations or operational capabilities" of warships, in order that they "act in a manner consistent, so far as is reasonable and practicable, with this Convention" (Art. 236).

The Convention does not provide for the immunity of warships from the application of its settlement of disputes provisions. Some of the alternatives contained in the initial working paper on the settlement of law of the sea disputes submitted to the second session of UNCLOS III included an exception (or reservation) regarding "disputes concerning vessels and aircraft entitled to sovereign immunity under international law"⁵⁰. However, the ISNT and the subsequent drafts did not mention this exception⁵¹. They retained only the optional exceptions concerning "military activities" – a notion which does not include law enforcement activities undertaken by warships and military aircraft (see *supra*, p. 1248).

Division B **MILITARY ACTIVITIES**

Paragraph 1 **Navigation and Naval Manœuvres**

The claim that many questions have not been given clear answers in the 1982 LOS Convention is particularly true in respect of the navigation and other activities of warships. The negotiations at

49. Part II, Section 3, Subsection A of the LOS Convention. See also Oxman, *op. cit.*, p. 818.

50. A/CONF.62/L.7, 27 August 1974, reproduced in UNCLOS III, *Official Records*, Vol. III, pp. 92-93.

51. A/CONF.62/WP.9.

UNCLOS III, as well as the provisions of Part II, Section 3, of the Convention leave the impression that the last Conference was somewhat more explicit than UNCLOS I in confirming that warships, as well as merchant ships, enjoy the right of innocent passage through the territorial sea⁵². However, the statements of many of the coastal States at the end of the Conference as well as their declarations made upon signature or ratification show that there are different interpretations of the Convention concerning the right of the coastal States to submit the passage of foreign warships to a prior authorization or notification⁵³.

Contrary to the vagueness concerning the conditions for the commencement of the innocent passage of foreign warships in the territorial sea, the Convention is clear when it regards their behaviour during the passage. Namely, *inter alia*, it expressly forbids: any exercise or practice with weapons of any kind; the launching, landing or taking on board of any aircraft; the launching, landing or taking on board of any military device.

If a foreign ship engages in any of these activities its passage shall be considered as prejudicial to the peace, good order or security of the coastal State (Art. 19, para. 2 (b), (e) and (f)).

As far as transit passage in straits used for international navigation is concerned, the problem of the right of submarines to navigate under water has not been resolved in a clear way⁵⁴.

Moreover, the definitions of straits in which transit passage or innocent passage shall be applied leave much to be desired (Art. 38, para. 1, and Art. 45, para. 1).

Although the freedom of navigation of all ships, including warships, has been provided for in the Convention in respect of the EEZ, opinions differ in respect of the right of foreign navies to undertake military activities in the zone. However, taking into account the drafting history of Article 58 of the Convention, it is clear that such a right of warships is to be derived from its paragraph 1, according to which, besides the high seas freedoms of navigation and overflight, and of laying of submarine cables and pipelines (reference to Article 87), all States enjoy in the EEZ

52. See *supra*, Chap. 17, Sec. 2, Div. B, para. 3, pp. 929 *et seq.*

53. For declarations at the final part of the eleventh session see UNCLOS III, *Official Records*, Vol. XVII, pp. 14-132; declarations made upon signature: *LOS Bulletin*, No. 5, pp. 39-41; declarations made upon ratification: *LOS Bulletin*, Special Issue I, pp. 2-9.

54. See a debate on the passage of submarines through straits used for international navigation: W. M. Reisman, "The Regime of Straits and National Security: an Appraisal of International Lawmaking", *American Journal of International Law (AJIL)*, Vol. 74, 1980, No. 1, pp. 48-76; J. N. Moore, "The Regime of Straits and the Third United Nations Conference on the Law of the Sea", *ibid.*, pp. 77-121. See also *supra*, Chap. 17.

“other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention”⁵⁵.

Aware of the fact that Article 58, paragraph 1, was to be interpreted as permitting military activities in the zone, Peru suggested the insertion of a new paragraph in Article 58 requiring foreign warships and military aircraft passing through the EEZ to refrain from engaging in manoeuvres or using weapons without the consent of the coastal State⁵⁶. As the Conference did not accept this suggestion, declarations aiming at the restriction of the same activities by foreign warships, made upon signature of the Convention by some States along the lines of the Peruvian suggestion (Brazil, Cape Verde, Uruguay), were not able to change the permissive approach that prevailed in the conception of Article 58, paragraph 1⁵⁷. However, it should be pointed out that in carrying out such military activities foreign States must “have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law...” (Art. 58, para. 3) and that they have to be carried out with the restraint “from any threat or use of force” against the coastal State (Art. 301). In some cases the permissibility of a military activity of a third State should be evaluated on the basis of Article 59 (“Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone”).

The problem of the legality of military manoeuvres and ballistic exercises temporarily preventing other States from using vast areas of the high seas remains still unresolved. In respect of nuclear experiments on the high seas not all the States are bound by the existing conventional rules. However, in our view, nuclear weapon tests are contrary to the high seas freedoms of all States recognized under general customary international law (see *infra*, Sec. 2, Subsec. 4, Div. B, para. 2).

55. See details concerning the negotiating history of this provision *supra*, Chap. 17, Sec. 1, Div. A, para. 5. See also H. Labrousse, “Les problèmes militaires du nouveau droit de la mer”, *The Management of Humanity's Resources: the Law of the Sea*, Hague Academy of International Law, United Nations University, Workshop, The Hague, 29-31 October 1981, 1982, p. 313; J.-P. Quéneudec, “Zone économique exclusive et forces navales”, *ibid.*, pp. 322-324; T. Treves, “Le nouveau régime des espaces marins et la circulation des navires”, paper presented to the Conference *Les institutions face aux nouvelles données de la présence en mer*, Paris, 26-28 May 1983, p. 20; Oxman, *op. cit.*, pp. 835-841; Kwiatkowska, *op. cit.*, pp. 249-250.

56. C.2/Informal Meeting/9, p. 2 (in Art. 58), 27 April 1978.

57. *LOS Bulletin*, No. 5, p. 45.

**Paragraph 2 Artificial Islands, Installations, Structures and Devices
Used for Military Purposes**

As there is no controversy concerning the fact that other States have only the right of innocent passage in the territorial sea of a coastal State, it is only in the respect of innocent passage that the LOS Convention contains detailed rules regarding the régime of the territorial sea. Therefore, man-made objects at sea (navigational aids and facilities and other facilities or installations) are mentioned in the LOS Convention, as far as the territorial sea is concerned, only in respect of innocent passage (Art. 19, para. 2 (*k*); Art. 21, para. 1 (*b*))⁵⁸.

On the contrary, as regards the establishment and use of artificial islands, installations and structures in other maritime areas there is a rather extensive, although not very clear, regulation. The main vagueness in this respect is contained in the provisions on the EEZ. Namely, according to Article 60, “the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use” of all artificial islands (para. 1 (*a*)). However, as far as installations and structures are concerned, the coastal State has this exclusive right only in respect to installations and structures “for the purposes provided for in article 56 and other economic purposes” or those “which may interfere with the exercise of the rights of the coastal State in the zone” (para. 1 (*b*) and (*c*)).

Afraid that the quoted rules may be interpreted as rules permitting all States to construct installations and structures used for military purposes without the authorization of the coastal State, Brazil, Peru and Uruguay suggested that coastal States be given the exclusive right in respect of all installations and structures, as has been the case with artificial islands⁵⁹. Maritime Powers prevented such a modification. The vehemence with which the change of Article 60, paragraph 1, was opposed proves only that at least some of them have not excluded the possibility of constructing their installations and structures for military purposes in foreign EEZs.

Be that as it may, declarations made upon signature or ratification of the Convention cannot change the text of the Convention or give it an interpretation contrary to the spirit that prevailed at the Conference. Therefore, it seems that the declarations of Brazil, Cape Verde and Uruguay, repeating the thrust of the mentioned suggestions made at

58. On the consequences of the coastal State's sovereignty in respect of installations in the territorial sea, T. Treves, “Military Installations, Structures, and Devices on the Seabed”, *AJIL*, Vol. 74, 1980, No. 4, pp. 819-820.

59. Informal suggestions: Peru, C.2/Informal Meeting/9; Brazil and Uruguay, C.2/Informal Meeting/11 of 27 April 1978.

UNCLOS III in respect of paragraph 1 of Article 60 are going beyond the scope of Article 310 of the LOS Convention⁶⁰.

On the basis of Article 80, the provisions of Article 60 apply *mutatis mutandis* to artificial islands, installations and structures on the continental shelf. Thus, the described dilemmas concerning the permissibility of foreign military installations and structures persist also in respect of the continental shelf. Moreover, an additional problem has been created by the fact that the LOS Convention does not mention one category of objects envisaged in the 1958 Convention on the Continental Shelf. Namely, this Geneva Convention entitled coastal States to construct and maintain or operate on the continental shelf, apart from installations, "other devices necessary for its exploration and the exploitation of its natural resources ..." (Art. 5, para. 2). On the basis of the terminology used in the LOS Convention, scholars have engaged in a discussion on the legal status of "devices" in the new law of the sea, as at least some of the "devices" lack the character of something "built" or "constructed", which is the characteristic of both "installations" and "structures"⁶¹. However, it should be pointed out that "devices" are not the only relevant category of man-made objects in respect of which the question of the relation to "installations" and "structures" could be asked. Namely, different texts use also the terms of "navigational aids", "equipment" and "facilities" and give to the last one different meanings (cf., for example, Art. 21, para. 1 (b) of the LOS Convention and Art. I, para. 1, of the 1971 Sea-Bed Treaty). Moreover, "devices" have even been mentioned in some provisions of the LOS Convention itself – those dealing with the protection and preservation of the marine environment and in which the relation between "devices" and "installations" and "structures" is construed in varied ways (cf. Art. 145 (a); Art. 194, para. 3 (c) and (d); Art. 209, para. 2).

The variety of the terms used and the probability of the use of the new ones in the future as well as the rationale of the provisions contained in Article 60, paragraph 1, require that the provisions of this paragraph be applied to all man-made objects in the EEZ and on the continental shelf, whatever the denomination of the man-made objects. Namely, the coastal State shall have the exclusive right in respect of such objects used for economic purposes (para. 1 (b)) or those which may interfere with the

60. *LOS Bulletin*, No. 5, p. 46. Italy, on the contrary, opposes in its declaration any extension of the right of the coastal State beyond the content of Article 60, *ibid.*

61. See the discussion between Treves and Zedalis: Treves, "Military Installations, Structures, and Devices on the Seabed", *op. cit.*, pp. 808-857; R. J. Zedalis, "Military Installations, Structures, and Devices on the Continental Shelf: a Response", *AJIL*, Vol. 75, 1981, No. 4, pp. 926-933; T. Treves, "Reply", *ibid.*, pp. 933-935.

exercise of the rights of the coastal State in the EEZ or on the continental shelf (para. 1 (c)). In respect of all other objects, even those used for military purposes, all States have equal rights within the limits determined by Article 58, paragraph 3 (due regard to the rights and duties of the coastal State) and Article 301 (peaceful uses of the seas). It is also plausible to conclude that at least some of the devices in the EEZ (e.g., navigational aids and facilities) could be subsumed in the freedoms of all States “associated with the operation of ships, aircraft and submarine cables and pipelines” (Art. 58, para. 1)⁶².

Contrary to the 1958 Convention on the High Seas (Art. 2), the LOS Convention expressly declares that the freedom of the high seas comprises, *inter alia*, both for coastal and land-locked States, “freedom to construct artificial islands and other installations permitted under international law, subject to Part VI” (Art. 87, para. 1 (a)). However, there are three categories of limitations to this freedom. The first results from the rights of the coastal States on their continental shelves (Part VI, Art. 80). The second category includes limitations agreed upon under special international treaties and under customary international law. Finally, there are some limitations based on the LOS Convention itself, such as due regard for the interests of other States (Art. 87, para. 2), reservation of the high seas for peaceful purposes (Art. 88), the special régime of the Area (Part XI).

Although apart from activities of exploration for and exploitation of the resources other activities are also envisaged in the Area, the Convention deals only with installations used for carrying out “activities in the Area” (Art. 147). Notwithstanding the lack of provisions concerning other installations, it should be concluded that based on Article 147 all States are entitled to erect or emplace installations used for carrying out “other activities” including military ones – “with reasonable regard for activities in the Area” (Art. 147, para. 3)⁶³. Limits to the right of individual States to installations in the Area are generally set by the principle of the common heritage of mankind and the Convention’s system of exploration and exploitation of the Area. Additional restrictions can be agreed upon by the international community in special international agreements, such as the Sea-Bed Treaty.

Paragraph 3 Marine Scientific Research

A great deal of knowledge gained through the conduct of marine scientific research can be used for military purposes. Military research itself, on the other hand, is one of the main military activities at sea.

62. Treves, “Military Installations, Structures, and Devices”, *op. cit.*, pp. 842-843 and 846.

63. *Ibid.*, pp. 851-857.

As already mentioned (see *supra*, Subsec. 1, Div. B), several provisions of the LOS Convention contain the principle of the conduct of marine scientific research exclusively for peaceful purposes: Article 240 (a) proclaims this principle for marine scientific research in general, and Article 143, paragraph 1, declares this principle for the Area in particular. As a consequence of the jurisdiction of coastal States in respect of marine scientific research in their EEZs and on their continental shelves, the duty to restrict scientific research to peaceful purposes in these areas is limited to "other States or competent international organizations". Only in respect of scientific research projects which have peaceful purposes, coastal States are obliged, in normal circumstances, to grant their consent (Art. 246, para. 3).

However, the general conclusion reached in respect of the principle of the "reservation exclusively for peaceful purposes" in the LOS Convention is relevant also with respect to the application of this principle to marine scientific research. Thus, marine scientific research conducted for military purposes is, if contrary to the principles stated in Article 301 of the Convention, forbidden in any part of the world oceans. Yet, in respect of marine scientific research projects of other States or competent international organizations in the EEZ and on the continental shelf, the Convention seems to give coastal States the possibility of a more extensive interpretation of the principle. Namely, the consent of the coastal State is conditioned not only by peaceful purposes of a project but also by the requirement that the project be carried out "in order to increase scientific knowledge of the marine environment for the benefit of mankind" (Art. 246, para. 3). Moreover, the coastal State is required to grant its consent to such projects "in normal circumstances". The vagueness of this terminology is only supplemented by the fact that disputes based on Article 246, paragraph 3, are subject only to compulsory conciliation and not to procedures entailing binding decisions (Art. 297, para. 2 (b)).

Although the right to carry out marine scientific research in the Area is granted not only to the Authority, but also to States Parties (Art. 143, para. 3), scientific research of individual States will probably not be exercised in the Area in an uncontrolled manner as the research carried out on the high seas (Art. 87, para. 1 (f)). Namely, States must promote international co-operation in marine scientific research in the Area and in this co-operation the role of the Authority is particularly pointed out. One of the main means of promoting international co-operation in the field is the dissemination of the results of research through the Authority or other international channels (Art. 143, para. 3). All these provisions do not seem to have in view military research which *per definitionem*, is not conducted "for the benefit of mankind as a whole" and with the aim to share its results with the entire international community.

**SECTION 2 DISARMAMENT AND NAVAL ARMS
REGULATION****Subsection 1 HISTORICAL OUTLINE****Division A NINETEENTH CENTURY****First Restrictions of War**

Numerous wars waged between the great Powers for the domination in Europe and the distribution of the colonies marked the nineteenth century. The people oppressed by the big and powerful also resorted to arms to set themselves free from their yoke. However, this same century saw the inception of many anti-war ideas and the birth of the pacifist movement. Pacifist ideas led to the establishment of the Institut de droit international and the International Law Association (both founded in 1873). The testimony of the sufferings of the victims of war led to the convocation of the first conferences the purpose of which was the adoption of rules for the protection of war victims.

War was still a legitimate means of the foreign policy of States and efforts were undertaken to adopt conventional rules of warfare (Paris 1856, St. Petersburg 1868, Brussels 1874). The major achievement where naval warfare was concerned was the 1856 Paris Declaration Respecting Maritime Law⁶⁴. However, even in these codifications of the laws of war the desire of States to avoid unnecessary sufferings was seen (e.g., in the 1868 St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight)⁶⁵. Moreover, the first conferences concerning the humane treatment of belligerents were held almost at the same time as these conferences codifying the laws of war (Geneva 1864 and 1868). Unfortunately, attempts to extend the principles of the 1864 Geneva Convention for the Amelioration of the Conditions of Wounded Soldiers in Armies in the Field to naval warfare failed⁶⁶.

Here it should be pointed out that the purpose of some of the treaties concluded in the nineteenth century, and discussed later on in this Chapter, was to exclude war from some sea areas.

64. Text in A. Roberts and R. Guelff (eds.), *Documents on the Laws of War*, 1982, p. 24.

65. *Ibid.*, p. 30.

66. Text of the 1864 Convention in J. B. Moore, *A Digest of International Law*, Vol. VII, 1906, p. 235.

Division B HAGUE PEACE CONFERENCES OF 1899 AND 1907**Paragraph 1 First Conference**

The ever-increasing disapprobation of war as means of settling the problems between States and the conclusion that the continuous armament was becoming a crushing burden even to the States with powerful economies led to the convocation of the First Hague Peace Conference (1899)⁶⁷. The aim of the Conference was: to reach an understanding not to increase for a fixed period the then existing effective of the armed military and naval forces as well as military budgets; to prohibit the development of new kinds of armaments and to restrict the use of some of the existing ones; to apply to naval warfare the stipulations of the 1864 Geneva Convention; to revise the unratified 1874 Brussels Declaration concerning the laws and customs of war; to accept principles concerning the peaceful settlement of disputes, with the object of preventing armed conflicts between nations⁶⁸.

Not all of these goals of the Conference were attained. Three Conventions were signed on 29 July 1899: Convention for the Peaceful Settlement of International Disputes; Convention Respecting the Laws and Customs of War on Land; Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864. In the three declarations annexed to the Final Act of the Conference the participating States agreed to prohibit: the launching of projectiles and explosives from balloons or by other similar methods; the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases; the use of bullets which expand or flatten easily in the human body. However, in respect of disarmament almost nothing was achieved. Despite long negotiations concerning the limitation of armaments, only a resolution and some "wishes" (*vœux*) were adopted in the Final Act itself. The resolution expressed the opinion of the Conference that the restriction of military charges was extremely desirable for the increase of the welfare of mankind. Moreover, the Conference expressed the wish that the Governments may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets. The Conference also formulated a

67. J. B. Scott, *Les Conférences de la paix de La Haye de 1899 et 1907*, Vols. I and II, 1927; H. Wehberg, "La contribution des Conférences de la paix de La Haye au progrès du droit international", *Académie de droit international, Recueil des cours (Hague Recueil)*, Vol. 37, 1931-II, pp. 533-569; J. M. Mössner, "Hague Peace Conferences of 1899 and 1907", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 3 (1982), pp. 204-211).

68. See F. W. Holls, *The Peace Conference at The Hague*, 1900, pp. 8-10, 23-27, 32-34.

wish that Governments continue the study of the question with regard to rifles and naval guns, with the object of coming to an agreement respecting the employment of new types and calibres⁶⁹. Suggestions that the Conference should express its opinion in favour of the prohibition of the use of submarine torpedo boats and the construction of warships armed with rams were not accepted⁷⁰.

Paragraph 2 **Second Conference**

As it was not able to attain all its aims, the First Hague Peace Conference proposed in its Final Act that a subsequent Conference be held to consider matters on which agreement had not been reached. However, the Second Hague Peace Conference (1907) was also due to the continuation of the arms race and new conflicts between States. The programme of the Conference included: improvements to be made in the provisions of the 1899 Convention for the Peaceful Settlement of International Disputes; additions to be made to the provisions of the 1899 Convention Respecting the Laws and Customs of War on Land; framing of a convention relative to the laws and customs of maritime warfare; additions to be made to the 1899 Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864⁷¹. Relatively successful in respect of some other aims⁷², as regards the laws and customs of maritime warfare the Conference also managed to adopt conventions on a number of problems: the status of enemy merchant ships at the outbreak of hostilities (Convention VI); the conversion of merchant ships into warships (Convention VII); the laying of automatic submarine contact mines (Convention VIII); bombardment by naval forces in time of war (Convention IX); certain restrictions with regard to the exercise of the right of capture in naval war (Convention XI); the creation of an International Prize Court (Convention XII). Moreover, rules concerning the rights and duties of neutral Powers in naval war were also codified (Convention XIII)⁷³.

However, in the field of limitation of armaments there was again no result. The Second Peace Conference confirmed only the resolution

69. The texts of the Final Act, the Conventions and the Declarations in Halls, *op. cit.*, pp. 375-473.

70. *Ibid.*, pp. 26 and 117-120.

71. See J. B. Scott (ed.), *The Proceedings of the Hague Peace Conferences, Translation of Official Texts, the Conference of 1907*, Vol. I, *Plenary Meetings of the Conference*, 1920, p. 1.

72. The following Conventions were adopted on 18 October 1907: Convention for the Pacific Settlement of International Disputes, Convention Respecting the Laws and Customs of War on Land, Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention; *ibid.*, pp. 599, 620 and 650.

73. *Ibid.*, pp. 637, 640, 643, 646, 656, 660 and 672.

adopted by the First Conference concerning the desirability of the restriction of military expenditures and invited Governments to resume the serious examination of this question⁷⁴.

One of the wishes expressed by the Second Peace Conference concerned the laws and customs of naval war. The Conference suggested that regulations relative to this issue figure in the programme of the next Conference. The Third Peace Conference had to be held within a period corresponding to that which elapsed between the first two Conferences⁷⁵. Consequently, the plans for the establishment of the preparatory committee for the third Conference coincided with the outbreak of the First World War. The codification of the international rules of naval warfare was nevertheless achieved in the 1909 Declaration of London; the Declaration has never entered into force⁷⁶.

Division C TREATIES OF PEACE 1919-1923

The Treaties of Peace concluded with the Central Powers after the First World War contain many restrictions in respect of military forces of the vanquished States; some of the restrictions concern naval forces and naval installations as well as the coasts of these States⁷⁷. Such clauses deal with the limitation of the personnel of the navies, the number, the displacement, and the classes of warships as well as the demilitarization of some islands and coastal areas. The military, naval and air clauses contained in the Treaties of Peace were carried out only partially and temporarily, due to the changed political and military realities⁷⁸.

Paragraph 1 Treaty of Versailles

The naval clauses (Arts. 181-197) of the Treaty of Versailles of 28 June 1919 determined: the maximum numbers of warships of different classes which Germany was allowed to possess; the displacement

74. Final Act of the Second International Peace Conference, J. B. Scott, *op. cit.*, p. 679 at p. 689.

75. *Ibid.*, p. 689.

76. See C. J. Colombos, *The International Law of the Sea*, 4th revised ed., 1959, pp. 419-423; D. P. O'Connell, *The International Law of the Sea*, I. A. Shearer (ed.), Vol. II, 1984, p. 1104; A. M. de Zayas, "London Naval Conference of 1908/1909", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 3 (1982), pp. 249-251).

77. See S. Verosta, "Peace Treaties after World War I", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 4 (1982), pp. 110-117).

78. See, for example, the Exchange of Notes between the United Kingdom and Bulgaria regarding the Military, Naval and Air Clauses of the Treaty of Neuilly, with Annex, Sofia, 12 August and 24 November 1938, League of Nations, *Treaty Series (LNTS)*, Vol. CXCIV, p. 117.

which the units of different classes could not exceed when replacing the units in commission; the time of the replacement of units of different classes⁷⁹. Germany was not allowed to possess submarines even for commercial purposes. The Principal Allied and Associated Powers had to determine the allowance of arms, munitions and war material the German warships were permitted to have on board or in reserve.

In order to ensure free passage into the Baltic to all States, Germany was not allowed to erect any fortifications in the western part of that sea nor install any guns commanding the maritime routes between the North Sea and the Baltic. Moreover, the construction of new fortifications was forbidden and the armament of the existing ones was restricted within 50 kilometres of the German coast and on German islands off that coast.

Paragraph 2 Other Treaties of Peace

On the basis of the Treaty of Peace signed with the Allies in Saint-Germain-en-Laye on 10 September 1919⁸⁰, Austria became a land-locked State. It was deprived of all its warships. Some of its auxiliary cruisers and fleet auxiliaries, after being disarmed, could be used as merchant ships. Hungary, the other land-locked State created upon the dissolution of the Austro-Hungarian monarchy (Treaty of Peace concluded on 4 June 1920 in Trianon)⁸¹, was obliged to accept almost equal naval clauses as Austria.

The Treaty of Peace signed in Neuilly-sur-Seine on 27 November 1919 obliged Bulgaria to surrender to the Allies its warships, submarines

79. The text of the Treaty of Versailles in *The Treaties of Peace 1919-1923*, Vol. I, 1924, pp. 3-263 (naval clauses, pp. 105-111). See also E. von Puttkamer, "Versailles Peace Treaty", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 4 (1982), pp. 276-282). Due to the fact that the Senate of the United States refused the ratification of the Treaty of Versailles, the United States concluded a separate Peace Treaty with Germany (Berlin, 25 August 1921), *LNTS*, Vol. XII, p. 192. The United States signed a similar Peace Treaty with Austria on 24 August 1921 (*LNTS*, Vol. VII, p. 156) and with Hungary on 29 August 1921 (*LNTS*, Vol. XLVIII, p. 191). All these treaties included naval clauses based on the Peace Treaties concluded with Germany, Austria and Hungary by all the Allied and Associated Powers (Treaties of Versailles, Saint-Germain and Trianon; see *infra*, footnotes 80 and 81). See also E. von Puttkamer, "Germany-United States Peace Treaty 1921", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 3 (1982), pp. 198-200).

80. *The Treaties of Peace 1919-1923*, Vol. I, *op. cit.*, pp. 267-456 (naval clauses, pp. 314-316). See also H. F. Köck, "Saint-Germain Peace Treaty (1919)", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 4 (1982), pp. 198-199).

81. *The Treaties of Peace 1919-1923*, Vol. I, *op. cit.*, pp. 461-649 (naval clauses, pp. 505-507). See also H. F. Köck, "Trianon Peace Treaty (1920)", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 4 (1982), pp. 249-250).

inclusive⁸². However, it retained the right to maintain not more than four torpedo boats and six motor boats on the Danube and along its coast for police and fishery duties. These vessels had to be without torpedoes and torpedo apparatus, and their personnel had to be organized on a purely civilian basis.

The Treaty of Peace signed with Turkey on 10 August 1920 at Sèvres contained naval clauses similar to those of other Peace Treaties of the Versailles system⁸³. However, the Treaty of Sèvres was replaced by the Treaty of Peace with Turkey signed on 24 July 1923 at Lausanne, which did not include naval clauses⁸⁴.

Division D LEAGUE OF NATIONS

Paragraph 1 The Covenant

The Covenant of the League of Nations proclaimed as the object of the organization the reduction of national armaments and not disarmament⁸⁵. The level to which Member States had to reduce their armaments was determined in a rather vague manner in Article 8, paragraph 1, of the Covenant:

“The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.”

Plans for such reduction of armaments were to be prepared by the Council but were eventually to be adopted by Governments (Art. 8, para. 2). Several subsidiary bodies were created and in 1925 a preparatory commission for the Disarmament Conference was established. The Conference was convened in 1932 but it was suspended in 1934 having achieved no result.

The failure of the League of Nations in respect of the reduction of armaments was caused by the absence of some important military Powers

82. *The Treaties of Peace 1919-1923*, Vol. II, 1924, pp. 653-785 (naval clauses, pp. 681-682). See also H. F. Köck, “Neuilly Peace Treaty (1919)”, in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 4 (1982), pp. 3-4).

83. *The Treaties of Peace 1919-1923*, Vol. II, *op. cit.*, pp. 787-941 (naval clauses, pp. 846-848).

84. *Ibid.*, pp. 959-1022; *LNTS*, Vol. XXVIII, p. 11. See also L. Weber, “Lausanne Peace Treaty (1923)”, in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 3 (1982), pp. 242-245).

85. The Covenant was contained in Articles 1-26 of the Treaty of Versailles and other Peace Treaties concluded by all the Allied and Associated Powers (except the United States) after the First World War; see *supra*, footnotes 79-83.

from the Organization, by the different approach of some of the most important members (France, Great Britain) to the relationship between the limitation of armament and international security, and by the arming and the aggressive policies of Japan, Germany and Italy⁸⁶.

Paragraph 2 **The 1922 Washington Naval Treaty**

Contrary to the failure concerning reduction of armaments to be achieved within the League, some results were achieved outside the Organization. On 6 February 1922 the Treaty for the Limitation of Naval Armament was signed at Washington between the British Empire, France, Italy, Japan and the United States of America⁸⁷. The Contracting Parties agreed to retain only those capital ships specified in the Treaty and to abandon their respective capital ship building programmes. The total replacement tonnage for capital ships and aircraft carriers was determined for each Contracting Party. Maximum individual tonnage limits were fixed for capital ships, aircraft carriers and other vessels of war; limits were also placed on gun calibres for each of the classes of warships. Additional provisions were agreed upon in order to prevent: the conversion of merchant ships into vessels of war, the construction by Contracting Powers for non-contracting Powers of warships exceeding the limitations prescribed for the Contracting Parties, the establishment of new fortifications or naval bases in the territories and possessions of some of the Contracting Powers, etc.

The limitations adopted at Washington were considered a great success of pacifism and a serious step forward in the quest of disarmament. However, this agreement was made possible primarily by the fact that the adopted measures were convenient to some of the maritime Powers which after the First World War were undergoing serious economic difficulties. Moreover, the accepted limitations made possible the orientation to smaller classes of warships which were more efficient and more rapid. The limitations agreed upon at Washington and in some other treaties at that time did not prevent the manifestation of aggressive intentions. Japan, engaged in the build-up of an enormous navy, denounced the Washington Treaty on 29 December 1934; as a consequence thereof the Treaty terminated on 31 December 1936⁸⁸.

86. See M. Vaïsse, "La Société des Nations et le désarmement", *The League of Nations in Retrospect*, Proceedings of the Symposium organized by the United Nations Library and the Graduate Institute of International Studies, Geneva, 6-9 November 1980, 1983, pp. 245-265.

87. *LNTS*, Vol. XXV, p. 201.

88. See Colombos, *op. cit.*, p. 24; M. O. Hudson (ed.), *International Legislation*, Vol. VII, 1935-1937, 1941, p. 263.

At the end of the Washington Naval Conference, on 6 February 1922, the Washington Treaty relating to the Use of Submarines and Noxious Gases in Warfare was also concluded⁸⁹. As the Treaty required the ratification of all signatories in order for it to take effect, the decision of France not to ratify the Treaty prevented its entry into force⁹⁰.

Paragraph 3 **The London Naval Treaties**

The five maritime Powers willing "to carry forward the work begun by the Washington Naval Conference ..." concluded the Treaty for the Limitation and Reduction of Naval Armament (London, 22 April 1930)⁹¹. The 1930 London Treaty supplemented the 1922 Washington Treaty by further renouncements in respect of capital ships replacement tonnage, by the disposal of some capital ships listed by name, by prohibiting the fitting of existing capital ships with landing-on platforms or decks, by fixing gun calibre limits for smaller aircraft carriers and submarines, by determining the permitted limits of the submarine displacement, etc. The Treaty determined the total tonnage (and some other limitations) in the cruiser, destroyer and submarine categories which were not to be exceeded; there were also partial limitations concerning small naval surface combatant vessels⁹².

According to its own provisions (Art. 23), the 1930 London Treaty remained in force until 31 December 1936. As the Conference of the Contracting Parties convened in 1935 with the aim of framing a new treaty was not successful, three of the five maritime Powers later concluded a new treaty⁹³. Namely, on 25 March 1936 France, Great Britain and the United States signed at London the Treaty for Limitation of Naval Armament. The Treaty also contained provisions for the exchange of information concerning naval construction⁹⁴.

Contrary to the rest of the text, Article 22 of the 1930 London Treaty, which restated the rules on submarine warfare, was to remain in force without time-limit (Art. 23, para. 1 (1)). However, the content of Article 22

89. Text in Hudson, *op. cit.*, Vol. II, 1922-1924, 1931, pp. 794-798.

90. Roberts and Guelff, *op. cit.*, p. 147.

91. Third preambular paragraph; text of the Treaty in *LNTS*, Vol. CXII, p. 65; Hudson, *op. cit.*, Vol. V, 1929-1931, 1936, pp. 394-420.

92. On the basis of Article 24, paragraph 2, the Treaty entered into force on 27 October 1930. See Procès-Verbal of the Deposit of Ratifications of the International Treaty for the Limitation and Reduction of Naval Armament, signed at London on 22 April 1930. London, 27 October 1930, *LNTS*, Vol. CXII, p. 92.

93. See Hudson, *op. cit.*, Vol. V, note 1 on p. 418, Vol. VII, p. 263.

94. *LNTS*, Vol. CLXXXIV, p. 115; Hudson, *op. cit.*, Vol. VII, pp. 263-285. The Treaty was amended by the Protocol Fixing a New Displacement Limitation for Capital Ships, signed at London, 30 June 1938, *LNTS*, Vol. CXCVI, p. 481; Hudson, *op. cit.*, Vol. VII, pp. 288-289.

was later incorporated verbatim in a new treaty – the London Procès-Verbal relating to the Rules of Submarine Warfare set forth in Part IV of the Treaty of London of 22 April 1930, signed at London on 6 November 1936⁹⁵.

Paragraph 4 **Other Treaties**

As a result of the intensive armament of Germany, Great Britain and Germany concluded an agreement on 18 June 1935; it determined the proportion of the aggregate naval strength of the British Commonwealth of Nations and Germany (100:35)⁹⁶. Germany denounced the agreement on 28 April 1939. Great Britain also concluded agreements with some other European States, substantially to the same effect as the 1936 London Naval Treaty⁹⁷.

The outbreak of the Second World War put an end to all the treaties concerning the limitation of naval armaments. Apart from the 1936 London Procès-Verbal on Submarine Warfare, the only treaty which is effective even today is the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (Geneva, 17 June 1925) – applicable also to naval warfare⁹⁸.

Division E **1947 TREATIES OF PEACE**

Treaties of Peace concluded after the Second World War (Paris, 10 February 1947), including the Treaty with Hungary, contain clauses limiting in various ways the right of vanquished States regarding military uses of the sea⁹⁹. The Agreement on the Treatment of Germany adopted by the heads of government of the United States, Great Britain and the USSR at Berlin (Potsdam) on 1 August 1945¹⁰⁰ determined the

95. *LNTS*, Vol. CLXXIII, p. 353; Hudson, *op. cit.*, Vol. VII, pp. 490-492. See also Colombos, *op. cit.*, p. 24; Roberts and Guelff, *op. cit.*, pp. 147-151.

96. Exchange of Notes regarding the Limitation of Naval Armaments, London, 18 June 1935, *LNTS*, Vol. CLXI, p. 9.

97. Colombos, *op. cit.*, pp. 24-25; J. Andrassy, *Medunarodno pravo*, 5th ed., 1971, pp. 505-506.

98. *LNTS*, Vol. XCIV, p. 65; Roberts and Guelff, *op. cit.*, pp. 137-145.

99. *UNTS*, Vol. 41, pp. 21 and 135, Vol. 48, p. 203, Vol. 42, p. 3. See also E. von Puttkamer, "Peace Treaties of 1947", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 4 (1982), pp. 117-124).

100. Text in Hudson, *op. cit.*, Vol. IX, 1942-1945, 1950, pp. 580-583. See also excerpts from the Protocol of the Proceedings of the Potsdam Conference in F. H. Hartmann (ed.), *Basic Documents of International Relations*, 1951, pp. 248-249; K. Doehring, "Peace Settlements after World War II", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 4 (1982), pp. 95-100); J. A. Frowein, "Potsdam Agreements on Germany 1945", *ibid.*, pp. 141-146.

complete disarmament and demilitarization of Germany as one of the purposes of the occupation of the country. Germany was not allowed to produce arms, ammunition and implements of war nor any type of aircraft and sea-going ship. The Protocol of the Proceedings of the Conference added a provision according to which part of the units of the German navy was to be divided equally among the three Powers and the remainder of its fleet had to be destroyed. The Treaty of Peace with Japan (San Francisco, 8 September 1951), concluded when Japan was actually no longer considered an enemy State, does not contain similar provisions¹⁰¹.

Paragraph 1 Naval Clauses

The limitations contained in the Treaties of Peace concluded with Bulgaria, Finland and Romania relate mainly to the navies of the concerned States but they refer also to the parts of their territories, including the coastal and sea areas¹⁰². It was stated that sea armaments and fortifications (as well as land and air armaments and fortifications) belonging to these States had to be closely restricted to meeting tasks of internal character and local defence of their frontiers. The personnel strength and the total tonnage of the navies were determined as follows: Bulgaria 3,500 persons and 7,250 tons; Finland 4,500 persons and 10,000 tons; Romania 5,000 persons and 15,000 tons. It was forbidden to these States to possess, construct or experiment with

“any atomic weapon, any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo-launching gear comprising the normal armament of naval vessels permitted by the present Treaty), sea mines or torpedoes of non-contact types actuated by influence mechanisms, torpedoes capable of being manned, submarines or other submersible craft, motor torpedo boats, or specialized types of assault craft” (Art. 13 of the Treaty with Bulgaria)¹⁰³.

As far as other war material was concerned, the three States were

101. *UNTS*, Vol. 136, p. 45. The multilateral Peace Treaty (1951) was followed by the bilateral peace treaties with some remaining States which also were at war with Japan; see W. Morvay, “Peace Treaty with Japan (1951)”, in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 4 (1982), pp. 125-129).

102. On naval, military and air clauses of the 1947 Treaties of Peace, see G. G. Fitzmaurice, “The Juridical Clauses of the Peace Treaties”, *Hague Recueil*, Vol. 73, 1948-II, pp. 255-367 at pp. 318-323.

103. Equal is the content of Article 14 of the Treaty with Romania, Article 17 of the Treaty with Finland and Article 15 of the Treaty with Hungary.

restricted to the quantities required for the maintenance of their naval forces.

Paragraph 2 Treaty of Peace with Italy

As far as Italy was concerned¹⁰⁴, the total personnel of its navy was not allowed to exceed 25,000 officers and men (Art. 60, para. 1). Annex XII of the Treaty contained a list of naval vessels which Italy was allowed to retain; other vessels were to be placed at the disposal of the four major Allied Powers (Art. 57). It was also prohibited to Italy to possess, contract or experiment with atomic weapons and other armaments mentioned in the Treaties with the three other defeated States. However, there were some differences between the Peace Treaty with Italy and the three other treaties: while Bulgaria, Finland and Romania were not permitted to possess “submarines or other submersible craft, motor torpedo boats, or specialized types of assault craft”, Italy was not entitled to “any guns with a range of over 30 kilometres” (Art. 51).

Italy was obliged to demilitarize some islands (Art. 49) and to destroy or remove its permanent fortifications and military installations – including their armaments – along the Franco-Italian and the Italo-Yugoslav frontiers (Arts. 47 and 48). It was not permitted to establish any new or expand any existing naval bases or permanent naval installations in a coastal area close to its frontiers with these two neighbouring countries. Measures of demilitarization were also agreed upon for the islands of Sardinia and Sicily (Art. 50). The newly established Free Territory of Trieste had to be demilitarized and declared neutral (Ann. VI, Art. 3).

It was provided that each of the naval clauses (as well as military and air clauses) of the Treaties of Peace were to remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and the respective States or – after these States become Members of the United Nations – by agreement between the Security Council and each of these States. However, owing to the changed political circumstances the naval and all other military clauses of the Treaties of Peace were only partially implemented. Bulgaria, Hungary and Romania as well as Italy gradually joined the new military alliances of their enemies of yesterday; only Finland carried out in full its obligations under the military clauses of its Treaty of Peace¹⁰⁵.

104. *UNTS*, Vol. 49, p. 3.

105. Cf. G. Vedovato, “La revisione del Trattato di Pace con l’Italia”, *Rivista di studi politici internazionali*, Vol. 41, 1974, No. 3, pp. 375-444; von Puttkamer, *Peace Treaties of 1947*, *op. cit.*, p. 123.

Division F UNITED NATIONS**Paragraph 1 The Charter**

The maintenance of international peace and security in the new world organization was intended to be based on the joint action of Member States which joint action could include the use of force upon the decision of the Security Council. Simultaneously with this priority task, the Council has the duty to formulate, with the assistance of the Military Staff Committee, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments and possible disarmament (Art. 26; Art. 47, para. 1). In so far as the General Assembly is concerned, it is stated in the Charter that the Assembly may consider "the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both" (Art. 11, para. 1).

Paragraph 2 The Results

Notwithstanding the participation of different organs of the United Nations in the activities concerning the regulation of armaments and disarmament, including the three special sessions of the General Assembly on disarmament, the results achieved in this field are extremely modest. They can be referred to as being very modest even when qualified together with the results of the negotiations obtained by the Member States outside the Organization. In fact, it is the sad truth that during the period of the United Nations mankind has proved absolutely incapable of controlling its armament. Even when compared with the earlier periods the results of these post-war times are tragically poor.

- Permanent arms race with the increasingly more complex weapons systems is no longer the obsession only of the great Powers and particularly aggressive or endangered States. The great majority of States nowadays insist on acquiring armaments to the extreme limits of their economic potential. Often, their military expenditures are far beyond their real economic capabilities. As a consequence thereof an always increasing number of skilled people and of financial means is being channelled towards military purposes – a heavy burden for the development of national economies and an obstacle to any positive change in the international economic and social situation.¹⁰⁶

106. Under the auspices of the United Nations, the International Conference on the Relationship Between Disarmament and Development was held in New York, from 24 August to 11 September 1987; Final Document of the Conference in *Disarmament* (United Nations publication, Sales No. E.88.IX.1), Vol. XI, No. 1, winter 1987/1988, pp. 131-138.

- Beside an enormous variety of conventional weapons, nuclear weapons and other weapons of mass destruction have been disseminated. Although weapons of mass destruction have been used only on several occasions, their use provoked sufferings unknown in the past wars. An all-out nuclear war would result in billions of dead people, serious effects on the climate, the end of the present civilization and would, probably, cause the end of life on our planet.
- In strategic rivalry which exists primarily between the two super-Powers, all spaces on earth have already been exploited – its surface, its subsoil, its seas, its atmospheric layer; the arms race has penetrated even outer space. In the context of this Chapter one must repeat once again that in the opinion of the super-Powers their nuclear equilibrium is today based on the ballistic missile nuclear submarines hidden in the oceanic depths.

In view of the disquieting features of these developments, the international instruments adopted within the framework of the United Nations in order to control some aspects of the arms race must be considered as insignificant. The resolutions of the General Assembly in this field are very numerous but are ignored even more frequently than the resolutions on other subjects. The treaties – some of which are analysed in the present Chapter – are formulated and ratified only when they concern aspects of the arms race which States do not consider important for their national security.

Paragraph 3 **Other Organizations and Conferences**

As already mentioned, some results in the field of arms control were achieved also in other fora. As is the case in the United Nations, the progress in these fora depends exclusively on the attitudes of the two super-Powers. In the periods of their détente the 1972 and 1979 SALT Agreements and the 1987 Treaty on the Elimination of Their Intermediate-Range and Shorter-Range Missiles (INF Treaty) were concluded¹⁰⁷. In times of their mutual distrust they would renounce the ratification of already-signed treaties, undermine the ongoing disarmament negotiations, develop new nuclear weapons systems. The relations between the super-Powers play a decisive role even in such multilateral undertakings as the Conference on Security and Co-operation in Europe. The détente enabled the 35 European States to sign the 1975 Helsinki Final Act, at the time considered a serious achievement in preventing war in Europe. The deterioration of the relations between the United States and the USSR almost brought the Helsinki Process to an end at the anxious-laden Follow-

107. *ILM*, Vol. 27, 1988, No. 1, p. 90.

up Conference in Madrid; due to the resurrected détente new avenues for European co-operation have apparently been reopened at the Vienna Review Conference.

In a world not able to free itself from the plague of war it is not surprising that the most impressive results are those achieved in developing international law concerning the protection of the victims of armed conflicts. Thus, new conventions on humanitarian law were adopted within the framework of the Red Cross (Geneva, 12 August 1949)¹⁰⁸. These four Geneva Conventions were supplemented by two Additional Protocols adopted at Geneva on 8 June 1977¹⁰⁹.

Subsection 2 SOURCES OF LAW

As Chapter 2 in Volume 1 of this *Handbook* is devoted to the analysis of the sources of law of the sea in general, the scope of this Subsection will be restricted to some specific remarks which concern the sources of the law of the sea with respect to the subject of this Chapter.

Division A TREATIES

Paragraph 1 Treaties and Military Powers

In the law of the sea topics dealt with in the present Chapter – as well as in all other particular fields of international law – treaties have some specific characteristics which in other fields are present less often. Such a particularity in this field is the fact that the impact which the individual States play in the formulation of treaties depends upon their military power: the most prominent role is reserved for nuclear weapon Powers, particularly the two super-Powers¹¹⁰. The super-Powers sometimes conclude bilateral treaties on fundamental questions relevant to many other States (e.g., the 1987 INF Treaty); important multilateral treaties are negotiated and signed by the great Powers and eventually opened for signature for other States (e.g., the 1963 Partial Test Ban Treaty); a special position is retained for the nuclear Powers in respect of the entry into force and the amendment of the treaty (e.g., the Partial Test Ban Treaty); although not States Parties, the nuclear weapon Powers are virtual guarantors of the implementation of some treaties (e.g., the Treaty of Tlatelolco) etc.

108. *UNTS*, Vol. 75, pp. 31, 85, 135 and 287.

109. *UNTS*, Vol. 1125, pp. 3 and 609.

110. See E. McWhinney, *Les Nations Unies et la formation du droit*, 1986, pp. 68-70; A. Randelzhofer, "Great Powers", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 9 (1986), pp. 142-146 at p. 145).

A specific feature of the treaties concluded by the super-Powers is the unusual fact that even when some of their treaties on arms regulation remain non-ratified, they still express their will to abide by their provisions. New political or security reasons, unrelated to the main scope of the treaties, prevent their ratification, but because of the importance of the treaties and the prestige of the contracting parties, the treaties are applied although not formally and legally binding (e.g., the 1974 Threshold Test Ban Treaty, the 1979 SALT II Treaty – see *infra*, Subsec. 4, Div. A, para. 2).

Paragraph 2 **Treaties Creating “Objective Régimes”**

For the treaties dealt with in this Chapter the question of treaties providing for the so-called “objective régimes” is very relevant¹¹¹. Namely, many scholars, mainly followers of Georges Scelle, are of the opinion that some treaties establish for the object they regulate a régime which concerns also third States. Treaties on navigation on international rivers and waterways, treaties providing for the use of maritime or land territories, treaties on demilitarization and neutralization are quoted among those creating “objective régimes”. Professor Colliard explains that some treaties on communication and treaties creating a political and territorial statute produce effects beyond the community of signatories because these States assume the role of a *de facto* international legislator. Such a competence of some States is recognized and the *erga omnes* effects of their rules are accepted if they conform with “the proper aim of international law”, with “the requirements of international life” and with “the objective international law”¹¹².

The most significant precedents recognizing the *erga omnes* effects of some treaties are the judgment of the Permanent Court of International Justice (PCIJ) in the *Wimbledon* case and the opinion given by the Committee of Jurists to the Council of the League of Nations concerning the demilitarization of the Aaland Islands. The PCIJ stated in the *Wimbledon* case that the international status of the Kiel Canal, established by the Treaty of Versailles, was enforceable also in respect of third States¹¹³. The Committee of Jurists considered that the “objective nature of the settlement of the Aaland Islands question by the Treaty of 1856” was a reason for its effects also in respect of States not being signatories to the Treaty¹¹⁴.

111. B. Vukas, *Relativno djelovanje međunarodnih ugovora*, 1975, pp. 133-150.

112. C.-A. Colliard, *Institutions internationales*, 3rd ed., 1967, pp. 245-246.

113. PCIJ (1923), *Series A, No. 1*, pp. 22 and 28.

114. League of Nations, *Official Journal, Special Supplement No. 3* (October 1920), p. 18.

Sir Humphrey Waldock, the Special Rapporteur of the International Law Commission in the topic of the law of treaties, envisaged the inclusion of a special provision on “objective régimes” in the Convention on the Law of Treaties¹¹⁵. However, the Rapporteur’s proposal was not endorsed by the majority of the members of the Commission. There were two main reasons for rejecting the Article on “objective régimes”: the opinion that its provisions overlapped with other Articles of the draft concerning the effects of treaties on third States and the fear that the acceptance of the possibility that treaties create “objective régimes” might promote a restricted number of influential States to the position of international legislators¹¹⁶.

At the present stage of the development of international law, based on the sovereign equality of States, the idea of treaties creating legal effects *erga omnes* could be accepted only in relation to treaties dealing with objects submitted to the exclusive competence of one or more of the Contracting States (e.g., treaties on demilitarization of parts of their territories). However, in the context of the present Chapter more relevant are frequent treaties which pretend to establish the régime of a space not under the jurisdiction of Contracting States, such as Antarctica or the high seas. Such treaties are often concluded by a considerable number of States, usually including all those relevant in respect of the subject dealt with by the treaty. Yet, whatever the authority of the Contracting States and the soundness of the accepted solutions, it can not be claimed that such treaties create rights and obligations in respect of third States, particularly in case of their formal opposition to the treaty. A well-known example is provided for by China and France, which do not consider themselves as being obliged by the Partial Test Ban Treaty. A recent confirmation of the impossibility to create rights and obligations for third States on the basis of such treaties is given by the 1985 South Pacific Free Zone Treaty (Treaty of Rarotonga):

“Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to freedom of the seas.” (Art. 2, para. 2.)¹¹⁷

Treaties intending to establish rules of general international law can achieve this object only if their provisions incite the creation of general customary international law (see *infra*, Div. D).

Division B UNILATERAL ACTS OF STATES

In conjunction with international conventions and international custom unilateral acts of States play an important role in the

115. Art. 63 in A/CN.4/167, pp. 60-80.

116. Vukas, *op. cit.*, p. 148.

117. Text of the Treaty in *SIPRI Yearbook 1986*, pp. 509-519.

creation, determination and interpretation of international law¹¹⁸. However, although not mentioned in Article 38, paragraph 1, of the Statute of the International Court of Justice (ICJ), some autonomous unilateral acts of States – acts not having any link with the treaties or custom – are considered today an independent source of international law. In order to create an international obligation there is no need for any other action on the part of any other State when the unilateral act demonstrates clearly the intention of the State in question to be bound by the clauses of such an act and when the act is made public.

Precedents in the very field covered by this Chapter contributed to the affirmation of unilateral acts of States as a source of international law. By the Declaration of 24 April 1957 on the Suez Canal, Egypt reaffirmed its determination to respect the Constantinople Convention of 29 October 1888. Moreover, it accepted additional obligations relative to its future actions in the new situation created by the nationalization of the Canal. In the last paragraph of the Declaration it was expressly said:

“This Declaration, with the obligations therein, constitutes an international instrument and will be deposited and registered with the Secretariat of the United Nations.”¹¹⁹

The major contribution to the acceptance of unilateral acts of States as an independent source of international obligations is due to the judgment of the ICJ of 20 December 1974 in the *Nuclear Tests* cases¹²⁰. Namely, the ICJ confirmed that the unilateral undertaking concerning the cessation of further nuclear tests in the atmosphere resulting from the declarations of the French authorities created an obligation for France¹²¹.

The declaration of the USSR, made at the 1982 second special session of the General Assembly devoted to disarmament – according to which the USSR assumed the obligation not to be the first to use nuclear weapons – may also be qualified as a unilateral declaration creating an international obligation¹²².

This declaration is only one of the unilateral nuclear disarmament

118. See M. N. Shaw, *International Law*, 2nd ed., 1986, p. 94; D. Carreau, *Droit international*, 1986, pp. 196-213; Nguyen Quoc Dinh, P. Daillier, A. Pellet, *Droit international public*, 3rd ed., 1987, pp. 330-335.

119. *UNTS*, Vol. 265, p. 299 at p. 306.

120. *ICJ Reports 1974*, pp. 253 and 457.

121. *Ibid.*, pp. 267-270. See also J. Andrassy “Povodom presude Međunarodnog suda o nuklearnim pokusima”, *Rad Jugoslavenske akademije znanosti i umjetnosti*, 1978, No. 375, pp. 5-105.

122. A/S-12/AC.1/10 and Corr.1 in *Official Records of the General Assembly, Twelfth Special Session, Plenary Meetings, Verbatim Records of the Meetings, Annexes*, p. 529. A similar pledge was made also by China, A/S-15/AC.1/18, para. 18, 17 June 1988.

measures recorded in the past. It is believed that such unilateral measures of arms limitation or reduction could contribute, simultaneously with the negotiations of international agreements, to the de-escalation of the arms race¹²³.

Division C **ACTS ADOPTED BY INTERNATIONAL ORGANIZATIONS
AND INTERNATIONAL CONFERENCES**

Although not mentioned in Article 38, paragraph 1, of the ICJ Statute, some of the acts adopted by international organizations are considered today as an independent source of international law¹²⁴. Such a conclusion is understandable in cases when member States expressly confer to an organization the right to take decisions obligatory for the organization itself or even for the member States¹²⁵. Otherwise, acts of international organizations are relevant for the creation of international law in cases when they actually represent an international agreement concluded in a specific, simplified form. They can also be declaratory of international law or incite the establishment of a new customary international law. It should be pointed out that the terms used are not decisive for determining the legal nature of such acts (resolutions, declarations, etc.) and that different parts of a single act may not be of the same legal nature.

Mutatis mutandis the above conclusions are applicable also to acts adopted at international conferences – very often closely linked to international organizations.

In the context of this Chapter the most important acts to be discussed are the resolutions of the General Assembly of the United Nations and the acts adopted at the Conference on Security and Co-operation in Europe. However, many other organizations and conferences adopt relevant acts in the field of arms control; due to the number of participating States and their prestige the most important perhaps are the acts arising from the meetings of the non-aligned States. However, the nature of the majority of such acts is clear: they represent political agreements, plans for future activities of the participating States or proposals to third States and international organizations.

123. Para. 41 of the Final Document of the first special session of the General Assembly devoted to disarmament, resolution S-10/2 of 30 June 1978; General Assembly resolution 39/148 of 17 December 1984; A/39/516 (*Unilateral Nuclear Disarmament Measures*, United Nations publication, Sales No. E.85.IX.2).

124. See Vol. 1, Chap. 2, Sec. 1, Div. A, para. 5. See also Carreau, *op. cit.*, pp. 216-230.

125. Nguyen Quoc, Daillier, Pellet, *op. cit.*, p. 341; Carreau, *op. cit.*, pp. 225-230.

Paragraph 1 Resolutions of the United Nations General Assembly

The General Assembly, apart from holding special sessions devoted to disarmament, discusses also at its regular annual sessions many items concerning disarmament and adopts resolutions on these issues. Article 11, paragraph 1, of the Charter is essential in defining the resolutions of the General Assembly as “recommendations” also in this field:

“The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.”

The resolutions of the General Assembly express mainly the positions and fears of the vast majority of States which request different actions from the military Powers: comprehensive nuclear test ban, limitations of nuclear armament, conclusion of treaties on disarmament, establishment of nuclear-free zones, etc.

Yet, the General Assembly sometimes formulates resolutions (declarations) which proclaim principles intended to be applied by all Member States. Thus, for example, it proclaimed “the permanent prohibition of the use of nuclear weapons” qualifying the use of such weapons as “a crime against mankind and civilization” (see *infra*, Subsec. 4, Div. A, para. 1). Such statements of the General Assembly in the question of nuclear weapons were justified as its resolutions proclaimed the interdiction of weapons which had already been forbidden under general customary international law.

In addition, some resolutions of the General Assembly are obligatory, at least for the States which voted in favour, when they in fact represent an agreement between the Member States concluded in the form of a resolution (declaration)¹²⁶.

However, except in these situations when it can be claimed that the resolutions are declaratory either of customary or of conventional law, it would be difficult to contend that resolutions of the General Assembly, no matter the majority with which they are adopted, could represent an independent source of international law¹²⁷. This conclusion is more

126. See R.-J. Dupuy, “Droit déclaratoire et droit programmatore: de la coutume sauvage à la ‘soft law’”, *L’élaboration du droit international public*, Société française pour le droit international, Colloque de Toulouse (mai 1974), 1975, pp. 132-148 at pp. 140-144.

127. A historical review of the attitude of different groups of States in respect of the legal nature of the General Assembly resolutions, see in McWhinney, *op. cit.*, pp. 70-73. See also A. Cassese, *Le droit international dans un monde divisé*, 1986, pp. 176-178.

obvious in the field of disarmament than in other spheres of United Nations activities. Namely, all States, great Powers in particular, do not accept restrictions being imposed upon their efforts in the field of "national security" without their express consent.

An example of the meagre direct results achieved by its resolutions is given by the General Assembly itself. Although as early as in 1971 it adopted a declaration designating the Indian Ocean "for all time as a zone of peace", the 1978 special session devoted to disarmament called this declaration as all others in the field – "proposals for the establishment of zones of peace". Consequently, the General Assembly is even today trying desperately to convince the States concerned to accept the convocation of a special conference in Colombo, which would enable the implementation of the 1971 declaration (see *supra*, Sec. 1, Subsec. 1, Div. C).

Paragraph 2 Helsinki Final Act

Some of the the most important conferences for the development of international relations do not result in international agreements, but in final documents of a non-conventional character (e.g., the 1945 Yalta Conference). Very often such documents cause doubts concerning their legal nature. The nature of the Final Act of the CSCE, adopted at Helsinki on 1 August 1975, has also been the cause of many scholarly analyses¹²⁸.

As a confirmation of their intention not to conclude a treaty, the participating States at the Helsinki Conference inserted in the final clauses a provision according to which the Final Act "is not eligible for registration under Article 102 of the Charter of the United Nations ..."¹²⁹. However, although not possessing the autonomous legal force of a treaty, the Final Act is not devoid of legal character¹³⁰. The main feature of its legal nature is the fact that it contains numerous rules of international law. Namely, some clauses obviously declare previously existing general customary international law (e.g., the rules contained in the Declaration on Principles Guiding Relations between Participating States¹³¹). Others represent in fact a written confirmation of agreements reached at the Conference by the

128. See a selected bibliography on the Helsinki Final Act in Nguyen Quoc, Daillier, Pellet, *op. cit.*, pp. 356-357.

129. *ILM*, Vol. 14, 1975, No. 5, p. 1292 at p. 1325.

130. For a detailed analysis of the "actes concertés non conventionnels" see Nguyen Quoc, Daillier, Pellet, *op. cit.*, pp. 351-358. See also F. Münch, "Non-Binding Agreements", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 7 (1984), pp. 353-358 at p. 355).

131. *ILM*, Vol. 14, 1975, No. 5, pp. 1293-1296.

participating States and incorporated in the Final Act (e.g., obligations concerning the prior notification of major military manoeuvres¹³²).

However, the majority of the clauses of the Helsinki Final Act determine the aims of the future co-operation in Europe having, for the time being, only the value of a political will of the participating States. Many of these clauses are susceptible of being further elaborated and transformed into conventional or customary rules of international law in the implementation of the Final Act. Thus, the measures agreed upon at the 1986 Stockholm Conference on Confidence- and Security-Building Measures and Disarmament in Europe, adding to those agreed upon at Helsinki, represent new conventional undertakings of the European States¹³³.

Division D **CUSTOMARY LAW**

Paragraph 1 **General Remarks**

Contrary to some expectations and opinions, international custom retains an important role as a source of international law today. However, even the scholars who are of the opinion that the importance of customary law is generally declining point out the law of the sea as one of the subject-matters in which customary law has still maintained an important role¹³⁴.

Paragraph 2 **Customary Law and Disarmament**

The field of arms regulation and disarmament is not a fertile ground for the creation of customary rules. Due to the basic reasons for the arming of the States – fear, distrust, aggressive intentions – the precise conventional procedure is more appropriate for accepting disarmament measures than the uncertain process and the vague results of the establishment of customary norms.

Treaties, which are very important in the establishment of customary law in many fields, law of the sea included, cannot play a similar role in respect of disarmament. Namely, the provisions of treaties in this field lack the main characteristic required by the ICJ in order to pass into the general *corpus* of international law: they are not “of a fundamentally norm-

132. *ILM*, pp. 1298-1299.

133. For the comparison of the Helsinki Act and the Stockholm Document in respect of confidence-building measures, see R. E. Darilek, “The Future of Conventional Arms Control in Europe, a Tale of Two Cities: Stockholm, Vienna”, *SIPRI Yearbook 1987*, pp. 339-354 at p. 349.

134. Cassese, *op. cit.*, pp. 163-166.

creating character such as could be regarded as forming the basis of a general rule of law”¹³⁵. The contents of these treaties are a good example of *traités-contrats*. Only in respect of some general principles have the treaty provisions, supported by other international instruments and by the practice and *opinio juris* of the great majority of States, contributed to the establishment of principles of general customary law (e.g., prohibition of pollution of the seas by dumping of radioactive waste; prohibition of weapons of mass destruction on the sea-bed).

**Subsection 3 MEASURES OF DISARMAMENT AND NAVAL ARMS
REGULATION**

Division A LIMITATIONS OF NAVAL ARMAMENT

Paragraph 1 Introduction

The above historical outline (Subsec. 1) demonstrates clearly that the relevant limitations of naval forces have always depended upon the great maritime Powers. Only the sporadic mutual treaty limitation of their fleets was able to substantially limit the global level of naval forces. On the other hand, the existing great Powers tended to prevent the emergence of new maritime Powers or the revival of the old. Therefore, they imposed limitations on their potential rivals in the supremacy on the oceans.

The past and contemporary treaties limiting the naval armament concern, *inter alia*: the number, the classes and the tonnage of ships; the armament of the navies; the arms trade; the use of weapons, etc. However, efforts in this field have not resulted in serious restrictions of the right of States to acquire the most modern and complex naval weapons systems for their navies.

The present Subsection deals only with the conventional naval armament; the regulation of nuclear armament is the topic discussed in the following Subsection 4.

Paragraph 2 Arms Trade

At the time of their colonial conquests the European Powers endeavoured to limit the arms trade in some extra-European territories. Thus, the Brussels Act of 2 July 1890 regulated the trade in arms

135. *North Sea Continental Shelf, Judgment, ICJ Reports 1969*, p. 41.

and ammunition in certain African zones¹³⁶. Its clauses on arms trade were replaced by the Convention on the Control of Trade in Arms and Ammunition signed at Saint-Germain-en-Laye on 10 September 1919¹³⁷. This Convention prohibited the importation of many kinds of arms and ammunition into almost the whole continent of Africa and some territories of Asia. Special supervision of the maritime zone adjacent to certain countries was established in order to ensure the efficacy of the measures adopted. The zone included the Red Sea, the Gulf of Aden, the Persian Gulf and the Sea of Oman. The 1919 Convention was in part superseded by the Convention on Supervision of International Trade in Arms and Ammunition and in Implements of War, opened for signature at Geneva on 17 June 1925¹³⁸. However, this Convention did not enter into force.

Nowadays, the colonial relations having disappeared, it is no longer possible that a restricted number of States limit the armament, the arms trade and transfer included, of other independent States. However, it is deplorable that within the disarmament efforts of the United Nations more attention is not being devoted to arms transfer. The 1978 special session of the General Assembly declared that

“consultations should be carried out among major arms supplier and recipient countries on the limitation of all types of international transfer of conventional weapons ...” (para. 85 of the Final Document).

No such consultations have taken place, “as with other conventional weapons, the transfer of naval arms has continued unabated”¹³⁹.

Paragraph 3 **Weapons Limitations**

The treaty prohibition of some weapons dates from the Conferences of St. Petersburg and The Hague; the results of these Conferences – mentioned in the above historical outline – are still in force.

136. K. Strupp, *Urkunden zur Geschichte des Völkerrechts*, Vol. II, pp. 356-378. See also J. Delbrück, “Arms, Traffic in”, in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 3 (1982), pp. 38-40).

137. Hudson, *op. cit.*, Vol. I, 1919-1921, 1931, pp. 323-342.

138. *Ibid.*, Vol. III, 1925-1927, 1931, pp. 1634-1668.

139. A/40/535 (*The Naval Arms Race*), para. 80. On bilateral talks between the United States and the USSR in 1977-1978, see J. L. Husbands and A. Hessing Cahn, “The Conventional Arms Transfers Talks: an Experiment in Mutual Arms Trade Restraint”, *Arms Transfer Limitations and Third World Security*, T. Ohlson (ed.), SIPRI, 1988, pp. 110-125. On military expenditure and arms trade today, see R. Tullberg and G. Hagmeyer-Gaverus, “World Military Expenditure”, *SIPRI Yearbook 1987*, pp. 119-162; T. Ohlson and E. Sköns, “The Trade in Major Conventional Weapons”, *ibid.*, pp. 181-215.

As far as naval war is concerned, the provisions of the 1907 Hague Convention VIII Relative to the Laying of Automatic Submarine Contact Mines deserve to be mentioned specially¹⁴⁰. Under this Convention, unanchored automatic contact mines must be constructed in such a way that they become harmless one hour at most after the person who laid them ceases to control them. Anchored automatic contact mines have to become harmless as soon as they have broken loose from their moorings. Torpedoes are to become harmless when they have missed their mark (Art. 1). The Convention forbids laying automatic contact mines off the coast and ports of the enemy with the sole object of intercepting commercial shipping (Art. 2). At the close of war each State has to do its utmost to remove the mines it has laid (Art. 5, para. 1). The obligations of States under the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare¹⁴¹ have been supplemented by the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, opened for signature at London, Moscow and Washington on 10 April 1972¹⁴².

On 18 May 1977 the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques was opened for signature at Geneva¹⁴³. The Convention forbids: "any technique for changing – through the deliberate manipulation of natural processes – the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space" "having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party" (Art. II; Art. I, para. 1). In so far as the hydrosphere is concerned, this Convention should prevent the development of hostile ocean modification activities such as physical or chemical manipulations aimed at disrupting acoustic or electromagnetic properties of the attacked waters or the generation of tsunamis (seismic sea waves).

Many provisions of the 1977 Additional Protocols to the Geneva Conventions of 12 August 1949¹⁴⁴, represent progressive development of international law. However, for the basic rules contained in Article 35 of

140. Roberts and Guelff, *op. cit.*, pp. 85-92. See also G. Hoog, "Mines", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 3 (1982), pp. 283-285).

141. See *supra*, footnote 98.

142. *ILM*, Vol. 11, 1972, No. 2, p. 310. See also G. Fischer, "Chronique du désarmement", *AFDI*, Vol. 17, 1971, pp. 85-130.

143. Text in *Status of Multilateral Arms Regulation and Disarmament Agreements*, 2nd ed., 1982 (United Nations publication, Sales No. E.83.IX.5), pp. 136-140; Roberts and Guelff, *op. cit.*, pp. 377-385.

144. See *supra*, footnote 109.

Protocol I Relating to the Protection of Victims of International Armed Conflicts it can be contended that they codify and restate the already existing customary law:

- I. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.
- II. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.
- III. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.”

A deviation from basic customary principles is claimed also in respect of the Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, opened for signature at New York on 10 April 1981¹⁴⁵.

Three Protocols are annexed to the Convention. The Protocol on Non-Detectable Fragments (Protocol I) and the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) are applicable also to sea warfare.

Division B DEMILITARIZED AREAS

Paragraph 1 Definition

On the basis of the practice of States and scholarly opinions the *Encyclopedia of Public International Law* states that demilitarization

“entails the obligation of a State under international law not to station military forces, and not to maintain military installations in specified areas or zones of its territory, including territorial waters, rivers and canals and the air space above”¹⁴⁶.

This definition corresponds roughly to the obligations undertaken by States in respect of the demilitarization of a part of their territory; in

145. See Roberts and Guelff, *op. cit.*, p. 468. Text of the Convention and Protocols in *Status of Multilateral Arms Regulation and Disarmament, op. cit.*, pp. 152-165.

146. J. Delbrück, “Demilitarization”, in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 3 (1982), pp. 150-152).

doctrine demilitarization is sometimes defined as a military servitude¹⁴⁷. The actual content of demilitarization in each case is determined by the act establishing the demilitarization of a particular territory. Demilitarization is often linked to, or mistaken for, neutralization, i.e., the status of a certain territory which excludes it from the "region of war"¹⁴⁸.

The content of demilitarization agreed upon for different territories ranges from the interdiction of any military force or installation on one hand to the prohibition of only some specific weapons or fortifications or limitation of military personnel on the other hand ("selective disarmament" according to Quéneudec¹⁴⁹). The main features of demilitarization at present are that demilitarization is undertaken jointly by the entire international community and that it concerns mainly spaces beyond the sovereignty of States (deep sea-bed, Antarctica, outer space).

Paragraph 2 Demilitarization and Maritime Areas

In view of the subject of this Chapter it has to be pointed out that in some international instruments dealing with demilitarization it is not sufficiently clear up to which extent demilitarization of a certain territory extends also to the adjacent maritime areas. Thus, for example, it is often not clear whether and how demilitarization of islands concerns also the sea surrounding them. Whenever this question is not expressly settled it should be presumed that demilitarization of a territory includes the demilitarization of its ports, naval bases as well as of other parts of the sea closely linked to the land territory in question. If the act on demilitarization itself does not provide a clear answer, the extent to which the demilitarization of a land territory is applicable to adjacent areas should be determined on the basis of the circumstances which had conduced to the demilitarization of that territory and on the basis of the content of international law, the law of the sea in particular, in force at the time of the adoption of the act on demilitarization. This Division deals only with the cases of demilitarization in which there is no doubt that they, at least partially, concern also the sea. Therefore, we will deal with demilitarization of islands, straits, canals and sea areas.

It should be pointed out that the majority of international instruments containing provisions on demilitarization regulate also navigation in these

147. Cf. J. Andrassy, *Međunarodno pravo*, 9th ed., 1987, p. 224.

148. See S. Verosta, "Neutralization", in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 4 (1982), pp. 31-34).

149. J.-P. Quéneudec, "The Peaceful Use of the International Maritime Areas", *The New Law of the Sea*, Selected and Edited Papers of the Athens Colloquium on the Law of the Sea, September 1982, Ch. L. Rozakis and C. A. Stephanou (eds.), 1983, pp. 187-197 at p. 189.

areas. Therefore, these instruments were already discussed in Chapter 17 in as much as they concern navigation. Yet, as the regulations and restrictions in respect of warships are components of demilitarization, navigation and passage of warships can not be completely left out from the text which follows.

Paragraph 3 **Islands**

A. Aaland Islands

As correctly noticed by Quéneudec, in the past the majority of treaties on demilitarization were concluded in respect of islands and border areas¹⁵⁰. The Aaland Islands have the longest history of demilitarization.

On 30 March 1856 in an Annex to the Peace Treaty of Paris a Convention on the Aaland Islands was concluded between France, Great Britain and Russia¹⁵¹. The three monarchs declared that the Aaland Islands will not be fortified and that there will be no military or naval establishment on the Islands (Art. 1). After the First World War the Council of the League of Nations recognized the sovereignty of Finland over the Aaland Islands under the condition of their neutralization and non-fortification¹⁵².

On 20 October 1921 the multilateral Convention relating to the Non-Fortification and Neutralization of the Aaland Islands was concluded¹⁵³; it supplemented the 1856 Convention. The Convention was applied to the islands, islets and reefs and to the 3-mile territorial waters around them within a zone determined by the Convention. No military, naval or military aircraft establishment or base operations could be maintained or set up in the Aaland Islands (Art. 3). The manufacture, import, transport and re-export of arms and implements of war were strictly forbidden. No military, naval or air force of any Power was allowed to enter or remain in the Archipelago; a few exceptions were agreed upon mainly in favour of Finnish ships (Art. 4). However, foreign warships maintained the freedom of innocent passage through the territorial waters (Art. 5). In time of war, the Aaland Islands had to be considered a neutral zone; nevertheless in the

150. Quéneudec, "Le statut international des espaces et les armes", *op. cit.*, p. 24.

151. Text in Strupp, *op. cit.*, Vol. I, pp. 193-194; C.-A. Colliard and A. Manin, *Droit international et histoire diplomatique. Documents choisis*, Vol. II – *Europe*, 1970, p. 26.

152. Text of the Recommendation of the Council of the League of Nations of 25 June 1921 in Colliard and Manin, *op. cit.*, Vol. II, pp. 72-73.

153. *LNTS*, Vol. IX, p. 211; Hudson, *op. cit.*, Vol. I, pp. 744-751.

event of a war affecting the Baltic Sea, Finland had the right to lay mines in the territorial waters of the Islands and to take other measures necessary to ensure the neutrality of the Aaland Islands (Art. 6). The observance of the provisions of the Convention was under the control of the Council of the League of Nations (Art. 7).

A new Agreement concerning the Aaland Islands was signed at Moscow on 11 October 1940; this time the only Contracting Parties were the USSR and Finland. It came into force as from 13 March 1948, the date of the notification given by the USSR of the revival of this Agreement, in accordance with Article 12 of the Treaty of Peace with Finland¹⁵⁴. The Agreement confirmed the duty of Finland to demilitarize the Aaland Islands along the lines of the 1921 Convention. However, it is now the consulate of the USSR in the Aaland Islands that verifies the fulfilment of the obligations undertaken by Finland with regard to the demilitarization and non-fortification of the Islands. If the consular representative of the USSR discovers any circumstances which, in his opinion, constitute a contravention of the provisions of the Agreement, a joint investigation shall be instituted upon his request to the Finnish authorities. The results of the joint investigation shall be communicated to the Governments of the Contracting Parties, in order that they may take the necessary measures (Art. 3).

The Treaty of Peace with Finland itself confirmed the demilitarization of the Aaland Islands: "The Aaland Islands shall remain demilitarized in accordance with the situation as at present existing" (Art. 5)¹⁵⁵.

B. Islands in the Mediterranean

The neutralization and demilitarization of the Ionian Islands (Corfu, Paxos, Levkas, Ithaca, Cephalonia and Zante) was agreed upon by the Great Powers in the Agreement signed at London on 14 November 1863, on the basis of which the Ionian Islands were ceded to Greece¹⁵⁶. The existing fortifications had to be destroyed and military forces in the Islands had to be restricted to the number necessary for maintaining public order and collecting State taxes. On the basis of the Treaty of 29 March 1864 all these measures were applied only to Corfu and Paxos and their dependencies¹⁵⁷.

Under the Treaty of Peace with Turkey (Lausanne, 24 July 1923), Greece was obliged not to establish any naval base or fortification on the islands of Mytilene, Chios, Samos and Nikaria. Its military forces in the islands were

154. Text of the Agreement in *UNTS*, Vol. 67, p. 139; see also note 1 at p. 146.

155. *UNTS*, Vol. 48, p. 232.

156. Strupp, *op. cit.*, Vol. I, pp. 185-186.

157. See M. Sibert, *Traité de droit international public*, 1951, Vol. I, p. 401.

limited to a small contingent. Turkish military aircraft were forbidden to fly over the said islands, and Greek military aircraft were forbidden to fly over the territory of the Anatolian coast (Art. 13)¹⁵⁸.

The Convention relating to the Régime of the Straits, signed simultaneously with the 1923 Peace Treaty with Turkey, established the demilitarization of a group of islands in the Aegean Sea west of the Dardanelles belonging both to Greece and Turkey: Samothrace, Lemnos, Imbros, Tenedos and Rabbit Islands (Art. 4)¹⁵⁹.

The 1947 Treaty of Peace with Italy is very precise in respect of the content of demilitarization. Annex XIII of the Treaty contains a definition of the terms “demilitarization” and “demilitarized”:

“For the purpose of the present Treaty the terms ‘demilitarisation’ and ‘demilitarised’ shall be deemed to prohibit, in the territory and territorial waters concerned, all naval, military and military air installations, fortifications and their armaments; artificial military, naval and air obstacles; the basing or the permanent or temporary stationing of military, naval and military air units; military training in any form; and the production of war material. This does not prohibit internal security personnel restricted in number to meeting tasks of an internal character and equipped with weapons which can be carried and operated by one person, and the necessary military training of such personnel.”¹⁶⁰

These definitions did not concern the partial demilitarization of Sicily and Sardinia (Art. 50). Completely demilitarized, in accordance with the above definitions, were some Italian islands (Pantellaria, the Pelagian Islands, Pianosa – Art. 49) as well as some islands ceded to Yugoslavia (Pelagosa – Art. 11) and ceded to Greece (Dodecanese Islands – Art. 14).

The present status of the demilitarization of all these islands on the basis of the 1947 Peace Treaty has not been resolved expressly. However, as Italy apparently considers itself free from any military, naval or air restrictions imposed by its Treaty of Peace, there is no valid reason why Greece and Yugoslavia should remain bound by the provisions on demilitarization of their islands¹⁶¹.

C. Other islands

The Treaty of Peace between Japan and Russia (Portsmouth, 27 August/5 September 1905) established the obligation of

158. See *supra*, footnote 84.

159. *LNTS*, Vol. XXVIII, p. 115.

160. *UNTS*, Vol. 49, p. 225.

161. See *supra*, Sec. 2, Subsec. 1, Div. E, pp. 1266-1267; see also Ph. Drakides, “Le sort actuel des démilitarisations de la Méditerranée (Italie, Grèce)”, *Revue hellénique de droit international*, Vol. 30, 1977, No. 1-4, pp. 42 *et seq.*

the two States not to construct any fortification or similar military works in their respective parts of the island of Sakhalin and the adjacent islands (Art. 9)¹⁶².

On the basis of Article 115 of the Peace Treaty of Versailles Germany was obliged to destroy fortifications, military establishments and harbours of the islands of Heligoland and Dune; it did not have the right to reconstruct these works nor to construct any similar works in the future¹⁶³.

The Treaty concerning the Archipelago of Svalbard (Spitsbergen) was signed at Paris on 9 February 1920 and it is still in force¹⁶⁴. Norway, under the sovereignty of which the Archipelago was placed on the basis of this Treaty, is obliged "not to create nor to allow the establishment of any naval base ... and not to construct any fortification" in the Archipelago. The territory of the Archipelago, determined by geographical co-ordinates, is never to be used for warlike purposes (Art. 9).

Paragraph 4 Straits

Provisions on neutralization and demilitarization were often included in treaties establishing international régimes for straits and canals. In different ways these provisions are combined with the regulation of international navigation; however they always protect the strategic interests of at least some of the great Powers.

A. Turkish Straits

Since the Black Sea was a Turkish inland sea for three centuries, Turkey asserted what was known as the "ancient rule of the Ottoman Empire", under which so long as the Porte was at peace, no foreign warships were to be admitted into the Straits of Bosphorus and the Dardanelles¹⁶⁵. This rule was confirmed and established as an international norm through several treaties: the Anglo-Turkish Treaty of 5 January 1809¹⁶⁶; the Treaty of Peace between Russia and Turkey, concluded at Adrianople on 2 September 1829¹⁶⁷; the Treaty between the European Powers and Turkey of 15 July 1840¹⁶⁸; the Treaty on the Straits

162. Strupp, *op. cit.*, Vol. II, pp. 139-143 at p. 141.

163. See *supra*, footnote 79.

164. See B. Broms, "The Demilitarization of Svalbard (Spitsbergen)", *Essays in Honour of Erik Castrén*, 1979, pp. 6-18.

165. See Colombos, *op. cit.*, p. 187.

166. Strupp, *op. cit.*, Vol. I, pp. 280-281.

167. *Ibid.*, pp. 179-182.

168. *Ibid.*, pp. 225-227 at p. 226

of 13 July 1841¹⁶⁹; and the Convention on the Straits, signed at Paris on 30 March 1856¹⁷⁰.

Under the Treaty on the Black Sea, concluded at London on 13 March 1871, the closure of the Straits for foreign warships remained in force¹⁷¹. However, power was given to the Sultan to open the Dardanelles and the Bosphorus to warships of friendly and allied Powers whenever it became necessary to “secure the execution of the stipulations of the Treaty of Paris of 1856” (Art. II). Article LXIII of the Final Act of the Berlin Congress of 13 July 1878 confirmed the application of the 1871 Treaty of London¹⁷².

Contrary to all these earlier treaties, according to the Treaty of Peace with Turkey, signed at Sèvres on 10 August 1920¹⁷³, the navigation through the Straits was to be opened, both in peace and war, to every vessel of commerce or of war and to military and commercial aircraft, without distinction of flag. In order to ensure the freedom of navigation, the waters of the Straits had to be under control of an international commission.

The principle of “freedom of transit and navigation, by sea and by air, in time of peace as in time of war” was declared for the Straits and the Sea of Marmora also in the new Treaty of Peace with Turkey, signed at Lausanne on 24 July 1923 (Art. 23)¹⁷⁴. The same day the separate Convention relating to the Régime of the Straits was also signed at Lausanne¹⁷⁵. The passage of commercial vessels and aircraft, and of war vessels and aircraft, was regulated by detailed provisions annexed to the Convention¹⁷⁶. An International Commission was constituted in Constantinople; its duty was to see that the provisions relating to the passage of warships and military aircraft are carried out (Arts. 11 and 14).

The 1923 Lausanne Convention contained numerous provisions on demilitarization. Demilitarized were: (a) both shores of the Straits of the Dardanelles and the Bosphorus over the extent of the zones delimited by the Convention; (b) all the islands in the Sea of Marmora, with the exception of the island of Emir Ali Adasi; (c) a group of islands in the Aegean Sea, west of the Dardanelles (see *supra*, p. 1286). The main obligations were stated in Article 6, paragraph 1, of the Convention:

“... there shall exist, in the demilitarised zones and islands, no fortifications, no permanent artillery organisation, no submarine

169. Strupp, *op. cit.*, Vol. I, pp. 279-281 at pp. 279-280.

170. *Ibid.*, p. 282.

171. *Ibid.*, pp. 283-286 at p. 285.

172. *Ibid.*, pp. 202-211 at p. 221.

173. See *supra*, footnote 83

174. See *supra*, footnote 84.

175. See *supra*, footnote 159.

176. Rules for the Passage of Commercial Vessels and Aircraft, and of War Vessels and Aircraft through the Straits, *LNTS*, Vol. XXVIII, pp. 121-127.

engines of war other than submarine vessels, no military aerial organisation, and no naval base”¹⁷⁷.

It was also not permitted to station in the demilitarized zones and islands any armed forces, except the police and gendarmerie forces necessary for the maintenance of order (Art. 6, para. 2).

The Lausanne Convention was replaced by the Convention regarding the Régime of the Straits, signed at Montreux on 20 July 1936, which is still in force¹⁷⁸. The main differences in comparison with the previous régime were that the functions of the International Commission set up under the 1923 Convention were now transferred to the Turkish Government and that Turkey was allowed to remilitarize the zone of the Straits¹⁷⁹. The transit of foreign warships has been considerably restricted (number of ships, aggregate tonnage per State); Black Sea States enjoy a more preferable treatment. However, the transit of vessels of war through the Straits is always to be preceded by a notification given to the Turkish Government through the diplomatic channel (Art. 13). With the exception of submarines belonging to the Black Sea States, the passage of submarines through the Straits is forbidden (Art. 12). The overflight of military aircraft is also not permitted (Arts. 15 and 23).

In time of war, Turkey not being a belligerent, warships will enjoy complete freedom of transit and navigation as in time of peace (Art. 19). If Turkey is a belligerent, the passage of warships shall be left to the discretion of its Government (Art. 20).

B. Other straits

Some measures of demilitarization and regulation of military activities were agreed upon also in respect of some other straits.

On 23 July 1881 Argentina and Chile signed in Buenos Aires a Treaty under which they were obliged not to construct fortifications along the shores of the Strait of Magellan, not to commit acts of war in the waters of that Strait and to respect the freedom of navigation in the Strait¹⁸⁰.

In order to assure the free passage of the Strait of Gibraltar, the Declaration of Great Britain and France of 8 April 1904 obliges the two Contracting Parties not to allow the erection of fortifications or any other strategic works on the coast of Morocco along the shores of the Gibraltar

177. *LNTS*, Vol. XXVIII, p. 129.

178. *LNTS*, Vol. CLXXIII, p. 213; Hudson, *op. cit.*, Vol. VII, pp. 386-403.

179. Para. 1 of the Protocol annexed to the Convention, *LNTS*, Vol. CLXXIII, p. 241.

180. Text in F. de Martens, *Nouveau Recueil général des traités*, second series, Vol. XII, p. 491.

Strait¹⁸¹. Spain joined the Declaration on the basis of the Convention signed with France on 27 November 1912¹⁸².

The already mentioned 1905 Treaty of Peace between Japan and Russia obliged the two States not to take any military measures which could hamper the free navigation in the Tatar Strait and La Pérouse Strait¹⁸³.

Paragraph 5 Canals

A. Suez Canal

The international régime of the Suez Canal was established by the Constantinople Convention of 29 October 1888¹⁸⁴. According to the Convention the Suez Canal “shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag” (Art. I). In time of war the Canal remains open even to ships of war of belligerents and the Contracting Parties agreed that no act of war nor any act having for its object to obstruct the free navigation of the Canal shall be committed in the Canal and its ports of access, as well as within a radius of 3 nautical miles from those ports. All these rules were to be applied even when the Ottoman Empire (the then suzerain of Egypt) was a belligerent State (Art. IV). As an exception, Turkey was entitled to take measures necessary for securing by its own forces “the defence of Egypt and the maintenance of public order” as well as “the defence of its other possessions situated on the eastern coast of the Red Sea” (Art. X). It was permitted that one of such measures be the erection of permanent fortifications. However, all these measures were not to interfere with the free use of the canal (Art. XI).

The Constantinople Convention did not allow States to keep any vessel of war in the waters of the Canal. Yet, each Power was permitted to station no more than two vessels of war in the ports of access of Port Said and Suez. This right was not to be exercised by belligerents (Art. VII).

B. Panama Canal

The neutralization and non-fortification of the canal crossing Central America were agreed upon on the basis of the Treaty Clayton-Bulwer of 19 April 1850¹⁸⁵, and later by two Treaties Hay-

181. Strupp, *op. cit.*, Vol. II, pp. 37-40 at p. 39.

182. Martens, *op. cit.*, third series, Vol. VII, p. 323

183. See *supra*, footnote 162.

184. Strupp, *op. cit.*, Vol. II, pp. 198-202. English text in J. B. Moore, *op. cit.*, Vol. III, pp. 264-266.

185. Strupp, *op. cit.*, Vol. I, pp. 288-290.

Pauncefote, dated 5 February 1900¹⁸⁶ (non-ratified) and 18 November 1901¹⁸⁷ – before the construction of the canal itself. All these treaties were concluded between Great Britain and the United States of America. Finally, after the independence of Panama, the United States concluded with the newly established State the Treaty Hay-Bunau-Varilla, of 18 November 1903¹⁸⁸, which was applied after the completion of the Panama Canal in 1914. The rules on neutralization contained in the Constantinople Convention were the basis for the neutralization of the Panama Canal (Art. 18). However, the United States, which was granted the use, occupation and control of the Canal Zone (Art. 2) had the right to use its police and its land and naval forces or to establish fortifications for the safety or protection of the Canal or of the ships in transit (Art. 23)¹⁸⁹.

For several decades Panama spared no efforts trying to change this status of subjugation. Eventually this situation has been altered and the prior treaties terminated on the basis of the Panama Canal Treaties, signed by the United States and Panama at Washington on 7 September 1977¹⁹⁰. However, although the Canal Zone no longer exists, the 1977 Panama Canal Treaty itself grants to the United States

“the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal” (Art. III).

However, the Treaty shall terminate on 31 December 1999 and from then on the Republic of Panama alone is to be responsible for the Canal (Art. II). For the time being, although both States are committed to protect and defend the Canal and the ships transiting it, the primary responsibility to protect and defend the Canal rests with the United States (Art. IV). For this purpose the use of defence sites, military areas of co-ordination and other installations is made available by the Republic of Panama to the United States¹⁹¹.

Simultaneously with the Panama Canal Treaty, but for an unlimited duration, the two States signed the Treaty concerning the Permanent Neutrality and Operation of the Panama Canal¹⁹². According to that Treaty, Panama declares

186. Strupp, *op. cit.*, Vol. II, pp. 202-203.

187. *Ibid.*, pp. 203-204.

188. *Ibid.*, pp. 204-210.

189. See Ch. Rousseau, *Droit international public*, Vol. IV, *Les relations internationales*, 1980, pp. 579 *et seq.*

190. The texts of the Panama Canal Treaties and related documents in *ILM*, Vol. XVI, 1977, No. 5, p. 1021.

191. See Agreement in Implementation of Article IV of the Panama Canal Treaty, *ibid.*, p. 1068.

192. *Ibid.*, p. 1040.

“the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality...” (Art. II).

The following is the main rule concerning the transit of warships:

“Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance.” (Art. III, para. 1 (*e*))

The Canal will thus enjoy the status of neutrality but, even after the departure of the United States forces, it will not be demilitarized:

“After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.” (Art. V.)

In order to render the régime established by the 1977 Permanent Neutrality and Operation Treaty applicable to third States, the United States and Panama adopted the text of a Protocol to that Treaty, open to accession by all States¹⁹³.

C. Kiel Canal

The Allied and Associated Powers imposed on Germany the duty to maintain the Kiel Canal and its approaches “free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of entire equality” (Art. 380 of the Peace Treaty of Versailles)¹⁹⁴. In its judgment of 17 August 1923 in the *Wimbledon* case the PCIJ confirmed the obligation of Germany to permit the passage of merchant ships even when they transported war material for belligerents as long as these ships belonged to nations at peace with Germany¹⁹⁵.

Because of the fact that Germany unilaterally denounced its obligations by a declaration of 14 November 1936, different opinions have been expressed concerning the applicability of the provisions of the Versailles Treaty today. The interpretation of Symonides and some other authors,

193. *ILM*, Vol. XVI, 1977, No. 5, p. 1042.

194. See *supra*, footnote 79.

195. *S.S. “Wimbledon”, Judgment, 1923, PCIJ, Series A, No. 1*, p. 15 at pp. 22-28.

who claim that the Versailles provisions concerning the Kiel Canal represent positive international law, seems more plausible than the opposite views¹⁹⁶.

Paragraph 6 Sea

A. Introduction

The demilitarization of the Black Sea on the basis of the Paris Peace Treaty of 30 March 1856 is the best known example of the conventional demilitarization of a sea¹⁹⁷. The waters and the ports of the Black Sea were forbidden to warships of coastal or any other State (Art. XI). Russia and Turkey were allowed to have some minor warships, necessary for the coastal service (Art. XIV). These two States undertook not to construct or maintain military maritime arsenals on their shores of the Black Sea (Art. XIII). All these provisions were abrogated by the London Treaty on the Black Sea of 13 March 1871¹⁹⁸.

The Final Act of the Berlin Congress of 13 July 1878, simultaneously with the recognition of the independence of Montenegro (Art. XXVI), denied its right to possess vessels of war. Moreover, the port of Antivari (Bar) and all the sea waters of Montenegro had to remain closed for warships of any nation. No fortifications were permitted between the lake of Scutari and the coast (Art. XXIX)¹⁹⁹.

Two Treaties of Peace (Dorpat, 14 October 1920; Moscow, 12 March 1940) imposed on Finland the duty not to maintain warships and other armed ships, submarines and armed aircraft in the waters along the Finnish coast of the Arctic Ocean. Only warships and other armed ships of a small displacement were permitted. Moreover, Finland was not allowed to construct naval ports, bases for a naval fleet or naval repair shops on its coast of the Arctic Ocean on a larger scale than is required for the permitted ships and their armament²⁰⁰. The 1920 Peace Treaty also required the demilitarization of the Finnish territorial waters in the Finnish Gulf²⁰¹.

Contrary to these cases of demilitarization agreed upon as a means of

196. J. Symonides, "Obowiazywanie postanowien traktata wersalskiego dotyczacych Kanalu Kilonskiego", *Technica i gospodarska morska*, 1967, pp. 254-256. Different opinions concerning the present status of the Kiel Canal see in *The Law of the Sea in the 1980s*, Proceedings, Law of the Sea Institute, Fourteenth Annual Conference, 20-23 October 1980, Kiel, 1983, pp. 608, 614, 615 and 619.

197. Strupp, *op. cit.*, Vol. I, pp. 187-194.

198. See *supra*, footnote 171.

199. See *supra*, footnote 172.

200. M. M. Whiteman (ed.), *Digest of International Law*, Vol. 3, 1964, pp. 165-167.

201. A/40/535 (*The Naval Arms Race*), Annex I, p. 88.

resolving political and territorial claims of the great Powers, the entire international community today tends to exclude some sea areas from the arms race. In this sense the most important results are those achieved in respect of the Antarctic seas and the sea-bed.

B. Antarctic seas

Although the term “demilitarization” has not been explicitly used in the Antarctic Treaty, signed at Washington on 1 December 1959²⁰², demilitarization was, without any doubt, one of the main aims of the Contracting States which undertook to use Antarctica “for peaceful purposes only”²⁰³ (fifth preambular paragraph and Art. I, para. 1). Namely, the obligation to use an area exclusively for peaceful purposes is not to be interpreted in this Treaty in the manner of some other instruments in which this obligation is not incompatible with the presence of military forces and all sorts of arms (e.g., Art. 88 of the LOS Convention). The meaning of the obligation to use Antarctica “for peaceful purposes only” is defined in the Treaty by giving examples of activities which shall not be permitted. These forbidden activities are exactly the activities usually covered by other treaties of demilitarization; they are: “*inter alia*, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons” (Art. I, para. 1). However, the use of military personnel or equipment for scientific research or for any other peaceful purpose is permitted, which only shows that the demilitarization of Antarctica is not complete (Art. I, para. 2).

The Antarctic Treaty with its provisions on demilitarization applies “to the area south of 60° South Latitude, including all ice shelves ...” (Art. VI). However, it is in respect of the application of the Treaty to the ocean surrounding the Antarctic continent in this area that a reservation has been included in Article VI itself:

“... nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area ...”.

Consequently, demilitarization measures obliging the Contracting States within the Antarctic continent should not apply on the high seas south of

202. See *supra*, footnote 2.

203. See C. C. Joyner, “Antarctica and the Law of the Sea: Rethinking the Current Dilemmas”, *San Diego Law Review*, Vol. 18, 1981, No. 3, pp. 415-442 at p. 420; H. H. Almond, “Demilitarization and Arms Control: Antarctica”, *Case Western Reserve Journal of International Law*, Vol. 17, 1985, No. 2, pp. 229-284 at p. 249.

60° South latitude if contrary to the rights which all States enjoy on the high seas under international law. Therefore, the high seas freedoms of navigation and overflight of warships and military aircraft are to be considered as granted independently of their being used “for scientific research or for any other peaceful purpose”, which is the condition for the presence of military personnel or equipment in the Antarctic continent itself (Art. I, para. 2). Moreover, all States have the right to carry out military manoeuvres and to test non-nuclear weapons, in so far as these military activities are part of the freedom of the high seas being closely linked to the freedoms of navigation and overflight of warships and military aircraft²⁰⁴.

In respect of the application of the reservation mentioned in Article VI there is another question to be answered: where do the high seas commence off the coasts of the Antarctic continent? Due to the unresolved problem of the territorial claims in Antarctica, there is today no unanimous answer to this question (see Vol. 1, Chap. 10, Sec. 3, Subsec. 2, Div. C, para. 4). Whichever solution is eventually chosen, in the sea area immediately adjacent to the shores of the Antarctic continent the demilitarization measures mentioned in the Antarctic Treaty and not the high seas freedoms should prevail.

C. *The sea-bed*

Another treaty which partially demilitarizes the ocean space – the 1971 Sea-Bed Treaty²⁰⁵ – will be examined in detail in the Subsection which follows as its main object is to prohibit the emplacement of nuclear weapons on the sea-bed. However, its purpose is also to prevent emplanting or emplacing on the sea-bed and the ocean floor and in the subsoil thereof

“any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons” (Art. I, para. 1).

The Treaty does not define which other types of weapons apart from nuclear weapons are covered by the category of “weapons of mass destruction”. It is generally accepted that the negotiating history of the Treaty proves that the term includes chemical and biological weapons²⁰⁶. However, the term “weapons of mass destruction” is not limited to nuclear, chemical and bacteriological (biological) weapons, but it includes any

204. See W. M. Bush, *Antarctica and International Law, A Collection of Inter-State and National Documents*, Vol. I, 1982, pp. 53, 67 and 676.

205. See *supra*, footnote 8.

206. O’Connell, *op. cit.*, Vol. II, p. 826.

weapons that have the potential for large-scale or widespread lethal effects comparable to those generally associated with nuclear weapons. The first special session of the General Assembly devoted to disarmament concluded that effective measures should be taken to prevent the emergence of new types of weapons of mass destruction and to prohibit new types and new systems of such weapons (para. 77 of the Final Document). Consequently, the United Nations Conference on Disarmament considers the item entitled “New types of weapons of mass destruction and new systems of such weapons; radiological weapons” and the General Assembly adopts resolutions calling upon all States “immediately following the identification of any new type of weapon of mass destruction to renounce practical development of such a weapon and to commence negotiations on its prohibition”²⁰⁷.

The Treaty does not generally ban military activities related to the sea-bed; thus, military uses of the sea-bed such as the placement of devices for detection and surveillance of submarines are not considered as contrary to the Sea-Bed Treaty.

The interdiction of the emplacement of weapons of mass destruction under the Sea-bed Treaty applies to the sea-bed and ocean floor and the subsoil thereof beyond the outer limits of a sea-bed zone extended not more than 12 nautical miles from the baseline from which the breadth of the territorial sea is measured (Art. I, para. 1, and Art. II). These undertakings apply also to the mentioned sea-bed zone, except that within the zone they shall not apply either to the coastal State or to the sea-bed beneath its territorial waters (Art. I, para. 2). The scope of this last provision is that there are no prohibitions for the coastal State in the 12-mile coastal sea-bed zone, while the coastal State may permit other States to install weapons of mass destruction only on the sea-bed beneath its territorial sea.

Subsection 4 **THE DENUCLEARIZATION OF THE SEA**

Division A **RESTRICTION AND PROHIBITION OF NUCLEAR WEAPONS**

Paragraph 1 **Prohibition of the Use of Nuclear Weapons**

A. Institut de droit international

The Institut de droit international adopted on 9 September 1969 a resolution in which it expressed the following view:

“Est interdit par le droit international en vigueur l’emploi de toutes les

207. Resolution 42/35 of 30 November 1987; resolutions concerning the prohibition of new types of weapons of mass destruction have been adopted since 1975.

armes qui, par leur nature, frappent sans distinction objectifs militaires et objectifs non militaires, forces armées et populations civiles. Est interdit notamment l'emploi des armes dont l'effet destructeur est trop grand pour pouvoir être limité à des objectifs militaires déterminés ou dont l'effet est incontrôlable (armes autogénératrices), ainsi que des armes aveugles.”²⁰⁸

According to the opinion of the Rapporteur of the Institute, Baron von der Heydte, this prohibition is applicable to nuclear, chemical and bacteriological weapons²⁰⁹.

B. United Nations General Assembly

In its resolution 1653 (XVI) of 24 November 1961 the United Nations General Assembly declared that the use of nuclear weapons is “a direct violation of the Charter of the United Nations” and that it is “contrary to the rules of international law and to the laws of humanity”. Its resolution 2936 (XXVII) of 29 November 1972 solemnly declares “the permanent prohibition of the use of nuclear weapons”.

However, the States Members of the United Nations do not behave in a manner which would prove that the existing international law suffices to reduce their armament to the types and systems of weapons which are not envisaged by the quoted resolution of the Institut de droit international. This is why the international community takes advantage of every sign of good will of the great Powers to obtain from them new international instruments regulating in different ways the armament of States, their nuclear armament in particular. In respect of nuclear weapons, treaties concerning different issues have been concluded: non-proliferation of nuclear armament; limitation of nuclear armament of the super-Powers; nuclear weapons and test ban; establishment of nuclear-weapon-free zones. We will deal with these treaties only in as much as they concern the sea.

Paragraph 2 Limitation of Strategic Nuclear Weapons at Sea

A. SALT I

The United States and the USSR established in 1969 a continuous dialogue for the purpose of mutually controlling their nuclear

208. Resolution “La distinction entre les objectifs militaires et non militaires en général, et notamment les problèmes que pose l'existence des armes de destruction massive”, *Annuaire de l'Institut de droit international (Annuaire)*, 53^e vol., session d'Edimbourg, septembre 1969, Vol. II, 1969, p. 360.

209. *Annuaire*, 52^e vol., session de Nice, septembre 1967, Vol. II, 1967, p. 209.

strategic armaments – the Strategic Arms Limitation Talks (SALT)²¹⁰. These talks resulted in the conclusion of two fundamental Treaties in Moscow on 26 May 1972: the Treaty on the Limitation of Anti-Ballistic Missile Systems (ABM Treaty) and the Interim Agreement on Certain Measures with respect to the Limitation of Strategic Offensive Arms (SALT I Agreement)²¹¹. Although the two forms of strategic arms limitations dealt with in the two Treaties are interlinked, only the second is within the scope of this Chapter as it in part concerns the naval forces of the two Contracting States. Namely, on the basis of the SALT I Agreement and the integrated Protocol on submarine-launched ballistic missiles (SLBMs) the two super-Powers set a limit for ballistic missile launchers on submarines for each of them (United States 710, USSR 950) as well as a limit for modern ballistic missile submarines (United States 44, USSR 62). The numerical superiority was conceded to the USSR in compensation for the technological and geostrategic advantages of the United States and the non-consideration of strategic bombers.

The SALT I Agreement was limited to a period of five years. After the expiration of this period, having failed to agree in time upon a SALT II Agreement, the Parties made formal statements on 23 September 1977 to the effect that they would continue to observe the provisions of the Interim Agreement²¹².

B. SALT II

Notwithstanding the difference in geography, strategy and technology between the USSR and the United States, the next step in the SALT process – the conclusion of the Treaty on the Limitation of Strategic Offensive Arms (SALT II Treaty – Vienna, 18 June 1979) – was based on the establishment of quantitative symmetry between the two super-Powers²¹³. Unlike the SALT I Agreement, the ceiling was now not determined for the SLBMs separately, but an aggregate number was determined for all the strategic delivery vehicles. Namely, the aggregate number for the launchers of intercontinental ballistic missiles (ICBMs) and SLBMs, heavy bombers and air-to-surface ballistic missiles (ASBMs) was

210. “The Strategic Arms Limitation Talks, November 1969-December 1971”, *SIPRI Yearbook 1972*, pp. 23-39; T. Bruha, “Strategic Arms Limitation Talks (SALT)”, in Bernhardt (ed.), *Encyclopedia of Public International Law* (Instalment 9 (1986), pp. 362-367).

211. *UNTS*, Vol. 944, p. 3. See also G. Fischer, “Les accords sur la limitation des armes stratégiques”, *AFDI*, Vol. 18, 1972, pp. 9-84; “Strategic Arms Limitation Agreements”, *SIPRI Yearbook 1973*, pp. 1-19.

212. Bruha, *op. cit.*, p. 364.

213. Text in *SIPRI Yearbook 1980*, pp. 245-272. See also “SALT II: an Analysis of the Agreements”, *ibid.*, pp. 209-244; G. Fischer, “Les Accords SALT II”, *AFDI*, Vol. 25, 1979, pp. 129-202.

not to exceed 2,400; from 1 January 1981 each Party was obliged to limit its strategic delivery vehicles to not more than 2,250 (Art. III). Within the permitted overall aggregate number of 2,250 strategic delivery vehicles, both sides were limited to 1,320 launchers of ICBMs and SLBMs equipped with multiple independently targetable re-entry vehicles (MIRVs) (as well as MIRVed ASBMs) and heavy bombers (Art. V, para. 1). A sub-limit of 1,200 was placed on launchers of ICBMs and SLBMs equipped with MIRVs (as well as MIRVed ASBMs – Art. V, para. 2). Moreover, both sides were permitted to deploy up to 14 re-entry vehicles on any SLBM (Art. IV, para. 12).

Some other limitations in the SALT II Treaty also dealt with sea-launched missiles. It was thus agreed that the number of SLBM test and training launchers cannot be increased by more than 15 per cent (Art. VII, para. 2 (a), and First Agreed Statement of the two States to Art. VII). Article IX, paragraph 1 (e), of the Treaty prohibited the Parties to develop, test or deploy heavy SLBMs or launchers for heavy SLBMs. An additional Protocol, which was due to expire on 31 December 1981, prohibited the deployment of sea-launched cruise missiles (SLCMs) with ranges greater than 600 km (Art. IV). The Protocol permitted, however, development and flight-testing of SLCMs to any range. No SLCMs with multiple independently targetable warheads were to be flight-tested during the application of the Protocol (Art. II).

SALT II, as well as SALT I, lacked international means of verification. It provided a verification system based on “national technical means” to be used “in a manner consistent with generally recognized principles of international law” (Art. XV). Each Party undertook not to interfere with the technical means of verification of the other and not to use deliberate concealment measures which impede verification of compliance with the provisions of the Treaty. The two Powers agreed further on notification provisions that were to aid the verification.

Notwithstanding the shortcomings (very high numerical limits of strategic nuclear forces which permitted nuclear fire-power growth of both States), the SALT II Treaty was a step forward compared to the SALT I Agreement. The United States and the USSR agreed in a joint statement that in the next round of SALT negotiations they would pursue the objective of significantly reducing the numbers of strategic offensive arms and that they would also negotiate further qualitative limitations²¹⁴. However, the SALT process was interrupted by the refusal of the United States to ratify the SALT II Treaty. In 1982 the Strategic Arms Reduction Talks (START) were initiated between the two States, but they were terminated by the USSR in December 1983. In March 1985 the Nuclear

214. Text in *SIPRI Yearbook 1980*, pp. 273-274.

and Space Talks (NST) opened in Geneva and they have included strategic arms reduction²¹⁵. For the time being their only result is the INF Treaty (Washington, 8 December 1987)²¹⁶.

The present status of the SALT II Treaty, which was to remain in force until 31 January 1985, is not quite clear. Notwithstanding the non-ratification, each Party unilaterally stated that it would abide by the Treaty's provisions as long as the other did so. Since 1984 both States have maintained that the other Party has violated provisions of the Treaty. In May 1986 while deciding on strategic submarines programmes, the United States announced that it no longer felt constrained by the SALT II limits. The USSR, on its part, stated in December 1986 that "for the time being" it would continue to observe the limits of the Treaty. Even less obvious than the legal status of the Treaty is the extent to which the statements of the two Parties correspond to the actual compliance with the Treaty provisions²¹⁷.

Paragraph 3 **Denuclearization and the Use of Nuclear Energy for Peaceful Purposes**

A. Introduction

Since the beginning of the use of nuclear energy there have been conflicting opinions concerning its use for peaceful purposes²¹⁸. The apparent dangers of its use for present and future generations have influenced not only a part of the public opinion but also some States which, in different ways, tend to regulate and limit the use of nuclear energy. Yet, in adopting prohibitions and limitations in respect of nuclear weapons States point out that they do not renounce their inalienable right to develop research, production and use of nuclear energy for peaceful purposes.

B. Use of nuclear energy at sea

The sea was one of the environments which first faced the use of nuclear energy both for military and for peaceful purposes²¹⁹. Immediately after the Second World War nuclear weapon tests were

215. Bruha, *op. cit.*, p. 365.

216. See *supra*, footnote 107.

217. Bruha, *op. cit.*, p. 365; *SIPRI Yearbook 1987*, pp. 9, 334 and 336.

218. The term "peaceful" is here used as a synonym of "non-military"; while discussing the reservation of the sea for "peaceful purposes" (*supra*, Sec. 1, Subsec. 1, Div. B), peaceful uses were understood – in accordance with the existing law of the sea – as including "military activities" in so far as they are not contrary to general norms of international law.

219. See L. M. Heydemann and W. H. Berman, *International Control of Nuclear Maritime Activities*, 1960. On the use of nuclear energy and international law in general: M. Sáhović, *Upotreba nuklearne energije i međunarodno pravo*, 1982; V. Lamm, *The Utilization of Nuclear Energy and International Law*, 1984.

executed at sea and nuclear-powered ships and submarines represented one of the first uses of nuclear energy for peaceful purposes. Due to the immense hazards of such activities for the marine environment, the 1958 Convention on the High Seas required that the States "take measures to prevent pollution of the seas from the dumping of radio-active waste ..." (Art. 25, para. 1). The 1963 Partial Test Ban Treaty prohibited the carrying out of any nuclear explosion – including those for peaceful purposes – in the whole ocean space. However, in establishing nuclear-free zones States have taken varied attitudes: only nuclear weapon test explosions and not explosions of nuclear devices for peaceful purposes are banned in Latin America and the surrounding seas, while in Antarctica and in the South Pacific all types of nuclear explosions are prohibited (see *infra*, Div. B).

As the LOS Convention is an "umbrella" treaty it does not contain many provisions for specific problems and situations. It, therefore, includes only a few provisions connected with the use of nuclear energy at sea; they concern innocent passage in the territorial sea. Nuclear-powered ships and ships carrying nuclear material are among the categories of ships which, in particular, may be required to confine their passage to the sea lanes and traffic separation schemes designated or prescribed by the coastal State (Art. 22, para. 2). Such ships, "when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements" (Art. 23). Such agreements are concluded under the auspices of the International Maritime Organization (IMO) but additional measures are often agreed upon by States directly concerned as well as by laws and regulations of coastal States (see *supra*, Chap. 17, Sec. 2, Div. B, para. 1). Specific international rules have been adopted also in respect of the protection and preservation of the marine environment from radioactive pollution; however, the situation in this field is far from being satisfactory (see *supra*, Chap. 22, Sec. 1, Subsec. 3, Div. A, para. 2, pp. 1176-1178).

Division B PROHIBITION OF NUCLEAR WEAPON TESTS

Paragraph 1 Introduction

In some cases this prohibition results from the explicit ban of nuclear weapon tests or the interdiction of all nuclear explosions; in others it is a result of other interdictions concerning the use of nuclear energy for military purposes. Both types of such conventional provisions prohibit nuclear weapon tests either *ratione personae* or *ratione loci*. However, apart from treaty law, the existence of customary international law is to be noticed in respect of nuclear weapon tests.

The nuclear weapon test ban is explicitly provided for some States, while in respect of others it derives from the interdiction not to manufacture or otherwise acquire nuclear weapons. Altogether, nuclear weapon tests are prohibited to: (a) States vanquished in the Second World War, most of them on the basis of their Treaties of Peace (see *supra*, Sec. 2, Subsec. 1, Div. E); (b) Austria on the basis of the State Treaty for the Re-Establishment of an Independent and Democratic Austria, signed at Vienna on 15 May 1955 (Art. 13)²²⁰; (c) States Parties to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), opened for signature at Mexico City on 14 February 1967 (Art. 1)²²¹; (d) non-nuclear weapon States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature at London, Moscow and Washington on 1 July 1968 (Art. II)²²²; (e) States Parties to the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga) signed at Rarotonga, Cook Islands, on 6 August 1985 (Art. 6)²²³.

On the other hand, treaties determine some spaces where it is prohibited to every State to carry out nuclear weapon test explosions. On the basis of the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (PTBT) signed at Moscow on 5 August 1963, any nuclear weapon test explosion and any other nuclear explosion at sea is prohibited²²⁴. The 1971 Sea-Bed Treaty prohibits testing of nuclear weapons on the sea-bed and ocean floor and subsoil thereof beyond a coastal zone of 12 nautical miles. Moreover, treaties on nuclear-(weapon)-free zones, which include sea areas, ban nuclear weapons testing in Antarctica, Latin America and the South Pacific.

Paragraph 2 Sea

On the basis of the PTBT each of the Parties undertook the obligation “to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control ...” (Art. I, para. 1). This provision bans such explosions “in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high seas ...”. Moreover, such explosions are forbidden in any other environment “if such explosion causes radioactive debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted”. Thus, the prohibition under PTBT applies to any nuclear explosion within

220. *UNTS*, Vol. 217, p. 233.

221. *UNTS*, Vol. 634, p. 281.

222. *UNTS*, Vol. 729, p. 161.

223. Text in *SIPRI Yearbook 1986*, pp. 509-519.

224. *UNTS*, Vol. 480, p. 43.

and outside territorial limits of States, with the exception of underground nuclear explosions carried out within the territorial limits of the State under the jurisdiction or control of which such explosion is conducted, if such explosions do not cause radioactive debris to be present outside the territorial limits of this State.

The fact that the PTBT expressly mentions only the territorial waters and the high seas causes no problem in interpretation, even today when the range of specific régimes at sea has increased considerably in comparison with the situation existing at the time of the conclusion of the PTBT (e.g., the EEZ). The territorial sea and the high seas are mentioned in the PTBT within the general term "water", with the purpose of showing that the prohibition of nuclear tests includes also the sea, both within and outside the territorial limits of States.

In respect of the high seas the question of the applicability of the prohibition of nuclear weapon test explosions to States non-parties to the PTBT is still sometimes raised. In our opinion, such a question should not be posed, as in respect of nuclear tests on the high seas the PTBT applies the already existing customary law to this new threat to the freedom of the high seas²²⁵. These tests are contrary to the freedom of all States to use the high seas without being hindered by other States. They also represent a manifest violation of the obligation "to protect and preserve the marine environment" (codified in Art. 192 of the LOS Convention) (see also Vol. 1, Chap. 7, Sec. 1, Subsec. 1, Div. B, para. 2, B).

Paragraph 3 **Sea-Bed**

The term "under water" used in the PTBT undoubtedly covers any explosion carried out on the sea-bed and the ocean floor. However, the formulations used in this Treaty are not sufficiently clear in respect of the possible explosions in the subsoil of the sea-bed. Namely, it is not clear whether the term "under water" covers also the subsoil of the sea-bed and whether "territorial waters" is meant to cover also the subsoil of the territorial sea. If the answer to both questions is negative, explosions in the subsoil of the territorial sea would be permitted in the case when they do not cause radioactive debris to be present outside the territorial limits of the States to which the territorial sea belongs.

The interpretation of the present situation in respect of the subsoil of the sea-bed and the ocean floor beyond the territorial limits of the coastal States is much clearer. Namely, every nuclear explosion carried out beyond States' territorial limits, including those carried out in the subsoil of the ocean floor, causes radioactive debris to be present outside the territorial

225. See Andrassy, *Međunarodno pravo*, 9th ed., p. 190.

limits of the coastal State and is, therefore, prohibited. Moreover, the already quoted Article I of the 1971 Sea-Bed Treaty forbids, *inter alia*, to emplant or emplace any facilities specifically designed for testing nuclear weapons (Art. I, para. 1). No doubt, this ban means the prohibition of nuclear weapons test explosions on the sea-bed and the ocean floor and in the subsoil thereof to which the Sea-Bed Treaty applies, i.e., beyond the 12 nautical miles coastal zone (Art. II).

There has been no result in negotiating a comprehensive test ban treaty which would also prohibit all underground explosions. The only result in respect of underground explosions are the two treaties concluded between the United States and the USSR according to which the two States determine the thresholds in respect of underground nuclear weapon tests and underground nuclear explosions for peaceful purposes. The Treaty on the Limitation of Underground Nuclear Weapon Tests (Threshold Test Ban Treaty, Moscow, 3 July 1974) prohibits underground nuclear weapon tests having a yield exceeding 150 kilotons²²⁶. The Treaty on Underground Nuclear Explosions for Peaceful Purposes (Peaceful Nuclear Explosions Treaty, Washington, 28 May 1976) established the same yield threshold for individual explosions as for weapon tests (150 kilotons) and another for group explosions (1,500 kilotons)²²⁷. A group explosion may reach an aggregate yield as high as 1,500 kilotons if it is carried out in such a way that individual explosions in the group can be identified and their individual yields determined to be no more than 150 kilotons. Neither of the two Treaties is as yet in force due to the problems of verification.

The PTBT, nor the 1974 Threshold Test Ban Treaty, did not set up an international mechanism to check whether the commitments are being complied with. While under the PTBT the Parties are presumed to monitor compliance with the Treaty unilaterally, using their national technical means of verification, the Threshold Test Ban Treaty expressly provides that each Party shall use national technical means of verification at its disposal for the purpose of providing assurance of compliance with the provisions of the Treaty (Art. II, para. 1). Only the 1976 Peaceful Nuclear Explosions Treaty envisages that observers of one Party are to be given access to the site of some explosions of the other Party in order to check compliance with the Treaty. However, for the purpose of the elaboration of effective verification measures for the Threshold Test Ban Treaty, the United States and the USSR recently concluded the Agreement on the Conduct of a Joint Verification Experiment²²⁸.

226. Text in J. Goldblat and D. Cox (eds.), *Nuclear Weapon Tests: Prohibition or Limitation?*, SIPRI, 1988, pp. 350-352.

227. *Ibid.*, pp. 352-363.

228. Text in *Disarmament* (United Nations publication, Sales No. E.88.IX.6), Vol. XI, No. 1, autumn 1988, pp. 171-173.

Paragraph 4 Antarctica

As already mentioned, “testing of any type of weapons” is one of the prohibited activities under Article I, paragraph 1, of the Antarctic Treaty. Moreover, “any nuclear explosions in Antarctica” are expressly forbidden in Article V, paragraph 1, of the Treaty. There is, therefore, no doubt concerning the prohibition of nuclear weapon tests on the Antarctic continent.

The problems concerning the application of the Antarctic Treaty to the ocean areas surrounding the Antarctic continent have already been mentioned. It has also been suggested that the demilitarization measures from the Treaty and not the high seas freedoms should apply in the sea belt immediately adjacent to the coasts of the Antarctic continent. On the high seas, even south of 60° South latitude – where the provisions of the Antarctic Treaty apply – States enjoy the rights they have under the general high seas régime (Art. VI). However, as expressed above, the exercise of nuclear arms is not contained in the freedom of the high seas. On the contrary, these tests hamper the exercise of the recognized rights and freedoms of all other States on the high seas and are, therefore, forbidden under general customary international law (see also Vol. 1, Chap. 10, Sec. 3, Subsec. 2, Div. C, para. 3).

Paragraph 5 Latin America

The Treaty of Tlatelolco contains the obligation of the Parties not to test nuclear weapons (Art. 1, para. 1 (*a*)). This obligation, as all others under the Treaty, extends to vast sea areas, as the Treaty applies not only to the territorial seas of the Contracting States and other areas under their sovereignty, but also to the high seas adjacent to Latin America within the limits determined by the Treaty (Art. 4).

On the basis of Protocol I to the Treaty the obligation not to test nuclear weapons in the zone of application of the Treaty is incumbent also on States *de jure* or *de facto* internationally responsible for territories in Latin America (Art. 1). Nuclear weapon States undertook the obligation not to contribute in any way to the testing of nuclear weapons in the zone to which the Treaty is applied (Protocol II, Art. 2).

Paragraph 6 South Pacific

Each State Member of the South Pacific Forum – the organization comprising all the independent States of the Region (13) – undertook, on the basis of the Treaty of Rarotonga, the obligation:

- “(a) to prevent in its territory the testing of any nuclear explosive device;
- (b) not to take any action to assist or encourage the testing of any nuclear explosive device by any State” (Art. 6).

On the basis of Protocol 1 of the Treaty, the same obligations in respect of the testing of nuclear explosive devices are to be undertaken by France, Great Britain, and the United States of America – the States internationally responsible for some territories situated within the South Pacific Nuclear Free Zone. Protocol 2 requires from the five nuclear weapon States “not to test any nuclear explosive device anywhere within the South Pacific Nuclear Free Zone” (Art. 1). This last prohibition concerns a region where one of the nuclear weapon states, France, still carries out nuclear weapon test explosions (see *infra*, Div. C).

Division C NUCLEAR-WEAPON-FREE ZONES

Paragraph 1 Introduction

Shortly after the introduction of nuclear weapons into the armies of the great Powers there followed the proposals envisaging the prohibition of the presence of such weapons in some areas²²⁹. Proposals were made in respect of zones under the jurisdiction of States as well as for the areas beyond the jurisdiction of any State. There were proposals for land territories as well as those for the sea areas. Numerous resolutions are being adopted in the United Nations General Assembly; their purpose is to incite procedures for the conclusion of treaties on specific nuclear-weapon-free zones.

In its resolution 3472 (XXX), “Comprehensive study of the question of nuclear-weapon-free zones in all its aspects”, of 11 December 1975, the General Assembly adopted a definition of the concept of a nuclear-weapon-free zone and defined the principal obligations of the nuclear weapon States towards such zones and towards the States included therein. According to this resolution a “nuclear-free zone” shall, as a general rule, be a zone recognized as such by the General Assembly and established by virtue of a treaty. The treaty establishing the zone must contain: a procedure for the delimitation of the zone, the statute of total absence of nuclear weapons from the zone and an international system of verification and control to

229. M. Lachs, “Bezatomske zone”, *Međunarodni problemi*, Vol. 15, 1963, No. 4, pp. 17-26; B. Vukas, “Oružja za masovno uništavanje i međunarodno pravo”, *ibid.*, Vol. 23, 1971, No. 1, pp. 39-53 at pp. 45-47; Nguyen Quoc, Daillier, Pellet, *op. cit.*, p. 875.

guarantee compliance with the obligations deriving from that statute. The nuclear weapon States are required to undertake a conventional obligation to respect the statute of total absence of nuclear weapons defined in the constitutive instrument of the zone and to refrain from using or threatening to use nuclear weapons against the States included in the zone.

Unfortunately, for the time being, nuclear weapons have been banned expressly only from spaces not very significant for the continuing arms race. As far as the ocean space is concerned, the presence of nuclear weapons is prohibited only on the sea bottom, in Antarctica, in Latin America and in the South Pacific. The obligation not to acquire nuclear weapons, undertaken by many States is, in our view, incompatible with the presence of third States' nuclear armament on the land or sea territory of the States which undertook such an obligation. However, there are opinions contrary to this, and, which is worse, the practice of some States corresponds to these opinions²³⁰.

Paragraph 2 **The Sea-Bed**

As already mentioned when discussing the demilitarization, the 1971 Sea-Bed Treaty prohibits "to emplant or emplace on the sea-bed and the ocean floor and in the subsoil thereof" – beyond the outer limit of a sea-bed zone of a width of not more than 12 nautical miles – any nuclear weapons "as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons" (Art. I, para. 1). It is generally taken that the terms "emplant or emplace" should be understood as granting the freedom of the use of submarines and vehicles, installations and structures which, apart from circulating on the sea-bed, can move in the water column itself²³¹.

Nuclear mines anchored to or emplaced on the sea-bed are considered to be prohibited. Altogether, the Treaty prohibits activities which are of dubious military interest while permitting the most important military uses of the ocean depths. On the other hand, the Treaty prohibitions do not affect the application of nuclear reactors or other non-weapon applications of nuclear energy.

The Treaty contains several provisions on the verification of the agreed prohibitions (Art. III). Each State Party to the Treaty is individually

230. See E. Brown Firmage, "The Treaty on the Non-Proliferation of Nuclear Weapons", *AJIL*, Vol. 63, 1969, No. 4, pp. 711-746 at p. 722.

231. Merciai, *op. cit.*, p. 73. See also J. Goldblat, "The Seabed Treaty", *Ocean Yearbook 1*, pp. 386-411; L. Migliorino, *Fondi marini e armi di distruzione di massa*, 1980.

entitled to verify through observation of activities of other States Parties the compliance with the provisions of the Treaty, provided that observation does not interfere with such activities. If after such observation reasonable doubts remain concerning the fulfilment of the obligations assumed under the Treaty, the State Party which has such doubts and the Party responsible for the activities giving rise to the doubts shall consult with a view to remove the doubts. The State which maintains its doubts even after such consultations shall notify the other States Parties. The Parties concerned shall co-operate on such further procedures for verification as may be agreed, including appropriate inspection of objects, structures, installations or other facilities that may reasonably be expected to be used for activities prohibited under the Treaty.

If consultation and co-operation between the States Parties have not removed the doubts and there remains a serious question concerning the fulfilment of the obligations assumed under the Treaty, any State Party may refer the matter to the United Nations Security Council.

Paragraph 3 **Antarctica**

Although the interdiction to emplace nuclear weapons does not formally appear in the Antarctic Treaty, the interdiction is undoubtedly contained therein. This conclusion may be drawn not only on the basis of the aims and the general spirit of the Treaty and from the principle of the use of Antarctica exclusively for peaceful purposes, but also from the fact that in Antarctica “all measures of military nature” are prohibited (Art. I, para. 1). This “total demilitarization” includes, naturally, the interdiction of nuclear armament²³².

Taking into account the preceding analysis of the Antarctic Treaty, it may be concluded that the interdiction to emplace nuclear weapons applies to the ports and roadsteads as well as to the belt of coastal waters, but not to the high seas surrounding the Antarctic continent.

The system of inspection established under the Treaty (Art. VII) is particularly important in respect of all prohibitions regarding nuclear activities: emplacement of nuclear weapons, nuclear explosions and disposal of radioactive waste material (Art. V, para. 1)²³³.

232. See Nguyen Quoc, Daillier, Pellet, *op. cit.*, p. 875.

233. On the basis of Article V which forbids any nuclear explosions in Antarctica, Almond concludes that this Article “also establishes indirectly the possibility that nuclear power plants, or the use of nuclear power in general, in the area must be precluded”, Almond, *op. cit.*, p. 254. For an opposite view see E. Stein, “Impact of New Weapons Technology on International Law: Selected Aspects”, *Hague Recueil*, Vol. 133, 1971-II, pp. 223-388 at p. 310.

Paragraph 4 Latin America

The substantive obligations of the Contracting States under the Treaty of Tlatelolco are contained in Article 1:

“1. The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:

- (a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and
- (b) The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way.

2. The Contracting Parties also undertake to refrain from engaging in, encouraging or authorising, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.”

As the Treaty envisages the use of nuclear energy for peaceful purposes (Art. 17), including the explosions for peaceful purposes (Art. 18), the Contracting Parties undertook to negotiate agreements with the International Atomic Energy Agency (IAEA) for the application of its safeguards (Art. 13). Moreover, they established their own control system (reports, inspection) under the aegis of a special regional organization – the Agency for the Prohibition of Nuclear Weapons in Latin America (Art. 7).

In order to make the Treaty applicable to all States which can endanger the denuclearization of Latin America, two Additional Protocols are joined to the Treaty. Under Protocol I the States which are internationally responsible for some territories in Latin America (France, Netherlands, United Kingdom, United States) undertake to apply the Treaty provisions concerning the denuclearization of the region in respect of warlike purposes (Art. 1). Apart from this undertaking (Art. 1), the nuclear weapon States are obliged under Protocol II “not to contribute in any way to the performance of acts involving a violation of the obligations of Article 1 of the Treaty ...” (Art. 2) and “not to use or threaten to use nuclear weapons against the Contracting Parties ...” (Art. 3).

The zone of application of the Treaty of Tlatelolco is the whole of the territory of each State (including the territorial sea, air space and any other space over which the State exercises sovereignty in accordance with its own

legislation – Art. 3) and the high seas adjacent to Latin America within the limits determined by the Treaty (Art. 4).

However, for the time being the Treaty is applied only to the territories of the States for which it is in force. It will be applied to the rest of the zone envisaged in the Treaty, i.e., to large areas in the Atlantic and the Pacific Oceans, upon the fulfilment of the following requirements: adherence to the Treaty by all States in the region; adherence to Additional Protocols by all States to which they are opened for signature; the conclusion of safeguard agreements with the IAEA. Most of these requirements have already been met; the greatest impediment to the full application of the Treaty is the non-ratification of the Treaty by Argentina and Cuba and of the Protocol I by France²³⁴.

Paragraph 5 South Pacific

Apart from the prohibition of testing of nuclear explosive devices (see *supra*, Div. B), each of the Parties to the Treaty of Rarotonga undertakes: (a) not to manufacture, or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere inside or outside the South Pacific Nuclear Free Zone, or to seek or receive assistance with such activity, or to give assistance to other States engaged in this activity (Art. 3); (b) to prevent the stationing of any nuclear explosive device in its territory, stationing being defined as “implantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment” (Art. 1 (d); Art. 5, para. 1); (c) not to dump radioactive wastes and other radioactive matter at sea (Art. 7, para. 1 (a)).

The Treaty applies to a broad zone in the South Pacific: its boundaries stretch from the border of the zone of application of the Treaty of Tlatelolco in the east, to the west coast of Australia in the west, and from the border of the Antarctic Treaty area in the south to the equator (with some extension into the northern hemisphere to include Kiribati) in the north (Annex 1 to the Treaty). This zone includes a vast area of the high seas and territories of 13 States as well as some non-self-governing territories. However, some of the obligations relate only to the territories of States, the territory being defined as “internal waters, territorial sea and archipelagic waters, the seabed and subsoil beneath, the land territory and the airspace above them” (Art. 1 (b)). The duties to prevent the stationing and the testing of any nuclear explosive device and to prevent the dumping of radioactive waste and other radioactive matter by any State are limited

234. D. R. Robinson, “The Treaty of Tlatelolco and the United States”, *AJIL*, Vol. 64, 1970, No. 2, pp. 282-309; A. Garcia Robles, “Mesures de désarmement dans des zones particulières: le traité visant l’interdiction des armes nucléaires en Amérique latine”, *Hague Recueil*, Vol. 133, 1971-II, pp. 43-134.

to the territories of the Parties (Art. 5. para. 1; Art. 6 (a); Art. 7, para. 1 (b)). Yet, even in their territories the Parties are not obliged to forbid visits to their ports and airfields of foreign ships and aircraft carrying nuclear weapons. They are free to decide whether to allow such visits as well as transit of their airspace by foreign aircraft, and navigation by foreign ships in their territorial sea or archipelagic waters, where these ships or aircraft have nuclear weapons aboard (Art. 5, para. 2).

The control system established by the Treaty of Rarotonga comprises: reports to the Director of the South Pacific Bureau for Economic Co-operation; exchange of information and consultation among the Parties; the application to peaceful nuclear activities of safeguards of the IAEA; and a complaints procedure (Art. 8). A Consultative Committee is established for consultation and co-operation on any matter arising in relation to the Treaty, for reviewing its operation and for carrying out the complaints procedure including inspection (Art. 10 and Ann. 4). However, no specific sanctions against non-compliance are provided in the Treaty.

Under Protocol 1 to the Treaty the three States responsible for non-self-governing territories in the South Pacific Zone undertake to apply in these territories the obligations concerning the manufacture, stationing and testing of any nuclear explosive device within the territories, as well as those concerning the IAEA safeguards (Art. 1). The nuclear weapon States undertake under Protocol 2 not to use or threaten to use any nuclear explosive device against any State or territory in the Zone. However, due to the strategic importance of the South Pacific and the present use of this area for nuclear weapon activities (nuclear weapon tests, transit of ships carrying nuclear weapons) the response of the great Powers to the invitation to accept the Protocols is uncertain²³⁵.

Paragraph 6 **Other Regions**

Apart from the regions mentioned above – in respect of which treaty obligations have been agreed upon – many other regions were also the subject of proposals for denuclearization. Suggestions coming from individuals, institutions or from States from a specific region were often endorsed by the United Nations General Assembly. Taking into account the history of a specific proposal and the circumstances in a region, the resolutions of the General Assembly require varied degrees of commitment of the Member States in respect of the denuclearization of every particular region.

235. G. E. Frey, "The South Pacific Nuclear-Free Zone", *SIPRI Yearbook 1986*, pp. 499-508; L. Migliorino, "Il Trattato di Rarotonga del 1985 per la denuclearizzazione del Pacifico meridionale", *La comunità internazionale*, 1987, No. 3, pp. 3-15.

Although many parts of the world have been mentioned in the course of the debates in the General Assembly (e.g., Balkans, Korea, Central Europe, Northern Europe, Nordic area, South-East Asia), resolutions of the General Assembly envisage the denuclearization of these new regions: Africa, Middle East and South Asia²³⁶.

Most advanced is the status of denuclearization of Africa. The Assembly of the Heads of State and Government of the Organization of African Unity (OAU) adopted in 1964 the Declaration on the Denuclearization of Africa (Cairo, 17-21 July 1964)²³⁷. The Declaration was endorsed by the General Assembly of the United Nations in resolution 2033 (XX) of 3 December 1965. Since then the Assembly has regularly called upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone²³⁸.

The efforts of South Africa to develop its nuclear capability provoked the General Assembly to call on the international community and the United Nations, including the Security Council, to take adequate and effective measures to put an end to the imminent danger posed by the possible acquisition of a nuclear weapon capability by South Africa (resolution 31/69 of 10 December 1976). The first special session of the General Assembly devoted to disarmament reaffirmed the duty of the Security Council to take appropriate effective steps whenever necessary to prevent the frustration of the object of the denuclearization of Africa (para. 63 (c) of the Final Document).

The items concerning the establishment of nuclear-weapon-free zones in the Middle East and in South Asia were included in the agenda of the twenty-ninth session of the General Assembly, in 1974²³⁹. However, due to the antagonism between the countries in these regions, the General Assembly is not able to do more than urge “all parties directly concerned to consider seriously taking the practical and urgent steps required for the implementation of the proposal to establish a nuclear-weapon-free zone in the region of the Middle East ...”²⁴⁰ and reaffirm “its endorsement, in principle, of the concept of a nuclear-weapon-free zone in South Asia”²⁴¹.

236. *The United Nations General Assembly and Disarmament 1985* (United Nations publication, Sales No. E.86.IX.II), pp. 171-178. See also A/S-15/AC.1/18, para. 11, p. 7, of 17 June 1988.

237. A/35/416 (*Study on All the Aspects of Regional Disarmament*, United Nations publication, Sales No. E.81.IX.2), para. 93.

238. The last resolution of the General Assembly on this item – 42/34 of 30 November 1987.

239. A/41/100 (*Annotated Preliminary List of Items to be Included in the Provisional Agenda of the Forty-first Regular Session of the General Assembly*), items 51 and 52, pp. 143 and 145.

240. Resolution 42/28 of 30 November 1987.

241. Resolution 42/29 of 30 November 1987.

The denuclearization of such vast regions would inevitably include sea areas, at least the maritime zones under the jurisdiction of the States in the region. Thus, resolution 1652 (XVI) – which was an early call of the General Assembly to consider Africa as a denuclearized zone – expressly included the “territorial waters of Africa”. Today, the General Assembly extends its call to consider and respect the continent of Africa as a nuclear-weapon-free zone to its “surrounding areas”. This vague term provoked the representative of the USSR to point out that “the creation of a nuclear-weapon-free zone should be in keeping with international law, in particular the freedom of navigation on the high seas”²⁴².

However, some of the proposals envisage mainly the denuclearization of ocean space. Thus, for example, the Declaration of the Indian Ocean as a zone of peace called upon the States concerned to enter into negotiations with a view to the elimination of nuclear weapons from the Indian Ocean, and resolution 41/11 declaring a zone of peace and co-operation in the South Atlantic called upon all States not to introduce nuclear weapons in the South Atlantic (see *supra*, Sec. 1, Subsec. 1, Div. C).

**Subsection 5 CONFIDENCE-BUILDING MEASURES AND MEASURES
INTENDED TO REDUCE THE RISK OF THE OUTBREAK OF
ARMED CONFLICTS**

Paragraph 1 Introduction

Simultaneously with the efforts to adopt measures of arms regulation and disarmament, States have tried to find subsidiary means for reducing tensions in international relations and avoiding armed conflicts. A number of such measures, for which the term “confidence-building measures” (CBMs) is today used, can be found in some early treaties on naval arms regulation²⁴³. Thus, for example, the 1922 Washington Naval Treaty required the Contracting States to notify of replacement construction²⁴⁴.

Today, in the presence of a world of 50,000 nuclear warheads, the necessity of eliminating force, threat, pressure and mistrust from international relations and to increase confidence as well as to reduce the risk of the outbreak of nuclear war is more urgent and apparent than ever. Aware of these necessities, the two super-Powers agreed on some CBMs the main purpose of which was to reduce the risk of the outbreak of nuclear war.

242. *The United Nations General Assembly and Disarmament 1985*, p. 183.

243. A/40/535 (*The Naval Arms Race*), Annex I.

244. See *supra*, footnote 87.

Thus, they established a direct line of communication between Moscow and Washington (1963); improved technical safeguards against accidental or unauthorized use of nuclear weapons; pledged to notify any accidental missile launching and, in such an event, to destroy their own launched missiles; undertook to give advanced notification of any deliberate experimental launchings beyond national territory (1971); adopted measures for the prevention of accidents on and above the high seas (1972); agreed to make prevention of nuclear war their policy (1973)²⁴⁵. The SALT Agreements had also included some CBMs: the exchange of information on certain activities, the non-impediment of certain reconnaissance activities, notification of missile launches which are planned to extend beyond the national territory of the Contracting State, and the establishment of a Standing Consultative Commission in order to promote the objectives and to implement the provisions of the Agreements²⁴⁶.

Bilateral CBMs were agreed upon not only between the United States and the USSR. Thus, besides the Agreement on Measures to Reduce the Risk of Outbreak of Nuclear War, concluded between the USSR and the United States (Washington, 30 September 1971)²⁴⁷, similar bilateral agreements to avoid nuclear accidents were concluded between the USSR and France in 1976 and between the USSR and the United Kingdom in 1977²⁴⁸.

After the renewal of détente, the USSR and the United States are again inclined to adopt CBMs. Thus, on 15 September 1987 they signed the Agreement on the Establishment of Nuclear Risk Reduction Centers²⁴⁹. The Centers established in Washington and Moscow are intended to reduce the risk that nuclear war might be initiated by miscalculation, accident or misunderstanding. They will also be used to exchange data and provide notifications as required under the terms of some other recently concluded treaties in the field: the 1987 INF Treaty and the Agreement on Notifications of Launches of Intercontinental Ballistic Missiles and Submarine-launched Ballistic Missiles (Moscow, 31 May 1988)²⁵⁰. This last Agreement stipulates 24 hours' advanced notification of missile launches through the Nuclear Risk Reduction Centers in Moscow and Washington, of the

245. A/36/474 (*Comprehensive Study on Confidence-building Measures*, United Nations publication Sales No. E.82.IX.3), paras. 85-88.

246. See *supra*, footnotes 211 and 213.

247. *ILM*, Vol. 10, 1971, No. 6, p. 1173.

248. Agreement between France and the Union of Soviet Socialist Republics on the prevention of accidental or unauthorized use of nuclear weapons, 16 July 1976; *SIPRI Yearbook 1977*, pp. 398-399; a note on the British-Soviet Agreement on the prevention of an accidental outbreak of nuclear war (Moscow, 10 October 1977), see in *SIPRI Yearbook 1979*, pp. 646-647.

249. *ILM*, Vol. 27, 1988, No. 1, p. 78.

250. *Ibid.*, No. 5, p. 1200.

planned date, launch area and area of impact for any launch of an intercontinental (ICBM) or submarine-launched ballistic missile (SLBM). The Agreement on Notifications was signed simultaneously with the already mentioned Agreement on the Conduct of a Joint Verification Experiment (see *supra*, Subsec. 4, Div. B, para. 3)²⁵¹.

CBMs are being suggested not only for the bilateral relations of the great Powers. Among the types of measures that have been suggested in recent years, a report of the United Nations Secretary-General mentions the following as appropriate to the naval arms race:

- (a) extension of existing CBMs to seas and oceans, especially to areas with the busiest sea lanes;
- (b) agreements not to expand naval activities in areas of tension or armed conflict;
- (c) withdrawal of foreign naval forces to specified distances from regions of tension or armed conflict;
- (d) agreements between two or more extra-regional States to forgo on a reciprocal basis some or all forms of naval deployment, activity and/or transit in a particular area;
- (e) restraints on the use of foreign naval bases;
- (f) restraints on the use of certain weapon systems;
- (g) the promotion of mutual trust and confidence by more openness between States concerning their naval strengths, activities and intentions, e.g., prior notification of and exchanges of information on naval exercises and manoeuvres or on major movements of naval forces, the presence of observers during exercises or manoeuvres;
- (h) international agreements to prevent incidents between naval forces on or over the high seas;
- (i) measures related to the non-proliferation of certain technologies of maritime warfare.

The report admitted the fact that some of these suggested CBMs approach measures of arms regulation²⁵².

Paragraph 2 **Prevention of Incidents on the High Seas**

Two of the bilateral treaties between the United States and the USSR reducing the risk of their armed conflict should be pointed out in the framework of this Chapter: the Agreement on the Prevention of Incidents on and over the High Seas, signed at Moscow on 25 May

251. See *Focus on Vienna*, Developments at the Vienna CSCE-Meeting and Related Events, Newsletter published by the Austrian Committee for European Security and Cooperation, No. 8, June 1988, p. 13.

252. A/40/535 (*The Naval Arms Race*), para. 298.

1972²⁵³, as part of the SALT I Agreement, and the Protocol to this Agreement, signed at Washington on 22 May 1973²⁵⁴.

The Agreement requires that warships operating in proximity to each other remain well clear to avoid risk of collision. Warships meeting or operating in the vicinity of a formation of the other Party shall avoid manœuvring in a manner which would hinder the evolutions of the formation. Formations shall not conduct manœuvres through areas of heavy traffic where internationally recognized traffic separation schemes are in effect. Warships engaged in surveillance of other ships shall stay at a distance which avoids the risk of collision; they shall also avoid executing manœuvres embarrassing or endangering the ships under surveillance. Warships of the two Parties shall not simulate attacks, launch any objects in the direction of passing warships of the other Party or use search-lights to illuminate the navigation bridges of passing ships of the other Party. Commanders of aircraft of the Parties shall use the greatest caution and prudence in approaching aircraft and ships of the other Party operating on and over the high seas. The two States undertook to exchange appropriate information concerning instances of collision, incidents which result in damage, or other incidents at sea between ships and aircraft of the Parties.

The 1973 Protocol supplements the Agreement by prohibiting warships and aircraft to make simulated attacks on non-military ships of the other Party. It is equally forbidden to launch or drop any objects near non-military ships of the other Party in such a manner as to be hazardous to these ships or to constitute a hazard to navigation.

On 15 July 1986 the United Kingdom and the USSR signed an analogous treaty – the Agreement concerning the Prevention of Incidents at Sea beyond the Territorial Sea²⁵⁵. This Agreement follows the content and the language of the 1972 Soviet-American Agreement.

Paragraph 3 **Conference on Security and Co-operation in Europe (CSCE)**

CBMs have been considered in different international fora. Thus, the Final Document of the first special session of the United Nations General Assembly devoted to disarmament (1978) proposed some CBMs (para. 93) and the United Nations Disarmament Commission adopted a set of guidelines for confidence-building measures, which it recommended to the third special session of the General Assembly devoted to disarmament (1988) for consideration²⁵⁶. The third special session was

253. *ILM*, Vol. 11, 1972, No. 4, p. 778.

254. *ILM*, Vol. 12, 1973, No. 5, p. 1108.

255. *LOS Bulletin*, No. 10, pp. 97-100.

256. *Official Records of the General Assembly, Fifteenth Special Session, Supplement No. 3, A/S-15/3*.

not able to reach consensus on a concluding document, but the recommended guidelines for CBMs met with the approval of the Member States²⁵⁷. On the other hand, CBMs in the form of so-called "associated measures" were considered in the Vienna Talks on Mutual Reduction of Forces, Armaments and Associated Measures in Central Europe²⁵⁸.

However, the most elaborate and valuable results have been achieved in the framework of the CSCE. Already the Helsinki Final Act contained a special section entitled "Document on Confidence-Building Measures and Certain Aspects of Security and Disarmament" which envisaged several CBMs: prior notification of military manoeuvres; exchange of observers at manoeuvres; prior notification of major military manoeuvres; exchange by invitation among military personnel, including visits by military delegations²⁵⁹. Yet, only prior notification of major military manoeuvres was agreed upon in obligatory terms and observed subsequently by the participating States. Notification was to be given "of major military manoeuvres exceeding a total of 25,000 troops, independently or combined with any possible air or naval components". Notification had to contain information on the designation, the general purpose of and the States involved in the manoeuvre, the forces engaged, the area and estimated time-frame of its conduct; it was to be given to all the States participating in the CSCE 21 days or more in advance of the start of the manoeuvre. The duty to notify military manoeuvres concerned "major military manoeuvres which take place on the territory, in Europe, of any participating State as well as, if applicable, in the adjoining sea area and air space".

On the basis of the Concluding Document of the Madrid Follow-up Meeting of the CSCE (9 September 1983)²⁶⁰, a special Conference on Confidence- and Security-Building Measures and Disarmament in Europe (CCDE) met in Stockholm from 17 January 1984 to 19 September 1986. The Conference adopted the so-called Stockholm Document, containing a set of confidence- and security-building measures (CSBMs), which are much more elaborate, effective and concrete than those accepted at Helsinki²⁶¹. Participating States agreed to give notification of military activities by land forces, conducted independently or in combination with air or naval components whenever they involve at least 13,000 troops or 300 tanks, if organized in divisions or equivalent structures. The engagement of air forces in an exercise will be notified if it is foreseen that in the

257. P. Florin, "International Security and SSOD III", *Disarmament*, Vol. XI, No. 1, p. 14.

258. See S. Lodgaard, "The Building of Confidence and Security at the Negotiations in Stockholm and Vienna", *SIPRI Yearbook 1986*, pp. 423-446.

259. *ILM*, Vol. 14, 1975, No. 5, pp. 1297-1299.

260. *ILM*, Vol. 22, 1983, No. 6, p. 1395 at pp. 1399-1400.

261. Text of the Stockholm Document in *SIPRI Yearbook 1987*, pp. 355-369.

course of the activity 200 or more sorties will be flown. Prior notification is due not only in respect of exercises, but also in respect of movements, transfers and concentrations of forces (para. 30).

Furthermore, the CSBMs agreed upon in Stockholm include provisions on: refraining from the threat or use of force, observation of certain military activities, exchange of an annual calendar that forecasts activities notifiable in the following year, constraining measures, on-site inspections. In respect of all the CSBMs adopted in the Stockholm Document the participating States concluded that they are “politically binding and will come into force on 1 January 1987” (para. 101).

According to the Madrid Concluding Document and Annex I to the Stockholm Document, the zone of application for the CSBMs covers the whole of Europe as well as the adjoining sea area and air space. The notion of “adjoining sea area” is understood to refer also to ocean areas adjoining Europe. As far as the “adjoining sea area and air space” is concerned it has been stated that

“the measures will be applicable to the military activities of all the participating States taking place there whenever these activities affect security in Europe as well as constitute a part of activities taking place within the whole of Europe ...”²⁶².

Thus, for the time being, with respect to the application of the CSBMs to the sea areas adjacent to Europe the CSCE maintains a functional approach which apparently does not cover independent activities of naval and air forces even if they “affect security in Europe”; besides being of such a nature, they must “constitute a part of activities taking place within the whole of Europe”. In this respect it is interesting to note a Yugoslav proposal (No. 133), made at the Vienna CSCE Meeting, which called for resuming the CCDE in 1988²⁶³. Among other elements, Yugoslavia suggested conducting negotiations on new mutually complementary CSBMs designated to contribute to the reduction of the risk of military confrontation, including independent activities of naval and air forces.

At the Vienna CSCE Follow-up Meeting the participating States agreed that the CCDE has to be continued as soon as possible. It has the task of expanding the measures adopted at Stockholm and also working out new types of CSBMs²⁶⁴. It is interesting to note that some of the recent suggestions in this direction concern the seas adjacent to Europe (Baltic, North Sea, European Arctic Ocean, Greenland Sea)²⁶⁵. Thus, General-

262. *SIPRI Yearbook 1987*, p. 368.

263. *Focus on Vienna*, No. 5, November 1987, p. 6.

264. *Ibid.*, No. 7, March-April 1988, pp. 1 and 2.

265. *Ibid.*, No. 5, pp. 11-12.

Secretary M. Gorbachev, when addressing the Yugoslav Parliament in Belgrade on 16 March 1988 suggested to freeze the number of ships and the potential of the naval forces of the USSR and the United States in the Mediterranean, and then to establish ceilings for them. Moreover, he proposed new CBMs. The two States should notify each other and all the Mediterranean States of the sending of naval ships to the Mediterranean Sea. Military exercises in the Mediterranean should also be notified and observers invited²⁶⁶.

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It would be difficult to draw any sound conclusions from all these chaotic developments in the field of naval armaments and disarmament. Instead of any conclusion of our own, we will end this Chapter by quoting the suggestions of the Chairmen of Working Groups I and II of the Committee of the Whole of the 1988 fifteenth special session of the United Nations General Assembly, the third special session devoted to disarmament – suggestions which concern naval armaments and disarmament. The Chairman of Working Group I suggested the following text:

“Member States acknowledge the growing awareness of the dangers posed by large naval forces and the naval arms race, as part of the general arms race and in its own right, in the context of the military blocs and the countries possessing the largest naval fleets. They also note the increasing concern of the nuclear dimensions in this area, including the geographical proliferation of nuclear weapons, a threat posed to the maintenance of international peace and security in general and to the countries of those regions in particular.”²⁶⁷

The Chairman of Working Group II proposed to the members of his Group the following paragraph on “naval arms race and disarmament”:

“There is common recognition that the high seas should be preserved for peaceful purposes and that the traditional principle of freedom of navigation must be upheld. As naval forces are not independent of other military forces, disarmament measures in the maritime domain should be considered in their general military context, taking into account that independent naval balance or parity do not exist. Any effort directed towards arms limitation, disarmament and confidence-building measures at sea should proceed as an integral part of the overall objective of halting and reversing the arms race in

266. *Focus on Vienna*, No. 7, pp. 9 and 13.

267. A/S-15/AC.1/18, para. 24, 17 June 1988.

general. Disarmament measures in the maritime field should be balanced in their general military context and should not diminish the security of any State.”²⁶⁸

The fact that the Members of the United Nations were not able to reach consensus on these texts – as well as on other suggestions by the Chairmen, including those on nuclear-weapon-free zones and zones of peace – is the best confirmation of the long and painful way humankind has to go in order to achieve genuine naval disarmament, complete denuclearization of the oceans and the use of the sea exclusively for peaceful purposes²⁶⁹.

268. A/S-15/AC.1/19/Add.2, para. 35, 17 June 1988.

269. A/S-15/AC.1/18/para. 9; A/S-15/AC.1/19, paras. 8 and 9, 20 June 1988.