CONFIDENTIAL.

SECRETARIAT

1351	— 351 —
(Formerly)	

1351

TERRITORIAL WATERS.

CONNECTED FILES.

NUMBER	
0112	Sea Fisheries
1377.	Marginal Sea.
1906.	Conference on The Law of the Sea.
1351.	Secret Volume - Same title.
2298/A	Continental Shelf.
C163	Visits of Russian Fishy Fleets

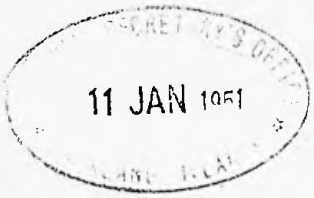
Falklands

OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

97624/50

Code
Circular



TO ALL MARITIME COLONIAL DEPENDENCIES EXCEPT BAHAMAS.

By airmail to: CYPRUS, FALKLAND ISLANDS, GAMBIA, GIBRALTAR, GOLD COAST, KENYA, LEEWARD ISLANDS, SOMALILAND PROTECTORATE, MALTA, NIGERIA, SIERRA LEONE, TANGANYIKA, WINDWARD ISLANDS, ZANZIBAR.

Sent 16th November, 1950. 16.30 hrs.

MARITIME CIRCULAR No. 1.

Grateful if you will furnish brief particulars of any claims for jurisdiction over portions of sea-bed outside three mile limit of territorial waters used for sedentary fisheries such as oysters, sponges, chanks, beche-de-mer, etc. which by long usage have come to be regarded as the subject of occupation and property.

Information is required for use at conference on subject to be held in U.S. shortly.

Reply at 2.

F.I. No: 3351.

2

SAVED TELEGRAM.

From: The Governor of the Falkland Islands.

To : The Secretary of State for the Colonies.

Date: 24th January, 1951.

No. 17 CELONY.

Your Maritime Circular No. 1 of 16th November, 1950.

There are no such claims in this Colony.

GOVERNOR.

23/1/51

3

C.O. Ref: 97624/52

DESPATCH

CIRCULAR 192/52 1st March, 1952.

CONFIDENTIAL

Sir,

TERRITORIAL WATERS.

I have the honour to inform you that Her Majesty's Government in the United Kingdom are considering the effect of the recent judgment of the International Court of Justice in the Fisheries Case between the United Kingdom and Norway, and in particular, whether it is desirable that, where the necessary geographical and other factors exist, advantage should be taken of the Court's decision so as to extend territorial waters by delimiting them in the manner permitted by the principles of international law which the Court has now laid down. Before coming to any firm decision as to the policy to be followed, Her Majesty's Government will wish to take into consideration the views of the Governments of the territories for whose international relations they are responsible.

2. It should be emphasized that the breadth of the belt of territorial waters was not in question before the Court, and therefore the view of Her Majesty's Government that, in the absence of historic usage supporting a claim to a greater breadth, the correct breadth of this belt is three sea miles, is not directly affected by the Court's decision. Nevertheless virtually everything else in what was hitherto believed by Her Majesty's Government to be the law governing the delimitation of territorial waters has gone. In particular, the fundamental rule that the belt is measured from the line of low-water mark has been replaced by a vague principle that "the belt of territorial waters must follow the general direction of the coast"; and, as a consequence, the special rules relating to bays have been radically altered.

5

3. I enclose an analysis of the implications of the Court's judgment, setting out in detail the general principles relating to the delimitation of territorial waters which can be inferred from the judgment. I should be grateful if you would, as a matter of urgency, consider the effect of the application of these principles to the territory under your administration and furnish me at the earliest possible date with your views, in relation to that territory, on the following questions:-

/(a)

Dec 15

RSC to comment.

2913

THE OFFICER ADMINISTERING

THE GOVERNMENT OF

THE FALKLAND ISLANDS.

4

(a) Whether the application of these principles could result in any extensive or important alteration of the territorial waters. (This generally speaking, seems likely to be the case only where the coastline, like that of Norway, is very irregular or contains indentations of considerable breadth, or where there are islands off the coast of the mainland, or where a territory consists of or contains a group of islands.)

(b) Whether any advantages or disadvantages, with respect of such matters as reservation of fisheries and policing and control in territorial waters, would result from any such alteration.

For this purpose, the enclosed analysis will probably be found adequate, but if you desire copies of the judgment, which are not at present readily available, application should be made to the Crown Agents for the Colonies.

4. This circular has not been addressed to the Governments of Northern Rhodesia, Nyasaland and Uganda. It has been sent to the Governor of Malta for the attention of Ministers, and to the High Commissioner, Federation of Malaya under cover of a separate despatch.

I have the honour to be,
Sir,
Your most obedient,
humble Servant,

Oliver Lyttelton

CONFIDENTIAL

Annex 2.

Implications of the judgment delivered by the International Court of Justice in the Anglo-Norwegian Fisheries Case.

(Note A. Both the form and the substance of the judgment are such that it is not possible to infer from it general principles relating to the law of territorial waters with absolute certainty. The most convenient way of attempting to assess the implications of the judgment is by referring to certain statements made by the Court and by considering these statements in the light of the context in which they were made. These statements are set out below, not in the order in which the Court made them, but in what appears to be a more logical order, and, where necessary, comment is added. In the case of extremely complicated points, it has been thought better simply to state the conclusions which have been drawn from the judgment, without quoting the Court's language and without giving the reasoning (which would necessarily be lengthy and involved) on which the conclusions have been drawn.)

(Note B. In order that there should be no possibility of misunderstanding, it is emphasized that, owing to the United Kingdom's admission that Norway was entitled on historic grounds to a territorial belt of 4 miles, the question of the maximum breadth of the territorial belt which is permissible under general international law never came before the Court. There is, therefore, no question of the Court having said in terms that a coastal State is entitled, in the absence of an exceptional historic right, to exercise sovereignty over a territorial belt extending for more than 3 miles in breadth. Nevertheless, the principles of international law relating to the actual delimitation of the belt are enunciated in such a way that it seems reasonable to conclude that the 3 mile rule, if it exists at all, is subject to a great many exceptions.)

Principle No. 1. Basic Principle.

"The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law". (page 132).

Comment.

This principle is incontrovertible. The Court has reaffirmed it, though it might have done so in rather stronger

/terms

6

terms. The principle as now stated is only of comparatively little effect because so many subjective factors have been permitted to enter into the international law relating to territorial waters.

Principle No. 2. Basic principle as applied to base lines: the general direction of the coast principle.

(a) While the coastal State "must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements, the drawing of base lines must not depart to any appreciable extent from the general direction of the coast". (page 133).

(b) "The belt of territorial waters must follow the general direction of the coast". (page 129).

Comment.

The Court undoubtedly rejected the application to the Norwegian coast of the "coast-line rule" (alternatively known as the "tide-mark rule" or "low-water mark rule", i.e., the rule - as formulated by Sub-Committee No. II at the Hague Codification Conference (1950) - that, "subject to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the line of the low-water mark along the entire coast). It seems virtually certain that the Court has rejected the contention that the coast-line rule is binding, as a rule of law, on any State, and has substituted instead the "general direction of the coast principle". It should be emphasized that the operative words "general directive" - are considerably less precise than the "line" of the coast would be. (The Court seems to hold that there is also a test of "reasonableness", (page 142), but its own application of this test in the Lopphavet area of northern Norway suggests that it does not operate as a serious limitation upon the freedom of action of the coastal State. (See also comment (2) on Principle No. 4 below)).

Principle No. 3. Basic notion of "internal waters".

(a) "The real question raised in the choice of base lines is in effect whether certain areas lying within these lines are sufficiently closely linked to the land domain to be subject to the régime of internal waters. This idea, which is at the basis of the determination of the rules relating to bays, should be liberally applied in the case of a coast, the geographical configuration of which is as unusual as that of Norway". (page 133).

/(b)

(b) The Court also mentions, with apparent approval, that some States have drawn base lines, "not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a similar form to the belt of territorial waters". (page 130).

Comment

The test in (a) above, whether certain areas are "sufficiently closely linked to the land domain to be subject to the régime of internal waters" appears to be mainly a geographical test. On the other hand, where there is uncertainty as to whether the geographical test is satisfied or not, it may be legitimate to take into account economic considerations. The geographical test itself appears to be no longer whether the waters concerned form a bay sensu stricto, but whether they are at least to some extent land-locked.

By approving the drawing of base lines across "minor curvatures" ((b) above), as well as across bays sensu stricto, the Court appears to have greatly reduced the significance in international law of the whole conception of a "bay". The only significance which the conception of a "bay" would seem now to have in international law is that where there is no bay, and yet where the base line departs to some degree from the general direction of the coast, then it may be necessary for the coastal state to justify its action under Principle No. 4. Where, on the other hand, there is a "well-defined bay", then a base line across its mouth needs no special justification because such base line must be assumed necessarily to "follow the general direction of the coast".

By "minor curvatures" it must be presumed that the Court had in mind indentations with the following characteristics:-

(i) Comparatively shallow penetration inland in proportion to the width of the mouth.

(ii) In any event, a comparatively small area is involved.

If characteristic (i) be taken alone, it would mean that the Bay of Biscay could be treated by France as a "minor curvature" and that a base line could be drawn from Pointe del Penmarch (Brittany) to Hendaye (Basses-Pyrénées). It is improbable that the Court intended such a result. "Minor" therefore means "small" as well as "gradual", and presumably principle (b) above is itself subject to the more general criterion laid down in (a) above.

/Principle No.4.

8

Principle No. 4. Effect of history, economics, etc.

(a) "There is one consideration not to be over-looked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage". (page 133).

(b) "By 'historic waters' are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title". (page 130).

(c) "From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States" (page 138).

Comment

(1) A certain difficulty arises in interpreting the above passages, which all relate to the role played by history in the law of territorial waters. The difficulty arises because the Court not only found for Norway on the general international law (and included the history of Norway's maritime claims as an element to be taken into account when applying the general international law to Norway) but also found for Norway on the basis of an historic title, which would have validated Norway's claims even if these had been invalid under general international law. Strictly speaking, the Court's observations on historic titles may be regarded as obiter dicta, but it is considered desirable to set out as clearly as possible the conclusions which may be drawn from the Court's judgment on this aspect of the case.

(2) While from (a) above, it is clear that economic tests may be applied as well as geographical tests, under general international law, it is unfortunately not clear what is meant by "usage" in the above formulation. According to a possible interpretation "usage" may only refer to actual economic exploitation by individuals. According to another (and probably more correct) view, (which is suggested by (b) and (c) above) "usage" means State practice, in the sense of legislation over a long period excluding foreigners from the area, and at least a toleration of that legislation by other States. The Rule may perhaps be stated as follows: Where a delimitation constitutes a manifest abuse of the principle that the belt of territorial waters must follow the general direction of the coast, then the coastal State can only justify that

/delimitation

delimitation on the basis of State practice over a long period tolerated by other States (i.e., an historic title or historic waters in the strict sense, as suggested by (b) and (c) above); where, however, a delimitation only in a small measure departs from the principle that the belt of territorial waters must follow the general direction of the coast, and is "kept within the bounds of what is moderate and reasonable" (page 142) then the coastal State may be able to justify that departure by a liberal adaptation of the general direction of the coast principle in order to safeguard economic interests, provided there is some (possibly very little) evidence of State practice, though not necessarily of toleration by other States. (This principle seems to follow largely from (a) above. See also the last part of the comment on Principle No. 2 above).

(3) Thus, to sum up, the category of "historic waters" still exists. These are waters which, but for the existence of an "historic title" (requiring the toleration of other States), would not be internal waters. The much greater degree of flexibility now introduced into the general law has, however, greatly reduced the significance of "historic waters" and has probably led to the total abolition of the special concept of "historic bays" (see Nos. 3 & 7).

Principle No. 5. The outer coast-line theory.

(a) "What really constitutes the Norwegian coast-line is the outer line of the 'skjaergaard'"[1] (page 127).

(b) "Since the mainland is bordered in its western sector by the "skjaergaard", which constitutes a whole with the mainland, it is the outer line of the "skjaergaard" which must be taken into account in delimiting the belt of Norwegian territorial waters". (page 128.)

(c) With regard to the permissible distance of the base lines drawn across the waters lying between the various formations of the "skjaergaard", the Court said: "In this connection, the practice of States does not justify the formulation of any general rule of law. The attempts that have been made to subject groups of islands or coastal archipelagoes to conditions analogous to the limitations concerning bays (distance between the islands not exceeding twice the breadth of the territorial waters, or ten or twelve sea miles, have not got beyond the stage of proposals. Furthermore, apart from any question of limiting the lines to ten miles, it may be that several lines can be envisaged. In such cases the coastal State would seem to be in the best position to appraise the local conditions dictating the selection". (page 131).

/Comment

1. By "skjaergaard" is meant the "rock rampart", consisting of islands, islets, rocks and reefs - of which there are said to be over one hundred thousand - off the coast of north - western Norway.

10

Comment

These passages indicate that the Court accepts in its entirety the outer coast-line theory; e.g., the theory that where there is an archipelago off a mainland, base lines (without regard to length) may be drawn connecting the islands of the archipelago. These base lines then become the base line from which territorial waters are measured and all waters inside these base lines (i.e., between the archipelago and the mainland) are to be regarded as internal waters. Although His Majesty's Government have opposed the outer coast-line theory in the past, it must be admitted that a considerable body of State practice can be pointed to as substantiating the validity of this theory in international law. In any case the Court has now accepted it. What remains uncertain is whether there is any limit to the distance between the islands of the archipelago themselves. Probably there is no fixed distance in miles, but the various islands must in some sense constitute a "unity" amongst themselves. Also the archipelago as a whole must in some sense be "united" with the mainland. Where more than one base line might be said to be in conformity with the general line of the coast, the choice is at the discretion of the coastal State.

Principle No. 6. Base lines along the outer edge of the outer coast-line are not confined to bays.

It is legal to draw base lines "between islands, islets and rocks, across the sea areas separating them, even when such areas do not fall within the conception of a bay" (page 130).

Comment

This statement confirms the view, expressed in Comment on Principle No. 3, that the conception of a "bay" has now become of considerably reduced significance in international law.

Principle No. 7. Bays - definition of

"The Court concludes that the Svaerholthavet has the character of a bay" (page 141). The base line here was about 39 miles across. The penetration inland was only 11.5 miles, because the Svaerholt peninsula juts out towards the sea in between two large fjords, penetrating inland from the base line 50 and 75 miles respectively. The United Kingdom argued that the

/Svaerholthavet

Svaerholthavet was not a bay because a bay, in international law, is essentially "a well-marked indentation, whose penetration inland is in such proportion to the width of its mouth as to constitute the indentation more than a mere curvature of the coast", and the implication was that a penetration inland of 11.5 miles, as compared with a distance from headland to headland of 39 miles, does not constitute a "bay", but rather "a mere curvature of the coast". The Court, however, held that "the fact that a peninsula juts out and forms two wide fjords, the Laksofjord and the Porsangerfjord, cannot deprive the basin of the character of a bay. It is the distances between the disputed base line and the most inland point of these fjords, 50 and 75 sea miles respectively, which must be taken into account in appreciating the proportion between the penetration inland and the width of the mouth". This seems to suggest that the United Kingdom's definition of a bay is still valid, particularly in the sense that the test for determining whether an area of water is a bay or not is essentially geographical. The Norwegian contention that other factors (e.g, economics, defence) can be taken into account, simply for the sake of determining whether an area of water is a bay or not, would appear to have been rejected. It is however, questionable whether the conception of a bay is any longer of much significance in international law (See Nos. 3 and 6 above). What is certain is that, if the reasoning in the comment on Nos. 3 and 4 above is correct, the distinction between "legal bays" and "historic bays" no longer exists, even though the category of "historic waters" still exists.

Principle No. 8. Bays - the 10 mile rule is not a general rule.

The 10 mile rule for bays "has not acquired the authority of a general rule of international law" (page 131).

The Court's view appears to be that, provided a configuration constitutes a "well-defined bay", a line across it is automatically justifiable, because any such line must necessarily "follow the general direction of the coast" regardless of length (see No. 3 above). A line across a "minor curvature", however, might in certain cases require special justification. Base lines across "minor curvatures", like base lines across "bays", are not subject to any prescribed distance in terms of miles. But probably base lines across "minor curvatures" are forbidden unless the sea areas "lying within these lines are sufficiently closely linked to the land domain to be subject to the régime of internal waters" (see No. 3 above), or unless the considerations mentioned in No. 4 above apply.

Principle No. 9. Straits.

"The Court is bound to observe that the Indreleia is not a strait at all, but rather a navigational route prepared as such by means of artificial aid to navigation provided by Norway. In these circumstances, the Court is

/unable

12.

unable to accept the view that the Indreleia, for the purposes of the present case, has a status different from that of the other waters included in the "skjaergaard". (page 132).

Comment

The Indreleia is a channel joining two or more portions of the high seas. It runs up through the Vestfjord and, although there are a great many leads between it and the high seas, it debouches principally into the high seas east of the North Cape. (It also goes directly past the town of Tromso). It would probably be unwise to draw any general conclusions from the Court's judgment on this point. The Court would appear to be saying that if navigation destined from one portion of the high seas to another portion of the high seas can only use the channel in question because of facilities provided by the coastal State, such a channel remains internal waters. On the other hand, the Court only laid down this principle "for the purposes of the present case". The term "navigational route", used by the Court in contradistinction to "strait", does not appear to have any particular significance or status.

Principle No. 10 Prescription: implied toleration by other States, duty of other States to protest etc.

If State X knows that State Y is delimiting territorial waters off part of her coast by a certain method and State X does not protest, then State X is deemed to have acquiesced in this method and the method becomes applicable to the entire coast of State Y, even if the ships of State X never went to that part of the coast originally delimited by State Y. State Z (which never knew of State Y's original delimitation) becomes equally bound to accept the application of the method to the entire coast of State Y, provided that the method has not encountered opposition from foreign States but has met with their general toleration.

Comment

The above is the conclusion which it seems permissible to draw from the Court's findings on the involved historical part of the case.

R.S.C.

Please see H.C. S's. minute at foot of 3.

HFCS 2/4/52.

Hon. Col. Sec.

1. The International Court's judgment would result in an extensive and advantageous alteration of the delimitation of territorial waters of the Colony.

2. The alteration would naturally result in advantages for controlling fisheries in these waters, when necessary.

H. B.
Registrar
2. IV. 52

I wonder how it will affect the D'cies?

Y.E. Papers (3) & (12)

Some of this I find rather complicated but it seems obvious that we ~~need~~ make useful & extensive gains.

2) I can see no thing but advantages in respect fisheries, policing & control as our base lines will be much more easier to interpret.

3) Draft ~~reply~~ telegraphic reply & (3) S.F.C. at cover.

7/4

Issue.

Mc 18/IV.

ACP FNA.

18/4

14

DECODE.

TELEGRAM SENT.

From GOVERNOR *to* SECRETARY OF STATE

Despatched: 21.4.52. *Time:* 0845. *Received:* ..... *Time:* .....

3

No 65. CONFIDENTIAL. Your Circular Despatch 192/52.

Territorial Waters. Consider application principles would result in extensive alterations territorial waters here, and that these alterations would have generally advantageous effect as regards fisheries, policing and control.

GOVERNOR.

GTC
SS

DECODE.

TELEGRAM SENT.

15

From **SECRETARY OF STATE** *to* **GOVERNOR.**

Despatched: 11.12.53 *Time:* 1145 *Received:* 11.12.53 *Time:* 1430

3

CONFIDENTIAL. ²?Unnumbered Circular of December 10th. My Despatch No 195/52 March 1st 1952.Circular.

Territorial Waters. Some replies to this despatch favoured the adoption of base line method delimiting territorial waters. H.M.Government have however decided after taking those replies into account that there are important considerations which require that they adhere to academic method.

2. Following is text of statement to be made here on Monday December 14th. It should be treated as Confidential until 4 p.m. Greenwich Mean Time on that day.

"For some time past Her Majesty's Government in the United Kingdom have had under consideration question water ? ? round coasts of the United Kingdom and overseas territories for which H.M.Government are responsible should be redefined in the light of judgment delivered by International Court Justice on December 18th 1951 in Anglo-Norwegian fisheries case. After full consideration of matter they have come to conclusion there should be no change; these territorial waters will therefore continue to be delimit fringe line drawn 3 miles low water mark or in the case of bays and estuaries from a closing line drawn at first point where they narrow to 10 miles in width.

The judgment in the Norwegian case depends on facts of that case. In the view of Her Majesty's Government it ought not to be inferred from that judgment that as a unlooked for International law a base line drawn in manner authorized by that judgment in that particular case would necessarily be applied to all or any other coasts.

Her Majesty's Government recognise that legal considerations apart from an extension of the United Kingdom territorial waters by means of drawing of base lines such as have been adopted along indented coast northern Norway would be of some advantage to British in shore fisheries. Her Majesty's Government sympathise with point of view in shore fishery men and are conscious of effect on them of their decision. Her Majesty's Government are also informed that extension of territorial waters would be of some advantage in certain Colonies and other overseas territories for which Her Majesty's.Government are responsible and they have taken this fully into account. Her Majesty's Government have however come to the conclusion that wider considerations arising from out Naval, Mercantile and deep sea fishery position incompetent? country and like interests in other territories concerned must take precedence.

Her Majesty's Government consider that all sea faring nations are best served by greatest possible freedom to use seas for all legitimate maritime ~~explosive~~? purposes and they view with concern the increasing encroachments on high seas which have taken place in recent years in many parts of the world.

At the same time Her Majesty's Government will continue co-operate in securing fullest possible measure conservation fishery by means of International Agreement through commissions set out under International Fisheries Convention.

SECRETARY OF STATE

Cypher.

Y.E. Pse see (15)

Rather corrupt ... effect ... but the status quo. ...itish Empire

I suppose the real answer ... not score as well as expected!

16

COLONIAL OFFICE

COLONIAL SECRETARY'S OFFICE
29 MAR 1956
FALKLAND ISLANDS

CONFIDENTIAL

PRIORITY

FROM THE SECRETARY OF STATE FOR THE COLONIES

C.O. Ref: IRD 280/04

SAVINGRAM

CIRCULAR 163/56 17th February, 1956.

PRIORITY
CONFIDENTIAL

1351

INTERNATIONAL LAW COMMISSION

DRAFT FISHERY ARTICLES

19 - 23

I enclose for information an extract from the report of the International Law Commission covering the work of its 7th Session held at Geneva last summer, containing certain draft articles (numbers 24 to 33) setting out the Commission's suggestions for an international code of fishery conservation.

2. The background to these articles is as follows. Ever since its first session in 1949, the International Law Commission has given its attention to a study of the Regime of the High Seas and the Regime of the Territorial Sea with a view to codifying, or progressively developing, international maritime law. In so doing it has inevitably found itself confronted with the general problems of fishery rights in the high seas, particularly in the waters adjacent to coastal states. Its deliberation on this particular aspect has led to the drafting of the articles referred to, which in the report enclosed have been circulated to Member States of the United Nations for constructive comment with a view to the production of a final draft for submission to the General Assembly and for ultimate universal adoption.

3. The articles attempt to express certain basic rights in a way which will command general approval. Nothing in them is intended to affect jurisdiction over, or the exploitation of, the resources of the land under the sea. Article 24 establishes the universal right to fish in the high seas subject only to existing treaty obligations and the provisions of the subsequent articles. Articles 25 to 30 qualify this right in varying degree: articles 28 and 29, for instance, deal with the rights of a "coastal state" which has a special interest in the maintenance of the productivity of the living resources in any area of the high seas contiguous to its coast. Articles 31 to 33 provide for the recourse to arbitration by states aggrieved under any of the preceding articles. It

/ is felt

The Officer Administering
The Government of the
Falkland Islands.

Reply at 25

is felt that these three articles are of prime concern to Colonial territories with a developing maritime fishery industry.

4. A statement of Her Majesty's Government's views on these draft articles is now being prepared. While Her Majesty's Government may find it necessary to express certain reservations with regard to these articles, it is in sympathy with their general intention and would welcome an international code of maritime fishery conservation which commanded universal support. The articles are a definite contribution, but the differences which have shown themselves both inside and outside the International Law Commission have indicated that there is a long way to go yet before they reach a universally acceptable form or, if accepted and applied, are universally respected. Moreover, the absence of effective sanctions for their enforcement means that violations of the code by nationals of certain states will go unpunished. The best hope is that errant members can be brought to respect the code, and enforce it on their fishermen, by force of common opinion and more effectively by an appeal to self-interest. However if no international code of this nature is adopted it is apparent that more and more states will on the pretext of fantastic territorial water claims, impose unilaterally their jurisdiction over unreasonably wide stretches of coastal waters, as has already occurred in South America, and thus impede the free passage of ships and trade. This is an alternative which Her Majesty's Government would find completely unacceptable.

5. For the rest, Her Majesty's Government considers that the articles are capable of improvement, certainly in drafting and perhaps in matters of substance. Article 29, for instance, as at present drafted does not recognise the difficulty which could arise among states claiming interest in one and the same adjacent area of the high seas, for example the Malacca Strait and the Bahama Sea.

6. Full weight is being given to the Colonial aspects of these articles. For future reference I should be glad to have the views of all interested territories on the articles as at present drafted in order to establish, if that is possible, a common Colonial view-point. In particular I should like to be fully briefed now (i.e. if possible by mid March) on any special considerations which though local in range may raise important questions of principle - for example those connected with sedentary fishing. There will be a further opportunity for Colonial Governments to examine these articles, as further amended by the International Law Commission and the General Assembly, and I shall consult you further then.

/6.

7. This circular has been addressed to all Colonies (including the Federation of Nigeria), Protectorates and Regional Organisations except the Regional Governments in Nigeria, Northern Rhodesia, Nyasaland and Uganda. It has been sent to the High Commissioner for the Federation of Malaya under cover of a separate despatch.

SECER.

Comment

In the main this article is taken from article 11 of the regulations adopted by the Second Committee of The Hague Codification Conference in 1930. The right in question is not contested in international law. Only certain details concerning the exercise of this right call for comment:

1. It is not necessary that, at the time when the foreign vessel within the territorial sea receives the order to stop, the vessel giving the order should likewise be within the territorial sea. This rule applies in practice in the case of patrol vessels cruising for police purposes just outside the territorial sea. The essential point is that the vessel committing the infringement must be in the territorial sea when the pursuit begins.

2. Pursuit must be continuous. Once it is broken off it cannot be resumed. The right of pursuit in any case ceases as soon as the vessel pursued enters the territorial sea of its own country or of a third State.

3. Pursuit cannot be considered to have begun until the pursuing vessel has spotted the foreign vessel in the territorial sea and has ordered it to stop by hoisting the prescribed signal. To prevent abuse, the Commission declined to admit orders given by radio, as these could be given at any distance.

4. The article also applies to vessels which lie outside the territorial sea and cause their boats to commit unlawful acts in that sea. Some writers define such cases by using the expression "constructive presence" in the territorial sea. The Commission, however, refused to assimilate to such cases that of a vessel staying outside the territorial sea and using, not its own boats, but other craft.

The rules laid down above are all in conformity with those adopted by The Hague Conference. The article adopted by the Commission differs from that of 1930 on two points only:

1. The Commission was of the opinion that the right of pursuit should also be recognized when the vessel is in a zone contiguous to the territorial sea, provided pursuit is undertaken on the grounds of trespass against rights for the protection of which the zone was established. Thus, a State which has established a contiguous zone for the purposes of customs control cannot commence pursuit of a fishing boat accused of unlawful fishing in the territorial sea if the fishing boat is already in the contiguous zone.

2. The Commission included in this article a case which presents some analogy with the right of pursuit and which gave rise to differences of opinion, as it arose after the 1930 Conference. The question was whether a vessel pursued and stopped in the territorial sea can be escorted to a port of the State of the pursuing vessel across the high seas, where there is no choice but to pass through the high seas. The Commission considered that it would be illogical to recognize the right of the pursuing vessel to seize a ship on the high seas and escort it to port across the high seas and at the same time to refuse the government vessel the right to escort a ship already apprehended in the territorial sea to port across the high seas, where special circumstances forced it to leave the territorial sea in order to reach the port.

Pollution of the high seas

Article 23

All States shall draw up regulations to prevent water pollution by fuel oils discharged from ships, taking account of existing treaty provisions on the subject.

Comment

Water pollution by fuel oils discharged from ships raises serious problems: danger to the life of certain marine species, fish and birds; pollution of ports and beaches; fire risks. Almost all maritime States have laid down regulations to prevent the pollution of their internal waters and their territorial sea by fuel oils. But these special regulations are clearly inadequate. Petroleum products discharged on the high seas may be washed towards the coasts by currents and wind. All States should therefore enact regulations to be observed, even on the high seas, by ships sailing under their flags, and the observance of these regulations should be controlled. It is obvious that only an international solution of the problem can be effective. A Conference held in London for the purpose drafted the International Convention for the Prevention of Pollution of the Sea by Oil, 1954. This Convention has not yet come into force.

Article 23 merely stipulates that States shall draw up regulations which their ships must observe, even on the high seas. This, in the Commission's view, is as far as the present draft can go on the subject. Unification, although desirable, is less essential here than in the case of signals and rules for the prevention of collisions.

Chapter II. Fishing

Right to fish

Article 24

All States may claim for their nationals the right to engage in fishing on the high seas, subject to their treaty obligations and to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

Comment

This article confirms the principle of the right to fish on the high seas. The Commission accepted no exceptions to that principle in the parts of the high seas covering the continental shelf, save as regards sedentary fisheries.[6] Nor did it recognize the right to establish a zone contiguous to the coasts where fishing could be exclusively reserved to the nationals of the coastal State.[7] The principle of the freedom of the seas does not, however, preclude regulations governing the conservation of the living resources of the high seas, as recommended by the Commission in articles 25 to 33 of the present draft. Furthermore, States may still conclude conventions for the regulation of fishing, but the treaty obligations arising out of such conventions are of course binding only on the signatory States.

---

[6] See *Official Records of the General Assembly, Eighth Session, Supplement No. 9*, A/2456, para. 71.

[7] *Ibid.*, paras. 105 *et seq.*

Conservation of the living resources of the high seas

At its third session, in 1951, the Commission provisionally adopted under the title of "Resources of the sea", articles relating to the conservation of the living resources of the seas.[8] This question was discussed in conjunction with the continental shelf, because certain claims to sovereignty over the waters covering the continental shelf arise, at least in part, out of the coastal State's desire to give effective protection to the living resources of the sea adjacent to its shores.

At its fifth session, in 1953, the Commission reviewed the articles adopted in 1951 in the light of the comments made by certain Governments, and thereafter adopted a set of draft articles reproduced in its report on the work of its fifth session.[9]

In adopting these articles, the Commission adhered to the provisional draft of the articles formulated in 1951. It recognized that the existing law on the subject provides no adequate protection of marine fauna against waste or extermination. The above-mentioned report states that the resulting position constitutes, in the first instance, a danger to the food supply of the world. Also, in so far as it renders the coastal State or the States directly interested helpless against wasteful and predatory exploitation of fisheries by foreign nationals, it constitutes an inducement to the State or States in question to resort to unilateral measures of self-protection, which are sometimes at variance with the law as it stands at present, because they result in the total exclusion of foreign nationals.

The articles adopted by the Commission in 1953 were intended to provide the basis for a solution of the difficulties inherent in the existing situation. The system proposed by the Commission protected, in the first instance, the interest of the coastal State. If only the nationals of that State were engaged in fishing in the areas in question, it could fully achieve the desired object by adopting appropriate legislation and enforcing its observance by those concerned. If nationals of several States were engaged in fishing in a given area, the concurrence of those States was essential; article 1 of the Commission's draft provided therefore that the States concerned would prescribe the necessary measures by agreement. Article 3 of the draft was intended to provide effectively for the contingency of the interested States being unable to reach agreement. It provided that States would be under a duty to accept as binding any system of regulation of fisheries in any area of the high seas which an international authority, to be created within the framework of the United Nations, prescribed as being essential for the purpose of protecting the fishing resources of that area against waste or extermination.

The General Assembly, at its ninth session [resolution 900 (IX) of 14 December 1954], recognized the great importance of the question of the conservation of the living resources of the sea in connexion with the work of the International Law Commission on the régime of the high seas. It decided to convene an international technical conference at the headquarters of the United Nations Food and Agriculture Organization in Rome on 18 April 1955 to study the technical and scientific aspects of the problem of the international conservation of the living resources of the sea. The report of the conference was to be referred to the International Law Commission "as a further technical contribution to be taken into account in its study of the questions to be dealt with in the final report which it is to prepare pursuant to resolution 899 (IX) of 14 December 1954".

The International Law Commission took note of the report of the conference (A/CONF.10/5/Rev.1) with great interest. The Vice-Chairman of the Commission, Mr. García-Amador, who represented the Cuban Government and acted as Deputy-Chairman at the Rome Conference, submitted to the Commission a series of draft articles, prefaced by a preamble, on the subject, to replace the articles approved by the Commission in 1953.

The Commission made a careful study of these draft articles and found them generally acceptable, although it introduced certain amendments.

The draft articles, as amended, and the preamble are annexed to the present chapter of the report. The articles, as amended, are also included as articles 25 to 33 in the draft text on the régime of the high seas adopted by the Commission. In view of the technical nature of several of these articles, the Commission trusts that Governments will also include in their replies information on all points of a technical nature which might be of use to it in the final drafting of the articles.

Article 25

A State whose nationals are engaged in fishing in any area of the high seas where the nationals of other States are not thus engaged may adopt measures for regulating and controlling fishing activities in such areas for the purpose of the conservation of the living resources of the high seas.

Comment

This article reproduces the principle enunciated in the first sentence of article 1 as adopted by the Commission at its fifth session in 1953.

Article 26

1. If the nationals of two or more States are engaged in fishing in any area of the high seas, these States shall, at the request of any of them, enter into negotiations in order to prescribe by agreement the measures necessary for the conservation of the living resources of the high seas.

2. If the States concerned do not reach agreement within a reasonable period of time, any of the parties may initiate the procedure envisaged in article 31.

Comment

This article is based on the second sentence of article 1 of the draft prepared by the Commission in 1953.

As regards paragraph 2, see the comment on article 31.

[8] See *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, A/1858, Annex, part II.

[9] See *Official Records of the General Assembly, Eighth Session, Supplement No. 9*, A/2456, paras. 92 *et seq.*

Article 27

1. If, subsequent to the adoption of the measures referred to in articles 25 and 26, nationals of other States engage in fishing in the same area, the measures adopted shall be applicable to them.

2. If the States whose nationals take part in the fisheries do not accept the measures so adopted and if no agreement can be reached within a reasonable period of time, any of the interested parties may initiate the procedure envisaged in article 31. Subject to paragraph 2 of article 32, the measures adopted shall remain obligatory pending the arbitral decision.

Comment

It would appear desirable and consistent with general legal principles to require newcomers to comply with the regulations in force in the waters where they wish to engage in fishing. If States of which the newcomers are nationals are not prepared to apply the regulations, they can open negotiations for their amendment with the States concerned. Failing agreement, the procedure laid down in article 31 will have to be followed.

Article 28

1. A coastal State having a special interest in the maintenance of the productivity of the living resources in any area of the high seas contiguous to its coasts is entitled to take part on an equal footing in any system of research and regulation in that area, even though its nationals do not carry on fishing there.

2. If the States concerned do not reach agreement within a reasonable period of time, any of the parties may initiate the procedure envisaged in article 31.

Comment

The right to take part in a system of regulation even though its nationals do not carry on fishing in the area concerned was granted, under article 2 of the draft prepared by the Commission in 1953, to any coastal State whose territorial sea was within 100 miles of the area. Under the present article this right is granted to any coastal State which has a special interest in the conservation of resources in parts of the high seas adjacent to its coasts. The Commission did not deem it advisable to adopt a fixed limit, which might prove in practice to be either too wide or, in particular cases, too narrow. Should doubts arise as to a coastal State's right to claim, in areas far removed from its shores, a special interest which it pretends to have, the matter would have to be settled by the arbitral procedure envisaged in article 31.

Article 29

1. A coastal State having a special interest in the maintenance of the productivity of the living resources in any area of the high seas contiguous to its coasts may adopt unilaterally whatever measures of conservation are appropriate in the area where this interest exists, provided that negotiations with the other States concerned have not led to an agreement within a reasonable period of time.

2. The measures which the coastal State adopts under the first paragraph of this article shall be valid as to other States only if the following requirements are fulfilled:

(*a*) That scientific evidence shows that there is an imperative and urgent need for measures of conservation;

(*b*) That the measures adopted are based on appropriate scientific findings;

(*c*) That such measures do not discriminate against foreign fishermen.

3. If these measures are not accepted by the other States concerned, any of the parties may initiate the procedure envisaged in article 31. Subject to paragraph 2 of article 32, the measures adopted shall remain obligatory pending the arbitral decision.

Comment

As early as 1951, the Commission dealt with the question whether the special position of coastal States as regards measures for the conservation of the living resources in parts of the high seas adjacent to their coasts ought not to be further recognized from a standpoint other than that expressed in article 28. A proposal was submitted to the effect that a coastal State should be empowered to lay down conservatory regulations to be applied in such zones, provided any disputes arising out of the application of the regulations were submitted to arbitration. Votes being equally divided on this proposal, the Commission decided to mention it in its report without sponsoring it.[10] The Commission did not include such a provision in its 1953 draft. At the 1955 Rome Conference, the tendency to make coastal States responsible for controlling zones adjacent to their coasts and applying in them measures of conservation consistent with the general technical principles adopted by the Conference was again in evidence.

The same idea underlay the proposal submitted to the Commission by Mr. García-Amador, in which the granting of special rights to coastal States was linked with the obligation to resort to arbitration if the exercise of those rights gave rise to objections by other interested States.

The Commission supported this proposal, on the ground that, in according rights on the high seas to coastal States, it could not merely rely on the smooth functioning of the general regulations observed between States for the peaceful settlement of disputes, and that acceptance of arbitration in the event of the legality of the measures taken by the coastal State being disputed was mandatory. Article 29 gives a coastal State the right to adopt conservatory measures unilaterally, if the negotiations with the other States concerned have not led to an agreement within a reasonable period of time. The articles specifies the requirements which the measures must fulfil in order to be valid as to other States. Should the latter fail to agree, however, the disputes will be settled by arbitration. Pending the arbitral decision, the measures will remain applicable subject to paragraph 2 of article 32.

[10] See *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, A/1858, Annex: Draft Articles on the Continental Shelf and Related Subjects, part II, para. 5 of comment to article 2.

Article 30

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not contiguous to its coast, has a special interest in the conservation of the living resources in that area, may request the State whose nationals are engaged in fishing there to take the necessary measures of conservation.

2. If no agreement is reached within a reasonable period, such State may initiate the procedure envisaged in article 31.

Comment

This article provides for the case of a State other than the coastal State whose nationals are not engaged in fishing in a given area but which has a special interest in the conservation of the living resources of the high seas in that area. This case may arise, for example, if the exhaustion of the resources of the sea in the area would affect the results of fishing in another area in which the nationals of the State concerned do engage in fishing. The Commission took the view that in such an event the State concerned could require the State whose nationals engage in fishing in the areas exposed to exhaustion to take the necessary steps to safeguard their threatened interests. Where no agreement can be reached, the question will be settled in accordance with the procedure envisaged in article 31.

Article 31

1. The differences between States contemplated in articles 26, 27, 27, 29 and 30 shall, at the request of any of the parties, be settled by arbitration, unless the parties agree to seek a solution by another method of peaceful settlement.

2. The arbitration shall be entrusted to an arbitral commission, whose members shall be chosen by agreement between the parties. Failing such an agreement within a period of three months from the date of the original request, the commission shall, at the request of any of the parties, be appointed by the Secretary-General of the United Nations in consultation with the Director-General of the Food and Agriculture Organization. In that case, the commission shall consist of four or six qualified experts in the matter of conservation of the living resources of the sea and one expert in international law, and any casual vacancies arising after the appointment shall equally be filled by the Secretary-General. The commission shall settle its own procedure and shall determine how the costs and expenses shall be divided between the parties.

3. The commission shall in all cases be constituted within five months from the date of the original request for settlement, and shall render its decision within a further period of three months unless it decides to extend that time-limit.

Comment

This article describes the procedure for the settlement of disputes arising between States in the cases referred to in the preceding articles. The draft text leaves the parties entirely free as regards the method of settlement. They may submit their differences to the International Court of Justice by agreement or in accordance with mutual treaty obligations; they may set up courts of arbitration; they may, if they so desire, seek to compose their differences through a commission set up for the purpose, before resorting to these procedures. It is only where the parties fail to agree on the method of settling a dispute that the draft text provides for arbitration, while leaving the parties an entirely free choice as to arrangements for arbitration. If, however, the parties fail to agree on this subject within three months from the date of the original request, the draft provides for the setting up of a commission without their co-operation. The commission will be appointed by the Secretary-General of the United Nations in consultation with the Director-General of the Food and Agriculture Organization. The Commission chose the Secretary-General in preference to the President of the International Court of Justice in view of the extreme technicality of the subject, which lies completely outside the President's routine functions. Furthermore, the Commission is convinced that the appointment of the arbitrators by the Secretary-General of the United Nations will give the best assurance of objectivity and impartiality.

The arbitral commission should be neither too small, in view of the complexity of the technical questions involved, nor too large, so that its proceedings may not be dilatory and that costs may be kept within reasonable bounds. The Commission felt that, if the number of members was fixed at four or six, the Secretary-General would be able to constitute the arbitral commission in such a way as to give due weight to all aspects of the question. While recognizing that the matters in dispute would be mainly of a technical nature, it considered that the legal questions inevitably linked with them would necessitate the presence of an expert in international law. The Secretary-General may, should he think fit, request the legal expert to act as chairman of the commission.

To ensure the continuity of the arbitral commission's work in all circumstances, it was necessary to authorize the Secretary-General to fill any casual vacancies arising after the appointment of the arbitrators. Finally, it seemed fair to let the commission determine how the costs entailed by its proceedings should be divided between the parties. The third paragraph prescribes certain time limits for the purpose of preventing the arbitration procedure from being protracted.

Article 32

1. The arbitral commission shall, in the case of measures unilaterally adopted by coastal States, apply the criteria listed in paragraph 2 of article 29. In other cases it shall apply these criteria according to the circumstances of each case.

2. The commission may decide that pending its award the measures in dispute shall not be applied.

Comment

Paragraph 1 recalls the criteria on which the commission's decision must be based. These criteria are primarily those specified in paragraphs 2 (*b*) and (*c*) of article 29. Paragraph 2 (*a*) will not apply in every case submitted to the arbitral commission. It will always apply in the case of measures adopted under paragraph 1 of article 29. In other cases, it was deemed advisable to leave the arbitral commission some latitude

as regards the applicability of the criterion mentioned in paragraph 2 (*a*), especially if, in the case envisaged in paragraph 2 of article 26 and paragraph 2 of article 27, the State of which the newcomers are nationals disagrees on the procedure for applying certain measures, while acknowledging their necessity.

Under articles 27 and 29, the measures adopted by one or more States in a given area remain in force pending the arbitral decision. But the arbitral commission might deem it proper, in special circumstances, to suspend the application of these measures during its deliberations. Paragraph 2 of article 32 authorizes it to take a decision to that effect.

Article 33

The decisions of the commission shall be binding on the States concerned. If the decision is accompanied by any recommendations, they shall receive the greatest possible consideration.

Comment

This article shows that the decision of the arbitral commission is intended to provide a final settlement of the dispute, not merely to serve as a recommendation to the parties. The commission might, however, wish to amplify its decision with certain recommendations concerning the way in which the parties should make use of their rights. This article allows it to do so.

CHAPTER III. SUBMARINE CABLES AND PIPELINES

Article 34

1. All States shall be entitled to lay telegraph or telephone cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables.

Comment

As regards the protection of telegraph and telephone cables beneath the high seas, there is a Convention dated 14 March 1884 to which a very large number of maritime States are parties. In 1913, a conference convened in London on the initiative of the British Government adopted a number of resolutions on the subject. The Institute of International Law has also considered the question on many occasions.

The Commission enunciated certain principles which, in its view, reflect the international law applying. It thought that the regulations concerning telegraph and telephone cables could be extended to include pipelines beneath the high seas.

Paragraph 1 of article 34 was taken from article I of the 1884 Convention. Paragraph 2 was added to make it quite clear that the coastal State is obliged to permit the laying of cables and pipelines on the floor of its continental shelf but that it can impose conditions as to the track to be followed, in order to prevent undue interference with the exploitation of the natural resources of the seabed and subsoil.

Article 35

Every State shall take the necessary legislative measures to provide that the breaking or injuring of a submarine cable beneath the high seas done wilfully or through culpable negligence and resulting in the total or partial interruption or embarrassment of telegraphic or telephonic communications, or the breaking or injuring of a submarine pipeline in like circumstances, shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their vessels, after having taken all necessary precautions to avoid such break or injury.

Comment

This article is substantially the same as article II of the 1884 Convention, but extends the latter to include pipelines. Like the succeeding articles, it was so worded to require States to take the necessary legislative measures to ensure that their nationals comply with the regulations.

Article 36

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost.

Comment

Cf. article IV of the 1884 Convention.

Article 37

Every State shall regulate trawling so as to ensure that all fishing gear shall be so constructed and maintained as to reduce to the minimum any danger of fouling submarine cables or pipelines.

Comment

Cf. resolution I of the London Conference of 1913.

Article 38

Every State shall take the necessary legislative measures to ensure that the owners of vessels who can prove that they have sacrificed an anchor, a net or any other fishing gear in order to avoid injuring a submarine cable shall be indemnified by the owner of the cable.

Comment

Cf. article VII of the 1884 Convention.

Annex to chapter II

DRAFT ARTICLES RELATING TO THE CONSERVATION OF THE LIVING RESOURCES OF THE SEA

The International Law Commission

Considering that

1. The development of modern techniques for the exploitation of the living resources of the sea has exposed some of these resources to the danger of being wasted, harmed or exterminated,

R.P.C.
16 for your obs. pl.
WLM
for AGC
9/4/56

Hon. Sol. Sec.,

I have no observations to make at the moment except that we should make every effort to protect our interests in the continental shelf contiguous to our coast and our future interests in the Burnwood Bank as a potential fishing area.

We will be given further opportunity to examine these articles, most probably when the U.K.'s views are known.

H.B.
16.iv.56.

Y.B.

16.

I cannot see anything in 19-23 which calls for special comment as far as we are concerned. As R.S.C. says we are to be given a further opportunity to examine these articles (para. 6 of 17 refers) I therefore propose to reply as in draft at b.c. pl.?

29/4.

We are very much beer when these sort of disputes come up. Draft appd WMA 30

Copy.

F. I. ref: 1351

C. O. ref: IRD 280/04

Copy

SAVING TELEGRAM.

From: The Officer Administering the Government of the Falkland Islands.

To: The Secretary of State for the Colonies.

Date: 30th April, 1956

No. 70 SAVING. COLONY CONFIDENTIAL

16. Your Circular 163/56. International Law Commission. Draft Fishery Articles.

No comment on articles as at present drafted.

GOVERNOR.

B.U. 15/6/56

JB/MF

26

RESTRICTED.

DEPARTMENT OF EXTERNAL AFFAIRS.
CANBERRA.

In reply quote No. 1577/18.

13th March, 1956.

30 APR 1956
FALKLAND ISLANDS

Sir,

In connection with their study of the issues involved in the current dispute with Japan on questions of pearling on Australia's continental shelf, the Australian Commonwealth legal authorities would be interested to have information about the continental shelf practice of several other countries.

So far as the Falkland Islands are concerned, there is available in Australia the text of the Falkland Islands (Continental Shelf) Order in Council, 21 December, 1950.

The Commonwealth legal authorities would like to know whether there are any additional laws or other instruments applying in the Falkland Islands to matters connected with the continental shelf and if so they would be grateful if you would forward to me copies of the texts of such laws or instruments. If there have been passed in the Falkland Islands any laws applicable to foreigners with respect to fisheries in the epi-continental sea, the texts of such legislation would also be appreciated.

It would also be of interest to know whether, and if so, what other countries have lodged any protests against any legislative or other action which the Falkland Islands may have taken in matters relating to the continental shelf. The texts of such protests would be welcomed by the Commonwealth legal authorities if they are readily available to yo

With regard to any exploitation of mineral resources in respect of the continental shelf of the Falkland Islands, it would be of value to have some information about the number of leases granted and the approximate total area of such leases, together with any available information concerning the extent of active exploitation of continental shelf mineral resources in the area.

I can assure you that any information which you are able to provide on the abovementioned matters will be greatly appreciated.

I have the honour to be,
Sir,
Your obedient servant,

(A.H. Body)
for Secretary.

The Colonial Secretary,
PORT STANLEY. FALKLAND IS.

21

Hon. Col. Sec.,

There are no laws or instruments applying to matters connected with the continental shelf other than the F.J. Continental Shelf O. in C.

To my knowledge no countries have lodged any protests against the above order.

No leases have been granted for the exploitation of the mineral resources (if any) of the continental shelf.

J.P.B.
Registrar
14.vi.56.

40 ✓ 26 and above. Draft letter to pl.
16/6

28

1351

1st August 56

Sir,

16 I have the honour to refer to your letter No: 1577/17 of the 13th March in connexion with the problem of the continental shelf as applied in the case of the Falkland Islands.

So far as the Falkland Islands are concerned there are no laws or instruments applying to matters connected with the continental shelf question other than the Falkland Islands (Continental Shelf) Order in Council of 1950, nor are there any special laws applicable to foreigners with respect to fisheries in the epi-continental sea.

There is no record of other countries having lodged specific protests against any legislative or other actions the Falkland Islands have taken in connexion with the continental shelf but, as you are no doubt aware, the Argentine Government claims sovereignty over the Falkland Islands and its Dependencies and the Government of Chile claim sovereignty over part of the Dependencies. These claims are not recognised by Her Majesty's Government.

There is no exploitation of mineral resources in respect of the continental shelf of the Falkland Islands and no leases or licences have been issued.

I have the honour to be, Sir,
Your humble, obedient servant.

(Sgd) A.C.S. Denton-Thompson

OFFICER ADMINISTERING THE GOVERNMENT.

The Secretary,
Department of External Affairs,
Canberra,
Australia.

BU 24 8/9/56 mail

BU 30/9/57 ~~2/11/56~~

RU 26/10/57 ~~BU 30/9/57~~ BU 20/12/56 No Trace 22/1/57

RESTRICTED

30.

1351

BRITISH EMBASSY,

MONTEVIDEO.

4/3

6 June, 1969

27/6/69

Uruguayan Territorial Waters

Please refer to our telegram No. 3 Saving of 2 June reporting the proclamation by the Uruguayan government of a 12 mile territorial sea and an area of exclusive fishing rights between this and the outer limit of the Continental Shelf.

... 2. I now enclose as promised, a translation of the whole Decree, including the elaborate preamble setting out the reasons on which this decision to double the size of Uruguay's territorial sea has been founded. Basically, however, this is for Uruguay a matter of keeping up with the Argentine and Brazilian Joneses. Flanked as the country is by two such overwhelmingly large and powerful neighbours, successive Uruguayan governments have felt it one of their primordial duties not to let Uruguay's sovereign rights (whether they can be exercised or not is of little consequence) go by default. Nor is there anything particularly new about the declaration of sovereign rights of a kind over the Continental Shelf. This is something which has been in the minds of Uruguayan legislators for some years now - see, for example, Jones' letter to General Department 1273/63 of 12 July 1963 (not to all). We shall, no doubt, see issue in due course a set of regulations designed to control permitted fishing in the outer zone, but the fact is, of course, and the Uruguayans are as well aware of it as anyone else, that the Uruguayan navy is barely capable of policing a 6-mile territorial sea, let alone the new amplifications of Uruguayan maritime jurisdiction. The Government, however, will feel satisfied that it has demonstrated its vigilance on one of the few matters capable of arousing nationalist passions in Uruguayan breasts - only a year ago the then Foreign Minister fell from office because it was alleged that he had failed to bring Uruguay's interest to the notice of the Argentine and Brazilian governments when they were negotiating their Fisheries Agreement.

3. I am not sure exactly what the agreement with Brazil on the delimitation of the two countries' respective waters amounts to, but the Uruguayans profess themselves very satisfied with it and seem disposed to try to persuade the

M.E. Heath, Esq.,
Aviation, Marine and Telecommunications Department,
F.C.O.,
London, S.W.1.

RESTRICTED

Argentine government to accept something similar.

4. I enclose an additional copy of this letter and enclosure for Latin American Department, and am sending copies to the Chanceries at Buenos Aires, Rio de Janeiro and Washington, and to the Colonial Secretary in Stanley.

(K.F.X. Burns)

(Free translation)

31

DECREE N° 235/969

Ministry of Foreign Affairs
Ministry of National Defence
Ministry of Industry and Commerce
Ministry of Transport, Communications & Tourism

Montevideo, 16 May, 1969

With reference to the Decrees of 21 February, 16 July and 26 December, 1963.

CONSIDERING:

(I) That the decree of 21 February 1963 fixed the minimum extension of the territorial waters of the Republic.

That it is beyond dispute, as was stated by the Inter-American Council of Jurists at their meeting in Mexico (1956) that: "Each State is entitled to fix its territorial waters up to reasonable limits, bearing in mind geographical, geological and biological factors, as well as the economic requirements of its population and its security and defence.

That it follows from the considerations on which the Decree of 21 February, 1963 was based, and also from the antecedents rehearsed in the Note addressed by the Ministry of Foreign Affairs to the Embassy of the United States of America on 14 February, 1963, that Uruguay repeatedly maintained the twelve mile criterion, which criterion is compatible with the provisions of the "Geneva Convention on Territorial Waters and Contiguous Zones".

That, although the Decree of 21 February, 1963 fixed the territorial waters at six miles, establishing a Contiguous

Zone of another 6 miles, this position was taken as a "Minimum doctrine", given the circumstances of that moment.

That in the period from 1963 up to to-day, the evolution of International Maritime Law has led to the generalization of the territorial water rule of 12 marine miles, without prejudice to the possibility of applying other criteria when geographic, physical and/or economic reasons require it.

That present circumstances and the analysis of all the elements of the question make it the duty of the Uruguayan Government to bring up to date the criterion accepted in 1963, taking as a base Uruguay's own tradition, the principles which inspired the above-mentioned Decree, and international reality. The formula established by the present Decree is, of course, without prejudice to any dispositions which it may be necessary to make in the future, to extend further the territorial waters of the Republic in accordance with the evolution of Public International Law and the demands of the nation's sovereignty.

That the declaration of the extent of the Republic's territorial waters, which is fixed at 12 miles, does not affect the rights of the country over the Contiguous Zone, as established in the Decree of 21 February, 1963, in accordance with Article 24 of the above-mentioned Geneva Convention, and which is reckoned from the outer limit of Uruguayan territorial waters.

That the Joint Uruguayan-Brazilian Declaration of 10 May, 1969, signed by the Ministers of Foreign Affairs of Uruguay and Brazil,...established, in accordance with the criterion established by Article 12 of the Geneva Convention on Territorial Waters and Contiguous Zones: "That the Uruguaya

Government and the Brazilian Government recognize as the lateral limit of the respective maritime jurisdictions the median line, whose points are equidistant from the closest points of the base line and which, starting from the point at which the frontier between the two countries reaches the Atlantic Ocean, is prolonged in the direction of the zone of the adjacent sea".

1.8.69

(II) That the Decree of 16 July, 1963, in entrusting to the Hydrographic Service of the Navy the surveying of the maritime zone beyond the territorial sea, established the criterion of the 200 metres isobatic line for the delimitation of the Continental Shelf of Uruguay, without prejudice to the rights beyond that line to the extent that exploration and exploitation of the natural resources of that zone are possible.

That expository paragraph VI of this Decree states:

"That under Article 2 of the Geneva Convention the riparian State enjoys rights of sovereignty over the Continental Shelf in respect of its exploration and of the exploitation of its natural resources. These rights are independent of its real or fictitious occupation, as well as of any express declaration, and it may not be explored, exploited or reclaimed by third States without the express consent of the riparian State".

In this respect the International Court of Justice in its judgment passed on 20 February, 1969 (Affaire Du Plateau Continental de la Mer du Nord, paragraph 19, page 22) has considered that the "most fundamental of all the rules of Geneva relating to the Continental Shelf, but independent of this norm, is the one according to which: "The rights of the riparian State concerning the zone of the Continental Shelf,

which constitutes a natural extension of its territory over the sea, exi ipso jure and ab initio in virtue of the sovereignty of the State over this territory, and by an extension of this sovereignty under the form of the exercise of sover gn rights for the purpose of exploring the bed of the se and exploiting its natural resources. There is here an inherent right. It is not necessary, in order to exercise it, to follow a given juridical procedure, nor to carry out special juridical acts. Its existence can be proved, as it has been by a number of States, but it does not pre-suppose any constitutive act. What is more, this right is independent of its effective exercise. To use the expression of the Geneva Convention, it is "exclusive" in the sense that if a riparian State choses not to explore or not to exploit the zones of the Continental Shelf which belong to that State, this concerns only that State and no one else can do so without its express consent".

That this Continental Shelf must also be delimited in accordance with the provisions of Article 6 of the Geneva Convention, based on an analogous criterion, ~~en ce qui concerne~~ regarding the admission of the principle of equidistance as accepted by Article 12 of the Convention on Territorial Waters and Contiguous Zones, recognised as an applicable system by Brazil and Uruguay as a system applicable to the delimitation of the limits of their respective territorial waters.

(III) That the Decree of 26 December, 1963, adopted the measures necessary at that time for the defence of the rights of the Republic relating to fishing in its epicontinental waters.

That in these waters - which cover the Continental Shelf, externally bounded by the 200 metres isobatic line, without

prejudice to the rights of Uruguay beyond this line as far as the exploration and exploitation of the natural resources of the zone may be possible - the Republic reserves exclusive fishing and aquatic hunting rights.

That these rights, obviously, do not affect, nor can affect, free navigation in these waters;

(IV) That for the reasons set out in the preceding expository paragraphs, it is necessary to bring up to date and to complete the rulings contained in the Decrees of 21 February, 16 June, and 26 December, 1963;

The President of the Republic

DECREES:

Article 1: The territorial sea of the Republic extends to twelve nautical miles.

Article 2: The Contiguous Zone to the territorial sea shall be governed by the provisions of the decree of 21 February, 1963;

Article 3: The lateral delimitation of the Uruguayan territorial waters with the territorial waters of Brazil, will be carried out in accordance with the provisions of Article 12 of the Geneva Convention on Territorial Waters and Contiguous Zone.

Article 4: Declares the exclusive right of the Republic in respect of fishing and aquatic hunting within the maritime zone lying between the external limit of the territorial sea and the external limit of the Continental Shelf, as delimited in the form referred to in the expository part of the present Decree.

Fishing vessels flying foreign flags may only exploit the living resources of Uruguayan epicontinental waters, where authorisation has been previously granted by the Executive Power, in accordance with the rules which in this respect may be made or in accordance with what the International Agreements now in force prescribe.

Article 5 The lateral delimitation of the Continental Shelf shall be carried out after the appropriate international negotiations, by the application of the principle of equidistance, as provided in Article 6 of the Geneva Convention on the Continental Shelf.

Article 6: The declaration of exclusive fishing rights over epi-continental waters does not signify in any way the renunciation of every possible and eventual enlargement of the extent of the national competences in this field, in accordance with the evolution of the economic, political, juridical and technical factors.

Article 7: The Ministries of Foreign Affairs and National Defence will take the necessary steps to prepare and publish large scale charts indicating the location of the maritime zones established in the present Decree.

Article 8: Let it be made known, published, etc.,

signed: PACHECO ARECO - VENANCIO FLORES- General Antonio FRANCESE - JORGE PEIRANO FACIO, - JOSE SERRATO.

Bl 1/3

"Geneva Convention on Territorial Waters & Contiguous Zones"

Bl 20/9

-6-

-1-

32

Our Ref: 1351

14 October, 1969.

Geneva Convention on Territorial Waters and Contiguous Zones

You were kind enough to send me recently a copy of the Geneva Convention on the Continental Shelf. Would you now be kind enough to send me a copy of the Geneva Convention on Territorial Waters and Contiguous Zones?

(J.A. Jones)

Reply at 33

UA 24/10/69

A. St.J. Sugg, Esq., C.M.G.

Bk 23/11

DA Jones & OBR.

33

With the compliments of

FOREIGN AND COMMONWEALTH OFFICE

Your letter to me
M. 1351 of 14 Oct.
Ben Greenish

LONDON, S.W.1

7/11/69

S/C. Submit with f. 1351
to me.

18/11

CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

PART I

TERRITORIAL SEA

Section I - General

Article 1

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

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

Article 2

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

Section II - Limits of the Territorial Sea

Article 3

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 4

1. In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

Article 5

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

Article 6

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

Article 7

1. This article relates only to bays the coasts of which belong to a single State.

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

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.

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

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

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Article 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

Article 10

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 11

1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has not territorial sea of its own.

Article 12

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the base-lines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Article 13

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

Section III - Right of Innocent Passage

Sub-Section A - Rules Applicable to All Ships

Article 14

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

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

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

6. Submarines are required to navigate on the surface and to show their flag.

Article 15

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Article 16

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

Article 17

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

Sub-Section B - Rules Applicable to Merchant Ships

Article 18

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article 19

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 20

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proveedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Sub-Section C - Rules Applicable to Government Ships other than Warships

Article 21

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

Article 22

1. The rules contained in sub-section A and in article 18 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

Sub-Section D - Rule Applicable to Warships

Article 23

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

PART II

CONTIGUOUS ZONE

Article 24

1. In a Zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

(a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

PART III

FINAL ARTICLES

Article 25

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

Article 26

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 27

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 28

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 26. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 29

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations. (1)

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 30

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 31

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 26:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 26, 27 and 28;

(b) Of the date on which this Convention will come into force, in accordance with article 29;

(c) Of requests for revision in accordance with article 30.

Article 32

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 26.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

(1) The convention entered into force on September 10, 1964.

R.S.C.

You may wish to note that we now have in this file a copy of the Convention on the Territorial Sea & the Contiguous Zone (pp. 34 - 40) & in f. 2298/A: Continental Shelf, a copy of the Convention on the Continental Shelf. Perhaps you would wish to take a note of the relevant file numbers.

23/12

Col. Sec.

It would be most interesting to know if this Convention applies to us or has been extended to us.

In the U.K. it is supported by or gives support to the Fishery Limits Act 1964. ~~and~~

The Russians inquired about our fishery limits and I believe Mr. Thompson told them 3 miles. (territorial waters).

G.P.B.
30.XII.69

R.S.C. Our Continental Shelf is fixed by the O. in C. of 21.12.1950 to be found at pp. 2-5, Vol 2 of the Laws, as you know. So far as I have been able to discover the limits of our territorial waters are 3 miles. I would doubt that this Convention has been applied to us but agree it would be desirable to be certain. If you will return

42

Note to me I will write to FCO by 16.1.70 max.

Bol. Sec.
Thank you.
H.B.
2.1.70

BA 15/2

50

33

25th February 72

Your ref: MG 4/1

TERRITORIAL WATERS

Thank you for the copy of your letter of the 16th of February to Whitney about the next Law of the Sea Conference planned for 1973 and the probability that Britain will wish to extend her territorial waters to 12 miles.

2. As you correctly say in your paragraph 5, it will in due course be desirable for Members of our Executive Council to know what is proposed and to know it before any public announcement is made.

J. A. Jones

R. C. Cox, Esq.,
Atlantic and Indian Ocean Department,
Foreign and Commonwealth Office,
London, SW1 2AH

JB