AERIAL JURISDICTION OVER SAFETY ZONES SURROUNDING MARITIME INSTALLATIONS

BY

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C O N T E N T S

ABBREVIATIONS

ADIZ	Air Defence Information Zone
Art./s	Article/s
Ch.	Chapter
Conf.	Conference
CSC	Continental Shelf Convention 1958
Ed.	Editor
E.E.C.	European Economic Community
E.E.Z	Exclusive Economic Zone
HSC	High Seas Convention, 1958
ICAO	International Civil Aviation Organization
ICJ Rep.	International Court of Justice, Reports
ILC	International Law Commission
IMCO	Intergovernmental Maritime Consultative Organisation
IMO	International Maritime Organization
ISBA	International Seabed Authority
LNTS	League of Nations Treaty Series
LOSC	Law of the Seas Convention, 1982
N.	Footnote
NYIL	Netherlands Yearbook of International Law
Para.	Paragraph
Prepcom.	Preparatory Commission
RIAA	U.N. Reports of International Arbitral Awards
S.	Section
SOEKOR	Suidelike Olie Explorasie Korporasie
Supp.	Supplement
TSC	Territorial Seas Convention, 1958
UK	United Kingdom
UN	United Nations
UNCLOS I	First United Nations Conference on the Law of the Sea
UNCLOS II	Second United Nations Conference on the Law of the Sea
UNCLOS III	Third United Nations Conference on the Law of the Sea

PART A

INTRODUCTION

CHAPTER I GENERAL

Extending the search for oil and gas into the marine areas is a relatively recent phase in the production of oil and gas. Although shallow water mining has been conducted since the 1940's, these attempts have been seen more as extensions of terrestrial mining than as serious offshore attempts.[1] The technological feasibility of offshore oil and gas mining has increased rapidly from the late 1950's onwards.[2] This coincides, and more often than not is related to, recent vast developments in the Law of the Sea and pursuit of agreement by nations on vital questions related to the use and control of the sea. International law relating to the offshore oil and gas regime is therefore fairly recent in origin and, in many areas, unsettled. Lawyers have wrestled with the problems of creating a legal regime in areas beyond State sovereignty, applicable to constrictions which generally do not adequately resemble, for legal purposes, either ships or islands.

In addition to the regime to be applied to the installation itself, it was soon realized that special precautions would have to be taken to ensure that loss of both life and property was kept to an absolute minimum. Offshore installations represent vast investment. They operate on, and are exposed to, an environment which is unpredictable, powerful and on occasion violent in nature, not to mention

the nature of the substances to be brought to the surface, which are dangerous, as experience has shown, in terms of inter alia, volatility and threat of pollution. One of the concepts soon arrived at was that of the safety zone, which has the obvious purpose of minimizing the possibility of collision with the installation, or crafts or objects attached to, or in the service of, the installation.

Now as the concept of a safety zone suggests, and due to the fact that the installations frequently operate beyond territorial waters, it was obvious that parts of the high seas were to be affected. While uneasy agreement has been reached in the conventions on the Law of the Sea[3] in relation to shipping and respect for safety zones, the concept of aerial jurisdiction over these legally unique areas still remains a controversial one. This despite the fact that overflight of these areas is both possible and likely by almost all aircraft, and that certain aircraft, particularly helicopters, have proven vital to the operation of installations, as a means of transport and communication. In addition technology has provided, and will provide, new craft which will be classified either as ships or aircraft, and will be considered in the light of their usefulness to oil and gas installations or alternatively the threat they pose to them.

CHAPTER II

THE RIGHT TO CONSTRUCT MARITIME INSTALLATIONS IN THE MARITIME ZONES

INTERNAL WATERS

These are all waters which lie landward of the baseline of the territorial sea[4] of a State and may include internal seas,[5] bays, historic bays, river mouths, ports, harbours, rivers, artificial waterways etc. Under international customary law it is clear that the coastal state has full and complete rights of legislative and enforcement jurisdiction in internal waters.[6] Hence the coastal State has full control over her internal waters and all legitimate uses of these waters are open to the State. Construction of installations, and taking necessary measures to protect them, would most certainly be regarded as legitimate uses of internal waters (provided that the installation did not cause damage to another State[7]). The creation of any safety zone would clearly be the prerogative of the coastal state.[8]

TERRITORIAL SEAS

In terms of international law the coastal State has sovereignty over her territorial seas.[9] Although the breadth of this area has been the subject of dispute since the concept of a territorial sea evolved, it would appear that it has been settled at twelve nautical miles. This figure appears in Art 3 of LOSC and is supported by a substantial following in State practice.[10] The coastal State has full and complete jurisdiction over her territorial seas.[11] Construction of installations in the territorial seas is clearly a legitimate use, and the creation of any safety zones is again within the powers of the coastal State, which zones would have to be observed even by ships in innocent passage.

THE EXCLUSIVE ECONOMIC ZONE

The EEZ extends up to 200 nautical miles from the baselines from which the territorial sea is measured.[12] It is a concept of recent origin, arising from the preparations for UNCLOS III. The right to claim an EEZ would appear to be international customary law by now, even if some of the rules pertaining to the EEZ are not. Over seventy States have claimed a 200 mile EEZ.[13]

Under LOSC Art 56 the coastal State has

> "(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the protection of energy from the water, currents and winds (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
> (i) the establishment and use of artificial islands, installations and structures..."

While the right to construct artificial islands in the EEZ is absolute,[14] there exists in relation to installations and structures, the right of construction only for economic purposes and those purposes implicit in Art 56 above, that is, exploring, exploiting, conserving and managing.[15] Important is that the coastal State has the exclusive right to construct and to authorize and to regulate the construction, operation and use of these artificial islands, installations and structures, in terms of Art 60(1) LOSC. This is an important provision and must be remembered when considering matters in relation to installations, including safety zones. The intention of the convention is clearly to provide for the beneficial use of the EEZ by the coastal

State on the one hand, while insisting on the administrative and legal responsibility of that coastal State in relation to such installations on the other. The reasonableness of any actions of the coastal state designed to protect the installations must therefore be assessed in this light.

The right to establish installations is almost certainly international customary law too, as State practice appears to be fairly extensive in this regard (amongst those States having the necessary infrastructure, at any rate) and there would appear to be no significant objection in principle to such practice. In addition, if one were to follow the argument that the EEZ is part of the high seas and certain uses are reserved for the coastal State, Art 87 (1)(d) of LOSC regards the "construction of artificial islands and other installations permitted under international law, subject to Part VI [the rules pertaining to the continental shelf]" as a legitimate freedom of the high seas.

THE CONTINENTAL SHELF

The CSC Art 2 provides that the coastal State exercises over the continental Shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. These rights are exclusive.[16] Over thirty States claim a continental shelf in accordance with the CSC Art 1 definition,[17] others claim to 200 m only, others to 200 miles, and others still further.[18] Whatever the problems of defining the outer limit of the continental shelf, which are beyond the scope of this work, it is certainly customary law that a State may claim one, for the above purposes.

The right to construct installations on the continental shelf is explicitly stated in CSC Art 5(2). Art 80 LOSC confirms this right.[19] This would apply in terms of most definitions, to that part of the continental shelf beyond the EEZ.

THE CONTIGUOUS ZONE

As this zone falls within the EEZ, by any definition of the contiguous zone, the right to construct, regulate and authorize parallels that in the EEZ above.[20]

ARCHIPELAGIC WATERS

This concept was provided for for the first time in the LOSC. These waters comprise all the maritime waters within archipelagic straight baselines established in accordance with the convention,[21] including the internal waters of an archipelagic State (rivers, bays and ports). Legally the archipelagic waters are neither internal waters (except for rivers, bays and ports[22]) nor territorial seas, although they bear a number of resemblances to the latter. An archipelagic State has sovereignty over its archipelagic waters including the subjacent seabed and subsoil and the resources contained therein,[23] subject to a number of rights enjoyed by third States (those established under previous agreements, fishing rights and other legitimate activities of immediately adjacent neighbouring States falling within archipelagic waters, existing submarine cables and their maintenance[24]). In addition, foreign ships and aircraft have the right of archipelagic sea lane passage, with sea lanes and air routes being designated by the archipelagic State in consultation with the competent authorities (IMO and ICAO).[25]

It would appear therefore, that the archipelagic State may establish installations in her archipelagic waters (and of course internal waters), sea and air lanes presumably being drawn to avoid these, after consultation with IMO and ICAO. Where a State does not claim archipelagic waters, the situation would be governed by the normal regime of territorial waters, continental shelf, EEZ and high seas.

STRAITS

Under the TSC 1958 passage, rights of ships and aircraft depended on whether the strait was territorial seas or high seas. The rule emerged however, that innocent passage could not be suspended in straits used for international navigation between one part of the high seas and another,[26] or the territorial sea of a foreign State.[27] The regime has been revised by LOSC.

Under LOSC, ships and aircraft have a right of transit passage, which right shall not be impeded by the coastal State.[28] In principle there would appear to be no restrictions on the coastal State to construct installations, except where the establishment of the installation and safety zone would impede transit passage. (transit passage includes overflight[28]). As with archipelagic waters however, presumably sea lanes and traffic separation schemes could be established in co-operation with IMO and ICAO[29] to avoid installations as long as this did not interfere appreciably with transit passage.

HIGH SEAS

The question of mining of the deep seabed area is in international law a controversial one, and was one of the main areas of disagreement at UNCLOS III. Nevertheless LOSC Art 87(1)(d) provides that the construction of artificial islands and other installations permitted under international law is a legitimate freedom of the high seas. Presumably the reference to international law is intended to make the provision subject to the licensing procedure of the ISBA and Prepcom. This would at time of writing probably not be international customary law. That installations will be operating in the deep seabed area is accepted (particularly those controlled by members of the Reciprocating States System[30]), but the issue is not settled.

CHAPTER III

OVERFLIGHT AND THE MARITIME ZONES

THE TERRITORIAL WATERS

The Paris Convention 1919[31], Art 1, stated that

> "The High Contracting Parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory. For the purposes of the present Convention, the territory of a State shall be understood as including the national territory, both that of the Mother Country and of the Colonies, and the territorial waters adjacent thereto"

The Ibero-American Convention, Madrid, 1926, and the Pan-American Convention on Commercial Aviation, Havana, 1928, contained similar provisions. Sovereignty over this superjacent air space has been a firm principle of international law, apparently, since 1919. It was confirmed in the Chicago Convention 1944[32], **Art 1** which states:

> "The contracting States recognize that every State has complete and exclusive sovereignty over the air space above its territory"

Art 2 continues:

> "For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State".[33]

This is further strengthened by Art 2(2) LOSC and Art 2 of TSC which provide that the sovereignty of a coastal State

> "extends to the air space over the territorial sea as well as to its bed and subsoil".

Unlike navigation however, the right of innocent passage for aircraft has never been admitted, mainly because of their speed and ability to avoid detection.[34] As far as aircraft are concerned therefore, the issue under discussion in this dissertation need be taken no further. The coastal state may completely control overflight of the territorial waters and may therefore *a fortiori* control overflight over any safety zones in these waters.[35] Frequently however, States conclude treaties governing the question of overflight of land and territorial waters. Such treaties may concern themselves with the issue of safety zones.

THE HIGH SEAS

The Chicago Convention 1944 does not expressly contain a provision confirming freedom of overflight above the high seas, but it appears that articles 1 and 2 of this Convention indirectly provide for this, using the "*a contrario*" argument. In other words, complete and exclusive sovereignty over airspace (Art 1) relates only to territory as defined in Art 2 which excludes the high seas.[36] The HSC 1958 however, confirms that

> "...Freedom of the high seas ... comprises, *inter alia*, both for coastal and non-coastal States: ... (4) Freedom to fly over the high seas ...",[37]

as does LOSC Art 87(1)(b). Freedom of overflight would appear to be restricted, as is freedom of navigation, in the sense that piracy is prohibited[38] and that the "Rules of the Air" are applicable to the high seas by virtue of Art 12 of the Chicago Convention 1944, as read with Annex 2.[39] In practice the Rules of the Air are normally observed even by non-members to the Chicago Convention and might well, by now, be considered as international customary law.[40] Another possible restriction on the freedom of the high seas is the right of hot pursuit of foreign aircraft in contravention of laws of the coastal State, but this does not appear to be settled.[41]

Finally it must be noted that the freedom of overflight in the EEZ is expressly preserved by Art 58(1) of LOSC. This is almost certainly international customary law, although the practice of a few States does contrast.[42]

ARCHIPELAGIC WATERS

As has been mentioned, LOSC provides that all ships and aircraft enjoy the right of archipelagic sea lanes passage in sea lanes and air routes established consequent to Art 53(1).[43] Passage must be continuous and expeditious and unobstructed transit between one part of the high seas or an EEZ and another part of the high seas or an EEZ.[44] If the archipelagic State fails to establish sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for navigation (international).[45] Now it would seem that even though there was general consensus at UNCLOS III on the legal regime governing archipelagos since 1977, recent State practice appears to be diverse and not always in line with LOSC.[46] This being so, the solution with regard to claims of jurisdiction to overflight would seem to be that validity of claims depends on the principle of opposability. A claim that receives the acquiescance or acceptance of another State will be valid as between those States.[47]

STRAITS

Section 2 of LOSC "applies to straits which are used for international navigation between one part of the high seas or an EEZ and another part of the high seas or an EEZ".[48] Art 38(1) creates the right of transit passage which is "the exercise ... of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait".[49] The obligations of ships and aircraft in transit passage are the same as those relevant for archipelagic sea lanes passage.[50] Where a strait has a

route through the high seas or EEZ of "similar convenience with respect to navigational and hydrographical characteristics; in such routes the other relevant parts of this Convention, including the provisions regarding the freedoms of navigation and overflight, apply".[51]

Where a strait is created between an island of a State and its mainland "transit passage shall not apply if there exists seaward of the island a route through the high seas or through an EEZ of similar convenience with respect to navigational and hydrographical characteristics".[52] Innocent passage applies in the area excluded from transit passage.[53] This means that there is no right of innocent passage for aircraft in such an area, and aerial jurisdiction for the purposes of this dissertation is the same as that under territorial waters above. Art 45(1)(b) also creates the right of innocent passage in straits used for international navigation between a part of the high seas or an EEZ and the territorial seas of a foreign State. Again, this would not include overflight. Thus aircraft have the right of transit passage over territorial seas,[54] but not those seas excluded by Arts 45(1)(a) and (b).

It is probable that the provisions on transit passage, as with archipelagic sea lanes passage, are not international customary law at this time. Again the situation will be governed according to the principle of opposability, until such time as a rule emerges as international customary law.[55]

CONTIGUOUS AIR ZONES

No outright claims have been made to any contiguous air zone beyond the territorial sea in the sense that the contiguous zone in the law of the sea exists. Air Defence Identification Zones, however, originated during the Korean War and were declared in 1950-1951 by the USA and Canada "for reasons of military security". They extend up to 300 miles

off the coast and foreign aircraft flying to and from the North American continent are obliged to report to the Air Traffic Control authorities upon entering the ADIZ.[56] Other ADIZ's have been created by France, the Philippines, Indonesia, Iceland, Italy, Japan, Korea and Taiwan. This practice is controversial, as it infringes upon the principle of "freedom of the air" above the high seas, but has been justified on the grounds of self defence, necessity and the analogy of the contiguous zone in the law of the sea.[57] The obligations imposed however, amount, it appears, to reporting of presence, and as such do not really affect the question of jurisdiction over aircraft for the safety of installations.

P A R T B

"A I R C R A F T" ?

Where aerial jurisdiction is claimed over the airspace of any safety zone surrounding a maritime installation, it is of course of considerable importance to establish to what craft the aerial jurisdiction applies. Even more important perhaps, is to establish what craft are exempt from control where no aerial jurisdiction is claimed over a safety zone, but control is claimed over shipping. It is necessary, in other words, to establish exactly what crafts fall under the terms "ship" or "vessel", for example, and what craft may be classed as "aircraft". This would assist in determining whether any Conventional or Legislative provision applies to a particular craft, where that provision uses the terms "ship" or "vessel" or "aircraft" etc.

CHAPTER IV

AIRCRAFT IN GENERAL

The term "aircraft" has not been clearly defined in the Chicago Convention[58] itself or in any other multilateral air law convention.[59] It has been contended (it is submitted with some justification) that the drafters of these conventions preferred to let jurisprudence determine the cases in which "aircraft" are involved.[60] Two Annexes to the Chicago Convention, however, do define "aircraft" for the purposes of these Annexes, as:

> "Any machine that can derive support in the atmosphere from the reactions of the air".[61]

This definition was taken from the Paris Convention 1919,[62] Appendix A. The definition was amended however, to include the phrase: "...other than the reactions of the air against the earth's surface".[63]

The express purpose of this amendment was clearly to exclude hovercraft from the definition.

Now the term "aircraft" certainly has a much wider meaning than "aeroplane". It includes at least aeroplane, seaplane, helicopter, airship, balloon, kite and it may well include hovercraft, but would probably not include spacecraft.[64] The Annex 6 and 7 definition includes two broad categories of craft:

1. Machines that are heavier than air that are mechanically driven (for example aeroplanes, seaplanes or helicopters), as well as those heavier than air that are <u>not</u> mechanically driven (like gliders or even kites (which would include hang-gliders etc);
2. machines that are lighter than air that are mechanically driven (for example airships) or not (e.g. captive or free balloons).[65]

As has been noted however, by confining the term "aircraft" to machines which fly <u>because</u> they can derive support from the reactions of the air, the Annex definition excludes machines which are able to fly in the air independantly of any support derived from the reactions of the air, such as missiles, rockets or earth satellites.[66] This type of machine is however, included in the legal definition of aircraft in several countries such as Argentina, Canada, The Dominican Republic, Egypt, France, Guatemala and the United States of America.[67]

Another view is that "aircraft" should be defined in terms of a mechanised air transport element,[68] in other words, aircraft are machines apt for the carriage by air of persons or things from one place to another. Following this view it would be advisable to resort to two fundamental bases for defining aircraft: their aptitude to move in airspace and carry persons or things.[69] Balloons would therefore be aircraft when "their trajectory is long enough to imply carriage - even in a vertical direction - while sounding balloons and parachutes would not come within the concept: the former because they cannot navigate in airspace, the latter because of their specific purpose and incapacity for carriage... The situation of radio-controlled aircraft is still clearer. Certain controversy exists, but the answer should be in the affirmative since they are able to navigate in airspace and carry persons or things. Such reasoning is also valid for the case of free balloons without crews. Similarly, gliders ought to come under the concept of aircraft because, although they lack engines, once in airspace they are able to carry out extended flights.[70] This latter contention in relation to gliders was supported by a French court decision.[71]

In the United Kingdom the Air Navigation Orders of 1949[72] and 1954[73] defined "aircraft" as including "all balloons (whether captive or free), kites, gliders, airships and flying machines". The present Air Navigation Order of 1985[74] contains no definition of "aircraft". It does however, contain a table of general classification of aircraft which includes as aircraft "all balloons (captive or free), kites, gliders, airships, aeroplanes (which includes landplanes, seaplanes, amphibious and self-launching motor gliders) and rotorcraft (such as gyroplanes and helicopters)". A "flying machine" is an aircraft heavier than air and power driven. A "kite" is a non-power driven craft, heavier than air, moored to or towed from the ground or water. A "balloon" is a non-power driven aircraft, lighter than air and can be free or captive. A "glider" is an aircraft heavier than air, not fixed to the ground and having no driving power but having means of directional control. Also included is a "pilotless flying machine" as an aircraft in flight. No other English enactment defines aircraft. In practice however, it is certain that the craft in the Order would be regarded as aircraft in English Law.[75]

In the United States of America an "aircraft" is defined as "any contrivance now known or hereafter invented, used, or designed for navigation of, or flight in, the air".[76] This definition would seem to include projectiles. The term "navigation" is not defined - it is only stated to include piloting.[77]

Before drawing any conclusions as to what should or should not be considered as aircraft on the basis of the above discussion, certain craft must be examined further.

CHAPTER V

SEAPLANES, HOVERCRAFT AND HYDROFOILS

1. SEAPLANES OR FLYING BOATS

These craft are unusual in that they are "amphibious" in nature. They are fully able to fly in no way different to conventional winged aircraft, yet, unlike the latter, they have the ability to float upon water while remaining stationary and to manoevre across water including of course, for the purposes of taking off and landing.

The better view, it is submitted, is that these craft are "aircraft" and not "ships" or "vessels". This should be a fortiori the case with lesser equipped seaplanes equipped with floats only for emergency etc.

> .."Air is the true medium of [the] craft; the water is a mere incident. They operate on it rather than in it..."[78]

Two American cases and two British cases are of interest here. In United States v Northwest Air Service[79] it was decided that no maritime lien could attach to a seaplane in respect of repairs effected to it in a hangar on land. This case has, however, attracted criticism and it has been suggested that "if repairs to a seaplane are made to assist its navigability on water there is no reason why a maritime lien should not arise".[80] Against this decision, however, is the decision in Reinhart v Newport Flying Service Corporation,(1928) U.S.Av. R. 232, where it was held by Cardozo J that a seaplane moored in navigable waters was a vessel. This case would, therefore, seem to indicate that seaplanes and flying boats are more easily equated with "ships" and "vessels" than are other ordinary land aircraft.[81] In the Kings Bench decision

of Polpen Shipping Co. Ltd v Commercial Union Assurance Co Ltd.[92] the facts were that a time policy of insurance on the plaintiff's motor vessel covered a loss by collision between the plaintiff's vessel and "any other ship or vessel". During the life of the policy the plaintiff's vessel dragged her anchor and collided with, and damaged, a flying boat belonging to the State which was also at anchor. The plaintiff, having paid for the damage to the flying boat, claimed from their underwriters. Atkinson J stated at 167:

> "The conclusion at which I have arrived is that it is impossible to hold that the words "ship or vessel" in this policy include this flying boat. I do not want to attempt a definition, but if I had to define "ship or vessel" I should say that it was any hollow structure intended to be used in navigation, i.e. intended to do its real work on the seas or other waters and capable of free and ordered movement thereon from one place to another. A flying boat's real work is to fly. It is constructed for that purpose, and its ability to float and navigate short distances is merely incidental to that work. To my mind that is where the difference lies".

Judgment was accordingly given for the defendants. Similarly in the Scottish case of Watson v R.C.A. Victor Co. Inc.[93] the Sheriff's judgment read:

> "It is common knowledge that a seaplane is in reality only a species of aircraft and that although its construction permits of its floating on the sea, or even being navigated short distances, its primary function...is navigation in the air...In short, in popular language, no one would I think describe a seaplane as a ship, or vessel, or boat...Plainly it cannot be predicated of a seaplane...that it is 'used in navigation' in the sense in which a ship or vessel is so used".

Technically the taxi-ing of a seaplane could bring the craft within the definition of a "ship" or "vessel" if this action were to be construed as navigation. It is submitted, however, that this would not be satisfactory. No State would be willing to apply its entire body of shipping law to a craft which really does not warrant such application, most of this legislation being inappropriate or inapplicable.[84] Bearing in mind, however, that the Conventions require only that "ships" respect safety zones[85] it does seem anomalous that while a flying boat (if excluded from the definition of "ship" as it must be) would be permitted (under the Conventions) to taxi, cruise just above water, or remain stationary over waters within a safety zone, a "ship" or "vessel", which could even be smaller, would not. Nevertheless it would appear that the general view is that seaplanes and flying boats are aircraft.

2. HOVERCRAFT

The following definition has been proposed:

> "An hovercraft may be defined as a surface vehicle which in operation is wholly or partially supported above the surface over which it is travelling, irrespective of movement of its lifting areas, by a continuously self-generated pressurized cushion of air which is retained beneath the vehicle and carried along with it. Air is supplied continuously to the cushion at a rate sufficient to maintain the supporting pressure against the loss occurring through the imperfect sealing of the cushion periphery. The pressurized cushion performs two functions, firstly to lubricate, reducing the resistance between craft and surface to a minimum, and secondly to provide the low-pressure, low inertia suspension system necessary for the vehicle to traverse rough surfaces".[86]

This paragraph clearly emphasizes the close relationship between the hovercraft and the surface.

There are two broad categories of hovercraft - amphibious and non-amphibious, the latter being designed to travel over water only. Hovercraft never at any stage rise above a height greater than a few feet above the surface. Within certain limits, however, they are unaffected by the nature of the terrain over which they travel (on water, as the case may be). Designs of hovercraft vary considerably, but there would appear to be three broad categories. The first are propelled by airscrews, the second by propellers which remain submerged when the hovercraft is "in flight" (this variation obviously being designed to traverse water only) and the third category is "virtually a land vehicle which is partly supported by the cushion of air although its wheels remain in contact with the ground and provide both the motive power and directional control".[87]

McNair submits that hovercraft should be acknowledged as a type of craft sui generis and that a court's decision in a particular case will depend not only on the purpose for which the classification is required, but also upon the evidence given with regard to the design and method of operation of the particular hovercraft involved.[88] Following this, McNair would regard the third category above as a motorvehicle, and the second as a "vessel" rather than an aircraft.[89] Nevertheless McNair concedes that the machines have much in common with aircraft, particularly having regard to their design and methods of construction, and consequently, some types of hovercraft could in some circumstances be quite properly regarded as aircraft.[90]

Bearing in mind the unique qualities of hovercraft, which in some instances resemble aircraft, in that little or no contact is made with the surface over which it is travelling, yet at the same time even these craft cannot operate with the surface more than a few feet below the craft, it is submitted that the view that hovercraft should be regarded as craft sui generis is the correct one. With

respect, however, it is suggested that it would not be logical to classify hovercraft as craft sui generis on one hand, while further categorizing them as vehicles, vessels or aircraft in accordance with particular design, on the other, thereby applying the entire body of air law, motor vehicle law or shipping law to that particular craft, as the case may be. More logical would be to apply a particular law to hovercraft in general, as the need arises. It is submitted that this would in addition more readily take into account any technological advancement in the field of hovercraft design.

Provision for this has in fact been made in the United Kingdom under the Hovercraft Act.91 "Hovercraft" is defined in section 4 as:

> "...a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle".[92]

For the purposes of this discussion, the key section is section 1 of the Act which provides that

> "Her Majesty may by Order in Council make such provision as She considers expedient...,
>
> h) for applying in relation to hovercraft or to persons, things or places connected with hovercraft;
>
> i) any enactment or instrument relating to ships, aircraft, motor vehicles or other means of transport...
>
> ii) any rules of law relating to ships or to persons, things or places connected with ships..."

This last provision ((ii) above) could be read to imply a greater legal affiliation of hovercraft to ships than other forms of transport. Nevertheless Section 1(h)(i) does apply to all forms of transport. In relation to safety zones

surrounding British maritime installations it will be seen that S21(1) and (3) of the Oil and Gas Enterprise Act 1982 forbids all vessels from entering safety zones. S28(1) Of the same Act includes hovercraft in the definition of the term "vessel" for the purposes of that Act.

Although, therefore, "ship" is not defined in either of the Conventions dealing with the safety zone, clearly each State would be free to interpret "All ships must respect these safety zones...etc."[93] to include hovercraft. This would be without doubt the view taken by any State wishing to protect an installation by means of a safety zone, as hovercraft operate not only on the same plane as ships (i.e. not above the installation), but often at far greater speeds.

3. HYDROFOILS

There are two principal types of hydrofoil that have been built. The first is a surface piercing hydrofoil, which relies on variable immersion of the foils to control lift.[94] The second is the fully submerged foil craft, which normally requires an automatic control system and control surfaces to vary lift.[95] In both cases it is quite clear that the craft is in contact with the water all of the time, either by means of the hull of the craft or the foils. Only exceptionally would both hull and foils be clear of the water and even then for no more than a second or so.

It is submitted that no State would have the slightest difficulty in classifying these craft as "ships" or "vessels", despite the high degree of sophistication apparent from design and mode of travel. The term "aircraft" would most certainly not be appropriate in describing hydrofoils. Where Conventional provision or State legislation or regulation refers to "ship" or "vessel", hydrofoils would quite clearly be governed by that provision or rule.

CHAPTER VI

CONCLUSION ON "AIRCRAFT"

The definition of "aircraft" that appears in Annexes 6 and 7 of the Chicago Convention 1944 is controlling as between parties to this Convention. Bearing in mind the fact that the Chicago Convention has over 150 parties, it could well be that this definition even represents the international customary law definition.[96] This would mean that all missiles and satellites which fly without support derived from the air would be excluded from the definition, as would hovercraft.[97]

As for amphibious craft (excluding hovercraft, for example seaplanes or flying boats) there should be no distinction, once these craft have been classified as aircraft, between cases where such aircraft are airborne and when they are not. As one view states:

> "Modern jurisprudence has completely assimilated the legal status of air and air space to that of subjacent territory[98] and there appears to be no reason why the air or airspace above the high seas should not similarly be assimilated to the high seas themselves".[99]

Following this argument amphibians would therefore be regarded as aircraft even when taxi-ing, or stationary, in the safety zone.[100] Hovercraft, on the other hand, which would be unlikely to be classified as aircraft for the purposes of safety zones and have air regulations applied to them, would, it is submitted, be regarded as "ships" or "vessels" in international law, as observed by State practice.

It is therefore suggested that the following craft would be considered as "aircraft" for the purposes of aerial jurisdiction, or alternatively, lack of aerial jurisdiction:[101]

Aeroplane (including Landplane)(including jet aeroplane)

Seaplane / Flying Boat

Helicopter]
] Rotorcraft
Gyroplane]

Airship

Balloon (free or captive)

Kite

Glider (both towed and self-launching water glider)

Microlite

Those craft which would not be classed as aircraft, but would be classed as vessels would include:

Hovercraft

Hydrofoil / Jetfoil

Those craft which would not be considered as either aircraft or shipping would include:

Spacecraft

Rockets

Missiles

Satellites

Parachute[102]

PART C

THE SAFETY ZONE

CHAPTER VII

THE RIGHT TO HAVE A SAFETY ZONE

A right ancilliary to the right to establish installations and explore and exploit is the right to create safety zones surrounding them. Art 5 (2) of the CSC 1958 states:

> "Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources and to establish safety zones around such installations and devices and to take in these zones measures necessary for their protection".

Paragraph 1 of Art 5 provides that the exploration and exploitation of the continental shelf must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

Paragraph 6 states that neither the installations or devices, nor the safety zones around them may be established where interference may be caused to the use of recognized sea lanes essential to international navigation. Similarly Art 60(4) LOSC provides that

> "The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take

> appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures".

From these articles it emerges that the term "installation" is to be given a wide meaning. "Devices" in CSC Art 5(2) is not defined. "Installations and other devices necessary..." could be taken as meaning "installation and other (alternative) devices" or "installations and other (additional/related) devices" or both. It is submitted that the correct interpretation would be to incorporate both possible readings, but to exclude ships (unless they are drilling ships) as these are not necessary for the actual exploration or exploitation of the continental shelf, as is required by the article. The test for eligibility for a safety zone would, therefore, be the extent of the device or vessel's relation to the actual exploration or exploitation of the shelf. Art 60(4) LOSC would appear to clarify the situation by adding the terms "artificial islands" and substituting the term "devices" for "structures". It is more difficult, possibly, to refer to a ship as a "structure" than as a "device", but this is not beyond doubt. The term "structure", as read with "artificial island" and "installation" would, however, seem to indicate an intention that only structures which remain immobile should be granted safety zones, or at least structures that remain immobile whilst they explore or exploit.[103]

CHAPTER VIII

AERIAL JURISDICTION OVER THE SAFETY ZONE UNDER THE CONVENTIONS

It was made quite clear in Art 5(4) CSC that installations connected with the exploration and exploitation of the shelf's natural resources and located on the continental shelf should have no territorial sea, nor do they affect delimitation of the territorial sea. This is supported by LOSC which provides that "offshore installations and artificial islands shall not be considered as permanent harbour works" and therefore do not, as do harbour works, form part of the baseline.[104] In addition, under LOSC, artificial islands, installations and other structures "do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the EEZ or the continental shelf".[105] Now Art 87(1)(d) clearly regards the construction of artificial islands and other installations permitted under international law as a freedom of the high seas.[106] Nevertheless, the above provisions, as read with LOSC Art 89, which states that "no State may validly purport to subject any part of the high seas to its sovereignty" make it quite clear that no maritime zones are to be generated from installations. This means that the coastal State may not claim jurisdiction over waters around the installation on the basis that they are situated in maritime zones. A fortiori they may not claim any aerial jurisdiction on such a basis.

The coastal State's sovereign rights to explore and exploit the continental shelf are exclusive in that no State may undertake such activities in these areas without the consent of the coastal State.[107] These rights of the coastal State do not depend on occupation, effective or notional, or on

any express proclamation.[108] Of necessity, then, it is within the power of the coastal State to regulate the conditions under which exploration and exploitation are to be conducted, which, of course, has been the case in many countries. LOSC Art 78(2), however, emphasizes that

> "The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention".[109]

The underlined phrase including overflight, as it could well do, the key word in this article is, therefore, "unjustifiable". Clearly some interference with navigation and overflight will inevitably take place by virtue of the mere existance of an installation in the EEZ and beyond. Studying this article in isolation, then, it would depend on the circumstances of each case whether legitimate interference with overflight over the installation, or in the area in the immediate vicinity of the installation, is justified. Of importance would be consideration of size, nature of the rig, number of ancilliary craft, measures already taken etc. Art 60(4) LOSC, however, apart from providing for safety zones, provides that the measures to be taken in those zones are to be appropriate and to ensure the safety of navigation and of the installations. As was submitted above,[110] however, it is doubted whether this implies that safety of aerial navigation is not to be considered. "Navigation" here should surely be given its widest meaning, the purpose of the article clearly being to allow the coastal State to regulate reasonably to avoid collision with the installation.[111] Art 262 LOSC provides in relation to installations established for scientific research, that adequate internationally agreed warning signals are to be provided to ensure safety at sea and "safety of air navigation". There is no reason for research installations being afforded any greater protection in this

respect, than other installations, although admittedly Art 262 permits only internationally agreed warning signals, as opposed to permitting the coastal State to regulate on its own initiative to ensure safety, and take measures which are not necessarily agreed internationally.

The provisions on the safety zone in the Conventions should be read against the background of the important Art 3 of CSC, which reads:

> "The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas or that of the airspace above those waters".[112]

On the other hand there is the obvious consideration of safety of the installations and vessels and aircraft, which the contracting parties would hold as of prime importance. The problem at the conferences was to agree on exactly how these two considerations should be balanced.[113]

Art 5(3) CSC was the result at UNCLOS I.

> "The safety zones referred to in paragraph 2 of this article[114] may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones".

The article resulting from UNCLOS III was LOSC Art 60, which is more elaborate than its predecessor in CSC.

> "5. The breadth of the safety zone shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted

international standards or as recommended by the competent international organisation. Due notice shall be given to the extent of safety zones.

6. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation".[115]

The relevant provision in relation to scientific research installations is Art 260 LOSC:

"Safety zones of a reasonable breadth not exceeding a distance of 500 metres may be created around scientific research installations in accordance with the relevant provision of this Convention. All states shall ensure that such safety zones are respected by their vessels".

All of the above articles provide that the safety zones may extend to 500 metres around the installation.[116] Arguably the term "around" could include airspace in which case the coastal state would be permitted to create an aerial safety zone, as "around" can be read to include a three dimensional aspect as well as a two dimensional one. In addition both CSC and LOSC provide that the zone is to be measured from each point of the outer edge of the installation. Now most installations extend to a significant height above the surface of the sea, some being several storeys high. The outer edges of the installation are invariably points metres above the surface of the sea. The articles could be read, in isolation, to include an air space extending skyward to a height at least as great as the outer edges of the installation, if the safety zone were to be 500 metres, extending horizontally, parallel to the sea, "around" the installation.

The overall intention that emerges from the articles, however, is that safety zones are not to include air space. Both CSC and LOSC provide that ships of all nationalities (or "all ships") are to respect the zones. Nothing is said in relation to aircraft. It is submitted that the term "vessels" in Art 260 LOSC would not include aircraft, not only because an aircraft is not normally referred to as a "vessel", but also because the zones in Art 260 are to be drawn in accordance with the relevant provisions of the Convention, which provisions would certainly include Art 60 LOSC, which would not seem to concern itself with aerial jurisdiction. The intention not to interfere with overflight may also be deduced from the use of other terms in the articles. LOSC Art 60(5) refers to the "breadth" of the safety zone, which would imply a two dimensional, horizontal, interpretation of the zone. In addition the zones are not to interfere with recognized "sea lanes essential to international navigation". This would appear to pertain to shipping only, with the single possible exception of archipelagic sea lanes which may include air routes, in accordance with Art 53(1) LOSC, above them. As was submitted above, however, these archipelagic sea lanes and air routes could be drawn to avoid any conflict with installations, after consultation with IMO or ICAO.[117]

The word "navigation" as it is used in the rest of Art 60 LOSC would not include aerial navigation if the same meaning is attached to the word as appears to have been given to it in paragraph 6 of that article. This paragraph states that "All ships...shall comply with...international standards regarding navigation".

With regard to installations in the Area, Art 147(2)(b) states that installations may not be established where "interference may be caused to the use of recognized sea lanes essential to international navigation or areas of intense fishing activity". In terms of Art 147(2)(c) the

safety zones must have "appropriate markings to ensure the safety of both navigation and the installations."[118] The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes". Again the article is very much shipping orientated. Aerial jurisdiction is not mentioned.

It is also debatable whether aerial safety zones would be reasonably related to the nature and function of the installation, as is required by Art 60(5) LOSC. There would, however, be a certain number of States supporting the view that they would be reasonably related.[119] Others would not. There is also another consideration introduced by Art 60(5) LOSC which provides that international standards are to be taken into account when determining the breadth of the safety zone. A reading of Art 60(5) (above text at N115), with attention being paid to the use of the word "except" in the second sentence, would indicate that more extensive zones may be created where this is authorized by international standards. As will be seen below (Chapter X), State practice might well be involved in the creation of international standards involving aerial safety zones. Even though the articles of the Conventions require a zone to be respected by shipping only, at this stage, a zone which is to be respected by aircraft could also develop into an international standard, and, on doing so, could be permitted in terms of Art 60(5) LOSC itself, for parties to LOSC on LOSC coming into force. Alternatively the provision might develop into international customary law, and be relied upon by any State.[120]

Under LOSC and CSC, therefore, the position is that the coastal State may create safety zones to a maximum of 500

metres around the installation, the distance depending on the nature and function of the installation.[121] At present, it is ships only that are required to respect these zones, not aircraft. The texts of the Conventions give no aerial jurisdiction to the coastal State directly.

The dangers, however, inherent in overflight of waters immediately adjacent to installations, do lead one to enquire whether or not these articles correctly reflect the intention of the participating States at the respective conferences. In other words, is the question of overflight to be regarded as an open one, because aerial jurisdiction is not expressly forbidden in terms of the Conventions, or was it intended that only navigation was to be interfered with, and as little as possible? An examination of the relevant preparatory documents of the conferences is necessary to answer these questions.

CHAPTER IX

AERIAL JURISDICTION OVER THE SAFETY ZONE AND THE TRAVOUX PREPARATOIRES

(i) UNCLOS I

The first time a zone around any installation appears to have been officially mentioned was in the United Nations Report of the International Law Commission covering its second session (June 5 - July 29 1950).[122] Paragraph 200 reads:

> "...For works and installations established in the waters of the high seas for working the seabed and subsoil, special security zones might be set up, but they could not be classed as territorial waters..."[123]

Immediately apparent from this paragraph are the two concerns

a) to protect the installations and avoid collision and
b) the unwillingness to extend any form of coastal State sovereignty.

The Introductory Report by the Committee on Rights to the Seabed and its Subsoil, International Law Association at the Copenhagen Conference, 1950[124] adopted the term "safety zone":

> "(4) The coastal State which is erecting or has erected any installation of the description referred to..., being an installation which reaches above sealevel, should be entitled to exercise over a limited portion of the waters above the continental shelf such control and jurisdiction as is required for the protection of such installation, but no such installation should of itself be considered as an 'island' or an 'elevation of the seabed' within the meaning of international law. Such limited portions of the high seas above the continental shelf should be referred to as 'safety zones'".

Of interest in this sub-paragraph is the extremely wide definition of installation for the purpose of safety zones. This did not survive into the text of CSC. The underlined phrase is also quite broad enough in itself to include aerial jurisdiction. The intention not to furnish full sovereignty is again clear from the stipulation that the installation is not an island. The paragraph continues:

> "(5) Each safety zone should normally be defined by a circle with a radius of 500 metres around the installation in question. This suggestion is made in view of the fact that, according to the legislation of various countries, the safety zone around an oil well (within which smoking and the lighting of fires is prohibited) is defined in this way".

The use of the three underlined words does not seem to envisage airspace ("hemisphere" could have been used instead of "circle", for instance) being included in the zone.[125] If this sub-paragraph is the origin of the figure of 500 metres for safety zones, the reason for the figure, given in the second sentence, cannot be the rationale behind it today. The purpose of the zone is quite clearly, at present, to avoid collision.

The overall impression given by this paragraph, it is submitted, is that aerial jurisdiction is not envisaged.

The Report of the International Law Commission covering its Third Session,[126] while emphasizing "no sovereignty", but "measures necessary for...protection",[127] carried the following comment:

> "...[T]he coastal State might establish narrow safety zones encircling [the installation]. The commission felt that a radius of 500 metres would generally be sufficient..."

Once again, aerial jurisdiction is not envisaged.

The International Law Commission at its 5th Session, 1954, adopted The United Kingdom Comments on the Provisional Articles on the Regime of the High Seas on the then Art 6(2). Here the United Kingdom suggested the establishment of a definite distance for the safety zone rather than the vague term "a reasonable distance",[128] which should be followed by the words "not exceeding 400 m."[129] The reason given was that the margin of safety for shipping must at all times be generally the same. Safety of aerial navigation was not adopted or proposed as a reason.

Paragraph 3 of Art 5 of CSC[130] had its origin in a Yugoslav proposal which read:

> "3. The safety zones referred to in paragraph 2 of the present article have a perimeter of 500 metres around the installations which have been erected, counting from each point of the outer edge of such installations. The air safety zone above that area shall extend up to a height of 1000 metres, counting from the highest point of such installations. Ships and aircraft of all nationalities must respect these safety zones".[131]

The first sentence of this proposed paragraph was adopted by 18 votes in favour, to 14 (including the United States) against with 23 abstentions.[132] The second sentence was rejected by 17 votes in favour, 18 against with 21 abstentions.[133] The words "and aircraft" in the third sentence were than logically dropped.[133] The third sentence was adopted by 31 votes in favour, 5 against and 19 abstentions.[133] The rationale behind the Yugoslav proposal was stated simply to be that installations could be endangered by aircraft even more than by ships.[133] Miss Gutteridge of the United Kingdom said that she did not regard the question of air safety zones as falling within the competence of a conference on the law of the sea.[134]

This proposal and rejection of the air zone is an important step in the discussion on aerial jurisdiction. This first sentence of the proposal was not adopted by a large majority (only 4). The second sentence was rejected by a majority of 18 to 17 - as slim a majority as is possible. The third sentence was adopted by a good majority. All three sentences attracted a large abstaining block. The conclusion to be reached, therefore, is that the text of Art 5(3) was adopted in a most tenuous fashion. Nevertheless aerial jurisdiction was proposed and considered and rejected. Certainly no rule of customary law could be extracted on the subject at this point. Indeed no fewer than 17 states considered that an air safety zone was necessary. It is submitted that the statement by Miss Gutteridge was not well-founded, as while it is conceded that air zones in general might well be more appropriately the subject of a separate conference on aerial navigation, the subject actually under discussion at this stage in UNCLOS I was the protection of installations exploring and exploiting the seabed. This was most relevant to a conference on the law of the sea. The fact, however, that there were three more abstentions than there were votes in favour of the rejection, combined with the large vote against the rejection of the second sentence, could indicate that the question is still an open one. This because aerial jurisdiction is not expressly prohibited by CSC as it appears.[135]

This view is supported by a paper prepared at the request of the Secretariat of the United Nations (but stated not to be considered as a statement of the views of the Secretariat),[136] which states:

> Para 66: "Neither Article 71 [now Art 5] nor its commentary, however, refer to air traffic and, consequently, a safety zone established around installations situated on the surface of the sea can presumably include part of the superjacent airspace. Such a safety zone or space may thus be assimilated to a prohibited, restricted or danger area, depending on the regulations enacted by the State concerned, and may even have no upward limit..."[137]
>
> Para 67: "Naturally the provisions of paragraph 5 should apply equally to air navigation, and safety zones extending upwards above the installations on the continental shelf should not interfere with recognized air routes".[138]

On the other hand, it can be argued with equal strength that a proposal for an air safety zone was made, and if the majority of States had supported the concept, it would have appeared in CSC final text. As CSC is now generally accepted to be representative of international customary law, the concept of aerial jurisdiction over the safety zone in customary law is not permitted. It is, therefore, necessary to examine whether the same uncertainty existed at UNCLOS III, the next opportunity States had to change matters.

(ii) <u>UNCLOS III</u>

As has been stated, the purpose of Art 5 of CSC was to enable the coastal State to regulate navigation in order to prevent, or at least attempt to prevent, collision between ships and installations on the continental shelf, the distance of the safety zones being limited to 500 metres. There were, at UNCLOS III, States that were concerned that this extent was not sufficient for the security of oil rigs

against the threat of destruction.[139] There were, therefore, attempts by these states to extend this limit of 500 metres to 2000 or even 4000 metres from the installations.[140] These attempts were resisted by those states that considered the agreed provisions on installations as being too delicately balanced to be disturbed.[141] The suggestion was made that navigational and security interests in particular areas might be better reconciled through action by IMCO or other institutional procedures.[142] It was clearly consequent to this that the present extensions "as authorized by generally accepted international standards or as recommended by the competent international organisation" was incorporated into LOSC.[143]

Despite these developments, however, none of the texts produced from UNCLOS III made any further concession to aerial jurisdiction. Consensus was achieved in Committee No. 2, and the resulting provisions have been examined in Chapters VII and VIII above. UNCLOS III, as far as aerial jurisdiction over the safety zones is concerned, confirmed CSC.

CHAPTER X

STATE PRACTICE

Having examined the relevant provisions in the conventions, it is necessary at this stage to investigate the position as regards the important area in international law of State practice.[144] The purpose of the enquiry is to ascertain to what extent States have complied with the conventions, or to see how the provisions have been interpreted. This will assist in concluding whether or not any rules of customary international law exist[145] in relation to aerial jurisdiction over the safety zone and, if they do exist, what these rules permit or forbid, as the case may be.

THE UNITED KINGDOM

Section 21(1) of the Oil and Gas (Enterprise) Act[146] states that the Secretary of State may by order create a safety zone around any installation which, or part of which, is maintained or is in the course of being assembled or dismantled in waters to which this section applies. Waters for the purposes of this section include territorial seas or designated areas.[147] Airspace is clearly not envisaged in this section. Sub-section 2 provides that the zone shall extend not more than 500 metres from the installation, but may extend outside these waters. Section 21(3) states that "A vessel[148] shall not enter or remain in a safety zone", except by consent from the Secretary of State, or an order. Vessel, as defined in Section 28(1), includes hovercraft,[149] but not aircraft.

Section 3 of the Contental Shelf Act[150] provided:

"(1) Any act or omission which

(a) takes place on, under or above an installation in a designated area or any waters within five hundred metres of such an installation; and

(b) would, if taking place in any part of the United Kingdom, constitute an offence under the law in force in that part,

shall be treated for the purposes of that law as taking place in that part.

(2) Her Majesty may by Order in Council confer jurisdiction on any court in the United Kingdom for any act or omission in the designated area".

Section 22 of the Oil and Gas (Enterprise) Act is substantially the same, for present purposes, as Section 3 above, but waters is extended to waters, not only in the territorial seas and designated areas, but also to any area designated in terms of S22(5) in a foreign sector, comprising any part of a cross boundary field. S22(7) Applies all the above to installations while in transit.

Use of the term "above" in the old Section 3 and current Section 22 in relation to waters within 500 metres of the installation clearly reserves aerial jurisdiction in relation to criminal offences (no civil jurisdiction is claimed) in the safety zone. Yet in terms of S21(3) (above paragraph) of the Oil and Gas (Enterprise) Act, only ships and hovercraft are excluded from the zone. The criminal jurisdiction claimed in Section 22 is both legislative and enforcement jurisdiction.

Bearing in mind the fact that the conventions permit the coastal State to take measures necessary for the protection of installations, in the zones, as read with the other provisions in the conventions,[151] Section 21(3) is reconcilable with the conventions. Ships of other nationalities are called upon to respect the zones.[152] Total

exclusion of vessels from the zones might be excessive, but could be justified as necessary for the protection of the installations and navigation. To claim criminal jurisdiction over ships and aircraft, as would seem to be the intention in terms of S22, however, could only be justified if this were necessary for the protection of the installation or navigation.[153] This justification is not apparent from a reading of the sections. One must, therefore, conclude that Section 22 goes further than the conventions permit.

Also to be considered is the Mineral Workings (Offshore Installations) Act.[154] Section 1(2) states that for the purposes of this Act

> "(a) 'waters to which this Act applies' means the waters in or adjacent to the United Kingdom up to the seaward limits of territorial waters, and the waters in any designated area within the meaning of the Continental Shelf Act 1964".

In terms of Section 1(7) of the Continental Shelf Act an area may be made a designated area within the provisions of Section 1(1) of the same Act, which says that

> "Any rights exercisable by the United Kingdom outside territorial waters with respect to the seabed and subsoil and their natural resources, except so far as they are exercisable in relation to coal, are hereby vested in Her Majesty".

In short, therefore, designated areas may be established in areas of natural resource exploration and exploitation. Such areas would include installations and their safety zones.

Now Part VI of the Civil Aviation Act of 1949 allows the Secretary of State or the relevant Minister to make any regulations to supplement any Order in Council made pursuant to this Act. Section 59 of the same Act provides that

"no Order or regulation shall, on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it applies to British aircraft registered in the United Kingdom, wherever they may be..." Section 8(4) of the Mineral Workings (Offshore Installations) Act 1971 then says

"So far as relates to any provision of an Order in Council or regulation concerning aircraft on or in the neighbourhood of offshore installations, Section 59 of the Civil Aviation Act 1949 (extra-territorial effect) shall apply to all aircraft, and not only to British aircraft registered in the United Kingdom and shall apply to the doing of anything in relation to any aircraft by any person, irrespective of nationality, or, in the case of a body corporate, of the law under which it was incorporated".

As can be seen, therefore, there are two separate statutory bases for regulation of the airspace surrounding maritime installations on the United Kingdom continental shelf: the Oil and Gas (Enterprise) Act and the Mineral Workings (Offshore Installations) Act. The latter is even more extensive than the former and would seem to go quite beyond the conventions. "Neighbourhood" in Section 8(4) above is not defined and could even include airspace above waters beyond 500 metres from the installations. In addition control of the area does not stop at criminal jurisdiction, although clearly there would be a reluctance to produce regulations granting civil jurisdiction beyond the territorial waters. The regulations could quite conceivably, however, be used to exclude aircraft totally from any safety zone. Only aircraft actually necessary for the operation of any given installation need be allowed into the zone. Jurisdiction would again appear to be both enforcement jurisdiction, as well as legislative.

FRANCE

In this country the offshore regime is governed by the Law relating to the Exploration of the Continental Shelf and to the Exploitation of its Natural Resources.[155] In terms of Art 1 the French Republic exercises it's sovereign rights to explore and exploit the continental shelf and subjects the shelf to a single legal regime. Art 3 defines "installation and devices" as meaning

> "(i) Drilling rigs and other structures for exploration including their attachments
> (ii) Ships taking part directly in exploration and exploitation activities".

Precisely what is meant by "directly taking part" is not altogether clear. Presumably it is drilling ships that are envisaged in this article.

Article 4 reads:

> "A safety zone may be established around the installations and devices defined in Article 3. This zone may extend to a distance of 500 metres measured from each point of the outer edge of these installations and devices. Access without permission to this zone, by whatever means, for reasons unconnected with the exploration or exploitation operations is prohibited..."

The wording of the first two sentences of Art 4 is clearly modelled on the conventions,[156] and would appear to be in conformity with them. The third sentence, however, would appear to be stricter than the provisions in the conventions. Not only is access specifically denied, except by permission, but it is also denied to shipping and all other means of transport. The term "unconnected" is not elaborated upon in this Law. Presumably the intentions would not be to exclude supply craft, for example, or craft indirectly related to operations. The article continues:

"...Restrictions may be imposed on the overflight of installations and devices and safety zones to the extent necessary for the protection of these installations and devices and for the safety of aerial navigation".

On the face of it this fourth sentence would seem to conflict with the third. Access "by whatever means" is excluded by the third sentence while restrictions on overflight may be imposed to the extent necessary for protection by the fourth. The latter would, therefore, imply that overflight which does not interfere with protection of the installation or aircraft may not be restricted, even if such overflight were to take place above the safety zone. The more likely interpretation of these provisions, however, would be that access by aircraft unconnected with operations is denied, except where permission is obtained, and restrictions may be imposed for the safety of the installations and aircraft for aircraft permitted to be in the zone, or aircraft connected with operations.[157]

Article 32 takes the above provisions even further by providing that, except in the case of force majeure, anyone who unlawfully enters a safety zone or who unlawfully flies over such a safety zone, after the competent authorities have taken the appropriate measures to inform the navigator[158] of the position of this zone, shall be punished with imprisonment between 11 days and three months and a fine of between 1000 and 5000 francs or only one of these two penalties. In cases of repetition of the offence, the fine may be doubled and in addition a sentence of imprisonment not exceeding two years may also be imposed.[159] Again it appears that this rather extensive provision may be wider than is permitted by the conventions, which require only that ships respect the safety zones.[160] Not only is unlawful entry made a criminal offence, under Art 32, but in addition the French criminal code is applied to the installations and safety zones. The latter are to be "subject to the criminal legislation and

criminal procedure in force at the seat of the tribunal de grande instance or tribunal de premiere instance under whose jurisdiction they fall.[161] Civil jurisdiction is not claimed under this Law. Presumably a certain amount of comity will be exercised in the implementation of Art 32; rigid enforcement of criminal laws on foreign ships and aircraft could well attract protest, where this occurs beyond the territorial seas, even in the safety zones. This is not provided for in the conventions, and in most cases would not be related to protection of the installation or aircraft.

NORWAY

A Royal Decree relating to Exploration for and Exploitation of Petroleum in the Seabed and Substrata of the Norwegian Continental Shelf[162] provided that safety zones of 500 metres are permitted around both temporary and permanent installations, although not around cables or pipelines.[163] Vessels are banned from entry therein without specific permission.[164] The same arguments put forward above[165] in relation to the legality of total denial of access to safety zones are again relevant here. Again it is vessels that are denied entry, which term would probably not include aircraft.

Now on March 24, 1972, a committee was appointed by Royal Decree for the purpose of presenting proposals for a formal Act with accompanying regulations which could replace the provisions of the Royal Decree of 1972. The Draft Act of 1979 Relating to Petroleum Activities on the Norwegian Continental Shelf[166] was the result. Section 34 amended Section 47 of the 1972 Decree, stating that

> "For safety reasons there shall be a safety zone around and above all temporary and permanent installations on or over the seafloor other than pipelines and cables".

No figure as to extent is included (for example, 500 metres). Instead the extent is to be decided by the King.[167] Further, he may decide, by agreement with another State, that a safety zone shall extend over the boundary line of another State's continental shelf, or that there shall be a safety zone on the Norwegian shelf, even if the installation it protects is located outside the shelf. (In other words, another State's safety zone can extend to the Norwegian shelf, which has occurred between the United Kingdom and Norway).[168] It is possible that by agreement enforcement and application of the law in such zones could be left to the State designating the zone (the state under whose jurisdiction the shelf otherwise falls).[169] Section 34 of the Draft Act bans the presence of all unauthorized vessels, hovercraft, aircraft, fishing equipment and objects of all kinds.

Again the extended provisions in the Draft Act appear to go further than is envisaged by the conventions, by excluding craft and objects other than ships. Unlike the United Kingdom and France, however, total criminal jurisdiction is not claimed.

MALAYSIA

Section 5(1) of the Continental Shelf Act 1966[170] provides that subject to the provisions of this Act and of every other written law in force in the Federation:

> "(a) every act of omission which takes place on or under or above, or any waters within five hundred metres of, any installation or device (whether temporary or permanent) constructed, erected, placed, or used in, on, or above the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources shall be deemed to take place in the Federation..."

A broad interpretation of this provision would render this provision extremely wide, as "every act or omission" includes not only criminal acts but also delictual acts and omissions. That the intention is to claim wide jurisdiction may be evidenced by a unique provision which follows paragraph (a) above, deeming the installation and safety zone to be above the high water mark in the Federation.[171] This would, of course, place the installation and safety zone, for legal purposes, within Malaysian territory, which would exclude rights of navigation and overflight completely. In other words it could be said that parcels of Malaysian territory (legally speaking) are established even on the high seas, where the continental shelf extends this far. The provision could be taken even further to include the generation of maritime zones from this "territory". Clearly this is not permitted in international law,[172] and any such extensions would attract wide protest.

This provision deeming installation and zone to be above the high waters mark is strange when seen in light of Section 6 of the same Act:

> "(1) The Yang di-Pertuan Agong may from time to time make regulations for all or any of the following purposes -
>
> (c) establishing safety zones, extending to a distance not exceeding five hundred metres measured from each point of the outer edge of the installation or device, around any installations or devices in, on, or above the continental shelf;
>
> (d) prescribing such measures as he considers necessary in any such safety zone for the protection of the installation or device with respect to which the safety zone is established;
>
> (e) regulating or prohibiting the entry of ships into any such safety zone..."

Section 6 on its own virtually echoes the provisions in the conventions. While Section 5(1)(a) does not in so many words exclude overflight, aerial jurisdiction is claimed for acts or omissions above the zone. Section 5(1)(b) read in isolation would seem to be so far-reaching as to render the other provisions discussed superfluous. It is unlikely that this is the intention of the legislature here - the purpose of this provision was probably to apply a legal regime to the installations and zones for operators and employees etc, in no way different to the regime applicable in Malaysia itself.

BARBADOS

Section 3(1) of the Marine Boundaries and Jurisdiction Act[173] creates a two hundred mile Exclusive Economic Zone for Barbados. Section 5 states that vested in the Government of Barbados are all rights in, and jurisdiction over, this Zone in respect of

(i) the exploration, exploitation, conservation, protection or management of the natural living and non-living resources of the seabed, subsoil and superjacent waters, and

(ii) the construction, maintenance or use of structures or devices relating to the exploration or exploitation of the Zone, the regulation and safety of shipping, or any other economic purpose.

These provisions are clearly in line with the conventions. Section 7 of the Act even guarantees the freedoms of navigation, overflight, laying of cables and pipelines etc. in the EEZ.

Section 19(2), however, reads:

"An incident shall, for the purposes of any law conferring jurisdiction on a court in Barbados, be deemed to have occurred in Barbados if (a) that incident occurs in, on, under, above or in relation to any vessel, structure or device or any waters within 500 yards of that structure or device, in the Zone;..."

Aerial jurisdiction is, therefore, claimed above the safety zone here, but only in relation to actual incidents which occur in the area. "incident" could, however, be given a wide meaning to include criminal or delictual incidents. Use of the words "or in relation to" would imply that Barbados claims jurisdiction over incidents not even related to the installation, devices or vessels etc, as long as they occurred in, or above the safety zone. Presumably, however, once again, restraint would be exercized on enforcement of the provisions where appropriate.

GRENADA

The Marine Boundaries Act 1978[174] of Grenada, sections 3, 5, 7 and 10(2) are exactly the same as the corresponding provisions in the Barbados Marine Boundaries and Jurisdiction Act 1978 above. The observations pertinent to the latter Act are therefore the same as for the Act of Grenada.

GUYANA

The President of Guyana is empowered by the Marine Boundaries Act 10[175] of 1977 to declare by order any area of the continental shelf[176] or EEZ[177] to be a designated area and make such provisions as he may deem necessary with respect to, inter alia, the safety and protection of artificial islands, offshore terminals, installations and other structures and devices in such designated areas.[178] Section 37 of the Act continues to provide that any act or omission which

"(a) takes place on, under or above an offshore terminal, installation or structure or upon an artificial island in a designated area or any waters within 500 yards of such terminal, installation, structure or island;..."

shall be deemed to have occurred in Guyana. Under sections 12 and 18, therefore, the President could well make regulations concerning aerial navigation provided the regulations were justified for the protection of the structure. Section 37 provides a similar jurisdiction to that claimed by the three countries discussed above, and again attracts similar observations to those made on the provisions in question.

ARGENTINA

This country has claimed a territorial sea of two hundred miles:

"The sovereignty of the Argentine Nation extends to the seas contiguous to its territory out to a distance of two hundred marine miles, measured from the lowest water mark..."[179]

This extension of sovereignty is not recognized by the majority of States.[180] Art 3 of the 1966 Law does, however, state that the "freedoms of navigation and air navigation shall not be affected by the provisions of the present law". It would appear, therefore, that Argentina would be reluctant to enact legislation restricting overflight of safety zones,[181] but that this would not happen is not certain.

BRAZIL

This nation, like Argentina, claims a two hundred mile territorial sea,[182] but, unlike Argentina, extends her sovereignty not only to the waters within 200 miles, but

also to the air space above the territorial sea, and to the bed and subsoil of that sea. Clearly, therefore, overflight of any safety zone within two hundred miles of the low water mark is not legally possible (without, of course, permission). For safety zones above the continental shelf beyond two hundred miles, however, additional legislation restricting overflight would have to be enacted.

EVALUATION OF STATE PRACTICE

The States discussed above are those States whose legislation by virtue of one interpretation or another, claim aerial jurisdiction to a greater or lesser extent. There are, however, States that have enacted legislation keeping very much within the boundaries of the conventions.[103] Clearly the majority of States have not yet enacted legislation on the subject.[104]

The three European countries, The United Kingdom, France and Norway, all exclude aircraft from access to safety zones. The United Kingdom and France claim criminal jurisdiction over any authorized aircraft within the safety zone. Technically, by placing designated areas beyond the territorial seas within the jurisdiction of the relevant courts without any additional disclaimer, the United Kingdom even claims civil jurisdiction over aircraft within the safety zone. Both the British and French Legislation contains enforcement provisions. Norwegian legislation, at the time of writing, has no enforcement provisions. The practice of these three States is most important, because not only has this practice not provoked official protest, but it is also these three States which have a considerable interest in the offshore North Sea or English Channel (France) operations.

The North Sea area has, geographically, been the marine area which has produced almost certainly the most experience in the field of offshore oil and gas exploitation. In assessing the validity of any State practice with regard to offshore operations, considerable weight would be attached to such experience.

Those States that have indirectly interfered with the overflight of present (and hypothetically future), safety zones by claiming territorial seas greater in extent than is permitted by international customary law (i.e. twelve miles) would not by so doing have created an important body of State practice. This is because the very basis of the claim to jurisdiction (i.e. the extension of sovereignty beyond twelve miles) is disputed by the majority of States in the international community, and would not be permitted by international customary law.

Those States whose legislation accords with the conventions[105] also represent an important body of State practice. The practice of these States endorses the view that aerial jurisdiction over the safety zones was not intended to be granted to coastal States by the conventions.

The practice of these States (for example Malaysia, Guyana, Grenada, Barbados) whose legislation could be read to accord more with British, French and Norwegian practice would not be as important as the latter, as experience in areas of the former States' jurisdiction is relatively recent and not as extensive as in the North Sea. Nevertheless more weight is given to the interpretation that aerial jurisdiction is permitted under the conventions, or by international law.

CHAPTER XI

THE SAFETY ZONE AND SELF DEFENCE

In this chapter it is necessary to consider the question of self defence as it applies to two different scenarios. The first situation is self defence against armed attack, or aggressive use of force. The second is where no hostile intent is present, yet protection of the installation is necessary.

1. SELF DEFENCE AGAINST ARMED ATTACK

Article 2(4) of the United Nations Charter,[186] which is generally acknowledged to have the status of international customary law,[187] states that

> "[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".

The exception to this well established rule is found in Art 51 of the same Charter:

> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security".

The "use of force" referred to in Art 2(4) encompasses at least armed force. Clearly the use of force against a maritime installation of another State would be strictly illegal in terms of international law. Any physical force short of armed force[188] would almost certainly be illegal - if it were not covered by the definition of force - as threat or use of force in any manner inconsistent with the Purposes of the United Nations. An arguable exception would be if the maritime installation were being used as a launching pad for the use of force by the State to which the installation belongs, against another State.[189] This would include any attack against passing shipping, aircraft, nearby States etc. Such an attack would also be illegal. Of relevance to the present discussion, however, is the question of self defence carried out from, or on behalf of, a maritime installation of one State against the aggression of another State, more particularly where such aggression emanates from the air. The relevance, or effect of the safety zone must be assessed in this light. Although Art 51 above confirms the <u>right</u> of self defence and the powers of the United Nations Security Council to maintain or restore peace, the rules governing the actual use of self defence are not to be found in the Charter of the United Nations, but in other rules of international law, established over the years.

Firstly, self defence involving the use of force must be against actual or imminent aggression.[190] The latter is obviously more difficult to justify. When considering reasons for use of force as self-defence all the circumstances of each case must be taken into account to determine the legitimacy of the action. The capability of weapons, the reaction time and the strategic situation are amongst the factors to be taken into account.[191]

Secondly the need to act must be "instant and overwhelming, leaving no choice of means, and no moment for deliberation."[192]

Thirdly, the response must be proportional:

> "Legitimate defence implies the adoption of measures proportionate to the seriousness of the attack and justified by the seriousness of the danger".[193]

In terms of the Corfu Channel Case a State may take steps to prepare to defend itself, but these must be reasonable in the circumstances.[194] The force defended against can be of a continuing character (for example, when there is always the threat of attack). The aggression must, however, be actual and not putative - no mistake even in good faith is permissable.[195] Self defence can be taken against whomsoever the force emanates - a state (subject of international law) or against objects of international law (ships, individuals etc). Theoretically it is possible to use self defence against those indirectly involved,[196] but this would be unlikely in the installation situation. Force, however, must only be used in self defence against aggressors or perhaps those involved.

Now it is true to say that oil rigs are "high value targets for external attack in a period of tension or war, or for peacetime terrorist attack or other malicious damage. [However] short of an assailant possessing suitable vessels and advanced weaponry, they are not easy to attack or sabotage successfully."[197] They are, however, fairly large, stationary targets, unprotected on the wide expanse of the oceans, and as such are rather vulnerable.[198] It is not unreasonable to assume that in the future installations could well become armed, although the most effective and likely means of protecting installations would be through regular patrolling of adjacent seas by ship or aircraft. Naturally radar would be of considerable assistance as a means of warning.

Any use of force in response to an attack would be subject to the rules in international law governing self defence. Similarly any use of force in response to threat of attack would be subject to the rules on anticipatory self defence. Each incident would have to be examined on its own to arrive at any conclusion as to whether use of force in response to attack or threat of attack was legitimate or not. All the circumstances of each case would have to be taken into account. The safety zone would invariably not be a consideration when launching or threatening to launch an attack upon an installation. Nor would the zone be a consideration when exercising the right of self defence. This could take place well beyond the boundaries of the zone. The only possible legal relevance the zone could have when assessing the legitimacy of an act of self defence would be, perhaps, if the attacking aircraft (or ship etc) (more particularly if the aircraft were a slower moving craft like a helicopter) were within the safety zone at the time of the attack or, more important, prior to a presumed attack in a case involving anticipatory self defence. This might be taken as evidence of intent to cause damage, thus assisting the State relying on self-defence to justify its act. This scenario is highly unlikely, however, as any pilot or Master would be most reluctant to place his aircraft or vessel in such extreme proximity to an installation at the time of attack, or any ensuing explosion could easily result in severe damage to the attacking craft itself. Nevertheless, suicide bombings are not unknown in terrorist or other aggression. A further point to consider is whether or not a safety zone, particularly an aerial safety zone, could in fact itself be established on the grounds of self defence.

Clearly a safety zone envisaged on the basis of self defence would have to be far greater in extent than a conventional 500 metre zone to be of any practical use. No international convention has any provision allowing for a safety zone greater than 500 metres from the installation. The conventions allow the zones for the protection of "installations and devices"[199] and for the protection of "navigation and of artificial islands, installations and structures"[200] respectively. The latter provision would seem to envisage prevention of collision more than military protection, but both provisions could conceivably include protection against acts of aggression. Both CSC and LOSC are quite specific and unambiguous on the subject of extent of the zones, however - 500 metres is the maximum. This distance is almost totally ineffective, and it would be reasonable to conclude that these provisions in the conventions are not concerned with hostilities.[201] Whether or not a State would be justified in creating a safety zone on the basis of self defence would therefore depend on the circumstances applicable to each case and every installation, as is required by the rules on self defence. Indeed, were such a safety zone permitted, it need not be limited to 500 metres. In addition overflight could be restricted, especially by foreign military aircraft. What would be envisaged would in all likelihood be a zone similar in nature to an exclusion zone. Such zones have been used in the past,[202] but not around any maritime installation.[203] Presumably, however, any such zones could be legitimately established only during times of hostilities and in the areas where hostilities were being conducted.[204] They would, therefore, be temporary in nature, and would have to be suspended on cessation of hostilities, even if the installation itself is not relocated.

Great care would have to be taken when establishing such zones to infringe the rights of other sea users and aerial navigators (i.e. those not involved in hostilities) as little as possible. This would mean, inter alia, restricting the size of the zone so as to be in proportion to the object protected etc. All measures would have to be reported to the Security Council as is required by Art 51 of the United Nations Charter. Any zones greater than 500 metres in existence after cessation of hostilities, or during any time of peace, would almost certainly attract protest. In addition it is submitted that on cessation of hostilities the legal justification of a zone even only 500 metres in extent would fall away, if that justification were self defence. A new zone would have to be established in accordance with the conventions, or international customary law,[205] should the customary law position on safety zones differ from what the conventions would appear to provide.[206]

2. SELF DEFENCE WHERE HOSTILITY IS NOT INVOLVED

It is necessary at this stage to examine whether or not the right of self defence exists outside Article 51 of the United Nations Charter, which provides that self defence may be exercised only against armed attack. Could self defence be legitimately exercised against danger other than armed attack? For the purposes of the present discussion the issue to be determined is whether or not an aerial safety zone could be established around a maritime installation on the basis of self defence against non-aggressive acts..[207]

The view most widely held at present would seem to be that force may only be used with the authorization of the United Nations Security Council, or in the exercise of the inherent right of self defence as permitted by Article 51.[208] The establishment of a safety zone is not in itself use of force. The rules on self defence, however, in international customary law are clear. Inter alia, the need to act must

be "instant and overwhelming, leaving no choice of means and no moment for deliberation",[209] whether against armed attack or not. It is submitted that the establishment of a safety zone in self defence in peace time would not easily be justified because of this rule.

In addition the United Nations Charter, Art. 51, is quite clear that self defence may only be used against armed attack. Self defence in any other circumstance is not provided for in the Charter. It is submitted also that it would be undesirable that measures such as the creation of zones having the effect of excluding shipping or aircraft be permissable in international law as legitimate applications of a right of self defence in peace time.[210] Were such measures permissable States would not only be in a position to create zones greater in extent than those provided for in the conventions, but they would also take other measures which they would justify as self defence. This would further erode the freedoms of navigation and overflight of the high seas of other States, and would not be welcome.

The fact that States have found it necessary to seek agreement at the conventions on the issue of safety zones would seem to suggest that States (at least those in favour of the articles allowing safety zones) do not consider that the rules on self defence cover the establishment of safety zones. In addition, no State has formally expressed the legal basis of any safety zone surrounding a maritime installation as being self defence. It must, therefore, be concluded that self defence is not appropriate as a justification for safety zones during peace time.

This is not, however, to say that a coastal State is powerless to act when there is threat of damage to an installation. There is support for the view that a State may protect itself not only from the imminent danger of attack, but also from some other danger.[211] The measures taken would have to be reasonable in all the circumstances, presumably, each case being considered on its own. An aircraft, for example, out of control heading towards an installation could conceivably be destroyed before collision, if this were the appropriate and reasonable course of action. In different circumstances, however, destruction of an aircraft merely because it is within a safety zone might well be excessive.[212]

CHAPTER XII

RELATED ISSUES

1. THE RIGHT OF HOT PURSUIT

The right of hot pursuit is one recognized by international customary law.[213] The right of hot pursuit may be exercised only by warships or military aircraft on government service especially authorized to that effect.[214] These aircraft or vessels may pursue a foreign ship which has violated that State's laws within its internal waters or territorial sea and arrest it on the high seas. Pursuit must be begun while the ship or one of its boats is within the territorial sea or contiguous zone of the pursuing State.[215] The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.[216] The pursuit must be uninterrupted[217] and the right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.[218]

The Geneva Conventions of 1958 did not in any way deal with the question of hot pursuit and any possible interference or overlap with zones around offshore installations. Indeed LOSC is the first convention to deal with the subject. Art 111(2)[219] states:

> "The right of hot pursuit shall apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones".

Now although hot pursuit may be exercised by aircraft, the hot pursuit of aircraft is not provided for in any international convention and does not seem to have been the subject of any arbitration or international judicial decision. The hot pursuit of foreign aircraft under circumstances similar to those under which foreign vessels may be pursued, does not appear to be a concept that exists in international law.[220] Although LOSC Art 111(2) does not rule out the possibility of hot pursuit of aircraft, it is unlikely that any further aerial jurisdiction was intended to be given to the coastal State in this regard in relation to the safety zone. This is supported by the fact that Art 111(6) provides that

> "Where hot pursuit is effected by an aircraft,
> (a) the provisions of paragraphs 1 to 4 shall apply mutatis mutandis;
> (b) the aircraft...must itself actively pursue the ship..."

An interesting question, however, would be whether the doctrine of constructive presence would confer any greater jurisdiction on the coastal State in relation to offences committed by an aircraft above the safety zone (or while resting on the waters within the zone) or EEZ. The situation envisaged here is where the aircraft so situated, having committed the offence, then returns to a ship, which is then pursued.[221] As there does not appear to be any arbitral or other decision on point, the question must be regarded as an open one.

It should also be remembered that should hot pursuit apply in relation to aircraft, it would only apply, in terms of Art 111(2), to violations of laws etc applicable in accordance with LOSC to the EEZ or continental shelf, including

safety zones. This would mean, in relation to the safety zone, that a violation of any protection laws made by the coastal State, for example, would have to be committed. The entire body of criminal law applied to an oil rig would not apply for the purposes of hot pursuit.

2. THE PASSAGE OF SUBMARINES

For the purposes of this dissertation, it is sufficient to point out that just as overflight and aerial jurisdiction do not appear to be envisaged by the provisions on the safety zone in CSC and LOSC, so too submerged passage does not seem to be included. Safety zones are to extend around installations,[222] not around and above or around and under. Arguably, however, submarines are more easily associated with "ships" and "vessels".[223] Certainly it would be the intention of the conventions to keep submarines outside of a safe distance from installations, although such an area would be most difficult to demarcate as one would on the surface by means of beacons, etc. Nevertheless, the question would still be regarded as an open one.[224] Submarines could, however, be most effective if used for the purposes of attack upon an installation, by torpedo, rocket etc. Such an attack or threat of attack would, of course, bring into play the rules governing use of force and self defence[225] under Art 51 of the United Nations Charter.

3. THE MOVING INSTALLATION

LOSC provides that any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organisation.[226] For the purposes of the present discussion the question of the safety zone is relevant, of course, not only on removal, but also during any time that the installation is a moving unit. In short, the enquiry is: Does the safety zone exist even when the

installation is being moved (thereby bringing into play the question of possible aerial jurisdiction around a moving maritime installation)? No convention specifically provides that the safety zone is to continue to exist whilst the installation is moving. Nor does a convention state that it is not to exist.

One increasingly popular view, however, is that whilst in motion maritime installations assume the status of ships.[227] Indeed, invariably exploitation and exploration rigs have two sets of crew - one for exploration or exploitation as the case may be, and the other for the relocation of the rig, the latter being constituted much as any other ship's crew might be, with heirarchy, including the Master. There would seem to be no special reason why an installation in motion should be afforded a safety zone when other large ships and oil tankers are not.[228] In addition it is submitted that the conventions themselves do not envisage moving safety zones: 1) Art 5(1) of CSC stipulates that exploration and exploitation must not result in unjustifiable interference with navigation, fishing, conservation or research. A moving safety zone could well result in interference and it is doubtful if it would be justifiable. This is particularly pertinent when one considers that while a rig is moving it is not actually exploring or exploiting. A fortiori would interference with aerial navigation be unjustifiable. 2) Art 5(2) CSC states that the coastal State is entitled to "construct and maintain or operate...installations..., and to establish safety zones around such installations". (ie "operating installations", would be the inference). It is submitted that there would be a good case for saying that an installation which is merely being moved could not be said to be operating (at least not fully for the purpose for which it was constructed) within the meaning of this article, and not, therefore, legitimately have a safety zone, nor would

it be properly "constructed". 3) Art 5(5) of CSC provides that due notice must be given of the construction of any such installations, and permanent means of giving warning of their presence must be maintained. Similarly Art 60(5) of LOSC states that "due notice shall be given of the extent of safety zones". It is submitted that what these articles provide is that publicity of the location of installations and safety zones is essential in order to demand respect for them. Clearly publicity as to the exact location of something as specific as a 500 metre safety zone cannot be given, in the case of a moving installation.

It must be concluded, therefore, that a moving installation would almost certainly have no safety zone in international law, and that consequently, aerial jurisdiction of foreign aircraft in the vicinity of a moving maritime installation is non existent. This is not to say, however, that the standards and practices of good navigation and overflight would not apply; they certainly would.[229]

4. PIRACY

Both HSC and LOSC[230] define piracy as consisting of any of the following acts:

"...(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, person, or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.

(3) Any act of inciting or of intentionally facilitating and act described in sub-paragraph 1 [or 2]".

Government ships or aircraft whose crews have mutinied and taken control of the ship or aircraft are subject to the same rules.[231] HSC Art 19 and LOSC Art 105 confer jurisdiction thus:

"On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship [or aircraft (LOSC)] taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The Courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property subject to the rights of third parties acting in good faith".

These articles certainly represent international customary law (19 and 105). Piracy, as was said by one author, is an example of jurisdiction according to the universal principle.[232]

In relation to the safety zone the position would simply be as follows:

1) Where the act of piracy occurs outside the safety zone[233] and the pirate aircraft (or, of course, ship) is within the zone, the coastal State (or State which created the safety zone) would be the appropriate State to seize the aircraft, arrest the persons and seize any property. This is because it is the State creating the zone which claims control over the zone and may regulate proceedings regarding protection of the installation. Naturally where the consent of this State is obtained, any other State may enter the zone and take the necessary action. Any other State could possibly enter the zone and take the necessary action even without the consent of the State creating the zone, but it is submitted that this

would not be satisfactory and could attract protest because, as has been said, it is the coastal State which has been granted the right not only to create safety zones, but also to take measures in those zones necessary for the protection of the installation and navigation.[234]

2) Where the act of piracy occurs within the zone and the aircraft (or ship) leaves the zone, any State may seize and arrest where the pirate aircraft is beyond any national jurisdiction. The moment the pirate aircraft enters airspace above territorial waters, the matter falls within the jurisdiction of that coastal State.

3) Where the act of piracy occurs within the zone and the pirate aircraft (or ship) remains within or returns to the zone, the situation is the same as 1) above.

5. HIJACKING

Hijacking clearly does not fall in with the provisions of the CSC or LOSC relating to piracy, above.[235] The relevant convention here is the Convention for the Suppression of Unlawful Seizure of Aircraft 1970.[236] The provisions would seem to be international customary law.[237] Art 1 defines the offence:

"Any person who, on board an aircraft in flight:[238]

(a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or

(b) is an accomplice of a person who performs or attempts to perform any such act

commits an offence..."

Each Contracting State undertakes to make the offence punishable by severe penalties.[239] In terms of Art 4(1), each State must establish jurisdiction over the offence and any other act of violence against passengers or crew, in the following cases:

"(a) when the offence is committed on board an aircraft registered on that State;

(b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principle place of business or, if the lessee has no such place of business, his permanent residence, in that State".

Art 4(2) allows for measures to be taken against an alleged offender "present in its territory" and Art 4(3) states that the Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Bearing in mind the fact that both CSC and LOSC emphasize that maritime installations are not to affect the delimitation of the territorial sea, nor do they have any territorial sea of their own, nor do they possess the status of islands,[240] clearly even when the aircraft is within the safety zone of a State[241] Art 4(1)(b) of the 1970 Convention will not oblige that State to establish jurisdiction over the offence.[242] If the State which created the safety zone did not agree to assume jurisdiction over the offence, then presumably Art 4(1)(c) would apply. The State creating the safety zone may, however, take any measures necessary for the protection of the installation or navigation.[243]

One view is that aerial hijacking, even in the short space of time since it has become a serious problem, might be argued to have been placed by customary international law on the same footing as piracy on the high seas, i.e. it is conduct in respect of which all states may exercise criminal jurisdiction under their law on a universality basis.[244] If indeed this could be said to be international customary law, then the matter could be dealt with as piracy would be.[245]

It is submitted, however, that not all States are willing to make decisions of such great magnitude concerning foreign nationals and aircraft in the hijacking situation. Should, however, the offender be separated at any stage from the aircraft, States would most certainly take action.[246]

PART D

SUMMARY AND CONCLUSION

The coastal State has the right to construct maritime installations in both its internal waters and territorial seas. The right to construct exists also in relation to the exclusive economic zone. This right is affirmed by LOSC, and almost certainly representing international customary law. The position is the same for the continental shelf of a coastal State. This is clear from the provision of both CSC and LOSC. Again the right must be considered as part of international customary law. As an archipelagic State has sovereignty over its archipelagic waters including the subjacent seabed and subsoil and the resources contained therein, this State must have the right to construct maritime installationis in these waters. The fact that a State borders a strait does not in itself prevent that State from constructing instal-lations in the strait, provided that transit passage and other relevant passage rights are not interfered with. In addition LOSC provides that the cons-truction of installations is a legitimate freedom of the high seas, although controversy exists as to whether deep sea mining beyond the limits of the exclusive economic zone or continental shelf should be subject to the control of the ISBA and or not.

Freedom of overflight does not exist in relation to territorial waters, and, unlike navigation, a right of in-nocent passage for aircraft has never been admitted. The coastal State may, therefore, control overflight of ter-ritorial waters and over any safety zones in these waters.

Freedom of overflight does, however, exist in relation to both the exclusive economic zone and high seas. In addition, the rights of archipelagic air lanes passage and transit passage exist over archipelagic waters and straits respectively.

A right ancilliary to the right to establish installations is the right to create safety zones surrounding them. These zones may not, however, be established where interference may be caused to the use of recognized sea lanes essential to international navigation. As archipelagic sea lanes passage and transit passage include overflight, safety zones may therefore not be established where interference may be caused to these types of passage, because the latter exist through and over sea lanes essential to international navigation. The coastal State may take measures in these zones necessary for the protection of the installation and navigation.

The conventions make it clear that safety zones are allowed for protection of the installation and navigation, and do not have the status of any other maritime zone. Aerial jurisdiction over a safety zone cannot therefore be said to exist in the way that it exists over territorial seas. In addition, the exercise of the rights of the coastal State may not infringe other rights and freedoms of other States unjustifiably. Clearly if the installations are established in areas where interference with navigation and overflight can be minimized, establishment of an aerial safety zone would not in itself constitute unjustifiable interference. It must, however, be concluded that the conventions permit safety zones not exceeding a distance of 500 metres from the installations, around the installations, and not around and above the installations. This is supported, inter alia, by

the fact that the conventions expect only ships to respect these zones, and the fact that at UNCLOS I the Yugoslavian proposal for an air safety zone was rejected. At neither of the conferences, UNCLOS I or III, was any concession made to aerial jurisdiction.

The only articles which could conceivably justify interference with overflight of safety zones are CSC Art 5(2) and LOSC Art 60(4) which provide that the coastal State may take in the zones measures necessary for the protection of the installation. That this interpretation is possible is clear from the practice of the United Kingdom, France and Norway - three European States of importance in the field of offshore oil and gas exploitation. The practice of a large body of States, however, concords with the conventions. The claims to exercise jurisdiction over aircraft would at the time of writing seem to be dubious and difficult to enforce. Indeed aspects of the legislation of those States claiming aerial jurisdiction would seem to go further than mere measures necessary for the protection of the installation. This practice has, nevertheless, attracted no protest.

It does not appear that there is sufficient State practice one way or the other to justify the existence of a rule of customary law on the question of aerial jurisdiction over safety zones. This is not to say that the provisions on safety zones in the conventions as far as they relate to shipping are not customary law - they almost certainly are. The conventions do not expressly forbid aerial jurisdiction, even though such jurisdiction is not expressly permitted. If jurisdiction over aircraft is seen as being over and above the provisions in the conventions on navigation, then it might conceivably be concluded that the practice of these States claiming aerial jurisdiction over safety zones represents an evolving rule of customary law, or the progressive development of a rule of customary law. It would seem, however, to be too early to tell whether or not aerial

safety zones are justified by international customary law, even if they are not expressly provided for in the conventions. An aerial safety zone is not necessarily incompatible with either the conventions or a safety zone for shipping, even if such an aerial zone was not actually intended by the conventions. The point is that an aerial safety zone was not expressly prohibited by the conventions.

The example of self defence does not justify the existence of a safety zone during times of hostility or peace. Nor is the existence of a safety zone signifi-cantly relevant in determining the legality of any measure taken in self defence. In addition it does not appear that any further aerial jurisdiction was intended to be given to the coastal State in relation to hot pursuit and the safety zone by LOSC. It is also clear that no aerial jurisdiction can be claimed around a moving installation, as a safety zone could not be created around a moving object of this nature. The safety zone may, however, have some relevance in determining jurisdiction over acts of piracy since it would be the prerogative of the coastal State to deal with any matter which might conceivably affect the safety of the installation and to regulate the passage of craft in the safety zone. This is not necessarily to say that any additional jurisdiction is granted to the coastal State, but rather that in certain circumstances the coastal State might well be the appropriate State to deal with the matter. The same could be said for hijacking, although here the situation is regulated by treaty. Consequently the coastal State would have to cooperate with other States in the event of a hijacking situation arising within a safety zone, particular regard being had to the coastal State's interest in the protection of the installation and personnel.

It is submitted that the following may be concluded as regards aerial jurisdiction over safety zones surrounding maritime installations.

1) Jurisdiction over foreign aircraft[247] within a safety zone is not envisaged by the convention.
2) State practice, the effect of which is to create aerial jurisdiction over safety zones, is beyond the provisions of the conventions.
3) There is not sufficient State practice to support the existence of a rule in international customary law conceding aerial jurisdiction over safety zones.
4) Existing State practice is too diverse to indicate the development of a rule of customary law conceding aerial jurisdiction over safety zones.
5) Action against foreign aircraft within safety zones, or exclusion of foreign aircraft from access to safety zones could only be justified if these measures are necessary for the protection of the installations and navigation, as is provided in Art 5(2) CSC and Art 60(4) LOSC. Such action would normally be justified only as ad hoc responses to particular events and not as general preventative measures established in advance.248
6) States whose practice has the effect of creating more jurisdiction over aircraft than is necessary for the protection of the installation and navigation would not be acting in accordance with international law.

* * * * * *

1 See Odell "Offshore Resources: Oil and Gas" The Maritime Dimension (eds. R.P. Barston and P. Birnie) London, 1980, at 76. Odell cites enclosed water areas such as Lake Maracaibo in Venezuela, The Gulf of Paria in Trinidad and also the operations in the territo rial waters of the states of Texas, Louisiana and California in the United States as examples.

2 Developments in offshore mining were clearly motivated by the fact that the seabed, more particularly the continental margin, are rich in natural resources. Oil and gas reserves on the continental margin amount to at least 90 percent of the total value of minerals extracted from the seabed. By 1984 offshore oil and gas production each accounted for approximately one quarter of world production. These proportions are expected to increase. Churchill, R.R. and Lowe, A.V. The Law of the Sea, Second Edition, Manchester, 1988 at 120.

3 The First United Nations Conference on the Law of the Sea, and the relevant resulting document, No. 7302 Convention on the Continental Shelf, done at Geneva, 29 April 1958 (which came into force on 10 June 1964); and the Third United Nations Conference on the Law of the Sea, and the resulting document, done at Montego Bay, 10 December 1982, which has yet to enter into force, at time of writing.

4 Art. 5(1)TSC; Art 8(1)LOSC.

5 Waters landward of a straight baseline established in accordance with TSC or LOSC and not previously considered internal waters.

6 In terms of LOSC Art 8(2), however, and TSC Art 5(2) where the establishment of a straight baseline has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial seas or high seas, a right of innocent passage shall exist in those waters.

7 Trail Smelter Arbitration (USA v Canada) (1941) III RIAA 1905, by analogy, which held that no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another state (at 1975). Also the Corfu Channel case [1949] ICJ Rep. 3: a state may not "allow knowingly its territory to be used for acts contrary to the rights of other states" (at p.21). (See also HSC Art 2 in relation to the high seas).

8 Regardless, apparently, of innocent passage. The duty of a coastal state not to hamper innocent passage appears to apply only to the territorial seas - TSC Art 15(1), LOSC Art 24(1).

9 TSC Art 1; LOSC Art 2(1).

10 By 1 June 1987, 97 States claimed 12 miles. The United Kingdom extended her territorial seas from 3 miles to 12 in 1987. The United States recognises claims of up

to 12 miles, although she claims only 3 miles herself. Churchill and Lowe N2 at 357.

11 The coastal State does have the duties not to hamper innocent passage. (TSC Art 15(1); LOSC Art 24(1)), and not to specify technical standards for foreign ships. Where installations provide hazards to navigation, the coastal State must, presumably, provide adequate sea lanes. As we see below, this is not a consideration for aircraft unless possibly, there is agreement to overflight (below, Chapter III).

12 LOSC Art 57. Those States claiming an EEZ have generally claimed 200 miles, with the exception of the Maldives (polygonal EEZ, from 37 to 310 miles) and the United Arab Emirates (up to boundary with neighbouring States, or where no boundary agreed, median line). Churchill and Lowe N2 at 348 and 351.

13 Churchill and Lowe N2 at 343-353. The authors state that up to 1 June 1987, 72 States claimed a 200 mile EEZ.

14 Art 60(1)(a) LOSC.

15 Art 60(1)(b) LOSC.

16 Art 2(2)CSC. Art 2 is repeated in LOSC Art 77(1) and (2). The ICJ even stated in its judgment in the North Sea Continental Shelf cases [1969] ICJ Rep 3 that the right of a coastal State in its continental shelf exists ipso facto and ab initio, i.e. an inherent right (at 23): supported by LOSC Art 77(3).

17 i.e. To a depth of 200 metres or to where exploitation can take place, whichever is the further. Churchill and Lowe N2 at 353.

18 Future parties to LOSC will adjust their definitions to concord with LOSC.

19 Installations estblished for the purpose of conducting marine scientific research are envisaged in Section 4 of part XIII LOSC.

20 The most extensive contiguous zone is claimed by South Africa (200 miles). Although South Africa has no EEZ at time of writing, she does have a continental shelf in accordance with CSC Art 1.

21 Art. 47.

22 LOSC Art 50.

23 LOSC Art 49 and Art 2(1). Sovereignty extends to airspace in terms of Art 49(2).

24 Art 51(1), Arts 51(1) and 47(6) and Art 51(2) LOSC respectively.

25 LOSC Arts 53(1), (2) and (9); Art 52(1).

26 TSC Art 16(4); Corfu Channel Case ICJ Rep. 1.

27 TSC Art 16(4).

28 LOSC Arts 38(1) and 44.

29 LOSC Art 41.

30 Established under the Provisional Understanding of 1984.

31 Convention for the Regulation of Aerial Navigation, Paris, 13 October 1919. Came into force on 1 June 1922. Terminated in 1947.

32 Convention on International Civil Aviation, Chicago, 7 December 1944. In force on 4 April 1947. 151 Ratifications.

33 What would be the position here in relation to South West Africa/Namibia, pending settlement? Could the territorial waters adjacent to the land, or the land itself, be said to be validly under the sovereignty, suzerainty, protection or mandate of a State (Which the United Nations Council for Namibia is not)? The area could possibly be said to be under the protection of South Africa. As to whether the area is under the mandate of South Africa would depend on whether or not United Nations General Assembly Resolution No. 2145(XXI) of 1966 validly terminates the mandate granted to South Africa or not.

34 Churchill and Lowe N2 at 64.

35 As to the question of the definition of "aircraft" and their overflight, see Part B below. Were a certain type of craft to be classified not as an aircraft but as a ship, or sea vessel, then the rules of an innocent passage would again become relevant.

36 De Vries Lentsch, F. The Right of Overflight over Strait States and Archipelagic States: Developments and Prospects 1984 NYIL 165 at 174 and N36.

37 Convention on the High Seas. Done at Geneva, on 29 April 1958. Came into force on 30 September 1962. Art 2.

38 Arts 14 and 15 HSC and Arts 100-107 LOSC.

39 De Vries Lentsch N36 at 174. These rules have been adopted by the ICAO Council as "International Standards".

40 De Vries Lentsch N36 at 175.

41 De Vries Lentsch N36 at 174. This question is discussed below Chapter XI.

42 Chiefly South American States. This is discussed below Chapter IX.

43 and in accordance with Art 53 generally: Art 53(2).

44 LOSC Art 53(3).

45 LOSC Art 53(12).

46 Churchill and Lowe N2 at 106.

47 Ibid.

48 LOSC Art 37.

49 LOSC Art 38(2). Art 38(2) provides too that these conditions do not preclude passage through the strait for the purposes of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

50 Art 54 LOSC. Note that transit passage does not apply to internal waters except where the establishment of a straight baseline in accordance with Art 7 has the effect of enclosing as internal waters areas not previously considered as such - Art 35(a). Nor does LOSC apply where long-standing international conventions are in force specifically regulating in whole or in part passage through straits (Art 35(c). As examples De Vries Lentsch suggests The Convention of Lausanne (1923) concerning the flight over the Dardannelles, Sea of Marmara and the Bosporous, and the Convention of Montreux (1936) concerning flight over the said straits between the Mediterranean and the Black Sea. De Vries Lentsch N36 at 217 N208.

51 LOSC Art 36. In other words, transit passage does not apply and that band of high seas or EEZ are not to be regarded as being different to any other high seas or EEZ. Perhaps special "due regard for the interests of other States" would be appropriate here - LOSC Art 87(2). Also Art 2 HSC.

52 LOSC Art 38(1), bearing in mind always that transit passage includes overflight.

53 Art 45(1)(a) LOSC.

54 De Vries Lentsch N36 at 217.

55 Except, of course, that parties to LOSC will be bound on LOSC coming into force.

56 De Vries Lentsch N36 at 172.

57 De Vries Lentsch N36 at 173.

58 1944, N32.

59 Shawcross and Beaumont Air Law Vol 1, 4th Edition by Martin, McClean, Martin and Margo, London, 1988, at Division V Paragraph I.

60 See Shawcross and Beaumont N59, Division V Paragraph I.

61 Annex 6 "Operation of Aircraft - International Commercial AIr Transport" and Annex 7, "Aircraft Nationality and Registration Marks".

62 Convention for the Regulation of Aerial Navigation, Paris, 13 October 1919. In force 1 June 1922. 38 Ratifications. 11 LNTS at 174. This is a convention which is of little more than historic interest - each of the parties to the Chicago Convention were bound to give notice of denunciation of the Paris Convention under Art 80. The Paris Convention terminated in 1947.

63 Adopted from the definition of the Council of the ICAO, November 8, 1967.

64 Seabrooke, G.A. Air Law, London 1964 at 177.

65 Bin Cheng The Law of International Air Transport London and New York, 1962 at 111.

66 Ibid.

67 Ibid.

68 The view is that of Gay de Montella as is referred to by Escalada, F.N.V. Aeronautical Law; Alphen aan den Rijn, Netherlands, and Germantown, Maryland, USA 1979 at 102.

69 Escalada N68 at 103.
70 Ibid.
71 of the Vitry-le-Francois Tribunal, October 20 1932, published in the Gazette du Palais, 1932 No. 63 at 76.
72 SI 1949/349, Art 71(I).
73 SI 1954/829, Art 73(1).
74 SI 1985/1643, Sch. I, Part A.
75 Shawcross and Beaumont N59 at Division V Paragraph 3.
76 S101(5) of the Federal Aviation Act 1958, 72 Stat 731, re-enacting the Civil Aeronautics Act 1938 S1(4).
77 S101(25) of the Federal Aviation Act 1958, N76.
78 McNair The Law of the Air, 3rd Edition by Kerr, M.R.E. and Evans, A.H.M., London 1964 at 324.
79 (1936) U.S. Av. R at 148.
80 McNair N78 at 324, on a note in 1937(7) Air Law Review pp 318 - 319.
81 McNair N78 at 324.
82 [1943] KB 161.
83 (1934) 50 L1.L. Rep. at 77 and 78.
84 This is also the view in McNair N78 at 325.
85 CSC Art 5(3); LOSC Art 60(6).
86 Trillo, R.L. Marine Hovercraft Technology, London, 1971 at 1.
87 McNair N78 at 327.
88 Ibid.
89 Ibid.
90 Ibid. Inter se, however, hovercraft have more similarities than differences.
91 of 1968, Chapter 59.
92 In light of the rest of the definition which implies travel over ground, water or other surface, clearly no special significance should be attached to the use of the word "vehicle" in the first line, for the purposes of classification of the craft.
93 CSC Art 5(3); LOSC Art 60(6).
94 Johnson, D and Messum, L.J. and Nicholson, K. Some aspects of Hydrofoil Motions and their Implications for Crew Performance, from the Eleventh Symposium on Naval Hydrodynamics (Unsteady Hydrodynamics of Marine Vehicles), edited by Bishop, R.E.D., Parkinson, A.G. and Price, W.G., Mechanical Engineering Publications Ltd., London and New York 1977 at 389.
95 Ibid.
96 This is thought to be the situation by Shawcross and Beaumont N59 at Division V Paragraph I.
97 Would this mean that the United States' definition (see above text at N67) is not in conformity with international law? It is submitted that it is wider than international law permits (missiles and satellites could easily be included under this definition). (Similarly, the definitions of those countries above at N67 would be too wide).
98 Referring here, presumably, to Art 1 of the Chicago Convention 1944.

99 McNair N78 at 266.
100 In support of this view, see the cases and discussion in Chapter XI above.
101 For the purposes of the safety zone, at any rate.
102 This latter class would, of course, in practice only highly exceptionally have anything to do with a safety zone. Only possible instances of intrusion of a member of this class into a safety zone would be in times of distress or aggression.
103 For further discussion on these articles, see Chapter V below. See also N138, last sentence.
104 LOSC Art 11.
105 LOSC Arts 60(8) and 80. This also applies to installations in the Area in terms of Art 147, and to scientific research installations in terms of Art 259.
106 See Chapter II above: This article applies to the EEZ as well.
107 LOSC Art 77(3). Also CSC Art 2(2).
108 LOSC Art 77(3), CSC Art 2(3).
109 CSC Art 5(1) is substantially the same, but it is narrower in that instead of the phrase "other rights and freedoms of other States", a list is provided: "...navigation, fishing or the conservation of the living resources of the sea...fundamental oceanographic or other scientific research carried out with the intention of open publication". The list does not include overflight. It is most unlikely, however, that the intention was to permit interference with overflight, but not navigation. This may be supported by the fact that LOSC Art 78(2) <u>is</u> wider. See, however, the discussion on LOSC Art 60(4) below in this paragraph.
110 N109 above, in relation to CSC.
111 See, however, the argument below that the overall intention of the Convention as it appears from Art 60 in general is to interfere with shipping, not overflight. "Navigation" throughout the article would seem to refer to shipping.
112 Art 78(1) LOSC has the same wording, except that the words "as high seas" have been excluded. This is probably to cater for the introduction of the EEZ, but it is submitted that the meaning of the article is not significantly altered for the purposes of this dissertation, because freedom of overflight is preserved over the EEZ by LOSC Art 58(1). This is also supported by Art 78(2) - see text at N109 above.
113 See Chapter IX below.
114 See Chapter VII above.
115 Art 60(7) LOSC has its CSC equivalent in Art 5(6).

116 Art 147 LOSC regulates installations in the Area. Whereas Art 5(2) CSC and Art 60(4) LOSC are permissive in nature (the coastal State "is entitled to" and "may" create safety zones, respectively). Art 147(2)(c) states that safety zones "shall be established around" installations in the Area.

117 Chapter II above. Sea lanes and traffic separation schemes in straits do not apply to aircraft. Art 41(1) LOSC states that they are to "promote the safe passage of ships". Similarly traffic separation schemes within archipelagic sea lanes may be prescribed only "for the safe passage of ships". LOSC Art 73(6).

118 See again the above discussion concerning Arts 60(4) and 262 above text at N111, for the meaning of "navigation" in this particular sentence. It is not clear whether air navigation is included.

119 See Chapter X below on State practice.

120 As to whether the provisions in relation to safety zones are customary law or not, see below (Part D Conclusion).

121 Art 147 LOSC does not specify the extent of a safety zone for installations in the Area. The concept of the coastal State has, in addition, no relevance for jurisdictional purposes, to the Area. In terms of Art 153(4) LOSC, the Deep Seabed Authority is to "exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the...provisions of [Part XI The Area] etc". Presumably this covers the safety zones. Although States Parties are contractually bound in terms of Arts 139 and 153(4) to comply with Part XI, clearly the question of enforcement in a safety zone in the Area is not well provided for, especially in respect of non parties to LOSC. In addition, at time of writing, LOSC is not yet in force, and Part XI is not customary law.

122 UN General Assembly Official Records, 5th Session, Supp. No. 12(A/1316).

123 Introduction of the word "works" would lend a wide interpretation to the concept installation.

124 p 15-16, Paragraph II.

125 For a view that the term "around" does not include airspace, see Symmons, Clive R. "The Maritime Zones of Islands in International Law"; Developments in International Law Vol I 1979 at 256:
"Unlike the territorial sea the zone attracts no superjacent airspace rights as it is to be 'around such installations'".

126 16 May - 27 July, 1951; A/CN 4/48 30 July 1951.

127 Art 6(2), which provided again that installations are not islands for the purpose of delimiting territorial waters.

128 Which had been employed in the Draft Articles despite, apparently, the reference to 500 metre zones in reports of the ILC above.

129 Transmitted by a note verbale from the UK delegation to the UN, 15 March 1956. There was, later in the Conference, an insistance by a number of states that the figure of 500 metres be stated, so as to set a maximum (Netherlands, Sweden, UK, Yugoslavia, Canada etc.).

130 Reproduced in the test above at N114.

131 Document A/Conf. 13/C.4/L.15; A/Conf.13/C.4/SR 30 p2

132 Ibid.

133 Paragraph 5, 29th Meeting of the 4th Committee, Wed. 2 April 1958.

134 29th Meeting N133, paragraph 13.

135 In other words, although CSC is generally regarded to be representative of international customary law today, it is possible that international customary law does not prohibit aerial jurisdiction by a coastal State, even though the convention does not expressly permit it.

136 By Pepin, E "The Law of the Air and the draft articles concerning "The Law of the Sea adopted by the International Law Commission at its Eighth Session Document A/Conf. 13/4.

137 Now Art 5 paragraph 6 CSC. See Chapter VII above.

138 One other preparatory document, however, entitled "The Breadth of the Safety Zone for Installations Necessary for the Exploration and Exploitation of the Natural Resources of the Continental Shelf" does not mention aeroplanes, aerial jurisdiction or overflight at all. It concerns itself only with shipping. This document was again stated as not necessarily representing the views of the Secretariat, although it was, again, prepared at the request of the Secretariat of the UN by Dr M.W. Mouton; Prep. Doc. No. 21 A/Conf. 13/26. It is not stated whether the Secretariat wished the discussion to exclude airspace.
Para 4, p.3 does state, incidentally, that the notion "installations" will be interpreted in the widest possible sense, because the devices used for the exploitation of the natural resources of the continental shelf show a vast variety.

139 O'Connell, D.P. The International Law of the Sea Vol.1, 1982, Oxford at 503.

140 Ibid.

141 Ibid.

142 Ibid.

143 LOSC Art 60(5) and discussion above Chapter VIII: This could conceivably include an extension to aerial jurisdiction. See, too, on self defence, below Chapter XI.

144 Of chief interest in this field is the practice of States controlling the North Sea/English Channel continental shelf, as this is the region which has involved the most experience. The three states discussed below are the North Sea or English Channel States with the most detailed rules concerning the safety zone. Other examples are given to provide perspective.

145 Bearing in mind the two elements necessary in order to establish the existence of a rule of customary international law, that is, firstly, a general and consistent practice adopted by States, and, secondly, the opinio juris, or, the belief that the practice is allowed or required by customary international law.

146 of 1982, Chapter 23. Sections 21 and 22 of this Act replace the relevant provisions (Sections 2 and 3) in the Continental Shelf Act 1964 Vol. 1, Chapter 29.

147 S21(9). As for the definition of "designated areas", see below in this section in relation to the Mineral Workings (Offshore Installations) Act 1971.

148 S2(2) of the Continental Shelf Act, N146 used the term ships, and created a criminal offence which will have been committed by the owner or master on entry into the area, unless he could not reasonably have known of the order (prohibiting ships from entering the designated area - S2(1).

149 ...as defined, presumably, in the Hovercraft Act 1968, Chapter 59, S4 - see above text at N92.

150 N146 above.

151 CSC Art 5(2); LOSC Art 60(4) and Chapter VII generally.

152 CSC Art 5(3), LOSC Art 60(6).

153 Except, of course, if the installations were in territorial waters where the coastal state may well claim such jurisdiction. Of relevance here are the designated areas beyond territorial seas.

154 1971 Vol. 2 Chapter 61.

155 No. 68-1181 of December 30, 1968. The translation used for this dissertation is that which appears in "Documents on the Law of the Sea" by Lay, Churchill, Nordquist, Vol. 1, 19, at 310-321.

156 The parallel provisions in the conventions are LOSC Arts 60(4) and 60(5) and CXC Arts 5(2) and 5(3).

157 In fact in terms of Art 7 of the Law, unless exceptional derogation is made by the competent Minister, all maritime or aerial transport between French territory and the installations and devices placed on the adjacent continental shelf shall be reserved for French ships or aircraft. This, in other words, is an application of cabotage in French Law; is this compatible with E.E.C. Law?

158 The term "navigator" must presumably include "aerial navigator".

159 Art 33 sets out the official competent to examine breaches of, inter alia, Art 32, and report the breaches to the public prosecutor. They are: 1) Officers and members of the police; 2) Administrators of Maritime Affairs; 3) Mining Engineers or engineers under their orders; 4) Government civil engineers in maritime service; 5) Officers and Petty Officers commanding State ships; 6) Commanders of State Aircraft; 7) Customs officers and 8) Members of the Marine Police and Fishery Protection Service. The list covers basically anyone with authority in Government service likely to be in, or in the vicinity of, a safety zone at any stage, and likely to witness an infringement.

160 LOSC Art 60(6) and CSC Art 5(3).

161 Art 35 of the Law.

162 8th December, 1972.

163 Section 47 of the Decree.

164 Ibid.

165 Above, same Chapter, under United Kingdom and France.

166 The translated provisions used for this section on Norway are from: Henderson, H. McN., Bates, Birnie and Burgess, "Oil and Gas Law, The North Sea Exploitation" Oceana Publications, New York 1982 Book 1, Part II, Chapter 2.

167 Henderson et al N166 paragraph 16.15.

168 Ibid.

169 Ibid.

170 Act of Parliament No. 57 of 1966, 28 July 1966.

171 Section 5(1)(b).

172 The provisions in the conventions stating that delimitation is not to be affected are CSC Art 5(4) and LOSC Art 60(8). These are almost certainly international customary law. See, also, above Chapter VIII.

173 No. 3 of 25 February 1978.

174 No. 20 of 1 November 1978.

175 Act No. 10 of 30 June 1977. Guyana has a 12 mile territorial sea, 200 mile EEZ and a 200 mile outer boundary of the continental margin: Churchill and Lowe N2, Appendix.

176 Section 12.

177 Section 18.

178 Sections 12 and 18 for the continental shelf and EEZ respectively.

179 Art 1 of Law 17.094 on Sovereignty Over Seas and Seabed off [the Argentine] Coast, December 29, 1966. Art 2 extends sovereignty to the seabed and subsoil of this zone.

180 Churchill and Lowe N2 at 67. Obviously the non-recognizing States will be those claiming less than 200 miles. Argentina claims this territorial sea, but is a party to CSC 1958, TSC and HSC.

181 ...as opposed to assuming that no right of overflight exists as is the case normally with territorial seas. This would be applicable to all states claiming extended territorial waters, while guaranteeing rights of navigation and overflight, e.g. Uruguay (Churchill and Lowe N2 at 67). Over twenty states claim territorial seas greater than 12 miles in extent. As to the position where States claim more than twelve miles, but do not guarantee freedoms of navigation and overflight, see the section on Brazil, below.

182 Brazilian Decree - Law Extending the Territorial Seas to 200 miles, March 25, 1970. Art 1.

183 An important example would be the USSR. The Eastern Bloc countries are generally also in line with the conventions. An example of a South American country whose practice accords with the conventions is Venezuela.

184 South Africa is amongst these States. Here, at the time of writing, the situation is governed by the Prospecting and Mining Leases between the Government of the Republic of South Africa and SOEKOR. Prospecting Lease Clause 10 and Mining Lease Clause 17 provide that SOEKOR shall not carry out operations in or about the prospecting/mining area in such a manner as may unjustifiably interfere with navigation or fishing etc. It is not clear whether "navigation" here includes aerial navigation or not. In addition Prospecting Lease Clause 19(d) and Mining Lease Clause 25.4 state that the South African Government retains the right to require that SOEKOR and any sub-lessee insist on their personnel, and those of their contractors, complying with South African laws, customs and codes. Presumably pilots or aircraft companies falling within Clauses 19(d) and 25.4 will have to comply with any local air laws. Compliance here, however, is based on contractual undertakings, as opposed to direct Legislation.

185 It is not intended in this dissertation to make any further study of the provisions of the legislation of these States, as the wording of this legislation invariably echoes that of the conventions, which are discussed above, Chapters VII and VIII.

186 San Francisco, 26 June 1945. In force 24 October 1945.

187 Despite the use of the term "members". The rule is understood to apply to all States.

188 For example, ramming.

189 This would depend on whether the use of force against the installation could be said to be self defence, or possibly anticipatory self defence, by the State against which the force from the installation is used. As to the rules governing self defence, see below.

190 O'Connell, D.P. International Law, London 1970, Second Ed., Vol. 1 at 316 where it is stated that "The law has not traditionally required a State to wait until it is actually attacked before taking measures of self defence;..."
191 O'Connell, N190 at 316.
192 The Caroline Case (1837). Moore, Digest of International Law, Vol 7 p 919, Note of April 24, 1841, where this phase was first used. Also O'Connell N190 at 316, and Greig, D.W. "International Law" London, 1976, Second Ed. at 885.
193 Report to the League of Nations L.N. Doc. A.14, 1927. Also Greig, N192 at 886.
194 Corfu Channel case N7 at 28.
195 The Mazuia Arbitration (1928), 2 U.N.R.I.A.A. 1013.
196 The Virginius USA v Spain) (1874) Moore, Digest of International Law, Vol 2 p. 895.
197 O'Connell N139 at 503.
198 Experience has in fact shown that oil installations can even be fairly popular targets during times of hostilities, for example, the Gulf War between Iran and Iraq.
199 CSC Art 5(2).
200 LOSC Art 60(4).
201 CSC and LOSC as a whole are actually not concerned with hostilities.
202 For example, by the United Kingdom during the Falklands War around the Falkland Islands, to name but one instance. Overflight was excluded.
203 To the present writer's knowledge.
204 Such a zone might be justified more easily if it protected a valuable grouping of installations, as opposed to a single isolated rig.
205 Bearing in mind the fact that a rule of international customary law requires both State practice and opinio juris for its establishment, while there is state practice on the exclusion of aircraft (and shipping) from established safety zones, it is doubted whether the opinio juris of these States would be that such measures were justified as self defence. Justification would be claimed from the provisions in the Conventions. Customary law would not, therefore, provide for safety zones on the basis of self defence.
206 As to this aspect, see Part D, Conclusion, Below.
207 The effect of such a zone could be to exclude aircraft with no hostile intent; this on the grounds that the mere presence of a craft within a certain distance constitutes a threat to the installation, the zone, therefore, being an exercise of the right of self defence.
208 Churchill and Lowe N2 at 308.
209 See references in N192.

210 One view is that self defence is a right against unlawful acts or omissions of another - Brown, E.D., The Legal Regime of Hydrospace, London, 1971 at 142.

211 An example is the Torrey Canyon incident where a tanker, registered in Liberia, having run aground and having released an estimated 60 000 tons of oil into the sea, was bombed by the Government of the United Kingdom to minimise further pollution. This action was justified on the grounds of self preservation - Torrey Canyon (1967) Command Papers, 3246.

212 An aircraft, for example, out of control heading towards an installation could conceivably be destroyed before collision, if this were the appropriate and reasonable course of action. In different circumstances, however, destruction of an aircraft merely because it is within a safety zone might well be excessive.

213 For example, the I'm Alone (1935) III RIAA 1609. The right is also recognized in HSC Art 23 and LOSC Art 111.

214 HSC Art 23(4); LOSC Art 111(5).

215 HSC Art 23(1); LOSC Art 111(1) adds Archipelagic Waters.

216 HSC Art 23(3); LOSC Art 111(4). The signalling ship need not be within the territorial sea or contiguous zone itself at the time: HSC Art 23(1); LOSC Art 111(1).

217 HSC Art 23(1); LOSC Art 111(1).

218 HSC Art 23(2); LOSC Art 111(3).

219 This article had its origins in a proposal by Argentina, Australia, Chile, Colombia, Mexico, New Zealand and the United States of America (Document A/Conf. 62/C2/L66) at UNCLOS III, 16 August 1974. The wording of the proposal was the same as that in Art 111(2), except that the proposal did not include the word "exclusive".

220 Which is not unreasonable when one considers the vastly greater speed with which aircraft move, the inability to give any visual signal to stop, the difficulty of establishing, in fact, whether any offence infringing the rights of the coastal State has taken place on or from an aircraft, the difficulty of committing such an offence (unless, of course, mere entry into the territorial seas of the coastal State is an offence under the laws of that State), not to mention the difficulty of keeping the pursuit "hot".

221 The aircraft being, more probably, a helicopter, or perhaps a seaplane.

222 Art 5(2) and (3) CSC; Art 60(4) and (5) LOSC.

223 This could be important where the provisions state that "ships" must respect the safety zones - Art 5(3) CSC; Art 60(6) LOSC.

224 To the knowledge of the present writer, there has been no State practice on this point.

disused rigs will soon be international customary law, if it is not already so, at time of writing.

227 See, inter alia, Summershill, M. Oil Rigs: Law and Insurance (Some Aspects of the Law and Insurance relating to Offshore Mobile Drilling Units), London 1979, Chapter 2 p 12-85, especially at 85.

228 It is not engaged in its hazardous work whilst in motion, and, given that oil and gas are invariably brought ashore by means of pipelines, it is not carrying large amounts of damaging material - unlike a laden oil tanker which does not have a safety zone.

229 See, too, Chapter XI above in relation to self defence in both use of force and non use of force situations, and action that may be taken against threat to an installation. Whether the installation is moving or not should not affect the right to take reasonable measures for protection.

230 Articles 15 and 101 respectively.

231 Articles 16 and 102 respectively.

232 Greig N192 at 333.

233 The safety zone being, of course, beyond territorial waters. Within territorial waters the matter falls clearly within the jurisdiction of the coastal State.

234 CSC Art 5(2); LOSC Art 60(4).

235 Same Chapter, previous heading, above.

236 Done at The Hague on 16 December 1970. The Convention entered into force in 1971. On December 31 1981, there were 115 contracting parties: Harris, D.J. Cases and Materials on International Law, 3rd Edition, London, 1983 at 236.

237 At least the key provisions, discussed below, are customary law.

238 In terms of Art 3(1) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation.

239 Art 2. The Convention does not, however, apply to aircraft used in military, customs or police services: Art 3(2).

240 CSC Art 5(4); LOSC Art 60(8).

241 Obviously the aircraft in such a situation would be a smaller craft, such as a seaplane or helicopter. As for the definition of "aircraft", see Part B, above ("aircraft" is not defined in the 1970 Convention). What would be the position if the craft is a hover-craft? Presumably if hovercraft were deemed to be aircraft the 1970 Convention would apply, and if deemed to be a ship then flag State jurisdiction would apply. If hovercraft were to be treated as craft sui generis, then one's only conclusion must be that the situation is practically unregulated by international law. There would have to be agreement on the issue, failing which, the State in which the hovercraft is registered would have jurisdiction.

242 In fact the Convention does not even permit the State to establish jurisdiction in such cases, expressly. Neither, however, is this State expressly forbidden from doing so. Perhaps the question of aerial hijacking stands in customary law on the same footing as piracy (see paragraph below), but this is not certain, in which case the State may take action.

243 CSC Art 5(2), LOSC Art 60(4). So when the safety of the installation or navigation is threatened presumably the coastal State may intervene. This could be the case if the aircraft were threatened with destruction by bombing unless demands are complied with, for example.

244 Harris N236 at 240. This would be supported by a United Nations General Assembly Resolution (2645 (XXV)) condemning without exception all acts of aerial hijacking and interference, and calling upon all States to take all appropriate measures within their jurisdiction.

245 See above, same Chapter, previous heading.

246 Most States, at any rate. International customary law on the subject could probably be said to be still evolving. Presumably the States of nationality of the hijackers would be free to enter into extradition treaties with the capturing State. Art 16(1) of the 1970 Convention states that "offences committed on aircraft registered in a Contracting State shall be treated, for the purposes of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft. "Art 16(2), however, provides that "without prejudice to the provisions of [Art 16(1)], nothing in this Convention shall be deemed to create an obligation to grant extradition".

247 As for the conclusion as to the definition of "aircraft" in international law, see Chapter VI above.

248 The latter would be establishment of jurisdiction (which is not allowed) as opposed to taking preventative adhoc action in casu (which is allowed).

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