

E. MEASURES FOR PEACE AND JUSTICE

1. ESTABLISHING PEACE

In compliance with the general obligations of all member states as laid down in the United Nations Charter to maintain peace and security and strengthen universal peace, (UN Charter, Art. 1) the 1982 Convention affirms these principles, (Preamble; Art. 138; Art. 301) but also goes further by reserving “the high seas for peaceful purposes”, (Art. 88) opening the Area exclusively for peaceful purposes, (Art. 141; Art. 147, Subpara. 2(d)) and requiring that marine scientific research be conducted exclusively for peaceful purposes. (Art. 240, Subpara. (a); Art. 246, Para. 3) However, it is hard to see where these noble sentiments have a practical legal impact. In the third decade of the existence of the United Nations (1975-1985) alone, there were about fifteen fishing disputes, thirty major demarcation disputes, and a similar number of major military operations. The oceans are “packed” with military equipment and electronic devices. Some argue that this is necessary to maintain peace; others, of course, see it as a threat to peace. These contradictory viewpoints reflect the fact that the Convention is a compromise at the lowest common denominator, and as long as the phrase “for peaceful purposes” is not defined more precisely, its impact will depend on the politics of the moment and it will not develop any authority of its own. However, the mere fact that the phrase exists and is used in the Convention can lend weight to arguments and further demand for a definition of “peaceful purposes” in order to make the expression applicable.

2. MEASURES TO CLOSE THE ECONOMIC GAP

All in all, the Convention is a law which aims to establish and maintain justice for all, and as such will be of benefit for all. But as it is also a political document, there are some subjects more related to substantive goals rather than simple regulation. Provisions of a regulatory nature can provide justice only when applied to relations among partners with equal footing in a social and economic system; the wider any existing gap between partners is, the less law will be able to provide justice. There is at the moment a considerable economic gap between the northern and southern hemispheres of our globe, and it is essential for the peace and security of the world that measures be provided to close this gap. The Convention incorporates to this end three substantive measures.

The first of these is, in particular, the dedication of the deep-sea area and its resources to all people (Art. 136-137) on the basis of “equal sharing” and, in general, the regime of the (Area. Part XI) Second, marine scientific research and marine technology are given a new dimension of importance, as almost 100 provisions, or one-third of the Convention, deal with various aspects and to varying degrees with these subjects. Finally, a complete Part of the Convention is dedicated to the development and transfer of marine technology (Part XIV) in order to encourage cooperation and the establishment of regional centres (Art. 275-277) by means of which research, training, and transfer of technology can be provided; this part is at all times to be read, interpreted, and practiced in accordance with the regime of marine scientific research and the regime of the Area.

These provisions aimed at reducing the economic differences between North and South are basically weak in spite of the impressiveness of the number, but they are nonetheless of significance because they have found their way into the charter of the oceans, require cooperation and transfer of technology, and impose considerable responsibility on international organizations.

3. THE UNIFICATION OF THE LAW OF THE SEA

The 1982 Convention is the Magna Carta of the law of the sea, and as such it provides only the general legal framework for all aspects of the use of the oceans. The framework contains considerable detail (which does not necessarily mean precision) with regard to some subjects, e.g., "innocent passage," (Art. 17-32) deep sea mining, (Part XI) and pollution from vessels. (Art. 211; Art. 217-234) In contrast, the Convention provides no more than a programme for some subjects, e.g., enclosed and semi-enclosed seas, (Part IX) and in some cases does no more than make a statement without further elaboration, e.g., the phrase "reserved for peaceful purposes." (Art. 88) But all provisions are intended to unify universal law and erect barriers against deviating national law, especially when it is less strict than international standards.

The Convention employs a number of methods - often only the results of compromises - to achieve this goal. The most direct method is the detailed regulation of a clearly defined subject, leaving little or no room for questions to arise. The right of navigation for all states, (Art. 90) the extent or establishment of zones, (Part II-VI) and piracy (Art. 101-107) are examples of this approach. The same level of quality of law is reached when states are obliged to apply codified international law or conventions. The Convention never uses the technique of referring directly to regulatory law, and only mentions the UNCITRAL Arbitration Rules, (Art. 108, Subpara. 2(c); Annex III, Art. 5, Para. 4) or the United Nations Charter. (Art. 19, Subpara. 2(a); Art. 39, Subpara. 1(b); Art. 138; Art. 279) When other law (conventions) is to be applied, the Convention uses instead terms such as "taking into account internationally agreed rules", e.g., (Art. 207) to conform to generally accepted international regulations, procedure, and practice, e.g., (Art. 94, Para. 5) "at least have the same effect as that of generally accepted international rules," e.g., (Art. 211, Para. 2) or "no less effective than international rules." e.g., (Art. 208, Para. 3) This technique allows varying degrees of flexibility of interpretation and enforcement of international regulations according to the interests and needs of each state, but still supports the intention of unification. With respect to pollution, the Convention uses the additional technique of requiring the states to establish international rules e.g., (Art. 43, Subpara. (b); Art. 208, Para. 5) and to re-examine them from time to time. (Art. 208, Para. 5; Art. 211, Para.1)

The following regulations are of a different nature:

- (a) In order to avoid the undermining of the comprehensive application of the Convention, it is not permitted to make reservations and exceptions (Art. 309) or otherwise suspend or modify the objectives of the Convention. (Art. 311, Para. 3-6)
- (b) The Convention requires the States Parties to fulfill their obligations in good faith. (Art. 300) which means that each state is to follow the "Golden Rule" and act as it would wish the other states to act in fulfilling their obligations
- (c) One of the most significant instruments of unification is the compulsory dispute settlement system provided by the Convention. (Part XII) Decisions from these tribunals would in many respects be a great contribution to the law of the sea.
- (d) Last but not least, reference should be made to the Preamble of the Convention, which calls for the achievement of justice and equal rights through the Convention, a goal which can only be reached by means of a highly unified law.

4. SETTLEMENT OF DISPUTES

The Convention system for settlement of disputes (Part XV) must be seen against the background of the international mechanism for resolving conflicts. Basically, all nations observe the principles of international law and fulfil their obligations on a kind of honour system and in good faith; if a nation refuses to observe these principles – and neither diplomacy nor political pressure can effect a change – military power may well be the only mechanism available to force this nation to meet its obligations, as the international legal system has virtually no means of enforcing judicial decisions or contractual obligations (such as treaties or international conventions). This century has seen many attempts to develop systems for the peaceful settlement of international disputes. One such attempt relevant for the 1982 Convention was the establishment of the International Court of Justice by the United Nations Charter of 1945. The Court of Justice is a principal organ of the United Nations, and all members of the United Nations may apply to the Court; but there is no general obligation to submit disputes to the Court of Justice.

The importance of the dispute settlement system provided by the Convention is that states parties which disagree on the interpretation or application of the provisions of the Convention are, at least to some extent, (Art. 286; Art. 297-298) bound to settle the dispute through courts or tribunals as described in the Convention. (Art. 287) A special dispute settlement system is designed for the activities in the sea-bed Area. (Art. 287; Art. 186-190) Within the general system, states have the choice among four fora, which include the International Court of Justice; (Art. 287, Subpara. 1(b)) the other three are (a) the International Tribunal for the Law of the Sea, (b) an arbitral tribunal, and (c) a special arbitral tribunal. (Art. 287, Para. 1) To a large extent, this is the result of compromises which made it easier for the states to swallow the bitter pill of surrendering a part of their sovereignty in accepting a compulsory system by giving them a wider choice of the court or tribunal to which they might apply, depending on the trust they have in a particular judicial organ. The law of the sea dispute settlement system is urgently needed for the unification of the law of the sea. If one considers the complexity which has evolved in the law of the sea in only a few decades, the economic possibilities of the oceans, the importance of the seas for mankind, and the countless aspects which must be taken into account in achieving justice, one will be forced to the conclusion that a compulsory dispute settlement is essential.