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COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED
AND THE OCEAN FLOOR BEYOND THE LIMITS OF
NATIONAL JURISDICTION

ARTIFICIAL ISLANDS AND INSTALLATIONS

Working paper submitted by Belgium

On 25 April 1971, the representative of Belgium in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction addressed a letter to the Secretary-General suggesting that the question of artificial islands be included in the list of subjects to be considered by the future Conference on the Law of the Sea (A/AC.138/35). The question was in fact included in the list (item 18).

The purpose of the present working paper is to give a brief review of the problems which this question involves and to suggest possible texts with a view to their solution.

The question of artificial islands raises two separate problems: firstly, that of the jurisdiction to which they are to be subject and, secondly, that of the right of States to erect such structures and the conditions which they must observe in doing so.

The first aspect, that of jurisdiction, does not seem to raise any real problems from the standpoint of the development of the international law of the sea, for it must be emphasized that the question does not concern floating islands - which, in view of their notional mobility, could be treated as vessels - but permanent islands, supported on the sea-bed or the ocean floor. It is self-evident that any such islands erected in the territorial sea would be subject to the jurisdiction of the coastal State. Any such islands erected beyond the limits of national jurisdiction might be placed under the jurisdiction of the international machinery for the sea-bed, whose establishment is contemplated; since they would be supported on the internationalized subsoil of the sea-bed or ocean floor, they would fall within the jurisdiction of the future international body. Furthermore, artificial islands supported on the continental shelf could be made subject either to the jurisdiction of the coastal State or to that of the State which authorized their construction. It should be recalled in this connexion that article 5 of the Convention on the Continental Shelf, done at Geneva on 29 April 1958, entitles the coastal State only to construct artificial installations necessary for the exploration and exploitation of the natural resources of the continental shelf, and places only those installations under the jurisdiction of the coastal State. In the case of artificial islands

which could be used as ports, or for the deposit of noxious waste, or for any other purpose, there is a gap to be filled in the law of the sea, and it would be sufficient to provide that installations of that kind will in future be placed under the jurisdiction of the coastal State or of the State which is responsible for their construction.

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The second problem raised by the question of artificial islands is more difficult. In the first place, it must be understood that only States can have the right to construct artificial islands. A mere private individual cannot claim that right, since the law of the sea is public law; it need only be recalled that a private individual does not possess the right to navigate a sea-going vessel, because such a vessel must have a flag, and that can only be granted by a State.

It may be asked whether a State has the right to erect such structures without taking into consideration the difficulties which its action may cause, such as interference with international navigation or fishing, the formation of sandbanks, or hindrance of access to the ports of a neighbouring State. It seems impossible to argue that it does, since article 5, paragraphs 5 and 6, of the Geneva Convention on the Continental Shelf expressly limits the freedom of action of the coastal State. That Convention provides for safety zones extending to a distance of 500 metres - which are thus at least one kilometre in diameter - and it would therefore seem unavoidable that such a provision should also be laid down for artificial islands, which themselves may cover a considerable area. The multiplication of artificial islands in shallow and narrow waters would not fail to have disastrous effects on the marine environment, fishing and other uses of the sea.

It seems unnecessary to lay down specific provisions for the case of artificial islands falling within the jurisdiction of the international machinery for the sea-bed and the ocean floor; since that machinery would be international in character, any States which deemed themselves injured by a project would be in a position to raise the matter and avail themselves of the remedies which are to be provided.

With regard to the continental shelf, it seems fair to provide for the authorization of the coastal State, since an artificial structure which does not serve for the exploitation of the natural resources of the shelf may directly interfere with that exploitation. It would at least be necessary to follow the restrictive provisions of the Convention on the Continental Shelf and provide for a right of appeal against any project which a State considered detrimental to its interests. Such an appeal could not lie to the international machinery proposed for the sea-bed unless the latter's authority extended to the territorial sea (which, in the circumstances, might be desirable). It might thus be necessary to provide for a right of appeal to IMCO if the objection related to interference with navigation; to the regional fisheries organization, if it related to interference with fishing; or to an international organization for the marine environment, if one is established, in the case of objections concerning the environment or pollution.

Finally, as regards the territorial sea, although it is placed under the sovereignty of the coastal State, article 15 of the Convention on the Territorial Sea and the Contiguous Zone of 29 April 1958 contains certain restrictions. It seems fair, while affirming the right of the coastal State to establish artificial islands, also to lay down provisions imposing on that State the obligation to consult the other States concerned when it undertakes the construction of an artificial island in its territorial sea, particularly as the territorial sea will very probably be extended and a structure in certain narrow waters might hinder access to the ports of a neighbouring State. It would be desirable to impose on a coastal State the obligation to publish the plans of any structure which it proposed to erect and to take into consideration any observations addressed to it by other States; it would doubtless be advisable to provide for the right of appeal to an impartial organization, such as IMCO.

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The following texts might serve as working bases for the preparation of sets of draft articles:

A. The territorial sea:

Article (a): The coastal State is entitled to construct artificial islands or immovable installations in its territorial sea; it must not, through such structures, impede access to the ports of a neighbouring State or cause damage to the marine environment of the territorial seas of neighbouring States.

Article (b): Before commencing the construction of artificial islands or installations as mentioned in the preceding article, the coastal State shall publish the plans thereof and take into consideration any observations submitted to it by other States. In the event of disagreement, an interested State which deems itself injured may appeal to IMCO, which though not empowered to prohibit the construction, may prescribe such changes or adjustments as it considers essential to safeguard the lawful interests of other States.

B. The continental shelf:

Article (c): The coastal State may, on the conditions specified in the following article, authorize the construction on its continental shelf of artificial islands or immovable installations serving purposes other than the exploration or exploitation of natural resources. Such structures shall be placed under its jurisdiction or under that of the State which undertakes their construction, and, with a view to their protection, may be surrounded by safety zones extending not more than 500 metres. Such artificial islands or immovable installations have no territorial sea of their own.

Article (d): Before commencing the construction of artificial islands or installations as mentioned in article (c), the State shall publish the plans thereof and take into consideration any observations submitted to it by other States. In the event of disagreement, an interested State which deems itself injured may appeal to ... 1/, which shall prescribe, where appropriate, such changes or adjustments as it considers essential to safeguard the lawful interests of other States.

C. The high seas beyond the limits of the continental shelf:

Article (e): Any construction of an artificial island or immovable installation on the high seas beyond the limits of the continental shelf shall be subject to the authority and jurisdiction of the international machinery for the sea bed. The international authority may authorize a State to erect such islands or installations and delegate jurisdiction over such structures to that State.

1/ It would seem advisable not to specify at present the body which would be competent to entertain such an appeal. It could be the tribunal of the international machinery, if that was thought appropriate, or there could be the triple possibility of recourse to IMCO in respect of complaints affecting navigation, to the regional fisheries organization in respect of those concerning fishing, or to the international authority for the marine environment and pollution, if one is established.