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THE LAW OF THE SEA:

SOME RECENT DEVELOPMENTS

(With Particular Reference to the United Nations Conference of 1958)

Carl M. Franklin (Author)

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CHAPTER II
THE GENEVA CONVENTION ON THE CONTINENTAL SHELF: SOME PROBLEM SITUATIONS

Although it is not possible to contemplate all of the different problem situations which may arise in the exploitation by the coastal state of its continental shelf resources under the provisions of the Geneva Convention, a few typical problems may be suggested.

In analyzing these problems it is well to remember that the presently known methods for exploiting the subsoil resources of the shelf fall into two groups:

1. Exploitation from the land mass by means of tunnels, as in the case of coal mines, and directional drilling for oil, gas and other resources.

2. Exploitation from the high seas by means of (a) fixed installations; (b) mobile installations or units; and (c) floating devices.¹

Mining tunnels from the mainland into the submarine subsoil have been used for more than a century.² This method is not likely to create any problems except in the case of two states facing each other with a common continental shelf. Here the problem which might arise is that State A could drill its tunnel beyond the continental shelf boundary line as provided for in Article 6 of the Convention.³ In such case State A would be liable in damages to compensate State B for the resources taken, and would be guilty of violating the sovereignty of State B.

Article 7 of the Convention suggests another problem which might arise in the distant future, although it is not likely to be the cause of any immediate concern in view of the limitations of present technology. It provides:

"The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunneling irrespective of the depth of water above the subsoil."⁴

² Mouton, The Continental Shelf 290 (1952); Gidel, 1 Le Droit International Public de la Mer 510 (1932).
⁴ Ibid., Art. 7.
It is possible, of course, that States A and B, facing each other across a rather broad expanse of high seas where the submarine area between them was below the 200 meter depth, could be seeking the same resources. State A could be tunnelling (or using directional drilling) to exploit the resources and State B could be attempting to exploit the same resources from permanent installations or mobile units on the high seas.

If such a situation should arise it would appear possible to invoke the boundary line provisions of Article 6 mentioned above and arrive at an equitable division of the resources involved. Unfortunately Article 7 did not use the term “directional drilling” as well as the term “tunnelling.” However, in view of the general intent of the Convention to place no limitations upon the coastal state in the exploitation of its submarine resources through the use of devices which originate on the land mass and hence do not per se interfere with fishing, navigation, etc., it is logical to interpret “tunnelling” broadly to include “directional drilling.”

One may conclude, therefore, that the problems arising out of the first method of exploiting continental shelf resources, namely, from tunnels or other devices originating on the land mass are not likely to be of major concern. However, when the continental shelf is exploited from the high seas, either with fixed installations or with mobile or floating devices, then a number of possible problem situations may be contemplated.

A. PROBLEM 1. USE OF THE CONTINENTAL SHELF FOR PURPOSES OTHER THAN EXPLOITATION OF NATURAL RESOURCES

Article 2 of the Convention provides:

“The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.”

(Emphasis added.)

Suppose that a state wishes to use its continental shelf for building permanent installations for defense purposes: radar platforms, submarine detection installations, weather stations, and even missile launching sites. Would such use be permitted under the provisions of the Convention and, if not, could they be justified under the inherent right of the state to take reasonable measures to provide for its defense?

Under a strict interpretation of Article 2 of the Convention, a coastal state is granted sovereign rights only for the purpose of ex-

*Ibid., Art. 2.*
ploiting the *natural resources* of its continental shelf. Hence it might be maintained that the state could not build radar platforms, weather stations, or other defense installations because these would not be for the purpose of exploiting the natural resources.

On the other hand, it seems more logical to argue that the right to exploit natural resources carries with it the corollary right to use whatever means are reasonable. The Convention itself suggests a test for reasonable means: those which "must not result in any *unjustifiable* interference with navigation, fishing, or the conservation of the living resources of the . . ." ⁶ Attaching lights, radar and weather equipment, and other devices to oil drilling installations, or mounting them on separate towers, would seem to constitute reasonable means of protecting the installations.

Moreover, a coastal state which builds an oil drilling platform in conformity with the provisions of the Convention would be entitled to install thereon a weather station or a radar antenna as part of its right to take measures necessary for the protection of its installations.⁷ Certainly this is a necessary corollary to the state's exploitation of its continental shelf resources. It follows, therefore, that if a weather station, radar antenna or other devices would be permitted on an oil drilling platform to protect the installation, the text of the Convention would imply permission to put such devices on separate platforms even though they might serve the dual purpose of servicing the oil exploitation safety zone and of augmenting the security of the coastal state against attack.

It is a logical step to conclude that a coastal state could establish defense installations on its continental shelf which were in no way connected with its installations used for exploring and exploiting the natural resources.

Finally, one may look to some defeated proposals at the Geneva Conference to conclude that a coastal state may use the continental shelf for the construction of defense installations quite apart from the exploitation of natural resources. Bulgaria introduced a proposal that "the coastal State shall not use the continental shelf for the purpose of building military bases or any installations which are directed against other states."⁸ (Emphasis added.) Subsequently, Bulgaria revised the proposal by omitting the last six words to remove the suggestion of aggressive intent, saying, "the coastal State shall not use the

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continental shelf for the purpose of building military bases or installations." The proposal was defeated.

India subsequently introduced a similar proposal which also failed. Hence, it is clear that the delegates who drafted and approved the Convention on the Continental Shelf purposely did not deny the right of the coastal state to build defense installations on its continental shelf for the purpose of augmenting its security against attack. However, it is reasonable to expect that such defense installations, like those used for exploiting the natural resources, would not be permitted to result "in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea..." 

Quite apart from interpretations of the Convention on the Continental Shelf and inferences from defeated proposals which suggest that a state may build defense installations on its continental shelf, perhaps the most compelling reason justifying the building of radar platforms, weather installations and other devices on the shelf even for the sole purpose of increasing the coastal state's security is the inherent right of each state to provide for its own protection. Nothing in the Convention on the Continental Shelf, or in any of the other three Geneva Conventions diminishes that right in the slightest. This being the case, one may justify such security installations not only under a broad interpretation of the Convention, but also under the inherent right of self-defense.

B. PROBLEM 2. USE OF NEUTRAL STATE'S CONTINENTAL SHELF SAFETY ZONE AREA AS A BASE OF NAVAL OPERATIONS BY AN OVERSEAS STATE

FACTS: State A, a coastal state, has developed an extensive cluster of oil drilling installations on the continental shelf some distance beyond her territorial sea but near a recognized sea lane.* In accordance with the provisions of Article 5 of the Geneva Convention on the Continental Shelf, State A has established a safety zone extending to a distance of 500 meters around the installations as meas-

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*See Diagram.
11 Ibid., Art. 5(1).
ured from each point of their outer edge, and has notified all nations of this safety zone.13

The distance between installations varies from 400 to 1,000 meters, thus providing sufficient clearance for the passage of vessels through the waters of the safety zone. State A has put lights and foghorns on each of the installations to warn ships which might stray from the recognized sea lane. She has also equipped some of the installations with defensive radar antenna and sonic devices in augmentation of her own security.

War breaks out between States X and Y, whereupon State A notifies each of the belligerents of her neutrality.

13 "Article 5"

"1. The exploration of the continental shelf and the exploitation of its natural resources 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.

"2. 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 those zones measures necessary for their protection.

"3. The safety zones referred to in paragraph 2 of this article 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.

"4. Such installations and devices, though under the jurisdiction of the coastal States, 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 of the coastal State.

"5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

"6. 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.

"7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

"8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published."
State X has a large submarine fleet which has been effective in sinking ships of State Y which use the sea lane near State A's continental shelf installations. Part of State X's success is due to the fact that her submarines have been using State A's safety zone area around the installations without permission as a haven from attack and as a base of operations. Although these submarines have never surfaced within the safety zone, their periodic presence is known both to State A and State Y. Aside from the fact that the personnel of State A working on the installations have become fearful that the safety zone might become a battle area, the submarines have not impaired or endangered the production of oil.
Finally, State Y notifies State A that henceforth if any submarines are found in the safety zone they will be subject to attack, even though such attack might involve the destruction of one or more of the installations and the loss of life among State A's personnel.

All three countries have ratified the Hague Convention XIII of 1907, concerning the rights and duties of neutral powers in naval war.

**GENERAL QUESTION:** What are the rights and duties of each of the three states: A (neutral), X and Y (belligerents)?

**SPECIFIC QUESTIONS:**

1. Does the provision of Article 5(3) of the Geneva Convention on the Continental Shelf requiring that ships of all nationalities must respect the safety zones established by the coastal state around its installations mean that all of the waters within the confines of the zone may be closed by the coastal state to vessels of other states for all purposes, or only for the purpose of, and to the extent necessary for, the protection of the installations?

2. Are the waters within the safety zone territorial sea?

3. If not, are they sufficiently analogous to territorial sea to cause the rights and duties of a neutral state under the Hague Convention No. XIII of 1907 to apply to the safety zone?

4. Does State A have the right under the Geneva Convention on the Continental Shelf, or an inherent right of self-defense quite apart from the Convention, to exclude the submarines of State X and the warships of State Y, and such other ships of both belligerents as might result in a collision of forces in the safety zone, in order to avoid the imminent danger in the zone of (a) possible serious impairment of State A's exclusive use (i.e., exploitation of the continental shelf resources), and (b) possible serious impairment of the inclusive uses (i.e., navigation, fishing, etc.) by all states, including State A?

5. Assuming that State A has the right to exclude all ships of both belligerents because of the (a) possible serious impairment of State A's exclusive use (i.e., exploitation of the continental shelf resources), and (b) possible serious impairment of the inclusive uses (i.e., navigation, fishing, etc.) of all states, does State A have the duty to do so?

Q 1. Does the provision of Article 5 (3) of the Geneva Convention on the Continental Shelf requiring that ships of all nationalities must respect the safety zones established by the coastal state around its installations mean that all of the waters within the confines of the

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14The terms "exclusive use" and "inclusive use" are used here in the same sense as used by McDougal & Burke to whom an indebtedness is acknowledged. McDougal & Burk, "Crisis in the Law of the Sea: Community Perspectives versus National Egoism," 67 Yale Law Journal 539 (1958).
safety zone may be closed by the coastal state to vessels of other states for all purposes, or only for the purpose of, and to the extent necessary for, the protection of the installations?

The above question is not easy to answer because certain provisions of the Convention make it possible to support opposing arguments. Looking to the language of the Convention one finds in Article 3 the express provision that "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." From this language it follows that the waters around the installations are high seas from which other states ordinarily may not be excluded, despite the right of the coastal state to establish a safety zone and to require that all ships respect it. This being the case, the waters within the safety zone could be used by all states for navigation, fishing, scientific research, and other purposes, provided that such uses do not endanger the installations or interfere unreasonably with the production of oil.

Moreover, Article 5(7) provides that the "coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents." This language implies that the waters around the installations, within and adjacent to the safety zone, are high seas in which all states may fish, subject to any limitations imposed by existing treaties or by the Geneva Convention on Fisheries, and hence said high seas may not be closed by the coastal state.

Finally, one finds support for the argument that safety zone waters are high seas, which normally may not be closed by the coastal state to other users, by noting a defeated Netherlands proposal in Committee IV of the Geneva Conference which would have prohibited all ships over a certain size from entering the safety zone and would have made said area prohibited anchorage for all vessels. Netherlands proposed that:

"A group of such installations and devices shall be considered as one unit if the distances are less than half a nautical mile. Entrance into such units is forbidden for all ships of more than 1,000 registered tons, except exploration and exploitation craft . . . . The area inside such units shall be a prohibited anchorage." 17

By defeating this proposal, Committee IV of the Geneva Conference supported the principle that navigation through and anchorage

in the safety zone area surrounding the installations is insured to overseas states as a matter of right, subject, of course, to the corol­
lar exclusive right of the coastal state to exploit the continental shelf resources, and the inclusive rights of all users to fish, etc., within the safety zone.

When the coastal state establishes a safety zone around the installa­
tions or devices on the continental shelf, the waters within the zone become what might be described as “protected high seas.”  

This term is formulated to designate a change in the character of the high seas within a particular area (i.e., within the safety zone) and for a limited time (i.e., until the installations are abandoned and removed or until the safety zone is discontinued even though the installations remain).

Wherever an area of the high seas involves competing inclusive uses such as navigation, fishing, scientific research, cable laying, etc., each user has a general obligation to accommodate every other user in order to permit maximum possible benefits to all states. However, with the development of permanent installations on the continental shelf, and the creation of the right under the Convention for the coastal state to establish safety zones around the installation, the general obligation of accommodation has had to become specific and somewhat detailed within this limited area of the high seas, assuming of course that the coastal state exercises its right to establish such a zone.

The superjacent waters of the continental shelf are designated by the Convention as high seas (Art. 3), but the waters within the safety zone should more properly be thought of and designated as “protected high seas,” even though the Convention does not do so, because within the safety zone all users have more specific rights and duties relative to other users than in other areas of the high seas. These specific rights and duties are prescribed by the Convention on the Continental Shelf. For example, the coastal state is obligated to undertake in the safety zones all appropriate measures for the pro-

\[18\] It is the establishment of the safety zone around the installations by the coastal state which gives to the waters within the zone the character of “protected high seas” and creates certain rights and duties in the coastal state which it does not have in the absence of a safety zone. It is true, of course, that even though a safety zone is not established, as in many instances it will not be since there is no duty of the coastal state to do so, the Convention provides for certain rights and duties of various users in an undefined area around the installations. For example, the exploitation of the natural resources must not result in any unjustifiable interference with navigation, fishing, etc., without reference to whether a safety zone has been established or not.
tection of the living resources of the sea from harmful agents.\textsuperscript{19} Also, ships of all nationalities must respect the safety zones,\textsuperscript{20} and the coastal state is entitled to take measures in the zones for the protection of installation, devices, etc.\textsuperscript{21}

That the special character of the high seas within the safety zone as "protected high seas" may be temporary is indicated by the fact that the Convention provides that when the installations are abandoned or disused, they must be removed.\textsuperscript{22} After the removal of the installations the safety zone would cease to exist and the "protected high seas" thereof would once again become just high seas, on which all users would resume their general obligations to accommodate all other users, except to the extent that treaties enunciated specific obligations. Moreover, since the Convention confers upon the coastal state the right to establish safety zones, but does not impose the duty to do so, the coastal state could disestablish safety zones, even though the installations remained.

Thus it is clear that within the safety zone various users are protected by certain express provisions of the Convention. The right to exploit a particular use within the safety zone, whether it be drilling for oil, navigating through the zone, fishing therein, conducting scientific research, laying submarine cables or pipelines, or doing other things, is prescribed by protective regulations covering this specific area of the high seas for as long as the safety zone exists.

Although the coastal state has the exclusive right to exploit the natural resources of the continental shelf, the exercise of this right is circumscribed in a number of ways both within the safety zone and outside it, even though a safety zone may not have been established. Moreover, as between the several inclusive users within a safety zone, it may be necessary at times to accord some users preferential treatment over others. For example, those using the "protected high seas" of the zone for peaceful purposes may be entitled to preferential use as against belligerents under certain circumstances.

While the Convention provides that the coastal State has the right to establish the safety zone and to take protective measures therein, this right normally would not justify the exclusion of other users from the zone, unless the other users were unreasonably impeding or endangering either the exploitation of the continental shelf resources, or the other uses of the "protected high seas" within the zone.

\textsuperscript{20} Ibid., Art. 5(3).
\textsuperscript{21} Ibid., Art. 5(2).
\textsuperscript{22} Ibid., Art. 5(5).
On the other hand, it could be argued, although the argument is less compelling, that the Convention contemplates that the safety zone may lawfully be closed to navigation, fishing and other uses as long as the installations are being used for the exploitation of the resources of the continental shelf. The first argument in support of this position is based upon Article 5(6) of the Convention which provides:

"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."

This language suggests that most navigation, if not all, is to take place in recognized sea lanes wherein continental shelf installations may not be located. Conversely, it may be inferred that such installations are to be located in waters which are not ordinarily to be used for navigation, except by the coastal state in servicing her installations, at least not so long as the installations are in use. Hence, the safety zone could be considered closed to navigation.

Still another argument against permitting any navigation into or through the safety zone surrounding the installations is to be found in the preparatory document which the delegates had before them in drafting the general requirement that "ships of all nationalities must respect these safety zones." In response to a question as to the need for a safety zone around oil drilling installations on the continental shelf, an oil industry spokesman said,

"It is desirable to establish a safety zone around the installations for the exploration and exploitation of the mineral resources of the continental shelf because of the possible presence of hydrocarbon vapours. . . . It would be desirable to prohibit entrance to these zones altogether, because any vessel, or its personnel, who may be unaware of the hazards involved, might unwittingly provide a source of ignition for the hydrocarbon vapours which could be present." (Emphasis added)

The statement of the oil industry spokesman emphasizes the excessive danger of permitting entrance into the zones around oil well installations, at least by surface vessels which might ignite the hydrocarbon vapors. However, even assuming that this reasoning is valid for surface vessels, it would have no applicability in the present instance unless the submarines of State X surfaced in the safety zone,

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24 Ibid., Art. 5(2).
which they have not done thus far, or unless the surface ships of State Y entered the zone to destroy the submarines. Moreover, it would not apply where the installations were used for the extraction of resources which did not produce dangerous hydrocarbon vapors.

Conclusion with respect to Question 1:

The more logical arguments lead to the conclusion that the waters within the safety zone around the continental shelf installations are “protected high seas” which may be used concurrently by all states for navigation, fishing, and for other purposes, subject only to the limitation that such uses must not unreasonably interfere with nor unduly endanger the operation of the installations by the coastal state, and subject to the obligation of each user to accommodate every other user.

Since navigation contemplates subsurface as well as surface navigation, and war vessels as well as merchantment, State X’s submarines could traverse or anchor in the safety zone, provided that in doing so they did not impair or endanger the production of oil by State A. The facts indicate that State X’s submarines thus far had not impaired or endangered State A’s oil production. Therefore, in the early stages of its use of the safety zone, State X would not be in violation of the Convention. Hence, until the ultimatum was received from State Y, indicating the possibility of imminent collision of forces in the safety zone, including possible damage to the installations and the personnel thereof, State A would not have the right to order State X’s submarines to cease using the safety zone for a haven and a base of naval operations against State Y. Of course, it could be argued that State Y has a right to attack the submarines of State X within the safety zone on sight without an ultimatum to State A since the waters of said zone are a part of the high seas. However, the waters are of a special kind which we have described as “protected high seas.” Although the coastal state does not have as extensive rights vis-à-vis belligerents in these “protected high seas” of the safety zone as she has in the neutral waters of her own territorial sea, she does have greater rights than she has on the high seas. As will be seen later, these rights of the coastal state include the right to take “protective measures” in order to safeguard her installations. In extreme cases these protective measures could result in an exclusion of the submarines of State X. Hence, it is debatable whether State Y would have the right to attack the submarines of State X in the “protected high seas” of the safety zone without first notifying State A of her intention to do so. Such notification would permit State A to take whatever protective measures were necessary to protect her installations, including the exclusion of State X’s submarines from the safety zone waters.
Q 2. Are the waters within the safety zone a territorial sea?

The Convention provides an unequivocal answer to this question. Article 5(4) says,

"Such installations and devices, though under the jurisdiction of the coastal State, 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 of the coastal State." 26

It is clear, therefore, that the man-made installations are not like natural islands which do have a territorial sea of their own. Hence the rights and duties of a neutral state with respect to its territorial sea would not apply.

Q 3. If the waters within the safety zone are not territorial seas, are they sufficiently analogous to territorial sea to cause the rights and duties of a neutral state under the Hague Convention No. XIII of 1907 to apply?

In order to answer this question it may be helpful to look at some of the articles of the Hague Convention No. XIII of 1907 to which all three states are parties. 27

"Article I. Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from all acts which would constitute, on the part of the neutral Powers, which knowingly permitted them, a non-fulfillment of their neutrality.

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"Article V. Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraph stations or any apparatus for the purpose of communicating with belligerent forces on land or sea.

"Article VI. The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of vessels of war, stores, or war material of any kind whatever, is forbidden.

"* * *

"Article XIII. If a Power which has been informed of the outbreak of hostilities learns that a belligerent ship of

war is in one of its ports or roadsteads, or in its territorial waters it must notify the said ship to depart within twenty-four hours or within the time prescribed by the local regulations.”

One of the purposes of a declaration of neutrality is to keep belligerents and their destructive forces from harming persons or property of the neutral state located within the territory or aboard her ships. Although continental shelf installations might be considered akin to ships, it seems more appropriate to classify them as man-made islands and hence a part of the State’s territory. As such they are entitled to be free from involvement in hostilities unless they are being used to assist one of the belligerents.

Article I of the Hague Convention above indicates that belligerents are bound “to respect the sovereign rights of neutral powers” and are “forbidden to use neutral ports and waters as a base of naval operations against their adversaries.” It might be argued that since the continental shelf installations themselves are subject to the sovereign rights of State A, the waters adjacent to those installations within the safety zone, while not territorial waters as such, nevertheless could be considered “neutral waters” from which State A could exclude the submarines of State X in order to keep the fighting away from the installations (i.e., away from the territory of State A).

However, in the interest of providing for the freedom of the high seas and their maximum use by all states, including belligerents, the sounder view is that the waters around the continental shelf installations are not neutral waters by analogy to territorial waters which the Convention specifically says they are not, but are “protected high seas.” This being so, State X is perfectly free to traverse or anchor in State A’s safety zone, subject to the specific obligations imposed by the Convention in what we have designated “protected high seas.” Since the waters around the installations are not “neutral waters” State A has neither rights nor duties as a neutral under the Hague Convention No. XIII of 1907 with respect to those waters. Moreover, the mere fact that the presence of a cluster of State A’s continental shelf installations in the high seas incidentally affords some assistance to one of the belligerents does not negate State A’s impartiality as a neutral.

Of course, if State A permitted State X’s submarines to erect wireless telegraph stations or any apparatus on the installations themselves for the purpose of communicating with belligerent forces, which action is prohibited under Article V of the Hague Convention No. XIII of 1907, or permitted State X to refuel the submarines from
the installations, also prohibited by the Convention,\footnote{Art. VI of the Hague Convention No. XIII of 1930 provides: 'The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of vessels of war, stores, or war material of any kind whatever, is forbidden.'} such action would constitute a violation of State A's neutrality since the installation is part of State A's territory over which she has "sovereign rights" and "exclusive use" under the provisions of the Convention on the Continental Shelf.\footnote{U.N. Doc. A/CONF. 13/L. 55, Art. 2 (1), (2), (1958).} In such case, State A would have a duty to force State X to discontinue using the installations or she would violate her neutral status.\footnote{Of course, the mere violation by State A of her neutral status would not cause the neutrality to end. \textit{I Oppenheim-Lauterpacht} 752 (7th Ed., 1952). On the neutral's duty of impartiality see Tucker, \textit{U.S. Naval War College, International Law Studies}, 1955, 202 (1957).}

Q 4. Does State A have the \textit{right} under the Geneva Convention on the Continental Shelf, or an inherent right of self-defense quite apart from the Convention, to exclude the submarines of State X and the warships of State Y (and such other ships of both belligerents as might result in a collision of forces in the safety zone) in order to avoid the imminent danger in the zone of (a) possible serious impairment of State A's \textit{exclusive} use (i.e., exploitation of the continental shelf resources), and (b) possible serious impairment of the \textit{inclusive} uses (i.e., navigation, fishing, etc.) by all states, including State A.

The answer to the first part of this question depends upon the interpretation of the language of the Convention which gives the coastal state the right "to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection,"\footnote{U.N. Doc. A/CONF. 13/L. 55, Art. 5(2) (1958).} and the right to demand that "ships of all nationalities must respect these safety zones."\footnote{Ibid., Art. 5(3).}

At the outset it is clear that this Convention and the other three drafted at Geneva in 1958 contemplated peacetime uses of the continental shelf, the high seas, territorial waters and contiguous zones. Although a neutral state's rights on the high seas are restricted in certain respects during a war (e.g., a belligerent has the right of visit and search, blockade and, under certain circumstances, the right of capture and condemnation of neutral ships) such restrictions do not apply to a state's continental shelf installations (i.e., its territory).

Hence, it may be argued that when the Convention provides that "ships of all nationalities must respect these safety zones," this duty to the coastal state applies whether the states of the world are at peace
or some of them are at war. The "respect" required of maritime states is that which is reasonably necessary to prevent damage to the personnel and installations within the safety zone and to prevent impairment of the use of these "protected high seas" by all states for fishing, navigation, and other uses.

It might be argued that State A would be entitled to decree that all warships of States X and Y could not traverse, anchor in or otherwise use the safety zone from the inception of and during the belligerency because of the possible danger to the installations and their personnel resulting from any use by the belligerents. To support such an argument would be to grant the coastal state the same rights against belligerent warships in the "protected high seas" of the safety zone as the coastal state has in its territorial sea from which it may exclude belligerent warships entirely. Such an extensive grant of rights to the coastal state would go too far inasmuch as the "protected high seas" of the safety zone are not the equivalent of territorial seas.

The protective measures which the coastal state may take in the safety zone under the Convention are only those which are necessary. Although it is not possible to determine at any given time what measures will be necessary in the future, as a broad general principle "necessary measures" would not include total exclusion of belligerent warships from the safety zone unless and until there is a clear indication of imminent danger to the various uses within the zone.

In the present case when State Y notified State A of intended use of force against the submarines of State X in the safety zone, if the submarines were not excluded from the zone, the danger of immediate and serious impairment of all uses, both exclusive and inclusive, within the safety zone became readily apparent. Hence, at this point State A would be entitled to take action with respect to the belligerents which she normally would not be entitled to take in the absence of such imminent danger. Upon receipt of State Y's ultimatum, State A then would have the right under the Convention to exclude the submarines of State X and the warships of State Y, and such other ships of both belligerents as might result in a collision of forces in the safety zone, notwithstanding the fact that the waters in the zone are essentially high seas. The fact that these high seas have become "protected high seas" gives the coastal state this right of exclusion.

It might be argued that the mere presence of State X's submarines in State A's safety zone would constitute an imminent danger to the continental shelf installations, and that the coastal state would therefore be entitled to exclude all belligerent ships from the safety zone.

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at the outbreak of war. However, it seems more logical to conclude that the mere presence of the submarines in the safety zone would not constitute an imminent danger until the other belligerent (State Y) gave some indication by word or act of an intention to attack the submarines in the safety zone waters. While State Y was under no duty to announce her intention to attack the submarines within the safety zone, having done so it then became certain that the installations and other peaceful uses of the safety zone were henceforth in imminent danger so long as the submarines remained in the safety zone.

Despite the paramount goal in the world community of maintaining the greatest possible degree of freedom of the high seas for navigation, fishing, scientific investigation, and other uses by all states, and despite a preference for inclusive uses rather than exclusive uses, it seems logical to interpret the provisions of the Convention giving the coastal state the right to take protective measures within the safety zone as including, under unusual circumstances such as those present here, the right to exclude belligerent ships from the zone. As a corollary, State X would be required to "respect the safety zone" by submitting to State A's decree to keep her submarines, and such other ships as might cause a collision of forces in the zone, out of the zone. As a practical matter, if State X found that the use of State A's safety zone was of material benefit to her submarines, the chances are that she would violate whatever provisions of the Continental Shelf Convention were necessary in order to maintain this advantage over State Y.

Quite apart from the Convention it seems reasonable that State A would also have the right to exclude the submarines of State X and the warships of State Y, and such other ships of both belligerents as might result in a collision of forces in the safety zone, under her inherent right of self-defense, which includes the right to protect her citizens and property (i.e., personnel and installations) from damage by belligerents. The inherent right of self-defense would permit the use of whatever force is necessary against both belligerents in the area of the installations.

Q 5. Assuming that State A has the right to exclude all ships of both belligerents because of the (a) possible serious impairment of State A's exclusive use (i.e., exploitation of the continental shelf resources), and (b) possible serious impairment of the inclusive uses (i.e., navigation, fishing, etc.) of all states, does State A have the duty to do so?

We have already seen in the discussion of Question No. 3 that since the waters around the installations are not "neutral waters" State A

34 As a practical matter, if State X found that the use of State A's safety zone was of material benefit to her submarines, the chances are that she would violate whatever provisions of the Continental Shelf Convention were necessary in order to maintain this advantage over State Y.
has neither rights nor duties as a neutral state under the Hague Convention No. XIII of 1907 with respect to those waters.

Now, however, the question is whether the right of the coastal state to exclude belligerent ships from the safety zone, when those ships appear on the verge of engaging in battle in the zone to the possible impairment of the exclusive and inclusive uses therein, also carries with it a duty to exclude when the waters are "protected high seas" and not territorial seas. It will be remembered that in the case of territorial waters the neutral state has a duty to notify a belligerent ship to depart from said waters within twenty-four hours or within the time prescribed by the local regulations. 35

Although the Convention on the Continental Shelf does not contain an article which expressly imposes a duty on the coastal state to exclude belligerents (or any state) from the safety zone, such a duty, as well as other duties, are clearly implied from certain provisions in the Convention.

With respect to the implied duties of the coastal state, other than the duty to exclude belligerents under certain circumstances, it is clear that in exercising its right to establish safety zones around the installations and to take necessary protective measures within such zones, the coastal state has two implied duties: (1) the duty to see that the protective measures are reasonable; and (2) the duty to see that they are uniform and non-discriminatory. That is, the coastal state could not apply certain measures and regulations to the ships of one country and not apply them to the ships of another country, although the coastal state could exclude the ships of two belligerents from the safety zone because of the imminent danger to the installations, while permitting the ships of non-belligerents to continue to navigate through the safety zone, fish therein, etc.

It follows, therefore, that if the ships of one belligerent are excluded, the ships of the other belligerent will also have to be excluded, not only for State A to fulfill its implied duty under the Convention to take protective measures in the safety zone which are non-discriminatory against similar classes of states (in this case, belligerents), but also under its general duty as a neutral to maintain an attitude of impartiality by refraining from giving such assistance and succor to one of the belligerents as would be detrimental to the other. 36

Returning to the main question of whether State A has a duty to exclude the warships of the two belligerents from the safety zone because of the imminent danger to all other users within the zone, it may be helpful to consider the two major groups or interests of the total

35 See p. 76, Art. XIII.
36 II Oppenheim-Lauterpacht, op. cit., footnote 30 (at 654, 675).
situation to whom State A owes duties: (a) the belligerent interests and (b) the world community interests.\(^{37}\)

In a situation involving a neutral and belligerents, attention is usually focused principally upon the duty of the neutral state toward the belligerents. Without denying the importance of this duty, one may venture to suggest that in the continental shelf safety zone, which is unique in its creation of “protected high seas,” involving a number of specific right-duty relationships between the various users, the coastal state has additional duties, beyond those owed to the belligerents, which are of even greater importance. These are the duties owed to the world community interests.

With reference to the coastal state’s duties to the world community interests, it is necessary to remember that the continental shelf concept, as well as the Convention on the Continental Shelf, accords sovereign rights to the coastal state to explore and exploit the natural resources of the shelf. Concomitantly, safeguards and protections are written into the Convention to insure, among other things, that in the exercise of these sovereign rights the coastal state will not unjustifiably interfere with navigation, fishing and other inclusive uses of the high seas of the area and particularly in the “protected high seas” of the safety zone.

Moreover, as indicated previously the coastal state is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents. This provision should be interpreted broadly to mean appropriate measures with respect to its own exploitation of the continental shelf resources and with respect to all other users within the safety zone.

Hence, in the exercise of its exclusive right to exploit the continental shelf resources the coastal state assumes a clearly-implied duty within the safety zone, and with respect to it, vis-à-vis the world community interests which are entitled as a matter of right to use these “protected high seas” within the zone, namely, the duty to operate her installations and to control the safety zone through necessary

\(^{37}\) "World community interests" is used to denote the various interests of all inclusive users and all beneficiaries of the use of the “protected high seas” within the safety zone. Inclusive users would include both actual and potential users. Beneficiaries of the use of the “protected high seas” within the safety zone would include all states, maritime as well as land-locked, some of whom would be direct beneficiaries and others indirect. Within limits, the situation might be compared with a third-party beneficiary contract under which the coastal state as the obligor promises the other signatory states to the Convention to undertake necessary measures in the safety zone to protect the world community interests in return for world community acquiescence to the coastal state’s sovereign rights to exploit the continental shelf resources, including the right to establish the safety zone around its installations and to take protective measures in said zone for its own benefit.
protective measures in such manner as to provide a minimum of interference to and a maximum utilization by all users.

Of course, all users includes belligerents as well as non-belligerents. Normally, belligerents will have the right to use the "protected high seas" of the safety zone and the coastal state will have the corollary duty to permit such use. However, when belligerents indicate that their continued use of the safety zone is likely to destroy or seriously hamper the various uses of the zone by peaceful states, the coastal state must fulfill its larger duty to the world community interests by exercising its right to exclude the belligerents.

Only the coastal state can act for the world community interests in this situation to insure a minimum of interference to and a maximum utilization by the non-belligerent users because only the coastal state has the right to establish and control a safety zone around its installations. Since this right is accorded by the world community interests to the coastal state, in accepting the right the coastal state assumes an implied duty to exercise the right whenever failure to do so could endanger or impede the normal rights of all non-belligerent users in the zone.

Hence, it follows that since State A alone can take such action as is necessary, and has the implied duty to do so in order that the "protected high seas" of the safety zone will be available for the maximum number of inclusive uses which the states of the world may wish to pursue in said zone, State A has a duty to the world community interests to exclude the warships of States X and Y. By acting uniformly against both of these belligerents, State A will fulfill its duty of maintaining impartiality as well as fulfilling its duty to the larger, more important group of non-belligerent users of the safety zone.

While the exercise by State A of its duty to exclude the two belligerent states from the safety zone will deprive them of access to these "protected high seas" it is readily apparent that the benefits derived from the fulfillment of State A's duty to the world community interests in insuring to all non-belligerents access to the waters of the zone for both exclusive and inclusive uses far transcends any disadvantages which may befall one or both of the belligerents as a result of their own actions.

Thus it may be concluded that while the coastal state normally would not have the duty nor, as we have seen above, the right to deny the use of the "protected high seas" of the safety zone to any state, whether belligerent or non-belligerent, when the belligerency reaches the stage of an imminent danger to and possible serious impairment of all other uses within the zone, the coastal state has the duty (as well as the right) to exclude the belligerents from the safety zone.