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THE PROBLEM OF NAVAL ARMS CONTROL IN THE MEDITERRANEAN: LAW OF THE SEA ASPECTS AND LEGAL POLICIES INVOLVED

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1. Introduction

The legal aspect of naval arms control and naval CSBMs is a subject little explored by international lawyers, even though any proposal aiming at naval arms control involves legal issues which must not be underestimated. Besides the law of the sea, which clearly provides the bulk of provisions, one has to take into account the Charter of the United Nations and institutions, such as permanent neutrality, which may have a naval feature.

This paper is divided into three parts. The first is a brief description of the law of the sea provisions which have a bearing upon naval arms control. The second contains an overview of the Mediterranean naval issues. Territorial statuses which are deemed relevant for our topic are also taken into account, such as the neutralization of territories. The same is true for naval bases, which play an important role for the Mediterranean outside users. The Black Sea is also considered, because of its strategic importance and because it counts the (former) Soviet Union among its riparian States. The third part identifies the institutional conditions upon which an arms control system can be set up and suggests a number of CSBMs, the only ones that in the opinion of this author are deemed compatible with the present situation.

I

GENERAL BACKGROUND: FLEETS MOBILITY AND LEGAL CONSTRAINTS

2. The status of foreign warships in zones under national jurisdiction (the territorial sea; the contiguous zone; the exclusive economic zone)

The three zones under consideration have a different status and this bears upon the navigational regime of foreign warships. While the territorial sea (stretching up to 12 miles from the coastal baselines) is subject to the sovereignty of the coastal State, the other two zones (respectively the contiguous zone up to 24 miles and the EEZ covering the sea-bed and the superadjacent waters up to 200 miles) are subject only to functional rights of the coastal State. It must be added that the existence of these last two zones is conditional upon an explicit proclamation by the coastal State.

In the territorial sea, foreign warships enjoy only a right of innocent passage. According to both the 1958 Geneva Convention on the territorial sea and contiguous zone and the 1982 Law of the Sea Convention, passage need not be notified and is not subject to the consent of the coastal State. It is difficult to say whether on this point the two conventions are a codification of customary international law. It is the view of many third world countries that the passage of foreign warships requires the previous consent of the coastal State. Until recently, this was also the view of the Soviet Union. A joint statement of the Soviet Minister of Foreign Affairs and the US Secretary of State, dated 23 September 1989 and laying down uniform interpretation

of the rules on innocent passage, states that all categories of ships, including vessels of war, enjoy a right of innocent passage, without notification or previous authorization. Ships in innocent passage cannot exert any action prejudicial to the peace, good order or security of the coastal State. For instance, as stated in Article 19 of the 1982 Law of the Sea Convention, they cannot be engaged in naval exercises. Aircarriers enjoy a right of innocent passage. However, aircraft must stay on the deck during the passage, since landing or taking on board of aircraft is forbidden.

In the contiguous zone foreign warships are incumbent of complete navigational rights and the same holds true for the exclusive economic zone. The main problem is connected with the right to conduct military exercises in the EEZ of a foreign country. During the Third Conference on the Law of the Sea a number of States proposed that the carrying out of military maneuvers in foreign EEZs should be authorized by the coastal State. This proposal was not accepted. The right to conduct military exercises is to be seen as a manifestation of the freedom of high seas retained by Article 58 of the Law of the Sea Convention. On the other hand the prohibition to carry out military maneuvers within the EEZ cannot be derived from Article 301 of the Law of the Sea Convention, since the peaceful purpose clause there embodied only means that the States are obliged not to pursue aggressive policies inconsistent with the UN Charter. However a number of States, when signing the 1982 Convention, restated their understanding and made clear that military exercises should be considered as forbidden within foreign EEZs. This was not, for instance, the view of Italy which, on the contrary, made a declaration according to which it was its understanding that the provisions of the Law of the Sea Convention did not rule out the lawfulness of conducting military exercises in a foreign EEZ without the consent of the coastal State.

3. The regime of international straits

According to a customary international law, warships are entitled to navigate through straits used for international navigation joining two parts of the high sea (international straits). This freedom, which was restated by the International Court of Justice in the Corfu Channel case, has been extended to those straits joining a territorial sea with the open sea by the 1958 Geneva Convention on the territorial sea and the contiguous zone. The 1982 Convention on the Law of the Sea has clearly innovated the previous regime. The new rules are considered as belonging to customary law by a considerable number of writers. According to the 1982 codification, international straits are subject to the regime of transit passage, which entails much more freedom since it gives: a right of unimpeded passage to all categories of ships; the right of overflight; and the right of submarines to a submerged passage. These freedoms are not in force for those straits formed by an island of the State bordering the strait and its mainland, provided that an alternative route of similar convenience exists; in this case

only the unimpeded passage applies. The 1982 Convention does not supplant regimes established long ago, such as that in force for the Turkish Straits.

4. Military uses of foreign continental shelves and sea-bed subsoil

The continental shelf is considered a promising area not only for its economic exploitation, but also for military uses. For instance, dormant mines can be left on it and activated by remote control when needed; special weapons for antisubmarine warfare - like the Captor system - can be emplaced on the sea-bed and submarine listening posts have become common devices for tracing the routes of this category of ships. Obviously a State can use its continental shelf for military purposes, with the single exception of emplacing nuclear weapons or other weapons of mass destruction at least 12 miles beyond its coastal baselines. The problem arises in so far as the use of a foreign country continental shelf is concerned. The point of view widely accepted is that under the regime of the 1958 Geneva Convention on the continental shelf military installations can be emplaced on the sea bed adjacent to the coast of a foreign State, provided that they do not interfere with the right of the coastal State to explore and exploit its natural resources. Since the conclusion of the 1958 Convention, however, the trend has been to limit the possibility of using another State's continental shelf for military purposes. India and Mexico made a declaration stating that foreign continental shelves cannot be used for military purposes when acceding to the 1971 sea-bed treaty and reiterated their view at the time of the 1977 sea-bed Treaty review conference.At the Caracas session of the Third Conference on the Law of the Sea, Mexico and Kenya tabled a proposal along the same lines. Some 37 States concurred with it, even if the proposal was rejected. Even though the 1982 Law of the Sea Convention does not contain any explicit provision on military installation, the cumulative effect of Articles 60 and 80 renders the possibility of emplacing military installations on another State's continental shelf very small indeed. According to one interpretation, military devices might be emplaced on the continental shelf of another State, provided that they: (a) do not amount to artificial islands; (b) are not capable of being used for economic purposes; (c) do not interfere with the exercise of the rights of the coastal State; (d) can be considered as a manifestation of the freedom which third States retain in another State's continental shelf. It goes without saying, however, that this interpretation is not shared by those countries which signed the Law of the Sea Convention with the understanding that any kind of installation or structure must be authorized by the coastal State.

5. The status of air space over territorial waters and the establishment of air identification zones

Foreign aircraft do not enjoy a right of overflying territorial waters, unless the consent of the coastal State is

given. The only exception is represented by the space over the waters lying between a strait governed by the regime of transit passage. Aerial navigation is free over the waters lying beyond the territorial sea. However a number of States have instituted aerial identification zones, which stretch for miles. A military aircraft venturing into such zones is requested to identify itself and to follow predetermined aerial routes. The lawfulness of AIZs is a moot point. According to one opinion an AIZ, stretching beyond the territorial sea outer limit, is legitimate in so far its purpose is that of identifying aircraft which head for the coastal State; aircraft in lateral passage, on the contrary, should not be obliged to give their identification and destination.

6. Preservation of the marine environment and the issue of naval pollution

Preservation of the marine environment is subject to detailed provisions in part XII of the 1982 Law of the Sea Convention. Two kinds of pollution are particularly relevant here: deliberate pollution from vessels (pollution by dumping) and pollution arising from maritime casualties. The latter can be very dangerous, particularly in the case of casualties involving nuclearly propelled vessels. In addition to the Law of the Sea Convention there other treaties relevant to the preservation of the marine environment in the Mediterranean, i.e. the 1973 IMO International Convention for the Prevention of Pollution from Ships (MARPOL Convention) and the 1976 Barcelona Convention and its related Protocols. The Law of the Sea Convention obliges States to prevent marine pollution and to cooperate to this end. Article 221 also empowers States to take forceful measures, beyond their territorial sea, in order to take action following serious sea accidents. The measures envisaged by the Law of the Sea Convention, however, do not apply to pollution arising from navigation of warships. These are generally immune from the stringent provisions dictated by the Convention, as demonstrated by Article 236 which states:

> The provisions of this Convention regarding the protection and the preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service.

This provision contains only a very mild obligation in that it continues by saying:

> However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

7. Navigational rights on the high seas

Both the 1958 Geneva Convention and the 1982 Law of the Sea Convention state that the high seas are open to all States,

whether coastal or land-locked and that the freedom of the high seas embodies the freedom of navigation as well as the freedom of overflight. The main question is not only the precise definition of the body of waters to be considered as high seas, but also the limits which might curtail the above freedom. Article 87 para. 2 of the Law of the Sea Convention states that those freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas; Article 88 of the same Convention says that the high seas shall be reserved for peaceful purposes. While the former provision is a self-explanatory limit to the freedom of one State in order to allow for the freedom of the others, the latter is open to question. The correct interpretation of the peaceful purposes clause is that not all military activity is prohibited, but only of those which are tantamount to aggressive policies, running counter Article 2 para. 4 of the UN Charter. It follows that naval exercises are permitted. The only duty which States are obliged to fulfill consists in giving adequate notification to the other sea users so as not to endanger peaceful navigation. The same is true for weapon testing, unless conventionally prohibited as in the case of the Limited Test Ban Treaty of August 5, 1963, which obliges the parties not to carry out any underwater nuclear weapon test explosion on high seas.

8. The notion of an enclosed or semi-enclosed sea and its relevance for the Mediterranean

The notion of enclosed and semi-enclosed seas is an innovation of the 1982 UN Law of the Sea Convention. According to Article 122 of this Convention, there are two definitions. The first takes into account geographical factors and defines an enclosed or semi-enclosed sea a "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet". The second definition given by Article 122 takes into account legal elements, since it defines an enclosed or semi-enclosed sea as "a gulf, basin or sea consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal states". The Mediterranean falls under the first definition and it encompasses subregional semi-enclosed seas, such the Black Sea or the Adriatic. The Law of the Sea Convention refers to economic cooperation as a field of action of the littoral States and lists such items as living resources, marine environment and scientific research. The list is merely illustrative; however, arms control and military problems in general are not necessary ingredients of the generic duty of cooperation which littoral States are obliged to fulfill under Article 123 of the 1982 Convention.

9. Zones of Peace over Marine Areas

The formal endorsement of the notion of zone of peace was a result of the UNGA resolution 2831 (XXVI) of 16 December 1971 declaring the Indian Ocean a zone of peace. Almost every year the UN General Assembly adopts a resolution on this subject, the

most recent being that of 27 December 1991 (Res 46/49). Zones of peace over marine areas are a typical non-aligned concept, the setting up of which has been proposed not only for the Indian Ocean but also for the Mediterranean at the 1978 Special Session of the General Assembly devoted to disarmament.

Though there is not only one notion of a zone of peace, its implementation would entail the prohibition of granting military facilities and the exclusion of fleets not belonging to the littoral States, or their limitation in number. As a rule, a zone of peace should also be a nuclear weapon-free zone. The proposal of instituting zones of peace has been always opposed by major naval powers, since its enforcement would curtail the principle of freedom of navigation on the high seas and that of collective self-defence. For non-littoral States, freedom of the high seas would be limited to non military navigation. This is why France, the United Kingdom and the United States, which have naval interests in the Indian Ocean, voted against GA resolution 46/49 mentioned above, while the positive vote of the Soviet Union was nothing but lip service paid to the idea of zones of peace.

II

THE MEDITERRANEAN REGION

10. Claims over territorial sea in the Mediterranean: a) the 12 mile criterion; b) the claims by Italy and Libya over historic bays (respectively the Gulf of Taranto and the Gulf of Sidra); c) the controversy between Greece and Turkey over the extension of the territorial sea in the Aegean

Since the territorial sea is subject to sovereignty of the coastal State, its extension is of utmost importance. The mobility of foreign fleets is limited by territorial seas: freedom of navigation is severely curtailed, naval maneuvers are not allowed and overflight is not permitted. In a narrow sea, such as the Mediterranean, the extension of territorial waters is of critical importance. The majority of States adopt the 12-mile criterion for calculating the breadth of their territorial sea. This is the case of Algeria, Morocco, Libya, Egypt, Lebanon, Yugoslavia, Italy, France, Spain, Cyprus, Malta and the Principality of Monaco. Of the remaining littoral States, three adopt the 6-mile criterion (Israel, Greece and Turkey), while two (Syria and Albania) have claims not consistent with customary international law. Syria claims a territorial sea up to 35 miles and Albania to 15 miles. It is worth noting that Turkey applies the 6-mile criterion in the Mediterranean and the 12 mile criterion in the Black Sea.

In fixing the limit of the territorial sea, the point from which the breadth is calculated (baseline) is extremely important. Only a few States follow the low tide mark criterion: Morocco, Libya, Egypt, Israel, Lebanon, Cyprus, Greece, the Principality of Monaco. Other States use a combination of the low tide mark and the straight baseline criteria: Tunisia, Syria, Turkey, Yugoslavia, Italy, France and Spain. A system of

straight baselines is followed by Albania and Malta, which has defined the sea lying between Malta, Fifla and Gozo as internal waters.

A number of the States mentioned above have claims to bays, about which third States have protested. Egypt qualifies as bays inlets which do not meet the test of the Geneva Convention on the territorial sea. Since this State has not yet published the geographical coordinates of its territorial sea, however, crucial problems have not yet arisen. The Tunisian claim to the Gulf of Gabes is opposed by Libya. Italy claims the Gulf of Taranto as a historical bay. This claim has not been formally protested, with the single exception of Malta. However, it is not considered consistent with international law by the United Kingdom or by the United States. Libya asserts its sovereignty over the Gulf of Sidra, which it regards as a historic bay. This claim has raised the protests of a number of countries (for instance, Italy, U.K., France) and has been overtly challenged by the United States. Since it considers the Sidra waters as high sea, naval exercises were carried out both in 1981 and 1986. This led to serious incidents. In 1981, two Libyan jet fighters were downed while attempting to hit US airplanes; in 1986 the US attacked military facilities on the Libyan coast and sunk three Libyan warships in response to a Libyan missile attack.

The enclosure of bays is not the only hot point. Also the breadth of a territorial sea can raise concern, as demonstrated by the controversy between Greece and Turkey. Turkey has made it clear that an extension of the Greek territorial waters to 12 miles in the Aegean would be regarded as a casus belli. In effect, if Greece extended its territorial waters up to 12 miles, almost the entire Aegean would become subject to Greek sovereignty. Greek territorial waters would cover 71.53% of the Aegean sea and only 19.71% of these waters would still be regarded as high sea. Consequently, there would no longer be a high sea corridor in the central Aegean. In effect, Turkey does not consider the 12-mile rule as opposable to it and claims that the extension of territorial waters in the Aegean up to 12 miles is to be considered an abuse of right (Article 300 of the 1982 Law of the Sea Convention).

11. The geography of international straits in the Mediterranean. Special cases: a) the Strait of Gibraltar; b) the Strait of Messina; c) the Turkish Straits

The Mediterranean is not a sea which can be easily reached from outside waters. It has three narrow entrance points: the Gibraltar Strait, the Suez Canal and the Turkish Straits. Navigation through the Mediterranean entails passage through numerous chokepoints--many of them straits in juridical terms--particularly now that almost all the Mediterranean States have extended their territorial waters. The Suez Canal is an artificial waterway and will be dealt with separately. Leaving aside the Straits of Gibraltar, Messina, and Bosphorous and Dardanelles, which will be considered later, the straits of the Western Mediterranean do not cause particular problems. The Strait of Minorca is an international strait, connecting two

parts of high seas. It is thus subject to the transit passage. The same is true for Boniface, which is a narrow outlet between Corsica and Sardinia. The Corsica Canal, between Corsica and the Tuscan Archipelago has become an international strait, subject to the transit passage. The Sicily Canal is not a strait in legal terms, since its waters are not completely under the jurisdiction of Italy and Tunisia. The same is true for the Malta strait. The entrance to the Adriatic Sea is made possible by the Otranto Canal. The distance between Albania and Italy is about 41 miles. Therefore, the Otranto Canal is not a strait in juridical term. However Yugoslavia, which is obviously interested in keeping that waterway open, insisted on having a provision in the Law of the Sea Convention stipulating that all freedoms of navigation and overflight apply to a strait used for international navigation where a route of high sea exists.
The main straits of the Ionian Sea are represented by the Corfu Strait and by that of Cerigo, between Crete and the Peloponnesus. Both are international straits subject to the rule of transit passage. Albania, the guardian of the Corfu strait which led to a "cause celebre" in 1949, has not signed the Law of the Sea Convention. The Cerigo Strait is important because it is a chokepoint entrance to the Aegean Sea. The other entrance points of the Aegean, such as the Kasos Strait, are not straits in juridical terms in so far as Greece maintains a territorial sea of 6 miles. Should Greece extend its territorial sea to 12 miles, all the entrance points of the Aegean would become international straits. The passage through the Aegean Islands is a point of contention between Greece and Turkey. This passage is made possible though a number of chokepoints which are straits in juridical terms, even with a Greek territorial sea of 6 miles. Greece asserts the right to indicate the strait which is to be used for international navigation. To this end, it signed the Law of the Sea Convention with the following understanding: " In areas where there are numerous spread out islands that form a great number of alternative straits which serve in fact one and the same route of international navigation, it is the understanding of Greece that the coastal State concerned has the responsibility to designate the route or routes, in the said alternative strait, through which ships and aircrafts of third countries could pass under transit passage regime, in such way as on the one hand the requirements of international navigation and overflight are satisfied, and on the other hand the minimum security requirements of both the ships and aircrafts in transit as well as those of the coastal State are fulfilled". It goes without saying that this stance has met with the Turkish opposition.

The strategic relevance of the Gibraltar Strait does not need to be underscored. Undoubtedly this strait is submitted to the regime of transit passage which allows unimpeded surface transit, submerged passage for submarines and overflight both for civil and military aircraft. Spain, as a controlling coastal State, has never been happy with this interpretation of the right of transit passage and it deposited a statement when signing the Law of the Sea Convention, which implies that overflight is subject to the regulations dictated by the coastal State.

The Strait of Messina falls under the category of straits disciplined by Article 38 para. 1 because there is an alternative route of similar convenience seaward of Sicily. It is thus subject to an unimpeded right of innocent passage. However, following a serious collision between two tankers,the Italian government has forbidden passage by tankers of more than 50,000 tons.

The Turkish Straits continue to be regulated by the 1936 Montreux Convention and do not fall under the regime of the Law of the Sea Convention (Article 35). The Convention makes a distinction between passage in time of peace and in time of war. In the former time case, commercial shipping enjoys the freedom of navigation, subject to the sanitary regulations of Turkey and to the payment of charges and taxes which can be levied by the Turkish government. The same freedom is not enjoyed by warships. Non Black Sea States are allowed to transit, provided that: they envoy light surface vessels (therefore submarine passage is forbidden), the passage is previously notified to the Turkish authorities, the maximum aggregate tonnage of all foreign warships in transit does not exceed 15,000 tons and the number of such warships does not comprise more than nine vessels. Black Sea Powers have a more privileged treatment. They can envoy capital ships exceeding 15.000 tons, provided that they pass through the Straits singly, escorted by not more than two destroyers. The transit of submarines is also permitted for the following purposes: if a submarine is constructed or purchased outside the Black Sea, it has the right to rejoin its base; those willing to reach the waters of the Mediterranean have the right to pass only to be repaired in dockyards outside the Black Sea. The passage of aircarriers is a moot point. The Montreux Convention does not contain a specific provision allowing or forbidding the passage of this kind of vessel. The Soviet Union argues that transit is implicitly allowed by Article 15 which forbids warships in transit to " make use of any aircraft which they may be carrying". Therefore it asked and obtained permission from the Turkish government for the passage of the aircarrier Kiev, qualified by the Soviet Union as a "cruiser". The official Western position is that a systematic interpretation of the provisions of the Montreux Convention leads to the conclusion that the transit of aircarriers is forbidden.

In time of war, transit is severely curtailed. If Turkey is a belligerent, the passage of warships falls entirely within the discretion of Turkey. If Turkey is neutral, the transit of warships of belligerent powers is forbidden, except for rendering assistance to the victim of aggression or pursuant to a deliberation of the League of Nations or for those vessels which find themselves separated from their bases.

It is worth noting that Turkey has the right to apply measures forbidding the passage not only when it is a belligerent State, but also when it finds itself threatened with an imminent danger of war. These measures, however, should be applied under the scrutiny of the League of Nations, which could oblige Turkey to discontinue them.

12. Navigable Waterways: the Regime of Suez Canal

Artificial navigable waterways cannot be equated to international straits. Therefore they cannot be subject to transit in passage or to unimpeded innocent passage. Since they are situated within a State territory, an international treaty is needed in order to open the waterway to international navigation. This is the case of the Suez Canal, stretching for 160 km from the Red Sea to the Mediterranean, the regime of which is disciplined by the Convention of Constantinople stipulated in 1888. Under this Convention, the territorial sovereign (i.e. Egypt as the successor of the Ottoman Empire) is obliged to keep open the Suez Canal " in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag". The Suez Canal cannot be blockaded and no belligerent action can be exerted in the Canal, its ports or their immediate vicinity, even if Egypt is a belligerent. It is not clear whether these restrictions apply in their entirety to Egypt, since Article X of the Constantinople Convention allows the territorial sovereign to take the necessary measures to secure its own defence and the maintenance of public order. Be that as it may, the Canal regime has been violated several times and Egypt has restricted the passage of Israeli vessels (bound to or coming from Israeli ports) until the stipulation of the 1979 Peace Treaty, which entitles Israeli shipping to use of the Canal and restates the validity of the Constantinople Convention. It is worth noting that Egypt had declared that it would abide by the Constantinople Convention through a declaration issued in 1957 and duly registered with the UN Secretariat.

13. Disputes over seabed and sea resources as potential threats to peace: a) the apportionment of continental shelf in the Mediterranean; b) the controversy over fishing rights (the case of the Mamellone).

Marine frontiers are an ideal line delimiting an area or dividing opposite or adjacent zones over which two or more States claim exclusive rights. The delimitations of such zones are particularly important in the Mediterranean, where the distance between opposite coasts, and thus between opposite sovereignties, is less than 400 miles. The apportionment of the continental shelf in the Mediterranean would require the stipulation of almost 30 treaties. Bilateral treaties have been stipulated by Italy, which has divided its seabed frontiers with Tunisia, Yugoslavia and Greece. Two ICJ judgments have paved the way to the apportionment of the continental shelf between Malta and Libya and between Tunisia and Libya. The undivided continental shelf in the Aegean sea is a source of potential conflict between Greece and Turkey. Greece's official stance is that the Aegean continental shelf should be apportioned according to the criterion of equidistance between the coasts of the two States. However the starting point for calculating the equidistance, far from being the Greek mainland, would be an ideal line linking the outermost points of the Greek islands. This solution is opposed by Turkey, which claims an

apportionment having the two mainlands as starting points. Turkey states that a circle should be drawn around the Greek islands in order to delimit their continental shelf.

Disputed territories and colonial remnants are another potential source of conflict, since the rights to the continental shelf are a projection of rights to land territory. These territories include: the northern part of Cyprus, which has proclaimed its independence; the sovereign UK bases on Cyprus (Dhekelia and Akrotiri); the Gaza strip; the Spanish possessions on the Moroccan coast (Ceuta, Penon de Velez de la Gomera, Penon de Alhucemas, Islas Chafarinas, Melilla); Gibraltar.

Fisheries are an additional source of potential conflict, as demonstrated by the fact that States police their adjacent waters in order to prevent unauthorized fishing. Navies of fishing States are also often present in disputed waters in order to protect their fishermen. A number of States, such as Italy, have regulated their fishing rights with neighbouring States by stipulating ad hoc agreements. Such agreements have now come to an end, with the single exception, as far as Italy is concerned, of the 1987 agreement with Yugoslavia for fishing rights in the Gulf of Trieste. Fishing policy is within the competence of the EEC and thus the EEC Mediterranean States are not allowed to stipulate agreements with their neighbours. The EEC, however, has not yet stipulated fisheries agreements, aside from the 1988 agreement with Morocco, which enables duly licensed EEC fishermen to fish in Moroccan waters. A potential instrument for preventing fishing disputes is the General Council for Mediterranean Fisheries; however it has not proven to be very effective to date.

The issue of apportionment of fishing rights between Italy and Tunisia has become particularly serious. Since the sixties, numerous incidents have taken place: Italian trawlers have been confiscated and Tunisian coast guards have often made use of firearms. The Tunisian fishing zone has been delimited with a batimetric criterion and extends, in some points, beyond the median line between Italy and Tunisia. Since 1979, Italy has forbidden Italian citizens to fish in the Mamellone, a sea area in the Sicily Canal. The rationale for the prohibition is to allow the optimal conservation of biological resources. The zone is patrolled by the Italian navy and is regarded by Italy as belonging to the high seas.

14. The 1971 Treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the seabed and the ocean floor and its application to the Mediterranean

The Seabed Treaty is a true treaty of disarmament in so far as it prohibits the emplacement of nuclear weapons and weapons of mass destruction on the seabed and the ocean floor. For the purposes of the Treaty, the inner limit of the seabed and ocean floor begins 12 miles from the baseline used for calculating the territorial sea. This means that within 12 miles States are free to place the devices forbidden by the Seabed Treaty. This liberty also pertains to those States which adopt

the 6-mile criterion for calculating the territorial sea, as Greece and Turkey. On this point, the application of the Seabed Treaty does not raise particular problems; it does, however, bear upon the baseline. Since the 12 miles extend from the baseline used for the calculation of the territorial sea, it is obvious that those States which have drawn straight baselines, or which claim historic bays "gain" space for emplanting nuclear devices in comparison to those States which adopt the criterion of normal baseline. The Seabed Treaty has not yet been ratified by all Mediterranean States; Egypt, France, Libya and Syria are not parties to it.

15. The extension of the contiguous zone and the practical irrelevance of the Exclusive Economic Zone in the Mediterranean.

Many littoral Mediterranean States had a territorial sea of 6 miles and a contiguous zone of 12. With the extension of the territorial sea to 12 miles, the contiguous zone has disappeared. This is the case of Italy, for instance. A few States have, however, extended their contiguous zones to 24 miles, in accordance with Article 33 of the 1982 Law of the Sea Convention. These States are: Egypt, France, Malta and Morocco. Syria claims a contiguous zone of 41 nautical miles; however, its claim is inconsistent with the limits established by international law. Because of the narrow limits between its opposite coasts, the Mediterranean is not an ideal environment for establishing EEZs. In fact, at the III Law of the Sea Conference, Algeria, Turkey and Israel opposed the establishment of such zones. This is also the position of Italy. Egypt and Morocco declared their intention to establish an EEZ; such a zone, however, has never been delimited (as far as Morocco is concerned this holds true for its Mediterranean coast, but not for the Atlantic). Malta claims a fishing zone of 25 miles and Tunisia claims a fishing zone that includes the area of Mamellone.

16. The special case of the Black Sea

Any control of naval armaments in the Mediterranean cannot but involve the Black Sea, which is of utmost importance for the Soviet fleet. The Black Sea offers an example of early naval control. The Treaty of March 30, 1856 established limits on the naval forces of the Russian and Ottoman Empires. Russia tried to abolish this treaty but was not successful and only obtained an annex to the Treaty of London of March 13, 1871. Modern Soviet policy has been to limit the presence of foreign fleets in the Black Sea and to obtain free access to the Mediterranean for Black Sea powers. In part, the Montreux Convention meets, in part, the Soviet concern, in so far as it gives Black Sea States a more favourable treatment through the Turkish Straits and limits the presence of the non Black Sea powers in that sea. The aggregate tonnage which non-Black Sea powers are allowed to navigate in the Black Sea is limited to 30,000 tons by Article 18 of the Montreux Convention. This figure may be increased to 45,000 and the tonnage which any one of non Black Sea power may

have in the Black Sea is limited to two-thirds of the aggregate tonnage which non-Black Sea powers are allowed to navigate. A further limitation is the exclusion of a permanent presence of non-Black Sea powers. Article 18 para. 2 of the Montreux Convention states that " vessels of war belonging to non-Black Sea Powers shall not remain in the Black Sea more than twenty-one days, whatever be the object of their presence there".

Aside from the above limits, the Black Sea does not present any special features if compared to other sea areas. Bulgaria, Romania, the Ukraine and the Soviet Union claim a 12-mile territorial sea. Turkey and the Soviet Union concluded a treaty on their territorial sea boundaries in 1973, on the basis of a 12-mile territorial sea. The two States have also delimited their continental shelf and EEZ in 1978 and 1987, respectively. The Soviet Union has adopted a system of straight baselines and considers the Azov Sea as internal waters. Varna and Burgas are claimed by Bulgaria as historic bays. In the Black Sea, there are no islands distant from the coast which can add significant maritime jurisdiction to the coastal States. The only case is that of Ostrov Zmeinyy, an island which is under Soviet rule, but which is claimed by Romania.

17. The Soviet proposal for transforming the Mediterranean Sea into a zone of peace

From time to time proposals aimed at the demilitarization of the Mediterranean or, at least, the limitation of its military uses are put forward. On 21 May 1961, the Soviet Union proposed the denuclearization of the Mediterranean. At the time of the Special Session of the General Assembly devoted to disarmament (1973), the Non-Aligned countries proposed the establishment of a zone of peace in the Mediterranean. In effect, the transformation of the Mediterranean into such a zone has been listed among the aims of the Non-Aligned Movement ever since the Algiers summit (1973). The Non-Aligned reiterated their proposal during the meeting held at Valletta on 10-11 September 1984. The Final Declaration affirms the following:

> The Ministers also considered that the freedom of the high seas in a closed sea like the Mediterranean should be exercised scrupulously and exclusively for the purposes of peace, and that naval deployment, particularly by States outside the region, that directly or indirectly threatened the interests of non-aligned Mediterranean members, should be excluded.

However, all these proposals have been rejected. The idea of the Mediterranean as a zone of peace was again touched upon in GA Res 36/102 (1981). In voting on this resolution - which is devoted to the more general problems of international security - there were 20 abstentions, four Mediterranean States among them (Israel, Italy, Spain and Turkey). A consensus resolution on co-operation and security in the Mediterranean adopted two years later (38/189) does not make any reference to the creation of a zone of peace in the Mediterranean. This resolution is of

the kind of those which the General Assembly has adopted by consensus since 1981 (36/102-1981; 37/118-1982; 38/189-1983;39/153-184; 40/157-1985; 41/89-1986; 42/90-1987; 43/84-1988; 43/84-1989), under the item " Strengthening of Security and Co-operation in the Mediterranean Region". Problems of arms control at sea are not touched upon.

18. The current status of the historic demilitarizations and of those established by the Peace Treaty of 1947

The most ancient demilitarizations in the Mediterranean date from the beginning of the century. Others were contracted within the framework of the Peace treaties concluding World War I or World War II.

The most ancient demilitarization which comes into consideration is that of the southern shore of the Strait of Gibraltar. At the beginning of this century, the Moroccan coast of the Strait of Gibraltar between Melilla and the right bank of the Sebou River was the object of a stipulation, made in 1904 between France and UK, under which that coastline was not to become the object of any fortification or strategic installation. The demilitarization was deemed instrumental to the right of free passage through the Strait of Gibraltar. This stipulation was reiterated in the Treaty of 12 November 1912, between France and Spain, a few months after Morocco had become a French protectorate. This is because the Moroccan shore affected by the duty of demilitarization was within the Spanish sphere of influence. Even if it is a moot point, it may be argued that the clauses of the 1912 Treaty cannot be considered as having been transmitted to Morocco by the principle of state succession. In fact, Morocco does not feel legally bound to observe them. However, in a declaration before the General Assembly in 1973 Morocco stated that it would have maintained the demilitarization ex gratia.

In the West Mediterranean the duties of demilitarization imposed by the 1947 Peace treaty to Italy were more important. Article 49 of this treaty required Italy to demilitarize the following islands: Pantelleria, the Pelagian Islands (Lampedusa, Lampione and Linosa) and Pianosa (in the Adriatic). Furthermore, the Peace Treaty imposed strict limitations on military installations in the larger islands of Sicily and Sardinia (Articles 50 and 51). Article 50 (4) prohibited Italy from constructing naval, military or airforce installations or fortifications in Sicily or Sardinia. These demilitarizations, however, together with other military clauses of the 1947 Peace Treaty, may now be deemed as abrogated by virtue of a process started by Italy in 1951. Exchanges of notes were stipulated with 15 of the 21 States parties to the Peace Treaty, under which Italy was freed by the duty of the demilitarization. The remaining 6 States (four Eastern bloc countries plus Ethiopia and Yugoslavia) appear to have acquiesced to the Italian 1951 initiative; consequently those clauses are no longer in force.

Article 11(2) of the 1947 peace Treaty stipulated the cession of the Italian Island of Pelagosa and the adjacent islets to Yugoslavia, with the obligation to keep them demilitarized. This obligation has not been questioned by

Yugoslavia.

The Aegean demilitarizations are the object of a harsh contention between Greece and Turkey. The duties of Greece as far as demilitarization is concerned apply to most of the Aegean islands adjacent to Turkey. They do not always have the same content, and stem from different instruments; therefore it is useful to consider the Greek islands in separate groupings.

1) Lemnos and the Adjacent Islands. The origin of these demilitarizations is a note, dated 13 February 1914, addressed by 6 European States to Greece. This note has not been formally abrogated. Greece, however, maintains that the origin of the demilitarization was Article 4 of the 24 July Lausanne Convention on the Straits. Given that the Lausanne Convention on Straits has been abrogated by the Montreux Convention, Greece asserts that the demilitarization of Lemnos and adjacent islands is no longer in force.

2) The Central Aegean Islands (Lesbos, Chios, Samos and Nikaria). Also in this case, the demilitarization was established by the London declaration of 13 February 1914. The demilitarization was later restated by Article 13 of the Lausanne Peace Treaty of 24 July 1923, which spells out its terms. The current point of disagreement between Greece and Turkey on these islands centres not so much on the duty of demilitarization as on its content and scope.

3) The Dodecanese Islands. The duty to keep the Archipelago demilitarized stems from Article 14 of the 1947 Treaty of Peace between Italy and Allied and Associated Powers. The islands were transferred to Greece with the obligation of keeping them demilitarized. After Turkey's 1974 intervention in Cyprus, the Dodecannese islands were the object of a programme of massive militarization. In order to respond to the Turkish protest, Greece did not question the permanent validity of the obligations stemming from Article 14 of the 1947 Peace Treaty, but limited itself to stating that no Greek Island had any means of attacking the Turkish territory.

19. The Permanent Neutrality of Malta

The source of Maltese neutrality is to be found in an exchange of notes with Italy which entered into force in 1981. Malta's permanent neutrality, which is based on non-alignment, is guaranteed by Italy. This means that Italy is obliged to intervene militarily to aid Malta, whenever the Island is the object of an armed attack, according to Article 51 of the United Nations Charter. The guarantee of Malta is open to other neighbouring Mediterranean States. In fact, Libya and Tunisia, in addition to Italy, should have guaranteed Malta's security. France and Tunisia, however, did not find it opportune to subscribe to the guarantee mechanism. In 1984, however, Libya concluded a Treaty of friendship and co-operation with Malta, by which it pledged to " assist Malta whenever the Government of the Republic of Malta explicitly requests so in case of threats or acts of aggression against Malta's territorial integrity and sovereignty".

Obviously a permanent neutral State cannot enter a military alliance. Therefore it can be militarily guaranteed by another

State or a group of States, but it cannot stipulate military pacts of a reciprocal nature. In other words it cannot enter a military alliance. Nor is a permanent neutral State permitted to host foreign military bases on its soil.

Malta's permanent neutrality also has a naval dimension. The exchange of notes with Italy contains two clauses which affect the policy of naval Powers present in the Mediterranean. There is a general clause which forbids the use of Malta's facilities in such manner or extent as to amount to the presence a concentration of foreign forces in Malta. This means that, apart from cases of collective self-defence or of execution of measures decided by the UN Security Council, use of port facilities, such as the refuelling of foreign naval vessels is permitted, but the stationing of a naval squadron is not. The second clause regulates the use of shipyards, which has long been the Island's main source of wealth. In principle, the shipyards have to be used "for civil commercial purposes" only. However, their use for military purposes is also allowed, in the following manner. Maltese shipyards are permitted to repair foreign military vessels, provided they are "in a state of non-combat". The shipyards may also be used for shipbuilding. Since the construction of military ships is not excluded, it may be supposed that Malta can build ships of this kind. However, the activity of shipyards used for military purposes must be kept, according to the language of the instrument establishing Maltese neutrality, "within reasonable limits of time and quantity". Military vessels (including auxiliary ships) of the two superpowers (i.e. the USA and the Soviet Union) cannot use Maltese shipyards. For such ships, use is absolutely forbidden, even though Malta interprets this clause in the sense that the prohibition encompasses only the repair of military vessels and not their construction.

20. The status of coastal States hosting foreign bases in case of armed conflict involving the basing State

Many Mediterranean States, mainly those belonging to NATO, have foreign military bases on their soil. Sometimes these bases are part of the integrated structure of NATO. In other cases they are used only by one State, even if their use can also serve the purposes of the Alliance. This is the case of a number of bases under US jurisdiction.

The first question to be answered is whether a State which has a foreign base on its soil can abide by a policy of neutrality if an armed conflict arises between the basing State and a third State. In time of war or armed conflict, a neutral State is obliged to abide by the duties stemming from both the 1907 Hague Convention V on neutrality in land warfare and the 1907 Convention XIII on neutrality in naval war. The neutrality status entails three fundamental duties: abstention, prevention and impartiality. Consequently, in land warfare, the neutral State is obliged not to permit the transit of belligerent armies, convoys or ammunition,through its territory. The use of radiotelegraphic stations is also forbidden. The duties of neutral States in naval war are even more stringent. Belligerent warships are not allowed to remain in a neutral port for more

than 24 hours, unless a delay is necessary because of bad weather in order to make repairs. The duty of impartiality obliges the neutral State to give the belligerents the same treatment.

Neutral ports and waters cannot be used by belligerents as a base for hostile operations and cannot host devices which may be used as a means of communication for belligerents.

The above considerations lead to the conclusion that the presence of foreign military bases is at variance with the status of neutrality, unless the basing State uses the base in a manner consistent with the duties of neutrality of the hosting State. This policy is very difficult to maintain when the base hosts air and naval forces of the basing State.

In case of an armed conflict between the basing State and a third State, the hosting State is obliged to choose a policy of non-belligerency. This kind of attitude, which according to some authorities is now recognized in international law, entails an attenuation of the duties of impartiality connected with the status of neutrality. A non-belligerent State would be allowed to support one warring party, even with logistic aid. Only direct intervention in support of a belligerent would be forbidden.

The next question to be answered is whether a belligerent State can react with armed force against a neutral State hosting an enemy base. We have to distinguish various hypotheses.

i) It might happen that the hosting State does not permit any military use of the base. In this case an attack against the neutral State would be an act of aggression.

ii) It might happen that the hosting State allows the use of the base within the limits of a policy of non-belligerency (e.g. the basing State warships are entitled to use naval base facilities for repairing and refuelling well beyond the limits stated by the Hague Convention No.XIII). Even in such a case the enemy base cannot be attacked. However, this line of reasoning is correct in so far as the doctrine of non-belligerency is considered consistent with present-day international law.

iii) It might happen that the foreign base is used as a place from which to attack enemy territory. In this case Article 51 of the United Nations Charter entitles the aggrieved belligerent to react against the territory on which the base is located.

iv) It must be conceded that a belligerent is entitled to react against the territory on which the base is located even if the attack has not been launched therefrom. This is the case in which the foreign base is totally under the control of the basing State and the hosting State retains only nominal sovereignty (nudum jus) over it. Article 51 of the United Nations Charter does not forbid an attack on military objectives different from those from which an act of aggression has been launched, provided that this reaction is justified in terms of necessity and proportionality--particularly when the base is under the complete sovereignty of the basing State, as in the case of the British bases in Cyprus(Akrotiri and Dhekelia).

21. Agreements concluded in order to prevent incidents on the high seas

The first of these agreements was negotiated between the United States and the Soviet Union on 25 May 1972 and is still valid even though a decade has passed since then. The 1972 Agreement is a classical example of a CBM since it is not aimed at arms reduction. It is, in part, a military adaptation of the 1972 International Regulations for Preventing Collision at Sea concluded within the framework of the IMO, which dictate International Rules of Road for vessels. The content of the 1972 Agreement between the United States and the Soviet Union is well-illustrated in the US Commander's Handbook on the Law of Naval Operations. Its main points are the following seven rules:

> 1. Ships will observe strictly the letter and the spirit of the International Rules of the Road.
>
> 2. Ships will remain well clear of one another to avoid risk of collision and, when engaged in surveillance activities, will exercise good seamanship so as not to embarrass or endanger ships under surveillance.
>
> 3. Ships will utilize special signals for signalling their operation and intentions.
>
> 4. Ships of one country will not simulate attacks by aiming guns, missile launchers, torpedo tubes, or other weapons at the ships of the other country, and will not launch any object in the direction of passing ships nor illuminate their navigation bridges.
>
> 5. Ships conducting exercises with submerged submarines will show the appropriate signals to warn of submarines in the area.
>
> 6. Ships, when approaching ships of the other party, particularly those engaged in replenishment or fight operations, will take appropriate measures not to hinder maneuvers of such ships and will remain well clear.
>
> 7. Aircraft will use the greatest caution and prudence in approaching aircraft and ships of the other party, in particular ships engaged in launching and landing aircraft, and will not simulate attacks by the simulated use of weapons or perform aerobatics over ships of the other party nor drops objects near them".

A Protocol stipulated on May 22, 1973 obliges the two Superpowers not to launch simulated attacks against non-military vessels of the other party. These agreements do not contain any geographical limitations and thus include the Mediterranean. On June 12, 1989 the United States and the Soviet Union stipulated an agreement (which entered into force on January 1, 1990) which is aimed at preventing dangerous military activities when their armed forces operate in proximity of each other. Though this agreement is not devoted to sea activities in particular, they

are not excluded. It covers instances in which the territorial sea of the other State is entered because of error or force majeure; the use of laser, which might hamper the other State personnel; and the interference with the command network, which could cause damage.

The 1972 USA-USSR agreement is a model which has only recently been adopted by other naval powers. An agreement of this kind was entered into by the United Kingdom with the Soviet Union on July 15, 1986. France and the Soviet Union stipulated such an agreement on July 4, 1989 and the subsequent year Italy concluded its naval agreement with the Soviet Union. It is worth noting that the Franco-Soviet agreement, by explicitly admitting the liberty to conduct military operations beyond the territorial sea, implicitly recognizes the lawfulness of conducting military exercises within areas which are subject to the economic rights of the coastal State (such as the EEZ).

22. The Mediterranean and Black Sea newly independent States and the problem of succession

The collapse of both the Soviet Union and Yugoslavia has given rise to new States, thus creating a problem of devolution of rights and obligation of the predecessor State. As far as the subject of this paper is concerned, attention is to be devoted to the Russian Federation, the Ukraine, and Georgia on the one hand and to Slovenia, Croatia, Bosnia-Herzegovina on the other. The relationship between the former Soviet Union and the Russian Federation has been dealt with as a case of identity by the international community: therefore the Russian Federation continues to be party to the treaties stipulated by the Soviet Union. A problem of devolution arises for the Ukraine and Georgia. The Ukraine, however, is a party to the Sea Bed Treaty, since it had treaty-making power under the Soviet constitution. Georgia may become party to that treaty either by adherence or by a declaration of succession. The real problem is represented by bilateral treaties stipulated by the Soviet Union for the apportionment of the continental shelf and the delimitation of the EEZ in the Black Sea. There is a need to divide the marine zones among the Russian Federation, the Ukraine and Georgia, on one hand, and between these three countries and Turkey, on the other. The Russia Federation can now be considered a party to the Montreux Convention. It is not clear, however, whether the other two new States can become party to it by virtue of a declaration of succession. An additional source of conflict is represented by the apportionment, between the Russian Federation (rectius between the CIS) and the Ukraine of the Soviet Black Sea fleet.

The Yugoslavian question is even more complicated from the viewpoint of international law. It is not clear whether Yugoslavia continues to exist as subject of international law after the independence of so many parts of its territory. Even if one assumes that the Yugoslavian State is still in existence, there is still a question of devolution of the treaty delimiting the continental shelf between Yugoslavia and Italy, since a portion of the former Yugoslavian continental shelf now belongs to Slovenia, Croatia and Bosnia-Herzegovina. Given the change of

circumstances, the fate of a number of multilateral treaties (e.g. instance the 1987 Treaty over fishing rights in the Gulf of Trieste) is also in question because the eastern waters of the Gulf are now under the Slovenian and Croatian jurisdiction and no longer under Yugoslavian authority.

It is worth noting that Croatia, Slovenia, the Ukraine and Georgia have become members of the CSCE, with the consequence that the relevant CSCE mechanisms and procedures apply to them.

III

THE MARINE AND NAVAL DIMENSION OF A LEGAL PROCESS FOR SETTING UP A SECURITY AND CO-OPERATION SYSTEM FOR THE MEDITERRANEAN

23. Premiss: the linkage between a CSCM process and naval arms control in the Mediterranean

The CSCM (Conference on Security and Cooperation in the Mediterranean) is an Italian goal which has been pursued since the first years of the CSCE. It is not appropriate in this paper to discuss the feasibility of a transfer of the CSCE experience to the Mediterranean. Suffice if to say that a possible CSCM is a Conference in which the participation of all Mediterranean and Black Sea States should be envisaged. A moot point is the participation of non-littoral States. It is undisputed that the US should take part in the process. The problem concerns the participation of other non-littoral States, such as Germany or Canada. CLearly the CSCM would encompass a military/security basket, as has been the case of the CSCE. It is also evident that the CSCM would embody a naval track within the military/security basket. It would be very difficult indeed to exclude naval issues from the CSCM.

The real problem lies in the fact that the idea of the CSCM has not yet gained enough currency. The question is therefore whether it is possible to set out a system of naval arms control in the Mediterranean without a CSCM. The answer is no, since it is difficult to conceive of the birth of such a system without a multilateral forum. This is not to say that bilateral initiatives cannot be started on the model of bilateral treaties stipulated between the Soviet Union on one side and, respectively, France and Italy on the other. It must be pointed out, however, that bilateralism has many drawbacks, such as the fact that it is generally pursued by virtue of binding instruments, while more flexible instruments (e.g. as those adopted within the CSCE process) may be built mainly on a multilateral structure. This is particularly true for CSBMs, even though there may be common understandings at the bilateral level, which is more flexible than a treaty.

It goes without saying that bilateral treaties, common understandings and whatever CSBMs States are able to agree upon might be included a multilateral process, be it the CSCM or a comparable initiative. It is therefore worth pursuing limited policies aiming at ameliorating naval relations, including, whenever possible, regional treaties. If a CSCM were ever to be convened, the instruments previously agreed upon would become part of the "acquis". This cannot be annulled by the Conference;

on the contrary, a multilateral process would serve as a driving force for adding new measures to it.

24. The need for a mechanism aimed at facilitating the settlement of disputes: is the Valletta procedure an appropriate method?

The UN Charter states the obligation to settle international disputes peacefully. This obligation, which is embodied in Article 2 para. 3 is complementary to the cardinal duty, stated in the subsequent paragraph, which obliges States to abstain from threatening or using armed coercion. The international community already provides instruments for the settlement of disputes. For instance, the Hague Convention of 1907 for the peaceful settlement of disputes and the Permanent Court of Arbitration, the International Court of Justice and the 1957 European Convention for peaceful settlement of disputes. The main problem is that the above instruments do not contain any obligatory third party involvement and they can be set in motion on a voluntary basis. Furthermore, States are often exempt from adjudication of those disputes which bear upon their vital interests. A well-structured system for marine disputes is provided for by the 1982 Law of the Sea Convention; however, it has not yet entered into force and its procedures are not yet available. The Mediterranean States have proved their interest in such methods of dispute-settling as jurisdiction, as is implied by the submission to the ICJ of disputes on the apportionment of the continental shelf (Libya/Tunisia and Libya/Malta). The Aegean dispute, however, demonstrates that not all States are willing to submit their disputes to international adjudication. Hence the interest in creating mechanisms which can coexist with those already in force.

The CSCE States, after a number of unsuccessful attempts, have been able to set up a method which includes the possibility of an obligatory third party involvement. The CSCE procedure for peaceful settlement of disputes, elaborated in Valletta in 1991, is an example of a flexible method provided for by a CSCE document. The Valletta procedure - which is not embodied in a treaty - is based on the CSCE Dispute Settlement Mechanism. The Mechanism consists of one or more independent persons nominated by common agreement by the parties to the dispute. If an agreement is not reached, the CSCE Centre for Conflict Prevention functions as a nominating institution. The Mechanism helps the parties determine a suitable dispute settling method (for instance, conciliation, arbitration, referral to the ICJ). If the parties do not agree on selecting an appropriate method, the Mechanism provides comments and advice to the parties on how to settle their disputes. If within a reasonable time the dispute is still pending, any party may bring it to the CSCE Committee of Senior Officials. The Valletta procedure shall not apply to disputes that any party considers as falling under the following issues: territorial integrity, national defence, title to sovereignty over land territory, or competing claims with regard to the jurisdiction over other areas. These exclusions render the Valletta procedure unsuitable for settling disputes over marine areas, and the effectiveness of the whole procedure

is very low. Suffice it to note that the Mechanism is prevented from addressing recommendations to the parties. The Valletta procedure is an instrument which may, however, be revised by the appropriate CSCE organs. It therefore constitutes a first step for approaching an issue which is difficult to solve, as the history of the CSCE negotiations for the peaceful settlement of dispute demonstrate. It is difficult to say, however, whether an instrument like the one drafted at Valletta constitutes a valid precedent. The Valletta procedure is linked to an institutional framework - such as the Committee of Senior Officials or the CPC - within which it can function. Therefore, a proposal aiming at setting up a flexible procedure for the Mediterranean countries would not be credible without the support of an institutional framework which can guarantee its functioning.

25. The legitimacy of military alliances according to the Charter of the United Nations and their bearing on naval policies

Article 51 of the UN Charter gives the right of individual and collective self-defence to States. This means that a State, once it has been the object of an armed attack, may react in self-defence and that third States may assist it in repelling the aggression. The right of collective self-defence is the basis of the legitimacy of military alliances. States are allowed to organize their collective self-defence in time of peace, in order to be ready to respond immediately, should an act of aggression occur. The UN Charter does not confine military alliances to any geographic limits. Consequently, an alliance, such as NATO, may group members belonging to different continents. Maritime communications are therefore vital for the effectiveness of the alliances and the implementation of the duty to help the aggrieved State, should it be attacked. Any proposal of arms control in the Mediterranean aimed at undermining the NATO maritime capability would therefore not be in keeping with current practice since it would curtail the principle of collective self-defence.

26. The problem of reconciling the unilateral dimension of the delimitation of marine areas with the superior need to avoid unnecessary confrontations

The delimitation of marine areas (territorial waters, continental shelf, EEZ) falls within the jurisdiction of the coastal State. However such delimitation must be consistent with international law, as has been stated by the ICJ in the 1951 Fisheries case involving Norway and the United Kingdom. The right of the coastal State to delimit marine areas adjacent to its coast can lead to claims by other States that the delimitation is not in keeping with international law. There can be either a paper protest or a showing of the flag by third States, in order to contest the claim by the coastal State and to prevent acquiescence. Mere diplomatic protests are not dangerous activities. The same does not always hold true for those activities consisting in showing the flag. To do this, States exercise their navigational rights or other high seas

freedoms, such as engaging in naval exercises in the disputed area. Disputes also arise in connection with the fishery zones adjacent to territorial waters, and States often dispatch military vessels in order to protect their trawlers. As the two Gulf of Sidra incidents mentioned in section II show, such disputes can degenerate into open armed conflict between the coastal and the protesting State.

In order to prevent acquiescence, the protest must be effective. Effective protest does not necessarily mean that States are obliged to show their flag. Acquiescence is prevented if the protest is reiterated. On the other hand, the exercise of navigational rights in disputed waters is not an unlawful activity, particularly when the claim of the coastal State is unreasonable and manifestly ill-founded. A possible way-out might consist in reducing the necessity of flag-showing by enhancing the role of diplomatic protest; this, however is not enough. Rules obliging States to exercise restraint need to be coupled with a system of dispute settling. States are traditionally unwilling to submit disputes over delimitation of marine areas to a third party compulsory settlement, or at least they avoid entering treaties with compromissory clauses, obliging them to accept arbitration should a dispute arise. This is demonstrated, for instance, by the Law of the Sea Convention which sets out a sophisticated system for dispute settling and allows States to declare that disputes related to sea boundary delimitations, including claims related to historic titles, are not eligible for the compulsory procedures entailing a binding decision (article 298, para. 1). For instance, the Soviet Union, the Ukraine and Tunisia have made such a declaration. In this case, a non-binding procedure, such as conciliation, is available.

In order to avoid the negative consequences arising from unilateralism originating from both claims of coastal States and counterclaims of those protesting, a regional system for dispute settling is desirable. Such a system is compatible with the Law of the Sea Convention, as stated in Article 282. The real problem lies in the political feasibility of such a system, since it cannot be easily set up, as the history of CSCE has demonstrated.

27. The regime of Turkish Straits, the demilitarization of Greek islands and the naval provisions of Malta's neutrality as possible instances of naval arms control

Neutrality and neutralizations are usually not considered modern measures of arms control. This is partly because these institutions flourished during the past century. The end of blocs, the fragmentation of power and the intensification of rivalries might lead to a reconsideration of institutions which reached their peak in the XIX Century. It is open to question whether new measures of this kind might play a role. It is certain however that keeping alive neutralizations that are still in force does not endanger international security, unless they are clearly obsolete. This holds true for instance for the regime which limits the navigation of warships through a given

waterway.

If this assumption holds true there is no need to abolish the regime of demilitarization to which the Greek islands are submitted, provided that it is still in force.

The Montreux Convention and the balance it strikes between Black Sea Powers and outside users constitutes an additional problem. This Convention limits the passage of warships and the class of armaments which they can have on board when entering the Black Sea. From the point of view of navigational rights, the Convention may be considered a measure of structural arms control, since one class of ships (submarines) cannot enter the Black Sea and possibility for a Black Sea Power to send its submarines to the Mediterranean is severely curtailed. There is no doubt that the Montreux regime is to be maintained and cannot be substituted by a regime of transit passage similar to that in force in international straits. The real question is whether the Montreux Convention needs to be revised.

There are four issues which are to be taken into account :

- the reference made by the Convention to the League of Nations and to its organs;
- the generation of weapons which did not exist when the Convention was drafted and that now are on board of ships;
- the class of ships - such as aircarriers - which are not mentioned in the Convention and the generation of nuclear propelled ships which are a postwar phenomenon;
- the reference, in the Convention, to such notions as "war" or "peace", which have become blurred.

There have been no initiatives to revise the Convention to date. The fear that the Soviet Union may take advantage of the revision to alter the status of Black Sea and transform it into a lake closed to non riparian States has prevented any move in that sense. However, the Convention is aging and it is difficult to bring it up to date if one relies only on an evolutionary interpretation. While interpretation and adaptation may help solve certain issues - such as the substitution of the United Nations for the League of Nations - others cannot be so easily solved: for instance the problem of whether warships entering the Turkish Straits are allowed to carry on board the new generation of weapons. Furthermore, the Convention does not address the powers of Turkey, as the guardian of Straits, as far as visit and search is concerned. Nothing is mentioned about marine pollution, and a system of dispute settling is lacking.

The Convention contains clauses on amendments. However, if its revision were to be confined to the States parties, a further political complication arises in o far as the United States is not party to it. The Soviet Union is party to it and a problem of participation for the Russian Federation does not arise, given that the international community considers the Russian Federation as identical to the USSR. A problem does arise, however, for the riparian republics generated by the Soviet diaspora, i.e. the Ukraine, whose ambitions to become a naval power are well known, and Georgia.

As has been seen, the Declaration on Malta's neutrality contains a number of naval clauses. They may continue to serve a useful purpose, and there is no need for a revision. The only questionable point is the textual reference in the Declaration

to the warships of two "superpowers", Is this clause, which refers both to the United States and the Soviet Union, still valid for the Russian Federation?

28. The prohibition to use the continental shelf of a foreign country for military purposes

Measures of genuine arms control are generally not proposed for the Mediterranean, at least by the West. They are considered politically unfeasible, even though their application is relatively easy to verify, given the small dimension of the Mediterranean and the possibility to control any incoming warship. This is not to say that any measure of naval arms control is to be avoided. Attention is to be devoted to areas which are deemed suitable for military activities, in particular, the continental shelf of foreign countries. We have seen that foreign States are still allowed to engage in a number of military activities on it, even though the continental shelf falls under the functional jurisdiction of the coastal State. An agreement among Mediterranean countries, open to the outside users, might prohibit the emplacement of those devices which are clearly aggressive, such as dormant mines. The scope of a possible agreement could vary and encompass all military devices, or only those which have a clear aggressive use. This does not mean that the continental shelf should be demilitarized. The coastal State should be allowed to use its continental shelf for military purposes, provided that the provisions of the 1971 sea-bed treaty are not violated.

29. Instruments for naval CSBMs and elements of an organizational structure helping to control naval policies in the Mediterranean

Unlike arms control, Confidence and Security Building Measures are more easily achievable, particularly if they are embodied in a flexible instrument and not in a formal treaty. The following CSBMs are worth discussing here, since they have a bearing on naval legal policies of the Mediterranean States.

a) A common interpretation of provisions regulating the military uses of the sea: Different and opposite interpretations of rules governing military activities in marine areas often give rise to tension, which may degenerate into open confrontation. This is true, for instance, for innocent passage through the territorial sea, which many States still consider subject to the consent of the coastal State, particularly when the passage is exercised by warships. A common understanding, such as that concluded by the United States and the Soviet Union on the passage of their warships through the territorial waters of each country, would help prevent incidents, since the passage of a foreign warship would no longer be perceived as a threat but as a routine naval activity permitted by international law. On this point, a common understanding might be concluded involving all the Mediterranean States and its main users. The scope of the understanding could be subsequently expanded in order to restate the lawfulness of other military activities, such as naval maneuvers in the areas adjacent to the territorial

sea. The purpose of these rules, far from limiting military activities in time of peace, would consist in making the coastal State confident that its security is not threatened.

b) A regional agreement or a range thereof aiming at preventing incidents on high seas: The 1972 agreement for preventing incidents on high seas has paved the way to a number of similar bilateral instruments, for instance between the USSR, on one part, and respectively the United kingdom, France and Italy on the other. Is there any need to conclude a multilateral agreement? Opinions are divided on this point. A multilateral agreement on prevention of naval incidents is seen as a useful CSBM by some; others, on the contrary, see it as a cumbersome exercise. The fact is that bilateral agreements are stipulated between countries with comparable navies (from a worldwide or a regional point of view). Furthermore, bilateral agreements involve competing navies, often watching each other during naval games, and set out appropriate rules of the road in order to avoid incidents. One can question whether there is a need for such agreements between friendly nations or between navies which are not comparable. If the answer is yes, the possibility of a regional agreement valid for the Mediterranean countries and outside users is worth being explored. One may even conclude at the conclusion that the existing bilateral agreements can coexist with a regional agreement. This is not to say that a Mediterranean agreement on preventing naval incidents should entail a derogation from the law of the sea in force in the oceans. However a regional agreement might better take into account the special features of the Mediterranean. For instance, naval pollution caused by an incident in the Mediterranean is an event which any Mediterranean user should be obliged to deal with.

c) As State practice shows, disputes originating from overlapping claims over the exploitation of mineral and marine resources give rise to confrontation between the concerned countries. This is particularly true when disputed areas involve oil drilling rights or competing claims over fisheries. The Mediterranean States should adopt a set of rules aimed at exercising restraint in order to prevent unnecessary confrontations. For instance, pending a final agreement with the adjacent or opposite State, the coastal State should not exploit its continental shelf beyond its territorial sea limit, unless a "bona fide" median line can be drawn. This is in order to prevent any forceful affirmation of maritime claims.

d) Measures of co-operation for crime prevention can help in increase trust and confidence between neighbouring countries. For example, cooperation among coast guards could be started, or enhanced if already in existence, in order to police the sea and combat drug trafficking or illegal exploitation of submarine archaeological treasures.

The above are only examples of possible CSBMs. A different issue is whether an organizational structure is desirable in order to administer them. This is a highly political problem and a structure - such as a sort of CPC (Conflict Prevention Center)- might only envisaged if the idea of a CSCM gains currency. It is likely that elementary CSBMs do not need to be administered by a Center.

30. Summary and conclusions

The evaluation of the Mediterranean region and its maritime environment has shown that a number of disputes are in existence and there is the risk that they may be resolved by resorting to armed force. Hence the need to set out a range of methods aimed at a peaceful solution of disputes. The analysis has proven that such disputes mainly involve the delimitation of marine areas, in particular the apportionment of the continental shelf and the delimitation of territorial waters (e.g. the Libyan claim to the Gulf of Sidra). A mechanism for dispute settling is therefore needed. The Valletta procedure - as we have seen - has many drawbacks. It applies only to the Mediterranean States which are CSCE members and embodies a very weak method, which is rendered almost unsuitable for marine disputes, since it does not cover controversies related to territorial integrity, national defence, title to sovereignty over land territory, or competing claims with regard to the jurisdiction over other areas. Consequently, the Valletta method is not of much help even for solving disputes which may originate from the devolution of rights and obligations to the new independent Mediterranean and Black Sea States.

The goal of CSBMs should consist, first of all, in finding out rules aimed at preventing the aggravation of disputes to which the Mediterranean States are party. In this connection, one can conceive of the expansion at bilateral level of treaties aimed at preventing naval incidents or even a regional treaty of this kind. New areas might be explored and the prevention of naval pollution seems to be a promising field for a regional instrument.

Revision of aging treaties, such as the Montreux Convention, might also be a suitable area of action. On the contrary the Constantinople Convention on the Suez Canal needs only a reaffirmation and an expansion of its membership.

Malta's neutrality should be preserved. The same holds true for the existing neutralization of territories, provided that the relevant treaty provisions are still in force and they play a role in maintaining the strategic balance.

It is likely not yet the right time for negotiating real measures of naval arms control. The only area could for instance be the continental shelf in order to explore an expansion, at the regional level, of the 1971 Sea-Bed Treaty.

More ambitious measures, be they CSBMs or arms control instruments, need to be negotiated within an institutional framework, such as the Conference on Security and Cooperation for the Mediterranean.