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Submarines in Irish Waters, 1984 to 1990

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TREATY SERIES, 1977

No. 18

CONVENTION
on the
INTERNATIONAL REGULATIONS
for
PREVENTING COLLISIONS AT SEA

Done at London, October 1972

Entered into force for Ireland
on 19th December, 1977

Presented to Dáil Éireann by the
Minister for Foreign Affairs

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CONVENTION ON THE INTERNATIONAL REGULATIONS FOR
PREVENTING COLLISIONS AT SEA, 1972



The Parties to the present Convention,

DESIRING to make TREATY SERIES, 1977,

MINDFUL of the need to bring up to date the International Regulations for Preventing Collisions at Sea annexed to the First Act of the International Conference on Safety of Life at Sea, 1960,

HAVING CONSIDERED CONVENTION in the light of developments since they were adopted,

on the

HAVE AGREED AS FOLLOWS:

INTERNATIONAL REGULATIONS

for

ARTICLE I

PREVENTING COLLISIONS AT SEA

The Parties to the present Convention undertake to give effect to the Rules and other Annexes constituting the International Regulations for Preventing Collisions at Sea (hereinafter referred to as "the Regulations") attached hereto.

Entered into force for Ireland
on 19th December, 1977

Signature, Ratification, Acceptance, Approval and Accession

Presented to Dáil Éireann by the

1. The present Convention shall be signed until 1 June
1973 and shall thereafter be ratified, accepted or approved;

2. States Members of the United Nations, or of any of the Specialized Agencies, or the International Atomic Energy Agency, or Parties to the Statute of the International Court of Justice may become Parties to this Convention by:

(a) signature without reservation as to ratification, acceptance or approval;

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3. Ratification, acceptance or approval shall be effected by the deposit of an instrument to that effect with the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") which shall inform the Government of the states that have signed or acceded to the present Convention of the deposit of each instrument and of the date of its deposit.

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not been copied*

Interdepartmental Meeting on 'Submarine' Incidents in the Irish Sea

Department of Foreign Affairs

Monday 30th April 1984

Present:

Mr. P. Cradock, Economic Division, Department of Foreign Affairs
(in Chair)
Legal Adviser, Department of Foreign Affairs

Mr. M. O'Rourke) Marine Division, Department of Communications
)
Mr. M. O'Brien)

Mr. D. MacPhionnbhair, Political Division, Department of Foreign Affairs
Mr. R. Montgomery, Economic Division, Department of Foreign Affairs

Chair outlined the purpose of the meeting, which was to examine, in the light of public anxiety and Ministerial direction, the possibilities of raising in a multilateral context Irish concern about the dangers posed to fishing vessels by the movements of submarines, where proposals to limit such dangers might usefully be formulated and pursued.

Legal Adviser admitted to a degree of pessimism about the likely success of such a strategy. The International Maritime Organisation was primarily concerned with merchant shipping, as a rule excluded warships from its conventions, and was moreover likely to be dominated by states with an interest on maintaining submarines' freedom of movement. Besides, submarine traffic was governed by the general rules of international law, and hence submarines already had, in principle, adequate obligations to other shipping; the problem was enforcement of these obligations.

Mr. O'Rourke (D/Communications) indicated that it would be procedurally possible to act in the Marine Safety Committee of IMO, which meets twice yearly, before becoming involved with the more politicised Council.

But he had his doubts about such an initiative since Ireland carried little weight in the Organisation (because of the small size of its merchant fleet) and any action in this context would, to stand any chance of success, have to be taken with the support of other states. He pointed out that hard evidence of submarine interference with our fishing vessels was confined to one instance alone; this was an inadequate basis for protest. Another possibility might be, however, to seek the designation on navigation charts of certain fishing grounds in which other states could then be asked to exercise particular care. (Irish waters are covered by British Admiralty charts).

Mr. Mac Phionnbhair (Political Division) stated his Division's view that only an approach stressing our concern with safety had any possibility of meeting with a sympathetic response; there was little scope for more overtly political action, as raising the matter with the U.S.A., the U.S.S.R. and in the EPC framework had shown. Ireland could, he suggested, lay before the Maritime Safety Committee of IMO a proposal couched in general terms, urging that measures to minimise the risks posed to fishing vessels by submarines be examined.

Legal Adviser wondered what positive measures of this type could be proposed. Would it be possible to lay down special navigational guidelines for submarines operating in fishing grounds? In any case, the technical advice of the Departments of Defence and Fisheries on the feasibility of this would need to be sought.

Mr. Mac Phionnbhair (Political Division) pointed out that fishing vessels from various other states had been involved in comparable incidents, although the attitudes and practices of NATO states, and the courses open to them, probably differed from our own.

Mr. O'Rourke recalled that in the case of the sinking of the French trawler which resulted in the loss of several lives, the French enquiry had concluded that the casualty was not caused by a submarine but by a wreck.

Legal Adviser suggested, to general agreement, that information on the experiences and views on the matter of broadly like-minded coastal states could usefully be sought.

The meeting also agreed that action through the Community was not possible, since it lacked competence in maritime safety matters.

Chair, in summing up, proposed,

- (i) that inquiries of the kind suggested by the Legal Adviser and already in train with the Danes be urgently made through our Embassies in countries with a likely interest;
- (ii) that a further meeting, also involving the Departments of Defence and Fisheries, be held when replies were available and in any case in a couple of weeks to consider the information thus obtained and to decide whether an approach to IMO might enjoy worthwhile support and, if so, what sorts of proposal would be technically feasible;
- (iii) that the question of designating certain areas as fishing grounds and so notifying other states, with a request that especial care be taken in them, could be considered at the latter meeting. There was in any case a possibility, pointed out by Mr. O'Rourke, that such a move could be part of an initiative in IMO.

The meeting agreed to this course of action. Mr. O'Rourke informed it that the next meeting of the Maritime safety Committee would be held in November 1984.

Rory Montgomery
Economic Division
3 May 1984

The Guardian

26/2/85

Submarine clue to vanishing boats

Paul Brown reports on the theories which may explain Irish Sea disappearances

TWO vessels which disappeared in the Irish Sea may have had their fishing gear snagged by submarines.

The 56-ton scallop dredger, the Mhari L, vanished last Wednesday and the South Stack disappeared last May. In both cases intensive searches have failed to find any sign of the boats or crews.

The coastguard station at Holyhead, which was responsible for the search for the South Stack when it went missing with its crew of three in calm conditions, said it had not come up with an explanation of what hap-

pened to the vessel. A submarine snagging her trawl was one of the possibilities, although there could have been an explosion, or the trawl could have snagged on the bottom and turned the ship over before the crew could do anything.

At Ramsey, where the extensive air and sea search for the Mhari L has been coordinated, the Coastguard said no explanation had yet been found. The area in which the ship disappeared did contain a submarine exercise area, but this was by no means the only possibility.

The Department of Transport, which has responsibility for investigating these disappearances, said a report had been completed on the disappearance of the South Stack, but that it would not be published. "Clearly submarines must be considered in these circumstances, but I cannot tell you what the reports say," said a spokesman.

The Armament and Disarmament Unit at the University of Sussex has records of three incidents where trawlers have become tangled with submarines. Mr Malcolm Spaven, a researcher, says that an Irish trawler was

sunk by a British diesel-powered submarine in March, 1982, after snagging its trawl wires.

In 1979, a Scottish fishing vessel was towed backwards for some hours by an American submarine before the crew managed to cut the wires. In 1982, the disappearance of a French trawler off Cornwall was widely attributed to the presence of a Russian submarine.

Mr Spaven said that if a submarine were to run into fishing gear it could pull down a comparatively small vessel in a few seconds.

Information received from Embassies about perceptions of
'submarine' problem and likely attitudes to an international
initiative

Embassies were asked to make urgent inquiries of an informal nature with authorities in their country/countries of accreditation to establish (a) if they share our concern (b) how they have reacted to any incidents (c) whether they would see any scope for an international action to counter the problem, e.g. an IMO Recommendation.

~~Copenhagen:~~ Share our concern

- ~~(b) Other such incidents have preceded the most recent.~~
- Bonn: (a) Expressed general concern
(b) Were naturally sensitive given sinking of Danish trawler by German submarine on test run and under civilian authority, but felt that existing safety regulations were adequate
(c) Would neither propose nor oppose an initiative (Embassy felt this indicated willingness to discuss problem if we made the running). Agreed that IMO Maritime Safety Committee seemed the most appropriate international forum. Saw possible problems with (i) military authorities (ii) reaction from E. European States (iii) need to prove that dimensions of problem would warrant a recommendation. Felt that it would be advisable to discuss proposal informally with other Western States.

~~initiative's succeeding. Pointed out Canadian~~
Moscow (Finland): (b) Finns have had no experience of such interference

- (c) Official concerned with shipping safety saw no

problem 'in principle' in raising matter at IMO, if presented as a purely technical issue. However, Political Director in Foreign Ministry did not think Finland would have an interest in pushing this matter, and nor did he think that superpowers would be ready to discuss it. Both seemed highly conscious of political sensitivities.

Copenhagen: (a) Share our concern

- (b) Other such incidents have preceded the most recent, in March this year
- (c) Were generally favourable to discussion at IMO and felt it would do good. Cautioned that their military authorities might think otherwise.

Buenos Aires: Ambassador felt it best to exclude Argentina from the canvas at this stage given that its concerns centre round British activities in the Falklands Exclusion Zone and that too close a linkage could be established with our rather different problem.

Ottawa: (b) there have been no incidents of this type yet, though submarine traffic off the West coast has increased

- (c) rather sceptical about the chances of an IMO initiative's succeeding. Pointed out Canadian sensitivities vis-a-vis U.S. in the matter, should problem be raised in an international forum. Suggested informally that some sort of bilateral agreement on channel delineation or vessel traffic management might be a more likely starter.

Athens: (a) Share our concern
(b) Have not had similar experiences
(c) Feel it is a matter of political decision as to which forum we decide to use.

Stockholm: On his visit (7th May) the Swedish Foreign Minister indicated the concern felt about Soviet incursions into Swedish waters. He would follow any Irish initiative with interest. In a press conference he pointed out that the two countries' problems were rather dissimilar. The question is, at Sweden's instigation, to be discussed at the next meeting of the Nordic contact group on fishing questions, in November this year. An opposition parliamentarian referred in debate to a number of incidents apparently involving trawlers and submarines.

Lisbon: (b) Portuguese Foreign Ministry unaware of similar incidents, but is to look into the matter.

Rome: (b) Italians have had some comparable experiences,
(c) Embassy contact (on IMO desk) personally in favour of an initiative in IMO, and thought it was necessary, but would need to consult other interested parties. No final response has yet been received.

- Tokyo: (a) The level of concern is low
(b) There have been no accidents involving Japanese trawlers, according to the Foreign Ministry (though our Embassy recalls that other sort of vessels have been affected by incidents)
(c) Would not oppose any international initiative, but feel that problem would be best dealt with regionally/bilaterally.

Ron Montgomery

Economic Division

Department of Foreign Affairs

16 July 1984

Moscow (Finland): (b) Fights back but no suggestion of such interference

(c) Official concerned with ensuring safety of fisher-

ROINN NA MARA
(Department of the Marine)
BAILE ATHA CLIATH 2.
(Dublin 2).



Dear Mr Skinner

The Minister specifically asked me to write to you about this.

Yours sincerely,
Patrick L. Howard



ROINN NA MARA
(Department of the Marine)
BAILE ÁTHA CLIATH 2
(Dublin 2)

31 May 1990

Ms. Geraldine Skinner
Legal Adviser
Department of Foreign Affairs
72-76 St. Stephens Green
Dublin 2

Dear Ms. Skinner

There have been in the recent past a number of incidents of aggressive behaviour by foreign-registered fishing vessels against Irish-registered craft. In a recent incident a French-registered fishing vessel 'rammed' an Irish trawler outside territorial waters off the south west coast.

The 'rules of the road' for ships moving in our territorial waters are contained in the International Regulations for Preventing Collisions at Sea, 1972. The latter are implemented internationally on a uniform basis and that basis is enshrined in the Collision Regulations (Ships and Water Craft on the Water) Order, 1984 as amended by the Collision Regulations (Ships and Water Craft on the Water) (Amendment) Order, 1990. Those committing wilful breaches of these Regulations (Section 419 of the Merchant Shipping Act, 1894) are guilty of a misdemeanour and punishable by a fine or imprisonment for up to two years. (Section 680 of the Merchant Shipping Act, 1894). However, there is a difficulty in that the Collision Regulations do not apply to foreign-registered vessels where incidents occur outside our territorial waters. Thus where the owner of a foreign-registered vessel behaves irresponsibly towards an Irish vessel fifteen miles off our coast there would appear to be little that can be done apart from asking the maritime authorities of the flag state to pursue the matter, which is not an effective remedy.

Incidents of this kind have been happening off our coast all too often recently. I am anxious, therefore, to explore any avenue which would provide us with powers to deal with them. While I appreciate that a basic tenet of maritime law is that the flag state is responsible for the regulation of its vessels' behaviour in international waters, I would appreciate any direction which you might give as to what might be done to overcome the problem.

Yours sincerely

Patrick G. Howard

P.G. Howard
Assistant Secretary

Fishing Vessel (Sinking)

11 am

Mrs. Ray Michie (Argyll and Bute) (by private notice): To ask the Secretary of State for Defence if he will make a statement on the sinking of the fishing vessel Antares from Carradale, with the tragic loss of four lives, following an incident involving one of Her Majesty's submarines.

The Minister of State for the Armed Forces (Mr. Archie Hamilton): At approximately 02.40 yesterday morning, the Royal Navy submarine HMS Trenchant reported that whilst operating submerged in the Clyde area, certain unexplained sounds on her starboard side led her commanding officer to believe that she might have snagged the gear of a fishing vessel. The submarine therefore surfaced and conducted a visual search of the area, sighting two fishing vessels some 3,500 yds astern. The crew recovered a length of trawl cable from the casing and, believing that she may have snagged the gear of one of the vessels sighted, attempted to make contact on VHF radio. The fishing vessels did not reply.

The Royal Navy then advised the coastguard, who also tried to make contact with fishing vessels in the area, but without success. The submarine remained on the surface for some two and a half hours in good visibility and, as it appeared that the fishing vessels were in no difficulty and that there were no other untoward signs, she continued her operations before returning to Faslane.

Following the call from the Navy, the coastguard initiated inquiries in an attempt to account for all vessels that may have been in the area. During the course of the morning, it was established that the fishing vessel Antares, a 16 m pelagic trawler from Carradale, with a crew of four, was unaccounted for. A search and rescue operation was initiated immediately, and I can now report that the Antares was discovered on the sea bed at 03.40 this morning in the area in which Trenchant reported the previous night's incident.

The search for the crew continues but, sadly, it now seems extremely unlikely that they will be found alive. This is of course a tragic loss for the small community of Carradale, and I know that the whole House would wish to join me in expressing the deepest condolences to the families of the four men. The crew of Trenchant and the entire submarine community are also, I know, shocked and deeply saddened.

The Department of Transport will of course be conducting a full inquiry into the incident, as will the Royal Navy, and I would not wish to speculate on the outcomes at this stage. Royal Navy submarines have been operating in the Clyde area for more than 80 years, with an excellent safety record. Fishing vessels are almost always present in the areas where our boats operate, and submariners are accustomed to maintaining a constant and careful watch for them. I believe that our record and our safety procedures are excellent, but we will of course look carefully at the results of both inquiries to see what lessons can be learned from this tragic accident.

Mrs. Michie: I am grateful to the Minister for expressing his sympathies, in which I know the whole House shares, to the wives and families of the crew members who have been lost. The shock and sorrow is very

real in Campbeltown, and particularly in the sm. tightly-knit community of Carradale, where the boat came from.

I welcome the announcement that there will be a full and extensive inquiry, and I hope that we will receive an early report. Meanwhile, will the Minister suspend submarine operations in the firth of Clyde, because this is not the first such incident? Will the Minister acknowledge that I and other Members of Parliament representing constituencies in the firth of Clyde area have repeatedly asked the Ministry of Defence to devise a solution to the danger that the accident highlights? There are various options for allowing submarines to identify fishing gear, which often swings a considerable distance away from the position of the fishing vessel itself. I have myself discussed the matter at length with Navy personnel, and they have worthwhile ideas on how to overcome that problem.

Will the Minister explain why the rescue services were not alerted earlier? Finally, it would help the bereaved families enormously in their sorrow if the Navy were able to refloat the wreck, which I believe is lying in 80 fathoms of water, so that the bodies of its crew members can be recovered.

Mr. Hamilton: I am grateful to the hon. Member. My right hon. Friend the Minister of Agriculture, Fisheries and Food, who is in his place, will report this exchange also to our noble Friend the Minister of State in another place.

We shall make every attempt to produce an early report on the incident. Delay is in nobody's interest, and we will ensure that that report is produced as soon as possible.

It would be extremely difficult to suspend Royal Navy operations meanwhile, as that would inhibit extensively the Royal Navy. The hon. Lady said that this is not the first such incident. That may be so, but in the 10 incidents involving the Royal Navy and the two involving the US navy since 1979, there was no loss of life, although two yachts were sunk in the Clyde area. The incident that I have reported is most tragic, but it seems to have been a freak accident.

The hon. Lady asked what can be done. We are reviewing the question of attaching beepers to nets. The Ministry is sponsoring research by the Admiralty research establishment. Trials have already been undertaken, and more will be commissioned. The results so far have given us cause to be very pleased. That innovation could make a massive difference. At present, a submarine can only listen to a fishing vessel's engine noise. If beepers are fitted to the cables themselves, that will make a major difference to safety. We will place all the emphasis that we can on continuing research into that aspect from here on.

We certainly have plans to recover the wreck. Recovery vessels will shortly be dispatched, and we hope to discover more about what happened when the wreck is brought to the surface.

Mr. Bill Walker (Tayside, North): My hon. Friend will appreciate that everyone in Scotland is saddened by the incident. The submariners themselves, as well as fishermen, are deeply concerned, because they too are at risk from anything that can snag their equipment when they are operating below the surface. The inquiry should bear in mind not only the submariners' operational needs, which are paramount, but their safety.

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Mr. Hamilton: My hon. Friend is absolutely right. I repeat: the submarine community is equally distressed, because submariners spend a great deal of time with fishermen during their training, and they regard it as a matter of professionalism to ensure that they do not become involved in such accidents. That matters very much to the submariners, and I know that they are deeply concerned and upset that the accident should have happened.

Mr. John D. Taylor (Strangford): Campbeltown is only miles from Northern Ireland. Northern Ireland's fishing industry has a close working relationship with fishermen on the west coast of Scotland. On behalf of the Ulster Unionist party and our fishing industry in County Down, I extend sympathy to the families in Campbeltown who have been so sadly bereaved and to the whole fishing community there.

Will the Minister acknowledge that what has happened was forewarned? It was inevitable, as fishermen have been saying for several years. It was a tragedy, and it should not be dealt with lightly. It requires not only a specific inquiry into what happened in the firth of Clyde but a wider inquiry into the operation of submarines of the Royal Navy and the United States off the west coast of Scotland and right down the Irish sea.

The fishing industries of Northern Ireland, Scotland, the Isle of Man and the Republic of Ireland—for which, oddly enough, I can speak today—are concerned about the number of incidents involving submarines, of the deaths and losses that have occurred and of the increasing threat in the sea which is attacking all our fleets. I therefore ask the Minister to widen the terms of the inquiry to the operation of submarines in the Irish sea and the firth of Clyde and to report on how there can be better co-ordination between fishing fleets and the submarines of various nations.

Mr. Hamilton: I am grateful to the right hon. Gentleman for the sympathy that he sends the families, and I know that his views will be echoed by everybody in the House.

There have not been many incidents. It has been implied that submarines were involved in accidents with fishing vessels, but on investigation a number of those accidents were found to have occurred in water that was too shallow for submarines to operate in. We must be careful before attributing to submarines every accident that happens to fishing vessels in coastal waters around Scotland or Northern Ireland, because that is not the case.

We shall see what lessons can be learned from the inquiry and what can be done to improve our procedures. We must be careful not to rush into saying that this has implications for all submarine activities. We must press on to make the position of fishing vessels safer. I have high hopes for the bleepers that can be fitted to nets.

Mr. Peter Viggers (Gosport): We all sympathise in this most tragic incident and express sympathy for the bereaved.

As the Defence Minister answering this private notice question, my hon. Friend will confirm that the Royal Navy carries out the most scrupulous checks in surfacing and submerging and that, if necessary, he will tighten anything that needs to be done by the Royal Navy.

Does he agree that it would be wrong for the inquiry to concentrate only on the Royal Navy's procedures, because

the procedures of fishing boats may also need investigation? For instance, the procedures for cutting nets may need to be improved. Will he confirm that the inquiry will consider the procedures of not only the Royal Navy but fishing boats?

Mr. Hamilton: Yes. I should like to confirm that there will be two inquiries. The Department of Transport inquiry will carefully consider the implications for the fishing industry, and the internal inquiry of the Royal Navy will be more concerned about whether the right responses were made in the submarine and aspects of what occurred.

The Royal Navy's submarines operate to the highest standards. The reaction of *Trenchant*, tragic accident though it may have been, was as the Royal Navy would have required: she surfaced and looked around the area to see whether anything could be done. It seems that the fishing vessel concerned had sunk so quickly that she was not visible on the surface.

Mr. Alan Williams (Swansea, West): Would not the submarine's detection equipment have identified in advance how many vessels should have been in the area? When it surfaced, it would have been absolutely clear that a vessel was missing. Therefore, will the Minister say how much time elapsed between the first awareness of the incident and the first contact with the rescue services?

On the point made by the hon. Member for Argyll and Bute (Mrs. Michie) about the temporary suspension of activities—we all understood the long-term problems of suspension—is not the submarine such a specific piece of equipment that, in the present international context, it is difficult to conceive that temporary suspension would cause any hardship?

Mr. Hamilton: I do not think that we can take that view, because it is important that our submarines keep training for an emergency. We would be running risks by suspending their activities. We must bear in mind the defence interests of keeping our crews properly trained.

The right hon. Gentleman said that the submarine should have known how many fishing vessels were in the area. That is the question that arises, but we must leave it to the board of inquiry. Submarines are required to listen for engine noise and, as a result of being able to pick them up, to avoid fishing vessels. The inquiry will have to consider that point and why the submarine, if it was responsible for snagging the nets, had not identified the fishing vessel earlier.

Mr. Williams: And the time lapse?

Mr. Hamilton: I am afraid that I do not know the answer to that, but I shall write to the right hon. Gentleman.

Mr. Dennis Skinner (Bolsover): Will the Minister confirm that this is another incident in a catalogue of catastrophes that have characterised this Government in the past 11 years? People will ask, if the Minister says that bleepers can be used to assist in operations and to prevent such incidents from taking place, why it is necessary to proceed with operations until bleepers can be fitted? Secondly, if there have been other incidents involving Irish boats and perhaps others, surely bleepers should have been fitted before now?

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Mr. Hamilton: The whole business of bleepers arose on an earlier incident, and we have been pressing ahead to develop them in the light of that.

The hon. Gentleman said that this is a catalogue of disasters, but it is not. There has been no evidence—

Mr. Skinner: It goes right across Departments.

Mr. Hamilton: This is hardly the time to discuss broader aspects of Government policy, and I do not think that this is the right context in which to do so. No loss of life has been associated with Royal Navy submarines prior to this, but we have pressed on with the development of bleepers, which offer an answer for the future.

Mr. Brian Wilson (Cunningham, North): May I first express sympathy to the bereaved and identify with the great sadness which yesterday descended on Kintyre? The Rev. Alistair Dunlop of Saddell and Carradale parish church said:

"Some tragedies can never be prevented, but this kind can. If it's a freak wave you can do nothing. If it is a submarine, you can."

Will the Minister recognise that fishermen working in waters off the west coast of Scotland and in the Irish sea have for too long had to live with this unnatural threat to their lives, on top of all the other dangers that they daily confront? Will the Ministry of Defence finally abandon denials and silences in order to recognise, and thus deal with, the persistent scale of this problem?

Will the Minister confirm that technology exists which has been researched in this country for submarines to recognise and thus avoid fishing nets? Will he confirm, in particular, that the Net Nav system, which has been developed by a firm called Sea Metrics, was discounted in March by the Department of Transport, presumably after discussion with the Ministry, on grounds of complexity and cost? As we mourn the loss of the Antares, does he agree that neither of those grounds appears adequate today?

Will the Minister accept the view of the secretary of the Clyde Fishermen's Association, with whom I spoke this morning, that the search for a solution has been retarded by the Ministry of Defence's refusal to admit responsibility for the problem—an attitude which, I regret to say, he appears to be perpetuating this morning by discounting the possibility of naval involvement in previous, as yet unexplained, incidents?

On the specific events of yesterday morning, will the Minister inquire closely into the response of the submarine Trenchant after its master became aware that something had indeed been struck? What breakdown in communications prevented the true fate of the Antares from being revealed during that crucial period? Why was it not recognised that where previously there were three fishing boats only two were visible to her?

Will the Minister reconsider his response this morning and give an immediate undertaking, out of sympathy and understanding for the fishing families in the area and along that coast, to divert submarines away from recognised areas of fishing activity until measures can be introduced to safeguard against such tragedies? Never again must fishermen working in flat calm, diligently pursuing their livelihood in coastal waters, lose their lives in such circumstances.

Mr. Hamilton: The hon. Gentleman suggests that we should abandon our policy of denial. I stand here in the House making a statement precisely spelling out what happened but denying nothing whatever. The hon. Gentleman's comment was inopportune. On admitting responsibility, it must be for the board of inquiry to conclude who was responsible for the incident. I have outlined all the details of the case as I know them. In those circumstances, we can reach our own conclusions, but it is impossible to say that it was definitely the responsibility of the submarine, because we do not know what findings the board of inquiry will make.

The hon. Gentleman asked whether we intended to admit to previous unexplained incidents. If we take that logic through to its conclusion, the Royal Navy would have to take responsibility for any fishing vessel which for some reason or other happened to be involved in a tragedy and sank, simply because no one else could be found responsible. That would be nonsense. We have gone into the most incredible detail in examining where our submarines were operating, whenever incidents took place in the past. If there was a submarine in the area, we have admitted it. But in some of the cases that we investigated, people accused submarines of sinking fishing vessels in waters which were too shallow for submarines to operate in.

We shall not admit liability for every fishing vessel that gets into trouble. I am afraid that there are cases in which fishing vessels go down with no explanation whatever. Such cases are great tragedies, but we cannot expect the Royal Navy to take responsibility simply because no other outcome can be found.

The hon. Gentleman said that, previously, there were three fishing vessels in the area and then only two could be found. I gather that such fishing vessels do not necessarily keep in contact with their colleagues in other boats. Fishing vessels can go down without people being aware of it. We reported back as soon as we possibly could. A search was carried out and the wreck has been found.

I am grateful to the hon. Gentleman for the sympathy that he expressed for the families. We all share that sympathy in the House today.

Hansard.

29 October 1990.

Submarines (Fishing Nets)

Mrs. Margaret Ewing: To ask the Secretary of State for Defence how many incidents have been recorded by his Department of the snagging of nets of fishing vessels by Royal Navy or North Atlantic Treaty Organisation submarines in each of the past five years giving the location of such incidents.

Mr. Archie Hamilton: The information requested is as follows:

<i>Date</i>	<i>Vessel</i>	<i>Location</i>
18 February 1987	Summer Mourne	Irish Sea
26 September 1987	Heroine	North Channel
6 December 1987	Prevail	North Channel
27 October 1988	Brilliant Star	Sound of Bute
3 December 1988	Mount Eden	North West of Mallin Head
17 April 1989	Laurel	Irish Sea
28 June 1989	Huntress	Firth of Clyde
12 September 1989	Contestor	Irish Sea
13 November 1989	Scotia	Butt of Lewis

Submarines

Mr. Cradock

As a follow-up to our small informal meeting on 30 April you will be interested to learn that I had a phone call today from a colleague in the Swedish Foreign Ministry. I attach a note of our conversation. In light of the last paragraph thereof you may consider it necessary to brief our Minister for next week's meeting.

As a follow-up to last week's meeting I would make one or two comments. You will recall that the question of jurisdiction over warships/submarines particularly in the territorial sea was queried. I have again checked this matter and am satisfied that at customary international law the position is that warships on the high seas are not subject to the jurisdiction of any State other than their own. It is a well-established rule of international law that warships are immune from legal process, execution or other jurisdictional measures of foreign authorities. Warships cannot form the subject of seizure, arrest or detention by any legal means or by any jurisdictional process. A coastal State may only exercise jurisdiction where this is agreed to by the flag State.

Warships enjoy the right of innocent passage through foreign territorial waters though it does appear that the coastal State has the right to enact regulations regarding the passage of foreign warships through its territorial waters if considerations based on its safety and protection justify it. The right of innocent passage has also been recognised for submarines provided they are negotiating on the surface of the water. Warships cannot be seized or interfered with in any manner by judicial proceedings, and if any offence occurs the offended State must apply directly to the Government of the country to which the vessel belongs. The Institute of International Law considered the subject in 1928 and expressed the fundamental rules as follows: "Warships cannot form the subject of seizure, arrest or detention by any legal means whatsoever or by any judicial procedure. They must, however, respect the local laws and regulations in force in the ports to which they are admitted."

The commander of a warship in a foreign port or waters retains complete jurisdiction over the ship and her crew thus excluding entirely the jurisdiction of the territorial sovereign.

From the foregoing it will be seen that it is a well-established principle of international law, which has not been diminished by recent Conventions or

practice, that warships are immune from the jurisdiction of other than the flag State. Such immunity is not lost for official acts even if they are illicit but not crimes under international law. It is the flag State which is responsible for the acts of warships. It has been argued that immunity will be lost if the warship intrudes in a foreign State in disguise and/or under false pretences. This is still an area of the law which is open to question and for example whether travelling submerged in the territorial seas would come within this description is not clear. The right of self-defence may exist even if there is no armed attack or aggression but the normal rules of self-defence require that the measure be necessary. In any event this does not arise in our case since the incidents occurred on the high seas.

In relation to the Maritime Safety Committee of the IMO, it consists of 14 members of which not less than 8 shall be the largest ship owning nations and the remainder from among those with an important interest in maritime safety. The Committee has the duty, *inter alia*, of considering aids to navigation, construction and equipment of vessels, rules for the prevention of collisions, handling of dangerous cargos, marine casualty investigation, salvage and risks and any other matters directly affecting maritime safety. It meets once a year and may invite any member of the organisation to participate on any matter of particular concern to that member. It may therefore be the most appropriate forum in which to raise the question of incidents at sea involving submarines. However, as was pointed out at the meeting it does seem that far more background information would be required and that some general guidelines as to how the problem could be dealt with would be required. Despite fairly widespread concern it does not seem realistic to expect that submarine States will accept any change in the law as exists at present.

It must also be borne in mind that submarine States are not anxious to restrict in any way the movements of their submarines or to disclose their activities. It is very unlikely that they would agree to the erosion of the immunity which they have enjoyed under international law and in my view it would be very difficult to get any useful agreement for a practical solution in the context of a large international organisation.



Legal Adviser
3 May 1984

Colours

1 June, 1990

Mr. P.G. Howard
Department of the Marine
Leeson Lane
Dublin 2

There is no piracy unless a ship itself is made the instrument or
vehicle of crime. The use of a ship for purposes of piracy
is not a crime in itself, but a violation of the right of protection. Of course, if the
ship flies any flag, and refused to do so, then it
would be easier to take action by the Navy.

I refer to your letter dated 31 May regarding recent incidents of
aggressive behaviour by foreign registered fishing vessels
against Irish registered craft.

I note from your letter that you are much more familiar with the
laws and regulations governing ships than I am but, following
some telephone conversations with officers from your Department
during the week, I had begun to look further into the present
international law on the matter. The following is the result of
my research with some tentative views on possible alternative
courses of action.

Ships on the high seas are subject to the exclusive jurisdiction
of the flag State and it is ultimately for the flag State to
exercise jurisdiction over ships flying its flag.

The first, and probably most important, of the customary law
rules is that every State has exclusive jurisdiction over all the
ships which fly its flag. The normal system presumes that all
ships concerned are regularly registered under the law of some
State and amenable to its authority. Active interference by
other than the flag State can only be justified in exceptional
cases where it is authorised by treaty, otherwise it is merely a
question of reporting an incident so that further action may be
taken through diplomatic channels. Provided the captain of a
merchant vessel shows its flag, the captain of a warship is not
justified in boarding her or taking any further action. Action
by him could only be justified if there are reasonable grounds
for suspecting that the vessel is engaged in some improper
activity. In the absence of good cause for suspicion, he may be
found responsible for any interference.

A warship on the high seas may interfere with a foreign ship
where it is engaged in piracy, the slave trade, unauthorised
broadcasting or is without nationality.

Should a situation arise in which one of these vessels is
ultimately arrested, there may be difficulty in pursuing the
matter in the Irish courts. You are probably conversant with the

A seizure on account of piracy may only be carried out by warships or those identifiable as being on government service and authorised to that effect. Piracy consists of any of the following acts:-

Any illegal acts of violence or detention committed for private ends and directed on the high seas against another ship or against persons or property on board such a ship. A ship may retain its nationality although it has become a pirate ship. On the high seas or in any other place outside the jurisdiction of any State, every State may seize a pirate ship.

There is no piracy unless a ship itself is made the instrument or vehicle of crime. The use of a ship for purposes of piracy deprives her of the right of protection. Of course, if the vessel was not flying any flag, and refused to do so, then it would be easier to justify action by the Navy.

In the event of collision or of any other incident of navigation concerning a ship on the high seas, action should only be taken by the flag State or the State of which the person involved is a national. No arrest or detention of the ship, even as a measure of investigation, may be ordered by any authorities other than those of the flag State.

I would interpret references to collision in this context as referring to accidental collision rather than to cases of deliberately aggressive activity leading to collision, which could be described as an illegal act.

I would suggest that the activities engaged in by the vessels you mention are such that they come within the latter category and that intervention by us, might possibly be justified as a last resort. The first step could be an approach through the usual diplomatic channel seeking an assurance that incidents (details of which we should furnish) would be immediately investigated and appropriate action taken. The next stage, in particular if no action has been taken on foot of our request and before actual intervention, would involve, as a minimum, a notification to the flag State, in so far as that State is known to us, that in the event of future incidents of the kind described, we will take appropriate action to intervene unless the flag State does so, and that such action would be taken with a view to protecting our nationals from the risk of serious injury or loss of life.

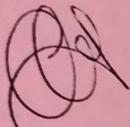
The position is not very satisfactory. We would have to attempt to justify our action, provided the flag State had been notified in advance of the intention to intervene, on the ground that the matter was not actively pursued by them. It would be on the basis that Irish nationals could be at risk and that the vessel in question is engaged in an illegal act of violence at sea.

Should a situation arise in which one of these vessels is ultimately arrested, there may be difficulty in pursuing the matter in the Irish courts. You are probably conversant with the

procedures but you might wish to seek additional advice on the domestic law from the Department of Justice which has recently been engaged in preparing legislation and from the Office of the Attorney General.

I trust the foregoing may be of some assistance to you but, given the complexity of the issue, it would be necessary, in my view, for the various alternatives to be explored in consultation with this and other Departments before any action is taken at sea.

Yours sincerely,



Ms. G. Skinner
Legal Adviser

See also file 306/261 II

Tane

Submarines are still with us -

I have had no time to explore the various possibilities of how we might pursue the question - See the beginning of a note which I was preparing under.

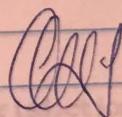
It seems the dep. sec. is anxious to set up a meeting to co-ordinate the views of other interested dep'ts. - Political/Economic and Legal div. would be involved. You may therefore be contacted by the Third Sec. in Economic Div. - Roy Montgomery.

It seems to me we would need to do more research on how the matter might be raised in IMO if this is thought desirable e.g. at the annual meeting of the Maritime Safety Committee.

A first step might be to ascertain which 14 States presently constitute its membership and even consult them before proceeding.

However my own view is that more would be achieved by bi-lateral arrangements with the States more directly concerned.

Given the difficulty of setting up a meeting next week after my return.



19/4/84

Legal Adviser

Legal Adviser

Nothing happened except that the attached useful documentation was copied to us and Economic (R. Montgomery) is trying to fix a meeting for Monday next 30 April at 3 PM *

Geneva 26.4.84

* The WSC aspect is likely to come up, given MacKellar's note & the Swedish references.

Submarines

The right of self-defence may exist even if there is no armed attack.

In relation to the recent incidents involving submarines around our coasts the Minister has taken the matter up informally bilaterally and also in the context of the Ten. He is, however, also anxious that the matter be considered at some international forum and wished to ascertain what might be the most appropriate international organisation.

Among the possible organisations is the IMO. This is the successor body to IMCO which was set up to provide machinery for co-operation among Governments in relation to practices relating to technical matters affecting shipping engaged in international trade. It was essentially an organisation concerned with commerce and its functions were consultative and advisory. It does not therefore seem to be the most appropriate organisation in this context.

It must also be borne in mind that submarine States are not anxious to restrict in any way the movements of their submarines or to disclose their activities or locations. It could therefore be very difficult to get any useful agreement from a large international organisation which includes among its members the UK, the US, the USSR as well as the major trading nations.

It is a well established rule of international law that warships are immune from legal process, execution or other jurisdictional measures of foreign authorities. Warships cannot form the subject of seizure, arrest or detention by any legal means or by any jurisdictional process. A coastal State may only exercise jurisdiction where this is agreed to by the flag State.

[Accordingly the Pueblo was entitled to the immunity of a warship and was outside the jurisdiction of North Korea for as long as it was on the high seas. The seizure of the Pueblo in international waters was illegal under international law and if it did sail through territorial waters it would have enjoyed the immunity of a warship.]

1. Foreign warships and crew are immune from foreign jurisdiction
2. Such immunity is not lost for official acts even if they are illicit but not crimes under international law
3. The flag State is responsible for the acts of the warship
4. Immunity will be lost if the warship intrudes in a foreign State in disguise and/or under false pretences.

The last point is probably debatable.

..../....

Document 17
93
No 21 to Secretary-General
1949-07-17

The right of self-defence may exist even if there is no armed attack or aggression but the normal rules of self-defence require that the measure be necessary.

Peace and Disarmament Bureau's note on Resolution 323 (IV) on Basic Principles

Resolution 323 (IV), adopted by the General Assembly on 29 December 1948, operative paragraph 2 invited all governments to submit their views on the rules on naval arms race to the Secretary-General of the United Nations. The Canadian Government wishes to respond by presenting the following views.

General comments

The continuing naval build-up and the development of naval arms systems adds a dimension to the problem of international security to which surprisingly little attention has been paid. The modernization and expansion of the navies of the major maritime powers and the increased sophistication of naval-based arms systems have created new and enlarged operational capabilities, which cause concern among a large number of nations. They are concerned about the possible effects on the freedom of the high seas, the peace and non-interference with international law concerning the rights and shipping and with the general development of maritime relations. Before discussing how total disarmament should function, some thought must be given to such concerns, in particular to those relating only for defensive action in one's coastal zone and territorial waters.

UTRIKESDEPARTEMENTET
Politiska avdelningen
Enhet VI
Handläggare: R Rydberg

PROMEMORIA

1984-04-06

Överlämnas av
UD
Pol VI för kännedom
1984-04-06 i

Afgård se till USA

Ms. Montgomery,
The section on "The legal context"
in this Swedish reply is of some interest.

P.M.C
26/4/84.

Svar på generalsekretärarens note om FN-studien om
marin kapprustning

Resolution 38/188 G, adopted by the General Assembly on 20 December 1983, operative paragraph 2 invites all Governments to submit their views on the study on naval arms race to the Secretary-General of the United Nations. The Swedish Government wishes to respond by presenting the following views.

General comments

The continuing naval build-up and the development of naval arms systems adds a dimension to the problems of international security to which surprisingly little attention has been paid. The modernization and expansion of the navies of the major maritime powers and the increased sophistication of naval-based arms systems have created new and enlarged operational capabilities, which cause concern among a large number of nations. They are concerned about the possible effects on the freedom of the high seas, the principle of non-interference with international sea communications for trade and shipping and with the economic exploitation of maritime resources. Efforts to bring about naval disarmament should focus on forces giving reason to such concerns, in contrast to forces designed only for defensive action in own coastal areas and territorial waters.

While disarmament negotiations have not succeeded in putting an end to the arms race, almost all branches of military activity have been subject to negotiation. The naval arms race has, however, attracted relatively little attention in disarmament negotiations, and only a few measures have been agreed upon after World War II.

One reason for the lack of attention given to the naval arms race in disarmament negotiations has been the difficulty in discussing the matters as long as negotiations on the law of the sea were not concluded and the legal and sovereignty situation was unclear. The conclusion of negotiations on the Convention on the Law of the Sea at Montego Bay (Jamaica) on 10 December 1982 has codified existing and new principles in the legal regime governing the use of the ocean space. Discussions pertaining to the issues of the naval arms race, measures for naval disarmament and related questions could thus be carried out on a firmer basis.

General Assembly resolution 38/188 G focuses on the implications of the naval arms race for international security, the freedom of the high seas, international shipping routes and the exploitation of marine resources. It recognizes that the comprehensive study on naval arms race should facilitate the identification of possible areas for disarmament and confidence-building measures.

This reply indicates some aspects of the latest developments of naval forces and the legal context for the problems of the naval arms race. Following this assessment of the present situation, examples of some possible arms limitation measures in the naval field are given.

The development of naval forces

In the years after World War II, navies were largely composed of battle-ships and destroyers, as well as conventional submarines. The threat from air forces and the development of nuclear weapons rapidly influenced the modernization of naval forces. Large aircraft carriers and modern submarines became increasingly important components. The strategic arms race, and the doctrine of nuclear deterrence, heightened the importance of submarines and anti-submarine warfare. To summarize the development of naval forces after World War II, submarines have gained in importance, and gunnery have gradually been replaced by long-range missiles, often of a targetable character.

Modern technology, e. g. nuclear power, has made the forward deployment of naval forces, as strategic submarines, aircraft carriers and other surface ships possible in all oceans. Rivalry between states and between the different weapon systems has caused an arms race at sea.

Submarine technology has increased the possibilities to remain under water for longer periods and to hide in deep waters. The number of submarines and their capabilities are increasing, and many states rely more and more on them for their naval strength. Modern submarines carry weapon systems for launching nuclear warheads, such as strategic missiles, cruise missiles, mines and torpedoes.

Several advanced systems for anti-submarine warfare have been developed, although the balance between anti-submarine and submarine systems today is in favour of the submarine.

The increasing ranges of submarine-launched strategic missiles makes it possible to launch ballistic missiles from all parts of the world oceans to targets everywhere on the continents.

Strategic submarines operate in all oceans and often pass through international straits. Improved missile accuracy due to modern navigation and guidance systems could have destabilizing effects, and fuel the nuclear arms race i. a. by causing perceptions of increased threats of nuclear first-strike capabilities. Developments in anti-submarine warfare could involve similar dangers.

Sea-launched cruise missiles are a new factor in the naval arms race. Having a relatively short range, such missiles will probably compel naval forces to operate closer to the shores of the continents, causing possible intrusions in the territorial sea of coastal states.

Short-range missiles are today relatively cheap and easy to install also in smaller vessels. This means that an increasing number of countries all over the world now have sea-launched missiles in their armouries.

Modern mines have become more sophisticated and more difficult to sweep than ever before. They can be constructed to remain on the sea-bed at great depths and be activated from a distance. Mini-submarines in modern military versions can be used for several tasks, such as mine-sweeping and even transportation of subversive forces behind the lines of a potential enemy. Their size makes it possible for them to penetrate the internal waters of other states.

Amphibious and other overseas and military transportation capacities are rapidly increasing in many countries. Their capacity and range enhances the possibilities of using them for the projection of military power for political purposes in all parts of the world.

Satellite-borne and other electronic or optronic systems for surveillance have acquired high performance levels, making it possible to follow the deployment of surface forces. Such surveillance systems might also facilitate the verification of agreements on naval disarmament or arms control.

Some earlier attempts to achieve naval disarmament and arms control

A few measures limiting naval forces have been agreed in the past. The multilateral 1971 Treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the sea-bed and the ocean floor and in the subsoil thereof (Sea-Bed Treaty) is one example. Of importance are the bilateral agreements between the United States and the Soviet Union on limitations of strategic submarines, contained in the SALT I and SALT II agreements. Related to them is a measure of confidence-building character, the Agreement on the prevention of incidents on and over the high seas.

A regional measure worthy of note is the inclusion of vast areas of the Atlantic Ocean and the South East Pacific into the area of application of the Treaty for the prohibition of nuclear weapons in Latin America, intended to be established by the full entry into force of the treaty.

The legal context

Although the actual implementation of the law of the sea convention raises certain issues for the future due to the slow process of ratification, the Convention by codifying already existing principles of the law of sea as well as introducing new provisions, provides a more precise basis for future efforts to develop principles relating to arms control. The Convention contains i. a. provisions relevant to the military use of the high seas, but it does not directly address matters of arms control.

Proposals concerning restrictions on the military use of the high seas have become extremely timely, against the background of an intensified naval arms race. There is an obvious need for further legal developments in the field of arms control, taking into account the existing rules of the law of the sea.

The traditional principle of the freedom of the high seas is a fundamental part of international law. The freedom of the high seas should, however, not be interpreted as a freedom from arms control. At this stage, we must realize that other concepts will have to prevail in order to promote international peace and security. The study will have to look into this matter.

On the other hand, the principle of the freedom of the high seas also includes a recognition of the importance to keep international sea communications open for trade and shipping in a manner consistent with the Charter of the United Nations and with the principles of international law (cf. the preambular part of General Assembly resolution 38/188 G). In this respect, the principle of the freedom of the

high seas has to be strengthened and reinforced. Military practices should thus not be allowed to hinder international trade and shipping and other peaceful purposes. This matter will also be of high importance for the study to address.

Possible areas to be considered for disarmament and arms control agreements

The above mentioned General Assembly resolution notes that some naval units constitute integral parts of the strategic nuclear forces of the two major nuclear powers. The naval arms race has to be seen as an important dimension of the strategic arms race. The study should give due attention to this important aspect. It should also focus on the specific problems related to the naval arms race. It could i. a. look into the issue of the potential conflict of interest between the major maritime powers and other coastal states. A second issue concerns the relationship between legal instruments and agreements on disarmament or arms control and the Law of the Sea. A third area would be an assessment of the implications of important tendencies in the development of naval technology, particularly in underwater technology.

A discussion of possible disarmament, arms control and confidence-building measures to be negotiated could identify a number of general issues, including the following:

- the limitation of sea-launched strategic nuclear missiles, and the possible establishment of sanctuaries for strategic submarines on the high seas;

- general limitation of naval forces, in particular offensive forces of the major military powers, including nuclear weaponry and amphibious and special military transportation capabilities;
- confidence- and security-building measures, e. g. the exchange of information on and limitation of naval and amphibious exercises on a general, regional or sub-regional basis;
- provisions for strengthening the right to safe navigation on the high seas for all ships belonging to neutral and non-combatant states;
- appropriate arrangements for verification;

The purpose of such policy measures should be to provide a contributions in the maritime context to the attempts to approach the overall declared aim of general and complete disarmament, to limit the practise of exposing naval strength for political intimidation purposes and generally to increase confidence and decrease the presence of military forces in particular areas of the high seas where such presence is designed to create tension. Of particular importance would be measures aimed at preventing an escalated nuclear arms race involving real or percieved attempts to gain nuclear first-strike capabilities.

The study should also look into prevailing practices by states, in times of crises or armed conflict, to close or impose restrictions on the use of certain areas of the high seas, by establishing what is known as interception areas, maritime exclusion zones or total exclusion zones or other areas of an exclusive character.

Another issue for the study to look into would be the laws of sea warfare, a question which is not included in the Additional Protocols to the 1949 Red Cross Conventions.

In particular the following issues could be subject to multilateral agreements:

- long-distance "fire-and-forget" missiles (risk for indiscriminate effects on civilian objects);
- rescue operations;
- prisoner-of-war transports;
- protection of civilian installations at sea (risk for adverse effects on the natural environment);
- sea mines (risk for indiscriminate effects on civilian objects);

Concluding remark

The UN study will have to consider a number of complex issues, some of those highlighted in the present Swedish answer to the Secretary-General. As already quoted from the above mentioned General Assembly resolution, the study should thereby facilitate the identification of possible areas for disarmament and confidence-building measures. Such an identification would be of high importance to the further consideration of the problems of the naval arms race by the General Assembly and in appropriate negotiating fora.

38/188 c

Study on naval arms race

The General Assembly,

Concerned about the naval build-up and the development of naval arms systems,

Mindful of the paramount importance for the security and well-being of all nations, for the international trade and shipping and for economic exploitation of marine resources, of preserving freedom of the high seas and of keeping open international sea communications for trade and shipping in a manner consistent with the Charter of the United Nations and with the principles of international law,

Mindful also of recent developments in the law of the sea,

Noting that some naval units constitute integral parts of the strategic nuclear forces of the two major nuclear-weapon Powers and are therefore included in the strategic arms negotiations while other naval nuclear-weapons systems are not the subject of any disarmament negotiations,

Recalling also paragraph 96 of the Final Document of the Tenth Special Session of the General Assembly, 204/ which stated that taking further steps in the field of disarmament and other measures aimed at promoting international peace and security would be facilitated by carrying out studies by the Secretary-General in this field with appropriate assistance from governmental or consultant experts,

Convinced that a broad study carried out by the United Nations on the naval arms race as well as the developments of naval forces and systems and their deployment would enhance international understanding of the issues involved,

1. Requests the Secretary-General, with the assistance of qualified governmental experts, to carry out a comprehensive study on the naval arms race, on naval forces and naval arms systems, including maritime nuclear-weapons systems, as well as on the development, deployment and mode of operation of such naval forces and systems, all with a view to analysing their possible implications for international security and for the freedom of the high seas and for the international shipping routes and for the exploitation of marine resources, thereby facilitating the identification of possible areas for disarmament and confidence-building measures;

2. Invites all Governments to submit to the Secretary-General, not later than 1 April 1984, their views on the content of such a study and to co-operate with him by making relevant material available so that the objectives of the study may be achieved;

3. Requests the Secretary-General to submit the final report to the General Assembly at its fortieth session.

H

Independent Commission on Disarmament and Security Issues

The General Assembly,

Recalling its resolution 37/99 B of 13 December 1982, in which it noted the report of the Independent Commission on Disarmament and Security Issues entitled "Common security", submitted to the General Assembly at its twelfth special session, the second special session devoted to disarmament, 205/

Recalling also that the Disarmament Commission, in accordance with resolution 37/99 B, considered the recommendations and proposals in the report of the Independent Commission, and that the Disarmament Commission recommended that the report be taken into account in ongoing and future disarmament efforts, 206/

204/ General Assembly resolution S-10/2.

205/ See A/S-12/AC.1/PV.4, p. 18; the report was subsequently issued as document A/CN.10/38. See also A/CN.10/51.

206/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 42, (A/38/42), para. 25.

RECORDED VOTE ON RESOLUTION 38/188 C:

In favour: Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Brazil, Burma, Burundi, Cape Verde, Chad, Chile, China, Colombia, Congo, Costa Rica, Cyprus, Democratic Kampuchea, Democratic Yemen, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, Gabon, Gambia, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iceland, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Lesotho, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Nepal, Netherlands, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Romania, Rwanda, Saint Vincent, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Syria, Thailand, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Vanuatu, Venezuela, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Against: United States.

Abstaining: Afghanistan, Angola, Belgium, Bulgaria, Byelorussia, Canada, Cuba, Czechoslovakia, Dominica, France, German Democratic Republic, Federal Republic of Germany, Hungary, India, Israel, Italy, Japan, Lao People's Democratic Republic, Liberia, Luxembourg, Mongolia, Mozambique, New Zealand, Poland, Portugal, Saint Lucia, Togo, Turkey, Ukraine, USSR, United Kingdom, Viet Nam.

Absent: Albania, Botswana, Central African Republic, Comoros, Equatorial Guinea, Grenada, Samoa, Sao Tome and Principe, Seychelles, Solomon Islands, St. Christopher and Nevis.

RECORDED VOTE ON RESOLUTION 38/188 H:

In favour: Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussia, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saint Lucia, Saint Vincent, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Singapore, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukraine, USSR, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Against: United States.

Abstaining: Belgium, Canada, France, Federal Republic of Germany, India, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Portugal, Somalia, Turkey, United Kingdom.

Absent: Albania, China, Comoros, Equatorial Guinea, Grenada, Samoa, Seychelles, Solomon Islands, St. Christopher and Nevis.

PL CC to PSS

PSM. Dofee
A/Ses Luis
Legal Adviser
Parcuse
P. Cradon
*etc
price
101*

Note

"Submarine" incidents in the Irish Sea

At the working Dinner of Political Directors in Paris on 27 March, I raised the problem created by the growing number of incidents allegedly involving submarines in the Irish sea. I listed a number of such incidents of way of illustration emphasising however that the only incident involving the sinking of a fishing vessel in which it had been established definitively that a submarine was involved was that of the fishing vessel Sharelga. This had been sunk as a result of its becoming entangled with the British submarine HMS "Porpoise". The resultant loss of the vessel (happily without death or injury to the crew) was the subject of litigation between the owners of the vessel and the British authorities.

However what was exercising public opinion to an increasing degree in Ireland was the number and frequency of the incidents which I had described and which (whether correctly or incorrectly) were ascribed to increased submarine activity in the Irish sea. Such incidents involving the loss of fishing boats had also resulted in the loss of the crews of two French fishing boats. It had not, of course been established that submarines were at fault.

A BBC television crew had been in Ireland recently with a view to making a documentary on the subject including both its marine safety and military aspects. The producer of the documentary had interviewed Irish fishermen and visited Government departments including those of Defence and Foreign Affairs. The resultant documentary which was likely to be serious and unsensational in character would give rise to further concern about the whole issue. Parliamentary opinion was also exercised particularly in the case of members of Parliament from areas with fishing ports.

My purpose in drawing this question to the attention of my colleagues was to emphasise the importance that we attached to the greatest care being taken by submarines operating in international waters which are also fishing grounds in which Irish and other Community vessels fish. Obviously we all had an interest in ensuring the safety of our vessels and crews, while at the same time taking account of the right of naval vessels, whether surface or submarine, to innocent passage. I indicated that we would also be raising the safety issue with States where submarines may also be involved e.g. the United States and the Soviet Union. My colleagues listened to what I had to say and indicated that they were of course concerned about the safety aspects since their own fishing vessels could also be affected.

Mackernan

P. MacKernan

29 March, 1984

Legal Advisor

*For your
information.*

Ron Montgomery
7/2/85

CH7

IMMEDIATE
=====

6TH FEBRUARY 1985

TO HQ
FOR P CRADDOCK, ECON DIV

FROM LONDON
FROM J DULLY

=====

WITH MR NAUGHTON, MET WITH SEC. GEN., IMO, THIS P.M.

HIS ATTITUDE WAS POSITIVE AND HELPFUL, NOTWITHSTANDING THAT HIS INITIAL REMARKS REPEATED IMO'S SENSITIVITIES ABOUT CAREFULLY PRESERVING ITS NEUTRAL ROLE. HE CITED ONGOING DIFFICULTIES FOR THE ORGANISATION ARISING FROM ACTIONS AGAINST MERCHANT SHIPPING IN THE GULF. IT WAS CLEAR THAT HIS PRIMARY PURPOSE WAS TO REMIND US OF HOW CAUTIOUSLY THE IMO ITSELF MUST BE SEEN TO RESPOND TO OUR REQUEST FOR ACTION RE SUBMARINES. HE SAID HE HAD CONSULTED MANY MEMBER COUNTRIES INFORMALLY AND, NOT SURPRISINGLY, THOSE WITH LARGEST MILITARY FLEETS WERE LOUDEST IN IDENTIFYING THE POLITICAL NATURE OF OUR CONCERN AND IN WONDERING ABOUT THE CORRECTNESS OF IMO'S INVOLVEMENT.

HAVING SAID ALL THAT, HOWEVER, THE SEC. GEN. CONTINUED IN A TONE AND MANNER THAT WAS VERY SYMPATHETIC TO OUR REQUEST. HIS MAIN THESIS WAS THAT (A) IF WE WERE TO APPEAR TO NEUTRALISE OUR CONCERN BY CONCENTRATING HEAVILY ON THE SAFETY ASPECT (B) DEPOLITICISE THE ISSUE BY REMOVING ANY SUGGESTION OF COMPLAINTS BEING AIMED AGAINST ANY ONE PARTICULAR MEMBER COUNTRY AND (C) AVAIL OF THE ACCUMULATED EXPERTISE OF THE SECRETARIAT IN VARIOUS KEY STAGES, WE MIGHT SUCCEED IN HAVING THE ISSUE DISCUSSED AT THE NEXT MEETING OF THE MSC AND A RECOMMENDATION FROM THE IMO ADOPTED WHICH WOULD URGE MEMBER GOVERNMENTS TO TAKE STEPS TO ENSURE THE SAFETY OF FISHING VESSELS ADOPTED.

BRIEFLY, THE BEST PLAN OF ACTION WOULD - ACCORDING TO THE

SEC. GEN. BE:-

- (1) WE SHOULD BY MID-FEBRUARY SEND FORWARD AN APPROPRIATE TITLE FOR AN AGENDA ITEM (IN NEUTRAL FORM SUCH AS "SAFETY OF FISHING VESSELS") TO THE SECRETARIAT FOR THE MAY MSC MEETING.
- (11) THE SECRETARY GENERAL WILL HAVE THIS PLACED ON THE AGENDA FOR THE MEETING:
- (111) BY MID-MARCH WE SHOULD HAVE PRESENTED A SHORT PAPER ON THE SUBJECT WHICH SHOULD (A) AGAIN LAY PRIMARY EMPHASIS ON OUR CONCERN BEING FOR THE SAFETY OF VESSELS: (B) NOT SAY ANYTHING THAT MIGHT IDENTIFY OUR PROBLEM AS A BILATERAL ONE (THAT IS, WITH NO MENTION OF ANY OTHER MEMBER COUNTRY): (C) MENTION OUR FEW EXPERIENCES WITH SUBMARINES BY WAY ONLY OF EXAMPLE AND PERHAPS NAMING THE IRISH FISHING VESSELS INVOLVED: (D) AT THE END, REQUEST AN IMO RECOMMENDATION THAT MEMBER GOVERNMENTS TAKE ALL SAFEGUARDS THEY CAN TO ENSURE THE SAFETY OF FISHING VESSELS ETC (THE DEPARTMENT OF COMMUNICATIONS WILL BE MORE FAMILIAR WITH THE APPROPRIATE TERMINOLOGY HERE):
- (IV) THIS NOTE WOULD THEN BE CIRCULATED BY THE SEC. GEN. AS A BACK-UP NOTE FOR THE AGENDA ITEM:
- (V) THE IMO SECRETARIAT WILL GIVE ALL THE PREPARATORY SUPPORT (I.E. FOR A SUCCESSFUL OUT COME) IT COULD WITHOUT ENDANGERING THE NEUTRALITY OF ITS POSITION:

END

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CH7 CONTINUED
PART TWO

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(V1) THE IRISH DELEGATE AT THE MAY MEETING SHOULD SUPPLEMENT THE PAPER BY A SHORT ORAL PRESENTATION, AGAIN NEUTRAL, OR, IF WITH A BIAS AT ALL, THEN WITH A BIAS IN FAVOUR OF THE SAFETY ELEMENT.

THROUGHOUT, THE SEC. GEN. OBVIOUSLY RECOGNISED WHY, FOR DOMESTIC CONSUMPTION, IT MIGHT BE NECESSARY TO RELATE OUR NOTE IN SOME WAY TO OUR BAD EXPERIENCES WITH SUBMARINES AND IT IS CLEAR THAT HE IS WILLING TO ACCOMMODATE THIS BY SUGGESTING, FOR OUR CONSIDERATION, THAT WE USE OUR SUBMARINE EXPERIENCES AS EXAMPLES OF THE SORT OF HAZARDS THAT FISHING VESSELS CAN ENCOUNTER AND HAVE ENCOUNTERED. ANY SUCH REFERENCE MUST, HOWEVER, CARRY A SECONDARY EMPHASIS IF IT IS NOT TO PROMPT WIDESPREAD OBJECTION TO OUR PAPER FROM THE FLOOR ON POLITICAL ARGUMENTS VIZ A VIZ IMO TERMS OF REFERENCE.

HE ALSO SAID THAT THE SECRETARIAT WILL BE MORE THAN WILLING TO ADVISE ON THE SUITABILITY (I.E. FROM THE VIEWPOINT OF ITS LIKELY ACCEPTABILITY IN OPEN FORUM) OF ANY DRAFT PAPER WE HAD IN MIND BEFORE ITS FORMAL CIRCULATION BY THE IMO ITSELF. IT WOULD ALSO BE WILLING TO DISCUSS IN ADVANCE WITH THE IRISH DELEGATE AT THE MAY MEETING THE EMPHASIS AND NUANCES THAT WOULD BEST BE TAKEN IN A PRESENTATION FROM THE FLOOR.

THE SEC. GEN. IS MOST ANXIOUS THAT THE ABOVE BE TAKEN BY THE SECRETARY, DEPARTMENT OF COMMUNICATIONS, AS HIS FORMAL REPLY TO THE LETTERS FROM THE LATTER. GIVEN THE NATURE OF

HIS ADVICE, IT WOULD BE CLEAR THAT THE REASONS WHY HE DOES NOT WISH TO PUT THE ABOVE IN LETTER FORM ARE GOOD. HE FEELS THAT THE SECRETARY, DEPARTMENT OF COMMUNICATIONS, WILL APPRECIATE THAT THE NATURE OF HIS ADVICE AND REPLY DEMANDS THAT IT BE CONVEYED IN THIS WAY RATHER THAN IN WRITING.

I THANKED THE SEC. GEN. FOR HIS VERY HELPFUL ADVICE AND TOLD HIM THAT HIS CONCERN AS DESCRIBED IN THE PRECEDING PARAGRAPH WOULD BE CONVEYED TO THE SECRETARY, DEPARTMENT OF COMMUNICATIONS. I ALSO TOLD HIM THAT IT WAS LIKELY HE WOULD HEAR FROM US SHORTLY AFTER OUR HOME AUTHORITIES HAD CONSIDERED HIS ADVICE.

END END END
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Note

- 2 -

I received a telephone call from Mr. Lars Magnusson, Legal Division of the Swedish Foreign Ministry regarding the question of submarines.

It appears that a member of Parliament has put a question to his Minister as to what action he proposes to take in this matter given the number of incidents involving submarines which are arising. Mr. Magnusson wondered whether we had considered the matter or had any new ideas as to the manner in which it might be raised.

2 May 1984

I informed Mr. Magnusson that we had in fact been considering the question since our Minister also was very concerned about these incidents and was looking for an appropriate forum in which the matter could be raised. We had already approached bilaterally a number of countries and expressed our concern to them. Among the possibilities which might be considered was the Safety Committee of the IMO. However, it did seem that this was a committee which was non-political and directly concerned with practical safety aspects in relation to shipping and that there was some doubt as to whether it would be the appropriate place to raise the question.

Mr. Magnusson said that the question had been raised as to whether submarines should be banned from important fishing zones. I said that we also had wondered whether this would be possible but that we had seen considerable difficulties in relation thereto even if the area was small.

There is an informal Nordic contact group in relation to fisheries which meets about once a year and he expects that the question might be raised in that forum. This group would be looking at the problem from the fishery angle.

Mr. Magnusson appeared to be very much of the same view as that expressed around the table at our meeting on 30 April. He felt the matter was so sensitive that it would be virtually impossible to achieve anything in an international forum. He was in effect generally doubtful that anything could be achieved on this issue. It also appears that they and some at least of the other Nordic countries have a formalised claims procedure for vessels which are damaged. They lodge a claim with the Foreign Ministry and this is then forwarded to the flag State of the country concerned. While some claims probably had been very large the ones which he had come across were for relatively minor damage and the flag State had usually without difficulty paid the compensation.

.../...

He did not appear to have come across a problem in which there had been difficulty in identifying the vessel in question.

He informed me that the topic was on the agenda for the visit of his Minister to Dublin next week!


Legal Adviser
2 May 1984

Mr. Magnusson said that we had in fact been considering the question since the beginning of the year. He also was very concerned about these incidents and was looking for an appropriate forum in which the matter could be raised. He had already discussed this bilaterally a number of countries and expressed our concern to the IMO. He considered that among the possibilities which might be considered was the Safety Committee of the IMO. However, he said that this was a committee which was non-political and directly concerned with technical safety aspects in relation to shipping and that there was one doubt in his mind if it would be the appropriate place to raise the question.

Mr. Magnusson said that the question had been raised as to whether actions such as should be banned from important fishing areas. He said that we also had wondered whether this would be possible but that we had even considerable difficulties in relation thereto even if the area was small.

There is an informal Nordic contact group in relation to fisheries which meets about once a year and he expects that some consideration will be raised in that forum. This group would be looking at the problem from the Norway angle.

Mr. Magnusson appeared to be very keen on the issue when he had expressed around the table at our meeting on 20 April. He felt however that anensitive issue like this would be virtually impossible to consider openly in an international forum. He was in effect suggesting that some action could be achieved on this issue. He also opined that they will not be able to get all of the other Nordic countries to have a standardized alarm procedure for ships which are damaged. There being a claim with the Foreign Ministry over which was forwarded to the legal body of the country concerned. While no claim had already had been made since the ones which he had case stated had no relatively minor damage and the flag state had usually without difficulty paid the compensation fee.

Dáil Éireann

Parliamentary Debates

Vol. 352

No. 5

Thursday, 28th June 1984

X Safety of Fishing Vessels.

99. Mr. G. Collins asked the Minister for Communications the efforts that have been made to date to ensure the safety of Irish fishing vessels and their crews going about their lawful business from the activities of submarines encroaching on their fishing grounds; and if he will make a statement on the matter.

Minister for Communications (Mr. J. Mitchell): To date only one of the reported incidents involving fishing vessels in the Irish Sea has been proven to have been caused by a submarine. In that

instance — the loss of the *Sharelga* in April 1982 — my predecessor ordered a preliminary inquiry under section 465 of the Merchant Shipping Act, 1894. Before that inquiry had been completed by a marine surveyor from my Department, the United Kingdom admitted that one of its submarines had been responsible.

Immediately on becoming aware of the incident involving the fishing vessel *Oriel* on 8 March last, I appointed a marine surveyor to conduct a preliminary inquiry into that casualty. His report has been received and is at present under consideration in my Department.

Sea craft, whether they be submarines, warships, merchant vessels or fishing vessels, are entitled to pass through the high seas, that is the seas outside our territorial waters. This right of innocent passage on the high seas is long recognised in international law and is enjoyed by Irish ships as well as those of all other countries.

Nevertheless, my colleague the Minister for Foreign Affairs has taken steps to make other Governments aware of the Government's concern that the movements of submarines in the waters off our coasts should be conducted with full regard to the safety of merchant and fishing vessel.

any case in which there has been damage my proposals reflect that area, to the Minister for Communications dealing with it?

Mr. O'Kelly: In relation to the flying of flags and other matters to which the Deputy referred, I would say that since it is a normal day-to-day accepted practice for the good order of movement of traffic in our waters and around our ports, but when there is a situation as such some measure must — like that of the submarine in the *Sharelga* incident — traverse our waters one can introduce as many laws as one likes and be in breach of as many international laws as one likes but it will not cure the problem, of which the Deputy is quite well aware.

Mr. Daly: There is a possibility that they may not cure it. But certainly there are some restrictions that could be introduced and some action that can be taken under the Law of the Sea Convention. Does the Minister propose taking such action or has the Minister for Communications any such plan? Furthermore can the Minister assure me the skipper of the *Sharelga* will be compensated because two years have passed since his boat was sunk and no one has been compensated?

An *Irish Citizen* plan is a totally different question.

Mr. Daly: Can the Minister give us an indication of what specific laws introducing legislation will affect our territorial sea?

Mr. O'Kelly: I am not in a position to do so but I can assure the Deputy that the Minister for Communications, in his capacity as Minister for Communications, will take such action as he deems necessary.

Parliamentary Debates

Vol 352

No. 3

Tuesday 26⁷

Activities of Submarines.

10. Mr. Daly asked the Minister for Fisheries and Forestry if he is aware of the fears and anxiety of fishermen at the danger of accidents arising from the activities of unidentified submarines in fishing areas; and the efforts he is making to have such activities prohibited.

Mr. O'Toole: I am fully aware of the anxiety of fishermen about the risk of accidents arising from the activities of submarines within the exclusive fishery limits of the State, especially since the sinking of the trawler *Sharelga* by a British submarine in April 1982. However, the freedom of the high seas has always been a fundamental principle of international maritime law. I am not in a position to introduce legislation which would conflict with that principle.

Mr. Daly: The Minister will be aware that there have been reports of subma-

has sovereign rights these are subject to the freedom of all ships, including naval vessels, to traverse the territorial seas so long as they do not act in a manner which is prejudicial to the peace, good order and security of that coastal State. In relation to naval vessels, including submarines, this would require that they be navigated so as to avoid coming in contact with underwater cables, pipelines, fishing gear and so on. In relation to that all we are asking is that they use our waters bearing in mind the safety of the people using them also.

Mr. Daly: The Minister must be aware that while there are certain freedoms, there are also certain restrictions and that he can introduce legislation or regulations here to control these activities, and to demand certain things of them under the existing Law of the Sea Conference. Does the Minister propose to deal with this specific area and to take further action to deal with the other problems which arise outside our territorial waters?

Mr. O'Toole: I might repeat that the freedom of ships to traverse our territor-

D 352-R

rial waters is also part of international marine law. I am afraid that any restrictions would be regarded as a breach of international law.

Mr. Daly: The Minister must be aware that the Law of the Sea Conference defined very clearly what one can and cannot do, and one can introduce restrictions to control activities, to ensure that ships fly flags and other things by which they can be identified. Has the Minister any proposals to deal with that area, or is the Minister for Communications dealing with it?

Mr. O'Toole: In relation to the flying of flags and other matters to which the Deputy referred, I should say that these are a normal day-to-day, accepted criteria for the good order of movement of traffic in our waters and around our coasts. But when there is a situation in which some unknown vessel — like that of the submarine in the *Sharelga* incident — traverses our waters one can introduce as many laws as one likes and be in breach of as many international laws as one likes but it will not cure the problem, of which the Deputy is quite well aware.

Mr. Daly: There is a possibility that they may not cure it. But certainly there are some restrictions that could be introduced and some action that can be taken under the Law of the Sea Conference. Does the Minister propose taking such action or has the Minister for Communications any such plans? Furthermore can the Minister ensure that the skipper of the *Sharelga* will be compensated because two years have passed since his boat was sunk and he has not been compensated?

An Ceann Comhairle: That is a totally different question.

Mr. Daly: Can the Minister give us an indication of whether he proposes introducing legislation to deal with our territorial seas?

Mr. O'Toole: I have no proposals at present to do what the Deputy suggests.

Mr. Daly: Would the Minister examine the matter and ascertain what he can do in an effort at least to alleviate anxiety?

Mr. O'Toole: I will indeed but I can tell the Deputy that, in the first place, it is a matter for the Minister for Communications.

"BUSINESS AND FINANCE"

5th JULY 1984

Sweden may back Irish stand on submarine issue

Sharelga owners claim £300,000 from British government

THE OWNERS of the trawler Sharelga, sunk by a British submarine in April 1982, have commenced proceedings in Belfast against the Ministry of Defence claiming damages for the loss of the vessel and subsequent loss of earnings. The owners of the Sharelga, the McEvoy family of Drogheda, say this action has been forced on them by an unsatisfactory offer of compensation by the Ministry of Defence. The McEvoy's are claiming £298,000 for the trawler. The latest offer from the British is £190,000.

The Sharelga was sunk in the Irish Sea

after having been dragged backwards by a submarine, later identified as British, which had become entangled in the trawler's nets. Two weeks later, the British admitted responsibility through the Embassy in Dublin and offered to pay compensation to the owners.

The Sharelga sank in deep waters and could not be retrieved. The vessel, which had been bought for £140,000 four weeks before the incident, was reconstructed on paper by surveyors and the valuation of £298,000 placed on it. The claim was submitted to the Ministry of Defence, which rejected it

as being too high. The Ministry made a counter offer which, in turn, was rejected by the McEvoy's. In October of last year, the British increased their offer to £190,000. The parties were still separated by over £100,000 and the owners rejected the second offer, too.

With no further offers on the table, the McEvoy's decided to resort to legal proceedings. A Queens' Bench claim for damages has been lodged in the Northern Ireland courts. Solicitors acting for the McEvoy's expect the case to come up for hearing towards the end of this year.

THE IRISH TIMES

TUESDAY, 8th MAY, 1984

Sweden may back Irish stand on submarine issue

SWEDEN may support Irish moves at international level to deal with the question of submarines intruding into offshore waters.

The problems posed to the two countries by such intrusions were discussed in Dublin yesterday by the Swedish Foreign Minister, Mr Lennart Bodstrom, and the Minister for Foreign Affairs, Mr Barry. Mr Bodstrom, who is on the first official visit to Ireland by a Swedish Foreign Minister, also met President Hillery and the Taoiseach, Dr FitzGerald.

Ireland is considering raising the submarine issue at the International Maritime Organisation, a UN body concerned with safety at sea. Mr Bodstrom said the problems facing the two countries were of different kinds. Ireland was concerned about the risk of a

tragic accident; Sweden found it necessary, to preserve its neutrality, to make it completely clear that its territory was not at the disposal of any foreign power.

Mr Bodstrom said he had been interested to hear the details of the New Ireland Forum report, which he said could be of great importance to all of Europe as well as to Ireland and Britain. He was very impressed by the work that had been done in the Forum and by the analysis produced.

East-West relations, disarmament, Lebanon and the Middle East were among other topics covered in yesterday's discussions.

Today Mr Bodstrom meets a group of Swedish investors in Ireland, and travels to Athlone to visit the firm of Ericsson Ltd. His visit ends tomorrow.

(XII.1.d,f)

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REFERENCE: C.N.141.1982.TREATIES-3 (Depositary Notification)

CONVENTION ON THE INTERNATIONAL MARITIME ORGANIZATION
SIGNED AT GENEVA ON 6 MARCH 1948

Amendments to the Convention
adopted by the IMO Assembly in resolutions A.358 (IX) of
14 November 1975 and A.371 (X)
of 9 November 1977 (rectification of resolution A.358 (IX))

ENTRY INTO FORCE OF THE AMENDMENTS
(EXCEPT AMENDMENT TO ARTICLE 51)

Amendments to the Convention
adopted by the IMO Assembly in resolution A.450 (XI) of
15 November 1979

ACCEPTANCE BY OMAN

The Secretary-General of the United Nations, acting in his capacity as depositary of the Convention on the International Maritime Organization, signed at Geneva on 6 March 1948, communicates the following:

On 22 May 1982, the amendments to the above-mentioned Convention, adopted by the IMO Assembly by its resolutions A.358 (IX) of 14 November 1975 and A.371 (X) of 9 November 1977 (rectification of resolution A.358 (IX)), entered into force for all Members of the Organization (excluding the amendment to article 51, which will enter into force on 28 July 1982). As a result of the entry into force of the said amendments, the name of the Inter-Governmental Maritime Consultative Organization (IMCO) has been changed to "International Maritime Organization (IMO)" and the title of the Convention is modified accordingly.

On 24 May 1982, the instrument of acceptance by the Government of Oman of the amendments to the said Convention, adopted by the IMO Assembly in resolution A.450 (XI) of 15 November 1979, was

deposited with the Secretary-General.

11 June 1982

f.7.1.

Uimh. Tag

Attention:

Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

ROINN GNOTHAI EACHTRACHA
EEC REGISTRY
FRITH
- 6 JUL 1982

Loc 1185/2. DIPA



INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

101-104 PICCADILLY, LONDON W1V OAE

Telephone: 01-499 9040

Telex: 23588

IMCO PRESS RELEASE

IMCO/1/82

2 April 1982

NEW IMCO MEMBER

On 17 March 1982, the Government of Nicaragua deposited an instrument of acceptance of the IMCO Convention with the Secretary-General of the United Nations, and thus became a Member of IMCO. At the same time Nicaragua also accepted the 1975, 1977 and 1979 amendments to the IMCO Convention.

IMCO now has 122 full Members and one Associate Member.

Mr. Blue Thursday, June -

Submarines

Following our conversation this afternoon I did a quick check on international conventions relating to safety of life at sea and for prevention of collisions at sea.

Ireland is "party" to a number of these but they all deal with "ships" and could not in my view apply to submarines. Even in the most recent Regulations, while the reference is to "all vessels on the high seas" or "reading through the text it is difficult to see how submarines could be included since the rules require lights etc. to be shown. Submarines are required to navigate on the surface only in the territorial sea.

I expect submarine owning States have been reluctant to commit themselves to any obligations which would require disclosure of their position. Nevertheless we are entitled in my view to expect that they recognise and observe the rights of other legitimate users of the sea - freedom to navigate, fish etc. Rather than relying on any conventional rules we should - my view stresses high seas freedoms as being a generally recognised principle of international law. fishing vessels must also of course abide by the rules which apply to them such as showing the correct lights and shapes, but in the last resort the question of who is to blame must ultimately be the deciding factor in who pays compensation. It seems to me that it is quite legitimate to expect payment of compensation

from the flag state of a submarine and that we should notify them of collisions to vessels flying our flag to that effect. Whether we would wish to do so or not for political reasons is another matter.

(P.P.)

LEGAL ADVICE

16/2/82

~~SECRET~~

cc P.S.M.

P.S.S.

Mr MacKernan

Mr McCabe

Mr MacPhonbrahan

16/4
16/4

I.

1. Mr. J. Boyle, Counsellor at the U.S. Embassy was called to the Department today in order to have the attention of the US authorities drawn to the Government's concern about the danger posed to Irish fishing vessels by submarines operating in the Irish Sea. He was accompanied by Mr. Mark Linton, First Secretary.
2. Mr. Ryan, who met the officials, outlined the recent history of alleged submarine responsibility for incidents in the Irish Sea which had resulted in full or partial loss to the fishing vessels involved as well as, in some cases, loss of life. Widespread media coverage had heightened public sensitivity and even alarm on this issue. The concern of the Government was to alert potential users of the Irish Sea to this growing anxiety and to ask these countries to ensure that all possible safety standards were maintained in an effort to avoid further incidents. We were not however in any way singling out or accusing the United States of negligence in this regard.
3. Mr. Boyle noted this expression of concern and gave assurances that it would be brought to the attention of the U.S. Authorities without delay so that all caution would be exercised during any possible manoeuvres in the area. It was agreed, upon request, that he be provided with an indication of any areas of greater risk, if such could be identified. He enquired whether we were aware of any countries' vessels being more responsible than others. Mr. Ryan replied that we had no knowledge in this regard, other than in the one case of the "Sharelga" where a British submarine was responsible. In reply to a question by Mr. Boyle, he said that all reported incidents had taken place outside Irish territorial waters, and that Irish trawlers fished almost all of the Irish Sea. It was obviously easier, indeed, for submarines to take greater precautions against accidents than trawlers working what were prime fishing grounds.

II.

4. Mr. Sobolev, Counsellor at the Soviet Embassy was also called to Iveagh House in order to be informed of Government concern in regard to threats to safety incidents allegedly involving submarines.
5. Mr. Ryan began with a brief account of government and public concern in this connection. Safety standards pertaining to Soviet submarines were undoubtedly very high and we were certainly not pointing the finger in their direction. However the Government were anxious that countries whose submarines could be operating in

1...

- 2 -

the region were made aware of the perceived danger to other vessels in those waters. Mr. Sobolev undertook to inform his Ambassador of this and was sure that a report would go to the Soviet authorities. He said that whenever Soviet vessels entered Irish waters, the appropriate authorities were always informed. He felt that Soviet submarines had no business in these waters being outside their usual 'patrol area' and said that most cases which had come to light had involved either American or British submarines. Mr. Ryan said that Irish trawlers fish practically all of the Irish Sea and our primary concern was for the safety of their lives and vessels. Mr. Sobolev said that his authorities were also interested in safety at sea in that Soviet fishing vessels are often in the Irish Sea.

M. McCarry
12 April, 1984

Ireland's Position re: Maritime Conventions

International Convention for the Safety of Life at Sea.

T.S. No. 1934

London 31st May 1929

Irish Instrument of ratification deposited on 8/2/1934

(Renounced by the Government of Ireland on 9th August 1953)

International Load Line Convention with Final Protocol

T.S. No. 2 1934

London 5th July 1930

Irish Instrument of ratification deposited on 8/2/1934

International Convention for the Regulation of Whaling

T.S. No. 2 1938

Geneva 24th September 1931

Irish Instrument of Accession deposited on 9/4/1938

International Convention for the Regulation of the Meshes of
Fishing Nets and the Size Limits for fish

T.S. No. 2 1940

London 23 March 1937

Irish Instrument of Ratification deposited on 17/6/1940

International Convention for the Regulation of the Meshes of
Fishing Nets and the Size Limits of fish

T.S. No. 5 1953

London 5th April 1946

Amending Protocol of 2nd April, 1953

Irish Instrument of ratification deposited on 2/1/1950

International Convention for the Safety of Life at Sea

T.S. No. 13 1953

London 10th June, 1948

Irish Instrument of acceptance deposited on 19/8/1953

International Convention for the Prevention of Pollution of the Sea
by oil

T.S. No. 8 1958

London 12 May 1954

Signed by Ireland subject to acceptance 12/5/1954

Convention on the Intergovernmental (IMCO) Maritime Consultative Organisation

T.S. No. 22 1958

Geneva 6th March 1948

Irish Instrument of Acceptance deposited 22 February 1951

Entered into force on 17/3/1958

International Convention for the Unification of Certain Rules of Law relating to Bills of Lading

T.S. No. 11 1962

Brussels 25 August 1924

Entered into force for Ireland on 30/7/1962

North-East Atlantic Fisheries Convention

T.S. No. 7 of 1963

London 24 January 1959

Entered into force for Ireland on 27/6/1963

Fisheries Convention Agreement as to the Transitional Rights (regarding Ireland).

Agreement as to Transitional Rights (regarding Britain).

Protocol of Provisional Application of the Fisheries Convention

T.S. No. 1 of 1966

London 9th March 1964

Entered into force on 15/3/1963

Final Act of the International Conference on Prevention of Pollution of the Sea by oil and of the Conference of Contracting Governments to the Convention signed at London on 12th May, 1954

T.S. No. 6 of 1967

London 13 & 14 April 1962

Article 14 entered into force on 28/6/1967

All remaining Articles entered into force on 18/5/1967

International Convention for the Safety of Life at Sea

T.S. No. 13 1967

London 17th June 1960

Entered into force for Ireland on 14/5/1967

Amendment to Article 28 of the Convention on the Inter-Governmental Maritime Consultative Organization signed at Geneva on 6th March 1948

T.S. No. 14 1968

Paris 28th September 1965

Entered into force for Ireland on 3/11/1968

International Convention on Load Lines 1966

T.S. No. 20 1968

London 5 April 1966

Entered into force for Ireland on 28/11/1968

Convention on Facilitation of International Maritime Traffic

T.S. No. 5 of 1971

London 9th April 1965

Entered into force for Ireland on 17/8/1971

Convention for the International Council for the Exploration of
the Sea, 1964

T.S. No. 3 of 1977

Copenhagen, 12 September 1964

Irish Instrument of Ratification deposited on 10/6/1965

Protocol to the Convention for the International Council for the
Exploration of the Sea

T.S. No. 4 of 1977

Copenhagen, 13 August 1970

Signed by Ireland without reservations as to ratification on 8/9/1970

Amendments to the International Convention on load lines 1966

T.S. No. 5 of 1977

Adopted on 12 October 1971

Entered into force for Ireland on 10/8/1976

Agreement between Ireland and Belgium on the holding of stocks of
crude oil and petroleum products

T.S. No. 14 of 1977

Dublin, 28 th April 1977

Entered into force on 28/4/1977

Convention on the International regulations for preventing
collisions at sea

T.S. No. 18 of 1977

London, 20 October 1982

Entered into force for Ireland on 19/12/1977

Amendments (1974) to IMCO Convention

T.S. No. 1 of 1979

Entered into force for Ireland on 26/10/1978

SECTION 3. INNOCENT PASSAGE IN THE TERRITORIAL SEA

SUBSECTION A. RULES APPLICABLE TO ALL SHIPS

Article 17
Right of innocent passage

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

Article 18
Meaning of passage

1. Passage means navigation through the territorial sea for the purpose of:

- (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
- (b) proceeding to or from internal waters or a call at such roadstead or port facility.

2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Article 19
Meaning of innocent passage

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

- (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- (b) any exercise or practice with weapons of any kind;
- (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
- (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
- (e) the launching, landing or taking on board of any aircraft;

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- (f) the launching, landing or taking on board of any military device;
- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- (h) any act of wilful and serious pollution contrary to this Convention;
- (i) any fishing activities;
- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage.

Article 20
Submarines and other underwater vehicles

In the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Article 21
Laws and regulations of the coastal State relating to
innocent passage

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

- (a) the safety of navigation and the regulation of maritime traffic;
- (b) the protection of navigational aids and facilities and other facilities or installations;
- (c) the protection of cables and pipelines;
- (d) the conservation of the living resources of the sea;
- (e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
- (f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
- (g) marine scientific research and hydrographic surveys;
- (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

Article 28
Civil jurisdiction in relation to foreign ships

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.
2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.
3. Paragraph 2 is without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

**SUBSECTION C. RULES APPLICABLE TO WARSHIPS AND OTHER GOVERNMENT SHIPS
OPERATED FOR NON-COMMERCIAL PURPOSES**

Article 29
Definition of warships

For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

Article 30
Non-compliance by warships with the laws and
regulations of the coastal State

If any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately.

Article 31
Responsibility of the flag State for damage caused by a
warship or other government ship operated for non-commercial purposes

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law.

Article 84
Charts and lists of geographical co-ordinates

1. Subject to this Part, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 83 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations and, in the case of those showing the outer limit lines of the continental shelf, with the Secretary-General of the Authority.

Article 85
Tunnelling

This Part does not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling, irrespective of the depth of water above the subsoil.

PART VII

HIGH SEAS

SECTION 1. GENERAL PROVISIONS

Article 86
Application of the provisions of this Part

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Article 87
Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

2. These 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, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 88
Reservation of the high seas for peaceful purposes

The high seas shall be reserved for peaceful purposes.

Article 89
Invalidity of claims of sovereignty over the high seas

No State may validly purport to subject any part of the high seas to its sovereignty.

Article 90
Right of navigation

Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

Article 91
Nationality of ships

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 92
Status of ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 93

Ships flying the flag of the United Nations, its specialized agencies and the International Atomic Energy Agency

The preceding articles do not prejudice the question of ships employed on the official service of the United Nations, its specialized agencies or the International Atomic Energy Agency, flying the flag of the organization.

Article 94

Duties of the flag State

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

- (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
- (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

- (a) the construction, equipment and seaworthiness of ships;
- (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
- (c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
- (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
- (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Article 95
Immunity of warships on the high seas

Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

Article 96
Immunity of ships used only on government non-commercial service

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

(a) ~~the ship is without~~ Article 97
Penal jurisdiction in matters of collision
or any other incident of navigation

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

3. Any person engaged in unauthorized broadcasting may be prosecuted before the court of:

- (a) the flag State of the ship;
- (b) the State of registry of the installation;
- (c) the State of which the person is a national;
- (d) any State where the transmissions can be received; or
- (e) any State where authorized radio communication is suffering interference.

4. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

Article 110
Right of visit

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

- (a) the ship is engaged in piracy;
- (b) the ship is engaged in the slave trade;
- (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
- (d) the ship is without nationality; or
- (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

4. These provisions apply mutatis mutandis to military aircraft.

5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

Interdepartmental Meeting on international action on
'Submarine' problem

Department of Foreign Affairs

Tuesday 17th July 1984

Present: Mr P Cradock (Chair))
Legal Adviser) Department of Foreign Affairs
Mr D MacPhionnbhairr)
Mr R Montgomery)

Mr M O'Brien - Department of Communications

Mr M Dorgan) Department of Fisheries and Forestry
Ms M Finnegan)

Mr J Cantan - Department of Defence

Commndr. J Kavanagh - Naval Service

Chair began by outlining past developments for the benefit of the new participants, and summed up the attitude of other coastal states, as ascertained by our Embassies subsequent to the previous meeting, to the possibility of an international initiative; some were generally favourable, others sceptical, but there was no willingness on their part to take a lead on the issue. However, our domestic political realities required that something in this direction be done. Mr Cantan (D/Defence) stated that his Department had not taken a decision on permanent representation on the 'committee'. In reply, Chair stressed the informality of the meeting, which he described as a pooling of information and resources on an ad hoc basis. Mr MacPhionnbhairr recalled a previous Government decision establishing a committee to consider this problem, in which Defence participation was envisaged.

/.....

Mr O'Brien (D/Communications) emphasised the novelty of the question in an IMO framework given that it involved an attempt to control the movements of warships, which were not normally the concern of the IMO. It would be advisable to seek the guidance of the Organisation's Secretariat in working out how best to bring the matter before the Maritime Safety Committee (MSC). His Department's marine surveyors could best advise on the modalities of an approach to IMO.

the problem of achieving observance of safety procedures -

Mr Dorgan (D/Fisheries and Forestry) explained the difficulties involved in defining particular areas as fishing grounds. Shoals of fish tended to move around widely, and fishermen were hesitant about giving full details of their own movements. He agreed that it would be necessary to be selective were we to seek the designation as fishing grounds on Admiralty charts of any particular areas.

more resources to an examination of possible solutions than were available here. There was general

Mr MacFhionnbhairr (D/Foreign Affairs) felt that the responses from abroad were 'enough to run on'. To elicit a more definite reaction it would be necessary to present other states with concrete proposals.

Mr O'Brien (D/Communications) explained that his Department and the Chair suggested that there were two broad alternatives in framing a resolution for consideration at the MSC; we could seek a precise delineation of areas in which special care was to be exercised, or could aim at a general 'exhortatory' statement of principles to be obeyed. Mr O'Brien (D/Communications) said that his Department's marine surveyors, who represent Ireland at the

MSC, favoured the former course. Legal Adviser indicated a preference for as much precision as possible in a first draft. An 'exportatory' resolution could represent a fall-back position.

Commndr. Kavanagh pointed out that it was open to all interested parties to suggest additions to the Admiralty charts. Mr O'Brien pointed out that this left unresolved the problem of achieving observance of safety procedures - international agreement was necessary.

Mr MacPhionnbhairr suggested that one way of proceeding would be to ask IMO to undertake a comprehensive study of the whole problem; this would be politically saleable, both domestically and internationally, and would permit the application of more resources to an examination of possible solutions than were available here. There was general agreement that this was a potentially productive approach.

The meeting then considered the narrower question of the designation of fishing areas on Admiralty charts. Mr O'Brien (D/Communications) explained that his Department and the Department of Fisheries and Forestry had been studying this question and that of the issue of a Notice to Mariners. This exercise was more or less concluded but they had deferred action pending discussion of the meeting.

/.....

Chair concluded that (i) the Department of Communications would consult their marine surveyors about an approach to the IMO Secretariat on a draft resolution for the MSC and that the Department of Foreign Affairs and the ~~by 1984~~ Department of Communications would maintain contact with a view to making the approach, (ii) work on the designation of fishing grounds on the Admiralty charts would proceed; the notification could be communicated through the diplomatic channels if the normal notification procedure were considered inadequate, (iii) a meeting would be held in early September to inform participants of progress ~~in~~ in the interim.

Rory Montgomery

Montgomery - Department of Defence
Montgomery - Naval Service

Montgomery - Economic Division

20 July 1984

Montgomery - Economic Division addressed the developments for the benefit of the other participants, and summed up the attitude of other coastal states. In response to our fisheries management to the previous meeting, to the majority of us international initiatives, some were generally favourable, albeit reluctantly, but there was no willingness on their part to take a lead on the issue. However, our domestic political realities enabled the switching in this direction to be done. Mr. [Redacted] stated that his department had not taken a position on permanent representation on the IMO.

c.c. PSM

PSS

Deputy Secretary

All participants

Montgomery - Economic Division addressed the informality of the meeting, as a pooling of information and knowledge on an ad hoc basis. Mr. MacPherson-Harris recalled a previous government decision establishing a committee to consider this position, in which Defence participation was anticipated.

END of file