Marine Scientific Research Vs UNCLOS’82

The age of ocean discovery is the voyages of HMS CHALLENGER (1872-1876). Before Law of the Sea (LOS) convention (1958), marine scientific research was not considered as being among the major fields of maritime activity. Research within maritime zones under coastal State sovereignty was conducted on the basis of ad hoc arrangements with the coastal State. Seaward of the territorial sea, maritime scientific research was regarded mostly as an expression of the freedom of the high seas (subject to possible coastal state rights and obligations regarding the continental shelf). Consequently, customary and conventional law of the sea with respect to marine scientific research was limited in scope. Technological and scientific advances following World War II, however, gave new significance to marine scientific research in general, and to its economic in particular. Signs of this appeared in 1958.

There was absence of any provision on marine scientific research in the draft articles on the law of the sea adopted by the International Law Commission in 1956. Reference was made at LOS 58 to [marine] scientific research in the on the articles relating to the continental shelf. UN Resolution 2750 C (XXV) of 17 December 1970 paved way to undertake the preparatory work for the Third United Nations Conference on the Law of the Sea. The major conflict of this concerned the distinction between “fundamental” and “applied” research. Concept was reflected in the Informal Single Negotiating Text (ISNT). Prior to the 1958 Geneva Convention on the Continental Shelf, there were no global instruments regulating the conduct of marine scientific research.

UNCLOS 82 convention on the law of the sea retained the basic principle of consent by coastal States for research on the continental shelf and extended it also to the exclusive economic zone. It has further expanded considerably the provisions on marine scientific research,

adding general principles as well as detailed rules governing its conduct.

In the process of drafting exclusive economic zone legislation, some States have adapted their older fishing laws and regulations by redefining the jurisdictional zone to which they apply. A practical result is that fishing codes and regulations which were applicable to previously defined fishing zones now apply to the exclusive economic zone. Because there is no definition of what constitutes marine scientific research in the Convention, the result of adapting older fishing laws to the exclusive economic zone is the creation of two consent regimes: one regime to be generally applied to marine scientific research and another to be specifically applied to scientific research relating to fishing. The focus is, however, on procedures to be followed for research activities in the exclusive economic zone and extended fishery zones as well as on the continental shelf.

Legislation which places restrictions on “exploration and exploitation” of resources has traditionally been applied to continental shelf minerals, usually hydrocarbons. Unless a State has indicated by some other means that it consider this type of legislation to cover marine scientific research, it has not been included. In particular, several of the European States which do not formally have consent regimes do in fact require consent for marine scientific research using this type of legislation as a basis for requiring information.

During the deliberations in the Sea-bed Committee, the development of this subject evolved. The basic concepts of international cooperation in marine scientific research activities were repeated and further developed in a series of General Assembly resolutions, notably resolution 2749 (XXV) of 17 December 1970 which enunciated that” States shall promote international co-operation in scientific research exclusively for peaceful purposes”