SEPARATE OPINION OF JUDGE VUKAS

(a) Submissions of the parties on the exercise of the right of Saint Vincent and the Grenadines in the exclusive economic zone of Guinea.

1. Although I do not agree with every single argument and every detail of the analysis of the Tribunal, I voted in favour of the operative paragraphs of the Judgment (except paragraphs (11) and (13)) as I do agree with the conclusions they contain.

However, I am obliged to attach this Separate Opinion to the Judgment as I do not fully share the attitude of the Tribunal in respect of the main submission of both parties. In paragraph 1 of its final submissions, Saint Vincent and the Grenadines asks the Tribunal to adjudge and declare that:

> the actions of Guinea (*inter alia* the attack on the m/v "Saiga" and her crew in the exclusive economic zone of Sierra Leone, its subsequent arrest, its detention and the removal of the cargo of gasoil, its filing of charges against St. Vincent & the Grenadines and its subsequently issuing a judgment against them) violate the right of St. Vincent & the Grenadines and vessels flying its flag to enjoy freedom of navigation and/or other internationally lawful uses of the sea related to the freedom of navigation, as set forth in Articles 56(2) and 58 and related provisions of the Convention.

In its final submissions, the Government of the Republic of Guinea asked the Tribunal to adjudge and declare that "the claims of St. Vincent and the Grenadines are dismissed as non-admissible". Alternatively, Guinea asked the Tribunal to conclude that:

> the actions of the Republic of Guinea did not violate the right of St. Vincent and the Grenadines and of vessels flying her flag to enjoy freedom of navigation and/or other internationally lawful uses of the sea, as set forth in Articles 56(2) and 58 and related provisions of UNCLOS. (paragraph 2)

2. The quoted paragraphs of the final submissions clearly indicate that the basic issue in this case is the opposite views of the parties concerning the interpretation and application of some of the provisions of the Convention to which they both are States Parties. Therefore, they submitted the dispute to the compulsory procedures entailing binding decisions, provided for in Part XV, section 2, of the Convention. Saint Vincent and the Grenadines first instituted arbitral proceedings in accordance with Annex VII to the Convention (by the Notification of 22 December 1997), but on 20 February 1998 the two States concluded an agreement transferring the arbitration proceedings to the Tribunal.

3. As the basic disagreement between the parties is the alleged violation of the right of Saint Vincent and the Grenadines under "Articles 56(2) and 58 and related provisions of the Convention", the opposite claims of the parties should primarily be analyzed and evaluated on the basis of the provisions of the Convention.

The fact that Saint Vincent and the Grenadines as well as Guinea are States Parties to the Convention does not suffice for the application of Part V of the Convention concerning the exclusive economic zone in "an area beyond and adjacent to the territorial sea"(article 55) of Guinea. Namely, unlike the case of the continental shelf (article 77, paragraph 3) and as the contiguous zone (article 33, paragraph 1), the rights of the coastal State over the exclusive economic zone depend on an express proclamation of the zone by the respective coastal State. Guinea proclaimed its exclusive economic zone by Decree No. 336/PRG/80, which entered into force on 30 July 1980.

Guinea proclaimed also its contiguous zone; in the proceedings, it even claimed that the *Saiga* supplied gas oil to the fishing boats in its contiguous zone off the coast of the island of Alcatraz. However, in the course of the proceedings, its reference to its contiguous zone became sporadic and inconsistent. It finally based its claims only on its alleged rights to enforce its customs legislation in its exclusive economic zone. Therefore, I will not deal with the rules on the contiguous zone, and the possibility that the bunkering activities of the *Saiga* took place in the contiguous zone of Guinea.

4. Having established its exclusive economic zone, Guinea put in force the specific legal régime of the zone, consisting of its rights and jurisdiction, and of the rights and freedoms of other States, governed by the relevant provisions of the Convention (article 55). The legal régime of the zone is automatically applied once the zone is proclaimed; it does not need internal, municipal rules in order to be operative. The ratification of the Convention, and the proclamation of the zone, suffice for the application of all the rules on the exclusive economic zone contained in the Convention. Of course, States are entitled to incorporate the provisions of the Convention into their internal laws and regulations, i.e. to transform into their domestic law the rules set out in the Convention. They may also formulate additional domestic rules to the extent that they are not contrary to the Convention and other relevant international rules.

5. Considering, therefore, that since 1980, beyond and adjacent to the territorial sea of Guinea, there has existed the exclusive economic zone of that State, I do not agree with the Judgment which bases its scrutiny of the legality of the arrest of the *Saiga* on the laws and regulations of Guinea. The Judgment has neglected the relevant provisions of the Convention directly applicable to the parties. This approach cannot be justified by the mere fact that, after referring to the relevant provisions of the Convention (see *supra* paragraph 1), Guinea also claimed that:

> Guinean laws can be applied for the purpose of controlling and suppressing the sale of gasoil to fishing vessels in the customs radius ("rayon des douanes") according to Article 34 of the Customs Code of Guinea. (paragraph 3 of the final submissions)

Although in the course of the proceedings Guinea referred to the Customs Code and some other laws, the main purpose of these references was the claim that neither their content nor their application to the *Saiga* violated the Convention.

6. In my opinion, it is indispensable to commence the inquiry concerning the legality of the actions of Guinea by analyzing the relevant provisions of the Convention.

As demonstrated in paragraph 1 above, the parties have opposite views concerning the content and the application of "Articles 56(2) and 58 and related provisions of the Convention". The main provision on the rights of "other States" in the exclusive economic zone is article 58, paragraph 1, which provides that all States enjoy, "subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention."

Article 56, paragraph 2, states that the coastal State, in exercising its rights and performing its duties under this Convention in the exclusive economic zone, "shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention".

Although not specifically indicated in the submissions of Saint Vincent and the Grenadines, the "related provisions of the Convention" are particularly those which determine the rights and duties of the coastal State, as their application could interfere with the freedom of navigation of ships flying its flag.

(b) Arguments of the parties

7. Before any further discussion, it is necessary to recall that the final submissions of Saint Vincent and the Grenadines (paragraph 1), as well as the corresponding paragraphs in the Memorial and the Reply, call on the Tribunal generally to protect "the right of St. Vincent & the Grenadines and vessels flying its flag to enjoy freedom of navigation and/or other internationally lawful uses of the sea related to the freedom of navigation" from "the actions of Guinea". The attack on the *Saiga* and the subsequent events are mentioned only as an example of the Guinean actions violating this right of Saint Vincent and the Grenadines and the ships flying its flag.

8. According to the Memorial, freedom of navigation and related rights, guaranteed under article 58 of the Convention, include bunkering which, therefore, must not be subject to customs duties or contraband laws in Guinea's exclusive economic zone.

The last part of paragraph 101 of the Memorial reads:

> *A priori* the right to bunker gas oil within the exclusive economic zone falls squarely within freedom of navigation rights and other internationally lawful uses of the sea. This is confirmed by the text of the 1982 Convention (and its *travaux préparatoires*), by the Convention's object and purposes, and by state practice. It is also consistent with international judicial authority on the extent of coastal state's rights in the exclusive economic zone.

Saint Vincent and the Grenadines did not indicate precisely where in the text of the 1982 Convention it has been *confirmed* that bunkering "within the exclusive economic zone falls squarely within freedom of navigation rights and other internationally lawful uses of the sea". It

also did not provide any evidence that the *travaux préparatoires* for the Convention supported the above claim, or at all referred to bunkering.

The only argument of Saint Vincent and the Grenadines concerning the freedom of navigation, which is based on the Convention, is its claim that the exclusive economic zone is a zone *sui generis* (article 55 of the Convention), in which all the "pre-existing rights of states to exercise high seas freedoms, … including bunkering, … are unaltered, except where subject to express limits under the 1982 Convention" (Memorial, paragraph 104).

Saint Vincent and the Grenadines did not refer to any "international judicial authority" or any specific "state practice" supporting its claim concerning bunkering.

9. Guinea, on its side, claimed that bunkering was not included in the high seas freedoms applicable in the exclusive economic zone. It considered the zone a régime where rights or jurisdiction which the Convention has not expressly attributed to the coastal State do not automatically fall under the freedoms of the high seas. Concerning bunkering undertaken by the *Saiga* it stated:

> Contrary to the Applicant's opinion that "bunkering is a freedom of navigation right", Guinea contends that the M/V "Saiga's" bunkering of fishing vessels *in the Guinean exclusive economic zone* is neither comprised by the freedom of navigation referred to in article 87 of the Convention, nor does it form any other internationally lawful use of the sea related to these freedoms, such as those associated with the operation of ships. It is not navigation of the M/V "Saiga" that is at issue in this case, but its commercial activity of off-shore bunkering in the Guinean exclusive economic zone. Article 58(1) of the Convention does not apply to the mentioned bunkering activities which caused Guinea to take measures against the M/V "Saiga" … . (Counter-Memorial, paragraph 95)

In addition, Guinea made two clarifications which reduce the scope of disagreement of the parties. First, it distinguishes the situation of the buyer from that of the seller of the fuel:

> Obtaining fuel, which is necessary to sail a ship, could reasonably be considered as ancillary or related to navigation, whereas providing fuel could not. (Counter-Memorial, paragraph 97)

Thus, a ship buying fuel from a vessel engaged in bunkering in the exclusive economic zone of a third State does not violate article 58, paragraph 1, of the Convention.

Second, Guinea distinguishes between supplying bunkers to fishing vessels in the Guinean exclusive economic zone and to other vessels navigating in transit through that zone (Counter-Memorial, paragraph 101). It opposes only bunkering of fishing vessels, not of other types of ships.

10. Therefore, on the basis of the mentioned explanations provided by Guinea, it appears that both parties accept as legal the supplying of bunkers to all other types of ships in transit through an exclusive economic zone other than fishing vessels. The task of the Tribunal is thus reduced

to the analysis and adjudication of the conflict of the positions of the parties respecting the bunkering only of fishing vessels.

In this respect, Saint Vincent and the Grenadines makes no distinction whatsoever. It is exactly in respect of a case of bunkering fishing vessels by the *Saiga* that it brought the case to the Tribunal. Indeed all its argumentation mentioned concerns bunkering in general.

11. On the other hand, Guinea argued against the legality of the supply of bunkers to fishing vessels in the exclusive economic zone. However, it did not want to base its opposition to the bunkering of such ships on the regard other States owe to its sovereign rights over the living resources of its exclusive economic zone. Namely, article 58, paragraph 3, in this respect reads:

> In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

12. Guinea decided not to base its claim on the rights it is guaranteed, as all other coastal States, in the exclusive economic zone under article 56, paragraph 1(a). It advanced two economic reasons for not permitting bunkering of fishing vessels in its exclusive economic zone, not willing to base them on its sovereign rights granted under article 56, paragraph 1(a). Its first reason is the following.

> Through obtaining fuel at sea, a fishing vessel can spend a longer time fishing on the fishing grounds and hence can catch a greater amount of fish, before it is bound to call at a port. Accordingly the coastal State has an interest to regulate offshore bunkering in its exclusive economic zone as an aspect of its fisheries policies. (Counter-Memorial, paragraph 104)

The second reason, linked to the first, concerns fiscal interests of Guinea:

> Whereas customs revenues on oil products represent at least 33% of the total customs revenue destined for the Guinean Public Treasury, and whereas only 10% of the fishing fleet operating in the Guinean exclusive economic zone is flying the Guinean flag, customs revenues from fishing vessels flying foreign flags are an important fiscal resource for Guinea. (Counter-Memorial, paragraph 104)

13. Yet, notwithstanding the link of its arguments with fishing, Guinea insists that bunkering fishing vessels in the exclusive economic zone is not inherent to the sovereign rights of the coastal State, provided for in article 56, paragraph 1(a), of the Convention. It claims that "[a]lthough the bunkering activities are ancillary measures of a considerable importance for the fishing vessels concerned, they constitute neither fishing nor conservation or management activities with respect to the living resources themselves" (Counter-Memorial, paragraph 106).

Guinea also rejected the possibility of using the remaining part of article 56, paragraph 1(a):

> Neither does Guinea contend that the economic activities employed by the M/V "Saiga" in its exclusive economic zone are "other activities for the economic exploitation and exploration of the zone, such as the production of energy from [the] water, currents and winds" in the sense of article 56(1)(a) of the Convention. The activities envisaged in the mentioned provision are those constituting an exploitation and exploration of the zone itself and its natural resources, as the example of energy production indicates, whereas bunkering activities are of a different nature. They are business activities … . Although these activities are conducted with a view to fisheries and although they represent ancillary measures for the fishing vessels in the exclusive economic zone, they do not form an economic exploitation of the zone itself. In conclusion Guinea does not contend that bunkering the fishing vessels would constitute a part of its sovereign rights in its exclusive economic zone. (Counter-Memorial, paragraph 108)

14. Having rejected any link of its assertion concerning the bunkering of fishing vessels with article 56, paragraph 1(a), of the Convention, Guinea eventually points out the legal basis for its claim.

The first field in which Guinea seeks justification for its action towards foreign tankers supplying bunkers to fishing ships are rules and principles of general international law. Such rules and principles, according to Guinea, are referred to in "the last operative sentence of the preamble to the Convention" and in article 58, paragraph 3. These rules and principles of general international law serve as a source of Guinea's claim that it is justified to exercise jurisdiction in respect of such bunkering in order to protect its *public interest*:

> Guinea alleges that it has an inherent right to protect itself against unwarranted economic activities in its exclusive economic zone that considerably affect its public interest. (Counter-Memorial, paragraph 112)

Endorsing this view throughout the proceedings, Guinea submitted, as a subsidiary argument, that its actions were justified on the basis of article 59 of the Convention, which reads:

> In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

However, Guinea invoked article 59 with some reluctance, as according to its Rejoinder, article 59 applies only when there is "a lacuna in the law which is not present here" (Rejoinder, paragraph 86).

15. In my view, "public interest" cannot be advanced as a reason for departing from the rules establishing a régime at sea. "Public interest" is not a notion indicating exceptional, momentary interests of a State, but a constant interest of the entire society of a State. It was exactly on the basis of the public interests of various participants in the Third United Nations Conference on the Law of the Sea (hereinafter: UNCLOS III) that the specific legal régime of the exclusive economic zone was established. The provisions on the rights and duties of coastal States, "other States", land-locked States, geographically disadvantaged States, are the result of protracted negotiations and of a balance of interests of all the groups of States, achieved in the régime of the exclusive economic zone.

From "public interest", Guinea switches to "the doctrine of necessity in general international law" permitting acts of "self-protection" or "self-help" (Rejoinder, paragraph 97; Counter-Memorial, paragraphs 112 and 113). As far as the application of these notions/principles in this case is concerned, I share the conclusions reached in paragraphs 132–135 of the Judgment.

(c) The relevant provisions of the Convention

16. Since the first initiatives for the extension of sovereignty/jurisdiction of coastal States, which eventually resulted in the establishment of the régime of the exclusive economic zone, coastal States envisaged the protection of their rights in respect of the natural resources of the sea. This was the main purpose for the adoption, and the essential element of the content of the 1952 Declaration on the Maritime Zone (the Santiago Declaration), the 1970 Montevideo Declaration on the Law of the Sea, the 1970 Declaration of the Latin American States on the Law of the Sea, the 1971 Report of the Subcommittee on the Law of the Sea of the Asian-African Legal Consultative Committee, the 1972 Declaration of Santo Domingo, the Conclusions in the 1972 General Report of the African States Regional Seminar on the Law of the Sea, and of several other instruments adopted by various organizations and groupings of States.[1]

Rights over natural resources in the proposed zone were also the dominant concern of coastal States in the work of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction.[2]

During the drafting of Part V of the Convention, the majority of States participating in UNCLOS III did not have in mind the protection of other economic activities of coastal States except the resource-related ones. An early proposal of 18 African States, to insert in the future Convention a provision on the jurisdiction of coastal States for the purpose of "control and regulation of customs and fiscal matters related to economic activities in the zone", and a similar proposal by Nigeria,[3] were reflected in the 1974 Conference document listing the various trends of the States participating in UNCLOS III (Main Trends Working Paper). However, due to the

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[1] Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *The Law of the Sea: Exclusive Economic Zone, Legislative History of Articles 56, 58 and 59 of the United Nations Convention on the Law of the Sea,* United Nations, New York, 1992, pp. 3-13.
[2] *Ibid.,* pp. 14-59.
[3] Documents A/CONF.62/C.2/L.82 and A/CONF.62/C.2/L.21/Rev.1, *ibid.,* pp. 80-82 and 73-76.

expressed opposition of several delegations[4], customs regulation in the exclusive economic zone was not mentioned in the drafts of the Convention.

The following paragraph relative to article 59, written by the most authoritative commentators of the Convention, confirms that in conceiving economic sovereign rights and jurisdiction of the coastal State, UNCLOS III never reasoned beyond their resource contents:

> On *issues not involving the exploration for and exploitation of resources*, where conflicts arise, the interests of other States or of the international community as a whole are to be taken into consideration. (emphasis added)[5]

17. It appears from all the above mentioned that the drafting history and the content of Part V of the Convention do not provide valid reasons for considering bunkering of any type of ships as an illegal use of the exclusive economic zone. In this respect, a note circulated at the beginning of the fifth session of UNCLOS III by the President of the Conference should be recalled. Pleading for a consensus on the régime of the exclusive economic zone, the President wrote:

> A satisfactory solution must ensure that the sovereign rights and jurisdiction accorded to the coastal State are compatible with well-established and long recognized rights of communication and navigation which are indispensable to the maintenance of international relations, *commercial* and otherwise. (emphasis added)[6]

Thus, the President did not see a strict separation of *ius communicationis* and *ius commercii*. It should be stressed that it was only after this President's appeal that the final formula of article 58, paragraph 1, was included in the draft of the Convention (Informal Composite Negotiating Text).

Bunkering should, although as a rather new activity at the time it was not expressly mentioned at the Conference, be considered an "internationally lawful use of the sea" in the sense of article 58, paragraph 1, of the Convention. It is related to the freedom of navigation "and associated with the operation of ships". This claim is not difficult to defend from the point of view of navigation as well as international law. Supply of bunkers is the purpose of the navigation of a tanker, and refuelling is essential for further navigation of the ship to which gas oil has been supplied. This close relationship of bunkering and navigation with the terms used in article 58, paragraph 1, forces me to recall here article 31, paragraph 1, of the 1969 Vienna Convention on the Law of Treaties, to which the parties often referred in their pleadings: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

(d) Developments after UNCLOS III

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[4] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. II, pp. 180, 211, 220, 233.

[5] Center for Oceans Law and Policy, University of Virginia School of Law, *United Nations Convention on the Law of the Sea 1982, A Commentary,* Volume II, S.N. Nandan and Sh. Rosenne, Volume Editors, (Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1993), p. 569.

[6] Document A/CONF.62/L.12/Rev.1, para. 13; *Official Records of the Third United Nations Conference on the Law of the Sea,* Vol. VI, p. 123.

18. Of course, subsequent development of customary law can clarify and/or amend any previous solution. Guinea wanted to use this usual phenomenon for explaining its claim. Yet, inadvertently, it provided evidence against its assertion concerning the existence of economic rights in the exclusive economic zone which are not resource-related:

> A recent report on State practice points out that especially African States do either explicitly recognise international law as the standard for determining any additional rights beyond those specifically provided for in Article 56 of the Convention or *retain other unspecified rights and jurisdiction in their exclusive economic zone related to the sovereign rights over the resources. The latter describes exactly what Guinea is claiming.* (Rejoinder, paragraph 94 – emphasis added)

This claim of Guinea opposes its basic reasoning, particularly the statements quoted above in paragraphs 12 and 13. However, the practice of States in the twenty years after the acceptance of the régime of the exclusive economic zone at UNCLOS III does not permit a different conclusion. Namely, in their legislation on the exclusive economic zone, in Africa and elsewhere, States repeat the provisions of the Convention concerning the rights, jurisdiction and the duties of coastal States, and on the rights and duties of other States. On the basis of article 56, paragraph 1(a), some of them adopted more elaborate rules, particularly on fisheries, the establishment of artificial islands, installations and structures, marine scientific research and the protection of the marine environment. In doing so, they neither go beyond their "sovereign rights over the resources", nor do they restrict in any manner the rights or duties of other States as defined in article 58, paragraph 1[7]. It is interesting to note that the mentioned characteristics of national legislation are expressed with no difference whatsoever in the collections of national legislation on the exclusive economic zone published by the United Nations in 1985 and in 1993[8].

The declarations of States made upon their signature and/or ratification of the Convention, in accordance with its article 310, do not indicate any significant disagreement with the régime of the exclusive economic zone as adopted at UNCLOS III.[9]

19. Guinea itself did not provide a meaningful input into the establishment of any new customary rule concerning the rights of coastal States. In respect to the legislation it invoked in

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[7] Bureau du Représentant spécial du Secrétaire général pour le droit de la mer, *Le droit de la mer, Evolution récente de la pratique des Etats,* Nations Unies, New York, 1987; Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: Current Developments in State Practice,* No. II, United Nations, New York, 1989: Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *The Law of the Sea: Current Developments in State Practice*, No. III, United Nations, New York, 1992; Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *The Law of the Sea: Current Developments in State Practice,* No. IV, United Nations, New York, 1995.

[8] Office of the Special Representative of the Secretary-General for the Law of the Sea, *The Law of the Sea: National Legislation on the Exclusive Economic Zone, the Economic Zone and the Exclusive Fishery Zone,* United Nations, New York, 1985: Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *The Law of the Sea: National Legislation on the Exclusive Economic Zone,* United Nations, New York, 1993.

[9] *Multilateral Treaties Deposited with the Secretary-General,* Status as at 31 December 1997, ST/LEG/SER.E/16, pp. 801 – 826.

order to justifiy its actions regarding the *Saiga, grosso modo* I share the conclusions of the Tribunal (see, in particular, paragraphs 122, 127 and 136 of the Judgment).

In fact, Guinea offered interesting evidence of its awareness about the insufficiency of its existing legislation for preventing bunkering of fishing vessels in its exclusive economic zone. After the arrest of the Saiga, the Government of Guinea undertook an initiative to adopt a decree expressly regulating "the activity of refuelling fishing boats and other vessels in transit to Conakry" (draft Joint Decree No.A/98…MEF/MCIPSP/98). In a letter of the National Director of Customs to the Minister of Economy and Finances, it is expressly stated that the proposed Decree is "*intended to close the current legal loophole* in the area of the refuelling of boats, an activity where the State currently registers large losses in customs revenue" (Counter-Memorial, paragraph 101, and Annex XVI, p. 9 - emphasis added).

20. In respect to Guinea's claims and its own legislation, it is interesting to note that an overview of the practice of States, prepared in 1994 by the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs, pointed out the case of an African State which is quite opposite to the tendency of Guinea. The following quotation demonstrates the attitude of Namibia, which amended its legislation in order to follow the content of the régime of the exclusive economic zone under the Convention:

> It may be noted that in 1991 Namibia adopted an amendment to section 4(3)(b) of the Territorial Sea and Exclusive Economic Zone Act of Namibia (1990), which had provided for the right to exercise powers necessary to prevent the contravention of fiscal law or any law relating to customs, immigration and health in its exclusive economic zone. The amendment deletes the reference to such right, which, under article 33 of the Convention, belongs to the contiguous zone and not to the exclusive economic zone, so that the Act may conform with the Convention.[10]

21. However, my conclusion concerning the non-existence of additional international rules concerning the rights and duties of coastal and/or other States in the exclusive economic zone beyond those in the Convention does not mean that I rule out the possibility of the development of such rules by a constant practice of States.

Article 59 of the Convention itself is a confirmation of the awareness of States participating in UNCLOS III that the specific legal régime they have established has not attributed all possible rights and jurisdiction to the coastal States or to other States. Therefore, not only in respect of fishing vessels, but also of other types of ships or specific situations in which they can find themselves at sea, new rules may be established not only through the practice of States, but also through other sources of international law.

(Signed) Budislav Vukas

[10] Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *The Law of the Sea: Practice of States at the time of entry into force of the United Nations Convention on the Law of the Sea,* United Nations, New York, 1994, p. 36.