# STATUS OF THE U.N. LAW OF THE SEA CONFERENCE



## HEARING

BEFORE THE

## COMMITTEE ON FOREIGN AFFAIRS
## HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

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NOVEMBER 19, 1974

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Printed for the use of the Committee on Foreign Affairs



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1975

44-125

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# STATUS OF THE U.N. LAW OF THE SEA CONFERENCE

TUESDAY, NOVEMBER 19, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
*Washington, D.C.*

The committee met at 10 a.m. in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki presiding.

Mr. ZABLOCKI. The committee will come to order.

The purpose of today's meeting is to hear a report of the status of the U.N. Law of the Sea Conference and an update on U.S. policy toward the Conference.

Appearing before the committee is Hon. John R. Stevenson, Special Representative of the President for the Law of the Sea Conference. Ambassador Stevenson's statement and a statement from his Deputy, Hon. John Norton Moore, who could not be present today, is in front of the members.

Ambassador Stevenson was the chairman of the U.S. Delegation to the first substantive session of the Third U.N. Law of the Sea Conference which was held at Caracas, Venezuela, from June 20 to August 29 this year.

As the members will recall, the House passed a resolution last year which endorsed the President's ocean policy objectives at the current Conference and called for an early agreement on a new Law of the Sea Convention.

Ambassador Stevenson, unfortunately, I have a prior commitment so I will not be able to be here for the entire hearing. It is my intention to stay until you have finished your statement and then to turn the meeting over to Congressman Fraser, who is chairman of the Subcommittee on International Organizations and Movements.

You may proceed.

## STATEMENT OF HON. JOHN R. STEVENSON, SPECIAL REPRESENTATIVE OF THE PRESIDENT AND CHAIRMAN OF THE U.S. DELEGATION TO THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE

### OVERVIEW OF CARACAS MEETING

Mr. STEVENSON. Mr. Chairman, the Caracas session of the Law of the Sea Conference last summer was faced with the monumental task of trying to develop a new constitution for the oceans.

Its concrete results were small in that no treaty texts were adopted, but still it is a mistake to regard the Conference as a failure. A number of results were obtained.

First, there was adopted by consensus a set of rules of procedures which included some novel rules designed to achieve generally acceptable agreements.

Second, there was a general debate including statements by 50 countries participating for the first time in the Law of the Sea Conference. This debate was moderate and showed movement toward general agreement on the broad outlines of a treaty.

Another achievement was that the Conference completed the preparatory work much of which should have been accomplished earlier. However, because of the highly political nature of some of the issues this had not been done, so it was only as a result of last summer's session that we now have alternative treaty texts organized in a comprehensible fashion dealing with the issues that governments must address.

There was a good deal more progress in some of the private discussions, a good deal more going on, than was visible to some of the press which was there.

Why did we not make more progress? I think partially it was the inevitable letdown when you move from very general principles to an attempt to draft specific treaty language. Second, a number of countries knew there would be another session this coming year and were not prepared to take the very difficult decisions, some of them involving important domestic interests, which would have made negotiation more fruitful.

Finally, many countries now look at the Law of the Sea negotiations in terms of a comprehensive treaty, a so-called package deal, and they are unwilling to agree to parts of that package until the entire package becomes a great deal more clear.

With respect to the substance of the negotiations it might be clearer, if, rather than talking as I do in the formal statement of the work of the three conference committees, I would report in terms of the three geographic areas with which the Law of the Sea is dealing.

The three areas I am talking about are the traditional territorial sea which, until World War II, was between 3 and 12 miles, an area in which the coastal state has almost the same kind of sovereignty it has on land except for the right of innocent passage for foreign vessels.

The second area is a broad area in which the coastal state will control resources, and perhaps have certain other limited jurisdiction, but where it clearly does not have territorial sovereignty. This is the so-called economic zone.

Finally, there is the fully international area beyond. As a result of the statements in the general debate last summer I think it is quite clear that there is a developing consensus in favor of a 12-mile territorial sea, a 200-mile economic zone, and an international regime for the deep seabed beyond this economic zone.

I might also say that perhaps the most dramatic development in indicating this developing general consensus last summer was the express endorsement of the 12-mile territorial sea and the 200-mile economic zone, as part of a generally acceptable law of the sea package by the United States, the Soviet Union, and the United Kingdom.

Within this very general area of agreement there are a number of specific issues which are still very much under negotiation.

TERRITORIAL SEA ISSUES

With respect to the territorial sea, the most critical issue is the question of transit through international straits which would be overlapped by the 12-mile sea. All straits up to 24 miles in width will be overlapped when you have general acceptance of a 12-mile territorial sea. The critical issue here is that the United States, the Soviet Union and a number of the other maritime countries would not accept a mere right of innocent passage through these international straits because innocent passage has proved to be very subjective in giving coastal states control over the right of transit, and, moreover, it prohibits submarines to transit submerged, and does not permit overflight.

The consensus in favor of a 12-mile territorial sea, therefore is conditioned by maritime countries' insistence that there must be an adequate guarantee of unimpeded transit through international straits.

Last summer the discussions on this point were, I think, somewhat milder and more constructive than they have been in the past. A number of important straits states have opposed departing from what they consider to be the existing regime of innocent passage in straits. Their principal concerns have been basically maritime safety, pollution, and their own security.

The United Kingdom, which is both an important maritime country and is, of course, sitting athwart one of the most important straits in the world, introduced a proposal which was designed to provide on the one hand for unimpeded transit through straits, and on the other hand by imposing certain obligations on the transiting vessels to take into account the straits states' interest in pollution, security, and safety.

A great many countries have not spoken on the straits issue because they are neither maritime countries nor are they strait states.

I think the resolution of this issue clearly must come as part of an overall package.

ECONOMIC ZONE ISSUES

Moving from the 12-mile territorial sea to the economic zone, the area beyond 12 miles and out to at least 200 miles, this area was the critical heart of the negotiations last summer. Until last summer most discussions of this area had related to the limits question—how far out should the coastal state have this type of control? Because of that there had not been such discussion of what the United States always has felt was a more important issue—namely the content of this economic zone, what kinds of rights and duties will the coastal state have within the economic zone?

It was a very significant step forward last summer to reach this very wide agreement on the limit question and begin to discuss the more difficult question of the nature of the coastal states' control within the zone.

There are still basically two limits questions to be resolved. Some countries with very large continental margins feel that where that continental margin goes beyond 200 miles, they should have control of the margin out to its edge. This is where most of the offshore petroleum is. Other countries, particularly the United States and Canada, feel with respect to certain species of fish, the anadromous fish such as salmon, which go way beyond 200 miles, but come back to the coastal

streams to spawn and must be managed by the coastal state if they are to be conserved, that there should either be some control beyond 200 miles or a prohibition on fishing for these fish beyond 200 miles.

Apart from those issues, the limits question is generally conceded to be very much on the way to solution.

With respect to the question of the nature of this coastal state jurisdiction between 12 miles and 200 miles, we have basically two different kinds of issues. One is the question of the coastal states' resource jurisdiction and what the international standards, if any, governing this jurisdiction should be; and, the second is the question of whether coastal states should have certain other kinds of rights in the economic zone as well as these rights with respect to resources.

As to the first of these issues, I cannot go into all of the details of the different balances of coastal states' rights and duties being discussed, but I think it is a fair summary to say that many of the developing countries feel that the coastal states' control over the fisheries and hydrocarbons, which are the principal resources in this area, should be exclusive in the sense that there should be no international standards. It should be entirely up to the coastal state as to what it does with these resources and how it manages them.

The position of the United States has been that there should be certain international standards. I will not go into all of them, but, for example, with respect to fishing we have urged that where the coastal states cannot fully utilize the resource that there is a duty to permit foreign fishing up to what sound conservation principles would allow.

We have also felt that with respect to the production of hydrocarbons out to 200 miles—or beyond if the limit is fixed at the edge of the margin—there should be some payments to the international community to be used for international community purposes, and also for international development purposes.

I think this may very well be a very important feature of an overall settlement. The landlocked countries of the world, and countries with very limited coastlines, are participating in the conference, and are seeking to have their interests taken into account. They will probably agree to this limit of the economic zone which seems to be emerging only if their interests are somehow taken into account. This is one of the ways that that might happen.

Apart from the question of coastal states' control over resources, which is very generally conceded subject to this question of the nature of the applicable international standards, if any, a number of countries are urging that the coastal state should also control certain other uses of this area, most notably scientific research and vessel source pollution.

The United States is one of the countries with the most interest in scientific research not only because of our interest in the oceans, but also because oceanic research is important to our knowledge of the climate and the world generally. Our scientists are very much concerned that a requirement of coastal states' consent in this area out to 200 miles will inhibit research.

We have suggested that coastal states' interests can be taken into account, not by imposing this consent requirement, but by imposing an obligation on foreign vessels conducting research to allow coastal scientists to participate, to give them the results of the research, and to help them interpret these results.

We were very pleased last summer that there was some support for this approach from some developing countries, although most still continue to urge a full consent regime.

With respect to the problem of pollution in the economic zone, the most difficult issue has to do with pollution from vessels. There is concern on the one hand that if the coastal state has full control to decide what sort of construction standards, for example, vessels navigating through its 200-mile zone must observe, that they can, in effect, unreasonably interfere with navigation.

On the other hand, you have the very widespread concern of coastal countries that there be effective standards and effective enforcement against pollution of their coasts by vessels.

The United States has urged that the most effective way to have high standards is to have international standards, and we have also urged that as far as enforcement is concerned, enforcement by the ports into which vessels come is the most efficent way to deal with that problem. However, there continue to be differences in this area ranging from those who want complete coastal state control over vessels for pollution purposes to the other extreme position, that only the state of the flag of the vessel can control pollution.

The economic zone negotiation is also important in a very general way because this does represent the key to a solution of what appeared 5 or 6 years ago to be an irreconcilable conflict between the 200-mile territorial sea advocates and the maritime countries. Here is a way of satisfying the coastal states with respect to resource jurisdiction, yet satisfying the maritime countries with respect to freedom of navigation.

That part of the bargain has pretty well stuck. The economic zone proposals as a minimum do guarantee freedom of navigation and freedom of overflight, but there is this very difficult problem of other uses that are neither resource uses nor navigation.

On the one hand, those who are concerned that over time this economic zone could, in effect, become a territorial sea are opposed to adding too many other areas in which the coastal state will have control. On the other hand some countries, particularly those countries which were formerly 200-mile territorial sea countries, seeing that they will not win on that issue, are now trying to, in effect, territorialize the economc zone by, in effect, making it much more inclusive and much closer to a territorial sea than to a mere resource control area.

That second area—of the economic zone—is where I think we probably had more movement last summer than in any other area.

### EXPLOITATION OF THE DEEP SEABED

With respect to the third area—the fully international area beyond—there are basically two types of issues involved. As far as the waters of this area are concerned, where the traditional freedom of the seas' regime has always prevailed, I think by and large the feeling is that that will be largely maintained. We will not have any oceans authority which will attempt to deal with the problems of navigation, fishing, or scientific research in the waters of this international area, and we will continue to rely basically on this principle of the oceans being open to all with reasonable respect for each other's exercise of that right. There were, however, some countries, particularly some of those thinking very far into the future, who have argued that there

should be an oceans authority in that area. I think that is a very definite minority point of view at this point, or a point of view urged by some simply because they feel that the maritime countries might resist this and it might make them more tractable in other areas.

The real discussion in this international area, beyond the economic zone, has had to do with the deep seabed where you had an agreement basically going back as far as 1970 when there was a General Assembly resolution adopted without any dissents in favor of an international regime and an international organization. However, despite that general agreement I think it is in this area that you have the sharpest difference between the point of view of the United States and some of the other countries with the technology and capital to exploit this area and the developing countries as a whole, as well as some developed countries, such as Norway and Canada.

I do not have time to go into all the details, but the basic difference involves a difference of opinion as to how much discretion should be vested in this seabed authority which will be dealing, at least in the foreseeable future and given the existing status of our technology, primarily with this new industry which will begin to produce nickel, copper, and certain other hard minerals from the manganese nodules found in the deepest part of the ocean.

The difference really relates, on the one hand, to the question of access to this resource; and, second, to regulation after access has been achieved. The technologically advanced countries which are dependent on these metals are very concerned that there be access under reasonable conditions while the developing countries by and large are concerned that they have a right to effectively participate in the exploitation of these resources.

In this area, unlike many of the other areas of the Law of the Sea Conference, there is a more direct split between the developed and the developing countries, and unfortunately in the past there has been a more ideological discussion.

Last summer the first attempts at real negotiation began attempting to get away from some of the more general concepts and see how it might be possible to reconcile the developing countries' interest in participation with the developed countries' interest in access.

For one thing, the developing countries, which in the past had insisted that all exploitation in this area be carried on by the international authority itself, did introduce a proposal which would have contemplated contractual relationships with countries and nationals of countries, and they also, for the first time, were willing to consider specifying some of the conditions of exploitation in the treaty itself.

There was also for the first time, a more sophisticated consideration of the economic implications of this new industry. One of the reasons many of the developing countries have been insisting on a seabed authority with very broad power and very wide discretion, including a right to control prices and production, has been the concern of the land-based producers of some of these metals as to the effect on their present production. For that reason, to a certain degree, the leadership has been seized by the land-based developing producers.

I think this summer for the first time there was a greater realization of the real uncertainty of all the economic prognostications as to the effect this production will have on land-based production in view of growing world demand for many of these metals; and, second, I think for the first time there has been a recognition that the interest of the consuming countries, including the consuming developing countries, may be somewhat different from that of the producers.

However, there still remains a very large conceptual gap from the position of the technologically advanced countries which have been urging basically a first-come, first-served system of objective licensing as opposed to a very discretionary authority which the developing countries have urged. However, I do think there is a beginning of a much more pragmatic approach to the problem of meeting the developing countries' desire for participation and I think a growing understanding on their part of the interest in access on the part of the technologically advanced countries.

Those are basically the three areas and three clusters of problems which we are dealing with.

### COMPULSORY SETTLEMENT OF DISPUTES

There is one other very important aspect of the negotiation from the standpoint of the United States which extends to all three areas, and that is our concern that there be some means of compulsorily settling disputes in all three of these areas. I think this is particularly important when you are dealing with the treaty which, in many areas, will really be constitutional in nature and will be very general in its language.

I think the only way to avoid continuing conflict will be to have some kind of compulsory dispute settlement procedure which will, for example, be able to decide when a coastal state, in exercising its resource jurisdiction, is unreasonably interfering with navigation.

Let me say, finally, that I think it is very important, in considering the results of this negotiation to think not only in terms of the maximization of U.S. interests but also in terms of the alternative if we do not reach agreement.

Certainly those of us who have been concerned with this negotiation recognize more than most that international lawmaking through this multilateral treaty process is a very time-consuming, frequently frustrating process. Nonetheless, it is our only alternative to unilateral solutions to the problem.

While unilateral solutions could probably protect our coastal resource interests adequately, they would very seriously prejudice our navigational interests, our interests in scientific research, and our distant water resource interests.

Moreover, I think, in terms of the kind of world that we want, you do have a prospect of increasing conflict if we do not reach agreement which is generally acceptable to most countries. I think every effort needs to be made to achieve an overall package that will be acceptable to governments and to their congresses.

Unfortunately, I wish I could say that it is just a question of time and if we take enough time we will get the correct result. I don't think that is the situation. I think we now are in a situation where, unless we

do begin to make substantial progress and the negotiations are carried forward—and I think this will require involving the very highest political levels in many countries—unless we do that, the opportunity may begin to slip away and we may go backwards.

I think next year will be a very, very important year and I very much hope that we will continue to have the cooperation and sound advice from this committee. We particularly appreciated the work last year of Representatives Donald M. Fraser and Peter H. B. Frelinghuysen, who served as congressional advisers on our advisory committee and on the delegation, and we were particularly delighted to have Mr. Robert Boettcher, of the committee staff, with us last summer. I very much hope that we will continue to have this kind of cooperation from the committee.

Mr. Chairman, I have departed very much from my prepared statement but I thought it might be useful to put this in a somewhat broader perspective, and I now would be delighted to answer questions either on the statement or on my remarks.

[Mr. Stevenson's prepared statement and that of his Deputy, Hon. John Norton Moore, Chairman of the National Security Council Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference, follows:

PREPARED STATEMENT OF HON. JOHN R. STEVENSON, SPECIAL REPRESENTATIVE OF THE PRESIDENT AND CHAIRMAN OF U.S. DELEGATION TO THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE

Mr. Chairman, I welcome this opportunity to appear before the House Foreign Affairs Committee to report on the progress made at the first substantive session of the Third United Nations Conference on the Law of the Sea held in Caracas, Venezuela, from June 20 to August 29, 1974.

Before proceeding with this report, I would like to say how much we appreciated the interest and work of Representatives Donald M. Fraser and Peter H. B. Frelinghuysen as Congressional advisers on the Advisory Committee on the Law of the Sea and U.S. Delegation to the Law of the Sea Conference. We also very much appreciated the attendance at the Conference of Mr. Robert B. Boettcher of the Committee Staff. We are deeply grateful for the advice and assistance that they and other members of the Committee have given to our efforts to achieve an agreed constitution and supporting legal regime for two-thirds of this planet. It has been and will remain a fundamental part of our policy to work closely with the Congress and this Committee to achieve a Law of the Sea Treaty that fully protects the basic interests of the United States.

I want to emphasize at the outset that, while the results of the Caracas session were not all we hoped for, the session was not a failure.

A most significant result was the apparent agreement of most nations represented there that the interests of all will be best served by an acceptable and timely treaty.

To that end, the Conference has scheduled, subject to confirmation at the current UN General Assembly, not only the next session in the spring in Geneva, but to return to Caracas for the signing of this agreement.

Further evidence of this desire to achieve promptly a widely acceptable treaty was reflected in the adoption by consensus of the rules of procedure early in the session. These rules make several changes in normal procedures that are designed to promote widespread agreement.

The tone of the general debate and the informal meetings was moderate and serious and reflected wide agreement on the broad outlines of a comprehensive general agreement.

Finally, the Delegates from all regions worked hard, as I am sure your staff representative will agree. Three or four simultaneous meetings were common and there were some night sessions. The number of papers worked on was

enormous, but this time the object—largely achieved—was organizing and reducing the alternatives, not proliferating them.

Other accomplishments of the session were considerable. Among the most important are the following:

(*a*) The vast array of critical law of the sea issues and proposals within the mandate of Committee II—including among others the territorial sea, economic zone, straits, fisheries and the continental margin—was organized by the Committee into a comprehensive set of working papers containing precise treaty texts reflecting main trends on each precise issue. All states can now focus on each issue, and the alternative solutions, with relative ease.

A similar development occurred with respect to marine scientific research in Committee III. Committee I, dealing with the novel subject of a legal regime for exploiting the deep seabed, had previously agreed to alternative treaty texts in the preparatory committee and further refined these texts at the Caracas session.

(*b*) The transition from a preparatory Committee of about 90 to a Conference of almost 150, including many newly independent states, was achieved without major new stumbling blocks and a minimum of delay.

(*c*) The inclusion in the treaty of a 12-mile territorial sea and a 200-mile economic zone was all but formally agreed, subject of course to acceptable resolution of other issues, including unimpeded transit of straits. Accordingly, expanded coastal state jurisdiction over living and nonliving resources appears assured as part of the comprehensive treaty.

(*d*) With respect to the deep seabeads, the first steps have been taken into real negotiation of the basic questions of the system of exploitation and the conditions of exploitation.

(*e*) Traditional regional and political alignments of states are being replaced to a certain degree by informal groups whose membership is based on similarities of interest on a particular issue. This has greatly facilitated clarification of issues and is necessary for finding effective accommodations.

(*f*) The number and tempo of private meetings has increased considerably and moved beyond formal positions. This is essential to a successful negotiation. Of course, by their very nature, the results of such meetings cannot be discussed publicly.

With few exceptions, the Conference papers now make it clear what the structure and general content of the Treaty will be. The alternatives to choose from, and the blanks to be filled in, and even the relative importance attached to different issues, are well known.

What was missing in Caracas was sufficient political will to make hard negotiating choices. A principal reason for this was the conviction that this would not be the last session. The absence prior to the completion of this session of organized alternate treaty texts on many issues also inhibited such decision making.

The next step is for Governments to make the political decisions necessary to resolve a small number of critical issues. In short, we must now move from the technical drafting and preliminary exploratory exchanges of views at this just completed session, which has laid bare both the outlines of agreement and the details of disagreement, to the highest political levels, involving heads of states themselves, to make accommodation on these critical issues possible.

The fundamental problem is that most states believe the major decisions must be put together in a single packages. Every state has different priorities and agreement on one issue is frequently conditioned on agreement on another. Thus, it might have been possible—and might have been helpful to the Executive Branch in its efforts to persuade the Congress not to take unilateral action—to adopt a general declaration of principles in Caracas endorsing, among other things, a 12-mile territorial sea and a 200-mile economic zone. Our Delegation opposed such an idea, because it would have diverted us from negotiating the key details of an economic zone that can spell the difference between true agreement and the mere apparance of agreement, and because our willingness to support such concepts is also conditioned on satisfactory resolution of other issues, including unimpeded passage of straits and the seabed regime. In choosing to concentrate on precise texts and alternatives, our Delegation believed we were in fact best promoting widespread agreement on schedule. However, we recognized that the absence of tangible symbols of agreement would place us in a politically difficult situation between sessions.

In his closing statement before the Caracas session, the President of the Conference, recognizing the problem, stated, "we should restrain ourselves in the face of the temptation to take unilateral action," and then urged states to prepare to reach agreement "without delay" since governments cannot be expected to exercise "infinite patience."

We regret that for a variety of reasons the Conference was unable to capitalize upon the initial, prevailing good will to adopt any agreed treaty articles at the Caracas session. Nevertheless, the political parameters of an overall agreement were made much clearer at Caracas and we are at the stage where differences in approaches are embodied in specific treaty articles expressed as alternative formulations on almost all the major issues.

On July 11 at a Plenary session, we noted there was a growing consensus on the limits of national jurisdiction, which we expressed in the following terms: "A maximum outer limit of 12 miles for the territorial sea and of 200 miles for the economic zone . . . conditioned on a satisfactory overall treaty package and, more specifically, on provisions for unimpeded transit of international straits and a balance between coastal state rights and duties within the economic zone." To promote negotiations on the essential balance of coastal state rights and duties the United States submitted draft articles proposing the establishment of a 200-mile economic zone in the treaty. The U.S. draft articles consist of three sections: the economic zone, fishing, and the continental shelf.

The economic zone section provides for a 200-mile outer limit with coastal state sovereign and exclusive rights over resources, exclusive rights over drilling and economic installations, and other rights and duties regarding scientific research and pollution to be specified. There would be coastal state environmental duties with respect to installations and seabed activities. All states would enjoy freedom of navigation and other rights recognized by international law within the economic zone.

The fishing section gives the coastal state exclusive rights for the purpose of regulating fishing in the 200-mile economic zone, subject to a duty to conserve and to ensure full utilization of fishery stocks taking into account environmental and economic factors. Fishing for anadromous species such as salmon beyond the 12-mile territorial sea would be prohibited except as authorized by the host state. Fishing for highly migratory species such as tuna would be regulated by the coastal state in the zone and by the state of nationality of the vessel outside the zone, in both cases in accordance with regulations established by appropriate international or regional organizations. Membership in the organization would be mandatory for coastal states of the region and states fishing for the resource. The coastal state would receive reasonable fees for the highly migratory fish caught in its zone by foreign vessels. The international organization, in establishing allocation regulations, would be obligated to ensure equitable sharing by member states and full utilization of the resource, and to take into account the special interests of the coastal states within whose economic zones highly migratory fish are caught.

The continental shelf section provides for coastal state sovereign rights over exploration and exploitation of continental shelf resources. The continental shelf is defined as extending to the limit of the economic zone or beyond to a precisely defined outer limit of the continental margin. The coastal state would have a duty to respect the integrity of foreign investment on the shelf and to make payments from mineral resource exploitation for international community purposes, particularly for the economic benefit of developing countries. In our plenary statement we suggested that these payments should be at a modest and uniform rate. The revenue sharing area would begin seaward of 12 miles or 200 meters water depth, whichever is further seaward.

The draft articles on the economic zone place the United States in the mainstream of the predominant trends in the Conference, and we were pleased with the favorable reaction to our proposal. We were disappointed, however, at the support, particularly among a number of African countries, for an economic zone in which there would be plenary, coastal state jurisdiction, not only over resources, but over scientific research and vessel-source pollution as well and in all of these areas there would be no international standards except provisions for freedom of navigation and overflight and the right to lay submarine cables and pipelines. Many of the same countries are saying that if a pattern of unilateral action by individual countries emerges before a treaty is agreed, they would go further and opt for a full 200-mile territorial sea.

We believe that specifying the rights and duties of both coastal states and other states in the economic zone is the approach best designed to avoid the sterile debate over abstract concepts.

At the final meeting of the Second Committee on August 28, the Chairman, Ambassador Andres Aguilar of Venezuela, made a constructive and challenging statement summing up its work. On its own initiative, the Committee decided to have the statement circulated as an official Committee document. This occurred after initial opposition by the 200-mile territorial sea supporters, which was withdrawn in the face of other Delegations' willingness to proceed to a vote if necessary. Because of its great importance and the universal respect and admiration earned by Chairman Aguilar for his strong and effective leadership, I would like to quote briefly from that statement.

> "No decision on substantive issues has been taken at this session, nor has a single Article of the future Convention been adopted, but the States represented here know perfectly well which are at this time the positions that enjoy support and which are the ones that have not managed to make any headway.
>
> "The paper that sums up the main trends does not pronounce on the degree of support which each of them had enlisted at the preparatory meetings and the Conference itself, but it is now easy for anyone who has followed our work closely to discern the outline of the future Convention.
>
> "So far each State has put forward in general terms the position which would ideally satisfy its own range of interests in the seas and oceans. Once these positions are established, we have before us the opportunity of negotiating based on an objective and realistic evaluation of the relative strength of the different opinions.
>
> "It is not my intention in this statement to present a complete picture of the situation as I see it personally, but I can offer some general evaluations and comments.
>
> "The idea of a territorial sea of 12 miles and an exclusive economic zone beyond the territorial sea up to a total maximum distance of 200 miles is, at least at this time, the keystone of the compromise solution favoured by the majority of the States participating in the Conference, as is apparent from the General debate in the Plenary meetings and the discussions held in our Committee.
>
> "Acceptance of this idea is, of course, dependent on the satisfactory solution of other issues, especially the issue of passage through straits used for international navigation, the outermost limit of the continental shelf and the actual retention of this concept and, last but not least, the aspirations of the land-locked countries and other countries which, for one reason or another, consider themselves geographically disadvantaged.
>
> "There are, in addition, other problems to be studied and solved in connection with this idea, for example, those relating to archipelagos and the regime of islands in general.
>
> "It is also necessary to go further into the matter of the nature and characteristics of the concept of the exclusive economic zone, a subject on which important differences of opinion still persist.
>
> "On all these subjects substantial progress has been made which lays the foundations for negotiation during the intersessional period and at the next session of the Conference."

Mr. Chairman, our experience during the Caracas session indicated that in the area of deep seabed mineral exploitation wider divergencies exist between the U.S. and the majority of nations at the Conference than on any other issue. The United States took the position that the Convention must "guarantee access on a non-discriminatory basis" to deep seabed resources. During the conference we explained that our concept of "guaranteed access" included a requirement that mining rights be granted automatically to any qualified applicant, that the whole system for granting rights be carefully structured in the treaty to insure that the system would be economically efficient and that exploitation occur under a set of detailed conditions written into the treaty that, taken together, guarantee the security of exploitation necessary to attract investments.

As in other areas of the law of the sea, the United States has sought in the deep seabed negotiation to protect its principal national interest in access to these mineral resources by setting out detailed provisions that explicitly prescribe how the system will work, what will be the rights and obligations of both

the international machinery established to govern exploitation and the prospective ocean miners who will do business under the system and what kinds of safeguards will be provided for ensuring that these respective rights and obligations are protected and fulfilled. Nevertheless, it is clear that inclusion in the convention of a detailed mining code alone would not fully protect our interest in guaranteed access, and thus the United States position also depends on achieving an appropriate balance in decision-making organs that realistically reflect existing interests, as well as providing machinery for the compulsory settlement of disputes.

Inclusion in the treaty, or in an annex with equal legal status of the "basic conditions of exploration and exploitation" was widely accepted this summer. However, the Group of 77 approach to "basic conditions of exploitation" differs from our own concept of rules and regulations in major ways. This includes the amount of detail to be included in the treaty. The Group of 77 draft also leaves substantial discretion to the International Authority, where our regulations leave little, if any. The Group of 77, and indeed some other countries like Norway and Sweden, have argued that it would be unwise to attempt to freeze in the treaty the precise terms and conditions to be imposed on an industry about which we have little knowledge. Moreover, many delegations expressed apprehension that a negotiation of detailed rules and regulations would be extremely technical and that, lacking technical experts on ocean mining in their own governments, they would be placed at a considerable disadvantage in such a negotiation. Such a negotiation, they have also argued, could not be completed in 1975.

We believe many of these arguments reflect underlying political and economic differences. One such difference relates to the conceptual differences concerning the nature and scope of the powers to be exercised by the International Seabed Authority. Another difference is that many countries in Committee I attach considerable importance to a widely ratified agreement that recognizes both the power of the Authority to engage in direct exploitation and its complete control over exploitation conducted by any other entity in the International Seabed Area. A third such difference is that several countries, some in leadership roles in the Committee, seek to use the power of the Authority to restrict seabed mineral production in order to protect their own land-based mineral resources. Inclusion of detailed rules and regulations in the convention, they argue, would create a "strait jacket" for the Authority and would jeopardize the ability of the Authority to exercise direct and effective control over all activities of exploration and exploitation.

The United States responded to these arguments in detail in the discussion in Committee I and indicated why rules and regulations are an important part of any deep seabed mining system.

Committee I, unlike the other committees, had before it a complete set of alternative treaty texts on the international regime and machinery assembled by the UN Seabed Committee. Thus, during the Caracas session, Committee I devoted almost all of its time to consideration of the three key issues under its mandate which have or will present the greatest difficulty. These issues—the exploitation system, who may exploit the area, the conditions of exploitation and the economic aspects of exploitation—are at the very core of the successful resolution of the multitude of alternative treaty texts on the international regime and machinery prepared by the UN Seabed Committee. Moreover, they are subjects which had not previously received careful and thorough consideration during the course of the negotiation.

Early in the Caracas session, the Group of 77 negotiated among themselves and then introduced a new alternative text for the important Article 9, "Who May Exploit the Area." While this text is unacceptable to the United States, it should be noted that in previous meetings the Group of 77 had been unable to agree that the Authority should be allowed to enter into various types of contractual arrangements with private entities. The new text, however, permits this practice as long as the Authority maintains "direct and effective control" over all activities. A trend could be discerned towards recognition that at least in the early years of its existence, the Authority would of necessity be required to deal with those private corporations from industrialized nations that have the financial and technical capacity to mine the seabeds. In order to attract these entities, the Authority will have to offer reasonable and secure conditions for their investments. The Group of 77 text does not contain any retreat from their position on direct exploitation by the Authority.

Mr. Chairman, we believe that Committee I benefitted greatly from a shift in the focus of its deliberation from the question of who may exploit the area to the conditions of exploitation. In a negotiating effort to meet the expressed concerns of the United States and other industrialized countries, the Group of 77 agreed to elaborate in greater detail the extent of control which their proposal would grant the Authority, the basic conditions of exploitation that the Authority would be empowered to impose on ocean miners. The proposed basic conditions introduced by the Group of 77 would grant the Authority far greater discretion in managing seabed operations than the United States could accept, but it includes several interesting elements which merit further discussion, such as security of tenure, a priority of right for the explorer to move to the exploitation phase and selection among applicants on a competitive basis. Moreover, the very introduction of "basic conditions of exploitation" represents a commitment to the concept that some such conditions will be included in the convention.

In comparison to the Group of 77 draft of basic conditions, the draft conditions of exploitation submitted by the United States is detailed and designed to limit the power of the Authority to discriminate among various ocean miners and to impose arbitrary and unreasonable terms and conditions. The draft conditions submitted by Japan and those prepared by eight members of the European Community are generally similar in approach and in detail to the United States position. The drafts, however, contemplate licensing only to states rather than directly to private entities. They also include a limitation on the number of mine sites to be granted any single entity. Moreover, the Union of Soviet Socialist Republics publicly endorsed a similar type of quota system for states. The United States has not supported any limitation on the amount of area for which exploitation rights can be granted to any single state or natural or juridical person but has sought through requirements to ensure diligence that the area will be brought into commercial production within a specified period of time. Moreover, it is important to mention that the Soviet Union clearly endorsed exploitation by the Authority through service contracts and joint ventures as well as exploitation by states.

Mr. Chairman, Committee I devoted several informal meetings to general debate on the proposals for basic conditions tabled at Caracas. There was little detailed discussion of the specifics or the rules and regulations proposed by the United States or other industrialized countries. The reaction of many countries to the industrialized nations' drafts was highly critical. They indicated their apprehension that these proposals unduly restricted the Authority's powers and thus were at variance with their concept of a strong international machinery. A view expressed by many was the need for protection of land-based production. In addition, in the view of many delegations, the available knowledge concerning ocean mining is at present too limited to allow agreement on detailed regulations that would have the same force as treaty law. In a statement to the Committee on August 19, the United States described what it believed to be the most essential elements to be contained in basic conditions of exploitation and elaborated the United States position that in those areas where it is not possible at this time to draft regulatory provisions, a detailed and carefully constructed system of rule making should be established by the convention.

In addition to the exploitation system and the conditions of exploitation, Committee I considered the question of economic effects of seabed production on the economies of developing country producers of the metals contained in manganese nodules. As we have testified several times before this Committee, the United States is opposed to granting the International Seabed Authority the right to impose, either directly or indirectly, price and production controls on seabed operations. The question of economic implications, however, has always been a highly politicized issue in the law of the sea negotiations. We believe that many members of Committee I reached a new appreciation in the course of discussions on the economic implications of deep seabed mining of the uncertainty surrounding estimates that seabed production will damage the economies of developing country producers of copper, cobalt, nickel and manganese. Moreover, for the first time we heard public statements by representatives of developing countries that recognized the need to protect consumers from artificially high prices for these metals. While this new awareness has by no means eliminated support for price and production controls within the Committee or an Authority with strong regulatory powers, we are hopeful that future discussion of the economic implications issue can be conducted in a more knowledgeable and pragmatic context.

Mr. Chairman, the nations participating in the deliberations of Committee I are now more aware than ever before of the serious importance which the United States attaches to its interests in the deep seabed negotiation. Our insistence that the convention must spell out the conditions of exploitation in order for us to be certain that guaranteed access on a nondiscriminatory basis is fully protected has helped to produce agreement to negotiate basic conditions. Though this agreement does not meet our concerns as to the conditions which must be included in the treaty, we are hopeful that such a negotiation, coupled with further consideration of the article on the exploitation system, can serve to facilitate agreement on the rights and duties of both the Authority and ocean miners.

The Caracas session did not see any major negotiating breakthrough or fundamental change in any position. However, during the last few weeks of the Conference real negotiations began on the basic conditions for exploitation when the First Committee agreed to establish a small, informal negotiating group. This group will resume its work at the next session of the Conference and we hope that negotiations in this context and during the intersessional period will lead to a narrowing of differences and a realistic approach that will promote access by industrialized consumer countries and the development of the mineral resources of the deep seabeds. The differences between what we call regulation and what others call control may be narrowed if we can agree on the conditions of exploitation, including measures to ensure that exploitation on a nondiscriminatory basis will take place, and if agreement can be reached on protecting relevant interests in the decision-making process. We cannot overlook, however, the fact that the positions of the industrialized countries and the Group of 77 are widely separated on the question of the basic conditions of exploitation.

The underlying reason for this divergence on all aspects of the Committee I negotiation is that the developing countries as a rule tend to approach the negotiation from a conceptual perspective that envisions an international machinery with broad, general powers, including the power of direct exploitation. The United States, however, favors elaborating in detail both the powers of the Authority and the safeguards to prevent abuse of this power and does not support the power of direct exploitation. Committee I is perhaps our most difficult negotiation, rooted as it is in widely differing political and economic interests.

In the Third Committee of the Conference, there were mixed results on formulating treaty texts for protection of the marine environment and oceanographic scientific research. We were pleased that texts concerning the preservation of the marine environment were prepared on several points including basic obligations, particular obligations, global and regional cooperation and technical assistance. But basic political issues remain to be resolved on the jurisdiction of port and coastal states with respect to vessel-source pollution and on whether there will be different obligations for states depending upon their stage of economic development—the so-called double standard. We believe that the Caracas session broadened the basis of understanding of the complex problems involved in drafting new legal obligations to protect the marine environment, and there were indications that all states were analyzing their environmental policies in detail.

On the scientific research issue, the various proposals were reduced to four principal alternatives regarding scientific research within the areas of national jurisdiction. Some states advocated a regime requiring coastal state consent for all research. Others supported a modified consent regime. The United States supported a regime which places obligations on the state conducing the research to notify the coastal state, provide for its participation, and ensure sharing of the data and assistance in interpreting such data. Other states proposed complete freedom of scientific research.

We were encouraged by the fact that for the first time states appeared to be moving toward serious negotiations on this subject, including serious consideration of our proposal.

Mr. Chairman, we know there will be disputes with respect to the interpretation and application of the provisions of the Treaty. The willingness of the United States and many others to agree to a particular balance of the rights and duties of states and the International Authority is predicated upon reasonable confidence that the balance will be fairly maintained. Accordingly, the establishment

of an impartial system of peaceful and compulsory third party dispute settlement is critical. We were encouraged to find at the Caracas session that there were states from all regional groups that support the need for comprehensive dispute settlement provisions. At the end of the session, the United States co-sponsored, with eight other states from different regions, a working paper containing alternative texts of draft treaty articles. This document was prepared, and is in general supported, by a broader informal Group chaired by the Representatives of Australia and El Salvador, for which Professor Louis Sohn of the Harvard Law School served as Rapporteur. We hope this document will facilitate the drafting of treaty articles on this important element of the Convention.

With your permission, Mr. Chairman, I will submit for the Record a copy of the Report transmitted by the Delegation to the Department of State on August 30, and copies of all draft articles sponsored or co-sponsored by the United States.

Mr. Chairman, to obtain a comprehensive treaty by the end of 1975 as contemplated in last year's United Nations General Assembly Resolution, governments must begin serious negotiation the first day at Geneva, and to prepare for that, they must during the intersessional period appraise the alternatives, meet informally to explore possible accommodations that go beyond stated positions, and supply their delegates with instructions that permit a successful negotiation. A multilateral convention of unparalleled complexity affecting some of our nation's most vital economic and strategic interests is within our reach. We cannot and will not sign just any Treaty; but in my judgment we would be terribly remiss in our responsibilities to the United States and to the international community as a whole if we were now to overlook broader and longer-range perspectives. In the year ahead we intend to work diligently and carefully for a Convention that will protect our interests in the broadest sense of that term. In this endeavor, Mr. Chairman, we trust that we shall have the guidance and support of the Congress and of your Committee.

Through our mutual cooperative efforts I am certain that we can take the necessary steps and develop constructive initiatives so that all will agree that the United States has done all it could to foster a successful outcome of the Third United Nations Conference on the Law of the Sea.

Thank you, Mr. Chairman.

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STATEMENT OF HON. JOHN NORTON MOORE, CHAIRMAN OF THE NATIONAL SECURITY COUNCIL INTERAGENCY TASK FORCE ON THE LAW OF THE SEA AND DEPUTY SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR THE LAW OF THE SEA CONFERENCE

Mr. Chairman, A number of bills being considered by this Committee raise questions deeply affecting the foreign relations of the Nation as well as our fishery and other oceans interests. They also pose a stark choice for our policy toward an area covering more than two-thirds of the surface of the earth. Is United States oceans policy to be pursued through cooperative efforts at international agreement? Or is it to be pursued through unilateral assertions of jurisdiction risking an irreversible pattern of conflicting national claims?

Mr. Chairman, I am appreciative of the very real threats to coastal and anadromous species off our coasts. This increased pressure is part of a global trend which in the absence of an adequate international legal framework for fisheries jurisdiction has in many areas led to over-exploitation. The depletion of the haddock stock off our Atlantic coast and the halibut stock off our Pacific Northwest are examples.

The principal problem in the present pattern of international fisheries jurisdiction is that management jurisdiction does not generally coincide with the range of the stocks. As such, any effort at sound management and conservation confronts the classic "common pool problem" similar to that experienced in the early days of the east Texas oil fields. That is, in the absence of agreement, it is not in the interest of any producer acting alone to conserve the resource. The solution to this common pool problem in fisheries is broadly based international agreement providing coastal states with management jurisdiction over coastal and anadromous species with highly migratory species managed by appropriate regional or international organizations.

For the first time in the history of oceans law, it is realistic to expect such a broadly based agreement covering fisheries jurisdiction. After lengthy prepara-

tory work in the United Nations Seabed Committee, the Third United Nations Conference on the Law of the Sea has completed its first substantive session held in Caracas, Venezuela from June 20 to August 29. If other issues are satisfactorily resolved, the Conference offers every promise of providing the jurisdictional framework for solving our coastal and anadromous fisheries problems.

The strong trend in the Conference is for acceptance of a 200-mile economic zone providing coastal states with jurisdiction over coastal fisheries in a 200-mile area off their coast. There is also considerable support for host state control of anadromous species and growing support for special provisions on international and regional management of highly migratory species. In this connection, the United States Delegation has indicated that we can accept and indeed would welcome agreement on the 200-mile economic zone as part of a satisfactory overall treaty which also protects our other oceans interests, including unimpeded transit of straits used for international navigation.

It is also realistic to expect such a broadly based oceans treaty in the near future. Even on the schedule established by the General Assembly calling for the second session of the Law of the Sea Conference in Geneva from March 17 to May 10, 1975, however, it is, of course, important that we prevent further depletion of coastal and anadromous stocks off our coasts before the new Law of the Sea Treaty comes into force. We are taking a number of important steps to meet this need.

First, we have strengthened both bilateral and multilateral agreements with nations whose nationals conduct fishing operations off our coast. In the northwest Atlantic Ocean, for example, we have this year instituted for the first time a comprehensive management regime for the entire biomass in the region off the United States coast. This involves quotas allocated nationally for each individual species or group as well as overall quotas for all fish in this region, coupled with a series of additional conservation measures such as closed areas and seasons and gear restrictions. These new measures also take into account economic problems facing American fishermen. While there are problems in implementation associated with the introduction of such a new and far-reaching management system, we believe that significant progress has been made in the northwest Atlantic.

In addition, we have bilateral fisheries agreements with several countries for this region as well as for the areas off our Pacific coast and Alaska. The United States is actively pursuing conservation initiatives in all the fisheries commissions of which we are members to encourage further steps that can be taken to control fishing in a rational manner and remedy overfishing where that has been experienced. This week, for example, a meeting for this purpose will be held by the International Commission for the Conservation of Atlantic Tunas, and the United States and Japan will begin bilateral negotiations. Bilateral discussions with the Soviet Union will also be held starting in January, 1975. We expect these multilateral and bilateral meetings to achieve greater conservation of the resources off the coasts of the United States and a more rational and equitable regime for American fishermen in all of the areas involved. In this regard, we intend to maintain that, at the least, the relevant principles regarding conservation and allocations to protect coastal State fishermen enunciated by the International Court of Justice in the Iceland Fisheries Cases should be applied in these new agreements.

For the information of the Committee, I am also submitting for the record a more detailed report prepared by the National Marine Fisheries Service on the present condition of the coastal and anadromous stocks off our coasts and efforts to provide increased interim protection to those stocks.

Second, we have proposed that the fisheries as well as deep seabed provisions of the new Law of the Sea Treaty should be applied on a provisional basis. That is, they should be applied after signature of the new treaty but before waiting for the process of ratification to bring the treaty into full legal effect. Provisional application is a recognized concept of international law and our proposal was favorably received in the Law of the Sea negotiations. We will, of course, consult closely with the Congress as to how provisional application should be effectuated and in doing so will shortly consult with this Committee.

Third, we recently announced and have notified potentially affected nations of tough new enforcement measures to provide increased protection for the stocks off our coasts until the new Law of the Sea Treaty can be fully applied. These new enforcement procedures will substantially tighten our control over the

incidental catch of living resources from the United States continental shelf. For the first time, they permit boarding of foreign fishing vessels using bottom gear (including bottom tending trawls) which would normally result in the catch of living resources of the U.S. continental shelf. In addition, they will require all nations whose vessels use such gear to enter into agreements with the United States for the protection of the living resources of our continental shelf. By controlling bottom trawling, these new agreements for the protection of our continental shelf fishery resources should also have real benefit for the protection of other stocks, such as haddock, halibut, Alaska pollock, and yellowtail flounder.

Attached is the letter to Senator Magnuson setting out the new enforcement measures. Because of their potentially severe impact on foreign nations fishing over our continental shelf, these far-reaching new measures will go into effect only on December 5, 1974, after a 90-day grace period to enable affected nations to adjust their fishing methods or to conclude agreements further protecting our living resources.

These new procedures will provide substantially increased protection to our valuable living resources. We believe that they are entirely justified by existing international law and that jurisdiction over the living resources of the continental shelf carries with it the right to require other states to enter into agreements for the protection of such resources if they are taken during fishing for non-shelf stocks as well as if the taking of such shelf resources is international.

Fourth, an expanded enforcement effort such as that envisaged in the plan recently submitted by the Coast Guard to the Coast Guard Subcommittee would, if adopted, also help ensure compliance with existing regulations and assist in the transition from the present limited fisheries jurisdiction to the broader jurisdiction which would result from a successful Law of the Sea Conference.

Finally, the Executive Branch is studying appropriate legislation to provide compensation for fishermen whose gear is damaged off our coasts by the actions of a foreign fishing vessel or its crew. Any legislation would of course structure the mechanism by which compensation is provided to assure that only legitimate claims are compensated.

These interim measures, taken together, should provide substantial additional protection of the fishery stocks off our coasts until a new Law of the Sea Treaty can be concluded. At the same time, the Executive Branch is strongly opposed to the enactment of legislation such as H.R. 8665 which would unilaterally extend the United States fisheries contiguous zone from 12 to 200 miles in a mistaken effort to respond to our interim problems. Enactment of this legislation would not satisfactorily resolve our fisheries problems, would at most merely anticipate a result likely to emerge in a matter of months from a successful Law of the Sea Conference, and would be seriously harmful to United States fishery and oceans interests in at least seven principal ways.

First, unilateral action extending national jurisdiction in the oceans is harmful to overall United States oceans interests and as such we have consistently protested any extension of fishery or other jurisdiction beyond recognized limits. A unilateral extension of jurisdiction for one purpose will not always be met by a similar extension but rather may encourage broader claims which could have serious implications, for example with respect to our energy needs in transportation of hydrocarbons, our defense and national security interests in the unimpeded movement of vessels and aircraft on the world's oceans, or our interest in the protection of marine scientific research rights in the oceans.

Because of our broad range of oceans interests and our leadership role in the world, an example of unilateral action by the United States would have a particularly severe impact upon the international community which could quickly lead to a crazy quilt of uncontrolled national claims. Indeed it was the threat of just such a result with its open-ended invitation to conflicts and pressures on vital U.S. interests that led to a decision in two prior Administrations, at the highest level of Government, that U.S. oceans interests and the stability of the world community would best be served by a broadly supported international agreement. This Administration strongly agrees with that judgment. Soundings from our embassies and at the Caracas session of the Law of the Sea Conference indicate that the possibility of unilateral claims by others is not merely an abstract concern should this legislation pass. This Committee, with its concern for the foreign affairs interests of the United States, knows well the great threat posed to such interests if unilateralism overtakes our ability to reach a comprehensive oceans agreement.

Second, enactment of legislation such as H.R. 8665 could be seriously damaging to important foreign policy objectives of the United States. Unilateral extension of our fisheries jurisdiction could place the Nation in a confrontation with the Soviet Union, Japan, and other distant water fishing nations fishing off our coasts. These nations strongly maintain the right to fish in high seas areas and are unlikely to acquiesce in unilateral claims, particularly during the course of sensitive law of the sea negotiations in which they have substantial interests at stake. The implications for détente and our relations with Japan are evident. In fact, both the Soviet Union and Japan have already expressed serious concern over this legislation to our principal negotiators at the Law of the Sea Conference.

Similarly, unilateral extension of our fisheries jurisdiction coupled with reliance on the Fisherman's Protective Act to protect threatened distant water fishing interests of the United States seem certain to assure continuation of disputes with other coastal states off whose coasts our nationals fish.

It is strongly in the national interest to encourage cooperative solutions to oceans problems rather than a pattern of competing national claims. A widely agreed comprehensive Law of the Sea Treaty will promote development of ocean uses and will reduce the chances of ocean disputes leading to conflict among nations. If these interests seem too theoretical, we might recall the recent "Cod War" between the United Kingdom and Iceland which resulted from a more modest Icelandic claim of a 50-mile fisheries contiguous zone.

Third, a unilateral extension of our fisheries contiguous zone from 12 to 200 miles would not be compatible with existing international law, and particularly with the Convention on the High Seas to which the United States and forty-five other nations are party. The United States has consistently protested any extension of fisheries jurisdiction beyond 12 miles as a violation of international law. And the International Court of Justice held only last month in two cases arising from the "Cod War" that the 50-mile unilateral extension of fisheries jurisdiction by Iceland was not consistent with the rights of the United Kingdom and the Federal Republic of Germany.

Mr. Chairman, what would we do if this bill were to become law and another country brings us before the International Court of Justice? Would we invoke our reservation and maintain that issues relating to the use of the seas up to 200 miles from our coast, or even hundreds of miles beyond this in the case of salmon, are exclusively within our domestic jurisdiction? Or would we respond on the merits and risk losing what we are certain to get from a widely accepted Law of the Sea Treaty?

As this Committee well knows, violation of our international legal obligations by encroaching on existing high seas freedoms can be seriously detrimental to a variety of oceans interests dependent on maintenance of shared community freedoms in the high seas. The appropriate way to change these obligations in order to deal with the new circumstances is by agreement. It is particularly inappropriate to argue that a unilateral act contrary to these obligations is required by such circumstances when a widely supported agreement that resolves the problem is nearing completion.

Fourth, a unilateral extension of our fisheries jurisdiction would post serious risks for our fisheries interests. Protection of the coastal and anadromous stocks off our coasts can only be achieved with the agreement of the states participating in the harvesting of those stocks. Unilateral action not only fails to achieve such agreement but it poses serious risks to existing fishery agreements and efforts to resolve the problem on a more lasting basis with such countries. Similarly, protection of our interests in fishing for highly migratory species such as tuna or coastal species such as shrimp where U.S. nationals fish off the coasts of other nations can only be achieved through more cooperative solutions. In short, we cannot expect to achieve acquiescence from states fishing off our coasts, and we will harden the positions of other countries off whose coasts we fish. The resolution of old disputes will be made more difficult and their costs to our fishermen and our Government will continue. At the same time we will face new disputes off our own coasts and elsewhere.

H.R. 8665 would provide others with an opportunity to make unilateral claims damaging to our distant water fishing interests despite any exceptions for highly migratory species or provisions for full utilization written into the legislation. If the United States can make a unilateral claim eliminating the freedom to fish on the high seas, it is difficult to assert that other nations are bound by the

exceptions and provisions contained in our own legislation. Moreover, even by its terms H.R. 8665 would include highly migratory species in the extension of coastal State jurisdiction where such species "are not managed pursuant to bilateral or multilateral fishery agreements." We should keep in mind that the principal countries with which we have disputes concerning jurisdiction over highly migratory species are not parties to agreements relating to the management of such stocks.

A unilateral extension of fisheries jurisdiction by the United States could also make it more difficult to achieve meaningful guarantees, such as those we are advocating at the Law of the Sea Conference, binding on all nations for the conservation and full utilization of the living resources of the oceans. Moreover, it could make more difficult acceptance of a rational basis for fisheries management; that is, jurisdiction over coastal and anadromous species in the coastal state and jurisdiction over highly migratory species in a regional or international organization. As such, legislation such as H.R. 8665, although intended to protect the fish stocks off our coasts, could, paradoxically, have the opposite effect not only on stocks off our coasts but on fish stocks the world over.

Fifth, passage at this time of legislation such as H.R. 8665 unilaterally extending the fisheries jurisdiction of the United States would seriously undercut the effort of all nations to achieve a comprehensive oceans law treaty. Our Nation has urged particular care and restraint in avoiding new oceans claims during the course of the Third United Nations Conference on the Law of the Sea. A pattern of escalating unilateral claims during the Conference could destroy the delicate fabric of this most promising and difficult negotiation. It could also undermine the essential political compromise by which all nations would agree on a single package treaty. And by unilaterally taking action which we have said must be dependent on a satisfactory overall compromise, it could harm other United States oceans interests such as protection of vital navigational freedoms, marine scientific research, environmental goals, or economic interests such as a regime for deep seabed mining which will promote secure access to the minerals of the deep seabed area. The ultimate tragedy of such legislation is that, though purporting to offer increased protection to our fisheries, it could well destroy forever the only effective opportunity we have had, that is through the ongoing Law of the Sea negotiations, to once and for all resolve our diverse fisheries problems.

Sixth, any benefits to the fisheries off our coasts which could accrue from a unilateral extension of fisheries jurisdiction to a 200 mile area, and in the case of salmon even beyond 200 miles, should be measured against the cost of the enforcement effort required to police such an area against nations which refuse to accept the claim. Enforcement of fisheries jurisdiction, to be truly effective, must be rooted in general acceptance by the other nations fishing in the area. If not accepted, the cost of full enforcement coverage could be great. In this connection, it should be noted that a 200 mile limit would add an area of nearly 2.3 million square nautical miles to our fisheries jurisdiction. Such an area is over two-thirds as large as the continental United States and all of its possessions. It should also be noted that this figure of 2.3 million square nautical miles does not include the area around the Virgin Islands, American Samoa, Guam, Wake or Midway.

These principal difficulties with legislation such as H.R. 8665 are in no sense alleviated by its emergency or interim nature. Section 9 of H.R. 8665 provides that the act would expire on such date as the Law of the Sea Treaty comes into force. Unfortunately, however, in the interim period the legislation would be simply a unilateral extension with all of the associated costs of unilateralism and with none of the benefits of a lasting solution. Moreover, this legislation could well prevent the agreement which is expected to supersede it.

I have not sought to discuss the specifics of H.R. 15619 which, because it is intended to be rooted in the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, is potentially not as objectionable as H.R. 8665. The principal problem with H.R. 15619, of course, is that the most important nations fishing for our coastal and anadromous species, including the Soviet Union and Japan, are not parties to the 1958 Convention. With appropriate changes it is possible that H.R. 15619 or a similar measure rooted in existing international law could be a useful alternative to H.R. 8665 without the grave impact on our overall oceans and foreign relations interests. Accordingly, before

commenting further on H.R. 15619 the Executive Branch would welcome an opportunity for further study with the Congress with a view to examining the possibility of changes which might make H.R. 15619 acceptable.

Mr. Chairman, this Committee, the Congress, and the Nation are faced with a fundamental choice. Are we to pursue cooperative efforts at solution to our oceans problems even when the going is rough and the pace slower than we would like? Or are we to pursue unilateral policies destined to lead to escalating conflict in the oceans?

Our fisheries interests as well as the overall oceans interests of our Nation all strongly require that we firmly set our course toward cooperative solutions.

Thank you, Mr. Chairman.

DEPARTMENT OF STATE,
*Washington, D.C., September 5, 1974.*

Hon. WARREN G. MAGNUSON,
*Senate Commerce Committee, U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MAGNUSON: In response to your recent inquiry concerning enforcement procedures in connection with continental shelf fishery resources, I am pleased to advise you that foreign governments whose vessels fish above the continental shelf of the United States are being notified of the following new guidelines for the enforcement of our rights to continental shelf fishery resources.

"1. The taking of continental shelf fishery resources from the United States continental shelf will result in the arrest and seizure of any vessel taking such resources, except as provided by the United States in bilateral agreements. For the purpose of determining whether such a taking has occurred, vessels may be boarded when engaging in either of the following acts:

(a) Fishing above the continental shelf of the United States with gear which is designed specifically to catch continental shelf fishery resources; or

(b) Fishing above the continental shelf of the United States with bottom gear which can be expected to result in the catch of continental shelf fishery resources except where the procedures used are designed to reduce and control such incidental catch pursuant to an agreement with the United States.

"2. In those instances where the taking of continental shelf fishery resources does not result in a substantial catch and such taking does not appear to be deliberate or repeated, a warning will normally be given. In any event, fishermen are expected to return to the sea immediately any continental shelf fishery resources which may be taken incidentally in the course of directed fisheries for other species. Fishermen who encounter concentrations of continental shelf fishery resources in the course of their fishing operations should take immediate steps to avoid such concentrations in future tows.

"3. To facilitate the transition in fishing procedures required by these procedures, U.S. enforcement officers will act with discretion during a short period to allow fishermen operating in the region to become familiar with these procedures.

"4. The boarding and where appropriate the arrest of any vessel pursuant to these procedures shall be in strict conformity with paragraph 1 above.

"5. The effective date of these new procedures will be December 5, 1974."

These guidelines should substantially enhance our protection efforts and help conserve our valuable resources. The practical effect of the change in procedure contemplated by paragraph 1(b) is to require the negotiation of bilateral agreements with all nations fishing over our continental shelf with bottom gear which can be expected to result in the catch of continental shelf fishery resources. These agreements would set forth appropriate procedures to ensure the fullest protection of our resources.

I hope that you will conclude, as I have, that this effort will materially assist in providing added protection to our continental shelf fishery resources.

Sincerely,

JOHN NORTON MOORE,
*Chairman, National Security Council, Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference.*

## Status of Major Fisheries Stocks off U.S. Coasts and Ongoing International Management Activities

(Prepared by U.S. Department of Commerce, National Oceanic and Atmospheric Administration)

Since the turn of the century, there has been a rapid increase in the utilization of living resources of the oceans, and during the past 72 years, the world-wide harvest of marine fishes has increased fifteen-fold, with the current catch in the vicinity of 70 million metric tons. The potential annual yield of traditional fisheries resources from the oceans is now estimated to be in the vicinity of 100–150 million metric tons; it has been estimated that the upper limits of sustainable yield will be reached well before the year 2000.

While the importance of marine fish to most other countries is generally recognized, there is a tendency to underrate their importance to the United States. Americans are not traditionally fish eaters, with an annual direct consumption of only 12 pounds per capita, but the total utilization of fish and fish products in the United States is 85 pounds (live weight) per capita. The difference is largely accounted for by the use of fish meal in poultry and animal husbandry, which has been a major factor contributing to the relatively low cost of meat in this country. Hence, we are dependent in a major way on fish as a raw material, and this helps to account for the United States being the ranking importer of fish and fish products.

The oceans' living resources play an important role in human recreational activities and meet certain aesthetic needs. In 1972, for example, Americans spent 17 million man-days fishing for marine sport fish and their catch accounted for about 7.4 pounds of fish per capita.

The rising demand for fish over the past several decades has lead to increased exploitation of ocean fishes, thus intensifying problems concerned with conservation of resources and in achieving national and international social and economic objectives. Failure to resolve these problems has (1) led to biological and economic waste, (2) diminished the biological productivity of a number of important commercial fish species, (3) introduced a variety of social and economic problems to fishing nations of the world, and (4) heightened international tensions between major fishing nations, as well as between developed and developing countries of the world. The failures of management can be associated with archaic institutional constraints, conflicting interest of user groups, fragmentation of jurisidiction at the national and international levels, excessive demands for precise scientific information, the validity of which must be accepted by all user groups, and delays in developing management systems, which have led to biological and economic overfishing and overcapitalization.

The volumes of fish harvested off the U.S. coast has increased dramatically in 25 years from 2.0 million metric tons (MMT) in 1948, to 5.0 MMT in 1972. Almost all this additional catch has gone to foreign fishermen in their world-wide search for further protein supplies. The growth in U.S. demand, therefore, has been supplied by imports. This multiplying fishing pressure and the lack of effective management has resulted in overfishing of several important species. Management of fisheries resources within the territorial seas lies mainly with states whose policies, interests, and authorities often result in conflicting and inefficient regulations. Moreover, the roles of state and Federal governments in management in the contiguous zones have not always been clearly defined, leading in some cases, to a management vacuum. International fisheries resources off the coasts of the U.S. have been managed through 8 international commissions and 12 bilateral agreements. In the case of international commissions, agreement has been by consensus; bilaterals have been negotiated, where multilateral agreements have not been applicable. None of these commissions or bilaterals has resulted in fully satisfactory arrangements for the resources or our U.S. sport and commercial fishermen. Largely as a result of these arrangements, characterized as being too-little, too-late, there has been a serious depletion of some major fisheries stocks of the U.S. coastal fishery resources and a major deterioration of some important segments of the fishing industry.

The amount and variety of fishes found in the oceans adjacent to the U.S. and in our estuaries are enormous. The American Fisheries Society has identified by common name over 2,000 species of finfish in the inland and ocean waters of the U.S. and Canada. U.S. commercial landings of about 170 species of finfish and

50 species of shellfish are reported annually. Present limited reports identify about 78 species groups as forming the basis of marine angling. It is estimated that the potential harvest off the U.S. coast is around 18.5 million metric tons. In 1972, the U.S. and foreign fleets caught around 5.0 million metric tons.

To take advantage of these abundant fisheries resources off our coasts, many nations have built and equipped huge fleets, which are capable of sustained large-scale operations in waters, distant from their home bases. This has resulted in large, often subsidized, foreign fleets fishing intensively just outside the U.S. contiguous fisheries zone (CFZ) in many instances on stocks historically harvested by U.S. fishermen, or stocks of potential interest to U.S. fishermen.

Fisheries stocks are continually self-renewing and may be harvested regularly in modernation. However, continued overfishing of a resource can lead to severe and possibly lasting damage. Since the advent of large foreign fleets off New England, the total haddock harvest decreased from about 249 thousand metric tons in 1965, to 26 thousand metric tons in 1973. A zero quota was established, but foreign fishing still continues with limited effective controls. In the North Pacific, halibut stocks are at a low level, with a U.S.-Canada catch of 14 thousand metric tons in 1973, compared to 29 thousand metric tons in 1963.

U.S. efforts through the IPHC have been influential in initiatives concerned with foreign trawling activities and small successes have been achieved in this area. However, incidental foreign catches still present a serious problem to the conservation of the halibut resource. Thus, the stock's ability to respond to remedial measures may be lost by continuation of largely uncontrolled foreign fisheries.

A further indication of the tremendous increase in foreign fishing off our coasts can be seen from a look at Japan's historical fishery record in the North Pacific. In 1954, the Japanese catch totaled 13,000 metric tons; whereas, in 1972, the catch had risen to 2.3 million metric tons. Virtually all of these fish were taken within 200 miles of the U.S. coast. Japan, incidentally, takes by far the greatest percentage of the total foreign catch off our U.S. coast in the Pacific Ocean.

To a very large degree, the impact of foreign fishing has resulted in the depletion of over twenty U.S. fisheries species. This estimate may be too low, since in many cases, adequate data for sound assessment are not available or not in a useable form.

The list of overfished and depleted stocks in the Pacific includes the halibut, pollock, sablefish, yellowfin sole, black cod, ocean perch, Alaska shrimp, and king and tanner crabs.

Apart from the serious effects of this concentrated harvest on stocks, damage to U.S. fishermen's gear and damage to nursery stocks of fish not sought, but important to the U.S. fleet, frequently occurs.

While the number of species damaged by distant-water fishing along the Atlantic coast may not be as long, the impact has been, in many ways, even more dramatic, since it includes several traditional fisheries which have been carried on for many decades by American fishermen. Two outstanding examples have been the depletion of the haddock off New England and the possible destruction of the river herring in the middle Atlantic area. Other Atlantic stocks severely damaged or threatened include herring, yellowtail flounder, and redfish.

The position of the Administration concerning fisheries resources of the high seas, pending an international settlement on Law of the Sea, can best be described as one of moving ahead within the framework of existing institutions to achieve the maximum degree of conservation and protection of U.S. fisheries interests. A number of steps have been undertaken to strengthen the present arrangements to make them more effective and additional initiatives will be pursued during the next several months to continue this course of action. The following examples are illustrative of actions that have been taken recently and objectives that will be pursued in the near future.

Considerable effort has been directed toward strengthening the *International Commission for the Northwest Atlantic Fisheries*, which involves 17 nations that conduct extensive fisheries off the eastern coast of the U.S. and Canada. Last year, the U.S. was able to achieve an overall catch quota program designed to permit stocks to recover to levels permitting maximum sustainable yield within a 3-year period. The overall quota was set below the sum of individual species, or stock quotas, to force more selective fishing and minimize longstanding incidental catch problems. The intermixing of species, particularly characteristic of the Georges Bank area, makes it impossible to implement species quotas accu-

rately or effectively. The so-called two tiered quota is a management method which encompasses the entire ecosystem for the area under consideration. Gear regulations were also adopted to force selective fishing and additional regulations to afford greater protection are on the agenda this fall. International enforcement measures, while still short of U.S. objectives, have come a long way over the past few years. Boarding and inspection of vessels of participating countries are carried out on a routine basis. It was largely the result of such inspections that recent violations involving Spanish, West German, and United Kingdom vessels were discovered and brought to the attention of flag-state authorities. At a special meeting scheduled this fall for members of Panel 5 who are engaged in fishing in areas off the U.S. coast, the U.S. will seek amendment of existing gear restriction controls, area closures, and modification of the exemption provisions for regulated trawl fisheries and stocks under a zero quota. These initiatives concern haddock and yellowtail flounder stocks, which are evidencing serious difficulties due to foreign as well as domestic pressures.

The problem of the depletion of halibut stocks in the eastern Bering Sea and the Gulf of Alaska continues to be a major concern to the Federal Government. Faced with serious declines in the catches of North American set-line fishermen, the Governments of Canada and the U.S. recently obtained the cooperation of Japan in taking voluntary measures in the eastern Bering Sea to reduce the incidental catch of halibut by Japanese trawlers. These measures were taken in addition to measures adopted by Japan, Canada, and the U.S. under the auspices of the *International North Pacific Fisheries Commission*. Subsequently, Canada and the U.S. approached the Soviet Union, urging the adoption of appropriate conservation measures similar to those already adopted by Japan, and also to take appropriate steps to reduce the incidental catch of halibut in the Gulf of Alaska, where increased trawling efforts with a substantial incidental catch of halibut were observed earlier this year. The Soviets agreed to undertake joint scientific cooperation to assess the problem and discuss within the next several months appropriate measures to deal with the problem. One of the continuing U.S. objectives is to seek adequate joint and voluntary measures to protect halibut. This will not only be done within the framework of the *International North Pacific Fisheries Commission*, but also through discussions with those countries not members of that Commission.

Other objectives within the *International North Pacific Fisheries Commission* include a reduction of fishing effort on several stocks which are believed to be overfished (such as pollock, Pacific Ocean perch, black cod, and herring), pursue additional measures needed to protect western Alaska salmon (Bristol Bay) to commence studies on groundfish (other than halibut) in the Bering Sea and to seek conservation measures concerning these groundfish.

U.S. efforts through the *International Pacific Halibut Commission*, which involves Canada and the U.S., have also been influential in initiatives concerned with foreign trawling activities in the eastern Bering Sea and Gulf of Alaska, where the incidental catch of halibut presents a serious problem. This is, again, another means of exerting pressure to achieve needed protection.

Since the mid-sixties, the U.S. has entered into a number of bilateral agreements to protect U.S. interests in the coastal fisheries lying outside the contiguous fisheries zone. These agreements involve the U.S.S.R., Japan, Canada, the Republic of Korea, Poland, and Bulgaria. The objective has been to provide workable agreements to protect established U.S. fisheries and to foster conservation for stocks of interest to the U.S. which fell outside established international fisheries commissions or involved non-members of these commissions. Under these arrangements, the U.S. has sought to reduce fishing effort on stocks that were under great pressure, assure provisions for adequate scientific and biological assessment to enable the development of rational catch limitations, to ensure that catch and effort limitations and other provisions are adequately enforced, and to provide measures to reduce interference by foreign trawlers of established U.S. coastal fisheries.

An international agreement with Brazil provides access for U.S. vessels and for conservation of shrimp in coastal waters off Brazil. These arrangements appear satisfactory from both the standpoint of Brazil and the U.S., and will be continued.

New guidelines have also been formulated concerning enforcement procedures related to continental shelf fishery resources. These guidelines, which provide for agreements concerning procedures to reduce and control incidental catches,

as well as enforcement procedures, were recently communicated to foreign governments whose vessels fish above the continental shelf of the United States. The substance of the guidelines is contained in the letter addressed to Senator Magnuson on September 5, 1974, and is a part of the record.

In addition to pursuing a course of strengthening the present arrangements, the U.S. intends to initiate at an early date, multilateral discussions with all countries fishing in the eastern Bering Sea and the eastern North Pacific Ocean, to develop arrangements for cooperative collection and analyses of biological data to permit quality conservation and management decisions. Our major concern is the increasing level of foreign fishing activities on stocks of present or potential importance to American fishermen and the lack of adequate information to allow for timely assessments and, consequently, follow-up with needed actions whenever this may be necessary.

Mr. ZABLOCKI. Thank you, Ambassador Stevenson. I notice that you have offered to transmit a copy of the report of the delegation which was filed on August 30. I trust you have a copy with you.

Mr. STEVENSON. Yes, sir.

Mr. ZABLOCKI. Will you present it and we will make it a part of the record at this point.

[The report referred to follows:]

THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

*Caracas, Venezuela, June 20–August 29*

U.S. DELEGATION REPORT

*1. Summary and Overall Evaluation of Session*

The object of the Law of the Sea Conference is a comprehensive Law of the Sea Treaty. This was not achieved at Caracas. It would be a mistake to regard the Caracas session as a failure however, as it accomplished a great deal: the foundations and building blocks of a settlement are now all present in usable form. A treaty can be achieved if detailed authentic negotiation takes place without delay.

Two underlying problems affect the evaluation of the session. First, events beyond the control of the Conference are tempting states to take matters into their own hands. Second, the Conference suffers from the carry over of a negotiating style more suitable for General Assembly recommendations or negotiation of abstract issues than texts intended to become widely accepted as treaty obligations affecting immediate interests of states in a dynamic situation. Tactics, rather than negotiation, was the rule.

Accomplishments of the session are considerable. Among the most important are the following:

(a) The vast array of Law of the Sea issues and proposals within the mandate of Committee II was organized by the Committee into a comprehensive set of informal Working Papers reflecting main trends on each precise issue. The large number of formal proposals were mainly introduced as a basis for insertions in these Main Trends Papers. All states can now focus on each issue, and the alternative solutions, with relative ease. A similar development occurred with respect to marine scientific research in Committee III.

(b) The transition from a Seabed Committee of about 90 to a Conference of almost 150 was achieved without major new stumbling blocks and a minimum of delay.

(c) The overwhelming majority clearly desires a treaty in the near future. Agreement on the Rules of Procedure is clear evidence of this desire to achieve a widely-acceptable treaty. The tone of the general debate and the informal meetings was moderate and serious. The Conference adopted a recommended 1975 work schedule deliberately devised to stimulate agreement.

(d) The inclusion in the treaty of a 12-mile territorial sea and a 200-mile economic zone was all but formally agreed, subject of course to acceptable resolution of other issues, including unimpeded transit of straits. Accordingly, expanded coastal state jurisdiction over living and non-living resources appears assured as part of the comprehensive treaty.

(e) With respect to the deep seabeds, the first steps have been taken toward real negotiation of the basic questions of the system of exploitation and the conditions of exploitation.

(f) Traditional regional and political alignments of states are being replaced by informal groups whose membership is based on similarities of interest on a particular issue. This has greatly facilitated clarification of issues, and is necessary for finding effective accommodations.

(g) The number and tempo of private meetings has increased considerably, and moved beyond formal positions. This is essential to a successful negotiation.

With few exceptions, the Conference papers now make it clear what the structure and general content of the treaty will be, the alternatives to choose from, and the blanks to be filled in, and even the relative importance attached to different issues. What was missing in Caracas was sufficient political will to make hard negotiating choices. The main reason was the conviction that this would not be the last session, which is the type of assessment that can easily be spread by treaty opponents. Nevertheless, the words "we are not far apart" were more and more frequently heard, at least in Committee II, insofar as the developing country assessment of U.S. positions is concerned.

The Conference has recommended to the UNGA that the next session be held in Geneva from 17 March to 3 or 10 May, the latter date depending upon certain practical arrangements to be made with the World Health Organization, whose assembly was scheduled to open on 6 May in Geneva.

The Conference also agreed to recommend that the formal final session of the Conference should be held in Caracas for the purpose of signature of the final act and other instruments of the Conference. The successful conclusion of perhaps the most complex and divisive global negotiation ever held must be on the basis of state's real interests rather than abstract concepts. The momentum, albeit with fits and starts, tends to favor such negotiation. The U.S. can contribute to this by retaining its commitment to that end, and sticking to a pragmatic approach to problems; but all must now make the ultimate choice between symbols and achievement.

### *2. Committee I (Seabed Beyond the Limits of National Jurisdiction)*

#### *A. General*

Unlike other Committees, the entire range of issues under Committee I's mandate, with only one exception, had been reflected in alternative treaty articles prepared by the Seabed Committee. The one exception was the preparation of treaty articles on rules and regulations for deep seabed mining: a critical element of the U.S. deep seabed position. In previous sessions of the Seabed Committee, which worked on the basis of consensus, there had been considerable opposition to even a discussion of rules and regulations, which were referred to in notes and footnotes.

The Committee held one week of general debate in which the following trends emerged: (A) a number of African and Asian delegations expressed their willingness to support an exploitation system that permitted different types of contractual arrangements in the early years of operation, coupled with a gradual phasing out of these systems in favor of direct exploitation. In this connection, the need to provide security of tenure and conditions that would attract entities with the necessary capital and technology was a prevalent theme in their statements; (B) there was increased support among European delegations for a parallel licensing/direct exploitation system—Australia and Canada maintained their support for this approach; (C) a large number of developing country delegations referred to the need to include dispute settlement machinery in the Authority.

The general debate was followed by a rapid reading of the Regime Articles in an informal Committee of the Whole, Chaired by Christopher Pinto of Sri Lanka. There were some reductions in alternatives and bracketed language on several articles. The majority received no alteration. The Informal Committee decided to discuss in detail major issues of disagreement rather than proceed to the texts on the Machinery. The three major issues selected were the exploitation system (Article 9 of the Regime), conditions of exploitation (Rules and Regulations), and economic implications.

#### *B. Exploitation System*

The exploitation system (Article 9) was identified by many countries as the crux of the Committee I negotiations. During the Caracas session, the Group of

77 agreed on a single text for Article 9 which would permit the Authority to enter into a variety of legal arrangements, provided it maintained "direct and effective control at all times."

A number of developing country delegations throughout the last weeks of the session began to call for serious negotiations on Article 9. Three delegations threatened voting instead.

Several delegations indicated a willingness to discuss formulas which might include the concept that the Authority's control over resource exploitation would be exercised in accordance with certain broad general principles to be laid down in the Convention.

Jamaica introduced a proposal for Article 9 that includes such general principles, together with the requirement that the Authority promulgate rules and regulations within this framework.

In the closing days of the session, after earlier resistance to discussion of the context of general conditions of exploitation, Committee I established a Negotiating Group with the mandate to consider Articles 1–21, placing special emphasis in its work on both Article 9 and conditions of exploitation. The Negotiating Group met several times and engaged in very constructive discussions on the Group of 77 text for Article 9. There emerged in these exploratory talks a definite willingness on the part of a number of delegations supporting that text to explore changes in the text without commitment.

*C. Conditions of Exploitation (Rules and Regulations)*

After completing the debate on the exploitation system and three weeks before the end of the session, Committee I arrived at the agenda item of rules and regulations for deep seabed exploitation.

The U.S. Delegation made clear the importance which it attached to a full and comprehensive discussion of the issues involved in the conditions of exploitation. A lengthy, off-the-record statement was delivered that explained in detail the purpose of rules and regulations, why the U.S. considered it important that they be included in the treaty, and our difficulties with moving further in the Committee I work without an agreed commitment that conditions of exploitation were to be included in the treaty.

The Group of 77 decided to prepare their own text of basic conditions of exploitation, and indicated a willingness to create some formal mechanism for discussing and negotiating this issue.

The draft text on basic conditions of exploitation that emerged from the Group of 77 was for the most part an elaboration of their proposal on Article 9, granting almost complete discretion to the Authority in very general terms to make decisions concerning exploitation, so as to protect land-based producers and give the Authority "direct and effective control" over all operators. In certain areas it described in greater detail how the Authority should maintain control and sprinkled throughout were the seeds of ideas that might be converted into treaty articles to protect investment.

In addition to the Group of 77 proposal on basic conditions, draft rules and regulations were submitted to Committee I by the U.S., by Japan, and by eight members of the European Community.

*D. Economic Implications*

Committee I devoted several days of on-the-record debate to the issue of economic implications. Land-based producers of the metals contained in manganese nodules had in previous sessions of the Seabed Committee succeeded in winning widespread support for price and production controls, but the high profile given this issue during the Caracas session resulted in two new developments:

(a) Detailed presentations and question-and-answer periods with representatives of UNCTAD and the Secretary-General served to highlight the great uncertainty regarding any threat that the ocean mining industry may pose for the economies of developing country producers of the metals contained in nodules.

(b) Several developing country representatives made public statements on the need to protect consumers from artificially high prices. This had never occurred in the Seabed Committee.

The U.S. Delegation submitted a Working Paper and made statements that pointed out the interests of all consumers in encouraging seabed output, the unlikelihood that the income of existing producers would decrease, even with seabed production, and the inherent difficulties and adverse effects of schemes

to protect land-based producers. Several developing countries expressed a willingness not to require protective measures in the convention itself, and an insistence that a balance between consumer and producer interests be structured into whatever machinery was created for dealing with the potential problem.

*E. Evaluation*

The work of Committee I advanced during the Caracas session. The inclusion of conditions of exploitation in the convention is widely accepted. However, the proposals for such conditions are at considerable variance with each other. Further, the Committee's discussion of economic implications led to a greater understanding of the complexity of the issue, coupled with a growing awareness among developing country delegations that the interests of their consumers might be damaged in attempts to protect a small number of developing country land-based producers who account for a minority share of the world's output, although the land-based producers continued to call for developing country solidarity. Most importantly, there was a new, more serious mood in the Committee that indicated an understanding that genuine negotiation is needed if an agreement is to be concluded. This mood, although intangible, can be demonstrated in the following developments:

(1) Most delegations opposed the Chairman's initial plan for two weeks of general debate—they wanted to get to work immediately;

(2) During the third reading of the Regime Articles, certain differences which were previously insurmountable were easily removed e.g.,

(a) The key Article on the common heritage concept was reduced from four to two alternatives—it would have been unanimously agreed but for the refusal of only a handful of delegations to add language to the principle of the common heritage;

(b) The differences over the Authority's power to regulate scientific research, which had been addressed in several different Articles, were restricted to only two Articles in the Regime;

(3) The Group of 77 was able to agree among themselves on what they believe to be a more flexible approach to Article 9, and agreed to discuss Article 9 along with the conditions of exploitation;

(4) An attempt by several land-based producers and a few others to prohibit reference to the conditions of exploitation in the debate on Article 9 was defeated;

(5) The Jamaican proposal for Article 9, although significantly different from that of the Group of 77, was supported by several developing country representatives. This proposal was subsequently made a general footnote to the Articles;

(6) Proposals for basic conditions of exploitation were presented and a Working Group for negotiating this issue, together with Article 9, was established;

(7) In various general statements and in all drafts of the basic conditions, the need to ensure an attractive and secure investment climate for deep seabed exploiters was acknowledged;

(8) Efforts by a few delegations to rally support for a vote on Article 9 did not succeed;

(9) Attempts by several land-based producers to prevent informal economic seminars on economic implications were unsuccessful;

(10) Efforts by a few delegations to obstruct progress in the Negotiating Group did not succeed;

(11) The principle of compulsory settlement of disputes and the establishment of a dispute settlement organ in the Seabed Authority was widely endorsed.

*3. Committee II*

The following are excerpts from the final summing-up of the Chairman of Committee I on August 28 (DOC.A/Conf. 62/C.2/L.86):

> In 13 informal Working Papers the officers of the Committee summarized the main trends with respect to the various subjects and issues, as they had been manifested in proposals submitted to the United Nations Seabed Committee or at the Conference itself. . . . In view of the nature and purpose of those papers, each of them had been submitted to the Committee in formal working meetings. Thus all the members of the Committee have had the opportunity to make observations on these papers in their original versions and in their first revised versions. After considering those observations in detail, the officers prepared a first and, in almost all cases, a second revision of the papers which, by agreement of the Committee, is the final version.

Thus what we have is the collective work of the Committee which, with the limitations and reservations to be indicated in the general introduction and, in some cases, in the explanatory notes accompanying certain of the papers, is a faithful reflection of the main positions on questions of substance that have taken the form of draft Articles of a convention.

Assembling these papers in a single text, with consecutive numbering makes it possible to present in an orderly fashion the variants which at this state of the work of the Conference are offered for consideration by states with respect to the subjects and issues falling within the Committee's competence.

This document, in my opinion, should serve not only as a reference text relating to the most important work done by the Committee at this session but also as a basis and point of departure for the future work of this organ of the Conference. It would be senseless to begin all over again the long and laborious process which has led us to the point where we now stand.

No decision on substantive issues has been taken at this session, nor has a single Article of the future Convention been adopted, but the states presented here know perfectly well which are at this time the positions that enjoy support and which are the ones that have not managed to make any headway.

The paper that sums up the main trends does not pronounce on the degree of support which each of them had enlisted at the preparatory meetings and the Conference itself, but it is now easy for anyone who has followed our work closely to discern the outline of the future Convention.

So far each state has put forward in general terms the positions which would ideally satisfy its own range of interests in the seas and oceans. Once these positions are established, we have before us the opportunity of negotiation based on an objective and realistic evaluation of the relative strength of the different opinions.

It is not my intention in this statement to present a complete picture of the situation as I see it personally, but I can offer some general evaluations and comments.

The idea of a territorial sea of 12 miles and an exclusive economic zone beyond the territorial sea up to a total maximum distance of 200 miles is, at least at this time, the keystone of the compromise solution favored by the majority of the states participating in the Conference, as is apparent from the general debate in the Plenary meetings, and the discussion held in our Committee.

Acceptance of this idea, is, of course, dependent on the satisfactory solution of other issues, especially the issue of passage through straits used for international navigation, the outermost limit of the continental shelf and the actual retention of this concept and, last but not least, the aspiration of the land-locked countries and of other countries, which, for one reason or another, consider themselves geographically disadvantaged.

There are, in addition, other problems to be studied and solved in connection with this idea, for example, those relating to archipelagos and the regime of islands in general.

It is also necessary to go further into the matter of the nature and characteristics of the concept of the exclusive economic zone, a subject on which important differences of opinion still persist.

On all these subjects substantial progress has been made which lays the foundations for negotiation during the intersessional period and at the next session of the Conference. (End of quotation)

*A. Territorial Sea*

Agreement on a 12-mile territorial sea is so widespread that there were virtually no references to any other limit in the public debate. Major conditions for acceptance of 12 miles as a maximum limit were agreement on unimpeded transit of straits and acceptance of a 200-mile exclusive economic zone. A variety of articles have been introduced on the territorial sea regime which, for the most part, parallel the provisions of the 1958 Territorial Sea Convention.

*B. Contiguous Zone*

The contiguous zone is an area where the coastal state may take measures to prevent and punish infringement of its customs, fiscal, immigration, and sanitary laws in its territory or territorial sea. Its maximum limit is 12 miles under the 1958 Territorial Sea Convention. Some states seem to feel that with the

establishment of a 12-mile territorial sea, the contiguous zone has become superfluous. Other would like it extended to an area beyond 12 miles.

*C. Straits*

The introduction of the U.K. Articles was the major event of the session, as the U.K.—as both a maritime power and a state bordering the most heavily used strait in the world—necessarily sought an accommodation of the interests involved. These articles were well received. The U.S.S.R. and Oman introduced articles on straits as well. In general, there was a trend in the direction of unimpeded passage. While there was little public movement toward conciliation on the part of the straits states, debate was less heated. The U.S. made a statement reiterating the fundamental importance of unimpeded passage on, over, and under straits used for international navigation, and addressed means of accommodating the concerns of straits states with respect to security, safety, and pollution. The U.S. also made it clear that distinctions regarding the right of passage could not be made between commercial vessels and warships.

*D. High Seas*

Discussion centered on issue of whether or not the high seas regime, as modified with respect to fishing, etc., would apply in 200-mile zone beyond the 12-mile territorial sea. The U.S. sponsored draft articles on this issue, on fishing beyond the economic zone, and also co-sponsored articles providing for hot pursuit from the economic zone and continental shelf.

*E. Access to the Sea*

There was little visible progress on the issue of landlocked state access to the sea, although there appears to be growing recognition among coastal states that the question needs to be dealt with fairly. Negotiation of the issue is probably tied to some extent to the question of access to and benefits from the resources of the economic zone.

*F. Archipelagos*

The Bahamas, Fiji, Indonesia, Mauritius, and the Philippines strongly advocated adoption of the archipelago concept. The issue has been complicated by the addition of arguments for archipelagic treatment of island groups belonging to continental states, with substantial differences of view indicated in conference statements on this issue. It is widely recognized that the key issues of definition and transit of archipelagic waters must be resolved for a satisfactory accommodation on the issue.

*G. Economic Zone and Continental Shelf*

(I) General

Over 100 countries spoke in support of an economic zone extending to a maximum limit of 200 nautical miles. With respect to the content of the zone; there is widespread support for the following:

(a) Coastal state sovereign or exclusive rights for the purpose of exploration and exploitation of living and non-living resources;

(b) Coastal state rights and duties with respect to pollution and scientific research to be specified, presumably in the Chapters of the Convention being prepared in Committee III.

(c) Exclusive coastal state rights over artificial islands and most installations;

(d) Exclusive coastal state rights over drilling for all purposes;

There is also general agreement that there would be freedom of navigation and overflight in the economic zone, as well as other third state rights such as laying and maintenance of submarine cables and pipelines. Provisions for the accommodation of uses in the zone would be included.

It is also widely recognized that a variety of detailed provisions regarding coastal state and third state rights in the economic zone will determine whether this overall framework can be translated into a generally acceptable treaty. Virtually all these details, in alternative form, are now present in the informal Working Paper (No. 4 on the Economic Zone) thus laying a clear foundation for negotiation and decision of these issues. With a few exceptions, economic zone proposals have now been proffered from all conference groups, including the U.S. These proposals have been incorporated into the alternative texts on main trends.

The major problems encountered in the economic zone negotiation center on the following points:

(1) What are the rights of the coastal state with respect to scientific research and vessel-source pollution? The issues are being dealt with in Committee III and are discussed in Section 4 of this Report.

(2) Do the rights of coastal states over the seabed and subsoil resources of the continental shelf extend beyond 200 miles where the continental margin extends beyond that limit? While a trend toward agreement on such jurisdiction is discernible, with some states declaring that such jurisdiction is a condition of agreement for them, there has been resistance from landlocked and geographically disadvantaged states, and from some African coastal states. The U.S. proposal of an accommodation that includes coastal state jurisdiction over the margin coupled with revenue-sharing as a solution to the problem is picking up additional support, but is still strongly opposed by some coastal states with large margins. The idea proposed by some landlocked states that they have rights of access to mineral resources of adjacent coastal states has met strong and widespread opposition.

(3) What are the duties of the coastal state with respect to conservation and full utilization of fish stocks? What are the rights of access of landlocked states to fisheries? What is the role of regional and international organizations in fisheries management? What special provisions should be included for highly migratory species and for anadromous species? Section (II) below addresses the fisheries question.

(4) What principles apply to the delimitation of the economic zone or continental shelf adjacent and opposite states? Any precise formula will tend to divide the Conference, since for each coastal state that supports a particular rule—e.g., equidistance—another naturally reacts in fear that it will lose some area. This problem has in turn given rise to arguments over the weight to be given to islands in such delimitation and, even further, to arguments that small or uninhabited islands are not entitled to an economic zone at all. The realization is growing that the Conference could become hopelessly bogged down if it tries to deal definitively with essentially bilateral delimitation problems.

(5) Collateral political and other issues. Numerous proposals have now been introduced regarding islands or areas under foreign domination or control. While most are now designed to ensure benefits for the local inhabitants, some go farther and address questions of administration or total denial of rights. Similarly, other questions have been raised that are more appropriately considered in other forums.

(6) The Legal Status of the Economic Zone. It is clear to all that the economic zone is not a territorial sea. It is equally clear that some classic high seas freedoms will be eliminated (e.g., fishing) or modified, while others, subject to the provisions of the Convention (for example provisions on pollution), will be retained (e.g., navigation and overflight). It appears that the provisions of the Convention regarding coastal state rights will need further elaboration before some states feel secure enough to grapple with the issue in precise terms.

In an effort to mollify such concerns, the U.S.—after consultation with a number of coastal-oriented states—introduced the following text:

> The regime of the high seas, as codified in the 1958 United Nations Convention on the High Seas, shall apply as modified by the provisions of this Chapter and the other provisions of this Convention, including, inter alia, those with respect to the Economic Zone, The Continental Shelf, the Protection of the Marine Environment, Scientific Research and the International Sea-Bed area.

(7) Dispute Settlement. Since the heart of the economic zone negotiation turns on a balance of rights and duties, the question of dispute settlement becomes a critical element. On the one hand, guarantees are sought against unreasonable interpretations, particularly as they affect navigation and overflight. On the other hand, a measure of coastal state resource management discretion is clearly inherent in the exercise of resource jurisdiction. The dispute settlement question is also examined in Section 5 of this Report.

There appears to be a genuine desire to negotiate on these questions, and they are likely to dominate regional and international consultations before the next session.

(II) Fisheries

The maritime nations, in particular the U.S., U.K., and U.S.S.R., made significant moves toward increased coastal states rights. In early August the U.S. tabled draft Articles setting forth in detail a 200-mile economic zone sys-

tem, which implemented its earlier expression of a willingness to accept a 200-mile economic zone as part of satisfactory overall settlement of conference issues including unimpeded transit of straits, and dependent on a concurrent negotiation and acceptance of correlative coastal state duties. These duties would include a duty to conserve fisheries and a duty to permit foreign fishing under coastal state regulation where a fishery resource is not fully utilized, and international and regional cooperation in establishing equitable conservation and allocation regulations for highly migratory species such as tuna, that includes fees and special allocations for the coastal state in the economic zone. Additionally, we reiterated our position on special treatment for anadromous species such as salmon. Three main approaches seem to have emerged with respect to fisheries in the economic zone. One is complete exclusively, with no coastal state duties. Another is the U.S. type approach, which couples exclusive coastal state regulation with conservation and full utilization duties. A third, exemplified by the Articles presented by 8 EEC states, emphasizes the role of regional organizations.

While advocate of the first approach dwelt largely on conceptual arguments in the public meetings, private discussions tend to reveal more flexibility.

It is widely recognized that there should be special provision regarding landlocked state access to fisheries. In the U.S. Articles, this is presented in conjunction with the full utilization concept, but a coastal state is free to give special priority in neighboring landlocked and dependent coastal states.

The provisions on highly migratory species in the U.S. Articles represent a large conceptual and substantive shift in the hope of finding reasonable accommodation. A large number of developing country delegates have commented favorably on the U.S. move.

In response to conceptual problems with jurisdiction following salmon beyond the economic zone, the U.S. has now proposed a ban on fishing for salmon beyond the territorial sea, except as authorized by the state of origin for purposes of ensuring full utilization.

Despite these positive signs, the failure to come to grips with the question of access and full utilzation still plagues the negotiation, and is of central importance to the ultimate ability of the Conference to accommodate widely disparate interests on the subject.

(III) Continental Shelf

Draft articles on the continental shelf were contained in L. 4 (Canada, Chile, Iceland, India, Indonesia, Mauritius, Mexico, New Zealand, and Norway) and in L 47 (U.S.) Coastal state jurisdiction beyond 200 miles, reflected in both submissions, was the major theme of debate. Other issues such as limits between states remain divisive.

Formal debate presented an opportunity for states favoring extension of coastal state jurisdiction beyond 200 miles and for those favoring a limit of 200 miles to present their positions. African states speaking, with exception of Mauritius, generally advocated the position in the OAU Declaration against coastal state jurisdiction beyond 200 miles. Other opposition came principally from land-locked and other geographically disadvantaged states plus Japan. States in favor of costal state jurisdiction over the continental margin beyond 200 miles included numerous Latin Americans and Asians, Western Europeans, Canada, Australia, New Zealand, and Mauritius. The Soviet Union supports jurisdicton beyond 200 miles to a depth of 500 meters. A number of states from different geographical groups made equivocal statements suggesting that they might be persuaded to accept coastal state jurisdiction beyond 200 miles.

The subject of revenue sharing from continental shelf resources was not extensively debated in formal Committee sessions. The U.S. proposal for revenue sharing beyond 200 meters and the Netherlands proposal for a graduated revenue sharing dependent on a combination of distance and depth are the only two proposals under formal consideration by the Conference. Trinidad and Tabago, Ghana and Jamaica referred to the concept as presenting a possible accommodation of interest, and Burma spoke in opposition.

The United States proposal relating to integrity of investment is the only provision on the subject under consideration. It did not figure prominently in debate, but is contained in the alternative texts developed by Committee II on the Economic Zone.

Numerous positions regarding delimitation of continental shelf boundaries between adjacent and opposite states were advanced. Treatment to be accorded

islands greatly complicated this issue. Some states are insisting that islands receive the same treatment as continental areas. Others are seeking to exclude or limit jurisdiction around islands.

### *4. Committee III*

Committee III established two informal Working Groups where most work was done. One, on pollution, was chaired by Jose Vallerta of Mexico who chaired the equivalent Working Group in the Seabed Committee. The other, on scientific research and transfer of technology, was chaired by Cornel Metternich of the Federal Republic of Germany.

*A. Marine Pollution*

Committee III met 22 times in informal session as a small negotiating group to deal with marine pollution issues. Draft articles were completed on general obligations to prevent pollution, particular obligations, global and regional cooperation, technical assistance, rights of states to exploit their resources, and the relevance of economic factors to developing countries' obligations. These texts were not fully agreed and the U.S., among others, opposed the last two in their entirety. Work was begun on rights to set standards and to enforce them, and on monitoring. The Committee did not begin consideration of state responsibility and liability, sovereign immunity or settlement of disputes.

The major item of contention in this discussion was the double-standard issue raised by Brazil, India and several other developing countries. The focus of discussion was on an Indian proposal to subject all obligations of states to their national environmental and national economic development policies. The U.S., U.K., Japan, and several other Europeans strongly opposed this approach. Some developing countries such as Jamaica, supported a more restricted concept to give flexibility to developing countries only with regard to land-based pollution.

At the next session, the Committee will begin with the article on monitoring and then take up standard-setting and enforcement rights. The basic problem of vessel-source pollution remains to be addressed, although a trend against coastal state standard setting is already evident, particularly with respect to construction standards.

Negotiations have moved to the point of beginning on the major controversial issues of standards and enforcement, particularly regarding vessel-source pollution. Private negotiations and consultations indicated considerable detailed consideration of specific problems and a willingness to discuss realistic solutions.

*B. Scientific Research and Transfer of Technology*

The Informal Working Group on Scientific Research and Transfer of Technology held 21 meetings during this session, either in informal session or as a negotiating group.

Initially, there was an attempt to elaborate a definition of scientific research drawing from the definition elaborated by the Seabeds Committee which excluded industrial exploration and specified that such research should be conducted for peaceful purposes. Several proposals were made by developing countries to delete these two qualifications. After inconclusive discussion, the informal committee decided to put the definitional question aside.

Agreement, however, was reached on general principles for the conduct of research as well as obligations for international and regional cooperation. The general principles include a requirement that scientific research be conducted exclusively for peaceful purposes; a clause dealing with non-interference with other uses; a requirement that research comply with applicable environmental regulations; and agreement that research activities shall not form the legal basis for any claim to any part of the marine environment or its resources.

The most important issues, and those on which there was the greatest divergence of views, centered upon research in the economic zone and the international seabed area. As deliberations neared conclusion four major trends emerged. Those trends were set forth in the Report of the Working Group which is expected to form the basis for negotiations at the next session.

One of those trends was tabled by Colombia and is stated to represent "The consensus of the Group of 77 of the Third Committee, without committing the final position of the members of the Group." This proposal provides that all research in the economic zone—including that conducted by satellites and ODAS—requires the explicit consent of the coastal state. Research in the in-

ternational area would be conducted directly by the International Authority or under its regulation or control.

The second trend, although not based on a formal proposal, follows the language of the Continental Shelf Convention and provides that while consent is required to conduct research in the economic zone, this consent shall not normally be withheld when certain conditions are met. It contains no reference to research in the international area.

The third trend provides for an agreed set of international requirements for the conduct of research in the economic zone in lieu of a requirement to obtain coastal state consent. Research in the international area may be carried out by all states. Document A/Conf. 62/C.3/L. 19, co-sponsored by 17 countries, reflects the substance of this third trend. The co-sponsors include 11 developing countries.

The fourth and final trend provides for total freedom to carry out research in the economic zone "except that marine scientific research aimed directly at the exploration or exploitation of the living and non-living resources shall be subject to the consent of the coastal state. In the international area, all states have the freedom to carry out marine scientific research related to the seabed, subsoil and superjacent waters."

In addition to the above, proposals were made with respect to the legal status of marine research installations and the responsibility and liability of those conducting research. These proposals, however, were not formally discussed at this session.

With the identification of the four main trends of proposals for the conduct of scientific research in the ocean, it appears that the Conference at its next session will be in a position to concentrate on reducing these texts to a single set of articles on scientific research.

Nigeria and Sri Lanka introduced separate formal proposals on technology transfer. Sri Lanka formally withdrew its proposal and joined with Nigeria and about 20 others in co-sponsoring a subsequent proposal on technology transfer (Document A/Conf. 62/C/3/L/12). This proposal calls for transfer of technology, including the facilitation of transferring patented and non-patented technology, through agreements under equitable and reasonable conditions. It requires, inter alia, that the Authority ensure that legal arrangements with respect to seabed activities provide for the training of developing state nationals, and that all patents on machinery and processes for exploiting the international area be made available to developing states upon request.

### *5. Dispute Settlement*

In the latter part of the session about 30 states from all regions interested in dispute settlement met informally on a regular basis to discuss ideas and provisions for the dispute settlement chapter of the convention. The Group was chaired by Ambassadors Galindo Pohl of El Salvador and Harry of Australia. The result is a Working Paper containing alternative texts on basic provisions introduced during the last week of the Conference by Australia, Belgium, Bolivia, Colombia, El Salvador, Luxembourg, Netherlands, Singapore, and the U.S. (A/Conf. 62/L. 7), and supported by most members of the Group.

Aside from Committee I, there has not been much public debate in the Conference on dispute settlement, although there are many states that regard it as a critical aspect of the negotiations.

The new paper (Doc. L. 7) is likely to stimulate further study and discussion during the period before the next session of the Conference.

The paper resulted from some of the most serious and constructive meetings of the entire session. It contains draft alternative texts, and notes indicating relevant precedents, on eleven points as follows:

(1) Obligation to settle disputes under the Convention by peaceful means.

(2) Settlement of disputes by means chosen by the parties. These texts deal with agreement by States to resolve a dispute by means of their own choice.

(3) Clause relating to other obligations. The issue dealt with is whether, in the absence of express agreement to the contrary, precedence is given to the procedures in the Convention or other procedures accepted by the parties entailing a binding decision.

(4) Clause relating to settlement procedures not entailing a binding decision. In a situation in which a dispute is referred to non-binding procedures, these

articles deal with the question of when a party is entitled to invoke applicable binding procedures under the Convention.

(5) Obligation to resort to a means of settlement resulting in a binding decision. Three alternative forums are described in connection with the obligation: Arbitration, a special Law of the Sea Tribunal, and the International Court of Justice.

(6) The relationship between general and functional approaches. During the discussion, there was considerable support for special functional forums in connection with some issues. The most widely discussed was a special Dispute Settlement Forum within the Seabed Authority. The issue addressed here is whether, and to what extent, there is resource from a special functional forum to the general procedures established by the Convention.

(7) Parties to a dispute. These texts establish that the dispute settlement machinery would be open to State Parties to the Convention, and then addressed the issue of whether, and the extent to which, international organizations, and natural and juridicial persons, could be involved.

(8) Local remedies. The texts deal with the question of exhaustion of local remedies.

(9) Advisory jurisdiction. The question addressed is whether a national court, duly authorized by domestic law, may request an advisory opinion from the Law of the Sea Tribunal on a question relating to the interpretation or application of the Convention.

(10) Law applicable. The question addressed is whether and under what circumstances rules, in addition to the Law of the Sea Convention, may apply, including bilateral agreements, regulations of international organizations pursuant to the Convention, and the right of Parties to agree to seek a settlement *ex aequo et bono*.

(11) Exceptions and reservations to the dispute settlement provisions. The issue addressed is whether, and with respect to what issues, there would be exceptions to the dispute settlement obligations of the Convention.

I

ANNEX—OFFICERS OF THE CONFERENCE

Officers of the Conference and Membership of the General Committee, the Drafting Committee and the Credential Committee.

President: Mr. Hamilton Shirley Amerasinghe (Sri Lanka)

Vice-Presidents: Algeria, Belgium, Bolivia, Chile, China, Dominican Republic, Egypt, France, Iceland, Indonesia, Iran, Iraq, Kuwait, Liberia, Madagascar, Nepal, Nigeria, Norway, Pakistan, Peru, Poland, Singapore, Trinidad and Tobago, Tunisia, Uganda, Union of Soviet Socialist Republics, United Kingdom, United States, Yugoslavia, Zaire, Zambia.

Rapporteur General: Mr. Kenneth O. Rattray (Jamaica)

COMMITTEE I

Chairman: Mr. Paul Bamela Engo (Cameroon)
Vice Chairman: Brazil, German Democratic Republic, Japan
Rapporteur: Mr. H. C. Mott (Australia)

COMMITTE II

Chairman: Mr. Andres Aguilar (Venezuela)
Vice Chairman: Czechoslovakia, Kenya, Turkey
Rapporteur: Mr. Satya N. Nandan (Fiji)

COMMITTEE III

Chairman: Mr. A. Yankov (Bulgaria)
Vice Chairman: Colombia, Cyprus, Federal Republic of Germany
Rapporteur: Mr. Abdel Magied Hassan (Sudan)

II

The General Committee consists of 48 Members, as follows: The President, the 31 Vice-Presidents, The Rapporteur General, and the 15 Officers of the three Main Committees.

*Drafting Committee*

Chairman: Mr. J. A. Beesley (Canada)

Members: Afghanistan, Argentina, Bangladesh, Ecuador, El Salvador, Ghana, India, Italy, Lesotho, Malaysia, Mauritania, Mauritius, Mexico, Netherlands, Philippines, Romania, Sierra Leone, Spain, Syria, Union of Soviet Socialist Republics, United Republic of Tanzania, United States

*Credential Committee*

Chairman: Mr. Heinrich Gleissner (Austria)

Members: Chad, China, Costa Rica, Hungary, Ireland, Ivory Coast, Japan, Uruguay

Copies of Articles sponsored or co-sponsored by the U.S. at Caracas will be airpouched separately to all Embassies.

OUTLOOK FOR PROVISIONAL AGREEMENTS

Mr. ZABLOCKI. You stated in your summary that it appears that the participating states at the Law of the Sea Conference are unwilling to agree on individual issues until an entire package is developed. In that case, I presume that the prospect for acceptance of the proposal that the United States has made for provisional application of the agreements on mining and fisheries is almost nil. Is my assumption correct?

Mr. STEVENSON. I am not sure I would agree with that. I think while countries want to see the whole treaty package which they will ultimately ratify before agreeing to a particular fishery solution, once you have that package and it is in the ratification process, I think that they would be willing to have provisional application of those parts of the treaty dealing with the most urgent domestic problems, particularly fishing and deep seabed mining.

I do not think that the desire to have a package deal—a comprehensive type of treaty—would prevent provisional application.

Mr. ZABLOCKI. So, then, your answer would be that the prospects at the Conference for acceptance of provisional application are good, or fair?

Mr. STEVENSON. I think we have not yet had as much discussion of provisional application as we would like. The impression we have gotten is that countries are much more concerned with the substance. I think that we do have a reasonable prospect, if we can get agreement on the substance, of getting provisional application, particularly in fisheries.

NATIONAL JURISDICTIONAL ISSUES IN THE INTERNATIONAL SEA AREA

Mr. ZABLOCKI. Mr. Ambassador, to what extent do you envision problems with regard to claims of national jurisdiction in areas where there are quite a few islands—for example, in the Aegean Sea? How would those two categories, fishing and deep seabed mining, be affected by national jurisdiction claims in areas such as the Aegean?

Mr. STEVENSON. I think the island question is one of the most difficult that the Law of the Sea Conference must deal with.

Now, basically, there are two kinds of problems. One is the problem of what kind of territorial sea and economic zone does the island state out in the middle of the ocean where there is no one else around have.

I think there was considerable support this summer, particularly from the large number of newly independent island states, for their having the same territorial sea and the same economic zone as continents.

We are faced with the argument by some that this was not just because they were so small and their populations were so limited. They frequently turned the argument around and said it was just because they did not have that kind of land area and had traditionally been much more dependent upon the ocean that they needed a full territorial sea and economic zone.

Now, of course, this whole issue makes it very important that the guarantees of navigation and other uses within an economic zone be effective if we are not going to interfere with navigation.

The second aspect of the island question—which is really the one you are dealing with, I think—is the question of how do islands affect delimitation when you are not out in the middle of the ocean but you have a number of countries close together or the more drastic situation where you have other countries having islands right off your own continent.

The answer to this, Mr. Chairman, is, I think, that on any one of these issues you could probably split the Conference right down the middle because all countries have very different sorts of delimitation questions.

I think that this underscores why we think compulsory dispute settlement is so necessary, because we do not think it will be possible to have anything other than a fairly general formula, and the only way that you are really going to get an equitable result will be to deal with this on a case-by-case basis.

This is one area where there have been some useful decisions by international bodies. The International Court decision in the North Sea case was successful in resolving the dispute in that area. If this Conference were to try to legislate the details of a solution to this delimitation question, I am afraid we will be hung up for a long time. So I hope that we can find an effective procedural formula for dealing with that issue.

Mr. ZABLOCKI. Thank you, Ambassador Stevenson.

Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. I would like to welcome Mr. Stevenson to the committee and to compliment him for his informal remarks. I shall read the statement with interest.

Since he can't do it for himself, Mr. Chairman, I would like also to compliment Ambassador Stevenson for his leadership as chairman of the delegation. He has given an indication this morning of the extent of his knowledge and his breadth of vision. I do think that he has played a key role thus far and I am sure he will continue to play a key role in the development of what we hope will be a satisfactory treaty which will be developed next year.

Having said that, I would like also to say that I personally regret very much that I was unable, because of the legislative schedule here, to visit Venezuela during the discussions. Even though the Conference continued for a considerable length of time. I was never able to keep to my original plan of coming down. However, I have followed this situation with considerable interest.

COMPULSORY SETTLEMENT OF DISPUTES

I have a couple of questions. You have suggested that there must be provision for a compulsory settlement of disputes. I should assume

that it might be difficult to reach agreement on this point. Would that have to be part of the treaty, in your opinion, or could it follow in the wake of a treaty?

In many respects, I should think you would need a determination of how to resolve difficulties in the economic zone at the time you were considering whether or not to ratify a treaty.

Mr. STEVENSON. I think merely to have the compulsory dispute settlement machinery as an optional protocol would be very dangerous and I think, if past history is any guide, it would mean that it simply would be ignored. Very few countries would accept it.

So I think it is important that it be part of the treaty. I think it could very much influence whether the Government would recommend and this Congress would be willing to accept a treaty in areas like the economic zone where it is important to have some assurance of an equitable accommodation of different uses.

When I say "compulsory," I should qualify that by indicating it would have to be compulsory only in the final instance; if countries themselves wanted to use other ways of settling the disputes, they should certainly be free to do so. But there should always be the possibility, if one of the states is reluctant, of the other state's having a way of forcing an adjudication.

OCEAN POLLUTION

Mr. FRELINGHUYSEN. I am not sure of the exact language of the resolution passed by the House a year ago in April, but there was a reference in it, I think, to international protection from ocean pollution.

From your remarks about pollution, I gather there really has not been a resolution of how that problem should be handled. Quite obviously, the coastal states have a legitimate interest in pollution, and you have said that, if carried too far, that interest might be excessive.

How do you envisage that international protection might be developed against pollution?

Mr. STEVENSON. I think it is important, in considering the nature of the Law of the Sea negotiations and what is reasonably achievable, to recognize that to some extent what we are dealing with is more like a constitution than a particular piece of legislation, because the really critical issues are an attempt to decide who will legislate and who will enforce certain rules of conduct. Those are the critical decisions.

I think this is true in the pollution area. We won't, at this Conference, be able to deal with all of the substantive aspects of the kind of pollution rules we would like to have, but we really should deal with the question of how those rules are going to be made and who is going to enforce them.

That gets to the point that you raised about accommodating the coastal states and international interests. There are many different variants of this problem. The United States has felt very strongly that, in the economic zone, there should be minimum international standards with respect to the production of hydrocarbons. A coastal state can have the right to impose stricter standards but at least there should be minimum international standards.

Some of the developing countries have been very reluctant to accept that, and I might also say that last summer the issue of whether there should be a double standard—in effect whether there should be a lesser standard for developing countries—was also raised. We were very sorry to see that issue raised, as we do not think that is an intelligent approach to the pollution question.

I do think the most troublesome problem in the pollution area is the extent of coastal state control of vessel source pollution in the economic zone. That is the area I was referring to that does have a potential for interference with navigation if coastal states simply have full control with respect to vessel source pollution.

On the other hand, the other extreme of simply leaving it up to the flag states, with all of the problems of flags of convenience, isn't satisfactory, either.

As I indicated, a number of intermediate positions have been suggested—having port states, where the vessels can most conveniently be inspected, enforce pollution controls, and having very tough international standards. A start on that was made at the IMCO conference last fall.

A lot of people would have liked higher international standards, but certainly if you can get tough international standards, that probably is not only the least risky from the standpoint of interfering with navigation but also the most effective way from the standpoint of preventing pollution.

### DANGER OF UNILATERAL ACTION

Mr. FRELINGHUYSEN. I have one final question if I may, Mr. Chairman. You mentioned the importance of reaching agreement on a treaty relatively soon, the difficulties that unilateral action might cause, and the dangers that this might cause. What do you think are the prospects for unilateral action that might be very disruptive to the possibility of securing agreement on a treaty?

Mr. STEVENSON. Well, there is no doubt that since World War II, we have had this pattern of unilateral action. Much of it is in response to very legitimate coastal state concerns. This is not a matter that has been limited to the United States.

On the other hand, in the last 10 years in particular, we have urged other countries to restrain these unilateral claims and to try to work out an equitable international solution. I think we have been effective in preventing much more general acceptance of the 200-mile limit than would otherwise have been the case.

I think the fact that the Conference is going on has also had a restraining influence on many countries. I think the African countries which might have gone that way have instead decided to support the 12-mile territorial sea and the 200-mile economic zone with some exceptions.

However, I think, if the Conference does not show substantial progress, there is the risk that legislatures and governments throughout the world will take the matter into their own hands. So that, I do think, that the Conference must show substantial progress.

Mr. FRELINGHUYSEN. Thank you.

Mr. FRASER. Mr. Fascell.

PENDING LEGISLATION ON 200-MILE FISHING LIMIT AND DEEP SEABED MINING

Mr. FASCELL. Mr. Ambassador, what would be the implications both for the Law of the Sea Conference and for U.S. foreign policy generally if the Congress passed and the President signed the pending bills on deep sea mining and on the 200-mile fishing limit?

Mr. STEVENSON. If I may take the fishing bill first, Congressman Fascell, I think that the unilateral extension of our fishing jurisdiction would have an adverse effect on the Conference negotiations. We, in effect, would be doing what we have urged others not to do.

While I have very little difficulty with the substance of the fisheries proposal since it coincides very largely with what we would like to see come out of the Conference, if we do this unilaterally, we are in a very poor position to object to some other country unilaterally doing something that would be very harmful such as the 200-mile territorial sea.

I also think that in view of the effect on countries such as the Soviet Union and Japan, who have been moving in the international negotiations, and may be willing to accept as part of an international package restrictions on their fishing that they will not accept bilaterally, it really will not be in the long-range interests of our fishing industry.

I think it is always difficult to urge a little more patience on those who have been very patient indeed over the years, but I think that we are now in serious substantive negotiation. I think if there is anything clear, it is that the coastal fishermen are probably going to be taken care of in almost any conceivable internationally agreed treaty. So it is a question of time really as far as fishing is concerned.

I also think that the fishing bill is a problem because it clearly goes beyond what we feel can be done under existing international law.

Now, in the deep seabeds the problem is somewhat different because most of the legislation that I have seen has been carefully drafted to not violate international law in the sense that it attempts simply to regulate U.S. citizens rather than attempting to give an exclusive claim or sovereignty to part of the ocean which you could not do.

We at least have felt that under existing high seas freedoms exploitation could be carried on with reasonable regard for other peoples' interests.

Now most of the world doesn't agree, as witnessed by the so-called moratorium resolution that was passed in the United Nations. Their basic legal position is that they look on the deep seabed as common property and until we get an agreement, no one should have a right to mine it.

In any event, from our standpoint, we think the legal position is quite different from the fishing legislation, but the problem is one of very great national differences on how the exploitation of that area should be handled. We still have a major gap to breach in the negotiations on that problem.

The administration is reviewing in its interagency task force and elsewhere what its position should be in the light of developments in Caracas with respect to this deep seabed legislation and the effect that it might have on the Conference negotiations.

There is always the risk that it could distract the Conference. Instead of concentrating on negotiations, a good deal of time will be spent criticizing what other countries have done. Of course, you will also have the problem of getting domestic positions so polarized that negotiations are stymied.

Mr. FASCELL. Mr. Ambassador, if the deep sea mining bill were enacted into law, it would seem to me that it might complicate matters unnecessarily. Any one of those bills by bringing up issues relating to licensing, distribution of profits, and the whole question of an international regime in my view, would unnecessarily complicate your work.

Mr. STEVENSON. You are quite correct. As far as the substance, as I say, I think there are sharper differences in the Conference on the deep seabed than in any other area and many would look on this as an attempt by the United States to impose our views on the rest of the world.

### EFFECT OF LAW OF SEA CONFERENCE ON EXISTING AGREEMENTS

Mr. FASCELL. What about historical fishing rights, present international fishing and conservation agreements, other agreements such as safety at sea and the International Pollution Conference; existing bilateral agreements; existing decisions by the court such as in the North Sea case? What happens to all of those in terms of the proposed comprehensive treaty?

Mr. STEVENSON. Well, in many of those areas, a new comprehensive treaty would supersede the existing convention. Now, this would not be true in all areas. We would hope to build in some of the substantive areas on the existing treaties. I think this is why the distinction I made earlier is important. We are not at this point going to be able to deal with all of the substantive law for the ocean. The most critical thing is to decide how that law is going to be made in the future.

I think, for example, a large part of the existing high seas convention is going to be carried over. I think most delegations would approve that.

Now, some fishing treaties may definitely have to be changed as part of the overall agreement that is now being reached, but I don't think you can generalize. Some will be kept and others will not.

### POSITIONS OF NATIONS WITH SPECIAL INTERESTS IN THE OCEANS

Mr. FASCELL. I have one final question, Mr. Ambassador. I think you touched on this, but I am trying to get it in capsule form. How do the different interests seem to be crystallizing—coastal states, landlocked states, strait states, developed nations, developing nations, and hemispheric blocks, and so on?

Mr. STEVENSON. I think you have hit on a very important aspect of this negotiation that distinguishes it from some of the United Nations' discussions. That is, this is not a simple split between the developed and developing world. Really it is only in the deep seabed that you had that kind of a split. In other areas if you use the term "have" and "have not" as opposed to "developed" and "developing," you find that some of the "have" countries are developing countries like Brazil with a huge coastline. Other developing countries are sitting athwart an international strait.

The differences between the coastal countries and the maritime countries, or rather between coastal and maritime interests are important, but you find many countries such as the United States which are important maritime countries, but which on the other hand are very important coastal countries. In fisheries we are much more of a coastal country than we are a distant-water maritime country.

The landlocked countries and the countries without long coastlines are playing a role in this Conference. They have a rather special interest and want to participate some way.

The coastal countries have taken somewhat different positions with respect to that interest.

The African coastal countries where most landlocked countries in terms of numbers are located, there are something like 15 or 16 landlocked African countries, have tended to take a regional approach. They are willing to give to the landlocked countries of that region equal fishing rights in their economic zone. They will not, however, give them an equal right to the mineral resources of the economic zone, which is what a number of the African landlocked countries proposed. I think that this is one of the reasons why a proposal for some kind of international revenue sharing on a modest basis from the production in the economic zone may be the way to get general agreement. I do not think the coastal countries of the world will ever agree to this direct right of participation by the landlocked countries in the mineral resources of their economic zone, whereas, perhaps, they will agree as a way of getting overall agreement, to some kind of a modest international payment.

You asked about the strait states. There are only a limited number of strait states in the world and some of them like the United Kingdom are both strait states and maritime states.

As I said in my earlier statement, the great bulk of the countries of the Conference have not taken a position on the straits issue. It has been argued mostly between the maritime countries and a relatively few strait states and this summer we did have some very intelligent proposals for attempting to reconcile the interests of those two groups.

Mr. FASCELL. Thank you.

Mr. FRASER. Mr. Whalen.

### ENFORCEMENT OF FISHERIES RIGHTS AND REGULATIONS

Mr. WHALEN. I have only one question, Mr. Ambassador. Mr. Moore in his statement refers to the new guidelines for the enforcement of our rights to Continental Shelf fishery resources which may be invoked on December 5 of this year. I wonder if you could explain this in a little more detail, specifically under what authority are these guidelines imposed and what enforcement procedures will be followed.

Mr. STEVENSON. I would like to ask Deputy Assistant Secretary Clingan to comment on that point.

## STATEMENT OF THOMAS A. CLINGAN, JR., DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND FISHERIES AFFAIRS

Mr. CLINGAN. Their guidelines to which you refer have been promulgated to the countries that are involved in the fishery resources in the vicinity of our shelf and they are based, first, upon the 1958 Convention

on the Continental Shelf of which gives the coastal state the authority exclusively to exploit those species and, furthermore, on the basis of the provisions of the Bartlett Act, which is our domestic implementation of that act.

In September these nations were sent a diplomatic note informing them that we would be on December 5 strictly enforcing the provisions of the 1958 treaty. They said—my office is at present involved in a series of bilateral negotiations where we are attempting to negotiate provisions which would satisfy the requirements of the Continental Shelf issues regulations.

Mr. WHALEN. Has this provoked any adverse response?

Mr. CLINGAN. We have had no formal response at all. I have had some informal consultations with some nations where they have raised certain questions about the applicability of our regulations.

Mr. WHALEN. How far would the guideline area extend?

Mr. CLINGAN. As far as the Continental Shelf extends.

Mr. WHALEN. And we are prepared to enforce these regulations?

Mr. CLINGAN. Yes; we are prepared to enforce them insofar as our resources permit us to enforce them.

Mr. WHALEN. What resources are you referring to?

Mr. CLINGAN. The Coast Guard, yes, and we are attempting with all deliberate speed to negotiate with individual countries or groups of countries in order to try to work out arrangements where the objectives of the regulations will be satisfied and, therefore, reduce the level of enforcements that might be necessary.

Mr. WHALEN. What nations would be most affected by this?

Mr. CLINGAN. Certainly I think the Soviet Union would be involved and early in February the Japanese, and I am going to Tokyo next week to conduct bilateral negotiations and those countries which fish off the northeast Atlantic coast which we referred to last week in Miami in that meeting—again it is the Soviets, the Poles, the Japanese, the United Kingdom, Canada, Portuguese and Spanish and Italians and French.

Mr. WHALEN. Thank you, Mr. Chairman.

Mr. FRASER. Mr. Lagomarsino.

Mr. LAGOMARSINO. Just to follow that question, what kind of a zone are we talking about with these new regulations?

Mr. CLINGAN. We are talking about the area of water covering the Continental Shelf of the United States wherever that might occur and in some areas that might be a mile off shore, off the coast of Florida we have a very narrow shelf and off the coast of New England we have a very large shelf. These are lobster and crabs that have been named as species, sedentary species of the shelf and protected under the 1958 convention.

Mr. LAGOMARSINO. But this is not primarily fishing.

Mr. CLINGAN. It is not fin fish at all.

Mr. LAGOMARSINO. How long, sir, do you think this process is going to take and I know this is a very difficult question, but I think it is a very important one.

Mr. STEVENSON. I think the length of time is basically going to depend on the willingness of countries to move from where we were last summer, which is a basic consensus on an overall line of agreement to taking decisions on some of these critical issues, like the nature of the economic zone and of the seabed authority in the area beyond.

Now, many people have said, well, there is such a huge list of items to be decided that you will never get through. I do not think that is quite right. I think the really critical issues aren't that numerous and while we have to have a comprehensive treaty in the sense that it will deal with all of these areas that I referred to, I think in some areas it can certainly leave some of the details to the future.

I certainly would not want to make any time prediction. What I will say is that I think it is absolutely critical that we show real progress next year and we go from where we now are to the point where you can see the final treaty emerging.

Now, hopefully we will continue that way next year and perhaps if we come back after the Geneva session, we can give you a much more precise estimate. It is a lot easier to tell you what we have to do—I think we have to wind this up soon—than to give you a precise prediction as to when that will happen.

Mr. LAGOMARSINO. What do we tell these fishermen who are so upset about this whole problem, and I think in some cases rightly so. Just wait a few more years and we will tell you how long it is going to take?

Mr. STEVENSON. I feel that the next session is going to be critical. I think we should know by the end of the Geneva session whether we are going to get an agreement which could be wound up as is contemplated with another session in Caracas, which could be next summer or early the next year, or whether another entire year will be required. Now, this also depends to some extent on what the other countries are willing to do in terms of the amount of time they are willing to devote to this.

We have more resources, even though some of us have difficulty spending as much time on the Law of the Sea as we would like, and are in a better position than some of the developing countries where the same man has to be attending a lot of other conferences.

So while we have been pushing very, very hard, we have to be mindful of some of the problems of the other countries.

Mr. LAGOMARSINO. Thank you.

Mr. FRASER. Mr. Bingham.

Mr. BINGHAM. Thank you, Mr. Chairman.

Mr. Ambassador, I think your report is a most interesting one and in many respects more encouraging than I had expected. From the newspaper accounts and so on it seemed that the Caracas negotiations were—the result was almost entirely negative, but you have given us a somewhat more hopeful prospect.

### ACCOMMODATION OF DISTANT WATER FISHING INTERESTS

First, I have a question about more or less the political aspects of the problem within the United States. How was the agreement reached with respect to the 200-mile economic zone in relation to the west coast fisheries, our west coast fisheries, who operate off Latin America?

Was that very much opposed by them and how was that resolved?

Mr. STEVENSON. Congressman Bingham, we do have an interagency task force within the Government which provides a vehicle for all of the various Government interests to be reflected and where we have disagreements, that ultimately goes to the President for decision.

In addition to that, we have an advisory committee where a number of these interests are represented themselves and we try to take into account their special problems in arriving at a general policy.

Now, I think this particular specific issue is an example of how within a general decision adopting the 200-mile economic zone as making sense in terms of achieving our overall interests and moving the negotiations forward, we still have attempted to take into account the interests of the distant water fishermen.

We have suggested that there be special treatment for highly migratory fish, such as tuna, within the 200-mile economic zone. Recommendations on conservation and allocation of a regional fisheries organization should be given effect with respect to this type of fish which our scientists tell us can be most effectively managed through that kind of international as opposed to strictly national management.

I think here again, like in many areas, you have to consider not only what the present situation is, but what it is likely to be if we are out voted at the Conference or alternatively, if there is no Conference, what the situation will be if the 200-mile territorial sea becomes generally accepted.

I think the answer in a general way is that we do try to take into account the individual interests. Our own perspective as to how that interest can best be protected in many instances may not agree with the industry itself, but we do take it into account in line with our overall policy.

VESSEL SOURCE POLLUTION CONTROL

Mr. BINGHAM. I was a little surprised at the reference on page 10, at the top of page 10 of your statement, which indicates that we do not agree that vessel source pollution should be something within the jurisdiction of a coastal state in the 200-mile limit; is that correct?

Mr. STEVENSON. I think we were talking about plenary coastal state jurisdiction in that area.

Now we have suggested that with respect to enforcing internationally arrived at pollution standards that port states should have very broad enforcement jurisdiction. It is our feeling that that will do the job better than having coastal states attempt to stop vessels that are in transit and it will also be better from the standpoint of our navigational interests.

We feel that as far as setting the standards are concerned, you will get a better result if you have internationally set construction standards so that vessels have to comply with the same standards throughout the world.

That doesn't mean that we want a weak standard. I think it is generally agreed within the Government that we want very adequate and strict standards, but there is this concern that as far as vessel source pollution is concerned, the answer isn't simply to turn it over to the coastal states, that we should look for other solutions that will accommodate the two interests better.

Mr. BINGHAM. Are you familiar with the articles that appeared recently in the New Yorker and the book subsequently published on the subject of the great danger from tankers and particularly the supertankers?

Mr. STEVENSON. I read the book review of the New York Times, but that is the extent of my knowledge of that particular book. I think certainly the supertanker is one of the technological developments that I think makes it necessary to reexamine the Law of the Sea and see what kind of construction standards are necessary in this day and age.

Mr. BINGHAM. Were these discussed at all in Caracas; for example, the double bottom requirement for tankers?

Mr. STEVENSON. No, I think again the feeling was that we should be serving more of a constitutional function in that area, deciding how that type of standard will be arrived at, but leaving it to bodies like IMCO that are technical in nature to come up with precise types of standards.

U.S. POSITION ON THE OUTER CONTINENTAL SHELF AND DEEP SEABED

Mr. BINGHAM. With regard to the Outer Continental Shelf development and the deep seabed, have there been any substantial changes in the U.S. position since you outlined those to us a year or two ago?

Mr. STEVENSON. Well, I don't know.

Mr. BINGHAM. At the time that the draft treaty was prepared.

Mr. STEVENSON. There has been a change in that the initial U.S. position. The continental margin contemplated a greater degree of international control over the resource management than we presently are supporting. Our position has remained completely the same in urging that other uses of that area be protected, particularly navigation, and that there be compulsory dispute settlement and that there be some kind of a revenue payment to the international community.

There was very, very broad opposition by coastal countries to having any sort of international control over resource management as such. So that did represent a change.

We have concentrated on the other aspects, the protection of the other uses, while accepting the very general disposition to give the coastal state the primary role in the resource management aspects of it.

Now we have continued to insist, and this brings us back to pollution, that there should be some minimum international standards governing coastal state resource management insofar as it involves the protection of the environment.

Mr. FRASER. Your time has expired. Mr. Ryan, do you have a question?

ECONOMIC POTENTIAL OF DEEP SEABED

Mr. RYAN. The only questions I have, Mr. Ambassador, relate to what you may know about the seabed itself. It seems to me that the potential of the deep seabed for providing some of the raw materials which we don't have on the land surface, might be extremely significant.

What work has been done by that Conference regarding this?

I think the possibility for developing the capacity to explore the deep seabed, and then the capacity to mine it or to drill it in the case of oil, should be a matter of very high priority in this country, but before we get that far, we would like to know what you know about the possibilities for doing so, both politically and from an economic standpoint. Can you comment on that?

Mr. STEVENSON. The Conference itself has not been engaged in sponsoring any direct investigative effort. Most of the information that is available comes from particular governments, including our own, and the Conference is really limited to having the Secretariat prepare reports which have tried to put together as much information as exists in these reports.

Our knowledge is clearly still only partial. As a very inexact generalization, I think it is fair to say that most of the information indicates that most of the oil, at least that they have found so far, is in the coninental margins and not in the area beyond.

Now, sometimes these margins extend beyond 200 miles, but with a 200-mile economic zone you will encompass a great deal of the oil potential and that will be under the primary jurisdiction of various coastal states.

EXPLORATION OF DEEP SEABED

Mr. RYAN. There hasn't been any extensive deep sea exploration yet, has there?

Mr. STEVENSON. Well, there is a scientific vessel, the *Glomar Challenger*, that has been carrying on a good deal of exploration in this area. Now in the deep seabed, again, in the present state of our knowledge and exploration, the managanese nodule is the principal resource that is being talked about at the present time.

Those nodules were discovered away back in the 1890's and they knew they were there, but it is only comparatively recently that the potential exploitation of them has been looked into.

Our Government has a number of research projects as do our scientific institutions.

Mr. RYAN. There is only one vessel presently?

Mr. STEVENSON. No; Woods Hole has a number of vessels.

Mr. RYAN. That is beneath 10,000 feet?

Mr. STEVENSON. I don't know about the precise nature of all of these projects. The only deep drilling project, I think, is the *Glomar Challenger*, but I don't know.

Tom, do you know whether there are others involved in deep drilling?

Mr. CLINGAN. That is the National Academy of Sciences under the advice of several major institutions around the country, but there are a number of other institutions that are taking seismic studies, studying the geology in both the Atlantic and Pacific. The deep drilling project is the only one that is doing extensive coring, and that is in the Pacific.

Mr. RYAN. How much of that has been done?

Mr. CLINGAN. The *Glomar Challenger* has been operating in the Pacific, I think, about 2 years. They have made five or six different legs. They have come up with some surprising information. There is a great deal more to be done.

That one vessel, of course, could be very well used in the Pacific Ocean alone for many more years.

Mr. RYAN. The reason I ask this, Mr. Ambassador, is because I had the opportunity to fly very extensively over the Canadian Northwest Territories a couple of years ago. I don't think there is a square mile

of the Canadian Northwest Territories that does not show the stripe of the track of the exploratory drilling and soundings of that area. It is safe to say that the land areas in most of the world have been pretty thoroughly explored for oil.

But to the best of my knowledge, with 60 percent of the Earth's surface underwater and more than 50 percent of it in deep water, that is not the Continental Shelf. There has been almost no significant exploration where we can say there is or there is not oil in deep water.

In advance of that discovery, what is being done to develop some kind of structure by which we can determine who owns the shore area? If there should be some sudden discovery in, say, the Middle Atlantic Ridge or off the Tomoto Archipelago of a substantial oil fill of the size of the Saudi Arabian field, it could substantially change the world's politics.

What has been done and what might be anticipated by that conference in the way of setting up a structure to keep war from breaking out over a field in some undetermined place in the world?

Mr. STEVENSON. Well, I think to some extent you already are having what you talked about, because it appears that the offshore oil is not nearly as much concentrated in one area as the onshore oil, and you have this recent Mexican discovery.

In many parts of the world, you have alternate sources of oil in the offshore area which are developing. Now, the history to date has been that that has been continental margin oil, and I think the geology is such that they think it is unlikely that there will be, percentagewise, very much found in the deep seabed.

But let us leave that aside. Let us assume that there is such a discovery. The whole consideration of this area beyond the 200-mile economic zone or the economic zone extending to the edge of the continental margin, wherever that final limit is agreed upon—the concept of the area beyond that as being an international area, while it has focused principally upon this problem of the exploitation of manganese modules, because that is the most immediate resource interest and, in the view of many, the only one that we are going to be dealing with for the rest of this century—I think it has always been thought that we want an international regime and an international organization that could also deal with whatever other resource interest might develop over time.

Now, as I indicated earlier, at the present time there is a dispute. We have taken the position that the traditional high seas freedom of the seas principle continues to apply and that therefore anyone that shows reasonable regard for anyone else's interests is free to pursue these interests, whether these be fish or seabed minerals.

On the other hand, it is quite clear that you can't give anybody an exclusive right the same way you can on land, which is what ocean miners would like to have.

Now, more than a two-thirds majority of the rest of the world has taken the position that high seas principles do not apply, that that is the common property of mankind; and until we get an agreement, it cannot be exploited.

I think it is common ground that, if we don't get agreement, you are going to continue to have disputes about what the legal status of

that area is. So I think it is only through getting some kind of an agreement for regulating this area and giving exclusive rights which will be protected but also exclusive rights that are exercised in a way that the international community's interests are taken into account that you are going to get a solution. It will apply not merely to the manganese module problem but to whatever other resource does turn up as our scientific knowledge expands.

DEEP SEA VENTURES, INC., CLAIM TO DEEP SEABED

Mr. RYAN. That is all.

Mr. FRASER. I have a question to follow that. I understand that 70 percent of the firm Deep Sea Ventures, Inc., is controlled by foreign firms, and it has filed a claim recently with the Secretary of State making claim to a certain portion of the Pacific Ocean seabed. Do you have any idea as to what will happen to that claim?

Mr. STEVENSON. Mr. Chairman, I will give you my own view. Of course, I am no longer the Legal Adviser of the State Department. I think, consistent with my previous answer, it has been the U.S. position that U.S. companies do have the right, until a treaty is adopted, to exercise high seas freedoms, which means that they would have the right to carry on exploitation subject to reasonable regard for other people's interests.

We have taken the position that you could not have exclusive rights, and so that I would think it is highly unlikely that exclusive rights would be recognized, because that is inconsistent with the traditional freedom of the seas approach.

Mr. FRASER. Are there further questions?

VOTING PROCEDURES

Mr. BINGHAM. I have one question. I am curious to know what discussion there has been—and I don't seem to see it in the statement—on the structure of the authority to be set up on this, with regard to voting rights and so on.

Mr. STEVENSON. Last summer there was not as much discussion of this issue as there has been in the past, because they were concentrating more on the question of who could exploit the area and the conditions of exploitation. But it is my own personal view that this is one of the really critical aspects of the negotiation.

I think if you can get the right kind of balanced decisionmaking process, you are going to have a greater willingness on the part of developed countries and their legislatures to go along with an authority that has substantial power.

This, of course, is a critical problem of the whole international lawmaking process today. We must find some way of reconciling the "one-nation, one-vote" principle with the realities of responsibility and power.

The only way, in a sense, that we got into this, this summer, was in determining our own decisionmaking procedure for the conference. You did have this attempt to try to reach a reconciliation between the consensus approach and "one-nation, one-vote" by providing that we would try to exhaust all efforts at reaching consensus first and then pro-

viding that there would have to be this preliminary question deciding that efforts at consensus had been exhausted and finally providing that, in the plenary, in addition to having two-thirds of those present and voting, you would have to have a majority of the states participating and that you would have to, by a similar majority, adopt the treaty as a whole and not simply the individual parts of it.

Of course, that still doesn't get to the heart of the problem of having some kind of a council, some kind of an executive body, where you will have representation on a basis that reflects something other than the sheer weight of numbers. I think that is a very critical thing not only for this negotiation but, I think, for the future of international organizations generally.

Mr. BINGHAM. Thank you.

Mr. FRASER. Are there any other questions?

Mr. Ambassador, on behalf of the committee, I want to express my thanks for your appearance today. We all are deeply indebted to you for your dedicated service to this very prolonged and most significant negotiation in which you are involved.

I hope that before too long you will be able to come back and report that the international community has agreed on a law of the sea treaty. We are grateful for your hard work and dedication.

Mr. STEVENSON. Thank you, Mr. Chairman.

Mr. FRASER. Thank you.

[Whereupon, at 12:05 p.m. the committee adjourned.]

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[Whereupon, at 12:50 p.m. the committee adjourned.]