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COMMITTEE PRINT

THE THIRD U.N. LAW OF THE SEA CONFERENCE

PREPARED AT THE REQUEST OF

HON. WARREN G. MAGNUSON, *Chairman,*
COMMITTEE ON COMMERCE

AND

HON. ERNEST F. HOLLINGS, *Chairman,*
NATIONAL OCEAN POLICY STUDY

FOR THE USE OF THE

COMMITTEE ON COMMERCE

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THE NATIONAL OCEAN STUDY POLICY

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NATIONAL OCEAN POLICY STUDY

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LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON COMMERCE,
April 21, 1975.

DEAR COLLEAGUE: We are pleased to forward another in a series of reports for use of the National Ocean Policy Study and the Senate on issues relating to ocean policy. The Third U.N. Law of the Sea Conference, now underway in Geneva, is no doubt one of the most important world meetings ever held. At issue are the legal rules applicable to the world community's use of ocean space and ocean resources.

This report was requested from the Congressional Research Service to serve as a "primer" and background document for members of the National Ocean Policy Study and for other interested members of the Senate. The law of the sea negotiations are quite complicated and positions taken by our government and other countries are often fluid. This report should give the basic essentials for understanding what is going on and why. Hopefully, through the wide reading of this report, all members of the Senate will better understand what implications this Conference has for the domestic and international interests of the United States.

We wish to emphasize that the conclusions which might be inferred from this report and which may prove to be controversial have neither been approved, disapproved, nor considered by the Senate Committee on Commerce or the National Ocean Policy Study.

WARREN G. MAGNUSON,
Chairman,
Committee on Commerce.

ERNEST F. HOLLINGS,
Chairman,
National Ocean Policy Study.

LETTER OF SUBMITTAL

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., March 19, 1975.

Hon. ERNEST F. HOLLINGS,
Chairman, National Ocean Policy Study, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request, we are submitting a primer on the Third Law of the Sea Conference.

The study includes references to pre-treaty law making, the 1958 and 1960 Conferences on the Law of the Sea, the preparatory conferences on the law of the sea; the New York and Caracas sessions of the Third Law of the Sea Conference, Administration policy formulation, Congressional views on the law of the sea negotiations, and the role of the Senate in treaty-making in general and the Law of the Sea Treaty in particular.

The study was authored primarily by Herman T. Franssen of our Ocean and Coastal Resources Project. Ms. Marjorie Ann Browne of our Foreign Affairs Division contributed an analysis of the role of the Senate in treaty making and implementation, and James E. Mielke of our Science Policy Research Division contributed part of a subsection on Congressional views concerning deep seabed mining.

We hope that this study will serve your committee's needs for the National Ocean Policy Study as well as those of other committees and Members of Congress interested in the Law of the Sea.

Sincerely,

LESTER S. JAYSON, *Director.*

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I. INTRODUCTION

On March 17, 1975, the second substantive session of what may be the most important international law-making conference since the establishment of the United Nations in 1945, commenced in Geneva, Switzerland. Delegates from some 140 nations will meet for eight weeks to continue the process of completing the final draft articles for a new Law of the Sea Treaty. Success or failure in this effort may mean the difference between peace and order in the oceans and chaos, possibly resulting in serious confrontations among users of the sea.

The outcome of the Conference will affect the mobility of our Navy and merchant marine around the world. It promises to have a profound impact on our valuable coastal fisheries and on the rights and obligations of our distant-water fishing fleet. It may well finally provide a fixed borderline between the area of ocean space within which states will have exclusive jurisdiction over all renewable and non-renewable resources and the area beyond national jurisdiction where rights and obligations over resources will be shared between states and an international regime which may be created upon completion of the Conference. The outcome of the Conference will probably also have an effect on the ability of scientists to continue their valuable marine research and on man's ability to cope with the growing danger of a contaminated ocean environment.

These are but some of the major issues being debated at the Third Law of the Sea Conference. In total the agenda of the Conference lists 25 main headings, and there are a number of issues listed under each heading. The conferees have the difficult task of drafting a treaty that is both widely accepted and comprehensive. As the participating nations agreed to consider the entire "package" of law of the sea treaty provisions in one rather than separate conventions, they must in effect, accept or reject the treaty as a whole rather than pick and choose in accordance with their own interests. Differences in actual and perceived national interests between and within negotiating blocs at the Conference complicate the possibility of reaching an agreement on a final text within the eight weeks scheduled for the Geneva session of the Third Law of the Sea Conference.

From the outset of the U.N. oceans debate, in 1967, the U.S. Congress has followed the progress of the Seabed Committee with great interest. During the 93d Congress and again during the first session of the 94th Congress, legislation has been introduced to protect coastal fisheries and the interests of the deep seabed mining industry. Congressional action has had a significant impact on the LOS position of the executive branch, which has undergone major changes since 1970.

This study provides a brief survey of the 1958 and 1960 Law of the Sea Conferences, the preparatory conferences on the law of the sea, the New York and Caracas sessions of the Third Law of the Sea Conference, U.S. Administration policy formulation, Congressional views on the law of the sea negotiations, and the role of Congress after adoption of a treaty.

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II. BACKGROUND FOR THE LAW OF THE SEA CONFERENCE

Pretreaty Law Making

International law, of which the principles which govern maritime intercourse, naval warfare and neutrality form a substantial part, is a body of rules which nations consider they are bound to observe in their mutual relations.[1] One of the most important sources of international law of the sea is custom; other primary sources are treaties, practice of states, usages, doctrines, sentences, and statutes. When the International Court of Justice (ICJ) was established after World War II together with the United Nations, decisions of that world body became regarded as sources of international law.

While some of the original sources of ocean law may date back as far as the third or second century B.C. (the Rhodian code), the rules of international law as it is understood today are little more than three hundred years old. In 1625, the Dutch jurist Hugo de Groot (Hugo Grotius), published a remarkable book on the laws of war and peace, which received such international recognition that before the end of the 17th century it was generally considered as embodying the rules of international law.[2] Hence, Grotius deserves the title of "father of the Law of Nations". One chapter of Grotius' book was devoted to the *mare liberum*, the freedom of the seas concept. He defended it on grounds of the inherently indivisible nature of the oceans, which are so vast that states cannot effectively occupy them. He also argued that all states had the right to use the resources of the high seas by reason of their inexhaustibility. The Grotian concept of freedom of the seas served the international community well for most of three centuries. It reflected the general interest in free, common utilization of the oceans, at least on the part of those countries with national power to enforce the rules.[3]

INTERNATIONAL LAW AND THE INTEREST OF STATES

The concept of freedom of the high seas was asserted in the 17th century as a reaction to the Papal bulls of 1493, which had divided the oceans between Spain and Portugal. The pope's action of granting exclusive rights over the oceans to Spain and Portugal interfered with the east-west trade of emerging maritime nations such as the United Netherlands and England. The policy of Spain to deny ocean access to other nations reached a climax in 1588, when a combined English-Dutch fleet, aided by the treacherous waters of the North Sea, succeeded in defeating the Spanish-Portuguese Armada.

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[1] C. John Colombos, *The International Law of the Sea*, (London: Longmans, 1962), p. 7
[2] Ibid., p. 8.
[3] John R. Stevenson, "Lawmaking for the Seas," *American Bar Association Journal*, Vol. 61, February 1975, p. 185.

Grotius' *mare liberum* was not merely an intellectual concept, but it served the maritime interests of the Netherlands East Indies company, where Grotius was employed. Whereas the Netherlands was already a major maritime power at the time of Grotius' writings, Britain was not, and consequently the British claimed exclusive rights over fishing and trade in what they considered British seas. Their policy was aimed at excluding the Dutch from profitable trade routes and from the rich fishing grounds off the coast of England. A classical legal battle was fought between John Selden, who defended the interests of a country which had not yet become the dominant maritime power in the world, and Grotius, who advocated an open sea for his country, the dominant maritime power of the time. Only after England gained naval supremacy did she become the leading champion of the freedom of the seas.[4] One can draw an interesting analogy between the Grotius-Selden controversy of the early part of the 17th century and the position taken by maritime and non-maritime nations at the ongoing law of the sea negotiations. Maritime nations would like to preserve as much of the freedom of the high seas as they can, while non-maritime nations favor restricting and controlling ocean activity in ocean areas adjacent to their coasts.

From its inception, the United States has been a staunch defender of the concept of freedom of the seas. In the case of the *United States* v. *Louisiana, et. al.*, the principle of freedom of the high seas was recognized by the United States Supreme Court, which ruled that "the high seas, as distinguished from inland waters are generally conceded by modern nations to be subject to the exclusive sovereignty of no single nation.[5]" For centuries, claims of exclusive jurisdiction beyond territorial limits of three miles were ignored by fishermen of other nations, and attempts by some nations to interfere with the freedom of the seas were strongly and successfully opposed by Great Britain and other major maritime nations, including the United States. Minor infringements on the Grotian doctrine, involving claims of territorial limits from 3 to 12 nautical miles (n.m.) took place prior to the Second World War, but it was not until after the war that the scramble for national ocean space began. Professor Wolfgang Friedmann of Columbia University, a leading expert on the law of the sea, maintained that the decisive turn away from the tenets of Grotius came with the introduction and rapid adoption throughout the world of the continental shelf doctrine expressed in the first of the two Truman Proclamations.[6] Within a few years, one coastal state after another had expressed or made corresponding claims, and various disputes between the defenders of the open sea and the new defenders of the closed seas broke out (cod war, tuna war, lobster war, etc.). Many, particularly developing coastal states, have no significant interests beyond their coastal waters but do have considerable interest in the ocean resources in areas immediately adjacent to their coasts. The international community appears to be on the verge of returning to the pre-Grotian era, when it was generally contended that the sea could be appropriated that it was not free to navigation and the use of all mankind.

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[4] For a detailed analysis, see: C. John Colombos, *op. cit.*, pp. 46–53.
[5] 363, U.S. 1, 33 cf. infra § 87, 1960.
[6] Wolfgang G. Friedmann, *The Future of the Oceans*, (New York: George Braziller, 1971), p. 31.

PRE-WORLD WAR II DEVELOPMENTS

The establishment of the League of Nations led to the first world-wide endeavor to codify matters relevant to maritime law, particularly during time of peace. The first conference specifically convened to consider the codification of international law met from March 13 to April 12, 1930, at The Hague, Netherlands. Forty-two states sent delegates and others sent observers.

One of the three subjects placed on the agenda of the conference was the regime of the territorial sea. The conference failed to achieve agreement concerning territorial waters, but it did prepare a draft convention for future consideration regarding the legal status of the territorial sea. The conference also touched on problems surrounding the rights of states in zones contiguous to their territorial limits but reached no agreement. In reference to ocean resources, the Assembly of the League concluded that the question of exploitation of the products of the sea was an appropriate topic for international agreement but little more was done by the League on this matter.[7]

POST-WORLD WAR II DEVELOPMENTS: 1945–58

In article 13 of the U.N. Charter, the General Assembly was charged with the explicit obligation to initiate studies and to make recommendations which would serve to promote the "progressive development of international law and its codification". In accordance with this directive, the International Law Commission (I.L.C.) was established on November 21, 1947.[8]

From 1949 until 1956, the I.L.C. received various questions related to the regime of the oceans, including questions concerning territorial limits, continental shelf, and high seas resources. Between 1954 and 1956, draft articles were adopted, and a final report on the law of the sea, prepared by this body of legal experts, included 73 articles and commentaries. It was submitted to the General Assembly in 1956, and by resolution 1105 (XI) of February 21, 1957, the General Assembly authorized the convening of an international conference of plenipotentiaries:

> . . . to examine the law of the sea, taking into account not only the legal but also the technical, economic, and biological aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as the conference may deem appropriate.[9]

1958 CONFERENCE ON THE LAW OF THE SEA

In 1958, 86 nations gathered in Geneva, Switzerland, to consider 73 draft articles resulting from the I.L.C.'s seven years of preparatory work. The approach of the I.L.C. had been one of identifying existing rules of law and clarifying or supplementing them with new ones where necessary.

The conference created five primary committees: The First Committee (territorial seas and contiguous zones); the Second Committee,

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[7] Eric Bain Jones, *Law of the Sea, Oceanic Resources*, (Dallas: Southern Methodist University Press, 1972) p. 35.
[8] Ibid., p. 35.
[9] Ibid., p. 36.

(high seas and general regime); the Third Committee (fishing conservation and living resources); the Fourth Committee (continental shelf); and the Fifth Committee (questions of free access to the sea for land-locked countries). The five committees presented to the plenary meeting of the conference a report of their work with appended draft articles. At the plenary meeting it was agreed that the draft articles and amendments would be embodied in four separate conventions: the Convention on the Territorial Sea and Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas, and the Convention on the Continental Shelf. Recommendations of the Fifth Committee were incorporated in the High Seas and Continental Shelf Conventions. Each Convention was to become effective thirty days after twenty-two accessions were submitted to the Secretary-General of the United Nations.[10]

ACCOMPLISHMENTS OF THE 1958 LAW OF THE SEA CONFERENCE

The 1958 conference was a step forward in the law of the sea despite the fact that many important matters remained unresolved. The conference had been considered as one of the most important efforts ever devised by governments to codify international law.[11] Even though ratification by the required 22 states took several years, a substantial majority adopted the four conventions.[12] The four conventions have achieved a recognized status in contemporary international law and made substantive contributions to the eventual codification of the law of the sea.[13] The four Conventions codified a great deal of existing customary law on various aspects of the law of the sea which was developed over the years by the practice of mainly European coastal states.

The Convention on Fishing and Conservation of the Living Resources of the High Seas contains a general obligation to adopt conservation measures when necessary, and is supplemented with other, specific, obligations. It provides that all States have the right for the nationals to engage in fishing on the high seas, but that States also have the duty to adopt measures for the conservation of the living resources of the high seas. The convention explicitly states that conservation of the living resources of the high seas "means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products for human consumption". It also provides that where nationals of two or more States are engaged in fishing the same stocks of fish in areas of the high seas, the States shall negotiate agreements for their nationals and shall take the necessary measures for the conservation of the living resources affected. This convention obtained the least signatures, and it has not been accepted by the international community.

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[10] The Convention on the Territorial Sea and the Contiguous Zone entered into force on 10 September 1965 (46 states are parties). The Convention on the High Seas entered into force on 30 September 1962 (54 parties). The Convention on Fishing and Conservation of the Living Resources of the High Seas entered into force on 20 March 1966 (35 parties), and the Convention on the Continental Shelf entered into force on 10 June 1964 (53 parties).

[11] Eric Bain Jones, *op. cit.*, p. 37

[12] Of 86 nations present and voting, 57 approved the Continental Shelf articles, 3 cast negative votes, and 8 abstained. The Convention on the High Seas was adopted by 65 affirmative votes, no opposing votes and one abstention. The Convention on the Territorial Seas and Contiguous Zone was approved by 61 votes, no opposing votes, and 2 abstentions.

[13] Eric Bain Jones, *op. cit.*, p. 38

The Territorial Sea and Contiguous Zone Convention confirmed that the sovereignty of the State extended beyond its land territory and its internal waters "to a belt of sea adjacent to its coast, described as the territorial sea". State sovereignty also extends to the air space over the territorial sea. The convention helped clarify international law in the area of straight baselines (art. 4, 5), bays (art. 7) and islands (art. 10). Article 24 sought to crystallize international law concerning the contiguous zone, a part of the high seas contiguous to the territorial sea but which does not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured. Within this area, coastal States may exercise the control necessary to prevent and punish infringement of its customs, fiscal, immigration or sanitary regulations committed within its territory or territorial sea. Article 14 through 23 apply to the right of innocent passage through territorial seas and straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

Convention of the High Seas.—The High Seas Convention specifically guaranteed four principal freedoms of the seas: (1) freedom of navigation; (2) freedom of fishing; (3) freedom to lay submarine cables and pipelines; and (4) freedom to fly over the high seas.

However, these are not the only areas to which freedom of the seas applies. While listing the four basic freedoms specifically, article 2 of the convention continues: "These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas."

Convention on the Continental Shelf.—The conference agreed on a compromise definition of the continental shelf, which incorporated the desired needs of countries with both large and narrow shelves by approving of the term "continental shelf" as applying to the seabed, and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters, or beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

Article 2 of the convention confers "sovereign rights" to the coastal State over the continental shelf, but only "for the purpose of exploiting it and exploiting its natural resources", such rights do not affect the legal status of the superjacent waters as high seas or that of the airspace above those waters (article 3). In addition to non-living resources, the continental shelf convention includes creatures of the continental shelf such as shellfish, and most recently the American lobster.

Other articles include safeguards against coastal State "unjustifiable" interference with navigation, fishing, conservation of living resources, scientific research undertaken with the intention to openly publish, and laying or maintenance of submarine cables or pipelines on the continental shelf. Article 6 provides guidelines for the delimitation of the continental shelf which is contiguous to the territories of two or more States whose coasts are adjacent or opposite to one another.

Dispute Settlement.—In addition to the four conventions, there was an optional protocol of signature concerning compulsory settlement of

disputes, which provides for resort to arbitration, conciliation or the International Court of Justice to settle disputes over the interpretation of any of the conventions of the law of the sea. It entered into force in 1962, and there are currently 34 parties to this convention. The United States is not a party to this protocal.

LIMITATIONS OF THE 1958 LAW OF THE SEA

1. The conference failed to agree on the delimitation of the territorial sea and of a contiguous fishery zone.

2. The failure to set clear limits to the seaward boundary of the continental shelf accelerated unilateral claims over seabed resources. Wolfgang Friedmann maintained that the exploitability criterion in the definition of the continental shelf, which was considered to be a relatively innocuous compromise at the time of the 1958 Geneva conference, has in fact proved to be the starting point for an almost unlimited outward and downward expansion of exclusive continental shelf claims and for the virtual elimination of the concept of the continental shelf as a largely meaningful limitation of national sovereign rights.

3. A great many States which signed one or more of the conventions subsequently failed to ratify those conventions. Moreover, the family of nations has increased by more than fifty percent since the first law of the sea conference in 1958 and many of the new members feel they are not bound to observe conventions which they have not signed or ratified. Only parties to the conventions are bound by their terms. As far as jurisdiction over the continental shelf is concerned, countries which have not signed the Convention on the Continental Shelf regard the extension of their sovereignty to the seabed and subsoil resources of the shelf as a matter of customary law, with no obligation to abide by the precise prescriptions of the Geneva convention.[14] This was confirmed by the decision of the International Court of Justice on the North Sea Continental Shelf case in 1969.

THE SECOND LAW OF THE SEA CONFERENCE OF 1960

Following the failure of the first law of the sea conference to reach agreements on either the breadth of the territorial sea or the establishment of a fishery zone adjacent to the territorial sea, the United Nations summoned a second conference, which was held in Geneva from March 17 to April 27, 1960, and was attended by the representatives of 89 states.

Among the several proposals presented at the conference was the one put forward by the Canadian and U.S. representative, recommending the adoption of a six mile territorial sea and a 6 mile fishery zone, subject to a ten year period of phasing out foreign fishing. The proposal was adopted by the committee of the whole, but failed by one vote to secure the required two-third majority, and accordingly the states which base their territorial waters on the 3-mile limit continued to do so.

In contrast to the 1958 conference, the second law of the sea conference did not have a basic text prepared by experts, and considered only proposals and amendments submitted by governments.

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[14] Wolfgang G. Friedmann, *op. cit.*, p. 32

The Malta Resolution of 1967

When the compromise formula on the open-ended definition of the continental shelf was reached in 1958, it was believed that exploitation of seabed resources at great depth would not be possible for at least 20 years.[15]

The development of modern drilling technology pushed extensive continental shelf claims outward and downward further and faster than expected. Several internationally known jurists, like Shigura Oda of Japan and F. Munch of the Federal Republic of Germany, maintained that under the 1958 continental shelf convention all submarine areas had in fact already been theoretically divided between the coastal states at the deepest trenches in the ocean floor, and not even the continental margins provide any limit.[16]

Modern technology also had a profound effect on fisheries. While only a few years ago during the first law of the sea conference the F.A.O. had indicated that only a few species were in danger of overfishing, the situation changed rapidly throughout the nineteen sixties. Improved navigation and harvesting techniques, coupled with the growing use of giant factory fishing and processing ships around the world, led to considerable strain on many commercially important fisheries in the Atlantic and Pacific.

New technology enabling the recovery of mineral-rich manganese nodules advanced during the Sixties necessitated the development of a legal regime to govern exploitation in the areas beyond coastal state continental shelf jurisdiction.

Finally, the international legal concept of innocent passage in the territorial waters of coastal states for foreign flag vessels began to present difficult problems of application. The advent of supertankers and nuclear submarines has caused some states to call for more comprehensive regulations for the passage of these vessels, both for the purpose of national security and environmental protection.

A statement by Ambassador Arvid Pardo of Malta to the United Nations on November 1, 1967 renewed a worldwide discussion on these subjects. Ambassador Pardo spoke of the importance of the resources of the oceans and the impact of their exploitation on mankind. He emphasized that the rapid growth of man's technological capability to exploit the oceans called for certain changes in the ocean regime. Ambassador Pardo introduced a draft resolution whose most important aspects were:

(1) exclusion of the seabed and subsoil beyond the limits of national jurisdiction from national appropriation;

(2) establishment of an international organization to regulate, supervise and control all seabed activities beyond the limits of national jurisdiction. Such an agency could safeguard the interest of the industrially less advanced nations, and the financial benefits derived from the exploitation of the resources of the seabed would be used primarily to promote the development of the poor countries; and

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[15] Wolfgang G. Friedmann, *op. cit.*, p. 36. Admiral M. W. Mouton presented a paper at the Conference, indicating that he believed that it would take a minimum of 10 years to develop structures that would permit drilling at 400 feet, a depth well within the 200 meter limit of the Truman Proclamation of 1945. Today, drilling ships can drill in waterdepths of more than 10,000 feet.

[16] Ibid., p. 40.

(3) the seabed and the ocean floor underlying the seas beyond the limits of present national jurisdiction were to be reserved exclusively for peaceful purposes in perpetuity.[17]

The United Nations Seabed Committee: 1967–73

Following debate on the Maltese resolution, the General Assembly established an *ad hoc* committee of 33 members to study the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction. The special committee met three times, and it became apparent that the industrial countries were opposed to the establishment of an international seabed authority. The *ad hoc* committee informed the General Assembly that further study was needed, and asked support for the idea of establishing a standing committee, which would be a focal point for the study of various related aspects of the item.

A year later, in December 1968, the General Assembly adopted a resolution to create a permanent 42-member committee on the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction. The committee was instructed to:

1. study the legal principles and norms which would promote international cooperation in the exploration and use of the seabed and the subsoil beyond the limits of national jurisdiction;
2. study the means of encouraging the exploitation and use of the resources of this area in the light of foreseeable technological development, and the economic implications, bearing in mind the fact that such exploitation should benefit mankind as a whole;
3. review and stimulate the exchange and widest possible dissemination of scientific knowledge on the subject; and
4. examine proposals to prevent marine pollution that may result from resource exploration and exploitation.

The committee was also instructed to study the question of reserving the seabed for exclusive peaceful purposes, and to undertake a study of the question of appropriate international machinery, taking into special consideration the interests and needs of the developing countries.

After 2 years of deliberations, the Seabed Committee had made enough progress to maintain confidence in the emergence of a general agreement on the requirements of the international regime for the seabed, which would be embodied in a future treaty.

At its 24th session, in 1969, the General Assembly in resolution 2574 A (XXIV) requested the Secretary-General to ascertain the views of Member States on the desirability of convening at an early date a conference on the law of the sea and to report his findings to the General Assembly at its 25th session.

In resolution 2574 B (XXIV), the General Assembly requested that the Seabed Committee expedite its preparation of a comprehensive and balanced statement of principles designed to promote international cooperation in the exploration and use of the international seabed area. The General Assembly, however, did not reach agreement on the statement of principles until the 25th session in 1970.

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[17] For a complete text of the statement, see: United States House of Representatives. Committee on Foreign Affairs. Subcommittee on International Organizations and Movements. *The United Nations and the Issue of Deep Ocean Resources*. 90th Congress. 1st Session. (Washington, D.C.: Government Printing Office, 1967), pp. 267–286.

Resolution 2574 C (XXIV) called on the Secretary-General to prepare another study on various types of international machinery for the deep-seabed.

THE MORATORIUM RESOLUTION

In another important resolution (2574D XXIV) the General Assembly declared that, pending the establishment of an international regime, including appropriate international machinery for the deep-seabed, states and persons, physical and juridical, were bound to refrain from all activities of exploitation of the resources of the area and that no claim to any part of the area or its resources would be recognized.[18] This so-called Moratorium resolution was passed by a vote of 62 to 28, with 28 abstentions. The United States and other industrialized nations including the Soviet Union voted against the resolution. As the United Nations has no general legislative powers, the Moratorium resolution is not legally binding on the United States or its nationals. A General Assembly resolution is merely an invitation or recommendation to member states to enter into a treaty relationship concerning the matters dealt with in the resolutions.[19] The Department of State has maintained that under existing international law nothing precludes American companies from exploring for or exploiting manganese nodules in seabed areas beyond national jurisdiction.[20]

Resolution to convene a new law of the sea conference.—In 1970, at the 25th session of the General Assembly, it was decided to convene in 1973 a conference on the law of the sea which would deal with the establishment of an equitable international regime—including an international machinery—for the area of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area; and a broad range of related issues including those concerning the regimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of living resources of the high seas (including the question of the preferential rights of coastal states), the preservation of the marine environment (including, *inter alia*, the prevention of pollution), and scientific research.[21]

The 1970 Declaration of Principles.—By resolution 2749 (XXV), the General Assembly adopted the Declaration of Principles Governing the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction. In the declaration, the General Assembly states that there is an area beyond national jurisdiction, and the resources of that area are the common heritage of mankind. The area shall not be subject to appropriation by any means by States or persons, and no State shall claim or exercise sovereign rights over any parts of it. The declaration calls for the establishment of an international regime to watch over the safe and orderly development and rational management of the area and its resources, and the regime shall ensure the equitable sharing by States in the benefits derived from these resources, taking into account the interests and needs of the developing countries.

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[18] United Nations, General Assembly, doc. A/9021, Supplement no. 21, New York, 1973, p. 3.
[19] Northcut Ely, *International Law Applicable to Deepsea Mining*, unpublished paper, Washington, D.C., November 14, 1974, p. 57.
[20] Ibid., p. 61.
[21] United Nations, General Assembly, doc. A/9021, Supplement no. 21, New York, 1973, p. 4.

The declaration was adopted by the General Assembly in 1970 by a vote of 108 to 0, with 14 abstentions. The United States voted for the resolution. Like the 1969 Moratorium resolution, the Declaration of Principles is not viewed by the U.S. as precluding American companies from exploring or exploiting manganese nodules in the seabed beyond national jurisdiction.[22] The U.S. government supports the UN declaration that the seabed beyond the limits of national jurisdiction is the common heritage of mankind, but it does not believe that title to the deep-seabed or its resources is held by the world community or that title to any area of the deep-seabed or its resources belongs to any State. Instead, the American government considers that the meaning of the principle of common heritage, as indicted by the principles which follow it in the resolution, will be elaborated in the international regime to be established.[23] Hence, the executive branch continues to hold the view that deep-seabed exploitation constitutes a reasonable use of the high seas and is presently permitted under international law.

At its 25th session, the General Assembly also decided to enlarge the Seabed Committee from 42 to 86 members. The additional 44 members were to be appointed by the chairman of the First Committee of the General Assembly in consultation with regional groups and taking into account equitable geographical representation thereon. The enlarged committee was instructed to hold two sessions in Geneva, in March and in July–August, 1971, in order to prepare draft articles for the law of the sea conference.

DIVISION OF THE SEABED COMMITTEE INTO THREE SUBCOMMITTEES

During 1971 and 1972 the Seabed Committee continued to meet in preparatory sessions. Following each year's meetings, appropriate resolutions were adopted by the General Assembly instructing the Secretariat to provide certain types of information or special studies for the use of the Seabed Committee.

The Committee's discussion on the Declaration of Principles brought out clearly that the issues of the law of the sea are closely intertwined, and that it was impossible to consider one part of ocean space without reference to other parts. Hence, the Committee's work was broadened to all aspects of the law of the sea in 1971, focusing on preparations for the conference.

It was decided at the first session in Geneva in March 1971, to divide the workload among three subcommittees:

Subcommittee I was charged with the preparation of draft articles embodying the international regime, including an international machinery, for the area and the resources of the seabed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction.

Subcommittee II had the task of preparing a comprehensive list of subjects and issues relating to the law of the sea, including those concerning the regimes of the high seas, the continental shelf, the territorial sea, international straits, contiguous zone,

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[22] Northcut Ely, op. cit., p. 61.
[23] Testimony by the Hon. John Morton Moore before the Senate Subcommittee on Minerals, Materials and Fuels, 92nd. Congress, 2nd Session, Washington, D.C., September 1974.

fishing and conservation of living resources of the high seas, and of preparing draft articles thereon.

Subcommittee III was to deal with the preservation of the marine environment and scientific research. It too was charged to prepare draft articles thereon.

The pattern of work followed by each subcommittee was roughly the same, a general debate on the main issues, followed by the creation of work groups which attempted to prepare draft articles on the basis of proposals and working papers submitted by delegations. Some 469 formal and countless informal meetings took place between 1970 and 1973.

At its 26th session in 1971, the General Assembly added the Peoples Republic of China and four other additional members to the Seabed Committee, increasing it from 86 to 91 members. The Seabed Committee was also requested to hold two sessions, one in New York during March and April, and one at Geneva during July and August of 1972. An important accomplishment of the Seabed Committee in 1972 was the formal approval of a comprehensive list of subjects and issues relating to the law of the sea.[24] The list was to serve as a framework for discussion and drafting of necessary articles. Under Resolution 3029–A (XXVII) of December 18, 1972, the General Assembly reaffirmed the mandate of the Seabed Committee and requested it to hold two further sessions in 1973, one of five weeks in New York, beginning in early March, and one in Geneva, beginning in early July, with a view to completing its preparatory work, and to submit a report with recommendations to the General Assembly at its 28th session. Resolution 3029–A (XXVII) also requested the Secretary-General to convene the first session of the Third Law of the Sea Conference for a period of two weeks in November-December, 1973, "for the purpose of dealing with organizational matters," and called for a second session of the conference "for the purpose of dealing with substantive work" to be convened at Santiago, Chile, for a period of eight weeks in April-May, 1974. The resolution expressed the expectation that the Third Conference would be concluded during 1974 or at a subsequent session or sessions no later than 1975, and observed that the government of Austria had offered Vienna as a site for 1975 should that additional time be required.[25]

Prior to the opening of the Third Law of the Sea Conference in New York in November of 1974, work groups in Subcommittees I and II had presented comparative texts of areas of agreement and disagreement; the work group of subcommittee III had not had enough time to examine several alternative texts for draft articles. The Seabed Committee submitted its report to the General Assembly but left out recommendations asked for in Resolution 3029. In view of differing opinions, the members of the committee considered that assessment of the preparatory work should be left to the General Assembly.

The 1973 session of the General Assembly established the final dates and locations for the first two sessions of the Conference. The first organizational session was to be held at U.N. headquarters in

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[24] For a complete text of the list, see: United Nations, General Assembly, doc. A/8721, Supplement no. 21, New York 1972, pp. 5–8.

[25] United Nations, General Assembly, doc. A/9021, pp. 8 and 9.

New York between December 3–14, 1973. The second session of the Conference would meet in Caracas, Venezuela, rather than Santiago, June 20 through August 29, 1974. Resolution 3067 (XXVIII) also dissolved the Sea-Bed Committee effective from the inauguration of the Conference and approved a "gentlemen's agreement" on decision-making procedures at the Conference.

III. THE THIRD U.N. LAW OF THE SEA CONFERENCE

Key issues.

The issue resulting in the creation of the Seabed Committee was the regime to govern the extraction of non-living resources of the seabed beyond the limits of national jurisdiction. When it became obvious that many States wished to open other areas of the law of the sea for negotiations and for inclusion in the Third Law of the Sea Conference, the Seabed Committee agreed on a comprehensive list of 25 main headings and a number of subheadings in 1972, after two years of debates. The 25 main headings follow, with an indication of the issues which the Committee singled out under each one:[1]

1. *International regime for the seabed and the ocean floor beyond national jurisdiction.*—Six issues are listed under this heading: nature and characteristics; structure, functions and powers of the international machinery; economic implications; equitable sharing of benefits bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked; definition and limits of the area; and its use exclusively for peaceful purposes.

2. *Territorial sea.*—The list identifies four main aspects for study in regard to this area (the zone which is closest to the coast and subject to the coastal State's sovereignty): nature and characteristics, including the question of the unity or plurality of regimes in the territorial sea; historic waters (those traditionally belonging to a particular State); limits; innocent passage in the territorial sea; and freedom of navigation and overflight resulting from the question of plurality of regimes in the territorial sea.

The issue of limits is further subdivided into two parts: first, question of the delimitation of the territorial sea and the various aspects involved; and second, breadth of the territorial sea, whether global or regional criteria should be used, and the different issues raised by open seas and oceans, semi-enclosed seas and enclosed seas.

3. *Contiguous zone.*—This was defined in the 1958 Convention on the Territorial Sea and the Contiguous Zone as an area beyond the territorial sea but no more than 12 miles from the coast. The list of subjects and issues gives three subheadings: nature and characteristics; limits; and rights of coastal States with regard to national security, customs and fiscal control.

4. *Straits used for international navigation.*—To be dealt with under this heading are innocent passage as well as other related matters including the question of the right of transit.

5. *Continental shelf.*—The 1958 Convention on the Continental Shelf says this term is used as referring "(a) to the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploration of the

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[1] This list was adopted from: United Nations, Office of Public Information, Press Release SEA/18, May 28, 1974.

natural resources of the said areas: (b) to the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands".

The list of subjects and issues cites five aspects of this topic: nature and scope of the sovereign rights of coastal States over the continental shelf, and duties of States; applicable criteria for the outer limit of the continental shelf; question of the delimitation between States and various aspects involved; natural resources of the continental shelf; and scientific research.

6. *Exclusive economic zone beyond the territorial sea.*—This concept, also referred to as "patrimonial sea" by many Latin American States, is not mentioned in the 1958 Law of the Sea Conventions. Nine aspects are cited in the list of subjects and issues: nature and characteristics, including rights and jurisdiction of coastal States in relation to resources, pollution control and scientific research in the zone, as well as duties of States; resources of the zone; freedom of navigation and overflight; regional arrangements; applicable criteria for limits; fisheries; sea-bed within national jurisdiction; prevention and control of pollution and other hazards to the marine environment, including rights and responsibilities of coastal States; and scientific research.

The fisheries aspect is further broken down into exclusive fishery zone, preferential rights of coastal States, management and conservation, protection of coastal States' fisheries in enclosed and semi-enclosed seas, and regime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction. The subtopic of the sea-bed within national jurisdiction is also subdivided—into nature and characteristics, delineation between adjacent and opposite States, sovereign rights over natural resources, and applicable criteria for limits.

7. *Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea.*—Seven aspects of this topic are recognized in the list of subjects and issues: nature, scope and characteristic seabed resources; fisheries; prevention and control of pollution and other hazards to the marine environment; international co-operation in the study and rational exploitation of marine resources; settlement of disputes; and other rights and obligations.

8. *High seas.*—The broad area of the sea beyond national jurisdiction is to be looked at from six aspects, according to the list of subjects and issues: nature and characteristics; rights and duties of States; question of the freedom of the high seas and their regulation; management and conservation of living resources; slavery, piracy and drugs; and hot pursuit.

9. *Land-locked countries.*—The list singles out four aspects of this topic: general principles of the law of the sea concerning the land-locked countries, rights and interests of land-locked countries, particular interests and needs of developing land-locked countries in the international regime for the sea-bed, and rights and interests of land-locked countries in regard to living resources of the sea.

Rights and interests of land-locked countries include free access to and from the sea through freedom of transit as well as means and facilities for transport and communications; equality of treatment in the ports of transit States; free access to the international seabed area beyond national jurisdiction; and participation in the inter-

national regime, including the machinery and the equitable sharing in the benefits of the area.

10. *Rights and interests of shelf-locked States and States with narrow shelves or short coastlines.*—Shelf-locked States are those whose continental shelves do not open out onto the high seas; examples are countries bordering certain large areas seas such as the Mediterranean and Caribbean. These and other categories of "disadvantaged" States dealt with under this topic would have their rights and interests examined from four aspects, according to the list of subjects and issues: international regime, fisheries, special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines, and free access to and from the high seas.

11. *Rights and interests of States with broad shelves.*

12. *Preservation of the marine environment.*—Five subheadings are given: sources of pollution and other hazards and measures to combat them, measures to preserve the ecological balance of the marine environment, responsibility and liability for damage to the marine environment, rights and duties of coastal States, and international co-operation.

13. *Scientific research.*—Nature, characteristics and objectives of scientific research of the oceans is the first of three subheadings. The others are access to scientific information and international co-operation.

14. *Development and transfer of technology.*—The subject matter, as set out in the list of subjects and issues, concerns the development of technological capabilities of developing countries through sharing of knowledge and technology between developed and developing countries, training of personnel from developing countries and transfer of technology to developing countries.

15. *Regional arrangements.*

16. *Archipelagos.*

17. *Enclosed and semi-enclosed seas.*

18. *Artificial islands and installations.*

19. *Regime of islands.*—This covers islands under colonial dependence or foreign domination or control as well as other related matters.

20. *Responsibility and liability for damage resulting from the use of the marine environment.*

21. *Settlement of disputes.*

22. *Peaceful uses of the ocean space; zones of peace and security.*

23. *Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction.*

24. *Transmission from the high seas.*

25. *Enhancing the universal participation of States in multilateral conventions relating to the law of the sea.*

Participants at the Third Law of the Sea Conference.—At its final stage, 91 countries participated in the preliminary conferences on the law of the sea. At the first substantive session of the Third Law of the Sea Conference in Caracas, Venezuela, about 150 nations participated, representing a diversity of economic, military, technological, and other interests. A number of these distinctions have profound consequences for national positions on law of the sea and the effort with

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which those positions are presented. Among the more important classifications of nations in this respect are:[2]

Technologically developed and developing nations, especially with regard to ability to explore for and exploit ocean resources.

Naval powers and non-military powers.

Maritime powers and non-maritime powers.

Coastal states and land-locked and other geographically disadvantaged states.

Coastal states with long coastlines and states with short coastlines.

States with extensive, potentially petroleum-rich continental margins and States with narrow and/or petroleum-poor continental margins (known or expected).

States with rich offshore fisheries and States with rather unproductive coastal waters.

States possessing a large merchant marine and states situated astride straits used for international navigation.

Archipelago states and states with normal coastlines.

States with rich coastal fisheries and states with distant-water fishing capabilities.

Regional-political groups: Africa, Latin America, EEC, the Arab Group.

In addition, many states have a diversity of interests—at times conflicting—within their own national policy making structures. For example within the United States, there are often quite differing perspectives concerning ocean policy held by the Department of Defense, the deep sea mining industry, the petroleum industry, coastal and distant-water fishing industry, oceanic research institutions, the merchant marine, those concerned with the marine environment, and others.

Officers of Conference

The officers of the Conference, elected at the organizational session in December, are as follows:

President: H. Shirley Amerasinghe[2a] (Sri Lanka).

Vice Presidents (31): 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, USSR, United Kingdom, United States, Yugoslvaia, Zaire and Zambia.

Rapporteur-General: Kenneth Rattray (Jamaica).

Committee I (international sea-bed regime and machinery): Chairman: Paul Bamela Engo (United Republic of Cameroon); Vice-Chairmen: Brazil, German Democratic Republic and Japan; Rapporteur: H. Charles Mott (Australia).

Committee II (general aspects of law of the sea): Chairman: Andres Aguilar (Venezuela); Vice-Chairmen: Czechoslovakia, Kenya and Turkey; Rapporteur: Satya N. Nandan (Fiji).

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[2] See: H. Gary Knight, "Issues Before the Third United Nations Conference on the Law of the Sea," *Louisiana Law Review*, vol. 34. Winter 1974, p. 164.

[2a] For biographical note see U.N. Office of Public Information Press Release BIO/1074-SEA/4 of 3 December 1973.

Committee III (marine environment, research and technology transfer): Chairman: Alexander Yankov (Bulgaria); Vice-Chairmen: Colombia, Cyprus and Federal Republic of Germany; Rapporteur: Abdel M. A. Hassan (Sudan).

Drafting Committee (23 members): Chairman: J. A. Beesley (Canada); Other members: Afghanistan, Argentina, Bangladesh, Ecuador, El Salvador, Ghana, India, Italy, Lesotho, Malaysia, Mauritania, Mauritius, Mexico, Netherlands, Philippines, Romania, Sierra Leone, Spain, Syria, USSR, United Republic of Tanzania and United States.

Credentials Committee (9 members): Chairman (elected by the Committee): Heinrich Gleissner (Austria); Members: Austria, Chad, China, Costa Rica, Hungary, Ireland, Ivory Coast, Japan and Uruguay.

Constantin A. Stavropoulos has been appointed by Secretary-General Kurt Waldheim as his Special Representative to the Conference (biographical note in Press Release BIO/1102 of 24 May). The Executive Secretary of the Conference is David L. D. Hall.

The same Officers will function at the Geneva session, with the exception of the Chairman of Committee II, Ambassador Andres Aguilar of Venezuela, who has been replaced by Ambassador Galindo-Pohl of El Salvador, and Constantin A. Stavropoulos, who has been replaced as Special Representative of the U.N. Secretary-General by Bernardo Zuleta of Colombia.

The New York Session: December 3–15, 1973

At the first session of the Third Law of the Sea Conference in New York, the Secretary-General presented a set of draft rules on procedure, and several nations provided amendments. The most important questions were related to voting procedures and credentials of representatives to the conference.

It proved impossible to complete agreement on procedures in December, and it was decided to hold informal consultations on the matter in New York from February 25 to March 1, 1974. The Conference also agreed that the decision in regard to the rules should be made by the Conference in Caracas not later than June 27, if necessary by voting. The understanding agreed to by the Conference was that the rules would be adopted by a simple majority unless the Conference decided that this constituted an important question requiring a two-third majority.

Finally, the Conference decided on its committee structures, and elected officers. Most of the substantive work of the Conference was to be carried on in three main committees of the entire membership. The work of the three committees was divided along the same lines as previously established in the preparatory conferences of the Seabed Committee: Committee I would deal with the international regime and machinery for the seabed; Committee II with other aspects of the law of the sea, such as territorial sea, international straits, economic zone, etc.; and Committee III with preservation of the marine environment and scientific research.

The Caracas Session

Nearly 150 nations had been invited to gather in June at Caracas in an effort to write a new set of binding international rules concerning human activities in the oceans. Representatives of 138 nations, 10 U.N. agencies, 10 intergovernmental organizations, and 33 non-governmental international organizations participated in the Geneva session.[3]

The goal of the Conference is to adopt a comprehensive convention and set up machinery to regulate the international seabed area. It is a complex task, and after five years of preparatory work hundreds of draft articles submitted by dozens of states have to be considered.

The substantive work of the Conference, which will cover a wide range of complex and controversial issues (see list of 25 main issues), falls into two main parts:

(1) the consideration and adoption of a treaty for an international regime, with appropriate international machinery, for the area of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; and

(2) a review and revision of the existing law of the sea. The first part would entail the drafting of new law. The second part would deal with other related issues of the law of the sea affected by the new proposals regarding the resources of the seabed and the ocean floor beyond national jurisdiction as well as those issues which the 1958 and 1960 law of the sea conferences had failed to agree on, or which called for review and revision to fit in with the needs and realities of the contemporary world.[4]

VOTING PROCEDURES

At its 20th meeting, on June 27, 1974, the Conference agreed on complex voting procedures, which were an attempt to reconcile the interests of the maritime nations and the developing countries.

The compromise formula differs considerably from voting procedures of most other U.N. conferences. At other UN conferences, decisions on matters of substance in committee are taken by a majority of states present and voting and in full conference by a two-thirds majority of states present and voting. Since abstention are not counted, this frequently has permitted the adoption of important rules of law by a small number of participating states.

During the Caracas session it was agreed that in the three main committees substantive action can be taken by a simple majority of states present and voting, thus applying the traditional rules. However, in plenary sessions (the final arbiter of all law of the sea treaty articles) substantive decisions can be taken only when two-thirds of the states are present and voting, provided the affirmative votes constitute at least a simple majority of the participating states. Thus if 150 states participate, a minimum of 100 must be in the hall for action to be taken (two-third quorum requirement); however two-thirds of the 100 (i.e. 67) insufficient because at least 76 affirmative

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[3] For a complete list of all participants, see: United Nations, Third Conference on the Law of the Sea, doc. A/Conf. 62/INF. 3/Rev. 2. New York, January 16, 1975.

[4] H. Shirley Amerasinghe, "The Third United Nations Conference on the Law of the Sea", UN and the Sea, *Unitar News*, vol. 6, no. 1, 1974, p. 3.

votes (simple majority of the 150 participants) are required. If every nation shows up and votes, it would take 100 yes votes to carry a substantive motion. With 150 attendees, a 76–38–36 vote would pass since abstentions are not counted (76 is two-third of the 114 votes cast yea or nay, and it also meets the simple majority test).

However, under rule 37, the Conference agreed to defer voting on substantive measures until all possible efforts at compromise have been used, and voting is to take place when a large majority of states believe that further negotiations will be fruitless. This system provides protection for minorities and also ensures that every possible effort will be made to reach an agreement by consensus rather than through polarizing votes. The Conference endorsed the following declaration incorporating the gentlemen's agreement made by the President of the Conference:

> Bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole and the desirability of adopting a Convention on the law of the sea which will secure the widest possible acceptance, the Conference should make every effort to reach agreement on substantive matter by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted.

The rules of procedure themselves do not refer to consensus by name, but, through a complex series of delaying procedures, are designed to ensure that everything has been done to achieve general agreement before any vote is taken on substantive issues.

Agreement by consensus, while not requiring the affirmative express approval of a text by every participating delegation, does give any delegation which is prepared to delay the right to block agreement. A provision to proceed exclusively by consensus would not be feasible for a subject as complex as the law of the sea in which so many important and disparate national interests are involved. The effect of the gentlemen's agreement (plus the procedural rules facilitating a consensus but providing for resort to voting if necessary) should dissuade states which might use their right to block agreement by consensus from doing so, and should enable both the committees and the plenary to proceed further by consensus than might have been thought possible.[5] Ambassador John Stevenson believes that the procedural innovation of the law of the sea conference will protect the international community from the potential abuse of the majority voting power of smaller countries.[6]

Substantive Issues Before the Third U.N. Conference on the Law of the Sea

The agenda for the law of the sea conference includes, as indicated before, 25 main headings and a number of subheadings, covering virtually every use and resource of the ocean. Six basic issues of overriding importance will be elaborated on. These are: non-living deep-seabed resources; living resources in the proposed economic zone; resources of the continental shelf; territorial limits and international straits; pollution; and, scientific research.

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[5] John R. Stevenson, "Lawmaking for the Seas", *American Bar Association Journal*, Volume, 61 February 1975, p. 189.
[6] Ibid., p. 189.

Within the limited scope of this primer it is impossible to discuss the positions of all countries on the basic issues, or even of the positions taken by the ten groups of nations described elsewhere. However, many of the differences of opinion tend to form along developed-developing countries lines. For the purpose of this survey of major positions, we have chosen to utilize the United States proposals which are fairly representative for the developed countries and the views of the Group 77 (now representing 106 developing countries at the Conference).

DEEP-SEABED RESOURCES

It is important to determine the boundary between the area of national jurisdiction and the international seabed area. Present law concerning the seaward extent of national jurisdiction over non-living seabed resources contained in the 1958 Convention on the Continental Shelf is open-ended, and this could lead to further extension of national jurisdiction by coastal states. Advanced technology will soon enable some industrial countries to explore for and produce manganese nodules from the seabed. While there is general agreement that an international authority to oversee the exploration and exploitation of the seabed needs to be created, there are different conceptions concerning the applicable legal regime.

The basic disagreements among the nations participating at the law of the sea conference are related to: who may exploit the area; the conditions of exploitation; and the economic aspects of exploitation.

U.S. position.—The United States has taken the position that the Convention must guarantee access on a nondiscriminatory basis to deep-seabed resources. It would like the seabed authority simply to issue licenses for exploration and exploitation of resources and to provide general regulations covering the rights and duties of licensees. Licensees would be issued automatically to any qualified applicant, be they states or corporations. The licensee would pay an application fee of no more than $50,000 and provide the seabed authority with certain declarations, statements and assurances.[7] In return, the licenses would receive exclusive rights for a considerable length of time over a designated area, which in the case of mining for manganese nodules would not exceed 30,000 square kilometers. The United States seeks adoption of a detailed mining code which explicitly prescribes how the system will work, what will be the rights and duties of licenses and the international regime, and what kind of safeguards will be provided for ensuring that these respective rights and obligations are protected and fulfilled.

The United States is aware that inclusion in a Convention of a detailed mining code would not fully protect its interests in guaranteed access. Thus, the United States position also depends on achieving an appropriate balance in the decision-making organs which realistically reflect existing interests, as well as providing for the compulsory settlement of disputes. There are still considerable conceptual differences concerning the nature and scope of the powers to be exercised by the International Seabed Authority.

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[7] For further details, see: United States draft appendix to the law of the sea treaty concerning mineral resources development in the international seabed area. United Nations, Third Law of the Sea Conference, doc. A/Conf. 62/C. 1/L. 6, Caracas, August 13, 1974.

The United States agrees that substantial regulatory powers should be vested in the International Authority, but control over the operation should remain with the operator or the sponsoring state, and the Convention would embody definite limits on the Authority's discretionary powers.

The position of the Group of 77.—The Group of 77 (now 106) developing nations, wants exploration, exploitation and related activities such as scientific research to be undertaken by the Authority. Their proposed draft article on the seabed reads:

> All activities of exploration of the area and of the exploitation of its resources and all other related activities including scientific research shall be conducted directly by the Authority.[8]

However, the Group of 77 is aware that only a few industrial nations have the technology to produce manganese nodules from the ocean floor. Hence, the draft article on the seabed regime recognizes the need to work with those who possess the technology, but who are under the overall control of the Authority:

> . . . The Authority may, if it considers it appropriate, and within the limits it may determine, confer certain tasks to juridical or natural persons, through service contracts or association or through any such means it may determine which ensures its direct and effective control at all times over such activities.[9]

Prior to the Caracas session, 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 trend would indicate a recognition that at least during the early years of its existence, the Authority would of necessity be required to deal with private companies from developed countries that have the financial and technical capability to mine the seabed.[10]

The Group of 77 also differ significantly from the developed countries in their views on the degree to which the International Authority, through its appropriate organs, will control the activities of the entity actually carrying out exploration and exploitation. Most proposals before the Committee envisaged that the new organization will have at least four main organs: an Assembly in which all States parties to the Convention will be members; an executive organ, or Council, of restricted membership; an operational arm; and, a Secretariat. Developing countries tend to favor concentration of power in the Assembly, where they would have control through majority voting. They would like to ensure that the Assembly would be called upon to decide every important issue. The executive organ, or Council, would carry out the day-to-day activities within relatively closely drawn lines laid down by the Assembly. The developed countries, on the other hand, would like to see an Assembly which would approve only broad policy lines and a Council with wide executive powers and considerable latitude in its conduct of the business of the organization. In addition, the developed countries want the Council to represent their interests in such a way as to make impossible for the developing nations to veto the Council's actions.

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[8] United Nations, Office of Public Information, Press Release SEA/100, Caracas, July 31, 1974.
[9] Ibid.
[10] For the complete text of the Position of the Group of 77, see: United Nations, Third Law of the Sea Conference, doc. A/Conf. 62/C I/L 7, Caracas, August 16, 1974.

As to the economic aspects of manganese nodule mining on the deep seabed, developing countries fear that exploitation may hurt the interests of current land-based producers of copper, nickel, manganese and cobalt. Two U.N. reports, issued prior to the Caracas session, predict that cobalt and manganese prices may be affected by seabed production but that there would be lesser impacts on world markets of the two other metals obtained from manganese nodules.

Even though most developing countries are importers of these minerals, the Group of 77 would like to take care not to depress the world price of the minerals contained in manganese nodules, by limiting production and profits. In contrast, the developed nations want economical and secure sources of supply. Recent experiences with OPEC have certainly not gone unnoticed at the law of the sea conference.

Ambassador John R. Stevenson maintained that the American 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.[11]

In spite of the fact that Committee I, unlike other committees, had before it a complete set of alternative treaty texts on the international regime and machinery, the Caracas session did not see any major negotiating breakthrough. 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. The U.S. hopes that this group will succeed in narrowing differences and that it will lead to a realistic approach which will promote access by industrialized consumer countries and the development of the mineral resources of the deep seabed.

THE ECONOMIC ZONE

The concept of exclusive coastal state jurisdiction over the renewable and non-renewable resources which are found in the water, in the seabed, and in the subsoil of an area adjacent to the territorial sea, was first introduced at a meeting of ministers of Caribbean nations on the law of the sea held in Santo Domingo in June 1972. In a declaration issued on June 7, 1972, the Caribbean nations held that coastal states had sovereign rights over such resources in an area (which they called the patrimonial sea) not exceeding a maximum of 200 nautical miles.[12] The Caribbean declaration was followed by draft articles submitted by Kenya, which specifically refer to the rights of coastal states "to establish an Economic Zone beyond the territorial sea for the primary benefit of their peoples and their respective economies in which they shall exercise sovereign rights over the natural resources for the purpose of exploration and exploitation." [13] The rights of the coastal state under the Kenyan draft are more extensive than those under the Santo Domingo Declaration and include the right of the coastal state to regulate scientific research and marine pollution within the Eco-

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[11] U.S. House of Representatives. Committee on Foreign Affairs. Hearing on the *Status of the U.N. Law of the Sea Conference*, 93rd Congress. Second Session. U.S. Government Printing Office, 1975, p. 11.

[12] For the text of the Declaration, see: United Nations, General Assembly, doc. A/8721, Supplement No. 21, New York, 1972, pp. 70–73.

[13] Ibid., pp. 180–182.

nomic Zone. In terms of the limits of the area, the Kenyan draft states that "the Economic Zone shall not in any case exceed 200 nautical miles, measured from the baselines for determining the territorial sea." [14] A year later, the Organization for African Unity at its 21st ordinary session in Addis Ababa, Ethiopia, from 17 to 24 May 1973, adopted the Kenyan draft on the Economic Zone.[15] Gradually, a growing number of developing and some developed nations adopted the 200 nautical mile Economic Zone concept, but the major maritime countries continued their opposition. Finally, at the Caracas session, the Soviet Union and the United States endorsed the concept of a 200 nautical mile economic zone under certain conditions. On July 11, 1974, Ambassador John R. Stevenson stated:

> We are prepared to accept, and indeed we would welcome, general agreement on a 12 mile outer limit for the territorial sea and a 200 mile outer limit for the economic zone, provided it is part of an acceptable comprehensive package including a satisfactory regime within and beyond the economic zone and provision for unimpeded transit of straits used for internatonal naviagation.[16]

U.S. position.—The willingness of the United States and other developed coastal states (Japan has not yet endorsed the concept) to accept a 200 mile outer limit for the economic zone depends on the concurrent negotiation and acceptance of correlative coastal state duties. The U.S. draft proposal on the economic zone includes the following provisions:

(1) the outer limit of the economic zone shall not exceed 200 n.m. from applicable baselines for measuring the territorial sea;

within the economic zone the coastal state shall have exclusive rights for the purpose of exploring and exploiting all natural resources of the seabed, the subsoil, and the superjacent waters;

(2) coastal states may not interfere with the freedom of navigation and overflight, and other rights recognized by the general principles of international law, except as otherwise specifically provided;

(3) coastal states shall have exclusive rights for the purpose of regulating fishing within the economic zone;

(4) coastal states shall ensure conservation of renewable resources within the economic zone based on scientific research and without discrimination against any fisherman;

(5) the coastal state shall ensure full utilization of renewable resources within the economic zone, and for this purpose shall permit nationals of other states to fish for that portion of the allowable catch not fully utilized by its nationals, and on the basis of priorities. Priorities favor states that have normally fished for the resource, neighboring and land-locked states;

(6) special regulations for anadromous species such as salmon favoring the state of origin;

(7) special regulations for highly migratory species such as tuna, which will be regulated by the coastal state within the economic zone, and by the state of nationality outside the economic zone, in accordance with regulations established by appropriate international and regional fishing organizations;

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[14] Ibid,. p. 181.
[15] United Nations, General Assembly, doc. A/9021, New York, 1973, pp. 4-8.
[16] Address by Ambassador John R. Stevenson, Special Representative of the President, U.S. Representative to the Law of the Sea Conference, Caracas, July 11, 1974.

(8) coastal states will exercise sovereign rights over the continental shelf for the purpose of exploring and exploiting its natural resources. The continental shelf is defined as the seabed and subsoil of the submarine areas adjacent to and beyond the territorial sea to the limit of the economic zone or, beyond that limit, throughout the submerged natural prolongation of the land territory of the coastal state to the outer limit of its continental margin. The seward limit of the continental margins still need to be defined;

(9) other provisions call for guarantees of foreign investment and sharing of revenue of non-renewable resources seward of the territorial sea or the 200 meter isobath, whichever is further; and

(10) rights of the coastal state over the continental shelf do not affect the legal status of the superjacent waters, or that of air space above those waters.[17]

The present U.S. position is both a recognition of the growing consensus on the concept of a 200 n.m. economic zone and a compromise between domestic coastal and distant-water fisheries. The United States has a major interest in both. Its distant-water tuna and shrimp fisheries rank among the most important U.S. fisheries in terms of value landed. At the same time, the United States has recognized the need to protect its coastal fisheries from the rapidly increasing danger of overfishing. Existing international law does not sufficiently protect marine fisheries beyond a narrow zone of twelve miles, and international and regional fisheries treaties and organizations have not proven effective in the fight against overfishing. The proposed economic zone of 200 nautical miles, coupled with special regulations for anadromous and highly migratory species, would bring almost all fisheries of commercial importance under the management of coastal states and international fisheries organizations.

The provision calling for coastal state jurisdiction over the resources of the seabed and subsoil to the outer limit of the continental margin, would also give the coastal state control over almost all potential petroleum provinces in the oceans. The only significant category of exploitable resources outside the economic zone are the manganese nodules, which are primarily located on the deep seabed. The present U.S. position on the continental shelf differs from the original Nixon proposals of 1970. At that time, the United States proposed that all nations adopt as soon as possible a treaty under which they would renounce national claims over seabed resources beyond the 200 meter isobath and would agree to regard those resources as the common heritage of mankind.[18] The Department of the Interior did not favor the Nixon draft, and foreign reaction to the idea of international control was also negative. In response to these negative responses the United States position shifted toward support for the 200-mile economic zone concept.

Developing nations' position.—Most developing coastal states favor a 200 nautical mile economic zone in one form or another. However, they differ significantly in their approach. The African position as

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17 For the complete text of the U.S. draft articles for the economic zone, see: United Nations, Third Law of the Sea Conference, doc. A/Conf. 62/L. 7, Caracas, August 27, 1974.

18 United Nations, Ecosoc, *Uses of the Sea*, doc. E 5120, New York, April 28, 1972, p. 5.

presented in the Declaration of the Organization of African States in 1973, for example, considers the exclusive economic zone as an area over which the coastal state exercises sovereignty over the living and non-living resources of the area. The African nations consider the economic zone as a national area of sovereignty for economic purposes, within which the coastal state not only enjoys sovereignty over all resources, but also exercises exclusive jurisdiction in the area for their protection. Rather than considering the economic zone as an area within which the coastal state has certain rights, the O.A.U. position regards the economic zone as a national zone within which the international community has certain well defined but restricted rights. They reject the obligation to ensure full obligation of living resources and insist on coastal state controls over scientific research and regulation of pollution within the economic zone. Even navigation may be subject to coastal state regulation under the African proposal.[19] The African proposal as it stands does not appear to be acceptable to the maritime nations.

Even within the Group of 77 there are differences of opinion on the rights and obligations of the coastal states within the economic zone. Many land-locked and geographically disadvantaged states fear that unless they have access to the resources of the economic zone and receive guarantees of transit, they have little to gain from the proposed economic zone. This was clearly brought out in the Kampala declaration.[20] Their support for the economic zone will largely depend on the degree of accomodation that coastal states are willing to bring about.

There are further complications. Acceptance of the economic zone will depend on agreement on territorial limits and international straits. Moreover, the Conference also needs to reach agreement on the problem of islands, baselines, archipelagoes, and so on. The list of items before Committee II totals 15 out of the 24 items before the Conference, and because so many controversial matters have to be examined, Committee II made less progress than Committee I at the Caracas session. At the Caracas session, Committee II devoted most of its time to a presentation of individual national positions and proposals at its 46 formal meetings (July 3–August 28) and to an effort in informal sessions to focus future discussions and negotiations on fundamental issues. Much of the available time was used attempting to debate and comment on the more than 80 formal proposals and to reduce as much as possible the number of alternative formulations in the working papers.

Ambassador Andres Anguilar of Venezuela, the Chairman of Committee II, summed up the progress made at Caracas in Committee II in a concluding statement at the end of the session:

> The idea of a territorial sea of 12 miles and of an exclusive economic zone beyond the territorial sea up to a total distance of 200 miles is, at least at this time, the keystone of the compromise solution favored by the majority of States participating in the Conference. The acceptance of this idea is, of course, dependent on a satisfactory solution of other issues especially the issue of passage through straits used for international navigation, the outermost limits of the continental shelf and the actual retention of this concept, and last, but not least, the aspirations of

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[19] For a complete text of the African proposal, see: United Nations, Third Law of the Sea Conference, doc. A/Conf. 62/C. 2/L. 82, Caracas, August 26, 1974.

[20] United Nations, Third Law of the Sea Conference, doc. A/Conf. 62/23, May 2, 1974.

land-locked and other countries which, for one reason or another, consider themselves geographically disadvantaged. There are, in addition, other problems which must be studied and solved in connection with this idea, for example, those relating to archipelagoes and to the regime of islands in general. It is necessary to go further into the matter of the nature and characteristics of the concept of an exclusive economic zone, a subject on which important differences still persist. On all these subjects substantial progress has been made which lays the foundations for negotiation in the intersessional period and at the next session of the conference. Much headway has been made at Caracas along the road which will lead us to the final goal.[21]

TERRITORIAL SEA AND INTERNATIONAL STRAITS

The question of the limits of the territorial sea and transit through international straits is also being examined by Committee II. Agreement on territorial seas and straits is of vital importance for the success of the Conference. While the majority of States represented at the Third Law of the Sea Conference favor adoption of a 12 nautical miles territorial sea, there are some significant complications which have made progress on this matter difficult. Extension of territorial limits to 12 miles would mean that over 100 straits now classified as international waters—including the English Channel, the Straits of Gibraltar, Malacca and Hormutz, to name four of the most important—will come under national control. Under a 3-mile territorial sea, those straits now include high seas.

U. S. position.—The United States has proposed that in the context of an overall satisfactory settlement, it would be willing to accept a 12-mile territorial sea. However, the U.S. has coupled its willingness to agree to a 12-mile territorial sea with recognition of a treaty right of unimpeded transit through and over straits used for international navigation. Without a right of unimpeded transit, it might be possible to assert that only the right of innocent passage would apply. Innocent passage does not permit submerged transit by submarines or overflight by aircraft. Moreover, there is no generally agreed international understanding of what passage is "innocent," and some strait states have interpreted the term innocent passage in such a way as to consider large petroleum tankers or nuclear-powered vessels inherently "not-innocent." Since international straits serve as access and connecting points for large areas of the oceans, free transit is of vital strategic and economic importance. And because of their special prominence, the potential of conflict from an uncertain legal regime is greatly increased in straits. The U.S. recognizes the legitimate concerns of strait states and has proposed international safety and pollution regulations.

Position of strait States.—The position of the strait States was clearly described in the draft articles on navigation through territorial seas and international straits, introduced in 1973 by Cyprus, Greece, Indonesia, Morocco, Spain and Yemen. These states want to maintain the concept of innocent passage and stated in their draft proposal that maritime safety and coastal State security will be served best "by the reasonable and adequate exercise by the coastal State of its right to regulate navigation through its territorial sea, since the purpose of the regulation is not to prevent or hamper passage but to

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[21] United Nations, Office of Public Information, Press Release SEA/150, Caracas, August 30, 1974.

facilitate it without causing any adverse effects to the coastal State." [22] The draft articles include a number of general articles applying to all vessels, and specific articles for merchant ships, warships, government ships other than warships and ships with special characteristics, such as nuclear-powered ships, ships carrying nuclear substances "or any other material which may endanger the coastal State or pollute seriously the marine environment" and ships engaged in research of the marine environment.[23] Under the articles, the coastal State would have the right to regulate passage through its territorial sea (which includes straits of 24 nautical miles or narrower) of ships with special characteristics, which in view of the referrence to vessels that could seriously pollute the marine environment, includes tankers. Coastal States could also require prior notification to or authorization by its authorities for nuclear-powered ships or ships carrying nuclear weapons, and submarines would be required to navigate on the surface and to show their flag.[24] The same rules of prior notification to or authorization by the competent authorities of the coastal State would also apply to all warships and government ships other than warships operated for non-commercial purposes.[25]

While the position taken by strait States is unacceptable to most maritime countries, the latter do agree that ships and aircraft in transit should comply with generally accepted international regulations, procedures and practices, and they have encouraged coastal States to propose traffic separation schemes for safety of navigation in crowded straits in order to promote safe passage of ships.[26] The maritime nations also recognize the impcrtance of fully protecting the marine environment, but they want international regulations, procedures and practices for the prevention and control of pollution from ships. They also favor adequate international provisions for compensation should damage result despite the most rigorous prevention requirements.

At the Caracas session there was little public movement toward conciliation on the part of the strait states, but debate was less heated than on previous occasions. Agreement on a 12-mile territorial sea was so widespread that there were virtually no references to any other limit in the public debate. However, major conditions for the acceptance of 12 miles as a maximum limit were agreement on unimpeded transit of straits and acceptance of a 200-mile exclusive economic zone.

MARINE POLLUTION AND SCIENTIFIC RESEARCH

Protection of the marine environment was largely overlooked at the 1958 and 1960 conferences on the law of the sea. Particularly since the Stockholm Conference on the Human Environment, the need for multilateral action to combat marine pollution has become apparent.

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[22] United Nations, General Assembly, doc. A/9021, Supplement No. 21, vol. III, New York, 1973, p. 4.
[23] Ibid., pp. 4–10.
[24] Ibid., see articles 3, 14, 15, 16
[25] Ibid., articles 19–23.
[26] Statement Before Committee II, the Honorable John Norton Moore, Chairman of the National Security Council Interagency Task Force on the Law of the Sea, Deputy Special Representative of the President, and United States Representative to the Third United Nations Conference of the Law of the Sea, Caracas, July 22, 1974.

Scientific research at sea is not specifically listed as one of the four basic freedoms of the high seas in article 2 of the 1958 Convention on the High Seas, but the I.L.C. stated in its commentary to the draft article, in its final report to the General Assembly:

> The list of freedoms of the high seas contained in this article is not restrictive. The Commission has merely specified four of the main freedoms, but is aware that there are other freedoms such as the freedom to undertake scientific research on the high seas—a freedom limited only by the general principle stated in the third sentence of § 1 of the commentary to the present article (i.e. that "States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States).[27]

Under the 1958 Continental Shelf Convention, some restrictions were placed on scientific research "concerning the continental shelf and undertaken there." [28] The United States and certain other matitime nations maintain that scientific research undertaken on or in the water column over the shelf with the intention of open publication is not subject to coastal state interference and does not need coastal state consent.

Committee III of the Conference was given a functional rather than a territorial mandate: it was to deal with the problems of pollution and scientific research everywhere in the oceans. The Third Conference addresses itself to two basic sources of pollution, (1) pollution produced in the process of exploiting the non-living resources of the seabed and subsoil and (2) pollution introduced to the marine environment from deliberate and accidental discharges. The Conference does not address itself to another major source of marine pollution; water-borne pollution emptied into the oceans by the world's river systems. The most critical pollution question at the Conference appears to lie in the area of coastal state jurisdiction over pollution regulation and control within the proposed economic zone.

While marine pollution related to offshore petroleum production contributes only a fraction of the total amount of oil spilled in the oceans, its local impact can be large.

U.S. position.—The U.S. has proposed that pollution resulting from the exploration and exploitation of seabed resources be treated differently from vessel-source pollution. The former should fall under the jurisdiction of the coastal state; the latter should be subject to international standards and regulation. The U.S. fears that coastal state jurisdiction over vessel-source pollution could lead to different sets of standards for coastal states, which in turn would impair freedom of navigation. However, the United States maintains that even within the economic zone, there should be minimum international standards with respect to the production of liquid hydrocarbons. A coastal state can have the right to impose stricter standards in addition to the minimum international standards.[29]

The United States favors international regulations for the control of vessel-source pollution, and envisions a combination flag state—port state coastal state regulatory system, which provides that:

> The flag State would continue to have enforcement responsibilities over its vessels, although such authority would not be exclusive, and would assume a

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[27] Warren S. Wooster, ed., *Freedom of Oceanic Research*, (New York: Crane, Russak & Company, Inc., 1973), p. 50.

[28] Convention on the Continental Shelf, article 5, paragraph 8.

[29] U.S. House of Representatives. Committee on Foreign Affairs. *Status of the U.N. Law of the Sea Conference, op. cit.* p. 37.

specific obligation to enforce international standards in the case of vessels flying its flag, subject to the right of other States to have recourse to compulsory dispute settlement procedures to ensure that the obligation was fully discharged. The port state would be able to enforce pollution control standards in the case of vessels using its port, regardless of where violations took place.

The coastal state would have rights and remedies that would fully protect its environmental interests; provision was made for dealing with the four major maritime pollution problems facing the coastal state: serious maritime casualties off its coast, violations of international standards imminent danger of major harmful consequences, persistent and unreasonable failure of a State to enforce the international standards with respect to vessels flying its flag, and general violations of the standards.[30]

The United States has indicated that extensive coastal state controls over marine pollution within the 200-mile economic zone would hurt developing coastal states as much as it would the U.S. and other maritime powers. Most developing countries are "zone locked," which means that vessels bound from their port to areas beyond any 200-nautical mile economic zone would of necessity pass through the economic zone of at least one other nation. If pollution control zones were used to inhibit maritime transport, the majority of the world's coastal States could be hurt.

Developing countries positions.—Developing countries maintain that not only pollution resulting from seabed resources development should be controlled by the coastal state, but that vessel-source pollution should also be regulated and controlled by the coastal State within the proposed economic zone. It may prove very difficult to reconcile this view with that of the developed nations.

Another major problem arises from the degree of urgency of pollution control as perceived by coastal States. The developing countries are generally not as enthusiastic about the concept of pollution prevention as are the developed countries. They maintain that the developed countries achieved their advanced economic status at no small cost to their environments, and only now, in their years of affluence, are in a position to afford consideration of such factors as environmental quality. They argue that suggestions concerning restrictions of industrial development for the purpose of protecting the environment will reduce growth rates in the developing countries. They are only willing to accept restrictions on growth if the developed nations pay for it.

Developing countries are also quick to point out that of the six international conventions for the Prevention of Pollution, only one—the 1954 agreement—is in force.[31] Moreover, they have charged, rightly or wrongly, that the Inter-Governmental Maritime Consultative Organization (IMCO)—which has been engaged in attempts to reduce vessel-source pollution—has by and large been the tool of the major maritime powers, and its efforts at pollution prevention have been token at best. Hence, most developing coastal states want to regulate and control marine pollution within the proposed economic zone.

At the Caracas session, draft articles were completed on general obligations to prevent pollution, particular obligations, global and regional cooperation, technical assistance, rights of states to exploit

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[30] Statement of the Hon. John Norton Moore before Subcommittee III of the Seabed Committee, July 18, 1973. United Nations, General Assembly, doc. A/AC. 138/SC. III/SR. 41, New York, 1973, p. 4.

[31] James E. McCarthy, "Law Beyond the Three-Mile Limit," *The Conference Board Record*, vol. 2, January 1975, p. 16.

their resources, and the relevance of economic factors to developing countries' obligations. These texts were not fully agreed upon 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 settlements of disputes.

At the Geneva 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.

U.S. position on scientific research.—Maritime nations like the United States have maintained that oceanic research has benefitted all mankind by providing the scientific community with information which can lead to better management of ocean resources, better weather forecasting, understanding and regulation of pollution, and the like. As most of the interesting scientific research at sea is conducted within the proposed economic zone of 200 nautical miles, marine scientists maintain that much vital research will be impaired by coastal state restrictions if the latter were to have the right to regulate scientific research within that area.

In order to safeguard the interests of the coastal states, the U.S. has proposed that all scientific research remain free from restraints, but that researchers comply with the following rules if they wish to conduct research in the economic zone:

(1) advanced notification of the proposed research, including a detailed description of the research project;

(2) a right of the coastal state to participate directly or through an international organization of their choice;

(3) sharing of all data and samples with the coastal states;

(4) assistance to the coastal states in interpreting the results of the research project in a manner that is relevant to the coastal state;

(5) publication as soon as possible of the significant research findings in an open, readily available scientific publication;

(6) compliance with all applicable international environmental standards; and

(7) flag-state certification that the research will be conducted in accordance with the treaty by a qualified institution with a view to purely scientific research.[32]

Developing coastal states, on the other hand, want to have control over all scientific research within the proposed economic zone. Developing coastal states have expressed the following reasons for their need to control oceanic research:

(1) the desire to control all oceanic activities, including scientific research within the proposed economic zone would make the

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[32] Address by Ambassador John R. Stevenson, Special Representative of the President, U.S. Representative to the Law of the Sea Conference Before Committee III of the Law of the Sea Conference, Caracas, July 1974.

coastal state the final judge of the kind of research they believe would be of benefit to their state;

(2) the fear that unregulated research within the proposed economic zone will widen the technological gap between the developed and the developing nations (this fear is based on the perception that only advanced countries can translate scientific research into economic benefits or military power);

(3) fear for espionage activities by research vessels (Pueblo affair syndrome); and

(4) freedom to conduct scientific research within the economic zone would not provide the developing coastal state with a *quid pro quo* which they expect in return for allowing foreign researchers to conduct oceanic research within their coastal waters.

At the Caracas session, the views of the maritime nations and the developing coastal states on the question of freedom of scientific research did not come any closer to one another. Agreement 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. The number of proposals were finally reduced to four principal alternative texts.

DISPUTE SETTLEMENT

The nations negotiating at the law of the sea conferences are attempting to produce an internationally agreed upon system, aimed at limiting friction and conflict over the uses of the seas. The voting procedures agreed upon at the Caracas session are a step in the direction of achieving this goal. However, these are likely to be differences over the interpretation and application of the provisions of the treaty. In order to define the rights and duties of states and to provide assurances that those rights under the treaty will be protected, a dispute settlement mechanism is necessary.

U.S. position.—The U.S. government believes that any law of the sea treaty is almost as easily susceptible of unreasonable unilateral interpretation as are the principles of customary international law. This is particularly true considering that the essential balance of critical portions of the treaty, such as the economic zone, must rest upon impartial interpretation of treaty provisions.[33]

In a working paper, introduced jointly with Australia, Belgium, Bolivia, Colombia, El Salvador, Luxembourg, the Netherlands and Singapore, the United States has set out its views on dispute settlement. In addition, most U.S. draft proposals contain compulsory dispute settlement provisions. The United States favors the creation of a new oceans tribunal with broad jurisdiction to deal with disputes

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[33] Address by Ambassador John R. Stevenson, Special Representative of the President, U.S. Representative to the Law of the Sea Conference before the Plenary Session of the Law of the Sea Conference, Caracas, July 11, 1974.

arising under the treaty. Whenever parties who abide by the law of the sea treaty cannot agree on a method of dispute settlement, they may refer the dispute to the tribunal. However, prior to referring disputes to the tribunal, states should be free to agree on other methods of dispute settlement they consider suitable. such as mediation, conciliation, arbitration, and other procedures. The only disputes that would not be submitted to the tribunal are fishing disputes, which would instead be submitted to a special commission, consisting of five members, named by agreement between the states in dispute or by the U.N. Secretary-General. The United States government maintains that a system of peaceful and compulsory third-party settlement of disputes is in the end perhaps the most significant justification for the accommodations which nations have been asked to make.[34]

Developing countries positions.—They generally do not favor compulsory dispute settlement for the following reasons: (1) They believe that the decision-makers in this approach will tend to be from developed nations; (2) costs associated with cimpulsory dispute settlement are likely to he high, and are consequently difficult to sustain for poor countries; and (3) the number of disputes requiring tribunal action may become overwhelming.[3]

At the Caracas session the three Committees did not become deeply involved in dispute settlement problems. Aside from Committee I, there was not much public debate in the Conference on 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 dispute settlement problems, and at the end of the session nine countries, including the United States, issued a workine paper which is likely to stimulate further study and discussion beforg the Geneva session.

THE CARACAS SESSION: A SUMMARY

At Caracas, update nations began the colossal task of deciding on a legal regime governing the activities of men and nations on more than two-thirds of the surface of the world. Many consider the Third Law of the Sea Conference the most important international law-making conference since the establishment of the United Nations in 1945. The outcome of the conference is of the utmost importance for the future of mankind. Ambassador John R. Stevenson emphasized the need for certain generally agreed upon principles of conduct to to resolve competing uses and conflicts at sea if we are to avoid complete chaos.[36]

The 138 nations participating at the Caracas session consist of maritime and non-maritime coastal states, coastal states with narrow and wide continental margins, coastal states with extensive and others with narrow coastlines, nations with coastal-water, distant-water or a combination of coastal- and distant-water fisheries interests, land-locked and geographically disadvantaged states, and so forth. While maritime nations may agree on certain issues such as the need for

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[34] Ibid., ———.
[35] Lewis M. Alexander, "The Law of the Sea Conference: Issues in Current Negotiations," *Naval War College Review*, vol. 29, November-December 1974. p. 49.
[36] John R. Stevenson, "Lawmaking for the Seas," *American Bar Association Journal*, vol. 61, February 1975.

narrow territorial limits and free transit through international straits, they may disagree on fishery issues because of different national interests. Developing nations may agree on the need for a strong international regime to regulate the development of ocean resources beyond the area of national jurisdiction, they may disagree on fisheries, the width of the proposed economic zone, and so forth. Moreover, in contrast to the First Law of the Sea Conference, which succeeded in keeping separate the subject matter of our Convention, the participants at the Third Law of the Sea Conference must consider the entire "package" of law of the sea treaty provisions and either accept or reject the treaty as a whole rather than picking and choosing in accordance with their special interests.

U.S. negotiators were fairly optimistic after the Caracas session. Ambassador John R. Stevenson was convinced that a comprehensive treaty would be obtainable by the end of 1975 as contemplated in the 1973 U.N., General Assembly resolution. Mr. Stevenson did add the following observation:

> To do so, however, governments must begin serious negotiations 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 negotation.[37]

The U.S. delegation to the Third Law of the Sea Conference maintains that considerable accomplishments were made at the Caracas session. Among the most important are the following:

(1.) 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 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;

(2.) the inclusion in the treaty of a 12-mile territorial sea and a 200-mile economic zone was all but formally agreed upon, subject to acceptable resolution of other issues;

(3.) the transition from a preparatory committee of about 90 to a conference of almost 150 was achieved without major new stumbling blocks and with minimum delay;

(4.) the first steps were taken toward real negotiation of the basic questions of the system and conditions of exploiting the deep seabeds;

(5.) 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;

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

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[37] Statement by Ambassador John R. Stevenson, Special Representative of the President and Chai·man of the U.S. Delegation to the Third U.N. Law of the Sea Conference, Before a Joint Meeting of the Subcommittee on Minerals, Materials and Fuels of the Senate Interior and Insular Committee and the National Ocean Policy Study, Washington, D.C. September 17, 1974, p. 27.

(7.) rules of procedure were adopted by consensus early in the session and designed to promote widespread agreement; and

(8.) 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.[38]

Among the major shortcomings of the Caracas session, the chairman of the delegation listed first and foremost the absence of political will to make hard negotiating choices. Principal reasons given for this were the conviction that another session would follow the Caracas meetings. and the absence of organized alternate treaty texts on many issues, Ambassador Stevenson maintained that the Conference suffered from the carryover of a negotiating style more suitable for General Assembly recommendations or negotiation of abstract issues than for texts intended to become widely accepted as treaty obligations affecting immediate interests of states in a dynamic situation. Tactics rather than negotiations were the rule.[39]

Also, the decision by the General Assembly that countries must decide on the whole "package" of law of the sea treaty provisions, has increased the difficulty of the negotiations by increasing the number of items with which the Conference must deal. In the end countries must accept or reject the package in its entirety.

In spite of the shortcomings, there was some optimism in the final statement of the President of the Conference, ambassador H. Shirley Amerasighe:

> There has so far been no agreement on any final text or on any single subject or issue, despite the lenghty deliberations in the Sea-bed Committee that formed the prelude to our discussions in the Conference itself. We can, however, derive some legislative satisfaction from the thought that most of the issues or most of the key issues have been identified and exhaustively discussed, and the extent and depth of divergence and disagreement on them have become manifest.[40]

It is difficult at this point to predict the outcome of the next session of the law of the sea conference in Geneva. An eight week session is scheduled, beginning on March 17, and if no final agreement is reached, subsequent sessions are contemplated for Vienna or Caracas. While U.S. delegates to the law of the sea conference are carefully optimistic about the possibility of preparing a comprehensive and widely accepted treaty, Professor Ann Hollick of the School for Advanced International Studies of Johns Hopkins University, believes that such a treaty is not likely to result from the Geneva session. She maintains that "with 25 agenda items and about 140 delegations to the conference, a detailed treaty could not be widely accepted and a widely accepted treaty could not be comprehensive".[41] Professor Hollick also suggests that from the U.S. perspective, none of the possible outcomes of the law of the sea conference will be seriously disadvantageous. If a limited treaty, encompassing acceptance of a 12 nautical mile territorial sea and a 200 nautical mile economic zone within which coastal states will have jurisdiction

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[38] *The Third Law of the Sea Conference on the Law of the Sea*, U.S. Delegation Support, Caracas, June 20-August 29, 1974.

[39] John R. Stevenson and Bernard H. Oxman, "The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session," *American Journal of International Law*, January 1975, p. 1.

[40] United Nations, Office of Public Information, Press Release SEA/150, Caracas August 30, 1974.

[41] Ann L. Hollick, "What To Expect From A Sea Treaty," *Foreign Policy*, Number 18, Spring 1975, p. 68.

over all living and non-living resources, will be achieved, the U.S. will benefit in terms of territorial and consequently resources gains. As all maritime nations have taken the position of insisting on narrow territorial limits of no more than 12 nautical miles and free transit for all vessels through international straits, coastal states are not likely to challenge the maritime nations on this issue. Professor Hollick writes that coastal states may impose a toll to cover the costs of managing traffic in congested states, "no government would lightly risk the humiliation of having its challenge to straits transit resisted by the naval powers acting in concert." [42] On the issue of deep seabed mining, Professor Hollick maintains that a limited treaty on the extent of the territorial sea and economic zone would bring a significant part of commercially attractive manganese nodule sites under U.S. jurisdiction (Pacific islands), and "if the provisions for a deep seabed regime are too offensive to the developed nations in an era of resource scarcity, their governments may simply ignore the treaty and encourage their firms to go ahead with consortia arrangements providing for reciprocal recognition of the mining claims of others." [43]

Many students of the law of the sea, in particular many of those in the academic community, believe that it may be better for the world to have no new LOS treaty at all rather than a bad treaty. Many, however, would agree with Professor P. A. Lapointe, who recently stated, "Were the Conference to fail, the world would, at best, be faced with the chaos of competing jurisdiction for many years to come and, at worst, with serious confrontations between users of the sea. Success will mean peace and order in the oceans for generations." [44]

CONGRESSIONAL VIEWS

During the same year that Ambassador Arvid Pardo of Malta called for the internationalization of the seabed resources beyond the area of national jurisdiction, Senator Claiborne Pell of Rhode Island introduced in the U.S. Senate a Resolution (S. Res. 186) urging the Administration to undertake the consideration of a draft treaty designed to achieve various objectives similar to those proposed by Ambassador Pardo. Congressional interest and actions related to the law of the sea have increased considerably in recent years. During the 93d Congress, at least 16 hearings were held by six committees on various ocean-related issues.

Two issues related to the law of the sea which have received most Congressional attention are fisheries and deep seabed mining. Throughout the late 1960's and early 1970's, several stocks of commercially valuable fisheries off the U.S. Atlantic and Pacific coasts have been severely depleted due to overfishing by distant-water fleets of the U.S.S.R., Japan, Eastern and Western Europe, and a few other nations. Although some voluntary reduction of fishing has been successfully agreed upon, particularly within the ICNAF region off New England, the overall situation remains critical. If timely action is not taken to protect our coastal fisheries, other species may go the same way as the Georges Bank haddock, on a steady road toward commercial extinction.

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[42] Ibid., p. 70.
[43] Ibid., p. 69.
[44] P. A. Lapointe, "Law of the Sea Advanced but much Remains to be Done, New Conference Rules Emerge," *International Perspectives*, No. V, November/December 1975.

Congress understood the urgency of the matter, and introduced the Emergency Marine Fisheries Protection Act (H.R. 8665 and S. 1988) during the 93d Congress. This Act would extend the contiguous fisheries zone from 9 miles to 197 miles, and extend the jurisdiction of the U.S. over anadromous species such as salmon to the limits of their range. The Act would terminate when and if a law of the sea treaty would enter into force. The Senate passed S. 1988 on December 11, 1974. The bill has been reintroduced in the Senate as S. 961 by Senator Magnuson, for himself and 18 other senators.

The executive branch has opposed unilateral action at a time when U.S. representatives are negotiating on a "package deal", and urging other nations so refrain from such unilateral action. However, many senators are of the opinion that we can no longer wait for the outcome of the law of the sea negotiations. Returning from the Caracas session last summer, Senator Muskie said:

> If we wait 2 or 3 years for an international treaty to be concluded, there may not be any resources left to protect. Adopting an interim 200 mile limit, on the other hand, will provide immediate protection for all our offshore fish stocks and will signal the nations of the world that the U.S. is not prepared to stand by idly while the Conference negotiations drag on.[45]

The executive branch no longer opposes the substance of the bill, but their principal objection to S. 961 (S. 1988 before) has been the timing of the bill. Senator Magnuson maintains that an adverse impact on U.S. interests will not take place if Congress considers the proposed legislation. He argues that nations of the world know our fishery position and it is contained in the bill, that the problem of overfishing requires urgent action, and that such action to protect fish is needed now and not in 1980 or later.[46] The Senator continued by saying that in his opinion a separate treaty could be, and ought to be, carved out from this extremely complex attempt to prepare one unified LOS treaty dealing with all ocean issues.[47]

The Subcommittee on Minerals, Materials and Fuels of the Senate Committee on Interior and Insular Affairs has taken a very active position on the development of minerals from the deep seabed. Congressional activity with regard to mineral resources of the deep seabed (primarily manganese nodules) dates back to 1969 when Senator Henry M. Jackson, Chairman of the Committee on Interior and Insular Affairs, created the Special Subcommittee on the Outer Continental Shelf. This Subcommittee, headed by Senator Lee Metcalf, held hearings in 1969 and 1970 to review the technological progress toward economic development of seabed resources and inquire into the soundness of the 1970 United States Working Paper on a draft United Nations Convention on the International Seabed Area. This working paper, proposed by the Administration before the United Nations Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, stressed issues related to naval mobility and military security, such as narrow territorial limits and free transit through straits, but placed little emphasis on securing rights to mineral resources. A staff report of the Subcommittee disagreed with the Administration's position stating, "To sacrifice

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[45] *Congressional Record*, August 13, 1974.
[46] *Congressional Record*, March 5, 1975, S. 3093.
[47] *Ibid.*

U.S. mineral interests in mining the deep seabed for a perceived military objective is at least debatable; but to sacrifice U.S. mineral objectives in mining deep seabed for what may be an unattainable military objective is folly, we feel." [48]

In view of the fact that no interim arrangements had been made in the Draft Convention to accommodate mining interests, and that future agreement by the United Nations on the Law of the Sea Convention would be several years away at best, the Special Subcommittee recommended that Congress consider legislation to encourage U.S. mining interests during this interim period. At the end of the 91st Congress, the Special Subcommittee on the Outer Continental Shelf dissolved, and the Subcommittee on Minerals, Materials and Fuels, chaired by Senator Lee Metcalf, was formed at the beginning of the 92nd Congress. This Subcommittee held hearings on a deep seabed mining bill written by the mining companies, and introduced by Senator Metcalf for discussion, but without his personal support. Hearings on the seabed mining bill were held in the 92nd and 93rd Congresses during which time the administration affirmed the need to tap the mineral resources of the deep seabed, but counseled taking no action which might jeopardize the prospects of successfully concluding a Law of the Sea Treaty by the end of 1975.

Consequently, early in the second session of the 93rd Congress, the Subcommittee redrafted the legislation to accommodate other interests and the administration's views by stipulating in the bill that no commercial development could begin before January 1, 1976. The Subcommittee's bill was also less attractive to the mining interests. The Administration continued to be opposed to the passage of any deep seabed mining legislation before the law of the sea negotiations were concluded, but did acknowledge the need for such legislation if law of the sea negotiations should drag out beyond 1975, or if a satisfactory treaty for U.S. interests could not be obtained.

Although differing from the Administration's views, the Senate Interior and Insular Affairs Committee also completely supports the concept of the law of the sea treaty. A number of its members sent a letter, dated June 7, 1974, to Secretary of State Henry Kissinger, stating their position favoring a 200 nautical miles limit of the resource zone and including all portions of the continental margins extending beyond 200 miles, and further stating that it is vital to the national interest that U.S. companies retain their current right of access to mine nodules from the seabed under terms that are conducive to making the investments necessary for their development.

Growing somewhat weary of hearing continual optimism expressed by the Administration in the face of lack of significant progress at the law of the sea conference, late in the Caracas session the Senate Interior and Insular Affairs Committee reported out the deep seabed mining bill with amendments. The amendments did much to return the bill to a form more acceptable to the mining interests. Faced with the prospect that mining companies could get along without the security for investment derived from national legislation by sharing risks through formation of international consortia, the committee felt that

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[48] U.S. Senate. Committee on Interior and Insular Affairs. *The Law of the Sea Crisis*. 92nd Congress, 1st Session. December 1971. (U.S. Government Printing Office, Washington, D.C. 1972), p. 10.

passage of the bill was necessary to promote and support U.S. national interests in developing new sources of minerals, and exercise some measure of control over their development. The Subcommittee chaired by Senator Metcalf has continually asked the Administration to submit or define the domestic legislation it would support if a successful treaty cannot be concluded. There are indications that the Administration is now moving in this direction with draft legislation that would, in effect, give the U.N. until the middle of 1976 to agree on a new Law of the Sea Convention.[49]

Senators Claiborne Pell, Edmund Muskie, Clifford Case and Ted Stevens, who acted as advisers to the U.S. Delegation at the Caracas session of the Third Law of the Sea Conference, returned from Caracas with rather pessimistic views concerning the status of the negotiations. The Senators made the following recommendations in a report to the Senate:

> . . . we believe that it is imperative that the negotiations reach this (a final) agreement by the end of 1975. Should the Conference go beyond its scheduled time-frame, the chances for success will be considerably diminished. Consequently, we think that the United States should realistically appraise its negotiating approach in light of the current Conference impasse. In our view, the delegates at Caracas have gone about as far as they can in the development of a technical and non-political base for a final agreement. We believe it is now time that this whole matter has to be taken up by the heads of state, or at least at the ministerial level. It cannot be left to those of lower rank because the questions that are holding up the agreement cannot be settled as technical matters. They require compromises and trade-offs that can only be negotiated at the political level. Legal scholars and statesmen will be struggling with the technical problems for many years to come and every reasonable effort should be made to support their work. However, in the interim, the United States should do all that is possible to resolve the political impasse of the Law of the Sea Conference, and should, at the same time, judiciously utilize other available options, whenever possible, without hindering the progress of that Conference, to solve its particular ocean problems. If an agreement is not reached at the 1975 meetings, the United States must realistically reappraise its position at least with respect to those issues relating to the U.S. fisheries resources.[50]

The U.S. Congress has played a very active role in protecting U.S. national interests in the oceans. The process has succeeded in redefining the original narrow U.S. position on the law of the sea, which was primarily designed to protect U.S. Naval interests, into a broader position more in line with the diverse interests of a major maritime and coastal power.

The First and Third U.N. Conferences on the Law of the Sea: A Comparison

1. Prior to the First Law of the Sea Conference, a single treaty text was prepared by the International Legal Commission after obtaining the comments of nations on the Commission's draft text. This single text was then discussed, amended and voted on at the Conference.

The reverse has taken place in the preparation of the Third Law of the Sea Conference. The various national interests and objectives were at first discussed in general terms in the preparatory committee and last summer at Caracas, with states submitting their competing

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[49] *Ocean Science News*, February 14, 1975, p. 4.

[50] U.S. Congress. *The Third U.N. Law of the Sea Conference.* Report to the Senate by Senators Claiborne Pell, Edmund Muskie, Clifford Case, and Ted Stevens, Advisers to the U.S. Delegation, Caracas, June-August 1974, (Washington, D.C. U.S. Government Printing Office, February 1975), p. 6.

texts on most treaty articles to be considered by the Conference and its Committees and to reduced ultimately to a single, approved text.

The difference may be accounted for in part by the fact that the 1958 Conference was devoted in many respects to codifying existing law, whereas the role of the present Conference is not only to modernize codified law in the light of changed circumstances and fill in the gaps, but also to provide progress in the development of entirely new law in areas such as the deep seabed and the protection of the marine environment.[51]

2. One triumph at the Geneva Conference in 1958 was in keeping separate the subject matter of the four Conventions. There were strong moves in the Fishery Committee, and even in the Committee on the Continental Shelf, to delay decisions and even activity pending the resolution of the vexing problems of the Territorial Sea and the Contiguous Zone. Although some problems are interrelated, the separation of subject-matter allowed for agreement on issues which would otherwise have been irreconcilable.

At the Third Law of the Sea Conference nations must consider the entire "package" of law of the sea treaty provisions rather than only their own interests in one or more items. They must in effect, accept or reject the treaty as a whole rather than picking and choosing in accordance with their special interests.[52]

As the list of main subjects on the agenda of the Third Law of the Sea Conference is much larger than the list of subjects introduced in Geneva in 1958, many more differences between and among states and groups of states participating at the LOS Conference need to be ironed out. Many students of international law and organization fear that the "package deal" approach may make a treaty which is both comprehensive and widely accepted, very difficult if not impossible to obtain.

3. Of the 86 nations participating in the First Law of the Sea Conference in Geneva in 1958, less than one-half were developing nations. Most of the developing nations present and voting in Geneva had not yet had the opportunity to clearly define the interests of their countries in matters related to the law of the sea.

At the Third Law of the Sea Conference, more than two-thirds of the almost 150 participating nations are developing countries, and many, if not most, have clearly defined their perceived national interests.

4. In 1958, when the International Legal Commission presented the Conference with 73 draft articles for consideration by the participating nations, the main task was to identify existing rules of law and classifying or supplementing them with new ones where necessary.

At the Third Law of the Sea Conference, the majority of developing nations is attempting to make radical changes in the existing rules of law. They are calling for a realistic revision of international law and for the need for a progressive development of the law of the sea in the light of scientific and technological progress.

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[51] John R. Stevenson, "Lawmaking for the Seas," *op. cit.*, p. 188.
[52] Ibid., p. 187.

IV. ADMINSTRATION POLICY FORMULATION

Interagency Task Force on Law of the Sea

The overall responsibility for the formulation and execution of U.S. oceans policy is exercised by the President. The National Security Council is the principal forum for Presidential consideration of this policy. It includes the National Security Council Under Secretaries Committee, whose chairman is the Deputy Secretary of State. Under his direction are: (1) the Chairman of the National Security Council Interagency Task Force on the Law of the Sea to propose oceans policy alternatives; (2) Special and Deputy-Special Representatives of the President for the Law of the Sea Conference to implement oceans policy; and (3) Office of the Law of the Sea Negotiations within the Department of State, which supports both the Chairman of the National Security Council Interagency Task Force on the Law of the Sea and the Special Representative of the President for the Law of the Sea Conference.

The National Security Council Interagency Task Force on the Law of the Sea evolved from an ad hoc Inter-Agency Task Force on the Law of the Sea, established in 1969 within the Department of State. The Task-Force was an attempt to resolve internal bureaucratic contention over control of ocean policy. The Task-Force, at the outset headed by Mr. John R. Stevenson who was also the head of the U.S. Delegation to the U.N. Seabed Committee, was composed of representatives from all affected Federal agencies and bureaus. In 1973 the ad hoc Task Force was formally placed under the direction of the National Security Council. Mr. Stevenson retired from the government in 1973, and his place as chairman of the Task Force was at first taken by Charles Brower, who in turn was replaced by John Norton Moore.

The National Security Council Interagency Task Force on the Law of the Sea supervises and coordinates policy related to the law of the sea and formulates ocean policy choices. These choices are reviewed by the National Security Council's Under-Secretaries Committee, then are sent to the President, who ultimately decides U.S. oceans policy and positions.

The following departments, agencies and bureaus are represented in the Task Force:

NSC Interagency Task Force on the Law of the Sea

Department of State

D/LOS—Office of the Law of the Sea Negotiations.
L/OES—Oceans, Environment and Scientific Affairs, Assistant Legal Advisor.
OES—Oceans, Environment and Scientific Affairs.
S/P—Policy Planning Staff.
L—Office of the Legal Advisor.
INR/RGE—Office of the Geographer.
T—Office of the Under Secretary for Security Assistance.
EB/IFD/OMA—Office of Monetary Affairs.
IO/OIC—Office of International Conferences.
IO/UNP—Office of United Nations Political Affairs.
EB/TT—Transportation and Telecommunications.

Department of Commerce
Deputy Administator, NOAA.
Executive Secretary, Law of the Sea Task Force.
Associate Administrator for Marine Resources.
Assistant Administrator for Operations Maritime Administration.
Assistant General Counsel for Science and Technology.
Assistant for International Fisheries.
Office of the Associate Administrator for Marine Resources, NOAA.
Deputy Director, Office of Import Programs, Bureau of Resources and Trade Assistance.
Chief, Non-Living Resources Division, Office of Program Integration, NOAA.

COUNCIL ON ENVIRONMENTAL QUALITY

Department of Defense
Director, Law of the Sea.
Joint Chiefs of Staff Representative for Law of the Sea Matters.
Chief, Maritime/UN Negotiations Division, Office of the Joint Chiefs of Staff.
Staff Assistant, Law of the Sea Task Force.
Staff Officer, Maritime/UN Negotiations Division.
Executive Officer to Staff Representative.

Environmental Protection Agency
Director, Oceans Division, Office of International Activities.

Federal Energy Administration
Assistant to the Administrator to the Administrator:
Designate.
International Energy Affairs.
International Energy Specialist, Energy Importing Nations Office.

Department of the Interior
Assistant Solicitor: International Law Division of Energy and Resources.
Special Assistant to the Assistant Secretary, Energy and Minerals.

National Science Foundation
Representative on Law of the Sea.

National Security Council
Senior Staff Member.

Office of Management and Budget
Budget Examiner.

Department of Transportation
Special Assistant to the Under Secretary for Transportation for Law of the Sea.

Department of the Treasury
Deputy Director, Office of Raw Materials and Ocean Policy.

U.S. Geological Survey (Department of the Interior).
A.I.D.
Central Intelligence Agency
Department of Agriculture
Foreign Agriculture Service Trade Negotiations Division.

Council of Economic Advisors
Council on International Economic Policy
Marine Mammal Commission
General Counsel.

Department of Justice
Chief, Marine Resources Section.
USIA

As of February 16, 1975, the Inter-Agency Task Force on the Law of the Sea consisted of the following members:

NSC Interagency Task Force on the Law of the Sea

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Mr. Myron Nordquist, D/LOS, Room 4321, New State.
Mr. Roger H. Hull, D/LOS, Room 4321, New State.
Mr. Ronald Bettauer, L/OES, Room 6420, New State.
Mr. Harry Blaney, S/P, Room 7316, New State.
Mr. Steven Burton, L/OES, Room 6420, New State.
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Ms. Kay McKeough, Room 2060, Main Treasury, Washington, D.C. 20220.

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Stuart McIntyre (hold in D/LOS).

Ambassador John R. Stevenson, Sullivan and Cromwell, 48 Wall Street, New York, N.Y. 10005.

Classified:

Ambassador John R. Stevenson, c/o CDR Robert McKew, USUN, New York, N.Y.

CDR Robert McKew, USUN, New York, N.Y.

Mr. Herbert Reis, USUN, New York, N.Y.

Mrs. Peggy Gerstle, 3016 O Street NW., Washington, D.C. 20007.

Mr. Frank Rossomondo (U), CIA, Washington, D.C. 20505, Attn: OBGI/GD/X.

Mr. Frank Rossomondo (C) (by hand), c/o OBGI/GD/X, Room 806, Magazine Building, 1815 North Lynn Street, Rosslyn, Va.

U.S. Geological Survey

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AID

Mr. Leo Laufer, PPC/IA, Room 3845, New State.

USIA

Mr. Gerald Kallas, U.S. Information Agency, IOP/C, Room 607, 1750 Pennsylvania Avenue, NW., Washington, D.C. 20547.

Justice, Department of

Mr. Bruce C. Rashkow, Chief, Marine Resources Section, 9th and Pennsylvania Avenue NW., Room 2345, Washington, D.C. 20530.

Council on International Economic Policy

Mr. James A. Rooney, Room 227, Old Executive Office Building, 17th and Pennsylvania Avenue NW., Washington, D.C. 20506.
Mr. Burdick Brittin (U), 1030 Millwood Road, Great Falls, Va. 22066.
Mr. Burdick Brittin (C), c/o OES, Room 3214, New State.
Mr. Donald McKernan (U), Director, Institute of Marine Science and Studies, University of Washington, Seattle, Wash. 98195.
Government Relations and Patent Office, 275 Administration Building, Mail Stop A–G70, Seattle, Wash. 98195, Attn: Security Officer for Donald McKernan (C).
Dr. Beverly Rowsome (U & C), PA/HO, Room 615, State Annex No. 2, Washington, D.C.
Mr. Louis B. Sohn (U), Bemis Professor of International Law, Harvard University Law School, Cambridge, Mass. 02138.

Department of Agriculture

Gloria Bozman, Foreign Agricultural Service, Trade Negotiation Division, Room 5609, Department of Agriculture, 14th and Independence Avenue NW., Washington, D.C. 20250.

Commerce, Department of

Mr. John J. Nachtsheim, Assistant Administrator for Operations, Maritime Administration, Department of Commerce, Room 6092, 14th and E Streets NW., Washington, D.C. 20230.
Mr. Robert B. Ellert, Assistant General Counsel for Science and Technology, Department of Commerce, Room 3422, 14th and E Streets NW., Washington, D.C. 20230.
Dr. James A. Storer, Assistant for International Fisheries, Office of the Associate Administrator for Marine Resources, NOAA, Department of Commerce, Room 918, WSC–5, Rockville, Md. 20852.
Mr. Antonio J. Macone, Deputy Director, Office of Import Programs, Bureau of Resources and Trade Assistance, Department of Commerce, Room 6895, 14th and E Streets NW., Washington, D.C. 20230.
Mr. Amor L. Lane, Chief, Non-Living Resources Division, Office of Program Integration, NOAA, Department of Commerce, Room 1018, WSC–5, Rockville, Md. 20852.

Council of Economic Advisers

Mr. Allan Pulsipher, Council of Economic Advisers, Room 309, Old Executive Office Building, 17th and Pennsylvania Avenue NW., Washington, D.C. 20506.

Marine Mammal Commission

Mr. Robert Eisenbud, General Counsel, Marine Mammal Commission, 1625 Eye Street NW., Washington, D.C. 20006.

Center for Naval Analysis

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Defense, Department of

Capt. James E. Baker, USN, Room 2D3222, The Pentagon, Washington, D.C. 20301.
LCDR Frederic G. DeRocher, Room 2D3222, The Pentagon, Washington, D.C. 20301.
Brig. Gen. William F. Georgi, USA, Room 1E969, The Pentagcn, Washington, D.C. 20301.
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Treasury, Department of the

Mr. Mark Colar, Room 2050, Main Treasury, 15th and Pennsylvania Avenue NW., Washington, D.C. 20220.

Interior, Department of the

Ms. Mary Anne Mason, Department of the Interior, Room 6637, 19th and E Streets NW., Washington, D.C. 20240.

State, Department of

Mr. Monroe Leigh, The Legal Adviser, Room 6425, New State.
Lt. Col. John M. Coykendall, AF/I, Room 5234, New State.
Mr. Brian Crowe, EB/IFD-ODF, Room 2833, New State.
Mr. Lindsey Grant, OES/ENP/EN, Room 7822, New State.
Mr. Julius Katz, EB, Room 6828, New State.
Mr. John MacKenzie, H, Room 7251, New State.
Mr. John L. Martin, ARA-LA/PLC, Room 6911, New State.
Capt. Matthew F. Pasztalaniec, PM/ISO, Room 7430, New State.
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Mr. Geoffrey E. Wolfe, EUR/RPE, Room 6428, New State.
Mr. John W. Zerolis, EA/RA, Room 4312, New State.

NOTE.—(U)=unclassified; (C)=classified.

ADVISORY COMMITTEE ON THE LAW OF THE SEA

In response to strong industry pressure, an Advisory Committee on the Law of the Sea was formed in early 1972. The purpose of the Committee is to serve the Department of State and the National Security Council (NSC) Interagency Law of the Sea Task Force in a solely advisory capacity with respect to U.S. Law of the sea policy and on questions affecting petroleum, hard minerals, marine science, international law, environment, transportation, maritime finance and other matters of public interest, particularly in regard to the Third United Nations Conference on the Law of the Sea and its related negotiations.

The Committee was established under the general authority of the Secretary of State as set forth in Title 22 of the United States code, in particular, Section 2656 of that Title. The approval of its Charter constitutes a determination by the Secretary of State that the establishment of the Committee is in the public interest in connection with the performance of duties imposed by law on the Department of State.

The Committee meets with the NSC Interagency Law of the Sea Task Force at the discretion of the Chairman to give advice on law of the sea matters.

The Committee has four officers and as many public members, not exceeding 125, as the Chairman deems necessary. The Officers are: Chairman—Chairman of the NSC Interagency Law of the Sea Task Force; Vice Chairman; Executive Secretary; and Public Chairman.

The NSC Chairman, after consultation with other members of the NSC Task Force, names as public members selected individuals who can provide adequate representation of the diverse interests involved in the law of the sea, including, but not limited to individuals from the petroleum, hard minerals, fishing and maritime industries, and from the fields of international law and finance, marine science and the environment. Members of the Committee receive an appropriate security clearance before appointment. Public members serve at the discretion of the Chairman and without compensation and bear their

own travel and all other expenses incidental to attendance at meetings. All support functions required for operation of the Committee are supplied by the Department of State Office of the Law of the Sea Negotiations.

The Committee meets approximately twice a year at the call of the Chairman; its functions are solely advisory, and it reports to the Secretary of State (written or oral) through the Chairman. All funding necessary for the organization and operations of the Committee is supplied by the Department of State. The annual estimated operating costs of the Committee are $3000.00 and one tenth man years.

In accordance with Public Law 92–463, section 14(a)(1), the Committee will terminate on January 4, 1977, unless it is formally determined to be in the public interest to continue it for a period of another two years.

MEMBERS OF THE ADVISORY COMMITTEE

Public Chairman

The Honorable Dean Rusk, The University of Georgia, School of Law, Athens, Ga. 30601.

I. Petroleum Subcommittee

Mr. Gordon L. Becker, Counsel, EXXON Corp., 1251 Avenue of the Americas, New York, N.Y. 10020.
Mr. George A. Birrell, General Counsel, Mobil Oil Corp., 150 East 42d Street, New York, N.Y. 10017.
Mr. Jonathan I. Charney, Assistant Professor of Law, School of Law, Vanderbilt University, Nashville, Tenn. 37420.
Mr. Hollis Dole, General Manager, Colony Development Operation, Atlantic Richfield Corp., 15 Security Life Building, Denver, Colo. 80202.
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Mr. Cecil J. Olmstead, Vice President, Assistant to the Chairman of the Board, Texaco, 135 East 42d Street, New York, N.Y. 10071.
Mr. Richard Young, Attorney and Counsellor at Law, Van Hornesville, N.Y. 13475.

II. HARD MINERALS SUBCOMMITTEE

Mr. T. S. Ary, Vice President, Union Carbide Exploration Corp., 270 Park Avenue, New York, N.Y.
Mr. Seymour S. Bernfeld, 17 Range View Drive, Denver, Colo., 80215.
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Mr. Charles F. Cook, Jr., 1208 North Columbus Street, Arlington, Va. 22205.
Mr. Marne A. Dubs, Director, Ocean Resources Department, Kennecott Copper Corp., 161 East 42d St., New York, N.Y. 10017.
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III. INTERNATIONAL FINANCE AND TAXATION SUBCOMMITTEE

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Mr. John G. Winger, Vice President, The Chase Manhattan Bank, N.A., 1 Chase Manhattan Plaza, New York, N.Y. 10015

IV. INTERNATIONAL LAW AND RELATIONS SUBCOMMITTEE

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Mr. Louis B. Sohn, Bemis Professor of International Law, Law School of Harvard University, Cambridge, Mass. 02138.
Mr. John Temple Swing, Council on Foreign Relations, 58 East 68th Street, New York, N.Y. 10021.

V. MARINE ENVIRONMENT SUBCOMMITTEE

Mr. Richard A. Frank, National Resource Defense Council, 1751 N Street NW., Washington, D.C. 20036.
Mr. Robert Hallman, Center for Law and Social Policy, 1751 N Street NW., Washington, D.C. 20036.
Mr. Bostwick H. Ketchum, Associate Director, Woods Hole Oceanographic Institution, Woods Hole, Mass. 02543.
Mr. Sam Levering, Save Our Seas, 245 Second Street NW., Washington, D.C. 20002.
Mr. Anthony Wayne Smith, Attorney at Law, 1710 18th Street NW., Washington, D.C. 20009.
Mr. George M. Woodwell, Brookhaven National Laboratory, Biology Department, Associated Universities, Inc., Upton, Long Island, N.Y. 11973.

VI. FISHERIES SUBCOMMITTEE

Mr. Charles R. Carry, 215 Cannery Street, Tuna Research Foundation, Inc., Terminal Island, Calif.
Mr. J. Steele Culbertson, Director, National Fish Meal & Oil Association, 1730 Pennsylvania Avenue, Washington, D.C. 20006.
Mr. Jacob J. Dykstra, Pt. Judith Fishermen's Coop. Association, Point Judith, R.I. 02882.
Mr. August J. Felando, Tuna Boat Association, 1 Tuna Lane, San Diego, Calif. 92101.
Mr. Harold E. Lokken, 1921 North 48th Street, Seattle, Wash., 98101.
Mr. Robert Mauermann, Executive Secretary, Texas Shrimp Association, 910 East Levee Street, Brownsville, Tex. 78520.
Mr. John J. Royal, Secretary/Treasurer, Fishermen and Allied Workers' Union, Local 33 I.L.W., 806 Palos Verdes Street, San Pedro, Calif. 90731.

Mr. Richard H. Stroud, Executive Vice President, Sport Fishing Institute, 608 13th Street NW., Suite 503, Washington, D.C. 20005.
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Mr. Lowell Wakefield, Wakefield Seafoods, Inc., Port Wakefield, Alaska 99550.
Mr. W. V. Yonker, Executive Vice President, Association of Pacific Fisheries, 1600 South Jackson Street, Seattle, Wash. 98144.

VII. MARINE SCIENCE SUBCOMMITTEE

Mr. William T. Burke, Professor of Law, University of Washington, School of Law (Condon Hall), Seattle, Wash. 98105.
Mr. John C. Calhoun, Jr., Vice President for Academic Affairs, Texas A. & M. University, College Station, Tex. 77843.
Dr. John P. Craven, University of Hawaii, Honolulu, Hawaii 96822.
Mr. L. Eugene Cronin, Research Professor and Director, University of Maryland, Natural Resources Institute, Chesapeake Biological Laboratory, P.O. Box 38, Solomons, Md. 20688.
Mr. Paul M. Fye, President, Woods Hole Oceanographic Institute, Woods Hole, Mass. 02543.
Mr. Bruce C. Heezen, Lamont-Doherty Geological Observatory, Columbia University, Palisades, N.Y. 10964.
Mr. John A. Knauss, Provost for Marine Affairs, University of Rhode Island, Kingston, R.I. 02881.
Mr. William Nierenberg, Scripps Institute of Oceanography, University of California, P.O. Box 109, LaJolla, Calif. 92037.
Mr. Roger Revelle, Richard Saltonstall Professor of Population Policy, Director of the Center for Population Studies, 3 Bow Street, Cambridge, Mass. 02138.
Mr. Warren Wooster, Dean of Rosenstiel School of Marine and Atmospheric Science, 10 Rickenbacker Causeway, Miami, Fla. 33149.

VII. MARITIME INDUSTRIES SUBCOMMITTEE

Capt. John W. Clark, President, Delta Steamship Lines, Inc., 1700 International Trade Mart, Box 50250, New Orleans, La. 70150.
Mr. William J. Coffey, American Institute of Merchant Shipping, 1625 K Street NW., Washington, D.C. 20006.
Mr. Herman E. Denzler, Jr., International Association of Drilling Contractors, 101 Norland Avenue, New Orleans, La. 70114.
Mr. Edward J. Heine, Jr., President, United States Lines, Inc., 1 Broadway, New York, N.Y. 10004.
Capt. Warren G. Leback, Vice President, El Paso LNG Co., 2727 Allen Parkway, Houston, Tex. 77019.
Mr. O. William Moody, Administrator, AFL–CIO Maritime Trades Department, Suite 501, 815 16th Street NW., Washington, D.C. 20006.

THE SENATE

Hon. James Buckley, U.S. Senate, 304 Russell Office Building, Washington, D.C. 20515.
Hon. Clifford P. Case, U.S. Senate, 315 Russell Office Building, Washington, D.C. 20515.
Hon. Ernest F. Hollings, U.S. Senate, 432 Russell Office Building, Washington, D.C. 20512.
Hon. J. Bennett Johnston, Jr., U.S. Senate, 437 Russell Office Building, Washington, D.C. 20515.
Hon. Warren G. Magnuson, U.S. Senate, 127 Russell Office Building, Washington, D.C. 20515.
Hon. Thomas J. McIntyre, U.S. Senate, 125 Russell Office Building, Washington, D.C. 20515.
Hon. Edmund S. Muskie, U.S. Senate, 115 Russell Office Building, Washington, D.C. 20515.
Hon. Claiborne Pell, U.S. Senate, 325 Russell Office Building, Washington, D.C. 20515.

Hon. Ted Stevens, U.S. Senate, 411 Russell Office Building, Washington, D.C. 20515.
Hon. John G. Tower, U.S. Senate, 142 Russell Office Building, Washington, D.C. 20515.

HOUSE OF REPRESENTATIVES

Hon. Thomas N. Downing, House of Representatives, 2135 Rayburn Office Building, Washington, D.C. 20510.
Hon. Joshua Eilberg, House of Representatives, 1130 Longworth Office Building, Washington, D.C. 20510.
Hon. Donald M. Fraser, House of Representatives, 1111 Longworth Office Building, Washington, D.C. 20510.
Hon. Gilbert Gude, House of Representatives, 2372 Rayburn Building, Washington, D.C. 20510.
Hon. Leonor K. Sullivan, House of Representatives, 2221 Rayburn Office Building, Washington, D.C. 20510.
Hon. Joel Pritchard, House of Representatives, 1039 Longworth Office Building, Washington, D.C. 20510.
Hon. Bob Wilson, House of Representatives, 2307 Rayburn Office Building, Washington, D.C. 20510.
Hon. Charles E. Bennett, House of Representatives, 2113 Longworth Office Building, Washington, D.C. 20510.

NOTE.—There will be two additional Congressmen added to the list shortly.

THE DELEGATION

The U.S. Delegation to the Third Law of the Sea Conference consists of two representatives, H. E. Mr. John R. Stevenson, Ambassador and Special Representative of the President for the Law of the Sea Conference, who is the chairman of the U.S. delegation, and H. E. Mr. 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, who acts as vice-chairman of the delegation.

There are Alternate Representatives, Congressional Advisers, Congressional Staff Advisers, Advisers, and Experts on petroleum, hard minerals, international law and relations, marine environment, fisheries, scientific research, and maritime industries.

The complete lists of all members of the U.S. Delegations to the Caracas and Geneva sessions of the Third Law of the Sea Conference follows below:

CARACAS SESSION

Representatives

H.E. Mr. John R. Stevenson, Ambassador, Special Representative of the President for the Law of the Sea Conference (*Chairman of the Delegation*).
H.E. Mr. 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 (*Vice-Chairman of the Delegation*).

Alternate Representatives

Mr. John A. Busterud, Member, Council on Environmental Quality, Executive Office of the President.
Mr. Stuart P. French, Director, Law of the Sea Task Force, International Security Affairs, Department of Defense.
H.E. Mr. Robert McClintock, Ambassador Extraordinary and Plenipotentiary to Venezuela.
Mr. Stuart H. McIntyre, Staff Director, NSC Interagency Task Force on the Law of the Sea, Department of State.
Mr. Vincent L. McKelvey, Director, United States Geological Survey, Department of the Interior.
H.E. Mr. Donald L. McKernan, Ambassador (Retired), University of Washington, Seattle, Washington, Consultant, Department of State.

Rear Admiral Max K. Morris, U.S.N., Joint Chiefs of Staff Representative for Law of the Sea Matters, Department of Defense.
Mr. Bernard H. Oxman, Special Assistant to the Special Representative and Assistant Legal Adviser for Ocean, Environment and Scientific Affairs, Office of the Legal Adviser, Department of State.
H.E. Mr. Howard W. Pollock, Deputy Administrator, National Oceanic and Atmospheric Administration, Director, Commerce Task Force on the Law of the Sea, Department of Commerce.
Mr. Leigh S. Ratiner, Deputy Assistant Administrator for Political and Economic Affairs, Federal Energy Office.
Mr. Herbert K. Reis, Counsellor, Legal Affairs, Permanent Mission, United Nations, New York.
Mr. Russell E. Train, Administrator, Environmental Protection Agency.
Mr. Howard L. Worthington, Deputy Assistant Secretary for Trade, Department of the Treasury.
Mr. Norman A. Wulf, Representative on the Law of the Sea, Office of the General Counsel, National Science Foundation.
Mr. Paul A. Yost, Captain, U.S.C.G., Special Assistant to the Under Secretary of Transportation for Law of the Sea, Department of Transportation.

Congressional Advisers

Mr. Warren G. Magnuson, United States Senate.
Mr. Edmund S. Muskie, United States Senate.
Mr. Claiborne Pell, United States Senate.
Mr. Ernest F. Hollings, United States Senate.
Mr. Clifford P. Case, United States Senate.
Mr. Ted Stevens, United States Senate.
Mr. James L. Buckley, United States Senate.
Mr. J. Bennett Johnston, Jr., United States Senate.
Mr. Leonor K. Sullivan, United States House of Representatives.
Mr. Thomas D. Downing, United States House of Representatives.
Mr. Donald M. Fraser, United States House of Representatives.
Mr. Joshua Eilberg, United States House of Representatives.
Mr. Peter H. B. Frelinghuysen, United States House of Representatives.
Mr. Bob Wilson, United States House of Representatives.
Mr. Gilbert Gude, United States House of Representatives.

Congressional Staff Advisers

Mr. Garner J. Cline, United States House of Representatives.
Mr. Arthur P. Endres, United States House of Representatives.
Mr. Merrill W. Englund, United States Senate.
Mr. Harrison Loesch, United States Senate.
Mr. David P. Stang, United States Senate.
Mr. William J. van Ness, Jr., United States Senate.
Mr. Jerry T. Verkler, United States Senate.

Congress of Micronesia Adviser

Mr. Andon Amaraich, Senator, Congress of Micronesia, Trust Territory of the Pacific Islands.

Senior Adviser

Mr. Dean Rusk, Law School, University of Georgia, Athens, Georgia.

Advisers

Mr. C. Paul Ake, Commander, U.S.N., Office of the Joint Chiefs of Staff, Department of Defense.
Mr. John T. Albers, United States Geological Survey, Department of the Interior.
Mr. Dayton Lee Alverson, Director, Northwest Fisheries Center, National Marine Fisheries Service, Department of Commerce.
Mr. Henry S. Bashkin, Director, International Commodities Division, Office of Import Programmes, Department of Commerce.
Mr. Steven J. Burton, Office of the Legal Adviser, Department of State.
Mr. Morris D. Busby, Office of the Special Assistant to the Secretary for Fisheries and Wildlife and Co-ordinator of Ocean Affairs, Department of State.
Mr. William Brewer, General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce.
Mr. Burdick H. Brittin, Consultant, Department of State.

Mr. James E. Brown, Commander, U.S.C.G., United States Coast Guard, Department of Transportation.
Mr. David E. Cook, Office of the General Counsel, Council on Environmental Quality.
Mr. Ernest C. Grigg, III, Embassy, Lagos.
Lieutenant Commander Frederic G. De Rocher, Office of the Assistant Secretary of Defense for International Security Affairs, Department of Defense.
Mr. John A. Dugger, Deputy Director, Law of the Sea Task Force, International Security Affairs, Department of Defense.
Mr. W. Pierce Elliott, Division of Energy Resources, Department of the Interior.
Mr. Otho E. Eskin, NSC Interagency Task Force on the Law of the Sea, Department of State (*Secretary of Delegation*).
Mr. Richard J. Gage, Director, Office of International Activities, Maritime Administration, Department of Commerce.
Mrs. Margaret L. Gerstle, Attorney, Washington, D.C., Consultant, Department of State.
Mr. Fitzhugh Green, Associate Administrator, Environmental Protection Agency.
Mr. Robert D. Hodgson, The Geographer, Director, Office of the Geographer, Bureau of Intelligence and Research, Department of State.
Mr. Roger H. Hull, NSC Interagency Task Force on the Law of the Sea, Department of State.
Mr. David B. Johnson, Office of Policy Research, Department of the Treasury.
Mr. James L. Johnston, Acting Director, Office of Ocean Policy, Department of Treasury.
Mr. Gerald J. Kallas, Office of Policy and Plans, United States Information Agency.
Mr. Terry L. Leitzell, Office of the Legal Adviser, Department of State.
Mr. Antonio J. Macone, Deputy Director, Office of Import Programs, Bureau of Resources and Trade Assistance, Department of Commerce.
Mr. Robert E. McKew, Commander, U.S.C.G., Permanent Mission, United Nations, New York.
Mr. Robert J. McManus, Environmental Protection Agency.
Mr. Myron H. Nordquist, Executive Assistant to the Chairman, NSC Interagency Task Force on the Law of the Sea, Department of State (*Secretary of Delegation, Technical*).
Mr. Basil N. Petrou, Office of Natural Resources, Department of the Treasury.
Mr. Virgil P. Randolph, III, Embassy, Caracas.
Mr. Nicholas H. Riegg, Bureau of Economic and Business Affairs, Department of State.
Mr. Robert W. Schoning, Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.
Mr. Richard T. Scully, Bureau of International Organization Affairs, Department of State.
Mr. Louis B. Sohn, Professor, Harvard University School of Law, Cambridge, Massachusetts.
Mr. James A. Storer, Special Assistant for International Fisheries Affairs, Office of Marine Resources, National Oceanic and Atmospheric Administration, Department of Commerce.
Mr. George Taft, Executive Secretary, Commerce Task Force on the Law of the Sea and Special Counsel to the Director, Department of Commerce.
Mr. Peter C. Tosini, Director, Office of Natural Resources, Department of the Treasury.
Mr. David H. Wallace, Associate Administrator for Marine Resources, National Oceanic and Atmospheric Administration, Department of Commerce.
Mr. Sidney A. Wallace, Captain, U.S.C.G., United States Coast Guard, Department of Transportation.
Mrs. Rebecca L. Wright, International Political and Economic Affairs, Federal Energy Office.
Mr. Glenn F. Young, Captain, U.S.C.G., United States Coast Guard, Department of Transportation.

Experts

Petroleum

Mr. George A. Birrell, General Counsel, Mobil Oil Corporation, New York.
Mr. Jonathan L. Charney, Assistant Professor of Law, School of Law, Vanderbilt University, Nashville, Tennessee.

Mr. Richard E. Faggioli, Manager, Special Projects, EXXON, New York.
Mr. G. Winthrop Haight, Attorney, New York, New York.
Mr. Cecil J. Olmstead, Vice-President, Texaco, New York.

Hard Minerals

Mr. Charles Cook, American Mining Congress, Washington, D.C.
Mr. Marne Dubs, Kennecott Copper Corporation, New York.
Mr. John E. Flipse, President, Deepsea Ventures, Inc., Gloucester Point, Virginia.

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Mr. Lewis Alexander, University of Rhode Island, Kingston, Rhode Island.
Mr. Richard R. Baxter, Harvard Law School, Cambridge, Massachusetts.
Mr. Aaron Danzig, Attorney, New York, N.Y.
Mr. Richard Gardner, Columbia University School of Law, New York, N.Y.
Miss Ann Hollick, Johns Hopkins School of Advanced International Studies, Washington, D.C.
Mr. H. Gary Knight, Louisiana State University, Baton Rouge, Louisiana.
Mr. Robert Krueger, Attorney, Los Angeles, California.

Marine Environment

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Mr. Anthony W. Smith, Attorney, Washington, D.C.

Fisheries

Mr. Charles R. Carry, Tuna Research Foundation, Inc., Terminal Island, California.
Mr. J. Steele Culbertson, Director, Fish Meal and Oil Association, Washington, D.C.
Mr. Jacob J. Dykstra, Point Judith Fishermen's Coop. Association, Point Judith, Rhode Island.
Mr. August J. Felando, American Tunaboat Association, San Diego, California.
Mr. Robert G. Mauermann, Texas Shrimp Association, Brownsville, Texas.
Mr. John J. Royal, Secretary/Treasurer, Fisherman and Allied Worker's Union, San Pedro, California.
Mr. William Saletic, Executive Manager, Seiners Association, Seattle, Washington.
Mr. William N. Utz, American Shrimp Association, Washington, D.C.
Mr. Lowell Wakefield, Wakefield Seafood Inc., Port Wakefield, Alaska.
Mr. Walter V. Yonker, Executive Vice President, Association of Pacific Fisheries, Seattle, Washington.

Marine Science

Mr. William Burke, University of Washington, School of Law, Seattle, Washington.
Mr. Thomas Clingan, Jr., Dean, School of Law, University of Miami, Coral Gables, Florida.
Mr. John Craven, Coordinator, Marine Affairs, University of Hawaii.
Mr. John Knauss, Provost for Marine Affairs, University of Rhode Island.
Mr. William A. Nierenberg, Scripps Institute of Oceanography, University of California, La Jolla, California.
Mr. Roger Revelle.
Mr. Warren Wooster, Dean, Rosenstied School of Marine and Atmospheric Science, Miami, Florida.

Maritime Industries

Mr. John W. Clark, President, Delta Steamship Lines, Inc., New Orleans.
Mr. William Coffey, American Institute of Merchant Shipping, Washington, D.C.
Mr. Herman E. Denzler, Jr., New Orleans.

GENEVA SESSION

H.E. Mr. John R. Stevenson, Ambassador, Special Representative of the President for the Law of the Sea Conference (Chairman of the Delegation).
H.E. Mr. 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 and Deputy Chief of Delegation (Vice-Chairman of the Delegation).

Deputy Representatives

Thomas A. Clingan, Jr., Deputy Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.
Bernard H. Oxman, Special Assistant to the Special Representative of the President for the Law of the Sea Conference, Assistant Legal Adviser for Ocean, Environment and Scientific Affairs, Office of the Legal Adviser, Department of State.

Alternate Representatives

Stuart P. French, Director, Law of the Sea Task Force, Department of Defense
Terry L. Leitzell, Office of the Legal Adviser, Department of State.
Hon. Vincent L. McKelvey, Director, Geological Survey, Department of the Interior.
Hon. Donald L. McKernan, Consultant, Department of State, Ambassador (Retired), University of Washington, Seattle, Wash.
Max K. Morris, Rear Admiral, U.S.N., Joint Chiefs of Staff Representative for Law of the Sea Matters, Department of Defense.
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Hon. Howard W. Pollock, Director, Law of the Sea Task Force, Deputy Administrator, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.
Leigh S. Ratiner, Administrator, Ocean Mining Administration, Department of the Interior.
Norman A. Wolf, Representative on Law of the Sea, Office of the General Counsel, National Science Foundation.
Glenn F. Young, Captain, U.S.C.G., Special Assistant to the Deputy Secretary of Transportation for Law of the Sea, Department of Transportation.

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Hon. J. Bennett Johnston, Jr.
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Hon. Edmund S. Muskie.
Hon. Claiborne Pell.
Hon. Ted Stevens.

U.S. Representatives

Hon. Joshua Eilberg.
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John A. Dugger, Director, Policy and Plans, International Energy Affairs, Federal Energy Administration.
Pierce Elliott, Assistant Solicitor for International Law, Division of Energy Resources, Department of the Interior.

Frederick W. Flott (Secretary of Delegation), Deputy Director, Office of International Conferences, Bureau of International Organization Affairs, Department of State.
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James Johnston, Chief, Oceans Policy Division, Department of the Treasury.
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Jack Martin, Bureau of Inter-American Affairs, Office of Policy Planning and Coordination, Department of State.
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Experts

Lewis Alexander, Law of the Sea Institute, Department of Geography, University of Rhode Island, Kingston, R.I., March 30–April 12.
Gordon L. Becker, Counsel, Exxon Corp., New York, N.Y., April 19–26.
William T. Burke, Professor of Law, University of Washington, School of Law, Seattle, Wash., April 27–May 10.
Joseph A. Cabranes, Office of Commonwealth of Puerto Rico, Washington, D.C., April 26–May 10.
Charles R. Carry, Tuna Research Foundation, Inc., Terminal Island, Calif., April 13–May 10.
Jonathan I. Charney, Assistant Professor of Law, School of Law, Vanderbilt University, Nashville, Tenn., March 17–29.
William I. Coffey, American Institute of Merchant Shipping, Washington, D.C., April 21–30.
John W. Clark, President, Delta Steamship Lines, Inc., New Orleans, La., May 1–10.
J. Steelf Culbertson, Director, National Fish Meal and Oil Association, Washington, D.C., April 20–30.
Herman E. Denzler, Jr., International Association of Drilling Contractors, New Orleans, La., April 8–20.
Marie A. Dubs, Director, Ocean Resources Department, Kennecott Copper Corp., New York, N.Y., March 17–April 5, April 20–May 10.
Jacob J. Dykstra, Point Judith Fishermen's Coop. Association, Point Judith, R.I., April 8–20, May 1–10.
August J. Felando, Tuna Boat Association, San Diego, Calif., March 17–April 12.
John E. Flipse, President, Deepsea Ventures, Inc., Gloucester Point, Va., April 5–19.
Richard A. Frank, National Resource Defense Council, Washington, D.C., March 17–April 12.
G. Winthrop Haight, Forsyth, Decker, Murray, New York, N.Y., March 17–April 5, April 26–May 3.
Robert Hallman, Center for Law and Social Policy, Washington, D.C., April 27–May 10.
Ann Hollick, Assistant Professor of Political Science, Johns Hopkins School of Advanced International Studies, Washington, D.C., April 26–May 10.

John A. Knauss, Provost for Marine Affairs, University of Rhode Island, Kingston, R.I., March 17–April 13
John G. Laylin, Covington and Burling, Washington, D.C., March 30–April 12.
Cecil J. Olmstead, Vice President, Assistant to the Chairman of the Board, Texaco, New York, N.Y., April 5–19, May 3–10.
William G. Saletto, Executive Manager, Seiners Association, Seattle, Wash., April 13–May 10.
Anthony Wayne Smith, Attorney at Law, Washington, D.C., April 13–25.
John Temple Swing, Council on Foreign Relations, New York, N.Y., March 16–29.
William Nelson Utz, Steele and Utz, Washington, D.C., March 17–April 12.
Lowell Wakefield, Wakefield Seafoods, Inc., Fort Wakefield, Alaska, April 13–May 10.
Warren Wooster, Dean of Rosenstiel School of Marine and Atmospheric Science, Miami, Fla., April 14–26.
W. V. Yonker, Executive Vice President, Association of Pacific Fisheries, Seattle Wash., March 16–April 12.

V. THE ROLE OF THE CONGRESS AFTER ADOPTION OF A TREATY

General Background

Before examining the specific role of the Senate in treaty-making, it is useful to describe briefly the basic procedure for concluding multilateral treaties both on the international level and with regard to U.S. practice.

INTERNATIONAL ACTION ON TREATIES

Multilateral treaties drafted by an international conference are, upon completion, adopted by a vote of the membership of the conference on the treaty as a whole. According to the rules of the Third Law of the Sea Conference, a decision on the adoption of the test of the Convention on the Law of the Sea as a whole will require a two-thirds majority of the representatives present and voting. At the conclusion of the conference delegates of the participating states will sign the text, thereby attesting that it is the one agreed to by the conference. Unless specified by the treaty or by the signers, signature will not in any way constitute consent to be bound by the treaty.

The next significant step in the international treaty-making process involves the receipt by the depositary entity, a state or an international organization—probably in the case of the Law of the Sea Treaty the United Nations—of instruments of ratification or accession from signatory and nonsignatory states. The text of the treaty will name the depositary, the length of time the treaty will remain open for signature, the number of ratifications and accessions required for entry into force, and the time lapse, if any, between the receipt of the requisite number of ratifications and accessions and the date of entry into force of the treaty. When enough ratifications or accessions have been received, this information and the date on which the treaty will enter into force will be circulated to all states entitled to become party to the treaty.

U.S. PRACTICE

U.S. practice with respect to treaties requires that the President submit the treaty to the Senate for its advice and consent to ratification. The President will include with his letter of submission the text of the treaty and a report by the Secretary of State on the treaty and its negotiating history. The Senate refers the treaty to the Committee on Foreign Relations. (Details on procedures within this Committee are described below in the section on the role of the Senate in treaty-making.) If the treaty is referred back to the Senate from the Committee, it is debated and voted on by that body in "executive session".

If Senate action is favorable to ratification, the treaty is returned to the President with a copy of the resolution of ratification, which is then transformed into an instrument of ratification to be executed by the President. The next stage in the case of multilateral treaties is

deposit of this instrument of ratification. Following the deposit of ratification, a proclamation, which contains the text of the treaty, is then issued by the President. This proclamation is, however, a national act and does not have any effect on international obligations undertaken when the United States deposits its instrument of ratification.

PROVISIONAL APPLICATION [1]

The U.S. Government has taken the position that portions of the Law of the Sea Treaty should enter into force provisionally after the treaty is adopted and signed by the Conference. Normal procedures for ratification of multilateral treaties which affect a broad range of significant international activity require several years for the accumulation of enough ratifications and accessions to bring the treaty into force.[2] In this case it is feared that delay with respect to the implementation of several important portions of the Law of the Sea Treaty could jeopardize the entry into force of the treaty.

As of the end of February 1975, precise proposals on the form that provisional application would take in the treaty had not been submitted to the Conference. A review of precedents reveals distinctions in the uses made of the provisional application format.

A mechanism not used in any of the precedents for provisional application reviewed by the above cited report is one of the tacit consent. In this approach, a resolution of the conference or a section of the Law of the Sea Treaty would indicate that certain articles would go into effect provisionally after an identified time period unless more than a specified number of the nations participating in the Conference disapproved. Alternatively, the articles could go into effect provisionally regardless of the number of declarations submitted. The declarations could simply indicate that a specific article would not apply or that it could not apply until the nation had, in accordance with the appropriate constitutional requirements, ratified the treaty, or it could not apply until the nation had taken appropriate legislative action to enable the nation to apply the article provisionally.

U.S. acceptance of provisional application has frequently been done by international agreement other than treaty. This has occurred in the instances when a separate document was used for provisional application. The authorities cited for entering into such executive agreements have included prior or subsequent consultation with Congress or with the Senate. With respect to treaties which contained a provisional application procedure, the United States has submitted declarations which could be regarded internationally as accepting the treaty provisionally. For example, the executive branch submitted a declaration of provisional application for the 1962 International Coffee Agreement after the Senate had approved ratification of the treaty. Congress had not, however, enacted the implementing legislation, and the note relative to the Agreement indicated that the United States would not "assume any of the obligations for which such legislation is neces-

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[1] Information in this section is taken from U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on International Organizations and Movements. Law of the Sea Treaty: Alternative Approaches to Provisional Application. March 4, 1974. Washington, U.S. Govt. Print. Off. 1974. 12 p. (93d Congress, 2d Session. Committee Print.) See p. 1-3.

[2] Entry into force of the four 1958 Law of the Sea Conventions ranged from four to eight years. The U.N. Human Rights Covenants adopted by the General Assembly in 1966 have not yet entered into force. The 1969 Vienna Convention on the Law of Treaties has been ratified or acceded to by 22 of the 35 states required for entry into force.

sary." [3] A declaration of provisional application to the 1971 International Wheat Agreement was not submitted until the appropriate committee in the Senate had been consulted and had given its consent.

None of the precedents in U.S. practice would give the President prior authorization to accept the treaty provisionally. According to Whiteman's Digest of International Law:

> In the United States, there is no practice of provisional ratification of treaties. In appropriate circumstances a declaration of adherence to principles established by a treaty or of provisional application to the extent permitted by law, may be made, but this is not tantamount to provisional ratification. The United States, as depositary for multilateral treaties which provide for the deposit of instruments of ratification in order to become a party, has declined to accept for deposit instruments or notifications of adherence "subject to ratification." [4]

The Role of the Senate in Treatymaking

Under article 2 of the U.S. Constitution, the President has the "Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." As indicated in the previous paragraphs, treaties are referred to the Committee on Foreign Relations after receipt in the Senate. The Committee will thereupon decide whether the treaty will be handled by the full committee or by a special or regular subcommittee of the committee. It is customary to require a treaty to be pending for a reasonable period so that the public will have time to study the treaty and those wishing to do so will be able to present their views to the Committee.

Committee staff will prepare for hearings which could range from a brief meeting with representatives from the executive branch to several days of hearings to receive statements and query both executive branch witnesses and members of affected interest groups and private individuals. After various viewpoints have been identified, the committee will meet to discuss and finally vote on its recommendations on the treaty. If a subcommittee has been created to consider the treaty, the subcommittee will vote and report to the full committee, which will in turn consider the treaty and vote on the recommendation of the committee.

While the Foreign Relations Committee is generally the sole committee involved in the consideration of treaties, regardless of their subject matter, prior to consideration by the Senate, there are precedents for the inclusion of other committees in this process. One might expect similar procedures to be used for the Convention on the Law of the Sea, which will involve issues handled by a number of committees within the Senate: Commerce, Interior and Insular Affairs, and Armed Services, as well as Foreign Relations. In the past, the Foreign Relations Committee has invited members of other committees to participate in the hearings being conducted on a treaty.[5] In other instances the Committee has received reports from another

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[3] Whiteman, Marjorie M. Digest of International Law, v. 14. Washington, U.S. Govt. Print. Off., 1970. p. 92.

[4] Whiteman, v. 14, p. 87.

[5] During consideration of the Nuclear Test Ban Treaty in 1963, the Foreign Relations Committee invited the members of the Committee on Armed Services and the Senate members of the Joint Committee on Atomic Energy to participate in the hearings. Members of these two committees sat with members of the Foreign Relations Committee during the hearings. In 1968 the Committee invited the Senate members of the Joint Atomic Energy Committee to sit in during the hearings phase of consideration of the Treaty on the Nonproliferation of Nuclear Weapons.

committee on the treaty under consideration.[6] Recently, the Committee informally referred the treaty to another committee for comment.[7] Ultimately, however, it is the members of the Senate Committee on Foreign Relations who meet in executive session to vote on the recommendation of the Committee to the Senate on the treaty.

Since it is unclear what form provisional application will take, it is difficult to predict what the role of the Senate and of the Committee on Foreign Relations will be. One might expect that the Committee will, at a minimum, be informed of the mechanism to be proposed by the United States and developed at the Conference. It is also unclear whether the Senate will be expected to act on the Treaty before the President commits the United States to participation in the provisional application of the Treaty.

After the Committee votes to order a treaty favorably reported, a report is submitted to the Senate setting out the purpose of the treaty and the views of the Committee as well as information identifying and discussing any controversial aspects of the treaty. The report also includes the text of the recommended resolution of ratification which the Committee is presenting to the Senate together with any proposed understandings, declarations, interpretations, reservations, or amendments recommended by the Committee. If the vote in Committee does not support U.S. ratification of the treaty, the usual procedure is to keep the treaty pending in Committee rather than to report it to the Senate.

If the Senate does not approve the resolution of ratification, the treaty will be returned to the Foreign Relations Committee. Thereafter, a resolution to return the treaty to the President may be submitted for Senate action after consultation with the executive branch.

Presumably the Senate will act on approval of U.S. ratification of the Treaty before implementation legislation is enacted by the Congress. Normally the Administration would hold up submission of such legislative proposals until the Senate had given its consent to ratification. Presidential action to deposit the instrument of ratification could occur before the implementation legislation is enacted but would probably be held up until after the Congress had completed its legislative tasks in adopting implementing legislation.

The Role of the Congress in Implementation

Some treaties require that states which are parties must take internal action to give effect to the treaty within the jurisdiction of the state. While, for the United States, treaties are the law of the land and thus equivalent to laws passed by the Congress, it is sometimes necessary for the Congress to do what is "necessary and proper" to implement a treaty. Frequently, implementation legislation involves the appropriation of funds. In other instances current laws have to be amended or new laws passed. The Law of the Sea Treaty will no doubt require the

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[6] During consideration in 1971 of several treaties on marine pollution, the Committee received a written report on the International Convention on Civil Liability for Oil Pollution Damage from the Subcommittee on Air and Water Pollution of the Senate Public Works Committee. In addition, the chairman of the Subcommittee on Oceans and Atmosphere of the Senate Commerce Committee submitted a statement to th Committee during the hearings on this group of treaties.

[7] During consideration in 1971 of the International Wheat Agreement, 1971, the Committee referred th treaty informally to the Senate Committee on Agriculture and Forestry for comment.

amendment of current U.S. law and the enactment of new law in the U.S. Code to assure that the principles set down in the Treaty are carried out by those under U.S. jurisdiction. In all likelihood the executive branch will have the initiative in creating the legislative proposals which will be submitted to the Congress. However, the comprehensive nature of the issues might prompt either body of Congress to create a special committee to examine the implementing legislation rather than (1) split the legislation among the various interested committees or (2) assign the legislation for simultaneous or consecutive consideration by a number of committees. A special committee might also provide the appropriate mechanism for consideration of legislation which might be submitted to implement provisional application of portions of the Treaty.

After being thoroughly studied at the committee stage, with appropriate revision in response to the views expressed during hearings, the legislation will be reported to the House and Senate for floor consideration. The precise legislative route will depend on the substance of the Treaty and of the implementing legislation and on the degree to which this substance is accepted or viewed as acceptable by the various segments of American society.

VI. CONCLUSION

For almost 300 years the Grotian concept of freedom of the seas served the international community well. It reflected the general interest in free common utilization of the oceans, at least on the part of those countries with national power to enforce the rules.

In the era following the World War II many political and technological changes took place which would have a significant impact on the law of the sea. The United States had developed technology to explore for and produce oil and gas from the continental shelf, some fisheries began to show signs of over-exploitation, and in the international political arena a large number of new countries joined the family of nations. To protect its offshore petroleum resources, the United States claimed jurisdiction over the resources of the seabed and subsoil up to the 200-meter isobath, in the 1945 Truman Declaration. Several developing countries in Latin America, which had narrow continental shelves and consequently less potential for offshore oil and gas, in turn claimed jurisdiction over all living and non-living resources out to a distance of 200 nautical miles from their coasts.

In 1957, the General Assembly of the United Nations, which under article 13 of the Charter is charged with the promotion of the "progressive development of international law and its codification," called for an international conference on the law of the sea. The First Law of the Sea Conference, which took place in 1958, adopted four conventions which have achieved a recognized status in contemporary international law and made substantive contributions to the eventual codification of the law of the sea. However, the Conference failed to agree on two vital issues: the delimitation of the territorial sea and of a contiguous fishing zone, and the seaward boundary of the continental shelf. Moreover, only a minority of the nations of the world did ratify one or more of the conventions, and non-signatories do not feel bound to observe the conventions they did not have a role in drafting. Attempts to reach new agreements on the width of the territorial sea and on the establishment of a fishery zone at the Second Conference on the Law of the Sea in 1960 failed completely.

Advanced drilling technology pushed extensive continental shelf claims outward and downward further and faster than expected. Technology to recover manganese nodules from the deep seabed was being developed during the nineteen sixties, and the advent of modern factory fishing vessels had a profound effect on fisheries. In order to put aside a significant share of the resources of the oceans for the benefit of all of mankind, Arvid Pardo, Malta's Ambassador to the United Nations, called for internationalization of deep seabed resources. As a result of the introduction of the Malta resolution, the U.N. General Assembly established at first an *ad hoc*, and in 1968 a permanent, Committee on the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction.

In 1970, the U.N. General Assembly decided to convene in 1973 a conference on the law of the sea, which would not only deal with the deep seabed and its resources, but also with a broad range of other issues related to the law of the sea. Between 1970 and 1973, the Seabed Committee met eight times in New York and Geneva in preparation of the 1973 Conference.

Prior to the Conference, the Seabed Committee agreed on a comprehensive list of 25 main headings and a number of subheadings, and individual nations as well as groups of nations submitted alternative draft proposals to the Seabed Committee for consideration.

The Third Law of the Sea Conference commenced in New York, on December 3, 1973, and the first substantive session took place in Caracas, Venezuela in the summer of 1974. The goal of the Conference is to agree on a widely acceptable and comprehensive treaty which, in view of the enormous differences in national interests among the various nations and groups of nations, is very difficult to achieve. The positions of the United States and other maritime nations on some issues such as the width of the territorial sea and the establishment of an economic zone within which coastal states will have exclusive jurisdiction over all resources, has come closer to the positions of the developing coastal states. However, on other issues, such as free transit through international straits, the limits of national jurisdiction within the economic zone, the scope and powers of the international regime for the deep seabed, regulation of marine pollution, freedom of scientific research, and other important issues, the positions of the maritime nations and developing coastal states still differ considerably.

It is too early to say if and when the differing views can be reconciled, but some students of the law of the sea have suggested that in view of the vast agenda representing widely varying national interests, a detailed treaty could not be widely accepted and a widely accepted treaty could not be comprehensive. Delegates are aware of the urgency of the matter. Many Members of the U.S. Congress have voiced the opinion that in view of the serious depletion of U.S. coastal fisheries, the United States cannot afford to wait a few more years for an international treaty to be concluded. Also, the growing American dependence on imported minerals and recent experiences with the Arab oil embargo, have confirmed the need to lessen dependence on other countries by tapping the mineral resources of the deep seabed.

A deep seabed mining bill and a bill calling for a 200-mile fishery zone have been re-introduced during the first session of the 94th Congress. The United States Congress is likely to follow progress at the ongoing session of the Third Conference on the Law of the Sea in Geneva with great interest.

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