THE DEPARTMENT OF STATE BULLETIN

Volume LXXI • No. 1839 • September 23, 1974

CARACAS SESSION OF THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

THE OFFICIAL WEEKLY RECORD OF UNITED STATES FOREIGN POLICY

For index see inside back cover

THE DEPARTMENT OF STATE BULLETIN

VOL. LXXI, No. 1839
September 23, 1974

The Department of State BULLETIN, a weekly publication issued by the Office of Media Services, Bureau of Public Affairs, provides the public and interested agencies of the government with information on developments in the field of U.S. foreign relations and on the work of the Department and the Foreign Service.

The BULLETIN includes selected press releases on foreign policy, issued by the White House and the Department, and statements, addresses, and news conferences of the President and the Secretary of State and other officers of the Department, as well as special articles on various phases of international affairs and the functions of the Department. Information is included concerning treaties and international agreements to which the United States is or may become a party and on treaties of general international interest.

Publications of the Department of State, United Nations documents, and legislative material in the field of international relations are also listed.

For sale by the Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

PRICE:

52 issues plus semiannual indexes,
domestic $29.80, foreign $37.25
Single copy 60 cents

Use of funds for printing this publication approved by the Director of the Office of Management and Budget (January 29, 1971).

Department Reports to Congress on Law of the Sea Conference and Discusses Legislation on 200-Mile Fisheries Jurisdiction

Following are statements presented to the Senate Committee on Foreign Relations on September 5 by Carlyle E. Maw, Under Secretary for Security Assistance; John R. Stevenson, Special Representative of the President and chairman of the U.S. delegation to the Third U.N. Conference on the Law of the Sea; and John Norton Moore, Deputy Special Representative of the President and deputy chairman of the delegation.[1]

STATEMENT BY UNDER SECRETARY MAW

I appreciate the opportunity to appear before this committee to testify on S. 1988. The Department of State attaches great importance to the successful conclusion of a comprehensive oceans law treaty, and we are concerned that unilateral action at this time would seriously damage the chances for agreement.

S. 1988, as amended, has major implications for the foreign relations of the nation. The administration strongly supports the effort to conclude a timely oceans law treaty within the Third U.N. Conference on the Law of the Sea. It is in the interest of all nations that such a comprehensive treaty be concluded.

The great potential of the world's oceans can only be fully realized with the stability which accompanies broadly based agreement on their legal regime. And without such an agreement, their great potential for peaceful development may be overshadowed by the potential for conflict.

It is particularly important that during the final stages of the Law of the Sea Conference all nations should refrain from new ocean claims which could irreparably damage the delicate fabric of the negotiation. Passage of S. 1988 or similar legislation unilaterally extending the fisheries jurisdiction of the United States would be seriously damaging to the negotiations as well as more broadly to the overall oceans and foreign relations interests of the United States. We strongly oppose the passage of this or similar legislation at this time.

Mr. Chairman, Ambassador John R. Stevenson, the Special Representative of the President for the Law of the Sea Conference, will report on the progress made at the Caracas session of the Third U.N. Conference on the Law of the Sea. Professor John Norton Moore, the Chairman of the National Security Council Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President, will then give the executive branch views on S. 1988.

STATEMENT BY AMBASSADOR STEVENSON

I welcome this opportunity to appear before the Senate Foreign Relations Committee to report on the progress made at the first substantive session of the Third U.N. Conference on the Law of the Sea, held in Caracas, Venezuela, from June 20 to August 29, 1974.

Before proceeding with this report, I would like to say how much we appreciated the at-

[1] The complete transcript of the hearings will be published by the committee and will be available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

tendance at the conference of three members of this committee, Senators Clifford Case, Edmund Muskie, and Claiborne Pell, as well as members of their and the committee's staffs. We are deeply grateful for their willingness to attend the conference and for the advice and assistance that they and other members of the committee have given to our efforts to achieve an agreed constitution and supporting legal regime for two-thirds of this planet. It has been and will remain a fundamental part of our policy to work closely with the Congress and this committee to achieve a law of the sea treaty that fully protects the basic interests of the United States.

Accomplishments of Caracas Session

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

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

To that end, the conference has scheduled not only the next session in the spring in Geneva but a return to Caracas for the signing of this agreement in the expectation that this will take place in accordance with the U.N. timetable. That timetable provides for conclusion of the treaty in 1975.

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

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

Finally, I am sure the members of the Senate who were with us will agree that the delegates from all regions worked hard. Three or four simultaneous meetings were common, and there were some night sessions. The number of papers worked on was enormous, but this time the object—largely achieved—was organizing and reducing the alternatives, not proliferating them.

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

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

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

b. The transition from a preparatory committee of about 90 to a conference of almost 150, including many newly independent states, was achieved without major new stumbling blocks and with a minimum of delay.

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

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

e. Traditional regional and political alignments of states are being replaced by informal groups whose membership is based on similarities of interest on a particular issue.

This has greatly facilitated clarification of issues and is necessary for finding effective accommodations.

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

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

Accommodation on Critical Issues Required

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

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

The fundamental problem is that most states believe the major decisions must be put together in a single package. Every state has different priorities, and agreement on one issue is frequently conditioned on agreement on another. Thus it might have been possible—and might have been helpful to the executive branch in its efforts here today—to adopt a general declaration of principles in Caracas endorsing, among other things, a 12-mile territorial sea and a 200-mile economic zone.

Our delegation opposed such an idea because it would have diverted us from negotiating the key details of an economic zone that can spell the difference between true agreement and the mere appearance of agreement and because our willingness to support such concepts is also conditioned on satisfactory resolution of other issues, including unimpeded passage of straits. In choosing to concentrate on precise texts and alternatives, our delegation believed we were in fact best promoting widespread agreement on schedule. However, we recognized that the absence of tangible symbols of agreement would place us in a politically difficult situation between sessions.

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

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

Rights and Duties in the Economic Zone

On July 11 at a plenary session, we noted there was a growing consensus on the limits of national jurisdiction, which we expressed in the following terms: [2]

> A maximum outer limit of 12 miles for the territorial sea and of 200 miles for the economic zone . . . conditional on a satisfactory overall treaty package and, more specifically, on provisions for unimpeded transit of international straits and a balance between coastal state rights and duties within the economic zone.

To promote negotiations on the essential

[2] For a statement by Ambassador Stevenson made on July 11, see BULLETIN of Aug. 5, 1974, p. 232.

balance of coastal state rights and duties the United States submitted draft articles proposing the establishment of a 200-mile economic zone in the treaty. The U.S. draft articles consist of three sections: the economic zone, fishing, and the continental shelf.

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

The fishing section gives the coastal state exclusive rights for the purpose of regulating fishing in the 200-mile economic zone subject to a duty to conserve, and to insure full utilization of, fishery stocks taking into account environmental and economic factors.

In substance, there is no significant difference between the objectives of S. 1988 and the U.S. proposal at the conference. Fishing for anadromous species such as salmon beyond the 12-mile territorial sea would be prohibited except as authorized by the host state. Highly migratory species such as tuna would be regulated by the coastal state in the zone and by the flag state outside the zone, in both cases in accordance with regulations established by appropriate international or regional organizations. Membership in the organization would be mandatory, and the coastal state would receive reasonable fees for the highly migratory fish caught in its zone by foreign vessels. The international organization, in establishing equitable allocation regulations, would be obligated to insure full utilization of the resource and to take into account the special interests of the coastal states within whose economic zones highly migratory fish are caught.

The continental shelf section provides for coastal state sovereign rights over exploration and exploitation of continental shelf resources. The continental shelf is defined as extending to the limit of the economic zone or beyond to a precisely defined outer limit of the continental margin.

The coastal state would have a duty to respect the integrity of foreign investment on the shelf and to make payments from mineral resource exploitation for international community purposes, particularly for the economic benefit of developing countries. In our plenary statement we suggested that these payments should be at a modest and uniform rate. The revenue-sharing area would begin seaward of 12 miles or 200 meters' water depth, whichever is further seaward.

The draft articles on the economic zone place the United States in the mainstream of the predominant trends in the conference, and we were pleased with the favorable reaction to our proposal.

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

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

At the final meeting of the Second Committee on August 28, the chairman, Ambassador Andres Aguilar of Venezuela, made a constructive and challenging statement summing up its work. On its own initiative, the committee decided to have the statement circulated as an official committee document. This occurred after initial opposition by the 200-mile territorial sea supporters, which was withdrawn in the face of other delega-

tions' willingness to proceed to a vote if necessary. Because of its great importance and the universal respect and admiration earned by Chairman Aguilar for his strong and effective leadership, I would like to quote briefly from that statement:

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

Deep Seabed Resources

Mr. Chairman, perhaps the most marked differences between the position of the United States and that of a majority of other states at the conference emerged in the First Committee, which deals principally with the mining of manganese nodules in the deep seabed for the production of nickel, copper, cobalt, and perhaps certain other metals. The basic differences relate to who will exploit the deep seabed resources and how this exploitation will take place.

The United States took the position that access to the resources should be guaranteed on a nondiscriminatory basis under reasonable conditions that provide the security of expectations needed to attract the investment for development of the resources. This would generate international revenues to be used for international community purposes, particularly for developing countries. A number of developing countries have supported a concept under which the international seabed authority would itself undertake exploration and exploitation and which, under the new formula introduced by the developing countries at Caracas, would in addition have discretion to contract with states and private companies to operate under its direct and effective control and under basic conditions of exploitation set forth in the convention itself.

During the last few weeks of the conference real negotiations began on the basic conditions for exploitation when the First Committee agreed to establish a small informal negotiating group. This group will resume its work at the next session of the conference, and we hope that negotiations in this context and during the intersessional period will lead to a narrowing of differences and a realistic approach that will promote access by industrialized consumer countries and the development of the mineral resources of the deep seabeds.

The differences between what we call regulation and what others call control may be narrowed if we can agree on the conditions of exploitation, including measures to insure that exploitation on a nondiscriminatory ba-

sis will take place, and if agreement can be reached on protecting relevant interests in the decisionmaking process.

Marine Environment and Scientific Research

In the Third Committee of the conference, there were mixed results on formulating treaty texts for protection of the marine environment and oceanographic scientific research.

We were pleased that texts concerning the preservation of the marine environment were prepared on several points, including basic obligations, particular obligations, global and regional cooperation, and technical assistance. But basic political issues remain to be resolved on the jurisdiction of port and coastal states with respect to vessel-source pollution and on whether there will be different obligations for states depending upon their stage of economic development—the so-called double standard.

We believe that the Caracas session broadened the basis of understanding of the complex problems involved in drafting new legal obligations to protect the marine environment, and there were indications that all states were analyzing their environmental policies in detail.

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

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

Provisions for Settlement of Disputes

Mr. Chairman, we know there will be disputes with respect to the interpretation and application of the provisions of the treaty. The willingness of the United States and many others to agree to a particular balance of the rights and duties of states and the international authority is predicated upon reasonable confidence that the balance will be fairly maintained. Accordingly, the establishment of an impartial system of peaceful and compulsory third-party dispute settlement is critical.

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

With your permission, Mr. Chairman, I will submit for the record a copy of the report transmitted by the delegation to the Secretary of State on August 30 and copies of all draft articles sponsored or cosponsored by the United States. The consolidated treaty texts in Committee II and other documents will be transmitted to the committee as soon as we receive them from the U.N. Secretariat.

Mr. Chairman, it is my firm conviction that a comprehensive treaty is obtainable by the end of 1975 as contemplated in last year's U.N. General Assembly resolution. To do so, however, governments must begin serious negotiation the first day at Geneva; and to prepare for that, they must during the intersessional period appraise the alternatives, meet informally to explore possible

accommodations that go beyond stated positions, and supply their delegates with instructions that permit a successful negotiation.

A multilateral convention of unparalleled complexity affecting some of our nation's most vital economic and strategic interests is within our reach. We cannot and will not sign just any treaty, but in my judgment we would be terribly remiss in our responsibilities to the United States and to the international community as a whole if we were now to overlook broader and longer range perspectives.

In the year ahead we intend to work diligently and carefully for a convention that will protect our interests in the broadest sense of that term. In this endeavor, Mr. Chairman, we trust that we shall have the guidance and support of the Congress and of your committee.

Through our mutual cooperative efforts I am certain that we can take the necessary steps and develop constructive initiatives so that all will agree that the United States has done all it could to foster a successful outcome of the Third U.N. Conference on the Law of the Sea on schedule in 1975.

STATEMENT BY MR. MOORE

It is a particular pleasure to appear before this committee to testify for the executive branch on two bills of fundamental importance to U.S. oceans policy. Both bills raise questions deeply affecting the foreign relations of the nation as well as our fisheries and other oceans interests. They also pose a stark choice for our policy toward an area covering more than two-thirds of the surface of the earth. Is U.S. oceans policy to be pursued through cooperative efforts at international agreement? Or is it to be pursued through unilateral national measures risking an irreversible pattern of conflicting national claims?

In testifying on these bills, I am appreciative of the outstanding service the sponsors of this legislation have continually rendered to the nation in fishery and other ocean matters. I am also appreciative of the very real problems confronting coastal and anadromous species off our coasts. This increased pressure is part of a global trend which in the absence of an adequate international legal framework for fisheries jurisdiction has in many areas led to overexploitation. The depletion of the haddock stock off our Atlantic coast is an example.

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

For the first time in the history of oceans law it is realistic to expect such a broadly based agreement covering fisheries jurisdiction. After lengthy preparatory work in the U.N. Seabed Committee, the Third U.N. Conference on the Law of the Sea has recently completed its first substantive session, held in Caracas, Venezuela from June 20 to August 29. If other issues are satisfactorily resolved, the conference offers every promise of solving the coastal and anadromous fisheries problems which prompted the bills before this committee.

The strong trend in the conference is for acceptance of a 200-mile economic zone providing coastal states with jurisdiction over coastal fisheries in a 200-mile area off their coasts. There is also considerable support for host state control of anadromous species throughout their migratory range and grow-

ing support for special provisions on international and regional management of highly migratory species. In this connection the U.S. delegation has indicated that we can accept and, indeed, would welcome the 200-mile economic zone as part of a satisfactory overall treaty which also protects our other oceans interests, including unimpeded transit of straits used for international navigation.

It is also realistic to expect a broadly based oceans treaty in the near future. The General Assembly resolution which established the Law of the Sea Conference provided that any subsequent session or sessions necessary after the Caracas session would be held no later than 1975. Pursuant to this schedule, the Caracas session of the conference agreed on a second session to be held in Geneva from March 17 to May 3–10, 1975. It also agreed that the formal signing session will take place in Caracas, with July and August 1975 discussed in this regard. We believe that it is important to adhere to this conference schedule.

Preventing Further Depletion of Fisheries

Even on this schedule, it is of course also important that we prevent further depletion of our coastal and anadromous stocks before the new law of the sea treaty comes into force. We are taking several important steps to meet this need:

—First, we are actively pursuing bilateral and limited multilateral approaches for the protection of our stocks. Progress has been significant in recent months, and we intend to continue to vigorously pursue improved protection bilaterally and within regional fisheries commissions.

For the information of the committee the administration is preparing and will shortly submit for the record a report on the present condition of our coastal and anadromous stocks and efforts to provide increased interim protection to those stocks. I am accompanied by the Honorable Howard Pollock, Deputy Administrator of the National Oceanic and Atmospheric Administration, Department of Commerce, and Mr. William Sullivan, Acting Coordinator of Ocean Affairs, Department of State, who are prepared to answer questions on these and future efforts to protect our coastal and anadromous stocks in the interim period before a new law of the sea treaty is applied.

—Second, we have proposed that the fisheries as well as certain other provisions of the new law of the sea treaty should be applied on a provisional basis; that is, they should be applied after signature of the new treaty but before waiting for the process of ratification to bring the treaty into full legal effect. Provisional application is a recognized concept of international law, and our proposal was favorably received. We will of course consult closely with the Congress as to how provisional application is to be effectuated.

—Third, we are today announcing a significant new measure to provide increased protection for our stocks until the new law of the sea treaty can be fully applied; that is, new enforcement procedures to substantially tighten control over the incidental catch of living resources from the U.S. continental shelf. In addition, we are carefully reviewing the availability of means to make possible increased Coast Guard enforcement efforts to protect our coastal and anadromous species in particularly vulnerable areas.

Attached is a letter to Senator Magnuson setting out the new enforcement measures for tighter control over incidental catches of U.S. continental shelf resources.[3] Because of their potentially severe impact on foreign nations fishing over our continental shelf, these far-reaching new measures will go into effect only after a 90-day grace period to enable affected nations to adjust their fishing methods or to conclude agreements further protecting our living resources. We are today notifying affected states of these new measures.

These new procedures will provide substantial increased protection to our valuable living resources. We believe that they are

[3] Not printed here.

entirely justified by existing international law and that jurisdiction over the living resources of the continental shelf carries with it the right to require other states to enter into agreements for the protection of such resources if they are taken during fishing for non-shelf stocks as well as if the taking of such shelf resources is intentional.

An expanded enforcement effort by the Coast Guard would also help insure compliance with existing regulations and assist in the transition from the present limited fisheries jurisdiction to the broader jurisdiction which is the likely outcome of a successful Law of the Sea Conference.

Difficulties of Proposed Legislation

Despite the interim problem in protection of our coastal and anadromous stocks, the executive branch is strongly opposed to the enactment of legislation such as S. 1988, which would unilaterally extend U.S. fisheries jurisdiction.

Enactment of this legislation would not satisfactorily resolve our fisheries problems, would at most merely anticipate a result likely to emerge in a matter of months from a successful Law of the Sea Conference, and would be seriously harmful to U.S. oceans and foreign relations interests in at least five principal ways:

—First, unilateral action extending national jurisdiction in the oceans is harmful to overall U.S. oceans interests, and as such we have consistently protested any extension of fisheries or other jurisdiction beyond recognized limits.

A unilateral extension of jurisdiction for one purpose will not always be met by a similar extension but, rather, may encourage broader claims which could have serious implications; for example, with respect to our energy needs in transportation of hydrocarbons, our defense and national security interests in the unimpeded movement of vessels and aircraft on the world's oceans, or our interest in the protection of marine scientific research rights in the oceans.

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

—Second, enactment of legislation such as S. 1988 could be seriously damaging to important foreign policy objectives of the United States.

Unilateral extension of our fisheries jurisdiction could place the nation in a confrontation with the Soviet Union, Japan, and other distant-water fishing nations fishing off our coasts. These nations strongly maintain the right to fish in high seas areas and are unlikely to acquiesce in unilateral claims, particularly during the course of sensitive law of the sea negotiations in which they have substantial interests at stake. The implications for détente and our relations with Japan are evident. In fact, both the Soviet Union and Japan have already expressed serious concern over this legislation to our principal negotiators at the Law of the Sea Conference.

Similarly, unilateral extension of our fisheries jurisdiction coupled with reliance on the Fishermen's Protective Act to protect threatened distant-water fishing interests of the United States seems certain to assure continuation of disputes with Ecuador and Peru as well as to generate new disputes with other coastal states off whose coasts our nationals fish.

It is strongly in the national interest to

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

—Third, a unilateral extension of our fisheries jurisdiction beyond 12 miles would not be compatible with existing international law, and particularly with the Convention on the High Seas, to which the United States and 54 other nations are party.

The United States has consistently protested any extension of fisheries jurisdiction beyond 12 miles as a violation of international law. And the International Court of Justice held only last month in two cases arising from the "cod war" that the 50-mile unilateral extension of fisheries jurisdiction by Iceland was not consistent with the rights of the United Kingdom and the Federal Republic of Germany.

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

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

—Fourth, a unilateral extension of our fisheries jurisdiction would pose serious risks for our fisheries interests.

Protection of our coastal and anadromous stocks can only be achieved with the agreement of the states participating in the harvesting of those stocks. Unilateral action not only fails to achieve such agreement, but it may also endanger existing fishery agreements and efforts to resolve the problem on a more lasting basis with such countries. Similarly, protection of our interests in fishing for highly migratory species such as tuna or coastal species such as shrimp where U.S. nationals may fish off the coasts of other nations can only be achieved through cooperative solutions.

In short, we cannot expect to achieve acquiescence from states fishing off our coast, and we will harden the positions of other countries off whose coasts we fish. The resolution of old disputes will be made more difficult, and their costs to our fishermen and our government will continue. At the same time we will face new disputes off our own coast and elsewhere.

S. 1988 or other similar legislation unilaterally extending U.S. fisheries jurisdiction would provide others with an opportunity to make unilateral claims damaging to our distant-water fishing interests despite any exceptions for highly migratory species or provisions for full utilization written into the legislation. If the United States can make a unilateral claim eliminating the freedom to fish on the high seas, it is difficult to assert that other nations are bound by the exceptions and provisions contained in our own legislation. Moreover, even by its terms S. 1988 would include highly migratory species in the extension of coastal state jurisdiction where such species "are not managed pursuant to bilateral or multilateral fishery agreements." We should keep in mind that the principal countries with which we have disputes concerning jurisdiction over highly

migratory species are not now parties to agreements relating to the management of such stocks.

A unilateral extension of fisheries jurisdiction by the United States could also make it more difficult to achieve meaningful guarantees such as those we are advocating at the Law of the Sea Conference binding on all nations for the conservation of the living resources of the oceans. Moreover, it could make more difficult acceptance of a rational basis for fisheries management; that is, jurisdiction over anadromous species in the host state and jurisdiction over highly migratory species in a regional or international organization. As such, legislation such as S. 1988, although intended to protect our fish stocks, could, paradoxically, have the opposite effect not only on stocks off our coast but on fish stocks the world over.

—Finally, passage at this time of legislation such as S. 1988 unilaterally extending the fisheries jurisdiction of the United States would seriously undercut the efforts of all nations to achieve a comprehensive oceans law treaty.

Our nation has urged particular care and restraint in avoiding new oceans claims during the course of the Third U.N. Conference on the Law of the Sea. A pattern of escalating unilateral claims during the conference could destroy the delicate fabric of this most promising and difficult negotiation. It could also undermine the essential political compromise by which all nations would agree on a single package treaty. And by unilaterally taking action which we have said must be dependent on a satisfactory overall compromise, it could harm other U.S. oceans interests such as protection of vital navigational freedoms, marine scientific research, environmental goals, or economic interests such as a regime for deep seabed mining which will promote secure access to the minerals of the deep seabed area.

Mr. Chairman, these principal difficulties with legislation such as S. 1988 are in no sense alleviated by its emergency or interim nature. Section 11(b) of S. 1988 provides that the act would expire on such date as the Law of the Sea Treaty comes into force or is provisionally applied. Unfortunately, however, in the interim period the legislation would be simply a unilateral extension, with all of the associated costs of unilateralism and with none of the benefits of a lasting solution. Moreover, this legislation could well prevent the agreement which is expected to supercede it.

In commenting on S. 1988 I have sought only to deal with the fundamental issue of unilateral extension of U.S. fisheries jurisdiction, which is the central feature of this bill. The executive branch has not at this time taken a position on the fisheries management aspects of the bill.

Similarly, I have not sought to discuss the specifics of S. 3783 which, because it is intended to be rooted in the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, is potentially not as objectionable as S. 1988. The principal problem with S. 3783, of course, is that the most important nations fishing for our coastal and anadromous species, including the Soviet Union and Japan, are not parties to the 1958 convention.

With appropriate changes, it is possible that S. 3783 or a similar measure rooted in existing international law could be a useful alternative to S. 1988 without the grave impact on our overall oceans and foreign relations interests. Accordingly, before commenting further on S. 3783, the executive branch would welcome an opportunity for further study with the Congress with a view to examining the possibility of changes which might make S. 3783 acceptable.

Cooperative Solutions Required

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

The overall oceans interests of our nation, our foreign relations interests, compliance with our international legal obligations, our

fisheries interests themselves, and our interest in concluding a timely and successful law of the sea treaty all strongly require that we firmly set our course toward cooperative solutions.

In any event, I am particularly heartened that this fundamental choice is being examined by this committee and trust that on this issue, as on all others, it will bring its understanding and experience to bear on the short- and long-range implications of this choice for the foreign relations of the nation.

Ambassador Stevenson Reviews Work of Law of the Sea Conference

Statement by John R. Stevenson [1]

This is the first of a series of reports I will be making in the next few weeks, including reports to the President and to committees of the House and Senate, about the results of this session of the Law of the Sea Conference. I want to emphasize at the outset that while the results obviously are not all we hoped for, neither is there any cause for billing the conference a failure.

I said in my first press conference here on June 20 that "great issues, involving the interests of so many states, are obviously not easily resolved." This is not to say that they cannot and will not be resolved within the time framework originally scheduled by the United Nations. That time framework for completion of a treaty in 1975 is, as you know, of substantive importance in this negotiation. Not only the United States but many other countries are under domestic political pressures to take legislative action which would have the effect of foreclosing many avenues of negotiation which have opened up this session.

What we are attempting to do here is to establish the goals of our international society for a large part of the world for the foreseeable future. This would not be easy were we able to foresee all the factual circumstances of man's future in the seas. It is more difficult when in large measure we must act on imperfect knowledge and in reliance on our general experience that a system of legal order is a preferable approach to peaceful accommodation in the seas.

Perhaps a most significant result of this session, and one not to be underestimated, has been the agreement of almost all nations represented here that the interests of all will be best served by an acceptable and timely treaty. To that end, the conference has scheduled not only the next session in the spring in Geneva but a return to Caracas for the signing of the agreement in the expectation that this will take place in accordance with the U.N. timetable.

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

a. The vast array of law of the sea issues and proposals within the mandate of Committee II dealing with territorial sea, straits, and the economic zone was organized by the committee into a comprehensive set of informal working papers reflecting main trends on each precise issue. A large number of formal proposals were introduced as a basis for insertions in these main trends papers. All states can now focus on each issue, and the alternative solutions, with relative ease. A similar development occurred with respect to marine scientific research.

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

c. The overwhelming majority clearly desires a treaty in the near future. Agreement on the rules of procedure is clear evidence of this desire to achieve a widely acceptable treaty. The tone of the meeting was moderate and serious. The conference adopted a recommended 1975 work schedule deliberately devised to stimulate agreement.

[1] Issued at a news conference held at Caracas on Aug. 28 at the conclusion of the Caracas session of the Third U.N. Conference on the Law of the Sea (text from press release 353 dated Sept. 3). Ambassador Stevenson is Special Representative of the President for the Law of the Sea Conference and chairman of the U.S. delegation to the conference.

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

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

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

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

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

What was missing in Caracas was the political will to negotiate, and the main reason for this was the conviction that this would not be the last session. The next step, as I said in my plenary speech, is for governments to make the political decisions necessary to resolve a small number of critical issues. In short, we must now move from the technical drafting and negotiating stage at this session, which has laid bare both the outlines of agreement and the details of disagreement, to the political level which makes compromise possible.

Each state here, depending upon its situation and circumstances, has a different idea of the relative importance of different issues and how the blanks should be filled in. The United States and some others have stated that it is essential to preserve unimpeded passage of straits and the general rights of navigation, in which all countries which trade with the rest of the world have a vital interest. There are differences as to the balance of coastal state rights and duties within an economic zone. There are differences as to how the problem of pollution within the zone should be handled and how scientific research can be conducted in a fashion that will not hinder research but will also recognize the interests of states in activities near their coasts. There are differences as to how and by whom the deep seabed should be exploited.

What we have done, I believe, is to lay all these problems on the table in the form of concrete alternative treaty texts, so that representatives of governments can go home and provide their governments with the information and the assessments that will permit them to decide what accommodations will best serve our common purpose. My delegation expects to arrive in Geneva willing to negotiate on all the remaining troublesome aspects of this treaty in the hope and in the spirit that other governments will be prepared to do likewise.

I have every confidence that the necessary decisions will be made and that most states will come to Geneva ready to conclude a treaty. Factual assessments can be made by computers. Judgments of the future, informed judgments on the best course for peace and stability of the world, must be made by men and governments in good faith and a spirit of compromise.

The United States has, I think, demonstrated that good faith and the willingness to accommodate the interests of others. There is much work to be done, but I look forward to returning to this hospitable city to sign the Treaty of Caracas next year.

U.S. Gives Position on Seabed Regime, Scientific Research, Straits, and Economic Zone at Law of the Sea Conference

Following are statements by John R. Stevenson, Special Representative of the President and chairman of the U.S. delegation to the Third U.N. Law of the Sea Conference at Caracas, made in Committee I of the conference on July 17, in Committee III on July 19, and in Committee II on August 1; a statement by John Norton Moore, Deputy Special Representative of the President and deputy chairman of the U.S. delegation, made in Committee II on July 22; U.S. draft articles on the economic zone and continental shelf; and alternative texts of draft articles on settlement of disputes.

STATEMENT BY AMBASSADOR STEVENSON, COMMITTEE I, JULY 17

Press release 313 dated July 24

Mr. Chairman [Paul Bamela Engo, of Cameroon]: May I say at the outset what great satisfaction my delegation has in seeing you in the chair. We appreciate very much, as all delegations do, the contributions that you and your colleagues at the podium have made and continue to make to the success of our work. Your leadership, wisdom, and political skills have in many ways enabled us to reach an advanced stage of work.

As you correctly pointed out in your statement to this committee on the 10th of July, the past work of the preparatory committee has given many of us a sense of false comfort, for we have thought that the preparation of a single large and complex document was in and of itself an achievement. You told us that our task was to begin to negotiate. Indeed, you demanded it of us. Mr. Chairman, we all owe you a great debt for your persistence, because it is now obvious after more than 50 statements in this committee that you have served as the catalyst for the commencement of negotiations for which we have all waited so many years.

We have listened with great care to the statements of all delegations who have spoken before us, and it is now clear beyond any doubt that serious negotiations are occurring. Mr. Chairman, our analysis of the statements made in the last week of our work leads us to certain very specific conclusions about the nature and scope of the problems before us in Caracas, and I will turn directly to them.

The central issue in the negotiations is the extent of control by the authority over commercial development of the resources of the international seabed area. In a very real sense, the question of who will control is resolved. The authority will have the control and will exercise it through its principal organs and their subsidiary organs. The authority should contain four principal organs: an assembly, a council, an operational arm, and a dispute-settlement body. The United States, in the latter part of the Geneva session of the Seabed Committee last year, proposed the creation of a comprehensive law of the sea tribunal for disputes arising out of the interpretation or application of the law of the sea convention.[1] We would anticipate that the dispute-settlement machinery in the authority would be a more specialized organ.

Each of these principal organs will have

[1] For U.S. statements made in the July–August 1973 session of the U.N. Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, see BULLETIN of Sept. 24, 1973, p. 397.

to be given different types of powers. Broad policy guidance will come from the assembly; executive decisionmaking will be in the council, with particular reference to the implementation of the general system of exploration and exploitation. The operational arm will manage the day-to-day affairs of the authority, and the dispute-settlement procedures will help preserve the integrity of this treaty we are here to negotiate. It will be necessary to provide for some checks and balances among the organs of the authority to insure against any abuse of power. This approach may help find a common middle path to agreement on the structure of the authority and many of its powers and functions.

The questions we face are: How much control? And subject to what safeguards? And over what activities? These are clearly not easy questions, but our impression of the statements of various speakers is that the question of control is made somewhat more difficult by thinking of it in terms of control versus no control. We believe a better approach would be to recognize that certain controls are essential in the authority —these controls in a broad sense are the rights of the authority, and these rights should be accompanied by corresponding duties.

Our first task is to identify the common denominators—what types of controls do most delegations seek to repose in the authority? We have identified seven major categories which appear to command widespread support:

—First, the right of the authority to prevent degradation of the marine environment from seabed exploration and exploitation;

—Second, the right to insure that sufficient and reliable information and data are given to the authority so as to allow it independently to satisfy itself that it is receiving all benefits and income to which the treaty entitles it;

—Third, the right to impose requirements which prevent any state or person who does not have the bona fide intention of exploring and exploiting from obtaining or keeping any mining rights in the area;

—Fourth, the right to require that mining be carried out safely;

—Fifth, the right to establish the procedures and mechanisms which will insure that those provisions of our treaty which promote programs for the transfer of technology to the developing countries and provide for the training of developing country personnel be faithfully executed;

—Sixth, the right to insure that the resources of the area are not monopolized by a few countries or private entities so as to preclude developing countries from participation in the exploitation of the resources of the area when they have the technology and financial capacity to do so; and

—Seventh, the right to participate in the benefits of resource development.

Mr. Chairman, my delegation can pledge its full support to work to achieve these kinds of controls. In some cases, we believe the controls should be carefully spelled out in the treaty itself. In others, we would want to include the controls by way of a mandate to regulate in the future, provided we can agree in the treaty on standards for the regulatory machinery and a just procedure for rulemaking which will inspire the confidence of all states.

We have also listened with care to the statements of other delegations concerning the duties or obligations of the authority. Here again, we have found basically five common denominators:

—First, developing and developed countries alike have spoken out clearly for the need to insure that no state is subject to discrimination in the exercise of its rights and that no state can be deprived of a right of access to the resources if it meets the obligations imposed by the treaty—this being one of the fundamental principles of the common-heritage concept.

—Second, virtually all countries have recognized the duty to provide stable conditions of investment which will promote the development of the resources. There is wide-

spread recognition that we all depend on the creativity and initiative of a pioneering few to achieve realizable benefits for all from the extraction of the resources.

—Third, it has been wisely said by many delegations that the authority should not encumber those who extract the resources with needless regulatory interference and administrative burdens which reduce economic efficiency and thus the benefits, including the revenues, which will be available for sharing.

—Fourth, many delegations have noted the need to protect the property, including proprietary data and trade secrets, of those on whom we depend for the extraction of the resources.

—Fifth, the authority must provide facilities and institutions for the knowledge and technology which will be transferred to developing countries. Effective transfer of technology, which many have stressed, requires careful planning and the creation of new institutions of learning. In this area the authority will make one of its most significant contributions to the benefit of all mankind.

Mr. Chairman, we are gratified that most delegations have referred in their statements to the need for negotiations on the fundamental terms, conditions, and safeguards for exploration and exploitation. Indeed, one delegation suggested that this committee change its perspective quickly and begin at once to examine these fundamental matters in the hopes that by doing so we will find common ground which may reduce the differences between what appear to be widely disparate conceptual approaches. We share this belief. It was our view in the working group last summer, and it remains our view today, that the differences between the two competing conceptual approaches to the question "Who may exploit the area?" are not as serious as previous debate would have indicated and that a close study of the basic conditions of exploitation founded on what now appear to be widely supported common denominators will help us find the path to agreement.

Regrettably, Mr. Chairman, it appears that in one major area no sign of a rapprochement is yet on the horizon. A few major producers and exporters of nickel and copper have brought to our attention their belief that a problem will accrue to them from seabed nickel and copper production, the two metals of principal commercial interest in nodules. The Secretary General has, at the request of the Seabed Committee, done several useful studies of the question, including a study now before us, A/CONF.62/25. Mr. Chairman, my delegation is pleased that at an appropriate time this summer the committee will have an opportunity to study this report more fully. We believe in light of recent international experience that it will be most useful for all countries, whether developed or developing, who are consumers of these materials in either raw or manufactured form to analyze together their interests.

Mr. Chairman, a better understanding of this problem and the extent to which it has already influenced the work of this committee may help us over the few hurdles ahead of us. Several nations have made proposals in connection with economic implications which call for production and price controls or which limit access to the resources of the area. Still other proposals have been made which, while they do not appear to be directly related to economic implications, may be motivated by a desire to insure that the authority will be able to regulate production effectively. Mr. Chairman, several of these proposals can be seriously disruptive in the negotiation because they are not only capable of being used to maintain or increase prices but also can be used to deprive states of access to the resources.

In addition, if used, they may well decrease the benefits available from the sea, including the benefits to consumers everywhere from the availability of a new supply of nickel and copper and the products made from those metals. The U.N. economic studies have shown that the increases in copper demand will greatly exceed the rate of development in seabed production. Similar conclusions, to a lesser extent, hold for nickel, but

in any case nickel is largely a developed country export. The effect on manganese is speculative, and only one company that we know of has any plan to produce any manganese at all from nodules. The cobalt production of one or two developing countries may be affected. In these cases appropriate measures will have to be considered. Let us move with extreme care and not try to solve problems which in reality may be quite small and manageable with remedies more dangerous than the illness we seek to cure.

Mr. Chairman, all countries, not only the rich, but rich and poor alike, are justifiably concerned by any price increase in essential commodities. Higher prices for resources used for development are a serious matter today, causing widespread hunger and starvation in many poor countries.

We believe, Mr. Chairman, that seabed metal production should be treated on the same basis as land production. Together, the two sources will account for the global supply and meet the global demand for these metals. To draw up special restrictions for one source and not the other is equivalent to agreement by treaty to discriminate against all states who may be seabed producers. This is neither a fair nor rational approach to the disposition of the common heritage of mankind.

Mr. Chairman, my delegation places special emphasis on the decisionmaking procedures which will be used by the authority for dealing with the multitude of problems that will face the authority in its quest for control over the resources of the area. As I mentioned earlier, we believe that, in order to protect the interests of all states, decisionmaking should be dispersed throughout the organs of the authority to avoid any single organ's dominance over the machinery.

In respect of the basic resource policies of the authority, we wish to assure a special procedure which we call rulemaking. The authority will have to deal with a host of unpredictable developments. In these areas, which include environmental protection, mining safety, resource conservation, adjustments to regulatory provisions which insure diligence in exploration and deter speculation, to name only a few, we think the authority should make rules by a procedure similar to the one used by the International Civil Aviation Organization. Rules should be drafted by a specialized subsidiary organ, and after council approval, forwarded to all states for review. If after a fixed time period, say 90 days, less than one-third of the members of the authority have objected, the rules would become binding. This approach, we believe, will give maximum opportunity for expert review in the authority and in governments and avoids the risk of undue influence by one or another of the organs of the authority.

Mr. Chairman, the authority has not yet been created. We are here to create it. This is an exciting and important experiment in international cooperation. We are each prepared to agree to controls over valuable resources by an intergovernmental organization. This is a unique adventure. But it cannot succeed if we are too ambitious. We are asking all nations to have trust in an unknown body. Let us build into this treaty as many necessary procedural protections as we can to insure that those who are wary of our efforts will be satisfied with our work product. To that end, Mr. Chairman, my delegation wishes to stress the following points which we regard as most important in these negotiations:

1. The resource system we choose for the treaty must insure nondiscriminatory access to the resources of the area for all states. If the authority has the power to restrict the number of areas available for commercial development and to select among applicants, my government would not be satisfied that our access was secure and free of potential discrimination.

2. The mandate of the authority should only include control of activities in the area which are directly related to the exploration and exploitation of seabed resources.

3. The treaty should provide an appropriate system of checks and balances among the organs of the authority.

4. A carefully defined system of rulemaking should be elaborated in the treaty to in-

sure a fair and thoughtful decisionmaking process.

5. Provisions for the compulsory settlement of disputes and machinery for that purpose are essential.

6. Voting arrangements in the council of the authority should be realistic.

7. We should seek methods for accommodating the concerns of land-based producers who are developing countries if it is clear that seabed production harms their level of domestic production, but at the same time the consumers of goods made from raw materials found in the seabed must be protected from artificial price increases for such materials.

8. The provisional application of the permanent regime and machinery.

Before closing, Mr. Chairman, my delegation would like to take note of the remarks of one speaker who indicated that industrialized countries had supported a system for exploitation which would permit both licensing and direct exploitation by the authority simultaneously. He rejected such a parallel system. We support his rejection. We are here to find a single system for exploration and exploitation which will accommodate the interests and needs of all countries.

For our part, we approach the next two-week period with the hope that when the informal committee makes its report to this committee, the third reading of the regime and machinery will be concluded except for those areas which we know cannot be easily solved and will, in any case, require your own firm guidance and personal attention in the weeks and months ahead. In August we look forward to a thorough and careful elaboration by the informal committee of the new aspects of our work—the effort to study more closely the resource exploitation system and its basic conditions of operation. We will also have to deal with the unfinished business of economic implications.

We are here to negotiate, Mr. Chairman, and we are convinced that the time to do so is now.

STATEMENT BY AMBASSADOR STEVENSON, COMMITTEE III, JULY 19

Press release 317 dated July 26

Mr. Chairman [A. Yankov, of Bulgaria]: I will limit my comments today primarily to marine scientific research within the economic zone. We have previously indicated that the coastal state should have the right to authorize and regulate scientific research in the territorial sea. In the area beyond the limits of national jurisdiction, the present right to conduct research should continue, as reflected in the declaration of principles adopted by the General Assembly in 1970.[2] Similarly, it is clear that coastal states should have jurisdiction to control commercial exploration in the economic zone. The basic question is the regime for scientific research in the economic zone adjacent to the territorial sea.

If an economic zone is established at a distance of 200 miles from the coast, at least one-third of the ocean will be included in this zone of particular importance to scientists. This conference has before it two fundamental questions regarding marine science. First, we must determine whether to foster the conduct of marine science; second, we must decide how other interests are to be accommodated with respect to the conduct of marine science.

We believe that there is a consensus in this conference that marine scientific research should be encouraged. We also believe that there is a consensus that rules regarding marine science should insure that all will benefit to the fullest extent and that the interests of the coastal state in the economic zone are protected. The challenge we face is the creation of a regime which reflects this consensus.

Fostering Marine Scientific Research. Obtaining needed knowledge about the ocean is often difficult, time consuming, and expensive. Many developing countries, when considering the manifold demands on their

[2] For text of the declaration (General Assembly Resolution 2749 (XXV)), see BULLETIN of Feb. 1, 1971, p. 155.

available resources, feel that they cannot justify a substantial diversion of their scarce resources to this type of research. How then do we insure that research conducted by countries willing to utilize some of their resources for scientific investigation of the oceans benefits all countries, including developing countries? Do we increase their burden by complicating the planning and conduct of research and increasing the expense, or do we create a regime which is as conducive as possible to conducting further research in a manner designed to insure universal benefit? I believe that we all would agree that we should strive for the latter. Instead of placing burdens on research, we should insure that research is for the benefit of all and that the interests of coastal states in the economic zone are protected.

Mr. Chairman, many states have called for a coastal state right of consent for research in the zone. Few countries in the world have the long coastlines characteristic of the United States and some of its neighbors in the Western Hemisphere. Frequently, valid and useful scientific research can be conducted off these lengthy coasts even though neighboring states may refuse to grant consent for research. This is not the case, however, for many countries in other parts of the world. For example, how could any research scientist undertake a meaningful study of the Guinea Current in the Gulf of Guinea if only some of the coastal states gave consent? How can data from different areas of the world be compared in order to formulate new hypotheses about the unknown?

Mr. Chairman, marine scientific research will not be fostered by a consent regime. In many cases, such a regime will simply preclude the research or undermine the validity of the scientific findings. In others, it will make the research more expensive, with the obvious consequence that less research will be conducted. As has been often stated, oceanic processes do not respect manmade jurisdictional boundaries. Scientific investigation of such oceanic phenomena as currents generally requires research off the coasts of many countries. If several states give their consent and others withhold consent, the research most likely will simply not be conducted. Nonconsenting and consenting states alike will be denied knowledge that otherwise would have been obtained from this research.

Insuring Benefit to All. To insure that all states benefit from marine scientific research, it is important that no restrictions be placed on the wide dissemination of research findings in the open literature and in global data banks available to all. The scientific process is a gradual one, with scientists building upon each others' research. It is a rare if not unique phenomenon that one research project provides the needed insight for a major scientific breakthrough; it is equally rare that the researcher himself is the one who obtains the most benefit from the research which has been conducted.

Mr. Chairman, we must insure that scientific knowledge flows not only to the coastal state and the researching state but to all mankind. To do otherwise would remove essential building blocks of science and widen the gap between developing and developed countries.

Protection of the Interests of Coastal States. As stated previously, oceanic processes do not respect manmade jurisdictional boundaries. Ideally, therefore, a more complete understanding of such oceanic processes could be obtained if marine scientists were free to carry out scientific research anywhere in the seas without restraints or restrictions. Balanced against this interest, however, are the legitimate rights and interests of coastal states. Last summer we set forth a draft treaty proposal for research in the economic zone. That proposal does not call for freedom of scientific research, nor does it deny the rights of the coastal state. Rather, our proposal sets forth a series of coastal state rights. These rights are expressed in the following obligations with which a researcher must comply if he wishes to conduct research in the zone:

—Advance notification of the proposed research, including a detailed description of the research project;

—A right of the coastal state to participate directly or through an international organization of its choice;

—Sharing of all data and samples with the coastal state;

—Assistance to the coastal state in interpreting the results of the research project in a manner that is relevant to the coastal state;

—Publication as soon as possible of the significant research results in an open, readily available scientific publication;

—Compliance with all applicable international environmental standards; and

—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.

We have tried in the listing of obligations to meet the legitimate concerns of coastal states. We studied national laws of other states in compiling the list. Perhaps we have not been successful in phrasing or listing every obligation that should be included. If there are other obligations that some feel should be included, these obligations should be discussed and, if found meritorious, included in the treaty.

I should like to explain briefly why we believe that these obligations will protect the interests of the coastal state. Advance notification will apprise the coastal state of the proposed research, provide background information on the need for, and the steps leading up to, the research project, and allow the coastal state to plan its participation in the research project. By participating, the coastal state can satisfy itself that the activities undertaken are in fact scientific and maximize the benefit it receives from the research conducted.

Not only do we propose sharing of all data and samples with the coastal state, but also we recognize that some coastal states may desire assistance in interpreting the data and samples received. This proposal provides not only that the flag state must assist the coastal state in interpreting the data resulting from that research project, but also that it must provide such assistance in interpretation in a manner that is relevant to the coastal state.

Open publication of the research results will insure that the research benefits all mankind. It will also provide additional assurance that the research is not commercially oriented, since those who collect proprietary data rarely are willing to share such data with their competitors.

To insure protection of the environment of the economic zone, researchers would be required to comply with all applicable international environmental standards. In addition, we recognize that drilling into the continental margin for scientific purposes can create both an environmental threat and resource management problems. We therefore proposed before Subcommittee II last summer, in articles on the coastal seabed economic area, that coastal states have the exclusive right to authorize and regulate all forms of drilling, including scientific drilling.

We also believe that the requirement that the flag state certify that the research is conducted by a qualified institution with a view to purely scientific research is a meaningful protection. As evidenced by these negotiations, countries such as my own which conduct a large amount of research have a great interest in protecting the right to conduct marine scientific research, and we believe that all countries will exercise great caution in granting such certification.

Finally, our articles require that those "conducting scientific research shall respect the rights and interests of the coastal State" in its exercise of jurisdiction in the zone. Clearly, the researcher cannot unreasonably interfere with fishing or seabed exploitation activities conducted by the coastal state in the zone. Additional protection for the resource activities of the coastal state will be provided by the opportunity to participate in the research. Moreover, under the coastal seabed economic area articles tabled last summer in Subcommittee II, coastal states may establish safety zones around installa-

tions. Research vessels, of course, would be required to respect such safety zones.

Mr. Chairman, under our proposal, if the researcher meets these obligations, he may conduct the research without coastal state consent. What happens, however, if there is a dispute as to whether they have in fact been met? Coastal states should not be without a remedy if they believe that all the prerequisites for the conduct of research have not been met. There should be an efficient mechanism available through compulsory dispute-settlement procedures to the coastal state and the researching state for the rapid resolution of such disputes. We welcome views on ways that these interests can best be balanced.

As I stated at the outset, we believe that the approach in our draft articles provides a balance of rights and duties which protects the interests of coastal states while fostering the conduct of marine scientific research and insuring that such research benefits all.

Technology Transfer. Some have suggested that a coastal state right of consent could be used as a bargaining lever to obtain technology transfer. We do not believe that any useful technology transfer in marine science would result through such a mechanism. First, to be meaningful, technology transfer in marine science must be regular and sustained and not as a result of negotiations with the occasional research vessel which seeks permission. As previously pointed out, a consent regime will increase research costs, thereby reducing the amount of research which is conducted and the attendant transfer of marine science technology. Second, neither scientific objectives nor the objectives of developing countries will be served if the cost of research becomes a major factor in determining where research will be conducted. For our part, we believe that transfer of marine science technology can best be accomplished through a multilateral effort, not through ad hoc bargaining for consent to do research.

In a statement before Subcommittee III of the Seabed Committee in 1972, we stated our "willingness, in principle, to commit funds to support multilateral efforts in all appropriate international agencies with a view toward creating and enlarging the ability of developing states to interpret and use scientific data for their economic benefit and other purposes; to augment their expertise in the field of marine science research; and to have available scientific research equipment including the capability to maintain and use it."

In that statement, we emphasized that these funds would be in addition to financial efforts by the international seabed authority. We reemphasize our willingness today to participate in such programs.

Mr. Chairman, I have tried to set forth briefly the views of my delegation concerning marine scientific research. As I said at the outset, we believe that there is an emerging consensus that scientific inquiry should be encouraged. We remain convinced that the best way to accomplish this is to insure that the individual scientist is as unfettered as possible and that the most logical means for meeting the legitimate interests of coastal states is through a series of internationally agreed obligations on the researcher. We look forward to working with others at this conference in achieving these goals.

STATEMENT BY MR. MOORE, COMMITTEE II, JULY 22

Press release 326 dated August 8

Mr. Chairman [Andres Aguilar, of Venezuela]: In accordance with your guidelines for our work, my delegation would like to take this opportunity to comment on proposals made by several states on the issue of straits and, in this connection, to devote particular attention to the concerns of states bordering straits with respect to security, safety of navigation, and prevention of pollution.

The U.S. delegation has stated on numerous occasions the central importance that we attach to a satisfactory treaty regime

of unimpeded transit through and over straits used for international navigation. Indeed, for states bordering as well as states whose ships and aircraft transit such straits, there could not be a successful Law of the Sea Conference unless this question is satisfactorily resolved. The inadequacies of the traditional doctrine of innocent passage—a concept developed not for transit through straits but for passage through a narrow belt of territorial sea—are well known.

We are appreciative of the strong trend in the debates as well as several proposals recently introduced in this committee which reflect an understanding of the importance of navigation and overflight through straits for the global flow of trade and communications and for a stable and peaceful world order. These proposals also reflect that there need be no conflict between the interests of states transiting and states bordering straits. While unimpeded transit of straits used for international navigation is vital to achieving a successful treaty, we can and must also protect the interests of states bordering straits.

The proposals made reflect the fact that three categories of concern have been most frequently expressed by states bordering straits. They are security, safety of navigation, and prevention of pollution.

With respect to the first of these concerns, the security of states bordering straits, we should remember that unimpeded transit is a right of transit, not a right to engage in activities inimical to the security of these states. It is solely a right of the transiting ship or aircraft to transit the strait; that is, to enter the strait, pass through or over in the normal mode using customary navigational routes and applicable traffic-separation schemes, and then to exit the strait. In this regard, it should be borne in mind that the right of unimpeded transit is a substantial restriction on present high seas freedoms. To make this clear, we agree that the chapter on passage of straits used for international navigation might specify that the right of unimpeded transit is solely for the purpose of continuous and expeditious transit of the strait.

To insure that unimpeded transit will be consistent with the security interests of states bordering straits, the treaty should require that ships and aircraft in transit refrain from any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of a state bordering the strait. Situations of actual hostilities are of course, like all conflict settings, governed by the overriding norms of the United Nations Charter.

It should also be noted with respect to security concerns that straits are confined waters and prudent seamen will want to pass through them as quickly as circumstances permit. As a practical matter, a strait is a most unlikely place for any threats to security against a state bordering the strait.

The second category of concern is safety of navigation. Here, too, it is possible to achieve a balance which will fully protect the interests of states whose ships and aircraft transit a strait and the interests of states bordering the strait.

The first need is to insure that transiting vessels and aircraft comply with applicable international safety regulations. The proposal contained in articles recently introduced by the United Kingdom meets this need. It provides that "ships in transit shall comply with generally accepted international regulations, procedures and practices for the safety of navigation at sea, including the international regulations for preventing collisions at sea." We support this proposal.

With respect to aircraft, we believe that civil aircraft in transit should comply with the high seas standards, recommended practices, and procedures established by the International Civil Aviation Organization under the Chicago Convention. State aircraft, which are not governed by these rules, should normally respect them and should at all times operate with due regard for the safety of navigation.

Because of the importance of traffic-separation schemes for safety of navigation in crowded straits, it would seem useful to encourage states bordering straits to propose traffic-separation schemes where necessary to promote the safe passage of ships. Such schemes could then go into effect after approval by the competent international organization.

The third category of concern is prevention of pollution. All states recognize the importance of fully protecting the marine environment. In this connection, the proposal made by the United Kingdom to require that ships in transit comply with generally accepted international regulations, procedures, and practices for the prevention and control of pollution from ships is an important one. It should also be noted that the new international discharge standards for areas close to the coast are very strict.

The United States is of the view that, subject to appropriate safeguards and the usual exemption for ships and aircraft entitled to sovereign immunity, states bordering straits should be able to enforce against violations occurring within the strait for deviation from internationally approved traffic-separation schemes. Such deviations may seriously threaten the marine environment within straits.

With respect to both safety and pollution concerns in straits, it is also important to make adequate provisions for compensation should damage result despite the most rigorous prevention requirements. The recent liability and fund conventions for compensation for damage caused by pollution from oil are a great step forward in this regard. And the provisions concerning liability in the United Kingdom articles and in A/CONF.62/C.2/L.11, jointly prepared by a number of Eastern European states, also seem worthy of study.

Similarly, with respect to both safety and pollution concerns in straits, some straits, because of depth or other navigational or environmental limitations, will require special standards in addition to those universally adopted. To meet this need, we would welcome states bordering a strait recommending to the appropriate international organization for approval any special safety or pollution standards which they feel are required. In this way, states bordering the strait have the predominant role in formulating such special standards, but at the same time the international community's interest is also fully protected.

Mr. Chairman, my delegation is also pleased that most of the recently introduced proposals concerning transit of straits include the essential element of transit by aircraft as well as ships. There have, however, been suggestions that questions of overflight of aircraft are not matters of oceans law and need not be dealt with in the Law of the Sea Conference. It should be recalled that the question of overflight was inseparably linked with the law of the sea in the 1958 Conventions on the High Seas and on the Territorial Sea and Contiguous Zone.

Moreover, since the breadth of the territorial sea will be decided by the conference, the question of overflight cannot be avoided unless those states making this suggestion are willing to forgo sovereignty over the airspace above the territorial sea. The subject is clearly before the Law of the Sea Conference, as the List of Subjects and Issues approved by the Seabed Committee specifically refers in items 2.5 and 6.3 to the freedom of overflight.

All aircraft, civil as well as state, now have a right of overflight within high seas areas, including high seas within straits used for international navigation. The Chicago Convention reflects this right by differentiating between flights over territory, which are subject to the consent of the state in question, and flights over the high seas, which are not. An extension of the territorial sea to 12 miles by a new law of the sea treaty would, unless accompanied by adequate provision for overflight of straits, alter this basic right of overflight through a large number of straits used for international

navigation which would be overlapped by a 12-mile territorial sea.

It is insufficient in this regard to rely on the Chicago Convention for the protection of this vital overflight right of straits overlapped by a territorial sea. For one thing, not all states have become parties to the convention. Secondly, with respect to overflight of territorial waters by civil aircraft, the convention permits states in certain circumstances to restrict or suspend overflight. Finally, the provisions of the convention do not apply to overflight by state aircraft. These state aircraft include a wide variety of aircraft important to the effective functioning of states, including aircraft specialized for weather, diplomatic, customs and immigration, search and rescue, and military uses.

Mr. Chairman, unimpeded transit of straits used for international navigation, and the interests of states bordering straits in security, safety of navigation, and prevention of pollution are complementary. All states share an interest in insuring each of these goals. It is fortunate, then, that as proposals recently introduced before this committee make clear, the conference need not make a choice between them. Rather, the task is to prepare articles which will fully protect the interests of all states.

STATEMENT BY AMBASSADOR STEVENSON, COMMITTEE II, AUGUST 1

Press release 337 dated August 22

Mr. Chairman: In plenary, my delegation indicated its willingness to support a 200-mile economic zone as part of an overall acceptable law of the sea treaty.[3] In this connection, we would like to make some preliminary comments on the portions of the nine-power working paper dealing with the economic zone (document A/CONF.62/L.4).

The economic zone is a new concept designed to reconcile the primary interests of the coastal state in resources with the primary interests of all states in navigation and other uses.

Viewed in this light, the economic zone would be the sum total of the judgments of the international community as to the most appropriate balance between coastal and international interests. Achieving this balance presents a very special problem concerning our mode of work. If we are to capture in treaty articles the essence of the balance, we must not attempt to do it in a few general articles—only a series of carefully drafted articles will accomplish this delicate task.

My delegation would welcome comments on its proposals for the economic zone based on the specific interests of states and the international community. But we cannot negotiate in the face of conceptual arguments that one or another idea is incompatible with the "essential character" of the zone. Arguments based on deductive reasoning from an abstract concept can only move us further apart.

One of the most serious restraints in the history of the law of the sea on the expansion of coastal state jurisdiction over resources has been the concern that this jurisdiction would, with time, become territorial in character. In the Seabed Committee, the proponents of the economic zone argued that it could be constructed with sufficient safeguards to prevent such a result. Having tentatively accepted those arguments here, we are presented with a proposal in document L.4 that tends to confirm some of our serious misgivings. For us and for others, the "specific articles" that the cosponsors left out largely spell the difference between an acceptable and unacceptable result. Accordingly, we would be unable to express even tentative acceptance of the document as a basis of negotiation now, or in any final action of this session, if this means exposing ourselves to a process of fruitless deductive reasoning from article 12 or, worse still, a future argument that a consensus on such texts was evidence of new general international law.

[3] For a statement made by Ambassador Stevenson on July 11, see BULLETIN of Aug. 5, 1974, p. 232.

Having said this, let me reiterate with respect to article 12(a) that we contemplate full coastal state regulatory jurisdiction over exploration and exploitation of seabed resources and fishing within the economic zone with special treatment for anadromous species and for highly migratory species.

The question of fisheries jurisdiction, a central aspect of the economic zone, illustrates the difficulties inherent in a deductive approach. My delegation supports the inclusion of coastal state duties to insure the conservation and full utilization of fish stocks under coastal state laws and regulations and, as stated above, special treatment for anadromous and highly migratory species of fish. We believe our proposals will stimulate fisheries investment in the coastal state and that additional provisions can be discussed to this end. However, we agree with the distinguished observer from the Food and Agriculture Organization in supporting international cooperation in fisheries management and would encourage states to enter into appropriate treaty and organizational arrangements, but we are not urging a mandatory general transfer of coastal state fisheries management jurisdiction to multilateral commissions. We believe these points should be negotiated on their merits and that such negotiations will facilitate agreement on the establishment and exercise of coastal state fisheries jurisdiction in the zone.

Recognizing that coastal state resource interests can be seriously affected by certain other activities, we have also proposed an exclusive coastal state right to authorize and regulate all installations for economic purposes and all drilling, whether or not such installations or drilling are related to exploration and exploitation of resources.

We support the inclusion of environmental rights and duties with respect to installation and seabed resource activities. We also support some revenue sharing from mineral resources and provisions on the integrity of investments in the development of such resources.

We support compulsory dispute-settlement procedures to prevent an abuse of treaty rights, not to second-guess the coastal state in exercising its rights in the economic zone.

We recognize that specific negotiation is required on these and other aspects of our proposals. We would hope the cosponsors of document L.4, in referring to specific articles, agree that such negotiation should be our main task.

The remaining question concerns activities other than those I have discussed, subject of course to the provisions of the convention regarding pollution and scientific research. Articles 14, 15, and 17 do not make it sufficiently clear that all high seas freedoms recognized by the general principles of international law are preserved, subject to, and except as otherwise provided in, the convention. It is also not sufficiently clear that the enjoyment of these freedoms is on an equal footing with—not subject to—the enjoyment by the coastal state of its rights in the zone. We understand this to be the intention of the articles and trust this is merely a drafting problem.

Mr. Chairman, while these remarks are also applicable to other proposals, including that of the delegation of Nigeria (document A/CONF.62/C.2/L.21), we believe the comprehensive structure of the Nigerian proposal should commend itself to the entire committee. Despite serious substantive problems on some points, we can see in that proposal a way for you to guide this committee toward the achievement of its goals. We are also encouraged by the remarks of the distinguished Representative of Nigeria on matters that remain to be dealt with and look forward to detailed elaboration of those ideas.

In conclusion, let me express the hope that the sponsors of document L.4, L.21, and other proposals will be able to accept these remarks as constructive in character and in the spirit of the famous French phrase, "Yes, but . . . ." However, I urge you, Mr. Chairman and others, not to underestimate the critical importance of the "but" to my delegation.

U.S. DRAFT ARTICLES ON ECONOMIC ZONE AND CONTINENTAL SHELF

U.N. doc. A/CONF. 62/C.2/L.47 dated August 8

UNITED STATES OF AMERICA: DRAFT ARTICLES FOR A CHAPTER ON THE ECONOMIC ZONE AND THE CONTINENTAL SHELF [4]

PART I. THE ECONOMIC ZONE

A. COASTAL STATE JURISDICTION

Article 1. General

1. The coastal State exercises in and throughout an area beyond and adjacent to its territorial sea, known as the economic zone, the jurisdiction and the sovereign and exclusive rights set forth in this chapter for the purpose of exploring and exploiting the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters.

2. The coastal State exercises in the economic zone the other rights and duties specified in this Convention, including those with regard to the protection and preservation of the marine environment and the conduct of scientific research.[5]

3. The exercise of these rights shall be in conformity with and subject to the provisions of this Convention, and shall be without prejudice to the provisions of part III of this chapter.

Article 2. Limits

The outer limit of the economic zone shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea.

Article 3. Artificial Islands and Installations

1. The coastal State shall have the exclusive right to authorize and regulate, in the economic zone, the construction, operation and use of artificial islands and installations for the purpose of exploration or exploitation of natural resources, or for other economic purposes, and of any installation which may interfere with the exercise of the rights of the coastal State in the economic zone.

2. The coastal State may, where necessary, establish reasonable safety zones around such off-shore installations in which it may take appropriate measures to ensure the safety both of the installations and of navigation.

3. The provisions of article 28 shall apply, *mutatis mutandis*, to such artificial islands and installations.

Article 4. Drilling

The coastal State shall have the exclusive right to authorize and regulate drilling for all purposes in the economic zone.

Article 5. Right to Protect the Marine Environment

In exercising its rights with respect to installations and sea-bed activities in the economic zone, the coastal State may establish standards and requirements for the protection of the marine environment additional to or more stringent than those required by applicable international standards.

Article 6. Coastal State Measures

With respect to activities subject to its sovereign or exclusive rights, the coastal State may take such measures in the economic zone as may be necessary to ensure compliance with its laws and regulations in conformity with the provisions of this Convention.

B. INTERNATIONAL STANDARDS AND DUTIES

Article 7. Navigation, Overflight, and Other Rights

Nothing in this chapter shall affect the rights of freedom of navigation and overflight, and other rights recognized by the general principles of international law, except as otherwise specifically provided in this Convention. The provisions of this article do not apply to activities for which the authorization of the coastal State is required pursuant to this Convention.

Article 8. Unjustifiable Interference

1. The coastal State shall exercise its rights and perform its duties in the economic zone without unjustifiable interference with navigation or other uses of the sea, and ensure compliance with applicable international standards established by the appropriate international organizations for this purpose.

2. In exercising their rights, States shall not unjustifiably interfere with the exercise of the rights or the performance of the duties of the coastal State in the economic zone.

Article 9. Duty to Protect the Marine Environment

In exercising its rights with respect to installations and sea-bed activities, the coastal State shall take all appropriate measures in the economic zone for the protection of the marine environment from pollution, and ensure compliance with international minimum standards for this purpose established in ac-

---

[4] These articles, which are presented as a basis for negotiation subject to agreement on other basic questions of the law of the sea, replace in their entirety draft articles on fisheries and the coastal sea-bed economic area contained in documents A/AC.138/SC.II/L.9 [*Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21* (A/8721, pp. 175–179)] and A/AC.138/SC.II/L.35 [*ibid., Twenty-eighth Session, Supplement No. 21* (A/9021, vol. III, pp. 75–77)].

[5] Detailed provisions on these subjects are to be set forth in the chapters of the Convention on scientific research and pollution.

cordance with the provisions of chapter — (pollution).

Article 10. Dispute Settlement

Any dispute with respect to the interpretation or application of this chapter shall, if requested by any party to the dispute, be resolved by the compulsory dispute settlement procedures contained in chapter —.

Part II. Fisheries

Article 11. General

The coastal State exercises exclusive rights for the purpose of regulating fishing within the economic zone, subject to the provisions of these articles.

Article 12. Conservation

1. The coastal State shall ensure the conservation of renewable resources within the economic zone.

2. For this purpose, the coastal State shall apply the following principles:

(a) allowable catch and other conservation measures shall be established which are designed, on the best evidence available to the coastal State, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, taking into account relevant environmental and economic factors, and any generally agreed global and regional minimum standards;

(b) such measures shall take into account effects on species associated with or dependent upon harvested species and at a minimum, shall be designed to maintain or restore populations of such associated or dependent species above levels at which they may become threatened with extinction;

(c) for this purpose, scientific information, catch and fishing effort statistics, and other relevant data shall be contributed and exchanged on a regular basis;

(d) conservation measures and their implementation shall not discriminate in form or fact against any fisherman. Conservation measures shall remain in force pending the settlement, in accordance with the provisions of chapter —, of any disagreement as to their validity.

Article 13. Utilization

1. The coastal State shall ensure the full utilization of renewable resources within the economic zone.

2. For this purpose, the coastal State shall permit nationals of other States to fish for that portion of the allowable catch of the renewable resources not fully utilized by its nationals, subject to the conservation measures adopted pursuant to article 12, and on the basis of the following priorities:

(a) States that have normally fished for a resource, subject to the conditions of paragraph 3;

(b) States in the region, particularly land-locked States and States with limited access to living resources off their coast; and

(c) all other States.

The coastal State may establish reasonable regulations and require the payment of reasonable fees for this purpose.

3. The priority under paragraph 2 (a) above shall be reasonably related to the extent of fishing by such State. Whenever necessary to reduce such fishing in order to accommodate an increase in the harvesting capacity of a coastal State, such reduction shall be without discrimination, and the coastal State shall enter into consultations for this purpose at the request of the State or States concerned with a view to minimizing adverse economic consequences of such reduction.

4. The coastal State may consider foreign nationals fishing pursuant to arrangements under articles 14 and 15 as nationals of the coastal State for purposes of paragraph 2 above.

Article 14. Neighbouring Coastal States

Neighbouring coastal States may allow each others' nationals the right to fish in a specified area of their respective economic zones on the basis of reciprocity, or long and mutually recognized usage, or economic dependence of a State or region thereof on exploitation of the resources of that area. The modalities of the exercise of this right shall be settled by agreement between the States concerned. Such right cannot be transferred to third parties.

Article 15. Land-locked States

Nationals of a land-locked State shall enjoy the privilege to fish in the neighbouring area of the economic zone of the adjoining coastal State on the basis of equality with the nationals of that State. The modalities of the enjoyment of this privilege shall be settled by agreement between the parties concerned.

Article 16. International Co-operation Among States

1. States shall co-operate in the elaboration of global and regional standards and guidelines for the conservation, allocation, and rational management of living resources directly or within the framework of appropriate international and regional fisheries organizations.

2. Coastal States of a region shall, with respect to fishing for identical or associated species, agree upon the measures necessary to co-ordinate and ensure the conservation and equitable allocation of such species.

3. Coastal States shall give to all affected States timely notice of any conservation, utilization and al-

location regulations prior to their implementation, and shall consult with such States at their request.

Article 17. Assistance to Developing Countries

An international register of independent fisheries experts shall be established and maintained by the Food and Agriculture Organization of the United Nations. Any developing State party to the Convention desiring assistance may select an appropriate number of such experts to serve as fishery management advisers to that State.

Article 18. Anadromous Species

1. Fishing for anadromous species seaward of the territorial sea (both within and beyond the economic zone) is prohibited, except as authorized by the State of origin in accordance with articles 12 and 13.

2. States through whose internal waters or territorial sea anadromous species migrate shall cooperate with the State of origin in the conservation and utilization of such species.

Article 19. Highly Migratory Species

Fishing for highly migratory species shall be regulated in accordance with the following principles:

A. *Management.* Fishing for highly migratory species listed in Annex A within the economic zone shall be regulated by the coastal State, and beyond the economic zone by the State of nationality of the vessel, in accordance with regulations established by appropriate international or regional fishing organizations pursuant to this article.

(1) All coastal States in the region, and any other State whose flag vessels harvest a species subject to regulation by the organization, shall participate in the organization. If no such organization has been established, such States shall establish one.

(2) Regulations of the organization in accordance with this article shall apply to all vessels fishing the species regardless of their nationality.

B. *Conservation.* The organization shall, on the basis of the best scientific evidence available, establish allowable catch and other conservation measures in accordance with the principles of article 12.

C. *Allocation.* Allocation regulations of the organization shall be designed to ensure full utilization of the allowable catch and equitable sharing by member States.

(1) Allocations shall take into account the special interests of the coastal State within whose economic zone highly migratory species are caught, and shall for this purpose apply the following principles within and beyond the economic zone: [insert appropriate principles].

(2) Allocations shall be designed to minimize adverse economic consequences in a State or region thereof.

D. *Fees.* The coastal State shall receive reasonable fees for fish caught by foreign vessels in its economic zone, with a view to making an effective contribution to coastal State fisheries management and development programmes. The organization shall establish rules for the collection and payment of such fees, and shall make appropriate arrangements with the coastal State regarding the establishment and application of such rules. In addition, the organization may collect fees on a non-discriminatory basis based on fish caught both within and outside the economic zone for administrative and scientific research purposes.

E. *Prevention of Interference.* The organization shall establish fishing regulations for highly migratory species in such a way as to prevent unjustifiable interference with other uses of the sea, including coastal State fishing activities, and shall give due consideration to coastal State proposals in this regard.

F. *Transition.* Pending the establishment of an organization in accordance with this article, the provisions of this article shall be applied temporarily by agreement among the States concerned.

G. *Interim Measures.* If the organization or States concerned are unable to reach agreement on any of the matters specified in this article, any State party may request, on an urgent basis, pending resolution of the dispute, the establishment of interim measures applying the provisions of this article pursuant to the dispute settlement procedures specified in chapter —. The immediately preceding agreed regulations shall continue to be observed until interim measures are established.

Article 20. Marine Mammals

Notwithstanding the provisions of this chapter with respect to full utilization of living resources, nothing herein shall prevent a coastal State or international organization, as appropriate, from prohibiting the exploitation of marine mammals.

Article 21. Enforcement

1. The coastal State may, in the exercise of its rights under this chapter with respect to the renewable natural resources, take such measures, including inspection and arrest, in the economic zone, and, in the case of anadromous species, seaward of the economic zones of the host State and other States, as may be necessary to ensure compliance with its laws and regulations, provided that when the State of nationality of a vessel has effective procedures for the punishment of vessels fishing in violation of such laws and regulations, such vessels shall be delivered promptly to duly authorized officials of the State of nationality of the vessel for legal proceedings, and may be prohibited by the coastal State from any fishing in the zone pending disposition of the case. The State of nationality shall within six months after such delivery notify the coastal State of the disposition of the case.

2. Regulations adopted by international organizations in accordance with Article 19 shall be enforced as follows:

(a) Each State member of the organization shall make it an offence for its flag vessels to violate such regulations, and shall co-operate with other States in order to ensure compliance with such regulations.

(b) The coastal State may inspect and arrest foreign vessels in the economic zone for violating such regulations. The organization shall establish procedures for arrest and inspection by coastal and other States for violations of such regulations beyond the economic zone.

(c) An arrested vessel of a State member of the organization shall be promptly delivered to the duly authorized officials of the flag State for legal proceedings if requested by that State.

(d) The State of nationality of the vessel shall notify the organization and the arresting State of the disposition of the case within six months.

3. Arrested vessels and their crew shall be entitled to release upon the posting of reasonable bond or other security. Imprisonment or other forms of corporal punishment in respect of conviction for fishing violations may be imposed only by the State of nationality of the vessel or individual concerned.

Part III. The Continental Shelf

Article 22. General

1. The coastal State exercises sovereign rights over the continental shelf for the purpose of exploring and exploiting its natural resources.

2. The continental shelf is the sea-bed 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, as precisely defined and delimited in accordance with article 23.

3. The provisions of this article are without prejudice to the question of delimitation between adjacent and opposite States.

Article 23. Limits

(Provisions are needed for locating and defining the precise limit of the continental margin, and to provide a precise and permanent boundary between coastal State jurisdiction and the international sea-bed area.)

Article 24. Natural Resources

The natural resources referred to in article 22 consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Article 25. Superjacent Waters

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters, or that of the air space above those waters.

Article 26. Application of Economic Zone Provisions

The provisions of part 1 of this chapter shall apply, *mutatis mutandis*, to the sea-bed and subsoil of the continental shelf.

Article 27. Duties with Respect to Non-Renewable Resources

In the exercise of its rights with respect to the non-renewable resources of the continental shelf, the coastal State:

(a) shall comply with legal arrangements which it has entered into with other contracting States, their instrumentalities, or their nationals in respect to the exploration or exploitation of such resources and shall not take property of such States, instrumentalities or nationals except for a public purpose on a non-discriminatory basis and with adequate provisions at the time for prompt payment of just compensation in an effectively realizable form, and

(b) shall pay, in respect of the exploitation of such non-renewable resources seaward of the territorial sea or the 200-metre isobath, whichever is farther seaward (insert formula), to be used as specified in article 1, for international community purposes, particularly for the benefit of developing countries.

Article 28. Installations

1. The coastal State shall have the exclusive right to authorize and regulate on the continental shelf the construction, operation and use of artificial islands and installations for the purpose of exploration or exploitation of natural resources or for other economic purposes, and of any installation which may interfere with the exercise of the rights of the coastal State.

2. The coastal State may, where necessary, establish reasonable safety zones around such off-shore installations in which it may take appropriate measures to ensure the safety both of the installations and of navigation. Such safety zones shall be designed to ensure that they are reasonably related to the nature and function of the installation. Ships of all nationalities must respect these safety zones.

3. The breadth of the safety zones shall be determined by the coastal State and shall conform to applicable international standards in existence or to be established by the Inter-Governmental Maritime Consultative Organization regarding the establishment and breadth of safety zones. In the absence of such additional standards, safety zones around installations for the exploration and exploitation of

non-renewable resources of the sea-bed and subsoil may extend to a distance of 500 metres around the installations, measured from each point of their outer edge.

4. Due notice must be given of the construction of any such installations and the extent of safety zones, and permanent means for giving warning of the presence of such installations must be maintained. Any such installations which are abandoned or disused must be entirely removed.

5. States shall ensure compliance by vessels of their flag with applicable international standards regarding navigation outside the safety zones but in the vicinity of such off-shore installations.

6. Installations and safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. For the purpose of this section, the term "installations" refers to artificial off-shore islands, facilities, or similar devices, other than those which are mobile in their normal mode of operation at sea. Installations shall not afford a basis for a claim to a territorial sea or economic zone, and their presence does not affect the delimitation of the territorial sea or economic zone of the coastal State.

Article 29. Submarine Cables and Pipelines

1. Subject to its right to take reasonable measures for the exploration and exploitation of the natural resources of the continental shelf, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

2. Nothing in this article shall affect the jurisdiction of the coastal State over cables and pipelines constructed or used in connexion with the exploration or exploitation of its continental shelf or the operations of an installation under its jurisdiction, or its right to establish conditions for cables or pipelines entering its territory or territorial sea.

ANNEX A

Highly Migratory Species

1. Albacore Tuna
2. Bluefin Tuna
3. Bigeye Tuna
4. Skipjack Tuna
5. Yellowfin Tuna
6. Pomfrets
7. Marlin
8. Sailfish
9. Swordfish
10. Sauries
11. Dolphin (fish)
12. Cetaceans (whales and porpoises)

ALTERNATIVE TEXTS OF DRAFT ARTICLES ON SETTLEMENT OF DISPUTES

AUSTRALIA, BELGIUM, BOLIVIA, COLOMBIA, EL SALVADOR, LUXEMBOURG, NETHERLANDS, SINGAPORE AND UNITED STATES OF AMERICA: WORKING PAPER ON THE SETTLEMENT OF LAW OF THE SEA DISPUTES

The representatives of a number of countries have held informal consultations on issues connected with the settlement of disputes which may arise under the Law of the Sea Convention. This working paper, resulting from those discussions, is presented as a possible framework for further discussions at the next session of the Conference. It sets out various possible alternatives, together with notes indicating relevant precedents.[6] The paper does not necessarily reflect the proposals of individual Governments, and does not in any way preclude any sponsoring delegation from presenting later its own proposals on the subject.

Where only one text appears under a particular heading, this does not necessarily imply that there are no other opinions concerning that question or that all delegations which have participated in the informal consultations agree on the necessity for such a provision.

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

Alternative A

The Contracting Parties shall settle any dispute between them relating to the interpretation or application of this Convention through the peaceful means indicated in Article 33 of the Charter of the United Nations.

Alternative B

[Having regard to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,] the Contracting Parties shall settle any dispute between them relating to the interpretation or application of this Convention by peaceful means in conformity with the Charter of the United Nations.

2. *Settlement of disputes by means chosen by the parties*

Alternative A

If any dispute arises between two or more Contracting Parties relating to the interpretation or

[6] The notes indicating relevant precedents which were included in the working paper (U.N. doc. A/CONF.62/L.7, Aug. 27) are not printed here.

application of this Convention, those Parties shall consult together with a view to the settlement of the dispute by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, recourse to special procedures provided for by an international or regional organization, or other peaceful means of their own choice.

Alternative B

The parties to the dispute may agree to settle the dispute by any peaceful means of their own choice, including negotiation, mediation, inquiry, conciliation, arbitration, judicial settlement, or recourse to special procedures provided for by an international or regional organization.

3. *Clause relating to other obligations*[7]

Alternative A

If the parties to a dispute [agree to resort to a procedure entailing a binding decision or] have accepted, through a general, regional, or special agreement, or some other instruments, an obligation to resort to arbitration or judicial settlement, any party to the dispute shall be entitled to refer it to [such procedure or to] arbitration or judicial settlement in accordance with that agreement or instruments in place of the procedures specified in this Convention.

Alternative B

The provisions of this Convention relating to dispute settlement shall not apply to a dispute with respect to which the parties are bound by an agreement, or other instruments, obliging them to submit that dispute to another procedure entailing a binding decision.

Alternative C

Notwithstanding the provisions of any agreement or other instruments in force between them, the Contracting Parties shall, unless they otherwise agree, apply the procedures laid down in this Convention to any dispute relating to its interpretation or application.

4. *Clause relating to settlement procedures not entailing a binding decision*

Alternative A

Where a Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention has submitted that dispute to a dispute settlement procedure not entailing a binding decision, the other party or parties to the dispute may at any time refer it to a dispute settlement procedure provided for by this Convention, unless the parties have agreed otherwise.

Alternative B

Notwithstanding any agreement to refer a dispute to a procedure not entailing a binding decision, any Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention, which is required by this Convention to be submitted on the application of one of the parties to a dispute settlement procedure entailing a binding decision, may refer the dispute at any time to that procedure.

Alternative C

The right to refer a dispute to the settlement procedure provided for by this Convention for obtaining a binding decision may be exercised only after the expiration of the time-limit established by the parties in an agreement to resort to a dispute settlement procedure which does not entail a binding decision, or, in the absence of such a time-limit, if, [within a period of — months] [within a reasonable time, taking into account all the relevant circumstances] that procedure has not been applied or has not resulted in a settlement of the dispute.

5. *Obligation to resort to a means of settlement resulting in a binding decision*

Alternative A.1

Any dispute which may arise between two or more Contracting Parties regarding the interpretation or application of this Convention shall be submitted to arbitration at the request of one of the parties to the dispute.

Alternative A.2

Any dispute between two or more Parties to this Convention concerning the interpretation or application of this Convention shall, if settlement by negotiation between the Parties involved has not been possible, and if these Parties do not otherwise agree, be submitted upon request of any of them to arbitration as set out in annex . . . to this Convention.

Alternative B.1

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention shall be submitted, at the request of any of the parties to the dispute, to the Law of the Sea Tribunal to be established in accordance with the annexed statute.

Alternative B.2

Notwithstanding the submission of a dispute to a

[7] A special provision may be needed when parties to a dispute are subject to the jurisdiction of the International Court of Justice as well as Parties to this Convention.

procedure not entailing a binding decision, any Contracting Party which is party to a dispute relating to the interpretation or application of this Convention, which is required by this Convention to be submitted on the application of one of the parties to a dispute settlement procedure entailing a binding decision, may refer the dispute at any time to the Law of the Sea Tribunal.

Alternative C.1

Any dispute arising between Contracting Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to the dispute.

Alternative C.2

Any dispute arising between Contracting Parties concerning the interpretation or application of this Convention shall be referred by application of any party to the dispute to a chamber to be established in accordance with the Statute of the International Court of Justice to deal with the Law of the Sea disputes.

Alternative D

Subject to the provisions of this Chapter, any party to a dispute relating to the interpretation or application of this Convention shall be entitled to refer such dispute at any time to [the dispute settlement procedures entailing a binding decision which are provided for in this Convention] [arbitration] [the tribunal established under this Convention] [the International Court of Justice].

6. *The relationship between general and functional approaches*

Alternative A.1

When a party to a dispute objects to a decision arrived at through a specialized dispute settlement procedure[8] provided for in this Convention, that party, may have recourse to the dispute settlement procedure entailing a binding decision provided for in this chapter on any of the following grounds:

(a) lack of jurisdiction;
(b) infringement of basic procedural rules;
(c) misuse of powers; or
(d) violation of the Convention.

Alternative A.2

Whenever this Convention provides for a specialized procedure, without allowing further recourse to the dispute settlement procedure entailing a binding decision, this chapter shall not apply.

Alternative B.1

1. Before resorting to the dispute settlement procedure entailing a binding decision provided for in this chapter, the parties to any dispute relating to chapters — of this Convention [e.g., those relating to fishing, pollution, or scientific research] may agree to refer it to a special fact-finding procedure in accordance with the provisions of annex —.

2. In any procedure entailing a binding decision under this chapter, the findings of fact made by the fact-finding machinery shall be considered conclusive [unless one of the parties presents positive proof that a gross error has been committed].

or

2. Should the findings of fact made by the fact-finding machinery be challenged by a recourse to the dispute settlement procedure provided for in this chapter, the party challenging such facts shall bear the burden of proof.

Alternative B.2

1. At the request of any party to a dispute relating to chapters — of this Convention [e.g., those relating to fishing, pollution or scientific research], the dispute shall be referred to a special fact-finding procedure in accordance with the provisions in annex —.

2. If any party to the dispute considers that the fact-finding decision is not in accordance with the provisions of this Convention, it may appeal to the dispute settlement procedure provided for in this chapter.

Alternative C.1

1. The Law of the Sea Tribunal, to be established in accordance with the annexed statute shall establish special chambers to deal with disputes relating to chapters — of this convention. Each chamber of the Tribunal shall be assisted in the consideration of a dispute by four technical assessors sitting with it throughout all the stages of the proceedings, but without the right to vote. These assessors shall be chosen by each chamber from the list of qualified persons prepared pursuant to the statute of the Tribunal. [Their opinion on scientific and technical questions shall be considered by the chamber as conclusive.]

2. Each chamber shall deal with the dispute in accordance with the special procedure prescribed for that chamber by the statute of the Tribunal, taking into account the special requirements of each category of cases.

Alternative C.2

1. When a dispute submitted to the Law of the Sea Tribunal involves scientific or technical questions, the Tribunal shall refer such matters to a

[8] It is envisaged that provisions relating to special procedures which may be required in such functional fields as fishing, sea-bed, marine pollution, scientific research, will be set out either in a separate part of the dispute settlement chapter or within the chapter to which they relate.

special committee of experts chosen from the list of qualified persons prepared in accordance with the statute of the Tribunal.

2. If the dispute is not settled on the basis of the committee's opinion, either party to the dispute may request that the Tribunal proceed to consider the other aspects of the dispute, taking into consideration the findings of the committee and all other pertinent information.

7. *Parties to a dispute*

Alternative A

1. The dispute settlement machinery shall be open to the States parties to this Convention.

2. The conditions under which the machinery shall be open to other States, international intergovernmental organizations, [non-governmental international organizations having a consultative relationship with the United Nations or a specialized agency of the United Nations or any other international organization], and natural and juridical persons shall be laid down [by . . .] [in an annex to this Convention], but in no case shall such conditions place the parties in position of inequality.

Alternative B

The dispute settlement machinery shall be open to the States parties to this Convention [and to the Authority, subject to the provisions of article . . .].

8. *Local remedies*

Alternative A

A Contracting Party which has taken measures alleged to be contrary to this Convention shall not be entitled to object to a request for submission of dispute to the dispute settlement procedure under this chapter solely on the ground that any remedies under its domestic law have not been exhausted.

Alternative B.1

The Contracting Parties shall not be entitled to submit a dispute to the dispute settlement procedure under this chapter, if local remedies have not been previously exhausted, as required by international law.

Alternative B.2

1. In the case of a dispute relating to the exercise by the coastal State of its enforcement jurisdiction in accordance with this Convention, the occasion [subject matter] of which, according to the domestic law of the coastal State, falls within the competence of its judicial or administrative authorities, the coastal State shall be entitled to request that the submission of the dispute to the means of dispute settlement provided for in this chapter be delayed until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party to the dispute which desires to resort to the procedure for dispute settlement provided for in this chapter may not submit the dispute to such procedure after the expiration of a period of one year from the date of the aforementioned decision.

[3. When the case has been submitted to the settlement procedure under this chapter, the party challenging the findings of fact by the judicial authorities of the coastal States shall bear the burden of proof.]

9. *Advisory jurisdiction*

If a court of a Contracting Party has been authorized by the domestic law of that Party to request the Law of the Sea Tribunal to give an advisory opinion [a ruling] on any question relating to the interpretation or application of this Convention, the Law of the Sea Tribunal may [shall] give such an opinion [ruling].

10. *Law applicable*

Alternative A

In any dispute submitted to it the dispute settlement machinery shall apply the law of this Convention, and shall ensure that this law is observed in the interpretation and application of this Convention.

Alternative B

In any dispute submitted to it, the dispute settlement machinery shall apply, in the first place, the law of this Convention. If, however, the dispute relates to the interpretation or application of a regional arrangement or public or private agreement concluded pursuant to this Convention, or to regulations adopted by a competent international organization, the dispute settlement machinery shall apply, in addition to the Convention, the rules contained in such arrangements, agreements, or regulations, provided the regulations are not inconsistent with this Convention.

Alternative C

Any dispute submitted to the dispute settlement procedure established by this convention shall be decided in accordance with applicable international law.

Alternative D

In any dispute submitted to it, the dispute settlement machinery shall apply:

(a) the provisions of this Convention;

(b) the rules and regulations laid down by the competent international authority;

(c) the terms and conditions of the relevant contracts or other legal arrangements entered into by the competent international authority.

10A. *Equity jurisdiction*

The provisions of this chapter shall not prejudice the right of the parties to a dispute to agree that the dispute be settled *ex aequo et bono.*

11. *Exceptions and reservations to the dispute settlement provisions*

Alternative A

The provisions of this chapter shall apply to all disputes relating to the interpretation and application of this Convention.

Alternative B.1

The dispute settlement machinery shall have no jurisdiction to render binding decisions with respect to the following categories of disputes:

(a) Disputes arising out of the normal exercise of regulatory or enforcement jurisdiction, except when gross or persistent violation of this Convention or abuse of power is alleged.[9]

(b) Disputes concerning sea boundary delimitations between States.

(c) Disputes involving historic bays or limits of territorial sea.

(d) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law.

(e) Disputes concerning military activities [, unless the State conducting such activities gives its express consent].

(f) . . . .

(g) . . . .

Alternative B.2

The dispute settlement machinery shall have no jurisdiction with respect to the following categories of disputes:

(a) Disputes arising out of the normal exercise of discretion by a coastal State pursuant to its regulatory and enforcement jurisdiction under this Convention, except in cases involving an abuse of power.[9]

(b) Disputes concerning sea boundary delimitations between adjacent and opposite States, including those involving historic bays and the delimitation of the adjacent territorial sea.

(c) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law.

(d) Disputes concerning military activities [, unless the State conducting such activities gives its express consent.]

(e) . . . .

(f) . . . .

Alternative C.1

1. In ratifying this Convention, acceding to it, or accepting it, a State may declare that it does not accept the jurisdiction of the dispute settlement machinery to render binding decisions with respect to one or more of the following categories of disputes:

(a) Disputes arising out of the normal exercise of regulatory or enforcement jurisdiction, except when gross or persistent violation of this Convention or abuse of power is alleged.[10]

(b) Disputes concerning sea boundary delimitations between States.

(c) Disputes involving historic bays or limits of territorial sea.

(d) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law.

(e) Disputes concerning military activities [, unless the State conducting such activities gives its express consent].

(f) . . . .

(g) . . . .

2. If one of the Contracting Parties has made such a declaration, any other Contracting Party may enforce the same exception in regard to the Party which made the declaration.

Alternative C.2

1. In ratifying this Convention, acceding to it, or accepting it, a State may declare that it does not accept the jurisdiction of the dispute settlement machinery with respect to one or more of the following categories of disputes:

(a) Disputes arising out of the normal exercise of discretion by a coastal State pursuant to its regulatory and enforcement jurisdiction under this Convention, except in cases involving an abuse of power.[10]

(b) Disputes concerning sea boundary delimitations between adjacent and opposite States, including those involving historic bays and the delimitation of the adjacent territorial sea.

(c) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law.

(d) Disputes concerning military activities [, unless the State conducting such activities gives its express consent.]

(e) . . . .

(f) . . . .

2. If one of the Contracting Parties has made such a declaration, any other Contracting Party may enforce the same exception in regard to the Party which made the declaration.

[9] The precise drafting and implications of this exception will require further examination in the light of the substantive provisions of this Convention.

[10] The precise drafting and implications of this reservation will require further examination in the light of the substantive provisions of this Convention.

U.S. and German Democratic Republic Establish Diplomatic Relations

Following are texts of an announcement read to news correspondents on August 30 by Robert Anderson, Special Assistant to the Secretary of State for Press Relations, and a joint U.S.-German Democratic Republic communique issued at Washington on September 4.

DEPARTMENT ANNOUNCEMENT, AUGUST 30

A delegation from the German Democratic Republic will arrive in Washington on September 2 for meetings with representatives of the Department of State on matters relative to the establishment of diplomatic relations.

The visiting delegation will be headed by Ambassador Herbert Süss, member of the Directorate of the Foreign Ministry of the German Democratic Republic. Assistant Secretary of State for European Affairs Arthur A. Hartman will head the American delegation.

Negotiations between the United States and the German Democratic Republic on the establishment of relations commenced in Washington July 15 and were concluded on July 26.

A team of U.S. administrative experts visited Berlin in mid-August to continue to work on arrangements for a U.S. Embassy there. G.D.R. experts have been in Washington since the end of July working on similar arrangements for a G.D.R. Embassy.

TEXT OF JOINT COMMUNIQUE, SEPTEMBER 4

Press release 355 dated September 4

The Governments of the United States of America and the German Democratic Republic, having conducted negotiations in a cordial atmosphere in Washington July 15–26, 1974, have agreed to establish diplomatic relations as of today in accordance with the Vienna Convention on Diplomatic Relations of April 18, 1961 and to base the conduct of these relations on the Charter of the United Nations.[1] The two Governments will exchange diplomatic representatives with the rank of Ambassador Extraordinary and Plenipotentiary.

The two delegations also exchanged views on the future development of relations between the two States. It was agreed that, pending the entry into force of a comprehensive consular agreement, their consular relations will be based in general on customary international law on consular relations. They also agreed to negotiate in the near future the settlement of claims and other financial matters outstanding between them.

Agreement was also reached on a number of practical questions concerning the establishment and future operation of their respective Embassies.

Saudi Arabian Foreign Minister Visits Washington

Sayyid Umar al-Saqqaf, Minister of State for Foreign Affairs of Saudi Arabia, made an official visit to Washington August 28–30. Following are exchanges of remarks by Secretary Kissinger and Foreign Minister Saqqaf after their meetings on August 29 and 30 and their exchanges of toasts at a dinner at the Department of State on August 29.

EXCHANGE OF REMARKS, AUGUST 29

Press release 350 dated August 30

Secretary Kissinger

Ladies and gentlemen: Foreign Minister Saqqaf and I have just completed several hours of conversation about bilateral relations between Saudi Arabia and the United

[1] At a news briefing held on September 4 after the signing of documents relating to the establishment of diplomatic relations, John F. King, Director, Office of Press Relations, stated that "in establishing relations the U.S. Government proceeds on the basis that the location and functioning of an American Embassy in East Berlin, where it will be convenient to the government offices with which it will deal, will not affect the special legal status of the Berlin area."

States and the next steps toward peace in the Middle East. We attach very great importance to the views of our old friends from Saudi Arabia. From our point of view, the conversations have been conducted in a very friendly, warm atmosphere, and I believe we have made good progress in understanding what can be done and in what time period.

It is always a pleasure to welcome my friend Foreign Minister Saqqaf here. We will continue our talks later today when the Foreign Minister calls on the President and will meet tonight again at dinner and again tomorrow morning.

Foreign Minister Saqqaf

Friends: I had a good meeting, apart from the delicious lunch we had together, a good meeting and very good discussions concerning our bilateral relations and concerning the situation in the Middle East. I can say that my friend Henry has achieved a lot of progress in the Middle East, and I still believe that he will continue his efforts to reach a final settlement based on justice and rights of the people of that area.

As I said, we had very fruitful discussions. We are happy about our bilateral relations, and I think that cooperation between our two countries would be strengthened more than what it is now, and we hope the Middle East problem will soon be solved. We are people who are for peace, and all that we are after is having progress in our country, in our countries, raising the social life of our people—spending our money on our countries—avoiding wars and killings everywhere on this globe.

I have nothing to add today. Tomorrow after seeing the President and meeting with my friend Henry today and tomorrow, maybe I can say something tomorrow.

EXCHANGE OF TOASTS, AUGUST 29

Press release 351 dated August 30

Secretary Kissinger

Mr. Foreign Minister, distinguished guests: It's a great joy for me to be able to welcome my friend Umar Saqqaf to Washington. I have had my staff try to dig up an Arabic phrase that I could master, and they told me that there's a phrase in Arabic that says *baitee baitak* which, for those of you who have never heard Arabic with a German accent [laughter], means "My house is your home."

Now, I hope, Umar, you feel at home here. This room is about the size of the bedroom I had when I visited Riyadh. [Laughter.]

But you are among friends.

I really shouldn't be so friendly to Umar, because last October when, less than a week after I had been appointed Secretary of State, he called on me in New York and he said, "We would like you to get involved in the Middle East. We just want a little of your time." [Laughter.] I promised him we would get involved, but he didn't quite trust me and speeded things up a little bit in October. [Laughter.]

Since then, we have gotten to know each other very well. I visited Riyadh for the first time last November, and I think it is safe to say that confidence was not yet complete. But from then, we have established a very close relationship of great confidence and trust.

Umar acts, from time to time, as an unofficial adviser on Arabic affairs—advice I need very badly. I remember one occasion when I told Umar that somebody in the Arab world had said to me that he wouldn't do something; Umar said, "Now you can have confidence. He will certainly do it." [Laughter.] And I said, "Then why did he tell me that he wouldn't do it?" He said, "Because he's decided to do it, but he didn't want you to leak it." [Laughter.]

Now, this showed many aspects, not to speak of many judgments of me.

But speaking seriously, the process of making peace in the Middle East, across the many years of distrust and all the disappointments, has been extremely difficult for all sides, and it required faith and inward strength for all of the countries concerned to make the effort—above all, faith in the possibility that nations that have fought each other for so long could learn to live in peace.

And in this effort—this almost spiritual effort, which was more complicated than the technical side—the contribution of our guest tonight has been enormous. His advice has always been helpful, even when we would have preferred him to say something else.

And the progress that has been made has gained importantly from his ability to talk to all of the Arab parties, as well as to us, from a position of trust and friendship.

Now we are embarked again on another effort to begin a negotiation; and all of us know that it will be a difficult negotiation and that it will take time and that things must mature. And we are counting on our friends from Saudi Arabia to continue with their advice and with their support.

And they can count on us—that we will continue the policies that have been started and that we will make every effort to move the Middle East to a just and lasting peace that all of the nations in that area have earned by their suffering.

But our relations with Saudi Arabia are not confined by the problem between the Arab states and Israel.

Saudi Arabia has the longest uninterrupted history of friendship with the United States of any state in this area. And therefore how well we progress in that relationship is important to both of our countries, and it is important to all the peoples in the area, so that they can see that by relationships of trust with the United States, and only by those relationships, can the deepest aspirations of the peoples of that area of the Middle East be realized.

We have recently started a cooperative relationship in many fields. We have set up many commissions to deepen our friendship, and we are confident that this will continue and that these commissions will be successful—not only because we have confidence in the technical experts that are on them, but because we have confidence in the attitude on both sides. And as we succeed, I think we can write a new chapter in the relationship of the Arab people to the American people.

To all of this, Umar Saqqaf has contributed importantly, and so we were very selfish in inviting him over here, as the last of the Arab Ministers that visited us in August, so that we could get the benefit of his wisdom. We will continue our conversations at the end of September at the occasion of the General Assembly.

So on behalf of all of my American colleagues here, I would like to welcome you and propose a toast to His Majesty King Faisal and to our guest, Foreign Minister Saqqaf.

Foreign Minister Saqqaf

My dear friend Henry, distinguished guests: It gives me great pleasure to be here among so many distinguished friends, friends whom we have great respect for. And I am very grateful that my friend Henry makes it possible for me to have met such important people and friends who, as I hope and I am sure, will take part in cooperating with us as Saudis or as Arabs to reach our goal in having a peaceful settlement with justice in our Middle Eastern countries.

Henry is a good friend of mine. I met him before, less than two years ago, and I can say frankly that I did like him the first time I saw him and had a talk with him—though I wonder whether he noticed that or not, because your impression is that it could be very difficult for me to like such a man, who is capable and already a professor and a man of wisdom, to be liked by a career diplomat like me, because I realized later on that career diplomats do not like him very much. [Laughter.]

I want to make it very clear to our friends here that our friend Henry has done really —by his dynamic force, by his ability, by the many talents that he has—he has done great things in the Middle East, things which nobody dreamed could be done.

It's easy for people from far away to say that something happened in this area or that area. But for us—those who live this crisis, this tragedy in the Middle East—[we] could never have thought of having disengagement in our area. What has been done was not everything, but it's a great thing, because it's the start which is always difficult. And for him and for people who are cooperating with him, I think the future will be a good one

for those who like peace and progress for the Middle East and for the world as a whole.

In our area, the concerned Arabs used to have, and still they have, great respect for America and American people. And even in Palestine, when they were asked after the Second World War—or the First World War—they were asked whether they preferred to have independence or to be helped by the Americans or any other country, they unanimously said that we wanted to be helped by the Americans, whom we believe are people of peace and freedom and justice. But that didn't work. Palestine was handed to other countries. I don't like to finish the story, but what I wanted to show is: That part of the world has respect and love for this part of the world, the United States of America.

The past is past. We have to deal with the future, and this is a future which is not as gloomy as it was in the past. Now the road is paved. People are ready to meet and discuss and even to bear receiving Dr. Kissinger in Syria more than 15 times. I don't know whether he suffered more or they suffered more after that continuous—[laughter]. But I'm sure of one thing—that he gained weight during that visit. [Laughter.] And I'm glad to see him losing some of that weight he gained. [Laughter.]

Back to Saudi Arabia and to that of weight.

Saudi Arabia is a good friend of the people of the United States. The great King Abd al-Aziz, who unified the Kingdom of Saudi Arabia, was a good friend of North America. So is his son, King Faisal. Saudi Arabia has never had any trouble with America. It was always because fear got in the picture, which makes it difficult and which caused some kind of trouble between our two states.

Sometimes it's the British, sometimes the French, sometimes the Israelis—and sometimes, as they say when there is nobody to blame, it's the Italians. [Laughter.]

So as an underdeveloped country, we feel that this great country, this powerful country, could be of great help for the Arabs and for the Middle East countries.

Thank goodness, now things are different—things have changed a lot; now you have friends. No more hostility, except among the few, toward the United States.

We know here that people are not always of the same opinion toward our cause and toward Arabs. We cannot blame them—we have to blame ourselves because we have never shown them in the right way what is our cause. We have committed—not as Saudi Arabia but as Arabs—we have committed a series of mistakes which have created hostilities between the United States and the Arabs. I am glad now to see among us the Ambassador of Egypt, the Ambassador of Syria—glad to see most of the Arab Ambassadors are among us here, which shows that the picture is different.

We are countries which have great potentialities. We know, ourselves, we cannot do everything alone. We need help; and when we say help, we need that help from our friends.

To be frank, we suffer from everything. We suffer from lack of human beings. We suffer from lack of technology. We suffer from lack of everything which can make any country work well and build a good future for itself.

And this is not only Saudi Arabia; there are some other Arab countries who need this help.

Now on this—you cannot ask for help, actually, as charity—it is a mutual interest. And the more we study this mutual interest thoroughly and with mutual respect, I think your country, your people, could be of a great help to our country. And our country, with the little—I don't know what your opinion is, "little" or "much"—she has, can also help in the United States.

All that we are looking for is that our friend Henry will continue his efforts, backed by the Government of the United States, by responsible people in the United States, to finish his job in a right way and to make peace prevail in our area.

If this is done, then there will be no room for the enemies of peace, for the enemies of progress, for those who want to live on

trouble—there will be no place. And then, once peace is prevailing in the Middle East, I think it's a step forward for peace prevailing over all the world.

I think I have said too much, and I hope my English is understood, because I still speak Arabic-English. As I finish, I ask you to join me in having a toast to His Excellency the President of the United States, our host, Henry, and the people of this great country.

Thank you.

EXCHANGE OF REMARKS, AUGUST 30

Press release 352 dated August 30

Foreign Minister Saqqaf

Before leaving Washington, I want to say a few words. I can say that, after this short visit which I have paid to the United States in which I have stayed in Washington, I spent most of the time with friends. Among them the first friend of them is my friend Henry, whom I met several times, and we had long talks about our bilateral relations, about the Middle East question, about the international situation.

I had the honor yesterday to have an audience with His Excellency President Ford. I went out with the impression of seeing no change in the policy of the United States after seeing him taking over as President. I found him an honest, up-to-the-point person, and I left very pleased from that meeting.

I can say also that my friend Dr. Henry Kissinger was as usual very friendly and frank and generous in all discussions. Everything went smoothly. I think we are in agreement in all the problems we have discussed.

Before leaving, I thank the President, I thank my friend Henry, I thank every person in this great country.

Secretary Kissinger

I cannot add anything to what the Foreign Minister has said so eloquently.

From the U.S. point of view, we considered the meetings very constructive. We have made even further progress in our bilateral relations, and we had very constructive talks about peace in the Middle East which I believe will contribute to the progress we all desire.

United Nations Documents: A Selected Bibliography

Mimeographed or processed documents (such as those listed below) may be consulted at depository libraries in the United States. U.N. printed publications may be purchased from the Sales Section of the United Nations, United Nations Plaza, N.Y. 10017.

General Assembly

Ad Hoc Committee on the Special Program:
Basic premises and issues involved in the establishment and operation of an international development fund. Report by the Secretary General. A/AC.168/2. June 12, 1974. 20 pp.
Considerations relating to the possibility of merging the United Nations Capital Development Fund with the operations of the Special Fund established by General Assembly Resolution 3202 (S–VI). Note by the Secretary General. A/AC.168/3. June 18, 1974. 7 pp.

Economic and Social Council

Preparatory Committee of the World Food Conference, Second Session. Preliminary paper on assessment of present food situation and future outlook, submitted by the Secretary General of the conference. E/CONF.65/PREP/6. May 8, 1974. 77 pp.

General discussion of international economic and social policy, including regional and sectoral developments. Economic trends in Latin America in 1973. E/5517. May 17, 1974. 20 pp.

Special measures related to the particular needs of the landlocked developing countries. Study on the establishment of a fund in favor of the landlocked developing countries. Note by the Secretary General. E/5501. May 21, 1974. 47 pp.

General discussion of international economic and social policy, including regional and sectoral developments. Studies on development problems in countries of Western Asia. Summary. E/5532. May 30, 1974. 35 pp.

Commission on Human Rights. Subcommission on Prevention of Discrimination and Protection of Minorities. Review of further developments in fields with which the subcommission has been concerned. Note of the Secretary General. E/CN.4/Sub.2/345. July 9, 1974. 9 pp.

TREATY INFORMATION

Current Actions

MULTILATERAL

Exhibitions

Protocol revising the convention of November 22, 1928, as amended (TIAS 6548, 6549), relating to international expositions, with appendix and annex. Done at Paris November 20, 1972.[1]
Accession deposited: Czechoslovakia (with a declaration), July 25, 1974.

Fisheries

Protocol to the international convention for the Northwest Atlantic fisheries (TIAS 2089), relating to amendments to the convention. Done at Washington October 6, 1970.
Ratification deposited: Romania, September 4, 1974.
Entered into force: September 4, 1974.

Load Lines

International convention on load lines, 1966. Done at London April 5, 1966. Entered into force July 21, 1968. TIAS 6331, 6629, 6720.
Accession deposited: Libya, August 12, 1974.

Amendments to the international convention on load lines, 1966 (TIAS 6331, 6629, 6720). Adopted at London October 12, 1971.[1]
Acceptance deposited: Canada, August 14, 1974.

Oil Pollution

Amendments to the international convention for the prevention of pollution of the sea by oil, 1954, as amended (TIAS 4900, 6109). Adopted at London October 12, 1971.[1]
Acceptances deposited: Canada, August 14, 1974; Norway, August 13, 1974.

Amendments to the international convention for the prevention of pollution of the sea by oil, 1954, as amended (TIAS 4900, 6109). Adopted at London October 15, 1971.[1]
Acceptances deposited: Canada, August 14, 1974; Norway, August 13, 1974.

Safety at Sea

Amendments to the international convention for the safety of life at sea, 1960 (TIAS 5780). Adopted at London November 26, 1968.[1]
Acceptance deposited: Canada, August 14, 1974.

Amendments to the international convention for the safety of life at sea, 1960 (TIAS 5780). Adopted at London October 21, 1969.[1]
Acceptance deposited: Canada, August 14, 1974.

Amendments to the international convention for the safety of life at sea, 1960 (TIAS 5780). Adopted at London October 12, 1971.[1]
Acceptance deposited: Canada (with a reservation), August 14, 1974.

Sea, Exploration of

Protocol to the convention of September 12, 1964 (TIAS 7628), for the International Council for the Exploration of the Sea. Done at Copenhagen August 13, 1970.[1]
Senate advice and consent to ratification: September 4, 1974.

Seabed Disarmament

Treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the seabed and the ocean floor and in the subsoil thereof. Done at Washington, London, and Moscow February 11, 1971. Entered into force May 18, 1972. TIAS 7337.
Ratification deposited: Italy, September 3, 1974.[2]

BILATERAL

Dominican Republic

Agreement relating to payment to the United States of the net proceeds from the sale of defense articles by the Dominican Republic. Effected by exchange of notes at Santo Domingo May 30 and August 8, 1974. Entered into force August 8, 1974, effective July 1, 1974.

DEPARTMENT AND FOREIGN SERVICE

Confirmations

The Senate on August 7 confirmed the nomination of Richard W. Murphy to be Ambassador to the Syrian Arab Republic.

The Senate on August 21 confirmed the following nominations:

Jack B. Kubisch to be Ambassador to Greece.

Richard L. Sneider to be Ambassador to the Republic of Korea.

The Senate on August 22 confirmed the nomination of William R. Crawford, Jr., to be Ambassador to the Republic of Cyprus.

[1] Not in force.
[2] With a statement.

Name Index

Check List of Department of State Press Releases: September 2–8

Press releases may be obtained from the Office of Press Relations, Department of State, Washington, D.C. 20520.

Releases issued prior to September 2 which appear in this issue of the BULLETIN are Nos. 313 of July 24, 317 of July 26, 326 of August 8, 337 of August 22, and 350, 351, and 352 of August 30.

No.	Date	Subject
353	9/3	Stevenson: statement issued at news conference, Caracas, Aug. 28.
*354	9/4	Sneider sworn in as Ambassador to Korea (biographic data).
355	9/4	Joint U.S.-German Democratic Republic communique.
*356	9/5	Kubisch sworn in as Ambassador to Greece (biographic data).

* Not printed.