SUPPLEMENTAL MATERIALS

for

KNIGHT, ed., THE LAW OF THE SEA: DOCUMENTS AND NOTES

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These supplemental materials were prepared exclusively for use by law students and graduate science students at Louisiana State University in the interdisciplinary course in Marine Resources Law (formerly Law of the Sea).

Introduction

In the fall, 1968, I prepared a preliminary multilith edition of a law school casebook in marine resources law entitled The Law of the Sea: Documents and Notes. This text was used during the spring 1969, 1970, and 1971 offerings of the Marine Resources Law course at the Louisiana State University Law Center. The course was designed and the materials prepared through support from the Office of Sea Grant Programs (National Oceanic and Atmospheric Administration, Department of Commerce). It is anticipated that a hardcover edition will be published late in 1972 or early in 1973, prior to the Third United Nations Conference on the Law of the Sea. Following that Conference, a supplement will be issued to cover changes in the law of the sea made there.

In the interim, and because much has happened in the law of the sea since the fall, 1968, this volume of Supplemental Materials has been prepared to accompany the materials in the original casebook. Funds from the Office of Sea Grant Programs were used to cover the costs of reproduction.

H. Gary Knight
December 8, 1971

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DECLARATION OF MONTEVIDEO
(May 8, 1970)

THE STATES REPRESENTED AT THE MONTEVIDEO MEETING ON THE LAW OF THE SEA:

RECOGNIZING that ties of geographic, economic and social nature bind the sea, the land and man who inhabits it, from which there arises a legitimate priority in favor of littoral peoples to benefit from the natural resources offered to them by their maritime environment;

RECOGNIZING FURTHER, that rules relevant to delimitation of national sovereignty and jurisdiction over the sea, the seabed and the subsoil thereof, and that measures concerning exploitation of resources, must always be mindful of the geographic realities of coastal States and of the special economic and social requirements of the less developed States;

WHEREAS:

The scientific and technological progress made in exploitation of natural resources of the sea has created a correlative danger of exhaustion of biological species by irrational or abusive extractive practices, or by disturbance of ecological conditions, which is the foundation of the right claimed by coastal States to prescribe the necessary measures to protect said resources within jurisdictional zones that are broader than the traditional ones, and to regulate within said zones the fishing and aquatic game hunting activities by vessels of national or foreign flags subjecting them to domestic legislation or to agreements celebrated with other States;

NO PAGES 1-16

In the declarations, resolutions and treaties, principally inter-American, as well as in multilateral declarations and agreements celebrated between Latin American States, legal principles have been incorporated which justify the right of the States to expand their claims to sovereignty and jurisdiction in the measure required to conserve, develop and exploit the natural resources of the maritime zones adjacent to their coasts, of their seabeds and the subsoil thereof;

Pursuant to said legal principles and on the basis of their unique conditions, the signatory States have expanded their claims of sovereignty or exclusive rights over maritime zones adjacent to their coasts, over the seabeds and subsoil thereof, out to a distance of two hundred marine miles, computed from the base line of the territorial sea;

The measures prescribed by the littoral States for conservation of the resources of the sea, of the seabed and its subsoil, applicable to the jurisdictional maritime zones adjacent to their coasts, definitely redound to the benefit of mankind, which finds in the oceans a basic source for means of subsistence and development;

The sovereign right of the States over their natural resources has been acknowledged and confirmed by numerous resolutions of the General Assembly and other organs of the United Nations;

It is appropriate here to define in a joint declaration those principles emerging from the new trends oriented towards the structuring of an International Law obviously in process of progressive evolution, which principles continue to gain increasing support from the international community;

DO DECLARE, as Basic Principles of the Law of the Sea:

1. The right of littoral States to exercise control over the natural resources of the sea adjacent to their coasts and of the

seabed and subsoil thereof in order to achieve the maximum development of their economy and to raise the living standards of their peoples;

2. The right to delimit their maritime sovereignty and jurisdiction in conformity with their own geographic and geological characteristics and consonant with factors that condition the existence of marine resources and the need for national exploitation;

3. The right to explore, conserve and exploit the living resources of the sea adjacent to their territories, and to control fishing and aquatic game hunting operations;

4. The right to explore, conserve and exploit the natural resources of their respective continental shelf out to where the depth of the superjacent waters admits of exploitation of said resources;

5. The right to explore, conserve and exploit the natural resources of the seabed and of the subsoil of the ocean floor out to where the littoral State claims jurisdiction over the sea;

6. The right to enact regulatory measures to achieve the aforecited goals applicable within the zones of their maritime sovereignty and jurisdiction, without prejudice to freedom of navigation and to the passage of vessels and overflight by aircraft of any flag;

Inspired by the results of this Meeting, the signatory States express in addition their goal to coordinate their future actions to assure effective defense of the principles enunciated in the present Declaration.

This Declaration shall be known as the "Declaration of Montevideo on Law of the Sea."

Signed 8 May 1970 by the Governments of Argentina, Brazil, Chile, Ecuador, El Salvador, Panama, Peru, Nicaragua and Uruguay.

DECLARATION OF LIMA
(August, 1970)

DECLARATION OF THE LATIN AMERICAN STATES ON THE LAW OF THE SEA

The Latin American Meeting on Aspects of the Law of the Sea,

Considering:

That there is a geographical, economic and social link between the sea, the land, and man who inhabits it, which confers on coastal populations a legitimate priority right to utilize the natural resources of their maritime environment;

That in consequence of that priority relationship, the right has been recognized of coastal States to establish the extent of their maritime sovereignty or jurisdiction in accordance with reasonable criteria, having regard to their geographical, geological and biological situation and their socio-economic needs and responsibilities;

That the dangers and damage resulting from indiscriminate and abusive practices in the extraction of marine resources, among other reasons, have led an important group of coastal States to extend the limits of their sovereignty or jurisdiction over the sea, with due respect for freedom of navigation and flight in transit for ships and aircraft, without distinction as to flag;

That certain forms of utilization of the marine environment have likewise been giving rise to grave dangers of contamination of the waters and disturbance of the ecological balance, to combat which it is necessary that the coastal States should take steps to protect the health and interests of their populations;

That the development of scientific research in the marine environment requires the widest possible co-operation among States, so that all may contribute and share in its benefits, without prejudice to the authorization, supervision and participation of the coastal State when such research is carried out within the limits of its sovereignty or jurisdiction;

That in declarations, resolutions and treaties, especially inter-American instruments, and also in unilateral declarations and in agreements signed between Latin American States legal principles are embodied which justify the aforementioned rights;

That the sovereign right of States over their natural resources has been recognized and reaffirmed in numerous resolutions of the General Assembly and other United Nations bodies;

That in the exercise of these rights the respective rights of other neighbouring coastal States on the same sea must be mutually respected; and

That it is desirable to assemble and reaffirm the foregoing concepts in a joint declaration which will take into account the plurality of existing legal régimes on maritime sovereignty or jurisdiction in Latin American countries.

DECLARES as common principles of the Law of the Sea:

1. The inherent right of the coastal State to explore, conserve and exploit the natural resources of the sea adjacent to its coasts and the soil and subsoil thereof, likewise of the Continental Shelf and its subsoil, in order to promote the maximum development of its economy and to raise the level of living of its people;

2. The right of the coastal State to establish the limits of its maritime sovereignty or jurisdiction in accordance with reasonable criteria, having regard to its geographical, geological and biological characteristics, and the need to make rational use of its resources;

3. The right of the coastal State to take regulatory measures for the aforementioned purposes, applicable in the areas of its maritime sovereignty or jurisdiction, without prejudice to freedom of navigation and flight in transit of ships and aircraft, without distinction as to flag;

4. The right of the coastal State to prevent contamination of the waters and other dangerous and harmful effects that may result from the use, exploration or exploitation of the area adjacent to its coasts;

5. The right of the coastal State to authorize, supervize and participate in all scientific research activities which may be carried out in the maritime zones subject to its sovereignty or jurisdiction, and to be informed of the findings and the results of such research.

This declaration shall be known as the "Declaration of the Latin American States on the Law of the Sea".

RESOLUTION 1

ON THE SEA-BED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

The Latin American Meeting on Aspects of the Law of the Sea

Considering:

That the Latin American States have declared on various occasions that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, including the resources of that zone, should be the common heritage of mankind;

That, in order to ensure that the exploration, conservation and exploitation of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, shall be carried out for the benefit of all mankind, irrespective of the geographical location of States and taking into consideration the special interests of the developing States, whether coastal or land-locked, it is essential that these activities be carried out under an international régime which shall include suitable machinery for ensuring joint participation in the administration of the zone and in the benefits derived therefrom;

That the United Nations Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction is at present engaged on the task of drawing up a declaration of principles which should establish the broad lines of the future régime;

That a group of fifteen States, with the participation of Latin American countries, has submitted to the said Committee, in document A/AC.138/SC.1/L.2, dated 23 March 1970, a draft General Assembly resolution containing general principles relating to the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction;

That, to succeed in its task, the said Committee must observe in its work a suitable order of priority corresponding to rational criteria for the formulation of rules of international law; and

That the introduction of proposals for the establishment of an interim régime for the international zone might not only delay the completion of the first essential stage, which is to draw up a declaration of principle and the broad lines of a permanent régime, but might also hamper the said Committee in the proper discharge of its mandate;

Decides to recommend to Governments participating in this Meeting that they take account of the following objectives;

(1) that the United Nations Committee on the Sea-Bed and Ocean Floor should continue to give priority to the task of preparing a declaration of principles which would establish the broad lines of the future permanent régime to be established for that zone;

(2) That the said declaration of principles should serve merely as the basis for the Committee's subsequent work, under the mandate conferred on it by General Assembly resolutions 2467 (XXIII) and 2574 (XXIV);

(3) That it would be premature to establish an interim régime for the international zone and to establish the extra-jurisdictional limits of the sea-bed and ocean floor until the above-mentioned stages have been completed;

(4) That in the light of the reports prepared by the Secretary-General of the United Nations on the various possible types of international machinery for the exploration, conservation and exploitation of the sea-bed and ocean floor and the sub-soil thereof beyond the limits of national jurisdiction, the Latin American Governments shall agree on a common position with regard to determination of the most suitable arrangement for organizing the said machinery and on the question of the desirability of including in it regional or sub-regional systems;

(5) That, without prejudice to any suggestions which they may see fit to make concerning the declaration of principles mentioned under (1), they should at the appropriate time support the broad lines contained in document A/AC.138/SC.1/L.2 of 23 March 1970.

RESOLUTION 2

ON THE CONVENING OF A FURTHER INTERNATIONAL CONFERENCE ON THE LAW OF THE SEA

The Latin American Meeting on Aspects of the Law of the Sea:

Recalling resolutions 798 (VIII) and 1105 (XI) of the United Nations General Assembly;

Having regard to the fact that the problems relating to the high seas, territorial waters, contiguous zones, the continental shelf, the superjacent waters, and the sea-bed and ocean floor beyond the limits of national jurisdiction are closely linked together, so that their consideration should take account of the necessary correlation between the legal régime and the physical environment to which it applies;

Considering that, at the request of the General Assembly in its resolution 2574 A (XXIV), the Secretary-General has consulted Member States on the desirability of convening at an early date a conference on the law of the sea to review the régimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and conservation of the living resources of the high seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction, in the light of the international régime to be established for that area;

Considering also that the convening of a conference or conferences with a limited agenda for the purpose of dealing separately with particular aspects of the law of the s is undesirable, because it would compromise the success of a general conference; and that it conflicts with the principle, recognized by the International Law Commission and

endorsed by the said General Assembly resolutions, concerning the treatment of maritime questions as a whole;

Bearing in mind, furthermore, that the Secretary-General is to report on the results of his consultations to the General Assembly at its twenty-fifth session;

Recommends to the Governments of the States participating in the Meeting:

(a) That, if they have not already done so, they reply to the Secretary-General's request for their views by expressing themselves in favour of convening an international conference on the law of the sea, provided the conference considers the various topics referred to in resolution 2574 A (XXIV), and once the permanent international régime and the administrative machinery applicable to the extra-jurisdictional sea-bed have been defined, and the studies, reports and inquiries made for that purpose have indicated that there are reasonable hopes for the success of the conference;

(b) That they instruct their delegations to the United Nations to support the above-mentioned position when this question is discussed at the twenty-fifth session of the General Assembly;

(c) That they also instruct the said delegations to oppose any proposal to convene a conference or conferences whose agenda would be limited to particular aspects of the law of the sea.

RESOLUTION 3
ON THE PROBLEM OF THE CONTAMINATION OF THE MARINE ENVIRONMENT

The Latin American Meeting on Aspects of the Law of the Sea:

Recognizing that the exploration, exploitation and use of the oceans and the soil and subsoil thereof and other activities carried out in non-marine environments have recently been creating a serious danger of contamination of waters and disturbance of the ecological balance of the marine environment;

Considering, consequently, the urgent need to take appropriate measures to prevent, control, reduce or eliminate contamination and any other dangerous and harmful effects that may result from the said activities;

Considering further that such measures must include not only rules to govern the exploration, exploitation and utilization of the oceans and the soil and subsoil thereof, and other activities which may affect the marine environment, but also rules relating to the system of liability for the resulting damages;

Recalling the progress made in those matters by various governmental bodies and by the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and its Intergovernmental Oceano-

graphic Commission, the Inter-Governmental Maritime Consultative Organization and the International Atomic Energy Agency,

Recalling also resolution 2467 B (XXIII) of the United Nations General Assembly of the United Nations;

Noting with concern that, notwithstanding the repeated protests of many States, nuclear weapons tests continue to be carried out in the marine environment, destroying important living resources, contaminating the waters by their radioactive effects and disturbing the existing biological, chemical and physical processes and balances;

Considering that, for all these reasons, and without prejudice to any international agreements that have been concluded or which may be concluded on these matters, it is necessary to reaffirm the right of coastal States to take any steps and measures that they may deem necessary for the proper protection of the interests of their peoples against the dangers of contamination and other harmful effects that may result from the use, exploration and exploitation of the seas contiguous to their territories, or from other activities carried out in non-marine environments that may affect the said interests;

Recommends to the Governments participating in this Meeting;

(a) That they reaffirm their decision to take such steps and measures as they may deem appropriate to prevent, control and reduce or eliminate contamination and other dangerous and harmful effects resulting from the exploration, exploitation and use of the sea adjacent to their coasts and of the soil and subsoil thereof, and from any other activities carried out in non-marine environments that may affect the interests of their people, in exercise of the right of coastal States to protect its maritime heritage;

(b) That they reaffirm their opposition to the continuance of those nuclear weapons tests, mainly in the marine environment, which produce effects harmful to the resources of the sea, contamination of waters and disturbance of their existing biological, chemical and physical processes and balances;

(c) That they exchange views and information on appropriate measures for the above-mentioned purposes and on draft international agreements relating to these matters;

(d) That they agree on common positions so that when these matters are discussed in international organizations and at international conferences, their respective representatives may take due account of the rights and interests of coastal States.

RESOLUTION 4
ON THE PROHIBITION OF THE EMPLACEMENT OF NUCLEAR AND OTHER WEAPONS ON THE SEABED AND THE OCEAN FLOOR AND IN THE SUBSOIL THEREOF

The Latin American Meeting on Aspects of the Law of the Sea:

Taking note of the Draft 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, submitted to the Conference of the Committee on Disarmament on 23 April 1970 by the Union of Soviet Socialist Republics and the United States of America (CCD/269/Rev.2).

Considering that at present, general and complete disarmament is an objective of fundamental importance for the international community;

Reaffirming its belief that the sea-bed and ocean floor and the subsoil thereof should be used for exclusively peaceful purposes; and

Considering that the draft should not prejudice the maritime sovereignty and jurisdiction of the Latin American States, or affect the regional agreements on disarmament to which they are parties;

Takes note with interest of the work done so far in this connexion by the Latin American countries represented in the Conference of the Committee on Disarmament in an attempt to ensure that due account is taken of Latin American rights and interests in the instrument to be elaborated; and

Recommends to the Governments of States participating in this Meeting that when the General Assembly of the United Nations considers the Draft 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, they endeavour to harmonize their efforts with a view to preventing any infringement of their maritime sovereignty and jurisdiction or of the existing regional régime among the Latin American countries on the subject of disarmament.

RESOLUTION 5
ON THE LEGAL ASPECTS OF SCIENTIFIC OCEANOGRAPHIC RESEARCH

The Latin American Meeting on Aspects of the Law of the Sea:

Recalling the resolutions adopted by the General Assembly of the United Nations at its twenty-fourth session on the legal aspects of scientific oceanographic research;

Considering the desirability of a careful study of resolution VI-13 of the Intergovernmental Oceanographic Commission on the promotion of basic scientific research;

Bearing in mind, in particular, the action at present being taken by the said Intergovernmental Oceanographic Commission with a view to the preparation of a draft Convention on the legal status of systems for the acquisition of oceanographic data (SADO);

Considering the importance from the standpoint of basic legal issues such as the sovereignty and jurisdiction of the coastal States, of any criteria that are adopted on this matter.

DECIDES:

(1) To recommend that the Governments participating in this Meeting undertake a continuing exchange of views with a view to co-ordinating and harmonizing their positions in the various forums dealing with the legal problems of scientific oceanographic research;

(2) To recommend also that these Governments adopt a common stand on the question of the desirability of those matters being considered jointly in the United Nations, so that the developing States, and particularly the Latin American countries, may participate actively in the formulation of any rules it is desired to adopt.

(3) To reaffirm:

(a) That any scientific research carried out within the maritime jurisdiction of a State shall be subject to prior authorization by that State and shall comply with the conditions laid down by that authority;

(b) That the coastal State has the right to participate in any research that may be carried out within its jurisdiction and to benefit from the results of that research;

(c) That all the samples obtained in research of this kind shall be the property of the State in whose jurisdiction the research is carried out and that they may be appropriated by those conducting the research only with the express consent of that State;

(d) That any scientific research which is authorized as such shall continue to be of a strictly and exclusively scientific character.

International Law and the Oceans

by John R. Stevenson
Legal Adviser

International law serves a variety of classic functions in the affairs of nations, all related to the maintenance of peace and a reasonable degree of stability:

First, prevention of conflict: To the extent that nations have similar views of their respective rights and obligations, the possibilities for conflict are reduced.

Second, security: This might as easily be termed predictability—the ability to foresee what activities can be undertaken with reasonable assurance that foreign states will acquiesce, without objection.

Third, accommodation of interests: Both customary and conventional international law purport to represent an equilibrium of different sometimes conflicting, interests. This is perhaps the most dynamic function of the law. Where changes of real or perceived interests occur, either the law must be adapted or it will cease to perform any of its functions.

To these functions one must add two increasingly important functions of modern international law beyond the classic objective of stability.

Fourth, promotion of common or community interests: Here we arrive at the very frontiers of the scope of international law—the protection of human rights, the promotion of economic development, the devotion of economic resources to peaceful purposes. President Nixon himself has highlighted another of these common objectives of profound importance—the need to assure that the environment of this planet remains hospitable to human life and activities.

Second, providing guideposts on matters heretofore dealt with on a strictly bilateral basis: The dramatic increase in the size of the international community in recent years has increased the need to deal with many problems on a broad multilateral basis in order to avoid a complex web of different, perhaps inconsistent, arrangements with essentially the same purpose.

Against these criteria I propose to measure the general state of the law of the sea, a body of rules governing the activities of men and nations on 70 percent of this planet.

The origins of the modern law of the sea are intricately tied to the origins of modern international law as a whole. Grotius himself, the father of modern international law, proclaimed the fundamental premise of the law of the sea: the freedom of the seas. His reasoning contains within it an adumbration of our problems with the law of the sea today. He wrote:

> All property is grounded upon occupation which requires that movables shall be seized and immovable things will be enclosed; whatever therefore cannot be so seized or enclosed is incapable of being made a subject of property. The vagrant waters of the ocean are thus necessarily free.

This passage suggests that the freedom of the seas rests on the fact that nations are physically incapable of exercising the same type of dominion over the oceans as they do on land. I submit that this is not true today and it was not entirely true even in Grotius' day. First, what Grotius said is equally applicable in practice to vast areas of the earth's land surface—deserts, polar regions, hostile and largely impenetrable

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Address made before the Philadelphia World Affairs Council and the Philadelphia Bar Association at Philadelphia, Pa., on Feb. 18 (press release 49).

jungles, and even major rivers. Second, major maritime powers have been in a position to exercise compelling dominion over large areas of the sea for thousands of years. As recently as the 19th century the legal principle of freedom of the seas was a keystone of Great Britain's foreign policy, but in terms of the military power to control the seas, Britannia ruled the waves.

Legal Jurisdiction Over the Seas

There are in fact three major alternatives regarding legal jurisdiction over the seas.

The first is a prohibition on national jurisdiction, with all enjoying equal rights to use the area with reasonable regard for each other's rights. This is the classic principle of freedom of the seas.

The second is control based on the physical power to exclude or regulate others. Thus, dominant maritime powers would develop marine empires similar to their land empires. For example, at the beginning of the 17th century large areas of the sea surrounding Europe were claimed by coastal states—the Adriatic, by Venice; the Baltic, by Denmark and Sweden; the Channel, the North Sea, and the seas off Ireland, by England.

The third is the division of the seas among nations in accordance with an agreed formula. The most likely formula would be relative proximity to the coast—with each coastal nation exercising dominion over all areas which are closer to its own coast than to the coast of any other nation.

I will exclude the second alternative—jurisdiction based on power to control—for three basic reasons. First, it is not seriously advocated by anyone these days. Second, when attempted in earlier times, it has not worked for long. Third, since it is based on relative maritime power, it is inherently unstable and inevitably invites direct military confrontation.

The first and third alternatives—freedom of the seas and coastal state jurisdiction over areas off its coast—are the major elements in the law of the sea today. It can be said that there is general, and probably universal, agreement that the coastal state's sovereignty extends to a limited belt of water, including the seabed and airspace, adjacent to its coast, called the territorial sea. It is also generally recognized that the coastal state has special competence over certain matters beyond its territorial sea. The most significant example would be its exclusive sovereign rights to explore and exploit the natural resources of the continental shelf adjacent to its coast. The 1958 Convention on the Territorial Sea recognizes certain specific law enforcement powers of the coastal state in a contiguous zone adjacent to its territorial sea, which may not exceed 12 miles from the coast, or baseline from which the territorial sea is measured. The overwhelming majority of states exercise exclusive fisheries jurisdiction up to 12 miles from their coast, either by virtue of a 12-mile territorial sea claim embracing such jurisdiction or by specific creation of a contiguous fisheries zone, as in the European Fisheries Convention and U.S. domestic legislation.

Breadth of the Territorial Sea

In 1958 the international community completed an impressive codification of the law of the sea which resulted in four law of the sea conventions: on the territorial sea and contiguous zone, the high seas, the continental shelf, and fishing and conservation of living resources of the high seas.[2] However, these conventions did not resolve the question of the breadth of the territorial sea or the precise outer limit of the continental shelf. With respect to the former question a second, unsuccessful, conference was held in 1960, at which a U.S. compromise proposal of a 6-mile territorial sea and an additional 6-mile exclusive fishery zone failed by one vote to obtain the necessary two-thirds majority. The United States has consequently adhered to the traditional position that 3 miles is the maximum breadth of the territorial sea. It has accepted a 12-mile exclusive fisheries zone in view of the overwhelming practice of states but does not recognize coastal state jurisdiction over fisheries beyond that limit.

[2] For texts of the conventions, see BULLETIN of June 30, 1958, p. 1111.

No coastal state, in our view, is obliged to recognize territorial seas exceeding 3 miles, there is nothing like uniform agreement on this figure. About 30 states claim 3 miles, another 15 between 4 and 10 miles, and about 40 claim 12 miles. Approximately 11 states claim some sort of jurisdiction over the waters beyond 12 miles, usually fisheries jurisdiction but in some cases full territorial jurisdiction as far out as 200 miles.

Given this state of affairs, it can readily be seen, as the President pointed out in his foreign policy message to Congress today, that it is urgent that international agreement be reached on the breadth of the territorial sea to head off the threat of escalating national claims over the ocean.[3]

In the course of the last 2 years the United States has consulted with a large number of nations regarding the desirability of making a new attempt to achieve widespread agreement on the breadth of the territorial sea and has accelerated the pace of these discussions in the last year.

It appears that there is widespread support for fixing the breadth of the territorial sea at 12 nautical miles. However, the extension of the territorial sea to 12 miles would place many important international straits, which with a 3-mile limit have high seas areas running through them, within the territorial sea of the coastal state. This would mean that vessels could only traverse these straits in innocent passage; furthermore, there is no established right of innocent passage for aircraft in the airspace over straits within territorial waters. In the view of many countries this is not a satisfactory situation. The freedom of the seas would have a far more restrictive meaning indeed if rights to traverse straits are not clear and secure. A significant number of nations agree that this problem requires solution if a 12-mile territorial sea is to be accepted.

An additional problem directly affected by the breadth of the territorial sea is the conduct of high seas fisheries. Many nations do not believe that more conservation of such fisheries adequately protects their interests. Large and mobile high seas fleets can move in on an area, seriously overfish the stocks, and move on. This can result in economic dislocations in a coastal state, or a region thereof, which is dependent on such fisheries for its livelihood. We believe these economic pressures have contributed significantly to the trend toward expanded unilateral jurisdictional claims and that many nations will insist that these problems be dealt with in conjunction with agreement on the breadth of the territorial sea.

As a result of our consultations we believe the time is right for the conclusion of a new international treaty fixing the limitation of the territorial sea at 12 miles and providing for freedom of transit through and over international straits and carefully defined preferential fishing rights for coastal states on the high seas. We intend to work closely with the many other nations who share our views in these matters at the U.N. this fall as a matter of high priority.

International Regime for the Seabed

I mentioned earlier that the 1958 Law of the Sea Conference also failed to establish a precise outer limit for the exercise of sovereign rights by the coastal state over the exploration and exploitation of the seabed. The Convention on the Continental Shelf defines the continental shelf as the adjacent areas of the seabed beyond the territorial sea to where the waters reach a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the seabed and subsoil. The convention does not define what is meant by "adjacent" areas.

We are all aware of the promise of enormous wealth in the seabed. There is reason to believe that petroleum or gas deposits may exist in the continental margins off the coasts of all continents. These resources may well exceed those which exist on land. Despite differing attitudes on where the precise outer limit of

[3] The complete text of President Nixon's foreign policy report to the Congress on Feb. 18 is printed in the BULLETIN of Mar. 9, 1970; the section entitled "United Nations" begins on p. 313.

continental shelf should be, there appears to be virtually universal agreement that coastal state jurisdiction over the seabed does not extend out to the middle of the oceans. Some have proposed fixing a narrow permanent outer limit at the geological edge of the continental shelf, if this is deeper than 200 meters. Some continental shelves extend as deep as 550 meters. Others have advocated a wide limit embracing the entire continental margin: the continental shelf, the steep sloping area beyond called the continental slope, and the sedimentary deposits overlapping and extending beyond the foot of the continental slopes which are referred to as the continental rise. The depth of water at the outer edge of the rise varies from 2,500 meters to 4,000 meters. Still others have proposed to resolve this difficulty by devising an intermediate zone regime for the continental slope and rise.

Any of these approaches would leave vast areas of the seabed beyond the limits of national jurisdiction over resources. The U.N. General Assembly has established a Seabed Committee to consider the peaceful uses of this area. The United States has taken the position that an internationally agreed regime for exploitation of resources beyond national jurisdiction should be established as soon as practicable. While we believe that the general principles of the freedom of the seas do apply to this area, we recognize that to assure a reasonable degree of stability and the promotion of common international objectives, broad agreement on an international regime, including a clear system of rules which will minimize the potential for conflict, is necessary.

The Secretary General of the United Nations has submitted a report to the Seabed Committee on various types of machinery which could be devised for regulating the exploitation of the resources of the seabed beyond national jurisdiction. At one end of the spectrum, agreed criteria would be established governing exploitation of these resources, with an international registry for claims made in accordance with these criteria. The registering state would have basic enforcement responsibilities. A second alternative would be an international licensing authority which would issue licenses in accordance with agreed criteria. At the far end of the spectrum would be an international organization with complete authority to undertake exploitation of seabed resources itself. As the Secretary General himself pointed out, these alternatives are more in the nature of benchmarks along a spectrum in which an infinite variety of modalities exists.

Fundamental Decisions

With the international community so deeply engaged in discussion of law of the sea, the question naturally arises as to whether or when a new international law of the sea conference or conferences should be held. The U.N. General Assembly has requested the Secretary General to inquire of member states whether a new conference should be held. In examining this matter, I believe three considerations are paramount:

First, the international community should look forward, not back. It achieved an impressive codification of the law of the sea in 1958. Its task now is to resolve the questions which were not resolved at that time and to address the new questions regarding the seabed which are posed by our rapidly expanding technology. Reopening the questions settled by the 1958 conventions would cause needless confusion and delay.

Second, we believe that rapid progress is only possible if the issues are treated in manageable packages. The 1958 comprehensive Geneva conference took almost a decade to prepare, in large measure because so many issues were being examined at the same time. The issues of the breadth of the territorial sea, straits, and fisheries are old ones which have been examined carefully by the international community in the past and are well understood. It seems to me they could be addressed as a single unit and resolved quickly. The formulation of a seabed regime involves many matters wholly new, not only to the law of the sea but to international law generally. Creative energies should be brought to bear on this matter without any dilution of attention.

Third, the international community must recognize that the entire issue of the seabed will be mooted unless there is agreement on the breadth of the territorial sea. The promise of an

international regime for the seabed and the bold experiment in providing international revenues for international community purposes will be shattered unless the nations of the world, acting as a unit, decide to protect their common interests from a chaotic pattern of coastal state claims.

The community of nations thus has before it a set of fundamental decisions regarding well over half of the earth. It must decide whether the clear rule of law rather than the force of arms will govern international relations on the seas. It must decide whether international cooperation for the benefit of all mankind or mystic national pride will dominate the oceans. In a most fundamental sense it must decide whether the order of the day is an accommodation of legitimate interests or a clash of positions.

The United States is prepared to lead the way toward a true internationalism in the oceans. We do this not only because of our ideals but because it is clear that this is the only way to assure that our own interests and the interests of all other nations are adequately accommodated. International law has reserved for us a vast area of high seas and a vast area of seabed beyond the limits of national jurisdiction—and thus with vast opportunities for bringing nations together to work toward common objectives. Whether in the next few years we take a step toward tying the world closer together or yield to misguided rhetoric will determine the course of events for a long time to come.

United States Outlines Position on Limit of Territorial Sea

Department Statement [1]

The United States Government has recently been discussing the question of the proper limit of territorial seas with many nations. Widespread disagreement on the proper breadth of the territorial sea makes it urgent that the community of nations attempt once again to fix a limit. The United States supports the 12-mile limit as the most widely accepted one, but only if a treaty can be negotiated which will achieve widespread international acceptance and will provide for freedom of navigation through and over international straits. At the same time the United States will attempt to accommodate the interests of coastal states in the fishery resources off their coasts.

The United States Government hopes this initiative will be successful. Until that objective is realized, the United States will continue to adhere to the position that it is not obliged to recognize territorial seas which exceed 3 miles.

[1] Issued on Feb. 25 (press release 64).

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

25 FEB 1970

DEPARTMENT OF DEFENSE PRESS RELEASE

United States Policy with Respect to Territorial Seas

The United States Government has recently been discussing the question of the proper limit for territorial seas with many nations. Widespread disagreement on the proper breadth of the territorial sea makes it urgent that the community of nations attempt once again to fix a limit. The United States supports the 12-mile limit as the most widely accepted one but only if a treaty can be negotiated which will achieve widespread international acceptance and will provide for freedom of navigation through and over international straits. At the same time the United States will attempt to accommodate the interests of coastal states in the fishery resources off their coasts.

The Department of Defense hopes this initative will be successful and will finally terminate growing anarchy in the law of the sea. Until that objective is realized, the United States will continue to adhere to the position that it is not obliged to recognize territorial seas which exceed three miles.

The United States has consistently taken the position that under international law it has no obligation to recognize claims in excess of three miles, and that United States nationals can, beyond a three-mile limit, enjoy the freedoms of navigation associated with the high seas.

The United States does not recognize the 12-mile limit because it would place large areas of water that are now considered to be high seas under various national sovereignties. Most important, a 12-mile territorial sea would increase by

over 100 the number of international straits around the world that would consist exclusively of territorial seas, and would therefore have serious implications for the national security and commercial interests of the United States. The 1958 Convention on the Territorial Sea and the Contiguous Zone codifies the right of "innocent passage" through waters comprising territorial seas. Unfortunately, the term "innocent passage" as now defined in international law lends itself to abuse by coastal States. Coastal States may have expansive conceptions of what constitutes a threat to their security and may assert a right to refuse passage which is objectively innocent. This difficulty was emphasized in the dispute over the Straits of Tiran and Gulf of Aqaba. Moreover, there is at present no generally accepted right to overfly territorial seas, not even when the territorial seas comprise international straits, without the permission of the coastal State.

It should be noted that frequently the justification is advanced for extending the United States territorial sea that it will enhance our ability to protect the United States against foreign espionage activity. It is a matter of public knowledge that foreign intelligence gathering ships have engaged in the practice of gathering intelligence off the coasts of the United States for many years. However, in an open society much of the information such ships seek is readily available by a variety of other means. Thus, the fact that foreign countries may conduct passive intelligence activities up to three miles from our shores does not justify any departure from the three-mile claim which the United States has consistently maintained since 1793. Any unilateral departure at this time from our historic claim would involve fundamental and far-reaching consequences adversely affecting security and commercial interests of the United States.

EXCHANGE OF NOTES BETWEEN THE GOVERNMENTS OF CANADA AND THE UNITED STATES CONCERNING THE ARCTIC WATERS POLLUTION PREVENTION ACT OF 1970 (CANADA)

DEPARTMENT OF STATE STATEMENT ON GOVERNMENT OF CANADA'S BILLS ON LIMITS OF THE TERRITORIAL SEA, FISHERIES AND POLLUTION

Last week the Canadian Government introduced in the House of Commons two bills dealing with pollution in the Arctic, fisheries and the limits of the territorial sea. The enactment and implementation of these measures would affect the exercise by the United States and other countries of the right to freedom of the seas in large areas of the high seas and would adversely affect our efforts to reach international agreement on the use of the seas.

The bills seek to establish pollution zones in Arctic waters up to 100 miles from every point of Canadian coastal territory above the 60th parallel. Within these zones, Canada would assert the right to control all shipping, to prescribe standards of vessel construction, navigation and operation, and to prohibit, if Canada deemed it necessary, the free passage of vessels in those waters. Additionally, the legislation seeks to authorize the establishment of exclusive Canadian fisheries in areas of the high seas beyond 12 miles, such as the Gulf of St. Lawrence and the Bay of Fundy, and of a 12-mile territorial sea off Canada's coasts.

International law provides no basis for these proposed unilateral extensions of jurisdictions on the high seas, and the United States can neither accept nor acquiesce in the assertion of such jurisdiction.

We are concerned that this action by Canada if not opposed by us, would be taken as precedent in other parts of the world for other unilateral infringements of the freedom of the seas. If Canada had the right to claim and exercise exclusive pollution and resources jurisdiction on the high seas, other countries could assert the right to exercise jurisdiction for other purposes, some reasonable and some not, but all equally invalid according to international law. Merchant shipping would be severely restricted, and naval mobility would be seriously jeopardized. The potential for serious international dispute and conflict is obvious.

The United States has long sought international solutions rather than national approaches to problems involving the high seas. We are working for appropriate action within the United Nations framework looking toward the conclusion of a new international treaty dealing with the limit of the territorial sea, freedom of transit through and over international straits and defining preferential fishing rights for coastal states on the high seas.

We are also seeking new international means for controlling pollution on the high seas. Last fall 47 countries, including the United States and Canada, participated in the preparation of two international conventions establishing the right of a coastal state to take certain limited anti-pollution measures against vessels on the high seas, and also imposing strict liability upon the owners of vessels responsible for pollution.

These conventions which the United States has recently signed were concluded under U.N. auspices at Brussels. Other international approaches to control of pollution are underway at NATO and the U.N. Moreover, the United States is acutely aware of the peculiar ecological nature of the Arctic region, and the potential dangers of oil pollution in that area. The Arctic is a region important to all nations in its unique environment, its increasing significance as a world trade route and as a source of natural resources. We believe the Arctic beyond national jurisdiction should be subject to internationally agreed rules protecting its assets, both living and non-living, and have noted with pleasure the Canadian Prime Minister's public statement that Canada would be prepared to enter into multilateral efforts to develop agreed rules of environmental protection. To this end, we intend shortly to ask other interested states to join in an international conference designed to establish rules for the Arctic beyond national jurisdiction by international agreement. We would be pleased if Canada were to join us in organizing such a conference.

We regret that the Canadian Government, while not excluding these cooperative international approaches to our mutual problems involving the oceans, now proposes to take unilateral action to assert its own jurisdiction and establish its own rules pending the conclusion of international agreements satisfactory to it. For the reasons indicated earlier the United States can not accept these unilateral jurisdictional assertions and we have urged the Canadian Government to defer making them effective while cooperating in efforts promptly to reach internationally agreed solutions.

If, however, the Canadian Government is unwilling to await international agreement, we have urged that in the interest of avoiding a continuing dispute and undermining our efforts to achieve international agreement, that we submit our differences regarding pollution and exclusive fisheries jurisdiction beyond 12 miles to the International Court of Justice, the forum where disputes of this nature should rightfully be settled. Canada's action last week excluded such disputes from its acceptance of the International Court's compulsory jurisdiction. However, such action only prevents Canada from being forced into the Court. It does not preclude Canada voluntarily joining with us in submitting these disputes to the Court or an appropriate chamber of the Court.

With respect to the 12-mile limit on the territorial sea, we have publicly indicated our willingness to accept such limit, but only as part of an agreed international treaty also providing for freedom of passage through and over international straits.

The history of U.S.-Canadian relations is unique in world affairs for its closeness and cooperation. We are confident that, in this spirit, our two countries will continue to resolve our differences amicably and with mutual understanding.

* * *

SUMMARY OF CANADIAN NOTE OF APRIL 16

TABLED BY THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS

IN THE HOUSE APRIL 17

The Canadian Government is unable to accept the views of the United States Government concerning the Arctic Waters Pollution Prevention Bill and the amendments to the Territorial Sea and Fishing Zones Act, and regrets that the United States is not prepared to accept or acquiesce in them. The Canadian Government cannot accept in particular the view that international law provides no basis for the proposed measures. For many years, large numbers of states have asserted various forms of limited jurisdiction beyond their territorial sea over marine areas adjacent to their coasts. The position of the United States Government is that the waters beyond a three-mile limit are high seas and that no state has a right to exercise exclusive pollution or resources jurisdiction on the high seas beyond a three-mile territorial sea. The Canadian Government does not accept this view which indeed the United States itself does not adhere to in practice. For example, as early as 1790, at a time when the international norm for the breadth of the territorial sea was without question three miles, the United States claimed jurisdiction up to twelve miles for customs purposes and enacted appropriate enforcement legislation, which is still in force. Since 1935 the United States has claimed the

authority to extend customs enforcement activities as far out to sea as 62 miles, in clear contradiction of applicable international law. In 1966, the United States established exclusive fisheries jurisdiction beyond its three-mile territorial sea extending out to twelve miles from shore, and the United States has just passed analogous legislation asserting exclusive pollution control jurisdiction beyond its three-mile territorial sea and up to twelve miles. Canada reserves to itself the same rights as the United States has asserted to determine for itself how best to protect its vital interests, including in particular its national security. It is the further view of the Canadian Government that a danger to the environment of a state constitutes a threat to its security. Thus the proposed Canadian Arctic Waters Pollution Prevention Legislation constitutes a lawful extension of a limited form of jurisdiction to meet particular dangers, and is of a different order from unilateral interferences with the freedom of the high seas such as, for example, the atomic tests carried out by the United States and other states which, however necessary they may be, have appropriated to their own use vast areas of the high seas and constituted grave perils to those who would wish to utilize such areas during the period of the test blast. The most recent example of such a test by the United States and its consequences for the freedom of the high seas, as was pointed out by some governments at that time, occurred in October 1969 when the United States warned away shipping within a 50-mile radius of the test it was conducting at Amchitka Island. The proposed anti-pollution legislation, proposed fisheries protection legislation and the proposed 12-mile territorial sea consititute a threat to no state and a peril to no one.

It is a well-established principle of international law that customary international law is developed by state practice. Recent and

important instances of such state practice on the law of the sea are, for example, the Truman Proclamation of 1945 proclaiming United States jurisdiction over the continental shelf and the unilateral establishment in 1966 by the United States of exclusive fishing zones. Overwhelming evidence that international law can be and is developed by state practice lies in the fact that in 1958, at the time of the first of recent failures of the international community to reach agreement on the breadth of the territorial sea, some 14 states claimed a 12-mile territorial sea, whereas by 1970 some 45 states have established a 12-mile territorial sea and 57 states have established a territorial sea of 12 miles or more. Indeed, the three-mile territorial sea, now claimed by only 24 countries, was itself established by state practice.

The United States Government is aware of the major efforts made by Canada at the 1958 and 1960 Geneva Law of the Sea Conferences to bring about an agreed rule of law on the breadth of the territorial sea and on the breadth of contiguous zones for the exercise of various other types of limited jurisdiction. Subsequent to the failure of the 1958 and 1960 conferences Canada joined with other countries in a further extensive and vigorous multilateral campaign to bring about agreement on those questions, but these efforts failed because the United States ultimately declined to participate in them. In 1964, when Canada passed legislation establishing a nine-mile contiguous fishing zone, the United States objected to it, only to follow suit two years later, thereby confirming its acquiescence in both the substance and the manner of Canada's action. In discussions between Canada and the United States from time to time over the last ten years, Canada has made clear its serious concern over the unresolved questions of the breadth of the

territorial sea and the rights of coastal states to assert limited forms of jurisdiction beyond the territorial sea for the purpose of protecting their vital interests. With respect to the Arctic Waters Pollution Prevention Bill, the Canadian Delegation at the November 1967 Brussels I.M.C.O. Conference made strenuous efforts to bring about international agreement on effective pollution prevention measures, but the results of that conference fell short of effective protection for coastal states and the world's marine environment.

It is well known that Canada takes second place to no nation in pressing for multilateral solutions to problems of international law, and that Canada has repeatedly and consistently shown its good faith by its continuous efforts to produce agreed rules of law. The Canadian Government is, however, determined to fulfil its fundamental responsibilities to the Canadian people and to the international community for the protection of Canada's offshore marine environment and its living resources, and the proposed legislation is directed to these ends.

The Canadian Government has long been concerned about the inadequacies of international law in failing to give the necessary protection to the marine environment and to ensure the conservation of fisheries resources. The proposed anti-pollution legislation is based on the overriding right of self-defence of coastal states to protect themselves against grave threats to their environment. Traditional principles of international law concerning pollution of the sea are based in the main on ensuring freedom of navigation to shipping states, which are now engaged in the large scale carriage of oil and other potential pollutants. Such traditional concepts are of little or no relevance anywhere in the world if they can be cited as precluding action by a

coastal state to protect this environment. Such concepts are particularly irrelevant, however, to an area having the unique characteristics of the Arctic, where there is an intimate relationship between the sea, the ice and the land, and where the permanent defilement of the environment could occur and result in the destruction of whole species. It is idle, moreover, to talk of freedom of the high seas with respect to an area, large parts of which are covered with ice throughout the year, other parts of which are covered with ice most of each year, and where the local inhabitants use the frozen sea as an extension of the land to travel over it by dogsled and snowmobile far more than they can use it as water. While the Canadian Government is determined to open up the Northwest Passage to safe navigation, it cannot accept the suggestion that the Northwest Passage constitutes high seas.

In these circumstances the Canadian Government is not prepared to await the gradual development of international law, either by other states through their practice nor through the possible development of rules of law through multilateral treaties. The Canadian Government has repeatedly made clear that it is fully prepared to participate actively in multilateral action aimed at producing agreed safety and anti-pollution standards and protection of the living resources of the sea but is not prepared to abdicate in the meantime its own primary responsibilities concerning these questions.

With respect to the Bill which would authorize the establishment of a 12-mile territorial sea off Canada's coasts, the large number of coastal states now claiming a territorial sea of 12 miles or more, and the recent efforts of the United States directed towards a rule of law on the territorial sea, rights of passage and fisheries jurisdiction, provide

the best evidence of the validity of the Canadian position on this question. The Canadian Government is aware of United States interest in ensuring freedom of transit through international straits, but rejects any suggestion that the Northwest Passage is such an international strait. The widespread interest in opening up the Northwest Passage to commercial shipping and the well-known commitment of the Canadian Government to this end are themselves ample proof that it has not heretofore been possible to utilize the Northwest Passage as a route for shipping. The Northwest Passage has not attained the status of an international strait by customary usage nor has it been defined as such by conventional international law. The Canadian Government reiterates its determination to open up the Northwest Passage to safe navigation for the shipping of all nations subject, however, to necessary conditions required to protect the delicate ecological balance of the Canadian Arctic.

Canada's new reservation to its acceptance of the compulsory jurisdiction of the international court does not in any way reflect lack of confidence in the court but takes into account the limitations within which the court must operate and the deficiencies of the law which it must interpret and apply. Canada's readiness to submit to the international judicial process remains general in scope and is subject only to certain limited and clearly defined exceptions rather than to a general exception which can be defined at will so as to include any particular matter.

It is the earnest hope of the Canadian Government that it will be possible to achieve internationally accepted rules for Arctic navigation within the framework of Canada's proposed legislation. It is recognized that the interests of other states are inevitably affected in any exercise of jurisdiction over areas of the sea. These interests

have been taken into account in drafting this legislation; Canada has, for instance, provided that naval vessels and other ships owned by foreign governments may be exempted from the application of Canadian anti-pollution regulations if the ships in question substantially meet Canadian standards. Canada will give the interests of other states, including the United States, further consideration in entering into consultations with them before promulgating safety regulations under the Arctic Waters Bill.

The Canadian Government is pleased to note that the United States confirms that it is acutely aware of the peculiar ecological nature of the Arctic region and the potential dangers of oil pollution in that area. The Canadian Government agrees that the Arctic is a "region important to all nations in its unique environment, its increasing significance as a world trade route, and as a source of natural resources". The Canadian Government does not, however, agree that the Arctic as a whole should be subjected to an international regime protecting its assets both living and non-living, if that is what is proposed by the United States. Canada's sovereignty over the islands of the Arctic Archipelago is not of course, in issue, nor are Canada's sovereign rights over its northern continental shelf and the Canadian Government assumes that the United States Government is not suggesting an international regime to cover these environments (nor the land mass and adjacent submarine resources of Alaska). With respect to the waters of the Arctic Archipelago, the position of Canada has always been that these waters are regarded as Canadian. While Canada would be pleased to discuss with other stated international standards of navigation safety and environmental protection to be applicable to the waters of the Arctic, the Canadian Government cannot accept any suggestion that Canadian waters should be internationalized. The Canadian Government

notes that the United States intends shortly to ask other interested States to join in an international conference designed to establish internationally agreed rules protecting the living and non-living assets of the Arctic beyond national jurisdiction, and notes that the United States Government would be pleased to join the Canadian Government in such a conference. Before the Canadian Government can express a definitive view on this question, further information will be required as to the scope, nature and territorial application of the rules the United States proposes, since the Canadian Government obviously cannot participate in any international conference called for the purpose of discussing questions falling wholly within Canadian domestic jurisdiction. With regard to matters properly of an international character, the Prime Minister took the lead in his statement to Canadian Parliament on October 24 last, in inviting the international community to join Canada in promoting a new concept, an international legal regime to ensure to human beings the right to live in a wholesome natural environment.

With respect to the proposed legislation permitting the establishment of exclusive fishing zones, it is the considered view of the Canadian Government that neither existing customary international law nor contemporary conventional international law are adequate to prevent the continuing and increasingly rapid depletion of the living resources of the sea. The Canadian Government is aware of the proposals of the United States and other states concerning possible solutions to this problem through a multilateral approach, and intends to participate actively and constructively in any conferences to be held to consider such questions. The Government in the meantime proposes to take all measures necessary for the protection and conservation of the living resources of the sea adjacent

to Canada's coast. It is Canada's expectation that other states will take similar action since it is becoming increasingly apparent that there is no other effective way of preventing the rapid depletion of the living resources of the marine environment.

The Canadian Government is pledged to the development of the use of Canada's Arctic waters for the encouragement and expansion of Canada's northern economy and has adopted a functional and constructive approach to these questions which does not interfere with and indeed can facilitate the legitimate activities of others. The two bills reflect the determination of the Canadian Government to fulfil its responsibilities to its own people and to the international community to preserve the ecological balance of Canada and to protect and conserve the living resources of its marine environment.

The Canadian Government reaffirms its faith in the spirit of co-operation which Canada and the United States have shown throughout so much of the history of their relations and is confident that it will be possible to resolve their differences amicably and with mutual understanding.

UNITED STATES of America, Plaintiff-Appellee-Cross Appellant,

v.

Louis M. RAY and Acme General Contractors, Inc., Defendants-Appellants-Cross Appellees,

Atlantis Development Corporation, Ltd., Intervenor-Appellant-Cross Appellee.

No. 27888.

United States Court of Appeals, Fifth Circuit.

Jan. 22, 1970.

As Modified April 10, 1970.

Action by United States to prevent private construction on coral reefs by American defendants seeking to establish an island nation, wherein the Bahaman corporation having similar intentions intervened. The United States District Court for the Southern District of Florida, Charles B. Fulton, Chief Judge, 294 F.Supp. 532, entered decree recognizing sovereign rights of United States but denied injunction and all parties appealed. The Court of Appeals, Ainsworth, Circuit Judge, held that coral reefs formed on continental shelf of United States became part of seabed of the continental shelf and United States had exclusive right to explore and exploit the reefs and that government should have been granted injunctive relief.

Affirmed in part and reversed in part.

1. Navigable Waters ⇐38

Building of caissons on coral reefs located on continental shelf of United States and dredging material from seabed and depositing that material within caissons for commercial development of the reefs was unlawful in absence of permit from Secretary of Army. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403; Outer Continental Shelf Lands Act, §§ 1 et seq., 4(f), 43 U.S.C.A. §§ 1331 et seq., 1333(f).

2. Navigable Waters ⇐1(7)

Evidence supported finding that area of continental shelf on which coral reefs were located was navigable, in action by United States to enjoin commercial construction on coral reefs which were completely submerged except when their highest projections were fleetingly visible while awash at mean low tide. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403; Outer Continental Shelf Lands Act, §§ 1 et seq., 4(f), 43 U.S.C.A §§ 1331 et seq., 1333(f).

3. Navigable Waters ⇐26(1)

Evidence established that commercial buildings which defendants intended to construct on coral reefs would interfere with exclusive rights of United States under Geneva Convention on the

Continental Shelf to explore continental shelf and exploit its natural resources, in action by United States to enjoin such construction. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403; Outer Continental Shelf Lands Act, §§ 1 et seq., 4(f), 43 U.S.C.A. §§ 1331 et seq., 1333(f).

4. Navigable Waters ⇐2

That portion of body of water is not navigable does not affect legal character of general navigability of area within statute prohibiting construction in navigable waters of United States unless work has been authorized by Secretary of Army. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403.

5. Waters and Water Courses ⇐89

"Bed" in body of water is land below ordinary high-water mark.

See publication Words and Phrases for other judicial constructions and definitions.

6. Navigable Waters ⇐36

Coral reefs formed on continental shelf of United States became part of seabed of the continental shelf and United States had exclusive right to explore and exploit the reefs. Outer Continental Shelf Lands Act, § 3(a), 43 U.S.C.A. § 1332(a).

7. Treaties ⇐11

To extent that any of terms of Outer Continental Shelf Lands Act were inconsistent with later adopted Geneva Convention on Continental Shelf, they should be considered superseded. Outer Continental Shelf Lands Act, § 3(a), 43 U.S.C.A. § 1332(a).

8. Injunction ⇐33

Neither ownership nor possession is necessary requisite for granting of injunctive relief.

9. Navigable Waters ⇐26(1), 36(5)

Where coral reefs on continental shelf served as spawning ground for fish and attracted water sports enthusiasts and marine researches, organism on reefs contained substances useful in pharmacology, reefs protected island waters and had been included as part of national monument and defendants' filling reefs would kill coral and constitute navigational hazard, federal government which did not own reefs was entitled to permanent injunction against interference with them. Outer Continental Shelf Lands Act, § 3(a), 43 U.S.C.A. § 1332(a); Act Oct. 18, 1968, 82 Stat. 1188.

10. Courts ⇐262.3(1), 264(2), 288, 302

Federal district court had jurisdiction of action by United States to enjoin defendants from changing coral reefs on continental shelf on basis that it was an action by the United States and was case or controversy arising under Constitution, laws or treaties of United States involving more than $10,000 and under the court's general equity and ancillary jurisdiction and under the Outer Continental Shelf Lands Act jurisdiction and under the Outer Continental Shelf Lands Act. 28 U.S.C.A. §§ 1331, 1345; Outer Continental Shelf Lands Act, § 4(b), 43 U.S.C.A. § 1333(b).

Louis W. Adams, Fort Lauderdale, Fla., J. Francis Hayden, New York City, for Atlantis Development Corp.

Charles E. Davis, Fishback, Davis, Dominick & Salfi, Orlando, Fla., for Louis M. Ray and Acme General Contractors, Inc.

Aaron A. Foosaner, First Asst. U. S. Atty., William A. Meadows, Jr., U. S. Atty., Miami, Fla., Shiro Kashiwa, Asst. Atty. Gen., George S. Swarth, Raymond N. Zagone, Jonathan I. Charney, Attys., Dept. of Justice, Washington, D. C., for the United States; John R. Stevenson, Legal Adviser, Dept. of State, Washington, D. C., of counsel.

Before WISDOM, GEWIN and AINSWORTH, Circuit Judges.

AINSWORTH, Circuit Judge:

Triumph and Long Reefs are two coral reefs which lie in international waters about four and one-half miles off the

southeast coast of Florida, near Miami, and are the subject of this interesting and fantastic controversy between two rival private claimants and the United States. To the District Court (Judge Charles B. Fulton), the case was reminiscent of a fairy tale.[1] To the defendants, the reefs were to become an island nation to be known as Grand Capri Republic; to intervenor, a new sovereign country would be established on the reefs, to be named Atlantis, Isle of Gold. Defendants would organize some semblance of a defense but have no intention of attacking the Coast Guard or Navy. Intervenor envisioned the reefs as a property worth one billion dollars, where a post office, building offices, stamp department and foreign office would be built, as well as a government palace and congress.

The fairy tale has an unhappy ending, with the granting by the District Court of the petition of the United States for a permanent injunction against the activities of defendants and intervenor on these reefs, and by the action which we take here in affirming in part and reversing in part the judgment of the trial court. The dreams of the separate groups for a new nation must perish, like the lost continent "Atlantis," beneath the waves and waters of the sea which constantly submerge the reefs.

The United States brought this action for injunctive relief against Louis M. Ray and Acme General Contractors, Inc. alleging interference with the rights of the United States on coral reefs located on its Continental Shelf on two grounds. In the first count the Government alleged that the activities of these defendants in building caissons on the reefs, dredging material from the seabed and depositing that material within the caissons was causing irreparable injury to the reefs which are subject to the control of the United States, and that these activities constituted trespass. The second count alleged that these activities were being unlawfully conducted without the required authorization of the Secretary of the Army. See 33 U.S.C. § 403; 43 U.S.C. § 1333(f). A preliminary injunction was granted against defendants. Thereafter Atlantis Development Corporation, Ltd., which was also contemplating commercial development of the reefs, was allowed by this Court to intervene in the proceedings.[2] Intervenor filed a cross claim, alleging its superior title to the property by virtue of discovery of the reefs by its predecessor. After an extensive nonjury trial, at which numerous witnesses, lay and expert, testified and at which voluminous exhibits were introduced, the District Court adopted all of the facts stipulated by the parties and further found:

"1. Triumph and Long Reefs are a part of the Continental Shelf extending seaward from the East Coast of Florida, and all waters overlying the reefs do not exceed one hundred fathoms in depth.

"2. Triumph and Long Reefs are completely submerged at all times, except when their highest projections are fleetingly visible while awash at mean low water. Accordingly, Triumph and Long Reefs are part of the 'seabed' and 'subsoil' of the Outer Continental Shelf within the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. § 1331, et seq.

1. Judge Fulton quoted the following as appropriate to his remark:
"They thought I was crazy when I bought the island. I said it was a bargain * * *.
They thought it was anarchy to fly my own personal flag * * *."
Donleavy, J. P.; "At Longitude and Latitude," in Meet My Maker the Mad Molecule, pp. 26–28; Delacorte Press, N. Y. (1960); United States v. Ray, S.D.Fla., 1969, 294 F.Supp. 532.

2. Atlantis Development Corporation v. United States, 5 Cir., 1967, 379 F.2d 818.

"3. These reefs, together with the organisms attached thereto, are 'natural resources' within the Outer Continental Shelf Lands Act, and the Geneva Convention on the Continental Shelf.

"4. The caissons positioned by Ray and the jack platform construction or 'boathouses' built on pilings proposed by Atlantis constitute 'artificial islands and fixed structures * * * erected * * * for the purpose of * * * developing' the reefs, within the Outer Continental Shelf Lands Act."

The District Court denied all claims of defendants and intervenor, granted the claim of the Government under its second count, but denied the Government's claim of trespass under the first count. In so doing, the District Court recognized the sovereign rights of the United States, but concluded that those rights are limited as the claimed interest of the United States is something less than a property right, consisting of neither ownership nor possession, and consequently not supporting a common law action for trespass *quare clausum fregit*.

All parties have appealed. The Government's appeal is limited to the Court's denial of an injunction on count one of the amended complaint. We affirm the District Court's factual findings and its grant of injunctive relief under the Government's second count. However, we reverse the Court's denial of injunctive relief on the first count of the Government's amended complaint.[3]

LACK OF STATUTORY PERMIT ISSUE:

The District Court correctly concluded that the past and proposed activities of defendants and intervenor were unlawful in the absence of a statutory permit from the Secretary of the Army. Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, prohibits construction in navigable waters of the United States unless the work has been "recommended by the Chief of Engineers and authorized by the Secretary of the Army." The authority of the Secretary of the Army is extended to the Outer Continental Shelf by Section 1333(f) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq.:

"The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to artificial islands and fixed structures located on the outer Continental Shelf."

[1–4] It is undisputed that defendants and intervenor did not obtain permission or authority for their activities on the reefs. The argument is made that the area is not navigable and therefore not governed by Section 1333(f) of the Outer Continental Shelf Lands Act. Apparently the Court did not, nor do we, deem it necessary to predicate the injunction on navigability of waters covering the reefs, although a specific finding of navigability was made. The quoted section extends the authority of the Secretary to "fixed structures located on the outer Continental Shelf" without regard to the navigability of the particular area involved. If it were necessary to find navigability, however, the evidence amply supports such a finding,[4]

3. The Legal Adviser of the Department of State joined in the brief of the United States "as an expression of the official views of that Department concerning the United States' rights and obligations under the Convention on the Continental Shelf." The United States emphasizes in its brief "that it would be contrary to the interests of the United States to claim, at this time, in a domestic court, more rights for the United States over its continental shelf than are necessary to prevent damage to the interests involved in the particular case." (Reply br. p. 3.)

4. The fact that a portion of a body of water is nonnavigable does not affect the legal character of general navigability of the area. In this respect see United States v. Turner, 5 Cir., 1949, 175 F.2d 644, 647, cert. den., 338 U.S. 851, 70 S.Ct. 92, 94 L.Ed. 521.

and fully establishes that the structures herein involved interfere with the exclusive rights of the United States under the Convention to explore the Continental Shelf and exploit its natural resources. Under the circumstances we do not decide what the result would be if the structures did not interfere with the rights of the United States as recognized by the Convention, our decision being limited to the particular facts of this case.

THE TRESPASS ISSUE:

It is clear that the reefs in question are within the area designated as the Continental Shelf by both national (Outer Continental Shelf Lands Act, supra) and international (Geneva Convention on the Continental Shelf,[5] 15 U.S.T. 473, executed in 1958 and effective in 1964) law.

The Outer Continental Shelf Lands Act, 43 U.S.C. § 1331(a), in pertinent part provides:

> "The term 'outer Continental Shelf' means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301[6] of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control."

Article 1 of the international Convention on the Continental Shelf similarly reads:

> "For the purpose of these articles, the term 'continental shelf' is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; * * *" 15 U.S.T. 473.

[5] The evidence shows that the reefs are completely submerged at mean high water,[7] and as the Court specifically found, "at all times, except when their highest projections are fleetingly visible while awash at mean low water." Thus the reefs are contemplated within the definition of the Outer Continental Shelf Lands Act and the Geneva Convention on the Continental Shelf, if they meet the definition of "seabed" or "subsoil" contained therein. Webster defines "seabed" as "lands underlying the sea."[8] The evidence establishes that the term "seabed" is commonly understood to be any terrain below the high water line. The federal and common law comports with this understanding in defining the "bed" of a body of water as lands below the ordinary high water mark. See United States v. Chicago, M., St. P. & P. R. Co., 312 U.S. 592, 597, 61 S.Ct. 772, 313 U.S. 543, 61 S.Ct. 772, 85 L.Ed. 1064 (1941); Alabama v. Georgia, 64 U.S. (23 Howard) 505, 515, 16 L.Ed. 556 (1859); Borough of Ford City, Pennsylvania v. United States, W.D.Pa., 1963, 213 F.Supp. 248, 251; Yellowstone Pipe Line Company v. Kuczynski, 9 Cir., 1960, 283 F.2d 415, 421. The record shows that on the death of the coral, which has a natural predilection for cementing itself onto preexisting rocky structures, its skeletal remains become

5. The Convention grew out of the 1958 United Nations Conference on the Law of the Sea at Geneva, and was developed by the International Law Commission of the United Nations.

6. The referred-to section is part of the Submerged Lands Act, 43 U.S.C. § 1301:
"When used in this chapter—
(a) the term 'lands beneath navigable waters' means—
* * * * *
(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide * * *."

7. "Mean high water" has been defined to be the average height of all high waters over a given location during a span of 18.6 years. Borax Consolidated v. City of Los Angeles, 269 U.S. 10, 26, 27, 56 S.Ct. 23, 80 L.Ed. 9 (1935); United States v. California, 382 U.S. 448, 450, 86 S.Ct. 607, 15 L.Ed.2d 517 (1966).

8. Webster's New International Dictionary (3d ed. 1961).

part of the seabed of the Continental Shelf. The District Court's finding that the reefs are part of the "seabed" of the Shelf is fully supported by substantial evidence of record.

[6] The same national and international laws (The Outer Continental Shelf Lands Act and the Geneva Convention on the Continental Shelf) explicitly recognize the sovereign rights of the United States and the exclusiveness of those rights to explore the Shelf and exploit its natural resources.

The Outer Continental Shelf Lands Act (43 U.S.C. § 1332(a)) states:

> "It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

[7] To the extent that any of the terms of the Act are inconsistent with the later adopted Geneva Convention on the Continental Shelf, they should be considered superseded. See Cook v. United States, 288 U.S. 102, 118–119, 53 S.Ct. 305, 77 L.Ed. 641 (1933). But there is nothing in the pertinent language of the Geneva Convention on the Continental Shelf which detracts from or is inconsistent with the Outer Continental Shelf Lands Act. To the contrary, the Geneva Convention confirms and crystallizes the exclusiveness of those rights, particularly with reference to the natural resources of the Shelf.

Article 2 of the Geneva Convention on the Continental Shelf provides:

> "1. The coastal State [9] exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
>
> "2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.
>
> "3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
>
> "4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed 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 seabed or are unable to move except in constant physical contact with the seabed or the subsoil."

It is unnecessary for us to decide whether the Outer Continental Shelf Lands Act, Section 1332(a), supra (which does not limit the nation's "jurisdiction, control, and power of disposition" to the natural resources of the Shelf), alone confers rights sufficient to authorize the injunctive relief sought. The right of the United States to control those resources is implicit in Article 2, paragraphs 1, 2 and 3, supra, of the Geneva Convention on the Continental Shelf, and explicitly recognized in the Submerged Lands Act, 43 U.S.C. § 1301 et seq. This Act further provides (43 U.S.C. § 1302) the definition of "natural resources" of the Continental Shelf:

> "Nothing in this chapter shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in Section 1301 of this title, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is confirmed."

9. The term "State" is used here in the sense of "Nation."

Section 1301, referred to within the above-quoted section, defines "natural resources" as including, "*without limiting the generality thereof*, oil, gas, and all other minerals, and *fish*, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, *and other marine animal* and plant *life* * * *." (Emphasis supplied.) 43 U.S.C. § 1301(e).

Article 2, paragraph 4, of the Geneva Convention on the Continental Shelf includes in its definition of "natural resources" both living and non-living [10] resources, for it defines the term as consisting of "* * * mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species. * * *"

Having thus concluded that the United States has the exclusive right for purposes of exploration and exploitation of the reefs, there remains only the question of whether injunctive relief was improperly denied to the Government on its first count which alleged trespass.

Although the complaint is inaccurately framed in terms of trespass in count one, the Government repeatedly stresses that it is not claiming ownership of the reefs. We do not question the District Court's conclusion that the Government's interest, being something less than fee simple, cannot support a common law action for trespass *quare clausum fregit*. But we do not understand that claim to seek such a remedy, despite the language in which the petition is couched. Damages, an inseparable element in the common law action for trespass, are not sought here, and the only relief requested is restraint from interference with rights to an area which appertains to the United States and which under national and international law is subject not only to its jurisdiction but its control as well. It is in this light that we consider the allegations of amended count one.

[8] Neither ownership nor possession is, however, a necessary requisite for the granting of injunctive relief. This principle is implicit in the companion decisions of the Supreme Court, United States v. State of Louisiana, 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 1216 (1950); United States v. State of Texas, 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221 (1950), in which injunctive relief was granted to protect "paramount rights" of the United States beyond the territorial limits of Louisiana and Texas, to distances farther out in international waters than that involved here and at a time when those rights had not yet been statutorily established.[11]

In United States v. Republic Steel Corp., 362 U.S. 482, 80 S.Ct. 884, 4 L.Ed.2d 903 (1960), the Supreme Court did not consider lack of specific statutory authority a bar to injunctive relief for the United States in an action alleging activities which resulted in obstruction to commerce in a navigable inland river. The test for such relief, the Court said, citing United States v. San Jacinto Tin Co., 125 U.S. 273, 8 S.Ct. 850, 31 L.Ed. 747, was "whether the United States had an interest to protect or defend." 362 U.S. at 492, 80 S.Ct. at 890. See also Wyandotte Transportation Co. v. United States, 389 U.S. 191, 88 S.Ct. 379, 19 L.Ed. 407 (1967); United States v. City and County of San Francisco, 310 U.S. 16, 60 S.Ct. 749, 84 L.Ed. 1050 (1940).

[9] The evidence overwhelmingly shows that the Government has a vital interest, from a practical as well as an aesthetic viewpoint, in preserving the reefs for public use and enjoyment.

10. Such a specific declaration renders immaterial the controversy of whether the coral composing the reefs is living or dead. Nevertheless, there is abundant evidence to corroborate the District Court's finding that the living corals attached to the reefs are sedentary.

11. Injunction from interferences with the natural resources over which the United States was claiming "sovereign rights" extended to an area 27 miles from the coast in the case against Louisiana, and to the outer edge of the Outer Continental Shelf in the case against Texas (anywhere from 75 to 150 miles of the coast).

The protective underwater crannies of the reefs serve as a haven and spawning ground for myriad species of tropical and game fish. The unique and spectacular formations of the submerged coral deposits attract scores of water sports enthusiasts, skin divers, nature students, and marine researchers. Certain organisms living on the reefs contain substances useful in pharmacology. The reefs protect the inland waters from the heavy wave action of the open sea, thus making the area conducive to boating and other water sports. Congress, intent on conserving the value and natural beauty of the area, recently enacted the Biscayne National Monument Bill establishing the area, which includes both Triumph and Long Reefs, as a national monument.[12] The reefs are a part of the series of coral reefs which dot the coastal and international waters extending out from southeastern Florida. Slightly to the south and west of the Triumph and Long Reefs, and straddling the three-mile dividing line between federal and state waters, is the huge federal-approved John Pennekamp Coral Reef State Park, also known as Key Largo Coral Reef Preserve. The fact that the area is worthy of preservation is abundantly demonstrated by the evidence. But more importantly, the evidence shows that protective action by the Government to prevent despoliation of these unique natural resources is of tantamount importance. There was convincing evidence that the activities of defendants in dredging and filling the reefs has and would continue to kill the sensitive corals by smothering them; that the construction would constitute a navigational hazard to pleasure craft, and would destroy a very productive marine area and other natural resources. Obviously the United States has an important interest to protect in preventing the establishment of a new sovereign nation within four and one-half miles of the Florida Coast, whether it be Grand Capri Republic or Atlantis, Isle of Gold.

The rights of the United States in and to the reefs and the vital interest which the Government has in preserving the area require full and permanent injunctive relief against any interference with those rights by defendants and intervenor.

[10] We find without merit the additional errors alleged, particularly the challenge to the District Court's jurisdiction. The District Court held, and we agree, that jurisdiction lies under 28 U.S.C. § 1345 (an action by the United States); under 28 U.S.C. § 1331 (a case or controversy arising under the Constitution, laws or treaties of the United States involving more than $10,000); under the Court's general equity and ancillary jurisdiction; and under 43 U.S.C. § 1333(b) (the Outer Continental Shelf Lands Act).

Affirmed in part, reversed in part.

12. Pub.L. 90-606, 82 Stat. 1188, October 18, 1968.

August 3, 1970

DRAFT UNITED NATIONS CONVENTION

ON

THE INTERNATIONAL SEABED AREA

Working Paper

The attached draft of a United Nations Convention on the International Seabed Area is submitted by the United States Government as a working paper for discussion purposes.

The draft Convention and its Appendices raise a number of questions with respect to which further detailed study is clearly necessary and do not necessarily represent the definitive views of the United States Government. The Appendices in particular are included solely by way of example.

[Ed. Note: Appendices A, B, and C have not been reproduced.]

UNITED NATIONS CONVENTION ON THE
INTERNATIONAL SEABED AREA

CHAPTER I

BASIC PRINCIPLES

ARTICLE 1

1. The International Seabed Area shall be the common heritage of all mankind.

2. The International Seabed Area shall comprise all areas of the seabed and subsoil of the high seas* seaward of the 200 meter isobath adjacent to the coast of continents and islands.

3. Each Contracting Party shall permanently delineate the precise boundary of the International Seabed Area off its coast by straight lines not exceeding 60 nautical miles in length, following the general direction of the limit specified in paragraph 2. Such lines shall connect fixed points at the limit specified in paragraph 2, defined permanently by coordinates of latitude and longitude. Areas between or landward of such points may be deeper than 200 meters. Where a trench or trough deeper than 200 meters transects an area less than 200 meters in depth, a straight boundary line more than 60 nautical miles in length, but not exceeding the lesser of one fourth of the length of that part of trench or trough transecting the area 200 meters in depth or 120 nautical miles, may be drawn across the trench or trough.

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*NOTE: The United States has simultaneously proposed an international Convention which would, inter alia, fix the boundary between the territorial sea and the high seas at a maximum distance of 12 nautical miles from the coast.

4. Each Contracting Party shall submit the description of the boundary to the International Seabed Boundary Review Commission within five years of the entry into force of this Convention for such Contracting Party. Boundaries not accepted by the Commission and not resolved by negotiation between the Commission and the Contracting Party within one year shall be submitted by the Commission to the Tribunal in accordance with Section E of Chapter IV.

5. Nothing in this Article shall affect any agreement or prejudice the position of any Contracting Party with respect to the delimitation of boundaries between opposite or adjacent States in seabed areas landward of the International Seabed Area, or with respect to any delimitation pursuant to Article 30.

ARTICLE 2

1. No State may claim or exercise sovereignty or sovereign rights over any part of the International Seabed Area or its resources. Each Contracting Party agrees not to recognize any such claim or exercise of sovereignty or sovereign rights.

2. No State has, nor may it acquire, any right, title, or interest in the International Seabed Area or its resources except as provided in this Convention.

(NOTE: The preceding Article is not intended to imply that States do not currently have rights under, or consistent with, the 1958 Geneva Convention on the Continental Shelf.)

ARTICLE 3

The International Seabed Area shall be open to use by all States, without discrimination, except as otherwise provided in this Convention.

ARTICLE 4

The International Seabed Area shall be reserved exclusively for peaceful purposes.

ARTICLE 5

1. The International Seabed Resource Authority shall use revenues it derives from the exploration and exploitation of the mineral resources of the International Seabed Area for the benefit of all mankind, particularly to promote the economic advancement of developing States Parties to this Convention, irrespective of their geographic location. Payments to the Authority shall be established at levels designed to ensure that they make a continuing and substantial contribution to such economic advancement, bearing in mind the need to encourage investment in exploration and exploitation and to foster efficient development of mineral resources.

2. A portion of these revenues shall be used, through or in cooperation with other international or regional organizations, to promote efficient, safe and economic exploitation of mineral resources of the seabed; to promote research on means to protect the marine environment; to advance other international efforts designed to promote safe and efficient use of the marine environment; to promote development of knowledge of the International Seabed Area; and to provide technical assistance to Contracting Parties or their nationals for these purposes, without discrimination.

ARTICLE 6

Neither this Convention nor any rights granted or exercised pursuant thereto shall affect the legal status of the superjacent waters as high seas, or that of the air space above those waters.

ARTICLE 7

All activities in the marine environment shall be conducted with reasonable regard for exploration and exploitation of the natural resources of the International Seabed Area.

ARTICLE 8

Exploration and exploitation of the natural resources of the International Seabed Area must not result in any unjustifiable interference with other activities in the marine environment.

ARTICLE 9

All activities in the International Seabed Area shall be conducted with strict and adequate safeguards for the protection of human life and safety and of the marine environment.

ARTICLE 10

All exploration and exploitation activities in the International Seabed Area shall be conducted by a Contracting Party or group of Contracting Parties or natural or juridical persons under its or their authority or sponsorship.

ARTICLE 11

1. Each Contracting Party shall take appropriate measures to ensure that those conducting activities under its authority or sponsorship comply with this Convention.

2. Each Contracting Party shall make it an offense for those conducting activities under its authority or sponsorship in the International Seabed Area to violate the provisions of this Convention. Such offenses shall be punishable in accordance with administrative or judicial procedures established by the Authorizing or Sponsoring Party.

3. Each Contracting Party shall be responsible for maintaining public order on manned installations and equipment operated by those authorized or sponsored by it.

4. Each Contracting Party shall be responsible for damages caused by activities which it authorizes or sponsors to any other Contracting Party or its nationals.

5. A group of States acting together, pursuant to agreement among them or through an international organization, shall be jointly and severally responsible under this Convention.

ARTICLE 12

All disputes arising out of the interpretation or application of this Convention shall be settled in accordance with provisions of Section E of Chapter IV.

CHAPTER II

GENERAL RULES

A. Mineral Resources

ARTICLE 13

1. All exploration and exploitation of the mineral deposits of the International Seabed Area shall be licensed by the International Seabed Resource Authority or the appropriate Trustee Party. All licenses shall be subject to the provisions of this Convention.

2. Detailed rules to implement this Chapter are contained in Appendices A, B and C.

ARTICLE 14

1. There shall be fees for licenses for mineral exploration and exploitation.

2. The fees referred to in paragraph 1 shall be reasonable and be designed to defray the administrative expenses of the International Seabed Resource Authority and of the Contracting Parties in discharging their responsibilities in the International Seabed Area.

ARTICLE 15

1. An exploitation license shall specify the minerals or categories of minerals and the precise area to which it applies. The categories established shall be those which will best promote simultaneous and efficient exploitation of different minerals.

2. Two or more licensees to whom licenses have been issued for different materials in the same or overlapping areas shall not unjustifiably interfere with each other's activities.

ARTICLE 16

The size of the area to which an exploitation license shall apply and the duration of the license shall not exceed the limits provided for in this Convention.

ARTICLE 17

Licensees must meet work requirements specified in this Convention as a condition of retaining an exploitation license prior to and after commercial production is achieved.

ARTICLE 18

Licensees shall submit work plans and production plans, as well as reports and technical data acquired under an exploitation license, to the Trustee Party or the Sponsoring Party, as appropriate, and, to the extent specified by this Convention, to the International Seabed Resource Authority.

ARTICLE 19

1. Each Contracting Party shall be responsible for inspecting, at regular intervals, the activities of licensees authorized or sponsored by it. Inspection reports shall be submitted to the International Seabed Resource Authority.

2. The International Seabed Resource Authority, on its own initiative or at the request of any interested Contracting Party, may inspect any licensed activity in cooperation with the Trustee Party or Sponsoring Party, as appropriate, in order to ascertain that the licensed operation is being conducted in accordance with this Convention. In the event the International Seabed Resource Authority believes that a violation of this Convention has occurred, it shall inform the Trustee Party or Sponsoring Party, as appropriate, and request that suitable action be taken. If, after a reasonable period of time, the alleged violation continues, the International Seabed Resource Authority may bring the matter before the Tribunal in accordance with Section E of Chapter IV.

ARTICLE 20

1. Licenses issued pursuant to this Convention may be revoked only for cause in accordance with the provisions of this Convention.

2. Expropriation of investments made, or unjustifiable interference with operations conducted, pursuant to a license is prohibited.

ARTICLE 21

1. Due notice must be given, by Notices to Mariners or other recognized means of notification, of the construction or deployment of any installations or devices for the exploration or exploitation of mineral deposits, and permanent means for giving warning of their

presence must be maintained. Any installations or devices extending into the superjacent waters which are abandoned or disused must be entirely removed.

2. Such installations and devices shall not possess the status of islands and shall have no territorial sea of their own.

3. Installations or devices may not be established where interference with the use of recognized sea lanes or airways is likely to occur.

B. Living Resources of the Seabed

ARTICLE 22

Subject to the provisions of Chapter III, each Contracting Party may explore and exploit the seabed living resources of the International Seabed Area in accordance with such conservation measures as are necessary to protect the living resources of the International Seabed Area and to maximize their growth and utilization.

C. Protection of the Marine Environment, Life and Property

ARTICLE 23

1. In the International Seabed Area, the International Seabed Resource Authority shall prescribe Rules and Recommended Practices, in accordance with Chapter V of this Convention, to ensure:

a. The protection of the marine environment against pollution arising from exploration and exploitation activities such as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations and pipelines and other devices;

b. The prevention of injury to persons, property and marine resources arising from the aforementioned activities;

c. The prevention of any unjustifiable interference with other activities in the marine environment arising from the aforementioned activities.

2. Deep drilling in the International Seabed Area shall be undertaken only in accordance with the provisions of this Convention.

D. Scientific Research

ARTICLE 24

1. Each Contracting Party agrees to encourage, and to obviate interference with, scientific research.

2. The Contracting Parties shall promote international cooperation in scientific research concerning the International Seabed Area:

a. By participating in international programs and by encouraging cooperation in scientific research by personnel of different countries;

b. Through effective publication of research programs and the results of research through international channels;

c. By cooperation in measures to strengthen the research capabilities of developing countries, including the participation of their nationals in research programs.

E. International Marine Parks and Preserves

ARTICLE 25

In consultation with the appropriate international organizations or agencies, the International Seabed Resource Authority may designate as international marine parks and preserves specific portions of the International Seabed Area that have unusual educational, scientific or recreational value. The establishment of such a park or preserve in the International Trusteeship Area shall require the approval of the appropriate Trustee Party.

CHAPTER III

THE INTERNATIONAL TRUSTEESHIP

ARTICLE 26

1. The International Trusteeship Area is that part of the International Seabed Area comprising the continental or island margin between the boundary described in Article I and a line, beyond the base of the continental slope, or beyond the base of the slope of an island situated beyond the continental slope, where the downward inclination of the surface of the seabed declines to a gradient of 1:_____.

2. Each Trustee Party shall permanently delineate the precise seaward boundary of the International Trusteeship Area off its coast by straight lines not exceeding 60 nautical miles in length, following the general direction of the limits specified in paragraph 1. Such lines shall connect fixed points at the limit specified in paragraph 1, defined permanently by coordinates of latitude and longitude. Areas between or landward of such points may have a surface gradient of less than 1:____. Where an elongate basin or plain having a surface gradient of less than 1:___ transects an area having a gradient of more than 1:____, a straight boundary line more than 60 nautical miles in length, but not exceeding the lesser of one-fourth of the length of that part of the basin transecting the area having a gradient of more than 1:___ or 120 nautical miles,* may be drawn across the basin or plain.

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* The precise gradient should be determined by technical experts, taking into account, among other factors, ease of determination, the need to avoid dual administration of single mineral deposits, and the avoidance of including excessively large areas in the International Trusteeship Area.

3. Each Trustee Party shall submit the description of its boundary to the International Seabed Boundary Review Commission within five years of the entry into force of this Convention for that Party. Boundaries not accepted by that Commission and not resolved by negotiation between the Commission and the Trustee Party within one year shall be submitted by the Commission to the Tribunal for adjudication in accordance with Section E of Chapter IV.

(NOTE: Additional consideration will be given to problems raised by enclosed and semi-enclosed seas.)

ARTICLE 27

1. Except as specifically provided for in this Chapter, the coastal State shall have no greater rights in the International Trusteeship Area off its coast than any other Contracting Party.

2. With respect to exploration and exploitation of the natural resources of that part of the International Trusteeship Area in which it acts as trustee for the international community, each coastal State, subject to the provisions of this Convention, shall be responsible for:

a. Issuing, suspending and revoking mineral exploration and exploitation licenses;

b. Establishing work requirements, provided that such requirements shall not be less than those specified in Appendix A;

c. Ensuring that its licensees comply with this Convention, and, if it deems it necessary, applying standards to its licensees higher than or in addition to those required under this Convention, provided such standards are promptly communicated to the International Seabed Resource Authority;

d. Supervising its licensees and their activities;

e. Exercising civil and criminal jurisdiction over its licensees, and persons acting on their behalf, while engaged in exploration or exploitation;

f. Filing reports with the International Seabed Resource Authority;

g. Collecting and transferring to the International Seabed Resource Authority all payments required by this Convention;

h. Determining the allowable catch of the living resources of the seabed and prescribing other conservation measures regarding them;

i. Enacting such laws and regulations as are necessary to perform the above functions.

3. Detailed rules to implement this Chapter are contained in Appendix C.

ARTICLE 28

In performing the functions referred to in Article 27, the Trustee Party may, in its discretion:

a. Establish the procedures for issuing licenses;

b. Decide whether a license shall be issued;

c. Decide to whom a license shall be issued, without regard to the provisions of Article 3;

d. Retain [a figure between 33-1/3% and 50% will be inserted here] of all fees and payments required by this Convention;

e. Collect and retain additional license and rental fees to defray its administrative expenses, and collect, and retain [a figure between 33-1/3% and 50% will be inserted here] of, other additional fees and payments related to the issuance or retention of a license, with annual notification to the International Seabed Resource Authority of the total amount collected;

f. Decide whether and by whom the living resources of the seabed shall be exploited, without regard to the provisions of Article 3.

ARTICLE 29

The Trustee Party may enter into an agreement with the International Seabed Resource Authority under which the International Seabed Resource Authority will perform some or all of the trusteeship supervisory and administrative functions provided for in this Chapter in return for an appropriate part of the Trustee Party's share of international fees and royalties.

ARTICLE 30

Where a part of the International Trusteeship Area is off the coast of two or more Contracting Parties, such Parties shall, by agreement, precisely delimit the boundary separating the areas in which they

shall respectively perform their trusteeship functions and inform the International Seabed Boundary Review Commission of such delimitation. If agreement is not reached within three years after negotiations have commenced, the International Seabed Boundary Review Commission shall be requested to make recommendations to the Contracting Parties concerned regarding such delimitation. If agreement is not reached within one year after such recommendations are made, the delimitation recommended by the Commission shall take effect unless either Party, within 90 days thereafter, brings the matter before the Tribunal in accordance with Section E of Chapter IV.

CHAPTER IV

THE INTERNATIONAL SEABED RESOURCE AUTHORITY

A. General

ARTICLE 31

1. The International Seabed Resource Authority is hereby established.

2. The principal organs of the Authority shall be the Assembly, the Council, and the Tribunal.

ARTICLE 32

The permanent seat of the Authority shall be at _____.

ARTICLE 33

Each Contracting Party shall recognize the juridical personality of the Authority. The legal capacity, privileges and immunities of the Authority shall be the same as those defined in the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations.

B. The Assembly

ARTICLE 34

1. The Assembly shall be composed of all Contracting Parties.

2. The first session of the Assembly shall be convened _____. The Assembly shall thereafter be convened by the Council at least once

every three years at a suitable time and place. Extraordinary sessions of the Assembly shall be convened at any time on the call of the Council, or the Secretary-General of the Authority at the request of one-fifth of the Contracting Parties.

3. At meetings of the Assembly a majority of the Contracting Parties is required to constitute a quorum.

4. In the Assembly each Contracting Party shall exercise one vote.

5. Decisions of the Assembly shall be taken by a majority of the members present and voting, except as otherwise provided in this Convention.

ARTICLE 35

The powers and duties of the Assembly shall be to:

a. Elect its President and other officers;

b. Elect members of the Council in accordance with Article 36;

c. Determine its rules of procedure and constitute such subsidiary organs as it considers necessary or desirable;

d. Require the submission of reports from the Council;

e. Take action on any matter referred to it by the Council;

f. Approve proposed budgets for the Authority, or return them to the Council for reconsideration and resubmission;

g. Approve proposals by the Council for changes in the allocation of the net income of the Authority within the limits prescribed in Appendix D, or return them to the Council for reconsideration and resubmission;

h. Consider any matter within the scope of this Convention and make recommendations to the Council or Contracting Parties as appropriate;

i. Delegate such of its powers as it deems necessary or desirable to the Council and revoke or modify such delegation at any time;

j. Consider proposals for amendments of this Convention in accordance with Article 76.

C. The Council

ARTICLE 36

1. The Council shall be composed of twenty-four Contracting Parties and shall meet as often as necessary.

2. Members of the Council shall be designated or elected in the following categories:

a. The six most industrially advanced Contracting Parties shall be designated in accordance with Appendix E;

b. Eighteen additional Contracting Parties, of which at least twelve shall be developing countries, shall be elected by the Assembly, taking into account the need for equitable geographical distribution.

3. At least two of the twenty-four members of the Council shall be landlocked or shelf-locked countries.

4. Elected members of the Council shall hold office for three years following the last day of the Assembly at which they are elected and thereafter until their successors are [redacted] elected. Designated members of the Council shall hold office until replaced in accordance with Appendix E.

5. Representatives on the Council shall not be employees of the Authority.

ARTICLE 37

1. The Council shall elect its President for a term of three years.

2. The President of the Council may be a national of any Contracting Party, but may not serve during his term of office as its representative in the Assembly or on the Council.

3. The President shall have no vote.

4. The President shall:

a. Convene and conduct meetings of the Council;

b. Carry out the functions assigned to him by the Council.

ARTICLE 38

Decisions by the Council shall require approval by a majority of all its members, including a majority of members in each of the two categories referred to in paragraph 2 of Article 36.

ARTICLE 39

Any Contracting Party not represented on the Council may participate, without a vote, in the consideration by the Council or any of the subsidiary organs, of any question which is of particular interest to it.

ARTICLE 40

The powers and duties of the Council shall be to:

a. Submit annual reports to the Contracting Parties;

b. Carry out the duties specified in this Convention and any duties delegated to it by the Assembly;

c. Determine its rules of procedure;

d. Appoint and supervise the Commissions provided for in this Chapter, establish procedures for the coordination of their activities, and determine the terms of office of their members;

e. Establish other subsidiary organs, as may be necessary or desirable, and define their duties;

f. Appoint the Secretary-General of the Authority and establish general guidelines for the appointment of such other personnel as may be necessary;

g. Submit proposed budgets to the Assembly for its approval, and supervise their execution;

h. Submit proposals to the Assembly for changes in the allocation of the net income of the Authority within the limits prescribed in Appendix D;

i. Adopt and amend Rules and Recommended Practices in accordance with Chapter V, upon the recommendation of the Rules and Recommended Practices Commission;

j. Issue emergency orders, at the request of any Contracting Party, to prevent serious harm to the marine environment arising out of any exploration or exploitation activity and communicate them immediately to licensees, and Authorizing or Sponsoring Parties, as appropriate;

k. Establish a fund to provide emergency relief and assistance in the event of a disaster to the marine environment resulting from exploration or exploitation activities;

l. Establish procedures for coordination between the International Seabed Resource Authority, and the United Nations, its specialized agencies and other international or regional organizations concerned with the marine environment;

m. Establish or support such international or regional centers, through or in cooperation with other international and regional organizations, as may be appropriate to promote study and research of the natural resources of the seabed and to train nationals of any Contracting Party in related science and the technology of the exploration and exploitation, taking into account the special needs of developing States Parties to this Convention;

n. Authorize and approve agreements with a Trustee Party, pursuant to Article 29, under which the International Seabed Resource Authority will perform some or all of the Trustee Party's functions.

ARTICLE 41

In furtherance of Article 5, paragraph 2, of this Convention, the Council may, at the request of any Contracting Party and taking into account the special needs of developing States Parties to this Convention:

a. Provide technical assistance to any Contracting Party to further the objectives of this Convention;

b. Provide technical assistance to any Contracting Party to help it to meet its responsibilities and obligations under this Convention;

c. Assist any Contracting Party to augment its capability to derive maximum benefit from the efficient administration of the International Trusteeship Area.

D. The Commissions

ARTICLE 42

1. There shall be a Rules and Recommended Practices Commission, an Operations Commission, and an International Seabed Boundary Review Commission.

2. Each Commission shall be composed of five to nine members appointed by the Council from among persons nominated by Contracting Parties. The Council shall invite all Contracting Parties to submit nominations.

3. No two members of a Commission may be nationals of the same State.

4. A member of each Commission shall be elected its President by a majority of the members of the Commission.

5. Each Commission shall perform the functions specified in this Convention and such other functions as the Council may specify from time to time.

ARTICLE 43

1. Members of the Rules and Recommended Practices Commission shall have suitable qualifications and experience in seabed resources management, ocean sciences, maritime safety, ocean and marine engineering, and mining and mineral technology and practices. They shall not be full-time employees of the Authority.

2. The Rules and Recommended Practices Commission shall:

a. Consider, and recommend to the Council for adoption, Annexes to this Convention in accordance with Chapter V;

b. Collect from and communicate to Contracting Parties information which the Commission considers necessary and useful in carrying out its functions.

ARTICLE 44

1. Members of the Operations Commission shall have suitable qualifications and experience in the management of seabed resources, and operation of marine installations, equipment and devices.

2. The Operations Commission shall:

a. Issue licenses for seabed mineral exploration and exploitation, except in the International Trusteeship Area;

b. Supervise the operations of licensees in cooperation with the Trustee or Sponsoring Party, as appropriate, but shall not itself engage in exploration or exploitation;

c. Perform such functions with respect to disputes between Contracting Parties as are specified in Section E of this Chapter;

d. Initiate proceedings pursuant to Section E of this Chapter for alleged violations of this Convention, including but not limited to proceedings for revocation or suspension of licenses;

e. Arrange for and review the collection of international fees and other forms of payment;

f. Arrange for the collection and dissemination of information relating to licensed operations;

g. Supervise the performance of the functions of the Authority pursuant to any agreement between a Trustee Party and the Authority under Article 29;

h. Issue deep drilling permits.

ARTICLE 45

1. Members of the International Seabed Boundary Review Commission shall have suitable qualifications and experience in marine hydrography, bathymetry, geodesy and geology. They shall not be full-time employees of the Authority.

2. The International Seabed Boundary Review Commission shall:

a. Review the delineation of boundaries submitted by Contracting Parties in accordance with Articles 1 and 26 to see that they conform to the provisions of this Convention, negotiate any differences with Contracting Parties, and if these differences are not resolved initiate proceedings before the Tribunal in accordance with Section E of this Chapter;

b. Make recommendations to the Contracting Parties in accordance with Article 30;

c. At the request of any Contracting Party, render advice on any boundary question arising under this Convention.

E. The Tribunal

ARTICLE 46

1. The Tribunal shall decide all disputes and advise on all questions relating to the interpretation and application of this Convention which have been submitted to it in accordance with the provisions of this Convention. In its decisions and advisory opinions the Tribunal shall also apply relevant principles of international law.

2. Subject to an authorization under Article 96 of the Charter of the United Nations, the Tribunal may request the International Court of Justice to give an advisory opinion on any question of international law.

ARTICLE 47

1. The Tribunal shall be composed of five, seven, or nine independent judges, who shall possess the qualifications required in their respective countries for appointment to the highest judicial offices, or shall be lawyers especially competent in matters within the scope of this Convention. In the Tribunal as a whole the representation of the principal legal systems of the world shall be assured.

2. No two of the members of the Tribunal may be nationals of the same State.

ARTICLE 48

1. Each Contracting Party shall be entitled to nominate candidates for membership on the Tribunal. The Council shall elect the Tribunal from a list of these nominations.

2. The members of the Tribunal shall be elected for nine years and may be re-elected, provided however, that the Council may establish procedures for staggered terms. Should such procedures be established, the judges whose terms are to expire in less than nine years shall be chosen by lots drawn by the Secretary-General.

3. The members of the Tribunal shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. A member of the Tribunal unable to perform his duties may be dismissed by the Council on the unanimous recommendation of the other members of the Tribunal.

5. In case of a vacancy, the Council shall elect a successor who shall hold office for the remainder of his predecessor's term.

ARTICLE 49

The Tribunal shall establish its rules of procedure; elect its President; appoint its Registrar and determine his duties and terms of service; and adopt regulations for the appointment of the remainder of its staff.

ARTICLE 50

1. Any Contracting Party which considers that another Contracting Party has failed to fulfill any of its obligations under this Convention may bring its complaint before the Tribunal.

2. Before a Contracting Party institutes such proceedings before the Tribunal it shall bring the matter before the Operations Commission.

3. The Operations Commission shall deliver a reasoned opinion in writing after the Contracting Parties concerned have been given the opportunity both to submit their own cases and to reply to each other's case.

4. If the Contracting Party accused of a violation does not comply with the terms of such opinion within the period laid down by the Commission, the other Party concerned may bring the matter before the Tribunal.

5. If the Commission has not given an opinion within a period of three months from the date when the matter was brought before it, either Party concerned may bring the matter before the Tribunal without waiting further for the opinion of the Commission.

ARTICLE 51

1. Whenever the Operations Commission, acting on its own initiative or at the request of any licensee, considers that a Contracting Party or a licensee has failed to fulfill any of its obligations under this Convention, it shall issue a reasoned opinion in writing on the matter after giving such party the opportunity to submit its comments.

2. If the party concerned does not comply with the terms of such opinion within the period laid down by the Commission, the latter may bring a complaint before the Tribunal.

ARTICLE 52

1. If the Tribunal finds that a Contracting Party or a licensee has failed to fulfill any of its obligations under this Convention, such party shall take the measures required for the implementation of the judgment of the Tribunal.

2. When appropriate, the Tribunal may decide that the Contracting Party or the licensee who has failed to fulfill its obligations under this Convention shall pay to the Authority a fine of not more than $1,000 for each day of the offense, or shall pay damages to the other party concerned, or both.

3. In the event the Tribunal determines that a licensee has committed a gross and persistent violation of the provisions of this Convention and has not within a reasonable time brought his operations into compliance with them, the Council may, as appropriate, either revoke his license or request that the Trustee Party revoke it. The licensee shall not, however, be deprived of his license if his actions were directed by a Trustee or Sponsoring Party.

ARTICLE 53

If disputes under Articles 1, 26 and 30 have not been resolved by the time and methods specified in those Articles, the International Seabed Boundary Review Commission shall bring the matter before the Tribunal.

ARTICLE 54

1. Any Contracting Party which questions the legality of measures taken by the Council, the Rules and Practices Commission, the Operations Commission, or the Seabed Boundary Review Commission on the grounds of a violation of this Convention, lack of jurisdiction, infringement of important procedural rules, unreasonableness, or misuse of powers, may bring the matter before the Tribunal.

2. Any person may, subject to the same conditions, bring a complaint to the Tribunal with regard to a decision directed to that person, or a decision which, although in the form of a rule or a decision directed to another person, is of direct concern to the complainant.

3. The proceedings provided for in this Article shall be instituted within a period of two months, dating, as the case may be, either from the publication of the measure concerned or from its notification to the complainant, or, in default thereof, from the day on which the latter learned of it.

4. If the Tribunal considers the appeal well-founded, it should declare the measure concerned to be null and void, and shall decide to what extent the annulment shall have retroactive application.

ARTICLE 55

1. The organ responsible for a measure declared null and void by the Tribunal shall be required to take the necessary steps to comply with the Tribunal's judgment.

2. When appropriate, the Tribunal may require that the Authority repair or pay for any damage caused by its organs or by its officials in the performance of their duties.

ARTICLE 56

When a case pending before a court or tribunal of one of the Contracting Parties raises a question of the interpretation of this Convention or of the validity or interpretation of measures taken by an organ of the Authority, the court or tribunal concerned may request the Tribunal to give its advice thereon.

ARTICLE 57

The Tribunal shall also be competent to decide any dispute connected with the subject matter of this Convention submitted to it pursuant to an agreement, license, or contract.

ARTICLE 58

If a Contracting Party fails to perform the obligations incumbent upon it under a judgment rendered by the Tribunal, the other Party to the case may have recourse to the Council, which shall decide upon measures to be taken to give effect to the judgment. When appropriate, the Council may decide to suspend temporarily, in whole or in part, the rights under this Convention of the Party failing to perform its obligations, without impairing the rights of licensees who have not contributed to the failure to perform such obligations. The extent of such a suspension should be related to the extent and seriousness of the violation.

ARTICLE 59

In any case in which the Council issues an order in emergency circumstances to prevent serious harm to the marine environment, any directly affected Contracting Party may request immediate review by the Tribunal, which shall promptly either confirm or suspend the application of the emergency order pending the decision of the case.

ARTICLE 60

Any organ of the International Seabed Resource Authority may request the Tribunal to give an advisory opinion on any legal question connected with the subject matter of this Convention.

F. The Secretariat

ARTICLE 61

The Secretariat shall comprise a Secretary-General and such staff as the International Seabed Resource Authority may require. The Secretary-General shall be appointed by the Council from among persons nominated by Contracting Parties. He shall serve for a term of six years, and may be reappointed.

ARTICLE 62

The Secretary-General shall:

a. Be the chief administrative officer of the International Seabed Resource Authority, and act in that capacity in all meetings of the Assembly and the Council;

b. Report to the Assembly and the Council on the work of the International Seabed Resource Authority;

c. Collect, publish and disseminate information which will contribute to mankind's knowledge of the seabed and its resources;

d. Perform such other functions as are entrusted to him by the Assembly or the Council.

ARTICLE 63

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other external authority. They shall refrain from any action which might reflect on their position as international officials responsible only to the International Seabed Resource Authority.

2. Each Contracting Party shall respect the exclusively international character of the responsibilities of the Secretary-General and the staff and shall not seek to influence them in the discharge of their responsibilities.

ARTICLE 64

1. The staff of the International Seabed Resource Authority shall be appointed by the Secretary-General under the general guidelines established by the Council.

2. Appropriate staffs shall be assigned to the various organs of the Authority as required.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

G. Conflicts of Interest

ARTICLE 65

No representative to the Assembly or the Council nor any member of the Tribunal, Commissions, subsidiary organs (other than advisory bodies or consultants), or the Secretariat, shall, while serving as such a representative or member, be actively associated with or financially interested in any of the operations of any enterprise concerned with exploration or exploitation of the natural resources of the International Seabed Area.

CHAPTER V

RULES AND RECOMMENDED PRACTICES

ARTICLE 66

1. Rules and Recommended Practices are contained in Annexes to this Convention.

2. Annexes shall be consistent with this Convention, its Appendices, and any amendments thereto. Any Contracting Party may challenge an Annex, an amendment to an Annex, or any of their provisions, on the grounds that it is unnecessary, unreasonable or constitutes a misuse of powers, by bringing the matter before the Tribunal in accordance with Article 54.

3. Annexes shall be adopted and amended in accordance with Article 67. Those Annexes adopted along with this Convention, if any, may be amended in accordance with Article 67.

ARTICLE 67

The Annexes to this Convention and amendments to such Annexes shall be adopted in accordance with the following procedure:

a. They shall be prepared by the Rules and Recommended Practices Commission and submitted to the Contracting Parties for comments;

b. After receiving the comments, the Commission shall prepare a revised text of the Annex or amendments thereto;

c. The text shall then be submitted to the Council which shall adopt it or return it to the Commission for further study;

d. If the Council adopts the text, it shall submit it to the Contracting Parties;

e. The Annex or an amendment thereto shall become effective within three months after its submission to the Contracting Parties, or at the end of such longer period of time as the Council may prescribe, unless in the meantime more than one-third of the Contracting Parties register their disapproval with the Authority;

f. The Secretary-General shall immediately notify all Contracting States of the coming into force of any Annex or amendment thereto.

ARTICLE 68

1. Annexes shall be limited to the Rules and Recommended Practices necessary to:

a. Fix the level, basis, and accounting procedures for determining international fees and other forms of payment, within the ranges specified in Appendix A;

b. Establish work requirements within the ranges specified in Appendices A and B;

c. Establish criteria for defining technical and financial competence of applicants for licenses;

d. Assure that all exploration and exploitation activities, and all deep drilling, are conducted with strict and adequate safeguards for the protection of human life and safety and of the marine environment;

e. Protect living marine organisms from damage arising from exploration and exploitation activities;

f. Prevent or reduce to acceptable limits interference arising from exploration and exploitation activities with other uses and users of the marine environment;

g. Assure safe design and construction of fixed exploration and exploitation installations and equipment;

h. Facilitate search and rescue services, including assistance to aquanauts, and the reporting of accidents;

i. Prevent unnecessary waste in the extraction of minerals from the seabed;

j. Standardize the measurement of water depth and the definition of other natural features pertinent to the determination of the precise location of International Seabed Area boundaries;

k. Prescribe the form in which Contracting Parties shall describe their boundaries and the kinds of information to be submitted in support of them;

l. Encourage uniformity in seabed mapping and charting;

m. Facilitate the management of a part of the international trusteeship area pursuant to any agreement between a Trustee Party and the Authority under Article 29;

n. Establish and prescribe conditions for the use of international marine parks and preserves;

2. Application of any Rule or Recommended Practice may be limited as to duration or geographic area, but without discrimination against any Contracting Party or licensee.

ARTICLE 69

The Contracting Parties agree to collaborate with each other and the appropriate Commission in securing the highest practicable degree of uniformity in regulations, standards, procedures and organizations in relation to the matters covered by Article 68 in order to facilitate and improve seabed resources exploration and exploitation.

ARTICLE 70

Annexes and amendments thereto shall take into account existing international agreements and, where appropriate, shall be prepared in collaboration with other competent international organizations. In particular, existing international agreements and regulations relating to safety of life at sea shall be respected.

ARTICLE 71

1. Except as otherwise provided in this Convention, the Annexes and amendments thereto adopted by the Council shall be binding on all Contracting Parties.

2. Recommended Practices shall have no binding effect.

ARTICLE 72

Any Contracting Party believing that a provision of an Annex or an amendment thereto cannot be reasonably applied because of special circumstances may seek a waiver from the Operations Commission and if such waiver is not granted within three months, it may appeal to the Tribunal within an additional period of two months.

CHAPTER VI
TRANSITION

ARTICLE 73

1. There shall be due protection for the integrity of investments made in the International Seabed Area prior to the coming into force of this Convention.

2. All authorizations by a Contracting Party to exploit the mineral resources of the International Seabed Area granted prior to July 1, 1970, shall be continued without change after the coming into force of this Convention provided that:

a. Activities pursuant to such authorizations shall, to the extent possible, be conducted in accordance with the provisions of this Convention;

b. New activities under such previous authorizations which are begun after the coming into force of this Convention shall be subject to the regulatory provisions of this Convention regarding the protection of human life and safety and of the marine environment and the avoidance of unjustifiable interference with other uses of the marine environment;

c. Upon the expiration or relinquishment of such authorizations, or upon their revocation by the authorizing Party, the provisions of this Convention shall become fully applicable to any exploration or exploitation of resources remaining in the areas included in such authorizations;

d. Contracting Parties shall pay to the International Seabed Resource Authority, with respect to such authorizations, the production payments provided for under this Convention.

3. A Contracting Party which has authorized exploitation of the mineral resources of the International Seabed Area on or after July 1, 1970, shall be bound, at the request of the person so authorized, either to issue new licenses under this Convention in its capacity as a Trustee Party, or to sponsor the application of the person so authorized to receive new licenses from the International Seabed Resource Authority. Such new license issued by a Trustee Party shall include the same terms and conditions as its previous authorization, provided that such license shall not be inconsistent with this Convention, and provided further than the Trustee Party shall itself be responsible for complying with increased obligations resulting from the application of this Convention, including fees and other payments required by this Convention.

4. The provisions of paragraph 3 shall apply within one year after this Convention enters into force for the Contracting Party concerned, but in no event more than five years after the entry into force of this Convention.

5. Until converted into new licenses under paragraph 3, all authorizations issued on or after July 1, 1970, to exploit the mineral resources of the International Seabed Area shall have the same status as authorizations under paragraph 2. Five years after the entry into force of this Convention all such authorizations not converted into new licenses under paragraph 3 shall be null and void.

6. Any Contracting Party that has authorized activities within the International Seabed Area after July 1, 1970, but before this Convention has entered into force for such Party, shall compensate the licensee for any investment losses resulting from the application of this Convention.

ARTICLE 74

1. The membership of the Tribunal, the Commissions, and the Secretariat shall be maintained at a level commensurate with the tasks being performed.

2. In the period before the International Seabed Resource Authority acquires income sufficient for the payment of its administrative expenses, the Authority may borrow funds for the payment of those expenses. The Contracting Parties agree to give sympathetic consideration to requests by the Authority for such loans.

CHAPTER VII

DEFINITIONS

ARTICLE 75

Unless another meaning results from the context of a particular provision, the following definitions shall apply:

1. "Convention" refers to all provisions of and amendments to this Convention, its Appendices, and its Annexes.
2. "Trustee Party" refers to the Contracting Party exercising trusteeship functions in that part of the International Trusteeship Area off its coast in accordance with Chapter III.
3. "Sponsoring Party" refers to a Contracting Party which sponsors an application for a license or permit before the International Seabed Resource Authority. The term "sponsor" is used in this context.
4. "Authorizing Party" refers to a Contracting Party authorizing any activity in the International Seabed Area, including a Trustee Party issuing exploration or exploitation licenses. The term "authorize" is used in this context. In the case of a vessel, the term "Authorizing Party" shall be deemed to refer to the State of its nationality.

5. "Operating Party" refers to a Contracting Party which itself explores or exploits the natural resources of the International Seabed Area.

6. "Licensee" refers to a State, group of States, or natural or juridical person holding a license for exploration or exploitation of the natural resources of the International Seabed Area.

7. "Exploration" refers to any operation in the International Seabed Area which has as its principal or ultimate purpose the discovery and appraisal, or exploitation, of mineral deposits, and does not refer to scientific research. The term does not refer to similar activities when undertaken pursuant to an exploitation license.

8. "Deep drilling" refers to any form of drilling or excavation in the International Seabed Area deeper than 300 meters below the surface of the seabed.

9. "Landlocked or shelf-locked country" refers to a Contracting Party which is not a Trustee Party.

CHAPTER VIII

AMENDMENT AND WITHDRAWAL

ARTICLE 76

Any proposed amendment to this Convention or the appendices thereto which has been approved by the Council and a two-thirds vote of the Assembly shall be submitted by the Secretary-General to the Contracting Parties for ratification in accordance with their respective constitutional processes. It shall come into force when ratified by two-thirds of the Contracting Parties, including each of the six States designated pursuant to subparagraph 2(a) of Article 36 at the time the Council approved the amendments. Amendments shall not apply retroactively.

ARTICLE 77

1. Any Contracting Party may withdraw from this Convention by a written notification addressed to the Secretary-General. The Secretary-General shall promptly inform the other Contracting Parties of any such withdrawal.

2. The withdrawal shall take effect one year from the date of the receipt by the Secretary-General of the notification.

APPENDIX A -- Terms and Procedures Applying to all Licenses in the International Seabed Area.

APPENDIX B -- Terms and Procedures Applying to Licenses in the International Seabed Area Beyond the International Trusteeship Area.

APPENDIX C -- Terms and Procedures for Licenses in the International Trusteeship Area.

[APPENDICES A, B, and C ARE OMITTED]

APPENDIX D

DIVISION OF REVENUE

1. Disbursements

1.1. All disbursements shall be made out of the net income of the Authority, except as otherwise provided in paragraph 2 of Article 74.

2. Administrative Expenses of the International Seabed Resource Authority

2.1. The Council, in submitting the proposed budget to the Assembly shall specify what proportion of the revenues of the Authority shall be used for the payment of the administrative expenses of the Authority.

2.2. Upon approval of the budget by the Assembly, the Secretary-General is authorized to use the sums allotted in the budget for the expenses specified therein.

3. Distribution of the Net Income of the Authority

3.1. The net income, after administrative expenses, of the Authority shall be used to promote the economic advancement of developing States Parties to this Convention and for the purposes specified in paragraph 2 of Article 5, and in other Articles of this Convention.

3.2. The portion to be devoted to economic advancement of developing States Parties to this Convention shall be divided among the following international development organizations as follows:

(NOTE: A list of international and regional development organizations should be included here, indicating percentages assigned to each organization.)

3.3. The Council shall submit to the Assembly proposals for the allocation of the income of the Authority within the limits prescribed by this Appendix.

3.4. Upon approval of the allocation by the Assembly, the Secretary-General is authorized to distribute the funds.

APPENDIX E

DESIGNATED MEMBERS OF THE COUNCIL

1. Those six Contracting Parties which are both developed States and have the highest gross national product shall be considered as the six most industrially advanced Contracting Parties.

2. The six most industrially advanced Contracting Parties at the time of the entry into force of this Convention shall be deemed to be: _____. They shall hold office until replaced in accordance with this Appendix.

3. The Council, prior to every regular session of the Assembly, shall decide which are the six most industrially advanced Contracting Parties. It shall make rules to ensure that all questions relating to the determination of such Contracting Parties are considered by an impartial committee before being decided by the Council.

4. The Council shall report its decision to the Assembly, together with the recommendations of the impartial committee.

5. Any replacements of the designated members of the Council shall take effect on the day following the last day of the Assembly to which such a report is made.

...a Chinese Association
...ntinum University
TYT Research Committee Report

資料組

April 3, 1971
Read Apr. 17, 197

THE SOVEREIGNTY OF TIAO-YÜ-T'AI (SENKAKU GUNTO)

"with the sniff of oil in the air, this is no longer
just an academic question for the international lawyers."

-The Guardian (12-13-70)

The current dispute over the uninhabited islands of Tiao-yü-t'ai raises two questions: (1) which state holds sovereignty over these islands, and (2) which state holds the right to the natural resources of the seabed on which these islands lie.

According to the 1958 Convention on the Continental Shelf,[1] it was agreed that (1) (Article I) the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands, and (2) (Article II) the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

The islands of Tiao-yü-t'ai lies on the edge of the continental shelf extending from Mainland China, who, according to the agreements quoted above, would have sovereign right to its natural resources. If, however, the islands belong to Japan, then she can invoke Article VI, paragraph 2, of the Convention: "Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest point of the baselines from which the breadth of the territorial sea of each State is measured."

According to the report of the UN-sponsored Economic Commission for Asia and the Far East made after extensive surveys in 1968 and 1969, "the shallow sea floor between Japan and the Republic of China may contain substantial resources of petroleum, perhaps comparable to the Persian Gulf area." A spokesman for the U.S. Woods Hole Oceanographic Institution, which conducted the U.N. survey, said that the 80,000 sq. mile Taiwan basin has late Tertiary sediments more than 6,500 ft. thick.[2] The islands of Tiao-yü-t'ai lie within this area.

Mr. Barry Weisberg, co-director of the Bay Area Institute in San Francisco, says in his article."The U.S. Oil Involvement in Asia"[3] that

> Ecologically, Southeast Asian crude oil is important because of its extremely low sulfur content--less than two-thirds of 1 per cent. The Administration is contemplating a tax on the sulfur content of fuel, and there is thus a reason for the industry to call low-sulfur fuels "sweet."
>
> These events [oil rush in the West Pacific] will no doubt shape the destiny of the entire Pacific Basin. Petroleum today represents 70 per cent of all U.S. investments in Third World Nations. This explains the statement by The Washington Post on October 4, 1969: "What happens in the board rooms of Standard Oil or Gulf may be of more in-

> ...forest and more permanent consequence to a country . . . than what happens on the seventh floor of the State Department."

This being the case, the importance of the Tiao-yü-t'ai incident is not to be overlooked. The present dispute may have repercussions not only in the economic sphere but also in the maintenance of world peace, and therefore the question of sovereignty over the islands must be dealt with most carefully.

The Question of Sovereignty

Altogether, five governments are involved in this dispute--viz., the Taiwan government (of the Republic of China), the Peking government (of the Peoples' Republic of China), the Tokyo government (of Japan), the Ryukyu government (of the Ryukyu Islands), and the U.S. government. Since, in effect, both the Taiwan government and the Peking government are claiming the islands for the Chinese people,[4] while the interests of the Tokyo government and the Ryukyu government are identical,[5] these four governments can be conveniently grouped under two separate fronts--the Chinese and the Japanese--without much distortion of facts. The U.S. government, as the present administering authority over those islands, also plays an important part in this affair. In the following, the reasons offered by each front to support its claim are summarized and the attitude of the U.S. government briefly outlined before we attempt at an analysis of the case.

Reasons for the Chinese claim. (1) Historically, Tiao-yü-t'ai was mentioned in Chinese texts as early as 1403, and has been repeatedly referred to as part of Chinese territory since 1534.[6] (2) Geographically, Tiao-yu-t'ai lies on the edge of China's continental shelf and is separated from the Ryukyu Islands by a trench over 2000 meters deep. Also, the northeasterly current in the East China Sea has made the islands a natural ground for Taiwan rather than for Ryukyu fishermen. (See Fig. 1) (3) The domestic administration of the Japanese government before 1945 placed the islands of Tiao-yu-t'ai under the Taipei Prefecture, not under the Okinawa Prefecture.[7]

Reasons for the Japanese claim. (1) Senkaku Gunto was first discovered by a Japanese in 1884 and officially made part of Ishigaki by the Japanese government in 1895.[8] (2) After the San Francisco Peace Treaty of 1951[9] came into effect, the Ryukyu Islands were separated from Japan. In the Report of the U.S. Civil Administration of the Ryukyu Islands, No. 27, the Senkaku Gunto is included in its administrative area. (3) The Ryukyu Islands--in its present boundary including the Senkaku Gunto--are scheduled to be returned to Japan in 1972, as a result of the 1969 agreement between Nixon and Sato.[10]

The attitude of the U.S. government. (1) The Senkaku Islands were intended to be included in the description contained in Article III of the 1951 Peace Treaty, under which the U.S. acquired administrative rights to the Ryukyu Islands.[11] (2) Japan was meant to retain residual sovereignty over the Ryukyus, and the administrative rights of the U.S. government are now anticipated to terminate in 1972.[12] (3) Japan will then have full right to her territories, and the U.S. government considers that "any conflicting claims to the Senkaku Islands are a matter for resolution by the parties concerned."[13]

Analysis. The following analysis is based on facts and documents we have come across in our research work.[14]

A. Historical Evidences

(1) The Chinese people have been closely related to the islands of Tiao-yü-t'ai since the 15th century, as the sources cited in footnote 6 clearly

indicate.

(2) Reference to these islands never appeared in Japanese historical texts or government documents before 1884, and, in any case, that year only marks the first "discovery" of the islands by a Japanese--who had already been preceded by numerous other Chinese "discoverers."

(3) After the Prefect of Okinawa learned of the 1884 "discovery", he applied in the following year to the Japanese government for permission to claim these islands. The Japanese government, not wishing to jeopardize the negotiations it was then having with China over the Ryukyu Islands,[15] postponed the issue. The application was made again in 1890, and again postponed. It was not until 1895, on the eve of Japan's victory in the Sino-Japanese War, that the application was finally accepted in a cabinet meeting of the Japanese government.[16] The interesting question here is: if Japan had not considered the islands of Tiao-yü-t'ai as part of China's territory, why did she take so much precaution in claiming the islands until she was sure of her victory over China?

(4) In the negotiations with China over the Ryukyu Islands referred to in (3) above, the islands of Tiao-yü-t'ai were not mentioned at all in a partition plan suggested by U.S. ex-President Grant.[17] Obviously, the Tiao-yü-t'ai Islands were not considered as part of the Ryukyus.

(5) In a comprehensive and detailed Atlas and Dictionary of Place Names in Japanese Territory published by the Geographical Society of Japan in 1939,[18] the islands of Tiao-yü-t'ai cannot be found. Nor did these islands appear in other Japanese atlases or government reports.[19] Apparently, the Japanese have forgotten about these islands after claiming them in 1895.

(6) In atlases published by other countries, the Chinese name for these islands--Tiao-yü-t'ai--was used consistently until after the Second World War, when the invention "Senkaku Gunto" began to appear.[20]

B. Geographical Evidences

(1) Tiao-yu-t'ai does not form part of the Ryukyu chain, but rather marks the outermost limit of the continental shelf extending from mainland China. It lies 100 miles away from the Yaeyama-Miyako group, and about 240 miles from Okinawa Gunto, and is separated from these other island groups by a trench over 2000 meters deep.

(2) The flow of the current in this area being northeasterly, it is much easier for Taiwan fishermen going with the current to reach the Tiao-yü-t'ai Islands than it would have been for Ryukyu fishermen, who would have to go across the current. As a result, the fishing grounds around the Tiao-yü-t'ai Islands have been monopolized by Taiwan fishermen for centuries. In 1958, fishermen from the Ilan district (in northeastern Taiwan) brought home 12,000 tons of mackerel (2/3 of the total production in the Ilan district) totalling NT$70,000,000 in worth. Currently each year, about 300 boats from Suao (in the Ilan district) make a living out of the Tiao-yü-t'ai fishing grounds, and the products they bring home support local canning industries.[21]

(3) Considering the above two factors, to include Tiao-yü-t'ai as part of the Ryukyu Islands is to ignore grossly the geographical circumstances and the meagre livelihood of the Taiwan fishermen.

C. The Legal Side

(1) The Japanese claim of the islands of Tiao-yü-t'ai in 1895 was a unilateral action without support from any bilateral agreement with China.

(2) When the Treaty of Shimonosake was concluded between China and Japan in 1896, the Japanese Congress defined the Tiao-yu-t'ai Islands as part the territories of cessation.[22] So, according to Article IV of the 1952

Sino-Japanese Treaty[23] which revoked all the treaties signed between the two countries before 1941, the Tiao-yü-t'ai Islands should be restored to Chinese sovereignty.

(3) During Japanese occupation of Taiwan, there had been a Japanese Supreme Court case which ruled that the Tiao-yu-t'ai Islands are part of the Taipei Prefecture, not part of the Ryukyus. During the same period, permit to fish in the adjacent waters of the Tiao-yü-t'ai Islands had to be obtained from the Taipei district authority.[24] From these facts, we can defer that even the Japanese themselves delineated these islands as part of Taiwan.

(4) With regard to the San Francisco Peace Treaty in 1951, the following points must be noted:

(a) In Article III, the trusteeship territory of the U.S. was not defined to the point of specificity required by international law, because the boundaries of the Ryukyu Islands, Daito Islands, etc., have never been legally defined. Without an attached grid map to the peace treaties, the islands that dot the East China Sea would easily become a point of dispute. The present Tiao-yü-t'ai affair is exactly a consequence of this vagueness in definition.

(b) The U.S. Department of State declares that the description contained in Article III "was intended to include the Senkaku Islands." Was that intention, we must ask, clearly conveyed to the Chinese, who should have been a necessary party to such territorial arrangements?

(c) Similarly, the intention of allowing Japan "residual sovereignty" over the Ryukyu Islands, etc., is not stated in the terms of the Treaty.

(d) Neither the Peking government nor the Taiwan government was signatories to this Peace Settlement, nor was any one of these governments represented in the Peace Conference held that year.[25] We cannot but question the fairness of such a settlement, where Chinese interests were not represented at all when one of the most important issues was Sino-Japanese relationship.

(e) The report of a sub-committee of the House Naval Affairs Committee published in August, 1945, recommended that the U.S. should, besides taking outright the Japanese-mandated islands and the outlying Japanese islands, assume "authority over strategic islands in the Pacific."[26] Could it be possible that, influenced by the attitude suggested in this report, the U.S. government, when marking out districts to be placed under its administration and trusteeship, have allowed strategic considerations to overshadow the rights of Allied Nations?

(5) In the Sino-Japanese Treaty, which reiterated the terms in the San Francisco Treaty, signed between Japan and the Taiwan government (on behalf of China) seven months after the 1951 Peace Settlement, the Tiao-yü-t'ai Islands were not mentioned either. It must be remembered, however, that

(a) this Peace Treaty was made with two documents in the background--the Cairo Declaration of 1943, and the Potsdam Proclamation of 1945, which Japan accepted unconditionally on its surrender. By these two memorandums of the Allied Powers, Japanese territory was "limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine."[27] If China had been represented in the 1951 Peace Conference, she would have had a chance to oppose the implication of "residual sovereignty" of Article III. As the facts appeared in 1952, the southern boundary of Japan was separated from the northeastern boundary of Taiwan by the U.S. administrative area of the Ryukyus. Any settlement of the boundary of Taiwan would then have to be made with the U.S., not with Japan.

(b) in a letter to U.S. Ambassador John Foster Dulles in 1951, Japanese Prime Minister Yoshida made it clear "that Japan ultimately desired political and commercial relations with mainland China and regarded the treaty with the Nationalists as an interim arrangement with the regime having 'the seat, the voice, and vote of China in the United Nations . . . and actual governmental authority over certain territory . . . and diplomatic relations with most of the members of the United Nations.'"[28] This being the attitude of the Japanese government at that time, we cannot help questioning the validity of this treaty as the sole determining force in such territorial dispute as the present issue.

(6) Although the Chinese have allowed the Tiao-yü-t'ai Islands to be included in the U.S. Civil Administration of the Ryukyu Islands, the following circumstances must be taken into consideration:

(a) "By the time of the Japanese Peace Treaty in 1951, the dimensions of the Communist threat in the western Pacific were apparent."[29] Here, the interests of the U.S. government and the Taiwan government were common insofar as Communism was their mutual enemy. In a sense, the entire eastern coastal seas of mainland China have been under the protection of the U.S. Seventh Fleet. What does it matter whether the Tiao-yü-t'ai Islands are included in the U.S. administrative area, so long as the livelihood of the Taiwan fishermen is not interfered with? To have the islands turned over to the Japanese would be a different question.

(b) From the Chinese point of view, the Western practice of putting everything in black and white is not all-important.[30] To them, history, geography, and actual circumstances have combined to make their ownership of the islands a reality. For centuries, Chinese fishermen have frequented these islands uninterfered with and unchallenged by any other countries until the recent dispute started. Nor was China the only party which think that the Chinese own the islands, since, prior to Japanese protests, several American oil companies have entered into agreement with the Chinese to explore the area.[31]

In view of the factors listed above, we do not think that it is fair to subject the settlement of the current dispute to the implications of the above-mentioned treaties. Historical, geographical and actual circumstances should be taken into consideration in determining the question of the sovereignty of the Tiao-yü-t'ai Islands. We are not denying the validity of the Western concept of the Rule of the Law, for we believe that this concept was built on the basis of justice. But we must condemn the practice of using that concept to justify territorial aggrandizement at the expense of the sovereign rights of other nations. What, indeed, are such treaties backed by Might, but "scraps of paper"?

The sense of justice, however, we believe to lie in every man's heart. In such an important issue that touches not only China, and Japan, but also the United States and other countries in the world, full consideration of the long-term economic and political developments must be taken into account. The United States government is now faced with the dilemma of the "two Chinas"; this timely issue will give it an opportunity to make clear its position. It will also, we hope, give it an opportunity to think twice before committing the security of the western Pacific in the hands of the Japanese government.

FOOTNOTES

[1]U.N. Doc. A/CONF. 13/L.55).

[2]The Oil and Gas Journal, August 10, 1970, p. 83.

[3]Originally entitled "Offshore Oil Boom," in The Nation, March 8, 1971. Reprinted in the Tiao-yu Tai Special, March, 1971, by the National Diao-yu Islands Action Committee - Berkeley Chapter.

[4]The Peking government was silent in the initial stages of the dispute, when the Taiwan government invoked the Geneva agreement to defend its claim of the Tiao-yü-t'ai Islands. Apparently, it is because the Taiwan government was still defending China's interests. Later, responding to the Japanese move for joint exploration of the seabed with Taiwan and South Korea, Peking claimed the islands as part of the Taiwan province of China (Jen Min Jih Pao, 12-29-70).

[5]Since the Ryukyu government, according to the Nixon-Sato Agreement (see note 10 below), is expected to be incorporated into the Tokyo government in 1972.

[6]In the 1403 edition of Shun Feng Hsiang Sung (a navigator's map of the early Ming Dynasty), the name Tiao-yü-t'ai first appeared. In Shih Liu-chiu Le (Summary Report of the Mission to the Ryukyus) by Ch'en Chook in 1534, the following passage appears:

> On the tenth day of the fifth month, the south wind was very strong. The boat(s) went flying forth, but, being with the current, it remained quite stable. We passed the Ping-chia-shan, Tiao-yu-ssu, Wang-wei-ssu, Chih-wei-ssu / the last three are among the islands presently under dispute /, one after another so quickly that our eyes could hardly take note of all of them. . . . In the evening of the eleventh day, we saw Ku-mi-shan / Kume /, which belongs to the Ryukyus.

Indirectly, Ch'en Chook is saying that the other islands he has previously mentioned --the Tiao-yu-t'ai Islands included--did not belong to the Ryukyus. In 1562, Kuo Yu-lin's report on his mission to the Ryukyus describes the Ch'ih-ssu (Ch'ih-wei-ssu) as the island marking the boundary of the Ryukyus. In 1785, the map of the Ryukyu Islands in Lin Tse-p'ing's San-Kuo tung-lan t'u-sho Liu-chiu pu-fun t'u specifies that the Yaeyama Gunto is administered by the Ryukyu government, but leaves the Tiao-yu-t'ai, Wang-wei-ssu and Ch'ih-wei-ssu unspecified--implying that these islands do not belong to the Ryukyus.

[7](Tzu-yang jih pao (8-30-70). According to Mr. Tse She-ko, Director of the Chi-lung Fisheries Association, there was a dispute in 1940-41 between the Taipei Prefecture and the Okinawa Prefecture over the administrative rights to the fishing grounds around the Tiao-yu-t'ai Islands. The dispute was carried to the Tokyo Supreme Court. After an investigation lasting for a year, the court decided in favor of Taipei. Since then, fishing permits to the area have to be obtained from the Water Products Association (which later developed into the present Chilung Fisheries Association) in Cheelung.

[8]As declared in the Ryukyu government's "Declaration Claiming the Senkaku Gunto" printed in the Asahi Shimbun (9-10-70).

[9]The San Francisco Peace Treaty is a multilateral agreement between Japan and the Allied Powers (except U.S.S.R. and China) as a conclusion to the Second World War, which in effect ended six years before.

[10]"Joint Communique, Nixon-Sato at Washington, 11-12-1969", U.S. State Department Bulletin (1969), pp. 551-559.

[11]Article III of the Peace Treaty reads as follows:

> Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29 north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto of Sofu Gan (including the Bonin Islands, Rosario Islands and the Volcano Islands), and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants, of these islands, including their territorial waters.

In a letter from the U.S. Department of State in reply to a Chinese student's letter to Nixon (reprinted in Brief Report on Tiao-yu-t'ai - U.S. East Coast, No. 3, 3-8-70), the U.S. Government's opinion is: "As used in the Treaty, the term refers to all islands south of 29° north latitude which were under Japanese administration at the end of the Second World War and which were not otherwise specifically referred to in the Treaty. This description was intended to include the Senkaku Islands."

[12]See Note 10 above.

[13]see letter from Department of State referred to in note 11 above.

[14]The sources of our information are chiefly the following:

Ming Pao yueh-k'an (a monthly journal published in Hong Kong), No. 58 (Oct., 1970), pp. 79-85;
United Quarterly, Research and Development De artment, New York, February, 1971;
Peking Review, 1 -11-70;
Jen-min jih-pao, 12-29-70;
The Guardian (Manchester, England), 12-18-70;
Asahi Shimbun (Japan), 9-10-70;
The New York Times, 1-30-71;
Shirley Jenkins, Our Far Eastern Record: The War Years, American Council, Institute of Pacific Relations, 1946;
U.N. Treaty Series;
U.S. Department of State Bulletin.

[15]Chung-yang jih-pao, 9-13-70.

[16]Ibid.

[17]Ibid; also see "The Ryukyu Islands: Pawn of the Pacific," Ralph Braibanti, in American Political Science Review, XLVIII (Dec., 1954), pp. 981, and Payson J. Treat, Diplomatic Relations between the United States and Japan (Stanford, 1932), Vol. 2, pp. 101-3.

[18]Ming-pao yueh-k'an, op. cit., p. 81.

[19]e.g., in the Annual Report of the Production of the Okinawa Prefecture, the 1965 Survey Report of the Temporary Situation of the State, the geological map of the Yaeyama Gunto, and the Statistics of the Ryukyus by the District Department of the Yaeyama Gunto.

[20]e.g., in the Andreeshandatlas, 4th edition (Germany, 1900), p. 140, and in The Encyclopaedia Brittanica (Univ. of Chicago, 1940), Vol. 24, p. 69.

[21]Ming-pao yueh-k'an, p. 81.

[22]Tiao-yu-t'ai Special, op.cit., p. 4.

[23]Article IV of the Sino-Japanese Treaty reads as follows:

> It is recognized that all treaties, conventions and agreements concluded before December 9, 1941, between China and Japan have become null and void as a consequence of the war.

[24]Tiao-yu-t'ai Special, op. cit., p. 4.

[25]Statement by John Foster Dulles made on behalf of the U.S. Delegation at the second plenary session of the San Francisco Conference for the Conclusion and Signature of the Peace Treaty, p. 458.

[26]Study of Pacific Bases, A Report by the Subcommittee on Pacific Bases of the Committee on Naval Affairs, House of Representatives, Seventy-ninth Congress, 1st session, pp. 1014-1015.

[27]See Young Hum Kim, East Asia's Turbulent Century - With American Diplomatic Documents (New York, Appleton-Century-Crofts, 1966), p.295 and pp. 297-8.

[28]See Douglas H. Mendel, Jr., "Japanese Policy and Views Toward Formosa," Journal of Asian Studies, Vol. 28, No. 3 (May, 1969), pp. 514-15.

[29]See Whitney T. Perkins, Denial of Empire: The U.S. and Its Dependencies (A. W. Sythoff-Leyden, 1962), p. 336.

[30]See Ralph Braibanti, op. cit., pp. 975-981, for another example of the difference between traditional Chinese diplomacy and the political and juridical concepts of Western international relations.

[31]The Oil And Gas Journal, August 24, 1970; also see Fig. 2, from Barry Weisberg's article in The Nation, op. cit.

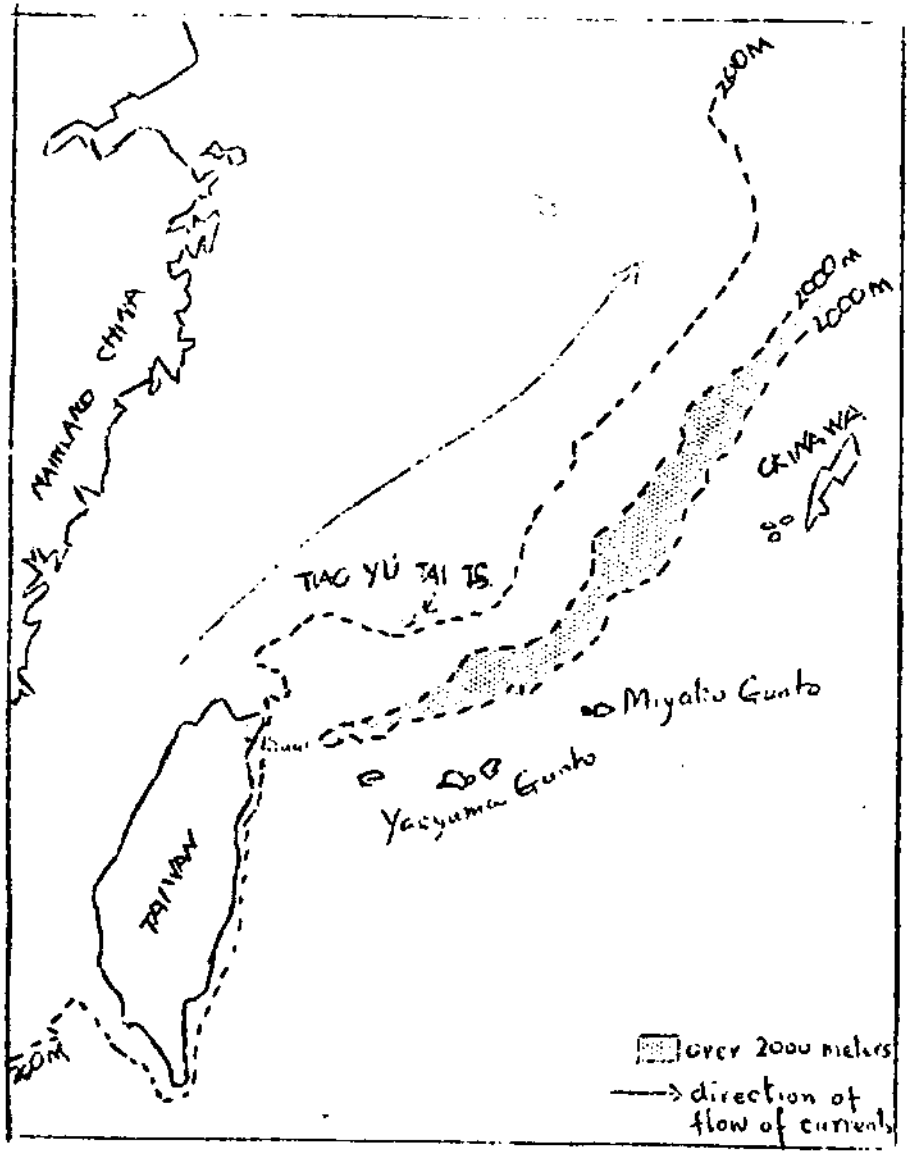

Fig. 1: Sea water depths near Tiao-yu-T'ai Islands

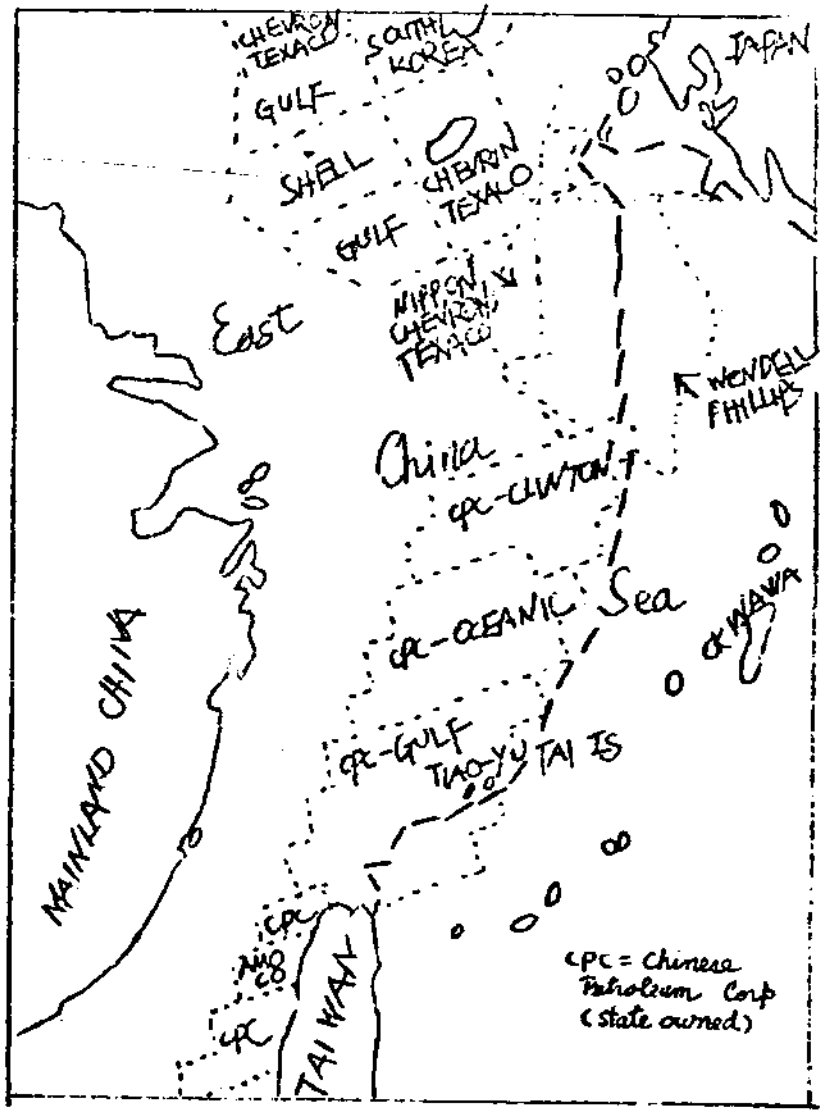

Fig. 2: Oil rush in Area between Taiwan and Korea

PRONOUNCEMENTS OF THE PEOPLE'S REPUBLIC OF CHINA ON THE SENKAKU ISLANDS DISPUTE

1. 4 Dec 70

COMMUNIST CHINA
INTERNATIONAL AFFAIRS

JAPANESE DESIGNS ON PAC, DPRK OFFSHORE OIL DENOUNCED

Peking NCNA International Service in English 2349 GMT 3 Dec 70 B

[Text] Peking, December 3 (HSINHUA correspondent)--A group of Japanese reactionary politicians and pro-U.S. monopolist bigwigs led by arch-war criminal Nobusuke Kishi, in collusion with the Chiang Kai-shek clique and the Pak Chong-hui puppet clique, [illegible] up on November 12 a "Liaison Committee" in Seoul and clamoured that beginning [illegible] they will "jointly exploit" the undersea oil in the water areas around China's Taiwan province and its appendant islands and in the shallow water areas close to China and Korea. This is a new crime committed by Japanese militarism in plotting aggression against China and Korea under the support of U.S. imperialism, and is a serious provocation carried out by the U.S. and Japanese reactionaries against the Chinese and Korean people.

U.S. imperialism has long instigated the Japanese reactionaries to speed up the formation of a Northeast Asia counter-revolutionary alliance. The Japan-Chiang-Pak "Liaison Committee" is in effect the backbone of a counter-revolutionary alliance with U.S. imperialism as the boss behind the scenes and Japanese militarism as the ring-leader. Since the emergence of the "Nixon Doctrine", U.S. imperialism has redoubled its efforts to urge Japanese militarism to serve as gendarme in Asia and to join the other running dogs of U.S. imperialism in opposing the people of China, Korea and other Asian countries.

After the "automatic extension" of the aggressive Japan-U.S. "security treaty" by the U.S. and Japanese reactionaries last June, the Japanese reactionaries, the Chiang Kai-shek clique and the Pak Chong-hui puppet clique held a sinister meeting in Tokyo in July and decided to set up a "Liaison Committee". They openly clamoured about opposing communism in Asia, exchanging information on China and "making close contacts on the joint defence of Asia and other problems". This thoroughly revealed the counter-revolutionary nature of this committee.

It is stipulated in the so-called organizational rules of the "Liaison Committee" that besides the exchange of information, there should be joint study and investigation of various problems "concerning" Japan, the Chiang Kai-shek clique and the Pak Chong-hui clique. This constitutes a further admission that these three running dogs of U.S. imperialism in Northeast Asia are bent on strengthening their counter-revolutionary collusion in an all-round way, and that through this collusion, Japanese militarism will tighten its control over the Chiang Kai-shek clique and the Pak Chong-hui clique while striving to realize its ambition of annexing China's territory Taiwan Province and the southern part of Korea.

The formation of the Japan-Chiang-Pak "Liaison Committee" shows that the Japanese militarist forces are embarking more recklessly onto the criminal path of aggression against China and Korea. At the instigation of the Japanese militarist forces, the first counter-revolutionary undertaking of this committee is its decision to set up under it two "special committees" for "ocean development" and "economic cooperation", declaring that "joint development" of the undersea oil in the water areas around China's Taiwan Province and its appendant islands and in the shallow water areas close to China and Korea will begin next year.

For this end, they planned to set up a so-called joint-stock company for ocean development and decided that the "special committee for ocean development" will meet in Tokyo in December to determine the proportion of their investment in the company and the nomination of its staff.

What is called "joint development" is merely an established practice of the Japanese militarist pirates in unscrupulously plundering others. The "joint development" to be undertaken by Japanese militarism together with Chiang Kai-shek and Pak Chong-hui, dregs of history spurned long ago by the Chinese and Korean people, is a downright dirty deal between aggressor and traitors.

For the purpose of plundering the undersea oil of China and Korea, the Japanese militarists adopted a series of new and more vicious tricks. That is temporarily to "shelve" or "freeze" the title of China and Korea to the islands and the undersea resources and begin "joint development" first. What do "shelving" and "freezing" mean? They mean that the people of China and Korea should surrender their sovereignty and let Japanese militarism plunder and occupy the islands and resources at will. Such frenzied political behaviour of the Japanese reactionaries has shocked even the Japanese bourgeois press which declared that "this is something rare in the world".

There are indeed rich oil, natural gas and other mineral resources on the sea floor in the water areas around China's Taiwan Province and its appendant islands and in the shallow water areas close to China and Korea. While frantically plundering the rich resources of China's Taiwan province, U.S. imperialism, aggressive by nature, has long stretched its claws of aggression to the sea floor of China's vast shallow water areas. In recent years, U.S. imperialism and the Japanese reactionaries have conducted large-scale surveys of the undersea resources in China's shallow water areas. Their aircraft and ships equipped with various kinds of instruments have made prolonged and repeated surveys over and on the surface of China's shallow water areas. The scope of their surveys included the vast water areas of the Yellow Sea, the East China Sea and the South China Sea close to China and the Taiwan Strait. These activities are still going on.

Japanese militarism is frantically conducting arms expansion and war preparations and stepping up the militarization of the national economy. Therefore, it is particularly in need of all kinds of strategic materials, especially petroleum.

Apart from unscrupulously plundering oil in the Middle East, Southeast Asia and other places, the Japanese reactionaries have been casting covetous eyes on China's undersea resources in particular. The reactionary Sato government, together with the U.S. armed forces in Okinawa and the U.S. imperialist-controlled U.N. Economic Commission for Asia and the Far East, has jointly surveyed the sea floor in the shallow water areas close to China and around China's Taiwan province. At present, it is plotting hand in glove with the Chiang Kai-shek clique to prospect for undersea petroleum in China's Taiwan Strait area.

Supported by U.S. imperialism, the reactionary Sato government is also seeking various pretexts to include into Japan's territory the Tiaoyu, Huangwei, Chihwei, Nanhsiao, Peihsiao and other islands and water areas which belong to China.

This new act of aggression perpetrated by the U.S.-Japanese reactionaries in league with the Chiang Kai-shek and Pak Chong-hui cliques has aroused the furious indignation of the 700 million Chinese people and the 40 million Korean people. The U.S. and Japanese reactionaries will eat their own bitter fruit if they do not retract their claws of aggression and are bent on acting arbitrarily.

DPRK SCIENTIFIC DELEGATION LEAVES SHANGHAI FOR CHANGSHA

Peking NCNA International Service in English 1629 GMT 3 Dec 70 B

[Text] Shanghai, December 3 (Hsinhua)--The scientific and technical delegation of the Democratic People's Republic of Korea with Won Tong-Ku, vice-minister of chemical industry, as its leader left Shanghai for Changsha by plane today after a visit to Shanghai.

The delegation was given a warm send-off at the airport by Ma Tien-shui, vice-chairman of the Shanghai Municipal Revolutionary Committee, and leading members of the organizations concerned: Huang Tao and others.

The delegation arrived in Shanghai from Nanking by plane on the afternoon of November 28 in the company of Sun Hsiao-feng, Chinese vice-minister of petroleum industry. During their stay in Shanghai, the Korean comrades-in-arms visited the site of the First National Congress of the Chinese Communist Party, the Shanghai industries exhibition, and a number of factories including the Hungwei paper mill and the Wusung chemical plant. They attended a performance of the modern revolutionary Peking opera "On the Docks".

Wherever the Korean comrades-in-arms went, they were given a warm welcome by the revolutionary masses.

The Shanghai Municipal Revolutionary Committee gave a banquet yesterday evening in honour of the visiting Korean delegation. The banquet was permeated with warm friendship and militant unity between the Chinese and Korean comrades-in-arms.

ROMANIAN DELEGATION LED BY DRAGAN CONTINUES VISIT

Bucharest AGERPRES International Service in English 1935 GMT 2 Dec 70 L

[Text] Peking-AGERPRES, 2.12.1970--AGERPRES correspondent I. Galateanu reports: The delegation of the General Trade Union Confederation of Romania at head with [as received] Constantin Dragan, member of the Executive Committee of the CC of the RCP, first vice-chairman of the GTUC Central Council, accompanied by Liu Hsi-chang, member of the CC of the Communist Party of China, member of the leadership of the workers' representatives assembly of Peking, Liu Ke-ming, deputy general secretary of the foreign relations department of the CC of the Communist Party of China, and by Aurel Duma, the Romanian ambassador in Peking, saw round industrial objectives in Peking, on December 2. In the evening, the GTUC delegation attended an opera.

CHOU EN-LAI MEETS AFGHAN AMBASSADOR 3 DECEMBER

Peking NCNA International Service in English 1928 GMT 3 Dec 70 B

[Text] Peking, December 3 (HSINHUA)--Chou En-lai, premier of the State Council, this afternoon met Afghan Ambassador to China Mohammad Osman Sidky.

UNITED NATIONS GENERAL ASSEMBLY
RESOLUTIONS 2467A, 2467B, 2467C, and 2467D

Twenty-third session
Agenda item 26

1752nd plenary meeting,
21 December 1968.

RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the First Committee (A/7477)]

2467 (XXIII). Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind

A

The General Assembly,

Recalling the item entitled "Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind",

Having in mind its resolution 2340 (XXII) of 18 December 1967 concerned with the problems arising in the area to which the title of the item refers,

Reaffirming the objectives set forth in that resolution,

Taking note with appreciation of the report prepared by the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,[1] keeping in mind the views expressed in the course of its work and drawing upon its experience,

Recognizing that it is in the interest of mankind as a whole to favour the exploration and use of the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, for peaceful purposes,

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1/ Official Records of the General Assembly, Twenty-third Session, agenda item 26, document A/7230.

NO PAGES 132-140

Considering that it is important to promote international co-operation for the exploration and exploitation of the resources of this area,

Convinced that such exploitation should be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries,

Considering that it is essential to provide, within the United Nations system, a focal point for the elaboration of desirable measures of international co-operation, taking into account alternative actual and potential uses of this area, and for the co-ordination of the activities of international organizations in this regard,

1. Establishes a Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, composed of forty-two States;

2. Instructs the Committee:

(a) To study the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and to ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole;

(b) To study the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole;

(c) To review the studies carried out in the field of exploration and research in this area and aimed at intensifying international co-operation and stimulating the exchange and the widest possible dissemination of scientific knowledge on the subject;

(d) To examine proposed measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of this area;

3. Also calls upon the Committee to study further, within the context of the title of the item, and taking into account the studies and international negotiations being undertaken in the field of disarmament, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which may be agreed upon in this respect;

4. Requests the Committee:

(a) To work in close co-operation with the specialized agencies, the International Atomic Energy Agency and the intergovernmental bodies dealing with the problems referred to in the present resolution, so as to avoid any duplication or overlapping of activities;

(b) To make recommendations to the General Assembly on the questions mentioned in paragraphs 2 and 3 above;

(c) In co-operation with the Secretary-General, to submit to the General Assembly reports on its activities at each subsequent session;

5. Invites the specialized agencies, the International Atomic Energy Agency and other intergovernmental bodies including the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization to co-operate fully with the Committee in the implementation of the present resolution.

B

The General Assembly,

Recognizing that it is in the common interest of all nations that the exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, should be conducted in such a manner as to avoid infringement of the other interests and established rights of nations with respect to the uses of the sea,

Mindful of the threat to the marine environment presented by pollution and other hazardous and harmful effects which might result from exploration and exploitation of the areas under consideration,

Desiring to promote effective measures of prevention and control of such pollution and to allay the serious damage which might be caused to the marine environment and, in particular, to the living marine resources which constitute one of mankind's most valuable food resources,

Recognizing the complex problem of ensuring effective co-ordination in the wide field of environmental pollution and in the more specific area of prevention and control of marine pollution,

Noting with satisfaction the measures being undertaken by the Inter-Governmental Maritime Consultative Organization to prevent and control pollution of the sea by preparing new draft conventions and other instruments for that purpose,

Recalling, in this regard, the progress achieved towards such concerted action by intergovernmental bodies and the establishment, by the Food and Agriculture

Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and its Intergovernmental Oceanographic Commission, the Inter-Governmental Maritime Consultative Organization and the World Meteorological Organization, of a joint group of experts on the scientific aspects of marine pollution,

Recalling further the competence and continuing valuable contributions of the other intergovernmental organizations concerned,

1. Welcomes the adoption by States of appropriate safeguards against the dangers of pollution and other hazardous and harmful effects that might arise from the exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, notably in the form of concrete measures of international co-operation for the purpose of realizing this aim;

2. Considers that, in connexion with the elaboration of principles underlying possible future international agreements for the area concerned, a study should be made with a view to clarifying all aspects of protection of the living and other resources of the sea-bed and ocean floor, the superjacent waters and the adjacent coasts against the consequences of pollution and other hazardous and harmful effects arising from various modalities of such exploration and exploitation;

3. Considers further that such a study should take into consideration the importance of minimizing interference between the many means by which the wealth of the ocean space may be harvested, and that it should extend to the examination of the circumstances in which measures may be undertaken by States for the protection of the living and other resources of those areas in which pollution detrimental to those resources has occured or is imminent;

4. Requests the Secretary-General, in co-operation with the appropriate and competent body or bodies presently undertaking co-ordinated work in the field of marine pollution control, to undertake the study referred to in paragraphs 2 and 3 above and to submit a report thereon to the General Assembly and the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

C

The General Assembly,

Having considered the item entitled "Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor,

and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind",

Reaffirming that exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, should be carried out for the benefit of mankind as a whole, taking into special consideration the interests and needs of the developing countries,

Recalling that international co-operation in this field is of paramount importance,

Bearing in mind its resolution A above establishing the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and the mandate entrusted to it,

1. Requests the Secretary-General to undertake a study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of this area, and the use of these resources in the interests of mankind, irrespective of the geographical location of States, and taking into special consideration the interests and needs of the developing countries, and to submit a report thereon to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration during one of its sessions in 1969;

2. Calls upon the Committee to submit a report on this question to the General Assembly at its twenty-fourth session.

D

The General Assembly,

Convinced that the nations of the world should join together, with due respect for national jurisdiction, in a common long-term programme of exploration of the ocean as a potential source of resources, which should eventually be used for meeting the needs of all mankind with due recognition of those of developing countries and irrespective of the geographical location of States,

Recalling also that in its resolution 2172 (XXI) of 6 December 1966 the General Assembly requested the Secretary-General to prepare proposals for ensuring the most effective arrangements for an expanded programme of international co-operation to assist in a better understanding of the marine environment through science, and for initiating and strengthening marine education and training programmes,

Recalling further the proposals made by the Secretary-General in his report,[2/] pursuant to resolution 2172 (XXI), as well as the various views expressed during the consideration of this subject by the General Assembly at its twenty-third session,

Noting that the Bureau and Consultative Council of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization considered the proposed International Decade of Ocean Exploration a useful initiative for broadening and accelerating investigations of the oceans and for strengthening international co-operation,

Endorsing the objectives expressed in Economic and Social Council resolutions 1380 (XLV), 1381 (XLV) and 1382 (XLV) of 2 August 1968 and recalling particularly the invitation to the General Assembly to endorse the concept of a co-ordinated long-term programme of oceanographic research, taking into account such initiatives as the proposal for an International Decade of Ocean Exploration and international programmes already considered, approved and adopted by the Intergovernmental Oceanographic Commission for implementation in co-operation with other specialized agencies,

Aware of the consideration given to the proposal in the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, arising from the contribution which the International Decade of Ocean Exploration would make to scientific research and exploration of the sea-bed and ocean floor, as an important part of a co-ordinated long-term international programme of oceanographic research,

Seeking to enrich the knowledge of all mankind by encouraging a free flow of scientific information on the oceans to all States,

1. Welcomes the concept of an International Decade of Ocean Exploration to be undertaken within the framework of a long-term programme of research and exploration, including scientific research and exploration of the sea-bed and the ocean floor, under the aegis of the United Nations on the understanding that all such activities falling under the national jurisdiction of a State shall be subject to the previous consent of such State, in accordance with international law;

2. Invites Member States to formulate proposals for national and international scientific programmes and agreed activities to be undertaken during the International Decade of Ocean Exploration with due regard to the interests

2/ E/4487 and Corr.1-6, and Add.1.

of developing countries, to transmit these proposals to the United Nations Educational, Scientific and Cultural Organization for the Intergovernmental Oceanographic Commission in time to begin the Decade in 1970, and to embark on such activities as soon as practicable;

3. Urges Member States to publish as soon as practicable the results of all activities which they will have undertaken within the framework of the International Decade of Ocean Exploration as part of a long-term co-ordinated programme of scientific research and exploration, and at the same time to communicate these results to the Intergovernmental Oceanographic Commission;

4. Requests the United Nations Educational, Scientific and Cultural Organization that its Intergovernmental Oceanographic Commission:

(a) Intensify its activities in the scientific field, within its terms of reference and in co-operation with other interested agencies, in particular with regard to co-ordinating the scientific aspects of a long-term and expanded programme of world-wide exploration of the oceans and their resources of which the International Decade of Ocean Exploration will be an important element, including international agency programmes, an expanded international exchange of data from national programmes, and international efforts to strengthen the research capabilities of all interested nations with particular regard to the needs of the developing countries;

(b) Co-operate with the Secretary-General, in accordance with paragraph 4 of General Assembly resolution 2414 (XXIII) of 17 December 1968 on the resources of the sea in the preparation of the comprehensive outline of the scope of the long-term programme of oceanographic research of which the International Decade of Ocean Exploration will be an important element, making available its views as to the appropriate relationship between the several international programmes already considered, approved and adopted by the Intergovernmental Oceanographic Commission for implementation, the Decade, and the long-term programme;

(c) Keep the Secretary-General informed of all proposals, programmes and activities of which it is informed in accordance with paragraphs 2 and 3 above together with any comments it may consider appropriate;

(d) Report through appropriate channels to the General Assembly at its twenty-fourth session on progress made in the implementation of the present resolution.

In accordance with the decision taken by the First Committee at its 1648th meeting, on 19 December 1968, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, established under paragraph 1 of resolution A above, will consist of the following Member States: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Ceylon, Chile, Czechoslovakia, El Salvador, France, Iceland, India, Italy, Japan, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Malta, Mauritania, Mexico, Nigeria, Norway, Pakistan, Peru, Poland, Romania, Sierra Leone, Sudan, Thailand, Trinidad and Tobago, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Yugoslavia.

UNITED NATIONS GENERAL ASSEMBLY
RESOLUTIONS 2574A, 2574B, 2574C, and 2574D

Twenty-fourth session
Agenda item 32

December, 1969

RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY*

[on the report of the First Committee (A/7834)]

2574 (XXIV). Question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind

A

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967 and 2467 (XXIII) of 21 December 1968,

Having regard for the fact that the problems relating to the high seas, territorial waters, contiguous zones, the continental shelf, the superjacent waters, and the sea-bed and ocean floor beyond the limits of national jurisdiction, are closely linked together,

Considering that the definition of the continental shelf contained in the Convention on the Continental Shelf of 29 April 1958[1] does not define with sufficient precision the limits of the area over which a coastal State exercises sovereign rights for the purpose of exploration and exploitation of natural resources, and that customary international law on the subject is inconclusive,

Noting that developing technology is making the entire sea-bed and ocean floor progressively accessible and exploitable for scientific, economic, military and other purposes,

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1/ United Nations, Treaty Series, vol. 499 (1964), No. 7302.

Affirming that there exists an area of the sea-bed and ocean floor and the subsoil thereof which lies beyond the limits of national jurisdiction,

Affirming further that this area should be used exclusively for peaceful purposes and that its resources utilized for the benefit of all mankind,

Convinced of the urgent necessity of preserving this area from encroachment, or appropriation by any State, inconsistent with the common interest of mankind,

Noting that the establishment of an equitable international régime for this area would facilitate the task of determining the limits of the area to which that régime is to apply,

Noting further the continuing efforts of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction to elaborate such a régime in accordance with paragraph 2 (a) of resolution 2467 A (XXIII),

1. *Requests* the Secretary-General to ascertain the views of Member States on the desirability of convening at an early date a conference on the law of the sea to review the régimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and conservation of the living resources of the high seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction, in the light of the international régime to be established for that area;

2. *Requests* the Secretary-General to report on the results of his consultations to the General Assembly at its twenty-fifth session.

1833rd plenary meeting,
15 December 1969.

B

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967 and 2467 (XXIII) of 21 December 1968,

Having considered the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,[2/]

Expressing its satisfaction to the International Atomic Energy Agency, the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and its Intergovernmental Oceanographic Commission, and to the

2/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 22 (A/7622 and Corr.1); A/7622/Add.1.

Inter-Governmental Maritime Consultative Organization for their participation in and contribution to the Committee's work, as well as to the Secretary-General for his assistance,

1. Takes note with appreciation of the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction;

2. Invites the Committee to consider further the questions entrusted to it under General Assembly resolution 2467 (XXIII) with a view to formulating recommendations on these questions, in the light of the reports and studies to be made available to it and taking into account the views expressed in the General Assembly at its twenty-fourth session;

3. Notes with interest the synthesis at the end of the report of the Legal Sub-Committee,[3] which reflects the extent of the work done in the formulation of principles designed to promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether land-locked or coastal;

4. Requests the Committee to expedite its work of preparing a comprehensive and balanced statement of these principles and to submit a draft declaration to the General Assembly at its twenty-fifth session;

5. Takes note of the suggestions contained in the report of the Economic and Technical Sub-Committee;[4]

6. Requests the Committee to formulate recommendations regarding the economic and technical conditions and the rules for the exploitation of the resources of this area in the context of the régime to be set up.

1833rd plenary meeting,
15 December 1969.

C

The General Assembly,

Recalling its resolution 2467 (XXIII) of 21 December 1968,

Noting with appreciation the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,[5]

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[3] Ibid., part two.

[4] Ibid., part three.

[5] Ibid., Supplement No. 22 (A/7622 and Corr.1); A/7622/Add.1.

Noting with satisfaction the study on international machinery prepared by the Secretary-General, which is annexed to that report,6/

Bearing in mind the recommendation of the Committee that the Secretary-General should be requested to continue this study in depth,

1. Requests the Secretary-General to prepare a further study on various types of international machinery, particularly a study covering in depth the status, structure, functions and powers of an international machinery, having jurisdiction over the peaceful uses of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, including the power to regulate, co-ordinate, supervise and control all activities relating to the exploration and exploitation of their resources, for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether land-locked or coastal;

2. Requests the Secretary-General to submit his report thereon to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration during one of its sessions in 1970;

3. Calls upon the Committee to submit a report on this question to the General Assembly at its twenty-fifth session.

1833rd plenary meeting,
15 December 1969.

D

The General Assembly,

Recalling its resolution 2467 A (XXIII) of 21 December 1968 to the effect that the exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, should be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries,

Convinced that it is essential, for the achievement of this purpose, that such activities be carried out under an international régime, including appropriate international machinery,

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6/ Ibid., annex II.

Noting that this matter is under consideration by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,

Recalling its resolution 2340 (XXII) of 18 December 1967 on the importance of preserving the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, from actions and uses which might be detrimental to the common interests of mankind,

Declares that, pending the establishment of the aforementioned international régime:

(a) States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;

(b) No claim to any part of that area or its resources shall be recognized.

1833rd plenary meeting,
15 December 1969.

RECORDED VOTE ON RESOLUTION D:

In favour: Afghanistan, Algeria, Argentina, Barbados, Bolivia, Brazil, Burundi, Central African Republic, Ceylon, Chad, Chile, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cyprus, Dahomey, Dominican Republic, Ecuador, Ethiopia, Finland, Guatemala, Guinea, Guyana, Haiti, Honduras, India, Iraq, Jamaica, Jordan, Kenya, Kuwait, Lesotho, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Morocco, Nepal, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Rwanda, Singapore, Somalia, Southern Yemen, Sweden, Thailand, Trinidad and Tobago, Tunisia, Uganda, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia.

Against: Australia, Austria, Belgium, Bulgaria, Byelorussia, Canada, Czechoslovakia, Denmark, France, Ghana, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Malta, Mongolia, Netherlands, New Zealand, Norway, Poland, Portugal, South Africa, Ukraine, USSR, United Kingdom, United States.

Abstaining: Burma, China, Cuba, El Salvador, Greece, Indonesia, Iran, Israel, Ivory Coast, Laos, Lebanon, Liberia, Libya, Madagascar, Malawi, Nigeria, Philippines, Romania, Saudi Arabia, Sierra Leone, Spain, Sudan, Swaziland, Syria, Togo, Turkey, United Arab Republic, Upper Volta.

Absent: Albania, Botswana, Cambodia, Cameroon, Equatorial Guinea, Gabon, Gambia, Senegal.

UNITED NATIONS GENERAL ASSEMBLY
RESOLUTIONS 2749, 2750A, 2750B, and 2750C

SUBJECT: Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction

DATE AND MEETING: 17 December 1970, 1933rd plenary meeting

VOTE: 108 in favour, none against, with 14 abstentions

DOCUMENT NUMBERS

REPORT TO ASSEMBLY: First Committee report A/8097 and Corr.1

RESOLUTION ADOPTED: 2749 (XXV)

TEXT OF RESOLUTION

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968 and 2574 (XXIV) of 15 December 1969, concerning the area to which the title of the item refers,

Affirming that there is an area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, the precise limits of which are yet to be determined,

Recognizing that the existing legal régime of the high seas does not provide substantive rules for regulating the exploration of the aforesaid area and the exploitation of its resources,

Convinced that the area shall be reserved exclusively for peaceful purposes and that the exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole,

Believing it essential that an international régime applying to the area and its resources and including appropriate international machinery should be established as soon as possible,

Bearing in mind that the development and use of the area and its resources shall be undertaken in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by fluctuation of prices of raw materials resulting from such activities,

Solemnly declares that:

1. The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind.

2. The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.

3. No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international régime to be established and the principles of this Declaration.

4. All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international régime to be established.

5. The area shall be open to use exclusively for peaceful purposes by all States whether coastal or land-locked, without discrimination, in accordance with the international régime to be established.

6. States shall act in the area in accordance with the applicable principles and rules of international law including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970,[1/] in the interests of maintaining international peace and security and promoting international co-operation and mutual understanding.

7. The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into particular consideration the interests and needs of the developing countries.

8. The area shall be reserved exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to a broader area. One or more international agreements shall be concluded as soon as possible in order to implement effectively this principle and to constitute a step towards the exclusion of the sea-bed, the ocean floor and the subsoil thereof from the arms race.

1/ Resolution 2625 (XXV).

9. On the basis of the principles of this Declaration, an international régime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon. The régime shall, inter alia, provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.

10. States shall promote international co-operation in scientific research exclusively for peaceful purposes:

(a) By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries;

(b) Through effective publication of research programmes and dissemination of the results of research through international channels;

(c) By co-operation in measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes.

No such activity shall form the legal basis for any claims with respect to any part of the area or its resources.

11. With respect to activities in the area and acting in conformity with the international régime to be established, States shall take appropriate measures for and shall co-operate in the adoption and implementation of international rules, standards and procedures for, inter alia:

(a) Prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment;

(b) Protection and conservation of the natural resources of the area and prevention of damage to the flora and fauna of the marine environment.

12. In their activities in the area, including those relating to its resources, States shall pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as of all other States which may be affected by such activities. Consultations shall be maintained with the coastal States concerned with respect to activities relating to the exploration of the area and the exploitation of its resources with a view to avoiding infringement of such rights and interests.

13. Nothing herein shall affect:

(a) The legal status of the waters superjacent to the area or that of the air space above those waters;

(b) The rights of coastal States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat thereof resulting from, or from other hazardous occurrences caused by, any activities in the area, subject to the international régime to be established.

14. Every State shall have the responsibility to ensure that activities in the area, including those relating to its resources, whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the international régime to be established. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability.

15. The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established.

* * *

SUBJECT: Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea

DATE AND MEETING: 17 December 1970, 1933rd plenary meeting

VOTES: Resolution A: 104 in favour, none against, with 16 abstentions

Resolution B: 111 in favour, none against, with 11 abstentions

Resolution C: 108 in favour, 7 against, with 6 abstentions (recorded vote) *

DOCUMENT NUMBERS

REPORT TO ASSEMBLY: First Committee report A/8097

RESOLUTION ADOPTED: 2750 (XXV)

TEXT OF RESOLUTION

A

The General Assembly,

Reaffirming that the area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, and its resources are the common heritage of mankind,

Convinced that the exploration of the area and the exploitation of its resources should be carried out for the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries,

Reaffirming that the development of the area and its resources shall be undertaken in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by the fluctuation of prices of raw materials resulting from such activities,

1. Requests the Secretary-General to co-operate with the United Nations Conference on Trade and Development, specialized agencies and other competent organizations of the United Nations system in order to:

(a) Identify the problems arising from the production of certain minerals from the area beyond the limits of national jurisdiction and examine the impact they will have on the economic well-being of the developing countries, in particular on prices of mineral exports on the world market;

(b) Study these problems in the light of the scale of possible exploitation of the sea-bed taking into account the world demand for raw materials and the evolution of costs and prices;

(c) Propose effective solutions for dealing with these problems;

2. Requests the Secretary-General to submit his report thereon to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration during one of its sessions in 1971, and for making its recommendations as appropriate to foster healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by the fluctuation of prices of raw materials resulting from such activities;

3. Requests the Secretary-General, in co-operation with the United Nations Conference on Trade and Development, specialized agencies and other competent organizations of the United Nations system, to keep this matter under constant review so as to submit supplementary information annually or whenever it is necessary and recommend additional measures in the light of economic, scientific and technological developments;

4. Calls upon the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction to submit a report on this question to the General Assembly at its twenty-sixth session.

B

The General Assembly,

Recalling its resolutions 1028 (XI) of 20 February 1957 and 1105 (XI) of 21 February 1957 concerning the problems of land-locked countries,

Bearing in mind the replies to the inquiries made by the Secretary-General in accordance with paragraph 1 of its resolution 2574 A (XXIV) of 15 December 1969, which indicate wide support for the idea of convening a conference relating to the law of the sea, at which the interests and needs of all States, whether land-locked or coastal, could be reconciled,

Noting that many of the present land-locked States Members of the United Nations did not participate in the previous United Nations Conference on the Law of the Sea,

Reaffirming that the area of the sea-bed and the ocean floor, and their subsoil, lying beyond the limits of national jurisdiction, together with the resources thereof, are the common heritage of mankind,

Convinced that the exploration of that area and the exploitation of those resources must be carried out for the benefit of all mankind, taking into account the special interests and needs of the developing countries, including the particular needs and problems of those which are land-locked,

1. Requests the Secretary-General to prepare, in collaboration with the United Nations Conference on Trade and Development and other competent bodies, an up-to-date study of the matters referred to in the memorandum dated 14 January 1958 prepared by the Secretariat on the question of free access of land-locked countries to the sea[1/] and to supplement that document, in the light of the events which have occurred in the meantime, with a report on the special problems of land-locked countries relating to the exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;

2. Requests the Secretary-General to submit the above-mentioned study to the enlarged Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, for consideration at one of its 1971 sessions, so that appropriate measures may be evolved within the general framework of the law of the sea, to resolve the problems of land-locked countries;

3. Requests the Committee to report on this question to the General Assembly at its twenty-sixth session.

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The General Assembly,

Recalling its resolutions 798 (VIII) of 7 December 1953, 1105 (XI) of 21 February 1957 and 2574 A (XXIV) of 15 December 1969,

Recalling further its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968 and 2574 (XXIV) of 15 December 1969,

Taking into account the results of the consultations undertaken by the Secretary-General in accordance with paragraph 1 of resolution 2574 A (XXIV), which indicate widespread support for the holding of a comprehensive conference on the law of the sea,

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1/ United Nations Conference on the Law of the Sea, 1958, Official Records, Vol. I (United Nations publication, Sales No.: 58.V.4, Vol.1), document A/CONF.13/29 and Add.1, p. 306-335.

Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole,

Noting that the political and economic realities, scientific development and rapid technological advances of the last decade have accentuated the need for early and progressive development of the law of the sea, in a framework of close international co-operation,

Having regard to the fact that many of the present States Members of the United Nations did not take part in previous United Nations conferences on the law of the sea,

Convinced that the elaboration of an equitable international régime for the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction would facilitate agreement on the questions to be examined at such a conference,

Affirming that such agreements on these questions should seek to accommodate the interests and needs of all States, whether land-locked or coastal, taking into account the special interests and needs of the developing countries, whether land-locked or coastal,

Having considered the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,2/

Convinced that a new conference on the law of the sea would have to be carefully prepared to ensure its success and that the preparatory work ought to start as soon as possible after the termination of the twenty-fifth session of the General Assembly, drawing on the experience already accumulated in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and using fully the opportunity provided by the 1972 United Nations Conference on the Human Environment to further its work,

1. Notes with satisfaction the progress made so far towards the elaboration of the international régime for the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction through the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the

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2/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021).

Subsoil Thereof, beyond the Limits of National Jurisdiction, adopted by the General Assembly on 17 December 1970;2/

2. Decides to convene in 1973, in accordance with the provisions of paragraph 3 hereof, a Conference on the Law of the Sea which would deal with the establishment of an equitable international régime -- including an international machinery -- for the area and the resources of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues including those concerning the régimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, inter alia, the prevention of pollution) and scientific research;

3. Decides further to review at its twenty-sixth and twenty-seventh sessions the reports of the Committee referred to in paragraph 6 below on the progress of its preparatory work with a view to determining the precise agenda of the Conference, its definitive date, location and duration, and related arrangements; if the General Assembly at its twenty-seventh session determines the progress of the preparatory work of the Committee to be insufficient, it may decide to postpone the Conference;

4. Reaffirms the mandate of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction set forth in resolution 2467 A (XXIII), as supplemented by the present resolution;

5. Decides to enlarge the Committee by forty-four members, appointed by the Chairman of the First Committee in consultation with regional groups and taking into account equitable geographical representation thereon;

6. Instructs the enlarged Committee to hold two meetings in Geneva in March and July-August 1971 in order to prepare for the Conference draft treaty articles embodying the international régime, including an international machinery for the area and the resources of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, taking

2/ Resolution 2749 (XXV).

into account the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked, on the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof beyond the Limits of National Jurisdiction adopted by the General Assembly on 17 December 1970, and a comprehensive list of subjects and issues relating to the law of the sea referred to in paragraph 2 above which should be dealt with by the Conference, and draft articles on such subjects and issues;

7. Authorizes the Committee to establish such subsidiary organs as it deems necessary for the efficient performance of its functions, bearing in mind the scientific, economic, legal and technical aspects of the issues involved;

8. Requests the Committee to prepare, as appropriate, reports to the General Assembly on the progress of its work;

9. Requests the Secretary-General to circulate those reports to Member States and Observers to the United Nations for their comments and observations;

10. Decides to invite other Member States which are not appointed to the Committee to participate as observers and to be heard on specific points;

11. Requests the Secretary-General to render to the Committee all the assistance it may require in legal, economic, technical and scientific matters, including the relevant records of the General Assembly and specialized agencies, for the efficient performance of its functions;

12. Decides that the enlarged Committee, as well as its subsidiary organs, shall have summary records of its proceedings;

13. Invites the United Nations Educational, Scientific and Cultural Organization and its Intergovernmental Oceanographic Commission, the Food and Agriculture Organization of the United Nations and its Committee on Fisheries, the World Health Organization, the Inter-Governmental Maritime Consultative Organization, the World Meteorological Organization, the International Atomic Energy Agency and other intergovernmental bodies and specialized agencies concerned to co-operate fully with the Committee in the implementation of the present resolution, in particular by preparing such scientific and technical documentation as the Committee may request.

RECORDED VOTE ON RESOLUTION C:

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Burundi, Cambodia, Cameroon, Canada, Ceylon, Chad, Chile, China, Colombia, Congo (Democratic Republic of), Costa Rica, Cyprus, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Laos, Lebanon, Lesotho, Liberia, Libya, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Paraguay, People's Republic of the Congo, Peru, Philippines, Portugal, Rwanda, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Southern Yemen, Spain, Sudan, Swaziland, Sweden, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Republic, United Kingdom, United Republic of Tanzania, United States, Upper Volta, Uruguay, Yemen, Yugoslavia, Zambia.

Against: Bulgaria, Byelorussia, Czechoslovakia, Hungary, Poland, Ukraine, USSR.

Abstaining: Burma, Cuba, Mongolia, Romania, Saudi Arabia, Venezuela.

Absent: Albania, Botswana, Central African Republic, Gambia, Maldives, *Pakistan.

* * *

* Later announced it had intended to vote in favour.

United States Policy for the Seabed

STATEMENT BY PRESIDENT NIXON[1]

The nations of the world are now facing decisions of momentous importance to man's use of the oceans for decades ahead. At issue is whether the oceans will be used rationally and equitably and for the benefit of mankind or whether they will become an arena of unrestrained exploitation and conflicting jurisdictional claims in which even the most advantaged states will be losers.

The issue arises now—and with urgency—because nations have grown increasingly conscious of the wealth to be exploited from the seabeds and throughout the waters above and because they are also becoming apprehensive about ecological hazards of unregulated use of the oceans and seabeds. The stark fact is that the law of the sea is inadequate to meet the needs of modern technology and the concerns of the international community. If it is not modernized multilaterally, unilateral action and international conflict are inevitable.

This is the time, then, for all nations to set about resolving the basic issues of the future regime for the oceans—and to resolve it in a way that redounds to the general benefit in the era of intensive exploitation that lies ahead. The United States, as a major maritime power and a leader in ocean technology to unlock the riches of the ocean, has a special responsibility to move this effort forward.

Therefore, I am today proposing that all [illegible] put as soon as possible a treaty under [illegible] they would renounce all national claims [illegible] the natural resources of the seabed beyond [illegible] point where the high seas reach a depth of 200 meters (218.8 yards) and would agree to regard these resources as the common heritage of mankind.

The treaty should establish an international regime for the exploitation of seabed resources beyond this limit. The regime should provide for the collection of substantial mineral royalties to be used for international community purposes, particularly economic assistance to developing countries. It should also establish general rules to prevent unreasonable interference with other uses of the ocean, to protect the ocean from pollution, to assure the integrity of the investment necessary for such exploitation, and to provide for peaceful and compulsory settlement of disputes.

I propose two types of machinery for authorizing exploitation of seabed resources beyond a depth of 200 meters.

First, I propose that coastal nations act as trustees for the international community in an international trusteeship zone comprised of the continental margins beyond a depth of 200 meters off their coasts. In return, each coastal state would receive a share of the international revenues from the zone in which it acts as trustee and could impose additional taxes if these were deemed desirable.

As a second step, agreed international machinery would authorize and regulate exploration and use of seabed resources beyond the continental margins.

The United States will introduce specific proposals at the next meeting of the United Nations Seabeds Committee to carry out these objectives.

Although I hope agreement on such steps can be reached quickly, the negotiation of such a complex treaty may take some time. I do not, however, believe it is either necessary or desirable to try to halt exploration and exploitation

[1] Issued on May 23 (White House press release).

of the seabeds beyond a depth of 200 meters during the negotiating process.

Accordingly, I call on other nations to join the United States in an interim policy. I suggest that all permits for exploration and exploitation of the seabeds beyond 200 meters be issued subject to the international regime to be agreed upon. The regime should accordingly include due protection for the integrity of investments made in the interim period. A substantial portion of the revenues derived by a state from exploitation beyond 200 meters during this interim period should be turned over to an appropriate international development agency for assistance to developing countries. I would plan to seek appropriate congressional action to make such funds available as soon as a sufficient number of other states also indicate their willingness to join this interim policy.

I will propose necessary changes in the domestic import and tax laws and regulations of the United States to assure that our own laws and regulations do not discriminate against U.S. nationals operating in the trusteeship zone off our coast or under the authority of the international machinery to be established.

It is equally important to assure unfettered and harmonious use of the oceans as an avenue of commerce and transportation and as a source of food. For this reason the United States is currently engaged with other states in an effort to obtain a new law-of-the-sea treaty. This treaty would establish a 12-mile limit for territorial seas and provide for free transit through international straits. It would also accommodate the problems of developing countries and other nations regarding the conservation and use of the living resources of the high seas.

I believe that these proposals are essential to the interests of all nations, rich and poor, coastal and landlocked, regardless of their political systems. If they result in international agreements, we can save over two-thirds of the earth's surface from national conflict and rivalry, protect it from pollution, and put it to use for the benefit of all. This would be a fitting achievement for this 25th anniversary year of the United Nations.

STATEMENT BY UNDER SECRETARY RICHARDSON [1]

Mr. Chairman, I appreciate the patience you and the members of your subcommittee have shown in rescheduling your hearings while the administration was considering and arriving at a position on this difficult problem.

Last Saturday, the President announced an initiative which offers a modern and imaginative basis for settling the uncertainties regarding the exploitation of the seabeds. It provides, for the first time in man's history, for an independent, substantial source of revenue for international community purposes, particularly economic assistance to developing countries. The President made his proposal during the year in which the United Nations is celebrating its 25th anniversary. If we are successful in implementing the President's proposal, I am confident that future generations will regard it as a significant example of leadership and farsightedness.

With your permission I would like to insert in the record at this point the President's statement in its entirety.

The President arrived at his decision only after lengthy and careful consideration of these difficult and important issues. The review of the problem actually began soon after Ambassador Pardo of Malta first introduced the seabed item into the United Nations General Assembly in the fall of 1967. Extensive discussions were held among all of the interested departments and agencies of the U.S. Government. The members of the executive branch benefited from the hearings held by this subcommittee and by other committees and subcommittees of the Senate and the House of Representatives, as well as from many private discussions with Members of the Congress.

We also had the benefit of numerous discussions with leaders of industry and representatives of various public groups. We found that the report of the Commission on Marine Science, Engineering and Resources, estab-

[1] Made before the Special Subcommittee on Outer Continental Shelf of the Senate Committee on Interior and Insular Affairs on May 27 (press release 162).

lished by the Congress, and reports prepared by the Secretary General of the United Nations were very helpful. Also, as a participant in the U.N. Seabeds Committee and its predecessor, the *Ad Hoc* Seabeds Committee, we gained much from hearing the views of other countries.

I would like today to describe for you some of the details of the President's proposal; but before I do, I would like to say a word or two about the context and background of the proposal.

You will recall that in his report to the Congress of February 18, "U.S. Foreign Policy for the 1970's," the President stated that "as man's uses of the oceans grow, international law must keep pace."[3] He said that the most pressing issue regarding the law of the sea is to achieve agreement on the breadth of the territorial sea to head off the threat of escalating national claims and that it was also important to make progress toward establishing an internationally agreed boundary between the continental shelf and the deep seabeds and on a regime for exploitation of deep seabed resources. He said further that we are working with others to channel the products of technological progress for the benefit of mankind.

The President's proposal of May 23 is aimed at giving effect to these general considerations. As the members of this committee are aware, the United States is already seeking a new law-of-the-sea treaty which would fix the limit of the territorial sea at 12 miles, with free transit through and over international straits, and would also give limited preferential fishing rights to coastal states on the high seas. The President's new proposal regarding the seabeds beyond the territorial sea is an effort to close the gap in another part of the international law of the sea.

The proposal combines narrow limits of national sovereign rights over seabed resources with a pragmatic division of royalties and administration of the resources of the continental margin and assures orderly development in the exploration and use of seabed resources beyond the continental margins. The concept of an international trusteeship for coastal states is a new one. It is designed to ensure the best possible use and sharing of the benefits derived from exploitation of the world's continental margins.

For the United States to propose a concept of broad extension of national jurisdiction would have indirect, but serious, national security implications and would impede the freedom of scientific research and other uses of the high seas. On the other hand, it is improbable that coastal states with long coastlines exposed to the open sea would be prepared to agree to a 200-meter limit if no international trusteeship zone with a division of royalties and administration were included.

In discussing the President's proposal with you, I ask that you bear in mind that we are still working on many details. In developing specific proposals on the international regime, we hope to work in close consultation with interested Members of Congress and the public.

I would like to emphasize the underlying importance to the United States and the rest of the world of providing arrangements which will assure that activities on the seabeds in years to come can be conducted under a clear system of law respected by the members of the international community. This in itself requires an evaluation of the interests and needs of a wide variety of nations, coastal and landlocked, developed and developing. The system, accordingly, cannot be designed to reflect the interests of any one nation or group of nations: the maritime and technologically advanced nations which will doubtless supply the technology needed for seabed exploitation for some time to come, the nations with long and exposed coastlines, or the landlocked nations and other states with relatively short or unexposed coastlines.

The President's proposal is based on a 200-meter limit for coastal-state sovereign rights over the continental shelf beyond the territorial sea. This figure represents the point out to which coastal-state sovereign rights over the

[3] The complete text of the report appears in the BULLETIN of Mar. 9, 1970; the section entitled "United Nations" begins on p. 313.

natural resources of the seabed are undisputed. It is the only figure mentioned in the Convention on the Continental Shelf.[4] Its use maximizes the area of the seabed which would be subject to a new international regime.

Its choice was also dictated by the difficulties involved in interpreting the adjacency and exploitability criteria of the Continental Shelf Convention. The resolution of an issue of such overriding importance should not, in our view, be reduced to a series of legal arguments regarding the meaning of terms which have been interpreted differently. Accordingly, we are proposing that new and certain decisions be made.

Moreover, we have taken into account the changes in the international community which have occurred since President Truman issued his continental shelf proclamation in 1945.[5] The mechanisms available for international cooperation and international solutions to problems have vastly expanded since that time. The number of independent nations has greatly increased. This is not only a quantitative but a qualitative change. The problem of promoting the economic development of these nations is one of the important items on the long-term agenda of the international community.

The treaty establishing the international regime would contain the general legal rules regarding exploitation of seabed resources beyond the 200-meter limit, including rules relating to matters such as preventing unreasonable interference with other uses of the ocean, protecting the ocean from pollution, assuring the integrity of the investment necessary for such exploitation, and providing for peaceful and compulsory settlement of disputes. These rules would reflect the common interests of all nations. Substantial mineral revenues from the exploitation of this entire area would be used for international community purposes, particularly economic assistance to developing countries. These revenues will be significant, of course, only if the formulas and rules used do not discourage investment and exploitation.

The proposal for establishing two types of machinery for authorizing exploitation of seabed resources, pursuant to the international regime, is designed to provide a basis for avoiding problems of dual administration of single-resource deposits within the continental margins and is intended to accommodate the interests of nations with long and exposed coastlines.

Coastal nations would be authorized by the international regime to act as trustees for the international community in an international trusteeship zone comprised of the continental margins beyond the depth of 200 meters off their coasts. This would include the continental slope and the continental rise, as well as the areas of the continental shelf which extend deeper than 200 meters. The coastal state would act pursuant to authority delegated to it under the treaty establishing the international regime and would be responsible for assuring adherence to the general rules established by that treaty. Within this framework it would, as trustee for the international community, authorize and regulate exploration and exploitation of seabed resources within the trusteeship zone pursuant to its own laws and regulations. It would decide on who would be granted leases and for how long. The conditions on which such leases would be granted subsequent to ratification would be consistent with and in addition to the general rules specified in the regime treaty. The treaty would make it the responsibility of the coastal state, as trustee, to prevent and punish violations of the general provisions of the treaty regarding exploration and exploitation of natural resources.

The agreed international machinery would perform many of the same functions with respect to the exploration and exploitation of natural resources beyond the continental margins. From a technical point of view, one would have to assume that certain functions would be performed under the international regime by individual states with respect to their nationals operating under authorizations from the international machinery. An example of this would be criminal penalties.

The proposal for the interim period pending negotiation of the treaty is designed to assure two objectives: first, that exploration and exploitation of the continental margins and the

[4] For text, see BULLETIN of June 30, 1958, p. 1121.
[5] For text, see BULLETIN of Sept. 30, 1945, p. 485.

deep ocean floor continue; second, that mineral revenues from this area will be generated for international community purposes without waiting for agreement on an international regime.

The President has suggested that leases and permits beyond 200 meters be issued subject to the international regime to be agreed upon. The regime should accordingly include due protection for the integrity of investments made during the interim period. What we have in mind are "grandfather" arrangements similar to those which were made with respect to areas in the Gulf of Mexico at a time when it was unclear whether particular areas were under the jurisdiction of the States or the Federal Government.

As the President stated, with respect to revenues, we would seek appropriate congressional action to make funds available under the interim proposal as soon as a sufficient number of other states indicate their willingness to join us.

Finally, we recognize that adjustments in U.S. import and tax laws and regulations will be necessary to avoid discrimination against U.S. nationals operating in the trusteeship zone off our coast or under the authority of the international machinery to be established. These changes would be based on the approach used in our existing laws and regulations regarding continental shelf resources and high seas fisheries.

LETTER FROM AMBASSADOR PHILLIPS TO U.N. SEABED COMMITTEE CHAIRMAN

Following is the text of a letter from Christopher H. Phillips, U.S. Representative on the U.N. Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, to Ambassador Hamilton Shirley Amerasinghe of Ceylon, the Chairman of the Committee.

U.S./U.N. press release 70 dated May 25

MAY 25, 1970

DEAR MR. CHAIRMAN: I am pleased to transmit to you the text of the statement by President Nixon on May 23 announcing U.S. oceans policy.

It is clear that the proposals contained in this announcement relate intimately to the program of work for the August session of the Seabeds Committee as it was discussed in the closing meetings of the Committee last March. These proposals address such specific points on our agenda as international regime, international machinery, general legal principles and the need to protect the resources of the seabed area beyond national jurisdiction for the common benefit of mankind.

Having in mind the desire of the General Assembly that your Committee achieve agreement on certain specific recommendations in time for their consideration by the Assembly at its 25th session, and desiring to encourage any exchange of views which might facilitate the work of the Committee, I want you to know, Mr. Chairman, that I am available to meet with you and any other interested members of the Committee who wish to discuss or raise questions concerning these proposals.

I would appreciate it if you would have this letter and the attached statement circulated as a document of the Committee.

Thank you for your cooperation.

Very truly yours,

CHRISTOPHER H. PHILLIPS

NON-EXTRACTIVE USES OF THE SEABED

H. Gary Knight*

On April 23, 1971, the representative of Belgium to the United Nations Seabed Committee[1/] transmitted a letter to the Secretary General of the United Nations concerning the agenda of items for consideration at the preparatory meetings of the Seabed Committee prior to the 1973 United Nations Conference on the Law of the Sea.[2/] The Belgian representative requested, inter alia, inclusion on the Conference agenda of the question of "jurisdiction over artificial islands, or artificial installations on the high seas."[3/] Belgium's interest in this question, as noted in the letter, was prompted by a proposal made to its government from a private source for the construction some 27 kilometers off the coast of an artificial port for the unloading of heavy tankers.[4/]

Belgium is not [the] only country which has been faced with requests for non-extractive uses of the seabed off its coast -- in at least two instances the United States Government has been confronted by entrepreneurs wishing to construct offshore resort-hotels on artificial islands resting on the continental shelf. The range of non-extractive uses of the seabed is limited only by one's imagination -- for example, the United States has [already] declared areas

of its continental shelf to be a national park[5]; other uses are in the planning stage, including the use of the seabed to anchor floating airports; and Japan is reportedly considering the possibility of foating cities moored to the underlying seabed.

The issue has taken on added urgency in view of what has become the most important non-extractive use of the continental shelf, viz., the installation of anti-submarine warfare tracking and detection devices by the military establishments of both the United States and the Soviet Union, and perhaps other countries. This use has been given substantial importance in the package of proposals submitted by the United States to the United Nations Seabed Committee[6] and was one of the principal factors in determining United States policy with respect to the use of the seabed and subsoil.

Accordingly, it is appropriate to review the present legal regime governing such non-extractive uses, including military uses, of the seabed, and to hazard a proposal as to what the regime ought to be if dealt with by the 1973 United Nations Conference on the Law of the Sea as requested by Belgium.

I.

Internationally, the use of the continental shelf is governed by the customary international law doctrine of the continental shelf and, for states party thereto, by the 1958 Convention on the Continental Shelf.[12] The latter is quite explicit in terms of the uses of the seabed covered. Articles 2 and 5 confer on coastal states parties thereto exclusive sovereign rights "for the purpose of exploring it and exploiting its natural resources," including the right "to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources."[13] A logical interpretation of these provisions utilizing the maxim inclusio unius est exclusio alterius would lead to the conclusion that only natural resource extractive activities are within the exclusive purview of the coastal state since these are the only rights conferred by the Convention, and that other uses are therefore open to all nations on an inclusive basis under the traditional doctrine of the freedom of the high seas. Indeed, the Belgian representative in his letter to the Secretary General observed:

It follows clearly from these provisions that an installation which is not used for the exploration or exploitation of the natural resources of the continental shelf does not come under the jurisdiction of the coastal State. This would apply to an artificial structure the only purpose of which is to serve as a port. . . .

In the event that structures of this kind were to be built, they could not be included within any jurisdiction under the existing international law.[9]

The interpretation of the customary international law rules relating to the continental shelf presents a somewhat more difficult problem of analysis for those rules are less clearly defined than the rights conferred by the Convention. The most precise formulation of the doctrine was given by the International Court of Justice in 1969 in its decision in the North Sea Continental Shelf Cases[10] as follows:

[T]he most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it, [is] . . . that the rights of the coastal

State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exists ipso facto and ab initio, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources . . . . [This right] is "exclusive" in the sense that if the coastal State does not choose to explore or exploit the areas of shelf appertaining to it, that is its own affair, but no one else may do so without its express consent.[11/]

If the Court's pronouncement is authoritative (and it must be remembered that the issue before the Court was neither the seaward extent of the continental shelf nor the nature of coastal states' rights therein, but rather the delimitation of lateral shelf boundaries between adjacent countries) then one can also logically conclude that the exclusive rights of the coastal state apply only with respect to the exploration for and exploitation of the natural resources of the area and that other uses must be made as an inclusive basis.[12/]

One argument in derogation of the view above stated which has been advanced to me is that the term "natural resources" should be liberally interpreted to include virtually any use of the seabed and subsoil, for the seabed itself is a resource of value in the economic sense if any commercial or governmental enterprise depends upon the use, either permanently or temporarily, of some portion thereof. I believe that this view would be inconsistent with the intent of the framers of the Convention on the Continental Shelf (as well as the practice with respect to the continental shelf which has evolved into the rules of customary international law concerning it), for states up until very recently -- and most particularly in 1958 when the Convention was drafted -- have been concerned exclusively with the extraction of petroleum, natural gas, some hard minerals, and certain species of sedentary fishes, and not with any of the newer [redacted] uses of the seabed which are now gaining public attention. Further, the Convention on the Continental Shelf specifically defines "natural resources" as consisting of:

> [T]he mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species . . . .[15]

It is also worthwhile noting that under the Outer Continental Shelf Lands Act[14] (legislation by which the United States administers its continental shelf lands beyond the three-mile limit[15]) no provision is made for uses other than the extraction of petroleum, natural gas, sulphur, and other minerals. From a cursory examination of the domestic law of other coastal states, it appears that this is the general rule among members of the international community, and that little if any legislation exists which is specifically concerned with non-extractive uses of the continental shelf. One United States federal subdivision, California, provides in its public resources code that:

> Lands owned by the State and which are under the jurisdiction of the [State Lands] [C]ommission may be leased for such purpose or purposes as the commission deems advisable, including . . . leases for commercial or industrial purposes . . . .[16]

Since the lands specified include submerged lands granted to California by the Submerged Lands Act, this general power extends to the seabed adjacent to the California coast. However, in view of its generality it offers little by way of precedent for an overall continental shelf regime for non-extractive uses although in defense of the provision it should be noted that it has the

obvious advantage of specifically permitting non-extractive uses which the Outer Continental Shelf Lands Act does not[9].

II.

This lack of international and national regulation with respect to non-extractive uses has already given rise to several problems. In the case of United States v. Ray[17] the United States Court of Appeals upheld an injunction requested by the United States Government to prevent certain entrepreneurs from constructing an artificial island attached to coral reefs on the continental shelf off the coast of Florida and outside the limits of territorial waters. Although the Government had framed its request for injunctive relief in the form of a trespass allegation, the Court suggested that the allegation was inaccurately framed and that what was in fact sought was "restraint from interference with rights to an area which appertains to the United States and which under national and international law is subject not only ot its jurisdiction but its control as well."[18] The Court coupled these "rights," and the "vital interests" of the United States in preventing infringement of those rights, and found the result sufficient to warrant injunctive relief. It must be conceded that the case is not of definitive import on the issue of non-extractive uses of the seabed since

the affected seabed area was coral, a living resource within the definition in the Convention on the Continental Shelf [19], and thus did not hold that the coastal state had exclusive rights with respect to non-extractive uses.[20] However, the classification of the interest of the coastal state in terms of "rights," and the utilization of the "vital interests" doctrine compels one to believe that executive and legislative, as well as judicial, organs of government are likely to respond in the same fashion, particularly if the entrepeneur is a foreign state or nation. This is the only example of decision making on this question at the national government level which has come to my attention and in view of the adversary litigative process which accompanied it, and the request of the Department of Justice for revision of the original slip opinion, it can hardly be said that Ray represents any definitive view of the United States Government on the question of non-extractive uses of the continental shelf.

Of critical importance to resolution of this issue is the interest and position of the United States Department of Defense (and its counterpart in the Soviet Union) in continuing placement of anti-submarine warfare tracking and detection devices on continental shelves and slopes beneath the world ocean. This is presently done on the basis outlined previously --

that the rights of the coastal state in its adjacent continental shelf under both customary international law and the Convention on the Continental Shelf are not exclusive with respect to non-extractive uses. Obviously, claims of two hundred mile territorial seas, with their concommitant absolute jurisdiction, would be a grave imposition on this privilege now asserted by the defense establishments. That this is of vital concern to the United States was made clear in its "Draft United Nations Convention on the International Seabed Area."[21/] Article 3 of that document provides:

> The International Seabed Area shall be open to use by all states, without discrimination, except as otherwise provided in this Convention.

Because the "International Seabed Area" is defined as "all area of the seabed and subsoil of the high seas seaward of the two hundred meter isobath adjacent to the coasts of continents and islands," it seems to be the obvious intent (the document provisions relate only to the extraction of petroleum, natural gas, and hard minerals) that the International Seabed Area is to be free for other uses on a non-exclusive basis.

III.

It seems to me the best view, with the possible exception of military uses, to accord to the coastal state for non-extractive purposes

an exclusive competence comparable to that given in the Convention on the Continental Shelf with respect to extractive uses of the seabed. A step in this direction was taken by Arvid Pardo in his ~~recently submitted~~ "Preliminary Draft Ocean Space Treaty" which was first discussed during the Pacem In Maribus Convocation held in Malta in June-July, 1971. Chapter XIV of the preliminary version of that document deals with "Other Uses," and provides as follows:

> Art. 59 (1). Subject to the provisions of this Convention, the coastal state may construct and maintain or operate on or under the seabed of national ocean space [from the coastaline to 200 miles seaward thereof] habitats, installations, equipment and devices for scientific research, for the exploration and exploitation of natural resources or for other peaceful purposes provided . . . .
>
> Art. 60. The coastal state may construct and maintain or operate in national ocean space artificial islands, harbors or other installations for peaceful purposes, whether anchored or not to the seabed, provided . . . .

The provisos relate to the establishment of safety zones, notice to the appropriate international authority having jurisdiction beyond the two hundred

mile limit, and non-interference with recognized sea lanes essential to international navigation. Although this approach would seem to be an acceptable solution, there is still the problem of interpreting the phrase "peaceful purposes." As is well known, this debate, which arose out of the negotiation and drafting of the seabed denuclearization treaty, leaves substantial doubt whether anti-submarine warfare tracking and detection devices would be regarded as "peaceful purposes." Perhaps the best solution would be to drop the phraseology "peaceful purposes" and rely on the provisions of the seabed denuclearization treaty to prevent the emplacing or emplanting of nuclear weapons or other weapons of mass destruction beyond the twelve-mile limit, thus leaving the United States and the Soviet Union free [redacted] to emplace the A.S.W. tracking and detection devices on the continental shelves and slopes of the world ocean [redacted]. The necessity for the freedom to emplace such devices has been given adequate publicity and it should suffice here to note only that it is an integral part of the maintenance of a secure second-strike capability which constitutes our current nuclear war deterrent.

There are several compelling reasons why coastal states should be given exclusive control of non-extractive uses (other than military) made on portions of the continental shelf adjacent to their coasts. Many of these reasons are analogous to those found in the justification for the Truman Proclamation[23] with respect to the continental shelf. Paramount among the reasons supporting coastal states exclusive rights are the following:

(1) National security. Clearly, each coastal state has an interest in precluding the installation of devices on its continental shelf which might prejudice military security, or the health, fiscal, sanitary, or immigration interests of the state. To allow carte blanche inclusive use beyond a narrow (e.g., 12 mile) limit would not seem to afford the coastal state the guarantees it needs in this regard. If that area were, however, subject to some international agreement and guarantees could be afforded through some international organization for the protection of vital coastal state interests, this position might be altered. However, it is not likely in the near future that institutions of sufficient authority or acceptance will be established and we will, accordingly, be relying on coastal states for enforcement and protective aspects of continental shelf operations for some time to come.

(2) Necessity for land based support. Most of the non-extractive uses of the seabed envisioned at the present time would require (or would of necessity involve) land-based support facilities. Thus there is created a nexus between the non-extractive use and the land mass of the coastal state and its people. This nexus suggests the necessity for coastal state competence without which the required cooperative effort could not exist. A nexus between land and adjacent water areas has been recognized in many cases -- specifically in the Anglo-Norwegian Fisheries case by the International Court of Justice[24] -- and it seems appropriate to extend that consideration to non-extractive uses of the continental shelf.

(3) Security of investment. If non-extractive uses are to be made of the continental shelf, much private capital must be induced to develop these enterprises. Unless appropriate security for the investment of private funds can be assured, these developments are not likely to take place. Accordingly, a sufficient coastal state interest to grant the property rights necessary for the enterprise would be required. This in turn means that the coastal state must have an internationally recognized competence with respect to non-exclusive uses in order to grant the required property interests. Again, were sufficient international institutions and rules

available for this purpose, this justification might have less weight, but in the foreseeable future such institutions and rules will not exist.

I would not suggest that any one of these justifications implies a specific geographical limit beyond which the coastal state does not exercise the appropriate exclusive competence. Indeed, it would be prefereable if the test of the extent of coastal state jurisdiction over non-extractive uses of the continental shelf could be an entirely functional one rather than a geographical one. For instance, at what point does the nexus between the non-extractive offshore use and the land mass and people of the coastal state become so tenuous that coastal state exclusivity is no longer required? This is not a question which can be answered by a specific fixed distance -- twelve miles, fifty miles, or two hundred miles -- but relates to the specific project or function involved. Admittedly, it would be difficult if not impossible to quantify the functional relationship between a particular usage and the coastal state, but it is from this approach that I believe the problem should be attacked rather than seeking some arbitrary or politically acceptable limit on coastal state jurisdiction over non-extractive uses of the continental shelf.

Thus, with the amendment suggested, something akin to Articles 59

and 60 of the Pardo draft should be included in any future seabed treaty or amendment to the Convention on the Continental Shelf. Part of the reason for the 1973 United Nations Conference on the Law of the Sea is that the 1958 agreements were not far reaching enough in scope to anticipate the needs of the 1970's and beyond. Certainly, any regime or regimes adopted in 1973, or later, will not be expected to last indefinitely, yet they should take into account the best projections of the use of ocean space which we can presently make. It is clear that non-extractive uses, (other than military uses) are going to increase as evidenced by the examples mentioned in this paper, and that a regime which does not afford some special competence to coastal states with respect thereto will be lacking an essential ingredient.

IV.

Domestically, I would take a page from one of my students who, in examining this problem, suggested that the United States amend the Outer Continental Shelf Lands Act immediately to permit any reasonable use of this Nation's shelf area. My student suggested:

> Such an amendment should be constructed to meet the tests of maximum utilization of presently available uses and those to come with a minimum of friction between states. In keeping with present practice

the Secretary of the Interior should continue to be authorized to grant leases for oil, gas, and sulphur production on the basis of competitive bidding. The enumeration of additional uses and the methods for administering them would be unwise as it is impossible to foresee all the projects which will be proposed for the shelf area, and such a list would unnecessarily limit the scope of the amendment. The Secretary should be authorized to grant permits for any reasonable uses which are within the national interest, but only after the developer had submitted his plans, public notice of the proposal has been made, and a public hearing has been held to consider the project and hear objections to it. In deciding what is reasonable and within the national interest, the Secretary should consider each of the following: net economic return to society, effect on the environment, proximity to and possible intereference with other uses, effect on foreign relations, effect on national defense, and the financial responsibility of the promoter. [redacted] 125

I would concur in these recommendations and would hope that similar guidelines would find their way into regulations implementing an international agreement.

Footnotes

*Associate Professor of Law and Marine Sciences, and Campanile Charities Professor of Marine Resources Law, Louisiana State University Law Center. The research for this article was [redacted] supported by the Office of Sea Grant Programs, National Oceanic and Atmospheric Administration, Department of Commerce.

1. Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, created by G. A. Res. 2467A (XXIII) (1968), 8 Int'l Legal Materials 201 (1969), adopted by 112 votes to none with 7 abstentions.

2. G. A. Res. 2750C (XXV) (1970) called for a Third United Nations Conference on the Law of the Sea to be held sometime during 1973 unless postponed by the twenty-seventh session of the General Assembly in 1972 on the ground of insufficient progress of preparatory work. The United Nations Seabed Committee was expanded from 42 to 86 members by Resolution 2750C and given the task of conducting preparatory conferences prior to the 1973 (or later) Conference. Resolution 2750C identifies as potential agenda items for the 1973 Conference:

> [T]he regimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the

question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of preferential rights of coastal States), the preservation of the marine environment (including inter alia the prevention of pollution), and scientific research.

3. U. N. Doc. A/AC.138/35 (May 3, 1971); the letter was signed by M. Alfred van der Essen.

4. The letter states:

> The Belgian Government received a proposal from a private source for the off-shore construction, more than twenty-seven kilometres from the Belgian coast, of an artificial port for the unloading of heavy tankers. The proposed site is on the Belgian continental shelf. U. N. Doc. A/AC. 138/35.

5. For a review of some of the possibilities for future seabed use, see Johnston, "Law, Technology and the Sea," 55 Calif. L. Rev. 449 (1967); Comment, "Continental Shelf Law: Outdistanced by Science and Technology," 31 La. L. Rev. 108, 112-113 (1970).

6. See the "Draft United Nations Convention on the International Seabed Area," U. N. Doc. A/AC. 138/25; 9 Int'l Legal Materials 1046 (1970). Other proposals were submitted by the United States Government during the July-August, 1971 session of the United Nations Seabed Committee in Geneva.

[redacted]

7. Convention on the Continental Shelf (done April 29, 1958, 15 U.S.T. 471 (1964), T.I.A.S. No. 5578, 499 U.N.T.S. 311, in force June 10, 1964. The United States is a party to the Convention.

8. Id., Arts. 2 (1, 2) and 5(2).

9. U. N. Doc. A/AC.138/35, supra note 3.

10. North Sea Continental Shelf Cases, [1969] I.C.J. 3.

11. Id., para. 19 of the majority opinion.

12. Of necessity, this argument is theoretical. There has been (with one possible exception to be noted later) no state practice in this regard from which the expectations of coastal states might be derived. Naturally, legal logic is not the only element which will go into the decision-making process when coastal states are confronted by the presence of non-extractive users of their shelves, but it is beyond the scope of this

brief analysis to delve into these extra-legal considerations.

13. Convention on the Continental Shelf, Art. 2(4).

14. 43 U.S.C. §§1331-43 (1964) (originally enacted as Act of August 7, 1953, ch. 345, 67 Stat. 462).

15. The Submerged Lands Act [43 U.S.C. §§1301-15 (1964) (originally enacted as Act of May 22, 1953, ch. 65, 67 Stat. 29] and subsequent litigation granted coastal states in the United States title to submerged lands out to three geographical miles from the coastline (except for Florida's Gulf Coast, and Texas, whose boundaries extend out three marine leagues). Accordingly, the Federal Government administers only those submerged lands lying seaward of the state boundaries.

16. Calif. Pub. Res. Code §6501.1.

17. United States v. Ray, 423 F. 2d 16 (5 Cir. 1970). Lower court opinion 294 F. Supp. 532 (S.D. Fla. 1969).

18. United States v. Ray, 423 F. 2d 16, 22 (5 Cir. 1970).

19. See text accompanying note 13 supra.

20. In fact, the Court specifically states:

> [The evidence] fully establishes that the structures herein involved interfere with the exclusive rights of the United States under the Convention to explore the Continental Shelf and exploit

its natural resources. Under the circumstances we do not decide what the result would be if the structures did not interefere with the rights of the United States as recognized by the Convention, our decision being limited to the particular facts of this case. 423 F. 2d 16, 20.

This language was modified from that of the slip opinion at the specific request of the Department of Justice in order that United States' rights in its continental shelf not be overstated.

21. Supra note 6.

22. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, reprinted in 10 Int'l Legal Materials 145 (1971).

23. Pres. Proc. No. 2667, 3 C.F.R. 1943- 1948 Comp., at 67 (1945); 13 Dep't State Bull. 485 (Sept. 30, 1945).

24. Anglo-Norwegian Fisheries Case, [1951] I.C.J. 116.

25. Comment, supra note 5, at 120.

Draft U.N Convention on the International Seabed Area: U.S. Working Paper Submitted to U.N. Seabeds Committee

On August 3 at Geneva the United States submitted a Draft U.N. Convention on the International Seabed Area to the U.N. Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction as a working paper for discussion purposes. Following are a statement by Department of State Legal Adviser John R. Stevenson issued at Washington August 3, a statement made before the committee that day by U.S. Representative Christopher H. Phillips, and a summary of the draft convention prepared by Mr. Stevenson which was issued at Washington that day.

STATEMENT BY MR. STEVENSON

In his May 23, 1970, statement of a new United States policy on the oceans,[1] President Nixon proposed that states should by international agreement renounce their sovereign rights in the seabed under the high seas [2] beyond a water depth of 200 meters; establish an international regime for the area beyond with certain basic principles and rules applicable throughout this area; authorize coastal states as Trustees for the international community to carry out the major administrative role in licensing the exploration and exploitation of natural resources from the limit of coastal state national jurisdiction to the edge of the continental margin and to share in the international revenues from the International Trusteeship Area which they administered; and establish an international organization to perform functions similar to the Trustee State functions for the area beyond the continental margin.

In making this statement the President emphasized the inadequacy of the present law of the sea to meet the needs of modern technology and the concerns of the international community. He noted the threat of unrestricted exploitation and conflicting jurisdiction if the law of the sea were not modernized on a multilateral basis, the ecological hazards resulting from unregulated use of the seabeds, and the special responsibility of major maritime powers with their technological capacity to provide leadership in working out an equitable international solution.

In order to carry out the President's objective of achieving an international agreement that will save over two-thirds of the earth's surface from national conflict and rivalry, protect it from pollution, and put it to use for the benefit of all, such agreement must provide a clear system of law generally respected by the international community and deal equitably with a wide variety of national and international interests. The Draft United Nations Convention on the International Seabed Area, which the United States has submitted to the U.N. Seabeds Committee in Geneva as a working document for discussion purposes, is designed to do just that.

The concept, contained in the President's statement and implemented in more detail in the draft convention, of narrow limits on national sovereign rights with respect to the seabed com-

[1] BULLETIN of June 15, 1970, p. 737.

[2] The President also referred to the U.S. proposals to fix the boundary between the territorial sea and the high seas at a maximum of 12 nautical miles with free transit through and over international straits and carefully defined preferential fishing rights for coastal states on the high seas. [Footnote in original.]

lines with a pragmatic division of revenues and administration in the area beyond national jurisdiction to provide an equitable basis for accommodating these various interests:

1. Maritime states' interest in freedom of navigation and other freedoms of the seas would be served by the limitation of coastal state sovereign rights over the seabed to the point where the high seas reach a depth of 200 meters. This will protect against the risk of coastal state sovereign rights with respect to the seabed beyond a depth of 200 meters expanding through the process of "creeping jurisdiction" to include sovereignty over the waters above. Since all rights coastal states will have in the Trusteeship Area will be specifically delegated in the convention and not derived from any residual sovereignty, there will be no basis for expanding jurisdictional claims.

2. The rights of states to conduct activities other than exploration and exploitation of natural resources in the International Trusteeship Area and beyond would be expressly protected by the convention, and the International Seabed Resource Authority would be empowered to adopt the additional rules necessary to protect these other uses of the marine environment.

3. Coastal states' interest in administering the exploration and exploitation of seabed natural resources would be fully recognized by the provision for coastal state machinery, pursuant to the convention, in the International Trusteeship Area, including complete discretion to determine who shall exploit these resources.

4. Coastal states' interest in participating in the revenues from exploration and exploitation of the Trusteeship Areas off their coasts would be met directly through the provision for sharing in the payments on production and other payments required to be made under the convention.

5. Developing countries, both coastal and noncoastal, would participate in the revenues derived from seabed mineral exploitation as the ultimate beneficiaries of payments made by the International Seabed Resource Authority to international development organizations.

6. All states parties to the convention, to the extent they or their nationals undertake exploration and exploitation activities in the Trusteeship Area off other countries' shores or in the area beyond the continental margin, would benefit from the general rules of the convention governing exploitation, including protection against arbitrary revocation of licenses or expropriation of investments.

7. The convention would provide a basis for oceanwide rules for the regulation of pollution and the prevention of injury to persons, property, and the marine environment arising from seabed exploration and exploitation activities.

8. Finally, and of particular international importance, by providing for generally agreed rules and compulsory dispute-settlement procedures the draft convention would make a major contribution to the avoidance of international conflict in the oceans.

The draft convention is a working document for discussion purposes and is put forward in the interest of promoting meaningful further consultations and cooperation on the achievement of the objectives set forth by President Nixon in his May 23, 1970, announcement.

STATEMENT BY AMBASSADOR PHILLIPS

Press release 229 dated August 3

I am very happy to address the Seabeds Committee today in Geneva, because I am optimistic that the Seabeds Committee will be able not only to complete successfully the immediate tasks before it but that it will make substantial progress toward the fulfillment of the broad responsibilities entrusted to it by the General Assembly.

Last June in New York and just this past week in Geneva, an informal drafting group met in order to reach a consensus on draft principles regarding the seabed beyond the limits of national jurisdiction. Provisional agreement has already been reached on certain principles. Furthermore, it appears that we are on the road to reaching agreement at this session on a complete and balanced statement of principles to be submitted to the General Assembly, in accord-

... with its instructions, for consideration and, hopefully, adoption at its 25th anniversary session.

In addition, the committee has made progress over the last 2 years in the consideration of alternative forms of regime and machinery. It is our hope that the committee can begin to narrow and refine the choices available. In this spirit, it is our view that the time for detailed and comprehensive proposals has arrived.

Mr. Chairman, you will recall that President Nixon promised on May 23, 1970, that the United States would introduce at this session of the United Nations Seabeds Committee specific proposals elaborating on the contents of his May 23 statement. It is a great honor for me to submit today to this committee, for distribution and discussion as a working paper, a Draft United Nations Convention on the International Seabed Area.[3] The United States Government hopes that this draft convention will make a significant contribution to the modernization of the international law of the sea, that it will serve the interests and needs of all mankind, and that it will promote rational and sensible use of the marine environment for the future.

We realize that this draft convention represents an essentially new and bold departure in the law of the sea; this was intended.

We realize that the draft convention for the first time will place the exploitation of resources of great potential value under continuing and comprehensive international regulation; this was intended.

We realize that this draft convention would, for the first time in the history of mankind, assure that benefits from the exploitation of resources will be equitably divided, regardless of the advantages of technology or geography enjoyed by any state; this, too, was intended.

This draft convention was prepared after a painstaking examination of relevant national and international interests, with particular reference to the work of the committee. Virtually all of the convention, both in concept and in detail, is based upon various reports of the Secretary General and the reports and discussions of the committee and its subcommittees.

We realize that we cannot alone judge whether these efforts have been successful. The draft convention deals with many questions which should receive further detailed examination by the committee and its subcommittees. We recognize that this draft convention is a further step in a negotiating process; it is our hope that the other members of the committee will find it a significant step which enhances the prospects for agreement on principles, an international regime, and international machinery. It is also our hope that at this session, and particularly at future sessions, after ample opportunity for reflection the committee will undertake the task of improving the draft convention in order that it may ultimately represent not the work of one delegation but of all.

The draft convention speaks for itself. However, I would like to highlight some of its provisions:

—It provides that the International Seabed Area shall be the common heritage of all mankind. This area would begin at the 200-meter isobath.

—It provides that no state has, nor may it acquire, any right, title, or interest in the International Seabed Area or its resources except as provided in the draft convention. It is this provision which gives effect to President Nixon's call for a treaty renouncing national claims beyond 200 meters, with the new draft convention replacing the Continental Shelf Convention beyond this limit.

—It would assure that the International Seabed Area will be open to use by all states and reserve it exclusively for peaceful purposes.

—It would guarantee that revenues will be devoted to the economic advancement of developing countries and provide for some of these revenues to be used in the promotion of international knowledge and technological capability concerning the safe and efficient use of the marine environment.

—It would assure accommodation of the different uses of the marine environment.

[3] U.N. doc. A/AC.138/25.

—It would assure that all activities will be conducted with strict and adequate safeguards for the protection of human life and safety and the marine environment. A large number of the regulatory provisions of the convention are designed to prevent pollution. For example, all deep drilling requires either a license or a special international permit.

—It provides uniform rules of both a general and detailed character governing exploration and exploitation of all seabed resources beyond the 200-meter boundary. Many of the general rules are contained in the main section of the draft convention, and the specific rules are contained in appendices which form an integral part of it. These rules are designed to insure, on the one hand, that maximum revenues for international community purposes will be derived from exploitation of marine resources and, on the other hand, to insure a favorable climate for investment.

—It would provide for a coastal state Trusteeship in the area beyond the 200-meter boundary embracing the continental margins. While we have not indicated a precise seaward limit for the area of the coastal state Trusteeship responsibilities, we believe it should be fixed taking into consideration, among other factors, ease of determination, the need to avoid dual administration over single resource deposits, and the avoidance of including excessively large areas in the International Trusteeship Area. The draft convention proposes to use a gradient formula as a means for determining this boundary.

—It would establish the rights and responsibilities of the Trustee State. These include assuring compliance with the rules of the draft convention, as well as the applicable rules of the International Seabed Resource Authority, and guaranteeing the Trustee full discretion to decide whether, how, and to whom licenses should be issued for exploration and exploitation. It would allow the Trustee Party to keep a portion of the required payments and any others it imposes on exploration and exploitation. A figure between one-third and one-half is suggested. The discretion of the Trustee to decide who may explore and exploit seabed resources in the International Trusteeship Area is the only exception to the requirement of the draft convention that the entire area beyond 200 meters be open to mining by all states on a nondiscriminatory basis.

—Over half of the articles of the draft convention are devoted to the powers and duties of a new international organization called the International Seabed Resource Authority.

—The International Seabed Resource Authority would have several important functions. They include comprehensive rulemaking authority beyond the 200-meter boundary; functional responsibilities including inspection of all licensed activities in the same area; licensing responsibilities beyond the Trusteeship Area; adjudication of all disputes arising under the draft convention, with special procedures for approving the delimitation of all boundaries required by the draft convention.

—The principal organs of the International Seabed Resource Authority would be an Assembly composed of all contracting parties, a balanced Council composed of 24 contracting parties, and an independent Tribunal. Three commissions have been included to deal with rulemaking, operations such as licensing, and boundaries.

—The International Seabed Resource Authority would have the responsibility for promulgating its rules in the form of annexes to the convention. The annex-making procedure will insure flexibility and ease of rulemaking in order to assist the Authority in adapting to developing technology.

Since there would be a renunciation of existing rights when the convention enters into force, rather than at present, the draft convention provides for due protection of the integrity of investments made prior to that time. In addition to protecting the integrity of investments, the transition clauses have been designed to avoid either discouraging exploration and exploitation or encouraging a speculative race for concessions and, at the same time, to assure that the international community will be pro-

vested if interim leases are issued under terms and conditions not in accordance with the provisions of the ultimate convention.

Mr. Chairman, I referred at the opening of my remarks to the progress being made on principles and on regime and machinery. Our introduction of the draft convention at the beginning of this session is intended to help the process of reaching agreement on principles at this session and to contribute to the planned discussion of regime and machinery at this session. In our future discussion of the various items on the agenda for this session, it is our intention to draw upon and elaborate on the provisions of the draft convention we have submitted today. For example, the draft convention contains basic principles which reflect the work of this committee on a declaration of principles and of course shows how the declaration might be applied. The principles in the draft convention are not, however, intended as a substitute for the principles being developed for the declaration.

In summary, Mr. Chairman, it is our hope that you and the members of the committee will find the submission of this draft convention elaborating on President Nixon's proposals a timely and useful contribution to the present and future work of the committee.

SUMMARY OF DRAFT CONVENTION

On May 23, 1970, President Nixon announced a new oceans policy for the United States and stated that the United States would make specific proposals at the U.N. Seabeds Committee in August with regard to the proposed regime for the seabeds beyond national jurisdiction which he set forth in broad outline in his announcement. The submission of a Draft United Nations Convention on the International Seabed Area to the Seabeds Committee as a working paper for discussion within that committee, as well as with other governments and within the United States, implements the President's announcement. The draft convention and its appendices raise a number of questions with respect to which further detailed study is clearly necessary and do not necessarily represent the definitive views of the United States Government.

The basic structure of the convention reflects the President's proposals that states should by international agreement renounce their sovereign rights in the seabed under the high seas[4] beyond a water depth of 200 meters; establish an international regime for the area beyond with certain basic principles and general rules applicable throughout this area; authorize coastal states as Trustees for the international community to carry out the major administrative role in licensing the exploration and exploitation of natural resources from the limit of coastal state national jurisdiction to the edge of the continental margin and to share in the international revenues from the Trusteeship Area which they administered; and establish international machinery to perform similar functions in the area beyond the continental margin.

Basic Principles

Among the basic principles which would become applicable to the entire International Seabed Area (including the International Trusteeship Area) under the convention would be the following:

The International Seabed Area would be the common heritage of mankind, and no state could exercise sovereignty or sovereign rights over this area or its resources or, except as provided in the convention, acquire any right or interest therein.

The International Seabed Area would be open to use by all states without discrimination, except as otherwise provided in the convention, and would be reserved exclusively for peaceful purposes.

Provision would be made for the collection of revenues from mineral production in the Area to be used for international community purposes including economic advancement of

[4] See footnote 2 on p. 209.

developing countries and for promotion of the safe, efficient, and economic exploitation of the mineral resources of the seabed.

Exploration and exploitation of the natural resources of the Area must not result in unjustified interference with other activities in the marine environment, and all activities in the Area must be conducted with adequate safeguards against pollution and for the protection of human life and the marine environment.

A contracting party would be responsible for insuring that those authorized by it (as Trustee in the Trusteeship Area) or sponsored by it (in the area beyond) complied with the convention. Contracting parties would also be responsible for any damage caused by those authorized or sponsored by them.

The general rules would be as follows:

Mineral Resources

All exploration and exploitation of the mineral deposits in the Area would be licensed by the appropriate Trustee in the Trusteeship Area and by the International Seabed Resource Authority in the area beyond, subject to general provisions relating to the terms of licenses included in appendices forming part of the convention, a number of which allow greater discretion to the Trustee State in the case of the Trusteeship Area. The contracting parties would have primary responsibility for inspecting activities licensed or sponsored by them. The International Seabed Resource Authority would also have authority to inspect and determine if a licensed operation violates the convention. Licenses would be revoked only for cause and in accordance with the convention. Expropriation of investments made, or unjustifiable interference with operations conducted pursuant to a license, would be prohibited.

Living Resources of the Seabed

All contracting parties would have the right to explore and exploit these resources (e.g., king crab) subject to necessary conservation measures and the right of the Trustee in the Trusteeship Area to decide whether and by whom such resources should be exploited.

Protection of the Marine Environment, Life, and Property

The International Seabed Resource Authority would be authorized to prescribe rules to protect against pollution of the marine environment and injury to persons and resources resulting from exploration and exploitation and to prevent unjustifiable interference with other activities in the marine environment.

Scientific Research

Each party would agree to encourage, and to obviate interference with, scientific research and to promote international cooperation in scientific research.

International Trusteeship Area

The provisions of the convention relating to the International Trusteeship Area would define the outer limit of this area as a line beyond the base of the continental slope where the downward inclination of the seabed reaches a specified gradient. Such gradient would be determined by technical experts, who would take into account, among other factors, ease of determination, the need to avoid dual administration of single resource deposits, and the avoidance of including excessively large areas in the Trusteeship Area. Other provisions would limit the Trustee's rights to those set forth in the convention. These rights of the Trustee State would include the issuing, suspending, and revoking of mineral exploration and exploitation licenses subject to the rules set forth in the convention and its appendices, full discretion to decide whether a license should be issued and to whom a license should be issued, exercise of criminal and civil jurisdiction over its licensees, and retention of a portion (a figure between 33⅓ percent and 50 percent is suggested for consideration) of the fees and payments required under the convention for activities in the Area. The Trustee State would also be able to collect and retain additional license and rental fees to defray its administrative expenses and to collect other additional payments, retaining the same portion as indicated above of such other additional payments.

International Seabed Resource Authority

The principal organs of the proposed International Seabed Resource Authority would be an Assembly of all contracting parties; a Council of 24 members, including the six most industrially advanced contracting states, at least 12 developing countries, and at least two land-locked or shelf-locked states; and a Tribunal of from five to nine judges elected by the Council.

The Assembly, which would meet at least once every 3 years, would elect members of the Council, approve budgets proposed by the Council, approve proposals of the Council for changes in allocation of net income within the limits prescribed in an appendix to the convention, and make recommendations.

The Council, which would make decisions only with the approval of a majority of both the six most industrially advanced contracting states and of the 18 other contracting states, would appoint the commissions provided for in the convention, submit to the Assembly budgets and proposals for changes in the allocation of net income within the limits prescribed in an appendix, and could issue emergency orders at the request of a contracting party to prevent serious harm to the marine environment.

The Tribunal would decide all disputes and advise on all questions relating to the interpretation and application of the convention. It would have compulsory jurisdiction in respect of any complaint brought by a contracting party against another contracting party for failure to fulfill its obligations under the convention, or whenever the Operations Commission, on its own initiative or at the request of any licensee, considered that a contracting party or licensee had failed to fulfill its obligations under the convention. If the Tribunal found the contracting party or licensee in default, such party or licensee would be obligated to take the measures required to implement the Tribunal's judgment. The Tribunal would have the power to impose fines of not more than $1,000 for each day of an offense as well as to award damages to the other party concerned. Where the Tribunal determined that a licensee had committed a gross and persistent violation of the provisions of the convention and within a reasonable time had not brought its operations into compliance, the Council could either revoke the license or request the Trustee Party to do so. Where a contracting party failed to perform the obligations incumbent on it under a judgment of the Tribunal, the Council, on application of the other party to the case, could decide upon measures to give effect to the judgment, including, when appropriate, temporary suspension of the rights of the defaulting party under the convention (the extent of such suspension to be related to the extent and seriousness of the violation). In addition, any contracting party, and any person directly affected, could bring before the Tribunal the question of the legality of any measure taken by the Council, or one of its commissions, on the ground of violation of the convention, lack of jurisdiction, infringement of important procedural rules, unreasonableness, or misuse of powers; and the Tribunal could declare such measure null and void.

The convention also provides for the establishment of three commissions, each of from five to nine members. The Rules and Recommended Practices Commission would consider and recommend to the Council adoption of annexes as described below. The Operations Commission would issue licenses for mineral exploration and exploitation in the area beyond the International Trusteeship Area and supervise the operations of licensees in cooperation with the Trustee or sponsoring party, but not itself engage in exploration or exploitation. The International Seabed Boundary Review Commission would review the delineation of boundaries submitted by the contracting parties for approval in accordance with the convention, negotiate differences among the parties and if the differences were not resolved initiate appropriate proceedings before the Tribunal, and render advice to contracting parties on boundary questions.

The members of the Rules and Recommended Practices Commission and the International

Seabed Boundary Review Commission would not be full-time employees of the Authority.

The Secretariat of the Authority would consist of a Secretary General appointed by the Council and a staff appointed by the Secretary General under the general guidelines established by the Council.

Any amendment of the convention or the appendices would require the approval of the Council and a two-thirds vote of the Assembly and would come into force only when ratified by two-thirds of the contracting parties, including each of the six most industrially advanced contracting states.

Appendices, which are integral parts of the convention, are included in the draft convention by way of example only, as they require extensive consideration of the questions involved by technically qualified experts.

The illustrative appendices included in the draft convention relate to (a) terms and procedures applying to all licenses in the International Seabed Area; (b) terms and procedures applying to licenses in the International Seabed Area beyond the International Trusteeship Area; (c) terms and procedures for licenses in the International Trusteeship Area; (d) division of revenue; and (e) designation of members of the Council representing the six most industrially advanced states.

Appendix A, applicable to the entire International Seabed Area, would provide for nonexclusive *exploration* licenses not restricted as to area authorizing geophysical and geochemical measurements and bottom sampling and exclusive *exploitation* licenses including the right to undertake deep drilling which would expire at the end of 15 years if no commercial production were achieved. Deep drilling for purposes other than exploration or exploitation of seabed minerals would be authorized under a permit issued at no charge by the Authority, provided the proposed drilling would not pose an uncontrollable hazard to human safety and the environment. Appendix A also provides for certification by the Trustee or sponsoring party of the operator's technical and financial competence. Minimum and maximum limits on required license fees (the applicable fee to be specified in an annex to the convention with authorization to the Trustee or sponsoring party to impose additional fees within specified limits to help cover its administrative costs) are set out. Provision is also made for the categories of minerals and areas covered by licenses and relinquishment of part of the licensed area when production commences. Maximum and minimum required rental fees prior to and after attaining commercial production (the applicable fee to be specified in an annex to the convention) and minimum annual work requirements are provided for. Submission of work plans and data under exploitation licenses prior to commercial production and submission of production plans and reports are required. Rules are set forth with regard to unit operations. Appendix A further contains minimum and maximum required payments on production, the applicable amount to be specified in an annex to the convention (such payments to be percentages of the gross value at the site of oil and gas or minerals, to be proportional to production, and to be in the nature of payments ordinarily made to governments under similar conditions). The levels of payments on production and work requirements would be graduated to take account of probable risk and cost to the investor, including such factors as water depth, climate, volume, or production, vicinity to existing production, or other factors affecting the economic rent that can reasonably be anticipated from mineral production in a given area. Finally, the operator and the authorizing or sponsoring party, as appropriate, would be liable for damage to other users of the environment, and operators would be required to subscribe to an insurance plan or provide other means of guaranteeing responsibility.

Appendix B, applicable to the area beyond the International Trusteeship Area, would permit contracting parties to obtain exploration and exploitation licenses from the Authority if they designate a specific agency to act as operator on their behalf and to authorize persons they sponsor to apply for licenses. It would require the sponsoring party to certify as to the technical and financial competence of the operator and would require the Authority to grant

lease on proper application unless another application for the same block had been received at the monthly intervals at which applications were opened. If more than one application had been received, the license would be awarded in accordance with competitive bidding among the applicants. There would also be provision for award of a license by competitive bidding in the event of termination, forfeiture, or revocation of an exploitation license or sale of a block contiguous to a block on which production had begun or of a block from which hydrocarbons or other fluids were being drained. Appendix B would authorize transfer of an exploitation license with the approval of the sponsoring party and the Authority and the payment of a transfer fee. It would provide limits on the duration of exploitation licenses and would set out minimum and maximum work requirements, the applicable amount of such work requirements to be stipulated in an annex to the convention.

Appendix C, applicable solely to the International Trusteeship Area, would reaffirm the Trustee's exclusive right, in its discretion, to approve or disapprove applications for exploration and exploitation licenses and to use any system for this purpose. It would establish the term of the exploitation license and conditions, if any, under which it might be renewed, provided that continuance after the first 15 years is contingent upon achieving commercial production. Finally, appendix C would impose proration and set work requirements above the minimums specified in appendix A.

Appendix D would provide that the net income, after administrative expenses of the Authority, would be devoted to the economic advancement of developing states parties to the convention and would be divided among a list of stipulated international and regional development organizations, the list to indicate the percentages assigned to each organization.

Appendix E would stipulate the formula for determining the six most industrially advanced contracting parties for purposes of designation to the Council.

Annexes to the convention would be prepared by the Rules and Recommended Practices Commission, submitted for comments to the contracting parties and to the Council for adoption and would come into force unless more than one-third of the contracting parties disapproved within 3 months. In addition to fixing the level, basis, and accounting procedures for determining international fees and other forms of payment within the ranges specified in appendix A and establishing work requirements for the area beyond the Trusteeship Area within the ranges specified in appendix B, annexes could establish criteria for defining the technical and financial competence of applicants for licenses and would assure that all exploration and exploitation activities and deep drilling would be conducted with strict and adequate safeguards for the protection of human life and safety, the marine environment, and living marine organisms. Annexes would be drawn up to prevent or reduce to acceptable limits interference arising from exploration and exploitation activities with other uses and users of the marine environment, assure safe design and construction of fixed exploration and exploitation installations and equipment, and other related matters. Any contracting party believing that a provision of an annex could not be reasonably applied to it because of special circumstances might seek a waiver from the Operations Commission.

The convention would provide for due protection of the integrity of investments in the International Seabed Area made prior to the coming into force of the convention. Authorizations by a contracting party to exploit mineral resources of the International Seabed Area granted prior to July 1, 1970, would be continued without change after the coming into force of the convention, with the contracting parties being obligated to pay the production requirements provided under the convention. New activities under such authorizations would be subject to the regulatory requirements of the convention relating to pollution and unjustifiable interference with other uses of the marine environment. With respect to authorizations granted after July 1, 1970, the authorizing contracting party would be bound either to issue a new license in its capacity as Trustee or, in the area beyond, to sponsor the

licensee's application for a new license from the International Seabed Resource Authority. A new license issued by a Trustee would include the same terms and conditions as the previous authorization, and the Trustee would be responsible for compliance with the increased obligations resulting from the application of the convention. Moreover, any contracting party authorizing activities after July 1, 1970, would be required to compensate the licensee for any investment losses resulting from the application of the convention.

Syllabus.

UNITED STATES *v.* LOUISIANA ET AL. (LOUISIANA BOUNDARY CASE).

ON CROSS-MOTIONS FOR THE ENTRY OF A SUPPLEMENTAL DECREE AS TO THE STATE OF LOUISIANA.

No. 9, Orig.—Argued October 14–15, 1968.—Decided March 3, 1969.

In *United States* v. *Louisiana*, 363 U. S. 1, the Court held that by the Submerged Lands Act of 1953 the United States had quitclaimed to Louisiana lands underlying the Gulf of Mexico within three geographical miles of the coastline, the United States being declared entitled to the lands further seaward. The decree and the Act defined "coast line" as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." The United States and Louisiana filed cross-motions for a supplemental decree designating the boundary of the lands under the Gulf owned by Louisiana, the parties differing primarily with respect to that part of the coastline consisting of "the line marking the seaward limit of inland waters." The United States contends that the definitions of "inland waters" contained in the international Convention on the Territorial Sea and the Contiguous Zone (hereafter Convention) should determine the location of that line, while Louisiana urges that the governing boundary is a line it calls the "Inland Water Line" which was fixed by the Commandant of the Coast Guard pursuant to an 1895 federal statute which directed the drawing of "lines dividing the high seas from rivers, harbors, and inland waters." Louisiana urges, alternatively, that the decree proposed by the United States reflects an overly strict construction of the Convention's provisions. *Held:*

1. That part of Louisiana's coastline which, under the Submerged Lands Act, consists of "the line marking the seaward limit of inland waters," is to be drawn in accordance with the Convention's definitions. Pp. 17–35.

(a) Congress deliberately "chose to leave the definition of inland waters . . . in the Court's hands" (*United States* v. *California*, 381 U. S. 139, 157), and did not intend to tie the meaning of "inland waters" to the 1895 Act, which was enacted to separate the areas in which shipping must follow inland navigation rules from those in which it must follow international rules. Pp. 19–21.

(b) In *United States* v. *California* the Court held that the Convention's definitions were "the best and most workable . . . available," and adopted them for the purposes of the Submerged Lands Act. P. 21.

(c) Nothing in either the enactment of the 1895 Act or in its administration indicates that the United States has treated the "Inland Water Line" as a territorial boundary. The reasonable regulation of navigation is not alone a sufficient exercise of dominion to constitute a claim to historic inland waters; and in any event no such claim can be made in the face of long-standing disclaimers of historic title and the absence of any treatment of the "Inland Water Line" by the United States as delimiting an area within which it can exercise jurisdiction over anything but navigation. Pp. 21–32.

(d) The Court's adoption in *United States* v. *California* of the Convention definitions was "for the purposes of the Submerged Lands Act" and not simply for the purpose of delineating a particular State's coastline. If the inconvenience of an ambulatory coastline proves substantial, the problems may be resolved through legislation or agreement between the parties. Pp. 32–35.

2. Though the Court is able, on the basis of the materials now before it, to decide many issues involving application of the Convention to the Louisiana coast, the Court has decided to refer to a Special Master several particularized disputes over the precise boundary between submerged Gulf lands belonging to the United States and those belonging to Louisiana, since resolution of several of such disputes cannot be made without evidentiary hearings and resolution of others in this technical and unfamiliar area would benefit from the preliminary judgment of a detached referee. Pp. 35–78.

(a) Dredged channels in the Gulf leading to inland harbors, not being raised structures, do not come within the category of "permanent harbour works" forming "an integral part of the harbour system," which are to be considered part of the "coast" under Article 8 of the Convention and therefore that provision does not establish such channels as inland waters. 36–40.

(b) By application of Article 11 to the Louisiana coast the low-tide elevations situated in the territorial sea (here the three-mile grant to Louisiana under the Submerged Lands Act) as measured from bay-closing lines are part of the coastline from which the Act's three-mile grant extends. Pp. 40–47.

(c) Article 7 of the Convention permits (in paragraph 4) a 24-mile maximum closing line for bays and (in paragraph 2) a "semicircle test" for determining the sufficiency of the water area enclosed (which requires that a bay must embrace at least as much water area within its closing line as would be contained in a semicircle with a diameter equal to the length of the closing line). "Outer Vermilion Bay," an area within a closing line from Tigre Point to Shell Keys, does not qualify as a bay under the semicircle test because it would be part of a larger indentation whose closing line far exceeds the 24-mile limit. Pp. 48–52.

(d) "Ascension Bay," whose headlands are jetties at Belle Pass on the west and Southwest Pass on the east, includes the inner bays of the Barataria Bay-Caminada Bay complex which are separated from the outer indentation only by a string of islands across the bays' entrances. Ascension Bay meets the semicircle test when the islands are treated (as provided by Article 7 (3)) "as if they were part of the water area." Pp. 52–53.

(e) Though East Bay does not meet the semicircle test on a closing line between its seawardmost headlands, Louisiana contends that a part of that indentation qualifies as a bay simply because a line can be drawn within it which would satisfy the semicircle test; however, no such area can qualify as a bay unless its own features, not those of the larger indentation, meet the requirements specified in Article 7 (2), as well as the semicircle test therein. Pp. 53–54.

(f) Where islands intersected by a direct closing line between the mainland headlands create multiple mouths to a bay (the situation with respect to the Lake Pelto-Terrebonne Bay-Timbalier Bay complex), the bay should be closed by lines between the natural entrance points on the islands, even if those points are landward of the direct line between the mainland entrance points. Pp. 54–60.

(g) The Convention does not prohibit the drawing of bay-closing lines to islands where (as is true of much of the Louisiana coast) insular configurations really are "part of the mainland"; and it is left to the Special Master initially to determine whether islands which Louisiana has designated as headlands of bays are so integrally related to the mainland as realistically to be parts of the "coast" within the meaning of the Convention. Pp. 60–66.

(h) Fringes or chains of islands are treated the same as other islands and are not taken into account as enclosing inland water

unless under Article 4 the coastal nation decides in the conduct of its international affairs to draw straight baselines joining appropriate points. The United States within its discretion has decided not to draw straight baselines along the Louisiana coast, and this exercise of discretion is not appropriately subject to review by the Court. Pp. 66–73.

(i) The Court leaves to the Special Master the task of determining whether any of the Louisiana coastal waters are "historic bays" within the meaning of Article 7 (6), and the Special Master should consider state exercises of dominion as relevant to the existence of historic title. Pp. 74–78.

Victor A. Sachse and *J. B. Miller*, Special Assistant Attorneys General of Louisiana, argued the State of Louisiana's motion for entry of supplemental decree. With them on the briefs were *Jack P. F. Gremillion*, Attorney General, *Paul M. Hebert*, *Thomas W. Leigh*, *Robert F. Kennon*, *W. Scott Wilkinson*, *J. J. Davidson*, *Oliver P. Stockwell*, *Frederick W. Ellis*, and *Anthony J. Correro III*, Special Assistant Attorneys General, and *John L. Madden*, Assistant Attorney General.

Archibald Cox argued for the United States on cross-motion for supplemental decree as to the State of Louisiana. With him on the briefs were *Solicitor General Griswold*, *Assistant Attorney General Martz*, *Louis F. Claiborne*, *Roger P. Marquis*, and *George S. Swarth*.

MR. JUSTICE STEWART delivered the opinion of the Court.

In *United States* v. *Louisiana*, 363 U. S. 1, the Court held that by the Submerged Lands Act of 1953 [1] the United States had quitclaimed to Louisiana the lands underlying the Gulf of Mexico within three geographical miles of the coastline.[2] The United States was declared

[1] 67 Stat. 29, 43 U. S. C. §§ 1301–1315.

[2] The Submerged Lands Act was enacted in response to the Court's decisions in *United States* v. *California*, 332 U. S. 19,

entitled to the lands further seaward. In the decree, as in the Submerged Lands Act, "coast line" was defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."[3] We reserved jurisdiction "to entertain such further proceedings, enter such orders and issue such writs as may . . . be deemed necessary or advisable to give proper force and effect to this decree."[4] Before the Court now are cross-motions by the United States and Louisiana[5] for a supplemental decree designating the boundary of the lands under the Gulf owned by Louisiana.[6] The segments of that boundary line that

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United States v. *Texas*, 339 U. S. 707, and *United States* v. *Louisiana*, 339 U. S. 699, that the States did not own the submerged lands off their coasts and that the United States had paramount rights in such lands. After enactment of the Submerged Lands Act, the United States commenced this action against Louisiana, invoking our original jurisdiction under Art. III, § 2, of the Constitution, and seeking a declaration that it was entitled to exclusive possession of and power over the lands underlying the Gulf of Mexico more than three geographical miles from the coast.

[3] 364 U. S. 502, 503; 43 U. S. C. § 1301 (c).

[4] 364 U. S., at 504.

[5] By order of the Court, the United States' original suit against Louisiana was broadened to include the other Gulf States as defendants. 354 U. S. 515. In connection with the supplemental decrees now proposed by the United States and Louisiana, Texas and Mississippi have filed motions seeking an order eliminating from consideration any issue with respect to the lateral boundaries between Louisiana and those States. While we have found it unnecessary to enter any such formal order, it is evident that the decree which will be entered at this stage of the case will decide only the rights of Louisiana and the United States and will not affect any lateral boundaries between the States.

[6] A supplemental decree was entered in 1965 with the consent of the parties removing several large areas from dispute. The decree also directed an accounting and distribution of funds collected from

lie three miles outward from "that portion of the coast which is in direct contact with the open sea" are for the most part easily determinable. The controversy here is primarily over the location of that part of the coastline that consists of "the line marking the seaward limit of inland waters."

More than three years ago, in *United States* v. *California*, 381 U. S. 139, we held that Congress had left to the Court the task of defining "inland waters," and we adopted for purposes of the Submerged Lands Act the definitions contained in the international Convention on the Territorial Sea and the Contiguous Zone, ratified by the United States in 1961.[1] The United States asserts that the same definitions should determine the location of the "line marking the seaward limit of inland waters" of Louisiana. Louisiana, on the other hand, contends that this line has already been determined pursuant to an 1895 Act of Congress which directed the drawing of "lines dividing the high seas from rivers, harbors and

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those areas under the 1956 Interim Agreement between the parties governing the administration of disputed areas. 382 U. S. 288.

[1] [1964] 15 U. S. T. (pt. 2) 1607, T. I. A. S. No. 5639. The Convention was the culmination of long years of work by the International Law Commission. Established by the United Nations General Assembly in 1947 to codify international law, the Commission began deliberations on the regime of the territorial sea in 1952 on the basis of a report submitted by the special rapporteur. At its eighth session in 1956 the Commission adopted a final report, which contained a proposed international convention and recommended the convocation of an international conference to examine further the law of the sea. The General Assembly adopted that recommendation and in 1958 convened the First U. N. Conference on the Law of the Sea in Geneva. With the International Law Commission report as its model, the Conference promulgated the Convention on the Territorial Sea and the Contiguous Zone and three other conventions dealing with other problems of international maritime law. See 1 A. Shalowitz, Shore and Sea Boundaries 208–211 (1962).

inland waters," and has proposed a decree based upon this contention. Alternatively, Louisiana argues that, even assuming the applicability of the definitions contained in the Convention on the Territorial Sea and the Contiguous Zone, the decree proposed by the United States reflects too restrictive a construction of the Convention's provisions in derogation of relevant principles of international law.

I.

The "Inland Water Line."

Comprehensive congressional regulation of maritime navigation began with the Act of April 29, 1864,[8] which promulgated rules applicable to all vessels of domestic registry on any waters. These rules were patterned on emerging international standards, and when most other maritime nations subsequently changed their rules, the United States Congress in 1885 enacted conforming "Revised International Rules and Regulations" to govern American ships "upon the high seas and in all coast waters of the United States, except such as are otherwise provided for." [9] The 1864 Act was therefore repealed except as to navigation "within the harbors, lakes, and inland waters of the United States." [10] In 1889 the International Maritime Conference drafted new International Rules, which were promptly adopted by Congress.[11] Article 30 of those rules provided that "[n]othing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbor, river, or inland waters." [12]

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[8] 13 Stat. 58, codified as R. S. § 4233.
[9] Act of March 3, 1885, 23 Stat. 438.
[10] 23 Stat. 442.
[11] Act of August 19, 1890, 26 Stat. 320.
[12] 26 Stat. 320.

The United States already had in the 1864 Act such special inland rules for ships of American registry. In order to clarify the areas and ships to which the International and Inland Rules would respectively apply,[11] Congress in 1895 provided that the rules of the 1864 Act were to govern the navigation of *all* vessels "on the harbors, rivers and inland waters of the United States."[12] The 1895 Act went on to provide:

> "The Secretary of the Treasury is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with light houses, light vessels, buoys or coast objects, the lines dividing the high seas from rivers, harbors and inland waters."

The authority thus vested in the Secretary of the Treasury has since been transferred several times to various federal officials and now resides with the Commandant of the Coast Guard;[13] and from time to time the lines authorized by the 1895 Act have been designated along portions of the United States coast. When the Submerged Lands Act was passed in 1953, such lines had been drawn in the Gulf only along some segments of the

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[11] The Inland Rules are now codified at 33 U. S. C. §§ 152-232 and the International Rules at 33 U. S. C. §§ 1061-1094.

[12] Act of February 19, 1895, 28 Stat. 672.

[13] The authority given to the Secretary of the Treasury in the 1895 Act was successively transferred: (1) to the Secretary of Commerce and Labor (Act of February 14, 1903, 32 Stat. 829), later redesignated "Secretary of Commerce" (Act of March 4, 1913, 37 Stat. 736), (2) to the Commandant of the Coast Guard (Reorganization Plan No. 3 of 1946, 60 Stat. 1097), (3) to the Secretary of the Treasury (or to the Secretary of the Navy when the Coast Guard is operating in that department (Reorganization Plan No. 26 of 1950, 64 Stat. 1280)), and delegated by the Secretary of the Treasury to the Commandant of the Coast Guard (Treasury Department Order of July 31, 1950, 15 Fed. Reg. 6521). Section 6 (b)(1) of the

Louisiana shore,[16] but in that year the Commandant of the Coast Guard drew new lines applicable to all the waters off the Louisiana coast.[17] In 1954 the Louisiana Legislature declared that it "accepted and approved" this demarcation, which it now calls the "Inland Water Line," as its boundary.[18] Louisiana now argues that this line encloses inland waters and is therefore "the line marking the seaward limit of inland waters," and thus its "coastline" within the meaning of the Submerged Lands Act.[19]

Louisiana argues initially that the 1895 Act is *in pari materia* with the Submerged Lands Act. Congress, it is said, must have contemplated that a technical term such as "inland waters" should have the same meaning in different statutes. The phrase appears, however, in quite different contexts in the two pieces of legislation. While the Submerged Lands Act established boundaries between the lands of the States and the Nation, Congress' only concern in the 1895 Act was with the problem of navigation in waters close to this Nation's shores. There is no evidence in the legislative history that it was the purpose of Congress in 1953 to tie the meaning of the phrase "inland waters" to the 1895 statute. For

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Department of Transportation Act, 80 Stat. 938, transferred this authority to the Secretary of Transportation, effective April 1, 1967 (Exec. Order No. 11340, March 30, 1967, 32 Fed. Reg. 5453); it was again delegated to the Commandant of the Coast Guard, effective April 1, 1967 (49 CFR § 1.4 (a)(2), 32 Fed. Reg. 5606).

[16] 12 Fed. Reg. 8458, 8460 (1947).

[17] 18 Fed. Reg. 7893 (1953).

[18] Louisiana Act No. 33 of 1954. The "Inland Water Line" is delineated on the map of the Louisiana coast appended to this opinion, following p. 78.

[19] In *United States* v. *California*, 381 U. S. 139, neither party suggested to the Court that the "Inland Water Line" had any relevance to the Submerged Lands Act. Indeed, both specifically disclaimed any reliance on it.

instance, during the Senate Committee hearings on the Submerged Lands Act, the following exchange took place between Senator Anderson and the Assistant Attorney General of Louisiana:

> "Senator ANDERSON. Was there not a so-called Government line drawn along the coast of Louisiana?
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> "Mr. MADDEN. Only a partial line, Senator. I remember the old statute that authorized, I believe it was first the Secretary of Commerce, or the Treasury, to fix a line to show the demarcation between inland waters and the high seas. I think the Coast Guard has attempted to draw a partial line over on the east side of Louisiana.
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> "Senator ANDERSON. We went through all that in the hearing a couple of years ago, and found that was of no value to us whatsoever." [20]

Louisiana's position that the Submerged Lands Act must necessarily be read as referring to the 1895 Act is thus not tenable.[21] After a lengthy review of the legislative

[20] Hearings on S. J. Res. No. 13 and other bills before the Senate Committee on Interior and Insular Affairs, 83d Cong., 1st Sess., 276 (1953). In hearings on proposed submerged lands legislation in earlier Congresses, representatives of Louisiana had argued to Congress that the Administration bills were "in error" because they overlooked the fact that, by the "Inland Water Line," "the inland waters of coastal States have already been defined and divided." Hearings on S. 155 and other bills before the Senate Committee on Interior and Insular Affairs, 81st Cong., 1st Sess., 194 (1949). See also *id.*, at 179–180; Hearings on H. R. 5991 and H. R. 5992 before Subcommittee No. 1 of the House Committee on the Judiciary, 81st Cong., 1st Sess., 74–75 (1949).

[21] Also without substance is Louisiana's claim that the United States cannot alter the boundary adopted by Louisiana in 1954. The question before us is the location of the boundary of land quitclaimed to Louisiana by the United States in 1953, and that question is of course not affected by any subsequent action of the Louisiana

history of the Submerged Lands Act in *United States* v. *California*, we reached the conclusion that Congress deliberately "chose to leave the definition of inland waters where it found it—in the Court's hands." 381 U. S., at 157. We adhere to that view, and turn to Louisiana's other arguments in support of the "Inland Water Line."

We further decided in *United States* v. *California* that the provisions of the Convention on the Territorial Sea and the Contiguous Zone were "the best and most workable definitions available," 381 U. S., at 165, and we adopted them for purposes of the Submerged Lands Act. Yet Louisiana asserts that the Court is not precluded by the *California* decision from adopting the "Inland Water Line" in this case. Essentially the argument is that the Convention was not intended either to be the exclusive determinant of inland or territorial waters or to divest a nation of waters which it had long considered subject to its sole jurisdiction. By the long-standing, continuous, and unopposed exercise of jurisdiction to regulate navigation on waters within the "Inland Water Line," the United States is said to have established them as its inland waters under traditional principles of international law. Alternatively, Louisiana suggests that, even assuming the exclusivity of the Convention on the Territorial Sea and the Contiguous Zone, the "Inland Water Line," by virtue of this assertion of sovereignty, has created "historic bays" within the exception of

Legislature. As we stated in an earlier dispute between these parties, "[w]e intimate no opinion on the power of a State to extend, define, or establish its external territorial limits or on the consequences of any such extension *vis à vis* persons other than the United States or those acting on behalf of or pursuant to its authority. The matter of state boundaries has no bearing on the present problem." *United States* v. *Louisiana*, 339 U. S. 699, 705.

Article 7 of the Convention.[22] We have concluded, however, that nothing in either the enactment of the 1895 Act or its administration indicates that the United States has ever treated that line as a territorial boundary.

Under generally accepted principles of international law, the navigable sea is divided into three zones, distinguished by the nature of the control which the contiguous nation can exercise over them.[23] Nearest to the nation's shores are its inland, or internal waters. These are subject to the complete sovereignty of the nation, as much as if they were a part of its land territory, and the coastal nation has the privilege even to exclude foreign vessels altogether. Beyond the inland waters, and measured from their seaward edge, is a belt known as the marginal, or territorial, sea.[24] Within it the coastal nation may exercise extensive control but cannot deny the right of innocent passage to foreign nations.[25]

[22] Article 7 sets forth precise mathematical requirements which bays must satisfy to qualify as inland waters from whose seaward edge the territorial sea extends. See *infra*, at 48; n. 64, at 49; 52, n. 68; 54–55. Paragraph 6 of the Article provides, however, that "[t]he foregoing provisions shall not apply to so-called 'historic' bays . . . ."

[23] On the threefold division of the sea, see generally L. Bouchez, The Regime of Bays In International Law 4–5 (1964); 1 Shalowitz, *supra*, n. 7, at 22–24; M. Strohl, The International Law of Bays 3–4 (1963).

[24] The breadth of the territorial sea varies from country to country, depending on the claims of the coastal state. These claims have long been so diverse that the Geneva Conference was unable to agree upon a uniform distance for purposes of the Convention on the Territorial Sea and the Contiguous Zone. A table illustrating the various territorial sea claims of most nations appears at 1 Shalowitz, *supra*, n. 7, at 389 (App. J.).

[25] Article 14 of the Convention on the Territorial Sea and the Contiguous Zone provides that "ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea."

Outside the territorial sea are the high seas, which are international waters not subject to the dominion of any single nation.[36]

Whether particular waters are inland has depended on historical as well as geographical factors. Certain shoreline configurations have been deemed to confine bodies of water, such as bays, which are necessarily inland. But it has also been recognized that other areas of water closely connected to the shore, although they do not meet any precise geographical test, may have achieved the status of inland waters by the manner in which they have been treated by the coastal nation. As we said in *United States v. California*, it is generally agreed that historic title can be claimed only when the "coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations." 381 U. S., at 172.[37]

[36] Article 2 of the Convention on the High Seas provides: "The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty." [1962] 13 U. S. T. (pt. 2) 2313, T. I. A. S. No. 5200. It has, however, generally been thought that the coastal nation can exercise some limited jurisdiction over ships beyond its territorial waters. See, *e. g.*, M. McDougal & W. Burke, The Public Order of the Oceans, c. 6 (1962); P. Jessup, The Law of Territorial Waters and Maritime Jurisdiction 75–112 (1927); 1 Shalowitz, *supra*, n. 7, at 27. The Convention on the Territorial Sea and the Contiguous Zone has recognized that such extensions of jurisdiction are sometimes imperative and has provided that in a contiguous zone not to exceed 12 miles from the coast, the littoral nation "may exercise the control necessary to: (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea; (b) Punish infringement of the above regulations committed within its territory or territorial sea." Article 24.

[37] A recent United Nations study recommended by the International Law Commission reached the following conclusions:

"There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the

While there is not complete accord on the definition of historic inland waters,[28] it is universally agreed that the reasonable regulation of navigation is not alone a sufficient exercise of dominion to constitute a claim to historic inland waters. On the contrary, control of navigation has long been recognized as an incident of the coastal nation's jurisdiction over the territorial sea. Article 17 of the Convention on the Territorial Sea and the Contiguous Zone embodies this principle in its declaration that "[f]oreign ships exercising the right of innocent passage [in the territorial sea] shall comply with the laws and regulations enacted by the coastal State . . . and, in particular, with such laws and regulations relating to transport and navigation."[29]

State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have continued for a considerable time; indeed it must have developed into a usage. More controversial is the third factor, the position which the foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of an historic title; others think that absence of opposition by these States is sufficient." Juridical Regime of Historic Waters, Including Historic Bays, [1962] 2 Y. B. Int'l L. Comm'n 1, 13, U. N. Doc. A/CN.4/143 (1962).

See also Bouchez, *supra*, n. 23, at 203, 281.

[28] Historic title can be obtained over territorial as well as inland waters, depending on the kind of jurisdiction exercised over the area. "If the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the sovereignty exercised was sovereignty as over the territorial sea, the area would be territorial sea." Juridical Regime of Historic Waters, Including Historic Bays, *supra*, n. 27, at 23.

[29] Modern authorities are unanimous on this principle. Thus, Jessup states that "[i]t seems clear that even transient vessels must obey reasonable rules and regulations laid down by the littoral state in the interests of safety of navigation and maritime police." And

Because it is an accepted regulation of the territorial sea itself, enforcement of navigation rules by the coastal nation could not constitute a claim to inland waters

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he cites the United States Inland Rules as an example of such regulation of the territorial sea. Jessup, *supra*, n. 26, at 121, 122, n. 37. Shalowitz also concludes that the right of innocent passage through the territorial sea "may be conditioned upon the observance of special regulations laid down by the coastal nation for the protection of navigation . . . and other local interests." 1 Shalowitz, *supra*, n. 7, at 23. See also Boggs, Delimitation of the Territorial Sea, 24 Am. J. Int'l L. 541, 542 (1930); 3 G. Gidel, Le Droit International Public de la Mer 633 (1934); Strohl, *supra*, n. 23, at 273, 275.

J. Griffin, The American Law of Collision (1949) is said by Louisiana to be to the contrary. Referring to the "Inland Water Line," the author states that "[t]he Inland Rules apply to vessels of any nationality, since the United States has full jurisdiction over the waters in question." *Id.*, at 11–12. It is clear, however, that the jurisdiction to which the author refers is not the total sovereignty of a coastal nation over its inland waters, but rather the control of the territorial sea. Thus, he notes earlier that the Inland Rules govern "cases arising on *coastal and inland* waters of the United States which are subject to *admiralty jurisdiction*." *Id.*, at 8. (Emphasis supplied.)

This international understanding is not a recent development. At the time Congress enacted the Inland and International Rules, there was also no dispute about a coastal nation's power to regulate navigation in its territorial sea. At the 1895 meeting of the International Law Association, Rules Relating to the Territorial Sea were adopted. A six-mile territorial sea was agreed upon, in which all nations would have the right of innocent passage. Article 7 then provided:

"Ships which pass through territorial waters shall conform to the special regulations decreed by the littoral State in the interest and for the security of navigation or as matter of maritime police."

Report of the Seventeenth Conference of the International Law Association held in Brussels, October 1895 (1896), excerpted in H. Crocker, Extent of the Marginal Sea 178 (1919). An identical article had been approved in 1894 by the Institute of International Law at Paris. *Id.*, at 149. And individual authors of the day often

from whose seaward border the territorial sea is measured.[89]

But even if a nation could base a claim to historic inland waters on its continuous regulation of naviga-

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expressed this principle. See the following works excerpted in Crocker: Bluntschli, Le Droit International Codifié (5th ed. 1895), in Crocker, at 10; Calvo, Le Droit International Théorique et Pratique (5th ed. 1896), in Crocker, at 33; Fiore, International Law Codified and Its Legal Sanction, or The Legal Organization of the Society of States (1918), in Crocker, at 58; Latour, La Mer Territoriale au Point de Vue Théorique et Pratique (1889), in Crocker, at 237–238; Von Liszt, Das Völkerrecht (5th ed. 1907), in Crocker, at 293; Nuger, Des Droits de l'État sur la Mer Territoriale (1887), in Crocker, at 304; Perels, Manuel de Droit Maritime International (1884), in Crocker, at 352–353; Schücking, Das Küstenmeer im Internationalen Rechte (1897), in Crocker, at 436–437.

The 1930 Conference at The Hague also had no doubt of the power of the coastal nation to regulate navigation in the territorial sea. Article 6 of its proposed codification stated:

"Foreign vessels exercising the right of passage shall comply with the laws and regulations enacted in conformity with international usage by the coastal State, and, in particular, as regards:

"(a) The safety of traffic and the protection of channels and buoys . . . ."

And the commentary to this Article stated that "[i]nternational law has long recognised the right of the coastal State to enact, in the general interest of navigation, special regulations applicable to vessels exercising the right of passage through the territorial sea." 3 Acts of the Conference for the Codification of International Law, Territorial Waters 214 (1930).

[89] The recent United Nations study of the concept of historic waters concluded that "if the claimant State allowed the innocent passage of foreign ships through the waters claimed, it could not acquire an historic title to these waters as internal waters, only as territorial sea." Juridical Regime of Historic Waters, Including Historic Bays, *supra*, n. 27, at 23. Under that test, since the United States has not claimed the right to exclude foreign vessels from within the "Inland Water Line," that line could at most enclose historic territorial waters.

tion,[31] it is clear that no historic title can accrue when the coastal nation disclaims any territorial reach by such an exercise of jurisdiction. For at least the last 25 years, during which time Congress has twice re-enacted both the International and Inland Rules,[32] the responsible officials have consistently disclaimed any but navigational significance to the "Inland Water Line." When the line was for the first time completed off the entire Louisiana shore, the Commandant of the Coast Guard declared:

> "The establishment of descriptive lines of demarcation is solely for purposes connected with navigation and shipping. . . . These lines are not for the purpose of defining Federal or State boundaries, nor do they define or describe Federal or State jurisdiction over navigable waters." [33]

As early as 1943 the Coast Guard had differentiated the "Inland Water Line" from other boundaries with territorial significance. Its manual on Admiralty Law Enforcement, published that year, discussed the principles of international law relating to the definitions and jurisdictional attributes of inland waters, the territorial sea, and the high seas. The manual then contrasted the line drawn under the 1895 Act.

> "NAVIGATION RULE: Now let us consider another line of demarcation. As shown in Chapter V, there are different rules for navigation on the 'inland waters' and the 'high seas': the Inland Rules and the International Rules. But here we

[31] Cf. Bouchez, *supra*, n. 23, at 227, 249; Strohl, *supra*, n. 23, at 293.

[32] Inland Rules: Act of May 21, 1948, 62 Stat. 249; Act of August 8, 1953, 67 Stat. 497. International Rules: Act of October 11, 1951, 66 Stat. 406; Act of September 24, 1963, 77 Stat. 194.

[33] 18 Fed. Reg. 7893 (1953).

do not apply the previous definition, but adopt a new one for convenience. The Secretary of Commerce has fixed a series of lines along our coast, lines not following the natural curvature of our shores, and not following any three-mile natural perimeter, and the Inland Rules apply inside this line, while the International Rules apply outside the line. . . .

"Quite obviously, this artificial line does not truly separate the high seas from the inland waters of the United States. It simply marks the area within which the Inland Rules apply, and outside of which the International Rules control." [84]

In *United States* v. *California* we held that the United States' disclaimer to the Court of any historic title was decisive in the light of the "questionable evidence of con-

[84] Admiralty Law Enforcement 25-26 (1943). See also the Coast Guard Law Enforcement Manual 3-7 (1954):

"The dividing line between inland and international waters as established by the Commandant, found in 33 CFR 82, is used only for the purpose of the Rules of the Road, and the enforcement of the inland rules of the road. It has no connection with territorial waters, or high seas, or other terms denoting general jurisdiction."

The manual Selected Materials on Coast Guard Law Enforcement 4-5 (1964) is to the same effect:

"The line established by the Commandant of the Coast Guard has no significance with respect to or dependence on the line establishing the limit of the territorial waters of the United States. In some places, the line is inshore of the territorial waters of the United States while in others, the line extends well outside the territorial limits of the United States. The sole purpose of the line is to establish a division line between the application of the Inland Rules and the International Rules of the Road."

And in the Commandant's most recent proposal to change the line for the Gulf of Mexico, he observed that "[t]he existing Gulf demarcation line extends about 20 miles out into international waters, as recognised by the State Department." He noted that the proposed "relocation of the line well within territorial waters removes any question of International Law." 32 Fed. Reg. 8763 (1967).

tinuous and exclusive assertions of dominion over the disputed waters." 381 U. S., at 175. In this case, not only are there long-standing, extrajudicial disclaimers of historic title, but also the United States has never treated the "Inland Water Line" as delimiting an area within which it can exercise jurisdiction over anything but navigation.[18]

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[18] Judicial and lay opinion have agreed on the limited significance of the "Inland Water Line." In discussing the line in *United States* v. *Newark Meadows Imp. Co.*, 173 F. 426, 428, Judge Hough, of the Circuit Court for the Southern District of New York, said in 1909:

"This legislation [the 1895 Act], however, was for the purpose of delimiting the inland waters of the United States, in order to inform navigators where the inland rules of navigation, as distinguished from the international rules, become applicable. It does not purport to change the boundaries of any federal district, nor enlarge the jurisdiction of any particular federal court . . . ."

Louisiana relies on the decision of this Court in *The Delaware*, 161 U. S. 459, where it was held that the Inland Rules should govern a collision in the Gedney Channel off New York Harbor. Referring to the "Inland Water Line," the Court stated that the enclosed waters were "as much a part of the inland waters of the United States *within the meaning of this act* as the harbor within the entrance." 161 U. S., at 463. (Emphasis supplied.) The italicized qualification indicates the Court's understanding of the limited import of the "Inland Water Line."

Writers who have considered the question are unanimous that the "Inland Water Line" serves only the purpose for which it was authorized. Thus, 1 Shalowitz, *supra*, n. 7, at 23, cautions that the

"physiographic concept of the limits of inland waters should not be confused with the lines established by the United States Coast Guard to separate the areas where the Inland Rules of the Road apply from those to which the International Rules apply. These lines are established for administrative purposes and have been held to have no application other than the specific purpose of determining what rules of navigation are to be followed."

Similarly, Strohl, *supra*, n. 23, at 4, n. 5, warns that

"[c]are should be exercised not to confuse the term 'internal waters' in the context of [international territorial law] with the term 'inland

There is no indication that in enacting the navigation rules and authorizing the designation of an "Inland Water Line" Congress believed it was also determining the Nation's territorial boundaries.[36] Indeed, it seems unlikely that Congress, if it had intended that result, would have delegated such authority to the Secretary of the Treasury, to be exercised in his discretion "from time to time" and by reference to navigational aids rather than in accordance with prevailing principles of international law. Consistently with their limited statutory purpose, the lines have always been drawn, and

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waters' as used by mariners entering United States coastal waters, where in certain localities they are required to operate under what are called Inland Rules of the Road. . . . The boundary lines for 'Inland Waters' within the meaning of United States Inland Rules of the Road do not necessarily coincide with the base lines delimiting the regime of internal waters as understood in general international law."

[36] On the contrary, the titles of the Acts and statements in the legislative history illustrate that Congress' only concern was with the regulation of navigation. *E. g.*, S. Ex. Doc. No. 35, 53d Cong., 3d Sess., 2 (1895). The provision for the delineation of an "Inland Water Line" was an afterthought, added "at the request of the maritime interests of New York and Philadelphia." 27 Cong. Rec. 2059 (1895).

Louisiana argues that since Article 30 of the 1889 International Marine Conference excepted from the International Rules only special rules for "inland waters," the Conference and Congress must have believed that the power of the coastal nation extended only to those excepted areas. It is clear, however, that both the Conference and Congress recognized the already prevailing principle of international law (see *supra*, n. 29) that the coastal nation had the power to regulate navigation in the territorial sea. But they decided that it would be preferable to have standard international rules, insofar as practicable, on all navigable waters, since there were rarely well-marked lines dividing national waters from the high seas. See Protocols of Proceedings of the International Marine Conference in Washington, D. C., in 1889, S. Ex. Doc. No. 53, 51st Cong., 1st Sess., 21–22, 25, 65–66, 127–128, 579, 730 (1890); H. R. Rep. No. 731, 48th Cong., 1st Sess., 2 (1884).

frequently altered, solely with regard to contemporary navigational needs.[37] And in the only instance called to our attention in which the "Inland Water Line" was

[37] There have been, for example, several recent changes in the lines. See, *e. g.*, 31 Fed. Reg. 4401, 10322 (1966); 32 Fed. Reg. 7127 (1967); 33 Fed. Reg. 8273 (1968). The stated purpose of one of the 1966 changes was "to bring the regulations up to date with identification of aids to navigation." 31 Fed. Reg. 4401. When the Commandant of the Coast Guard proposed the 1953 changes in the "Inland Water Line" across the Gulf coast, he noted that "[t]hese lines are based on the needs of safety in navigation." 18 Fed. Reg. 2556 (1953). And when the 1953 line was finally adopted, he stated:

"The comments, data, and views submitted which were based on reasons not directly connected with promoting safe navigation were rejected.

"The establishment of descriptive lines of demarcation is solely for purposes connected with navigation and shipping." 18 Fed. Reg. 7893 (1953).

Similarly, when the Commandant proposed changes in the line in 1967, his reason was that "[t]he present demarcation line is not easily located and therefore is not serving its purpose of informing mariners about the rules of the road applicable to their present positions." 32 Fed. Reg. 8763 (1967). The proposed modifications were withdrawn after extended hearings. The notice of withdrawal contained the following comment on some of the evidence adduced at those hearings:

"A number of comments and views submitted did not address themselves to the purpose for which the line of demarcation is authorized under 33 U. S. Code 151, but to other subjects, including State boundaries, State rights, fishing rights, etc. These comments and views were not considered as germane to the proposals under consideration and no action is taken with respect thereto." 32 Fed. Reg. 14775 (1967).

The only alleged departure from this construction of the "Inland Water Line" is one in a set of Coast Guard orders of May 20, 1925 (*i. e.*, during the Prohibition Era), purporting to authorize law enforcement in the "territorial waters" of the United States. "Territorial waters" were defined as comprising

"all waters within a radius of three nautical miles from the 'coast' of the United States . . . and all waters inshore of the lines desig-

mentioned by the United States in its international relations, the State Department in 1929 cautioned that the "lines do not represent territorial boundaries, but are for navigational purposes." [38] We must therefore reject Louisiana's contention that the United States has historically treated the "Inland Water Line" as the territorial boundary of its inland waters.[39]

Finally, Louisiana argues that only adoption of the current "Inland Water Line" will fulfill the "requirements of definiteness and stability which should attend any congressional grant of property rights belonging to the United States." *United States* v. *California*, 381 U. S. 139, 167. Any line drawn by application of the rules of the Convention on the Territorial Sea and the Contiguous Zone would be ambulatory and would vary with the frequent changes in the shoreline. This will lead, it is said, to continuing uncertainty and endless litigation concerning the location of the Louisiana coast-

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nated and defined by the Secretary of Commerce . . . as limiting the 'inland waters' of the United States."

This definition is found in a Coast Guard manual for official use only entitled Law Enforcement at Sea relative to Smuggling 2 (1932). While the orders do attach to the "Inland Water Line" a jurisdictional significance beyond the regulation of navigation, they do not support Louisiana's position. The orders clearly equated "inland waters" to the territorial sea.

[38] Letter from W. R. Castle, Jr., to Chargé Lundh, July 13, 1929, in 1 G. Hackworth, Digest of International Law 645 (1940).

[39] Louisiana argues that the jurisdictional significance of the "Inland Water Line" is evidenced by its adoption by Congress in several other Acts. Officers Competency Certificates Act, 53 Stat. 1049, 46 U. S. C. § 224a (12)(a); Coastwise Load Line Act, 49 Stat. 888, 46 U. S. C. § 88; Act for inspection of seagoing vessels, 49 Stat. 1544, 46 U. S. C. § 367. In all of these statutes, however, the "Inland Water Line" is adopted as the line *seaward* of which the provisions are to apply. Consequently they do not represent an exercise of jurisdiction over inland waters.

line under the Submerged Lands Act, because the shoreline is constantly shifting as the Mississippi River and violent Gulf storms remold the soft, silt-like delta soil. This problem was not encountered on the rock-hard, comparatively straight California coast, and Louisiana contends that there is nothing in the Submerged Lands Act which requires that inland waters be given the same definition for every part of the United States coast.[40] Just as the Court was free in *United States* v. *California* to adopt the definition which best solved the problems of that case, the argument concludes, we are free in this case to adopt a different definition more suited to the peculiarities of the highly unstable Louisiana shore.

We do not, however, so broadly construe our function under the Submerged Lands Act. Our adoption in

[40] One congressional committee report in 1953 concluded that perhaps the definition of inland waters could not be uniform, particularly as to Louisiana:

"The hearings in Louisiana were particularly revealing in regard to the weight which should be given to geographical factors. The trip our subcommittee took by air over the shore and coastal area of Louisiana was highly informative on this score. There is a startling difference between the shore and coast line of Louisiana and Florida on the one hand and that of Texas and California, on the other hand. To say that these contrasting coastal areas should be treated exactly alike with reference to the definition of inland waters would ignore geographical factors that are wholly different."

Report of the House Committee on Interior and Insular Affairs, pursuant to H. R. Res. No. 676 authorizing an Investigation and Study of the Seaward Boundaries of the United States, H. R. Rep. No. 2515, 82d Cong., 2d Sess., 19 (1953). The recommendation of that study, however, was that Congress should adopt general guidelines for the definition of inland waters and then delegate the task of drawing exact boundaries to a special commission, an approach which Congress rejected in the Submerged Lands Act. The Attorney General also urged Congress to draw "[a]n actual line on a map" in defining state boundaries to avoid uncertainty and expensive litigation. Hearings on S. J. Res. No. 13, *supra*, n. 20, at 926 (1953). This approach was also rejected in the statute as enacted.

United States v. *California* of the definitions contained in the Convention on the Territorial Sea and the Contiguous Zone was "for purposes of the Submerged Lands Act," and not simply for the purpose of delineating the California coastline. Congress left to this Court the task of defining a term used in the Act, not of drawing state boundaries by whatever method might seem appropriate in a particular case. It would be an extraordinary principle of construction that would authorize or permit a court to give the same statute wholly different meanings in different cases, and it would require a stronger showing of congressional intent than has been made in this case to justify the assumption of such unconfined power. Finally, we note that if the inconvenience of an ambulatory coastline proves to be substantial, there is nothing in this decision which would obstruct resolution of the problems through appropriate legislation or agreement between the parties. Such legislation or agreement might, for example, freeze the coastline as of an agreed-upon date.

Even if we were free to adopt varying definitions of inland waters for different portions of the United States coast, we are not convinced that the policy in favor of a certain and stable coastline, strong as it is, would necessarily outweigh countervailing policy considerations under the Submerged Lands Act. We recognized in *California* the desirability of "a single coastline for both the administration of the Submerged Lands Act and the conduct of our future international relations." 381 U. S., at 165. The adoption of the "Inland Water Line" for Louisiana would be completely at odds with this desideratum. Moreover, adoption of a new definition of inland waters in this case would create uncertainty and encourage controversy over the coastlines of other States, unsure as to which, if either, of the two defini-

tions would be applied to them. This uncertainty might be compounded by the absence of any "Inland Water Line" around much of the United States. And we cannot assume that, in enacting the Submerged Lands Act, Congress envisioned that the ownership of potentially vast resources might thereafter be determined "from time to time" by the Coast Guard, acting solely in the interest of navigational convenience.

For these reasons, we conclude that that part of Louisiana's coastline which, under the Submerged Lands Act, consists of "the line marking the seaward limit of inland waters," is to be drawn in accordance with the definitions of the Convention on the Territorial Sea and the Contiguous Zone.

* * * *

In due course a Special Master will be appointed by the Court to make a preliminary determination, consistent with this opinion, of the precise boundaries of the submerged lands owned by Louisiana in the Gulf of Mexico.

It is so ordered.

[Map of Louisiana coast follows this page.]

THE CHIEF JUSTICE and MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, dissenting.

We must decide in this case the meaning of the term "inland waters," as used in the Submerged Lands Act of 1953.[1] Although the value of all the submerged lands probably could be stated only in astronomical figures, this dispute is a minor one involving only a comparatively small segment of land adjacent to Louisiana.[2] The Court chooses as the proper meaning the com-

[1] 67 Stat. 29, 43 U. S. C. §§ 1301–1315.

[2] For this reason it is difficult to understand why the Federal Government is subjecting the State of Louisiana and this Court to a long series of technical and wasteful lawsuits. When all of them are over the United States will have little more undersea land than it already had. The only practical difference that I can see at the moment if the Federal Government wins is that it, instead of the State, will have power to lease the land to some oil company. On the other hand should Louisiana win, it can lease the land perhaps at a bigger price and then, as I pointed out in a prior separate opinion, *United States* v. *Louisiana*, 363 U. S. 1, 85, 98–100, devote its oil income to public education.

plex series of definitions incorporated in the Convention on the Territorial Sea and the Contiguous Zone, an international treaty approved by the President and ratified by the Senate.[3] In making this choice, the Court relies on the recent decision by a divided Court that this standard should be used in determining the boundaries of California's "inland waters" along the California coast. *United States* v. *California*, 381 U. S. 139 (1965) (generally referred to as the second *California* case). I cannot agree to application of the same standard to Louisiana, where coastal conditions are wholly different[4] and where the Convention standard, which the Court thought would provide some certainty and stability for California, can only cause chaos and confusion. Nor can I find any justification for applying the Convention standard applied in the second *California* case to Louisiana, a State that was not a party to the West Coast litigation but urges us to adopt a different standard, one especially convenient for application to Louisiana's own unusual coast, and one never even considered in the West Coast litigation.[5] Under these circumstances I must dissent.

[3] 44 Dept. State Bull. 609; [1964] 15 U. S. T. (pt. 2) 1607, T. I. A. S. No. 5639.

[4] "History is subject to geology. Every day the sea encroaches somewhere upon the land, or the land upon the sea; cities disappear under the water, and sunken cathedrals ring their melancholy bells. Mountains rise and fall in the rhythm of emergence and erosion; rivers swell and flood, or dry up, or change their course; valleys become deserts, and isthmuses become straits. To the geologic eye all the surface of the earth is a fluid form, and man moves upon it as insecurely as Peter walking on the waves to Christ."

W. & A. Durant, The Lessons of History 14–15 (1968).

[5] The propriety of using the Coast Guard line as the seaward line of inland waters was not litigated in the second *California* case. The issue was not raised by the pleadings; nor was it argued. The point was raised once on oral argument when MR. JUSTICE BRENNAN asked if the United States relied on the Coast Guard line. Mr. Cox,

I would hold that "inland waters" should be measured in Louisiana, and in any other State with similar coastal characteristics, by the standard urged by Louisiana—the Coast Guard line established years ago, under the authority of an 1895 Act of Congress, to mark off the boundaries of the States' "inland waters." Such a holding would put an end to a useless, unnecessary litigation, over an issue that can well be characterized as *de minimis* so far as the practical effect to the United States is concerned.

I.

In 1947 this Court decided that no one of the States bordering on the Atlantic or Pacific Ocean or on the Gulf of Mexico owned any part of the land submerged under the waters lying adjacent to its shores.[4] In 1953 Congress, in the Submerged Lands Act, "restored" to the States what it thought our holding had wrongfully taken away from them. What the Act did was in effect to quitclaim to each coastal State submerged land extending three geographic miles seaward from the State's coastline, except that under certain circumstances States bordering on the Gulf of Mexico were entitled to a maximum of not more than three leagues (roughly nine geographic miles) from the coastline. Under the Act submerged land of the Continental Shelf more than three miles or three leagues beyond the coastline is property of the United States. The Act defined "coast line" in § 2 (c) as "the line of ordinary low water along that portion of the coast which is in direct contact with the

the Solicitor General, replied that the United States placed no reliance on it, the purpose of that line being "to indicate where the inland rules applicable to vessels control and where the international ocean rules control." He added that Louisiana will contend, when her case reaches here, that the Coast Guard line does control but that it was not involved in the California segment of the litigation.

[4] *United States* v. *California*, 332 U. S. 19 (1947).

open sea and the line marking the seaward limit of inland waters." This definition of "coast line" is, of course, not clear enough in itself for one to go out and look around the waters and fix the boundary line between submerged lands belonging to the Federal Government and those belonging to the States, particularly since the crucial term "inland waters" is not defined in the Act at all. There appears to be one thing certain about the problem, however, and that is that the dispute between Louisiana and the United States is no part of international affairs subject to international law, but is exclusively a domestic controversy between the State and Nation. The United States, nevertheless, contends that in determining this purely domestic dispute, the Act's words must be given their content in international law and the controlling principles must be found in the international Convention. The United States places its chief reliance for this contention on the second *California* case. In that case some questions arose about whether certain segments of the California coastline, particularly with reference to bays, inlets, sounds, indentations, and islands, were within California's inland waters. There the Court did not pass on the applicability of the 1895 Act of Congress,[7] and seeking a satisfactory way to

[7] This is vividly demonstrated by the colloquy between MR. JUSTICE BRENNAN and Solicitor General Cox, referred to in n. 5 above:

"JUSTICE BRENNAN: Now, I have forgotten—maybe the briefs cover this provision of Title 33 under which the Commandant of the Coast Guard is required to fix the lines dividing the high seas from inland waters.

"Do you rely on that at all?

"MR. COX: Oh, no. And neither does California.

"JUSTICE BRENNAN: Well, would you tell me why part (a)(2) of that title dealing with this very section, for example, there is a provision that 'The outer limits of inland waters in Santa Barbara Harbor shall be,' and then there is a description, a line drawn from Santa Barbara, the light-blue one, past the Santa

determine some of the perplexing problems about treatment of bays, etc., as inland waters, a divided Court concluded to resort to the treaty mentioned. The majority believed reliance on the treaty was dictated by the need

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Barbara Harbor breakwater which, if I locate it on this map, is some little segment away in the upper corner, beneath the word 'Santa Barbara' on your map. But you don't rely at all on the definition of inland waters on Congressional definition in another statute.

"MR. COX: No. No. We think that those statutes relate simply to—had one purpose and only one purpose, and that is to indicate where the inland rules applicable to vessels control and where the international ocean rules control.

"JUSTICE BRENNAN: Just traffic rules of the road.

"MR. COX: They are just traffic rules of the road, we would say.

"*Now, in the Louisiana case, if and when it ever gets here, Louisiana will contend it relies on that because in that instance it happens that the Coast Guard line is placed way out in the Gulf, but here it is apparently placed way in.*

"JUSTICE BRENNAN: As I get it, it is only a tiny bit of a corner up there at that point.

"MR. COX: That is right. And, of course, this is terribly deep water and ocean-going vessels use it.

"Now, I should say that there are some small points in these bays that we would agree were harbors. For example, we would agree that up—if you can remember Monterey Bay—that is not on this map—it sort of hooks around, comes around in like this (demonstrating), and the shore comes out this way. We would agree that these little points up here are harbors. If you have been to Monterey, we would agree that the area in which you see fishing vessels anchored, up there at the dock, that is a harbor. That has not been argued about here. We concede. And there may be a few little points up next to Santa Barbara that come the same way as harbors.

"JUSTICE BRENNAN: Well, I notice that the Commandant has defined inland waters from Monterey Harbor, San Luis Obispo, San Pedro, Santa Barbara, Crescent City, Isthmus Cove at Santa Catalina and Avalon Bay, but you don't rely on any of these.

"MR. COX: No. We don't rely on any of them.

"JUSTICE BRENNAN: You don't rely on that.

"MR. COX: We don't rely on it, no." (Emphasis added.)

to adopt "the best and most workable definitions available," 381 U. S., at 165, thus, as it was believed, adding stability to the operation of the Act and carrying out a purpose of the Act's proponents to give security of title to the State and its oil lessees.

But if that turns out to be the result of using the treaty definitions in the second *California* case, it will certainly not be the result here, for there are crucial differences between the two coasts. California waters are in the main deep and often are navigable very close to shore. There are few indentations along that State's coast, and most of these are smooth or relatively regular in shape. The shoreline is, of course, subject to changes by natural forces, but the land along the shore is for the most part hard and rocky, and therefore such changes in the shoreline have been extremely gradual. The Louisiana coast is entirely different in many ways. The waters off the shore are shallow and often not readily navigable. The shoreline is marked by numerous complex indentations, and indeed the United States, in a brief filed earlier in this litigation, itself recognized that "[t]he Louisiana *coast* line is an extraordinarily complicated one."[8] (Emphasis added.) Even more important than this complexity of the present coastline is its highly volatile nature. The mighty Mississippi brings sediment and mud which may build up little islands and mud elevations one day and destroy them the next. Parts of the Mississippi Delta are receding at a rapid rate, while in other parts deposits are rapidly being built up. Recent projects along the Atchafalaya River may cause that river to begin building another massive delta that could grow seaward at a rate of almost one mile per year. Because the coast is composed

[8] Memorandum for the United States in Reply to Louisiana's Brief in Opposition to Motion for Leave to File Complaint, March 7, 1956, pp. 9–10.

of soft, silt-like material, because the water is for the most part relatively shallow, and because the elevation of the land along the shore is extraordinarily low, the shoreline often changes drastically merely as a result of temporary variations in winds and waves. Offshore islands sometimes appear or disappear spontaneously as a result of the same forces, and of course major hurricanes to which Louisiana—unlike California—is occasionally exposed, cause even more substantial changes.

In Louisiana, consequently, the Court cannot correctly say about its holding what it said with some plausibility in the second *California* case:

> "Before today's decision no one could say with assurance where lay the line of inland waters as contemplated by the Act; hence there could have been no tenable reliance on any particular line. After today that situation will have changed. Expectations will be established and reliance placed on the line we define. . . . 'Freezing' the meaning of 'inland waters' in terms of the Convention . . . serves to fulfill the requirements of definiteness and stability which should attend any congressional grant of property rights belonging to the United States." 381 U. S., at 166–167.

Today's holding does not grant Louisiana the "definiteness and stability" promised to California. A company having an oil lease now under ocean waters of Louisiana gets no more than an ambulatory title: here today and gone tomorrow. And with its title, I suppose, will go all of its expensive investment in developing the lease. Stable business cannot be fostered that way. The ambulatory title, which the Court finds in the Submerged Lands Act, I think frustrates the just expectations Congress desired that oil companies have in the stability of their leases for exploitation of oil under the sea.

Nothing was said in the second *California* opinion indicating that the treaty provisions the Court borrowed in that case were to be mechanically used to fit every land dispute. The treaty was chosen there because the Court thought it provided the "best and most workable definitions available" in the dispute between California and the United States; the doctrine cannot fit all cases. If it worked for stability in California, it has a directly opposite effect in Louisiana. Moreover, the doctrine is tending to bring about interminable litigation. Passed 15 years ago, the Act has generated litigation that is not yet abating; we have another dispute similar to this one before us now, and neither the United States nor the State indicates that there is not far more time-consuming litigation still to come. In fact, discussion of this case by the Court requires 63 pages in what appears to me to be as succinct and clear an opinion as could have been written. And even yet the end of the dispute has not arrived. How many years the Master who must now be appointed will have to work, how many persons must be hired to help him, no one can predict. Settling and identifying boundaries on land is a surveyor's job; he must go to the land with his instruments and mark it off. Identifying an ocean boundary, we are told by the briefs and arguments of both parties here, is a much more complex job; it takes much time by surveyors, cartographers, photographers, and oceanographers, a knowledge of angles, tides, rolling waters, higher mathematics, etc.* Shorelines are constantly changing, and thus under the Court's formula even this painstaking work cannot provide a means of marking the boundary for all time. I cannot accept the argument that Congress ever intended to impose on this Court such an unjudicial job. I turn therefore to Lou-

*See my dissent filed today in the *Texas Boundary Case*. *Ante*, at 8, n. 2.

isiana's contentions that Congress long ago adopted a plan and selected a government agency to determine where the inland water line is, that this agency has considered and determined that line, marking it as required by law, and that this line, which is not movable but fixed, provides the stability and certainty necessary to make the purchase and exploitation of oil leases on submerged lands a commercial success. To the extent that my analysis is inconsistent with other possible interpretations of the second *California* case, it must be recognized that the usual reasons for strong deference to prior precedent are almost wholly absent here. *Stare decisis* is a valuable principle because by making the governing legal rules predictable, it enables private parties to determine their rights without litigation and enables lower courts to dispose of the great bulk of disputes that do result in litigation. In the present unique situation, however, only a small handful of parties is affected by the governing legal rule; settlement entirely out of court is highly unlikely under the Court's Convention rule; and in practice though not of necessity, cf. 28 U. S. C. § 1251 (b)(2), all these disputes are being brought within the original jurisdiction of this Court. Under these circumstances this Court should certainly not adhere blindly to its previous holdings, particularly where, as here, the State involved was not a party to the prior litigation and the claim raised here by Louisiana under the 1895 Act was never considered in the prior litigation.

II.

In 1895 Congress passed this law:

"The Secretary of the Treasury is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with light houses, light vessels, buoys or coast objects,

the lines dividing the high seas from rivers, harbors and inland waters." [10]

This 1895 law was the successor of other laws showing congressional interest in marking the boundaries between inland and outer-sea waters.[11] Such marks are necessary in order for ships to know when they must obey local signals in the inland waters of a State, as distinguished from their duty to observe international rules and warnings. Title 33 of the U. S. Code contains our inland water rules, for infraction of which courts can inflict penalties consisting of fines and sometimes ship seizures. The Government argues that it is not the purpose of this statute to give the Secretary power to mark this boundary except to control navigation. To buttress this contention, reference is made to a few sporadic statements by Secretaries who had occasion to mark boundaries and by some legislators who helped pass the statute. But surely the Government is not contending that Congress in solemnly considering over a period of years and then passing this law was doing so as a kind of joke. International and local rules of navigation are serious business and the warnings put out under order of Congress to inform ships where inland waters begin must be acted on and obeyed. Here not only has the line delineating Louisiana's waters been marked but also the State passed Act 33 of 1954 accepting these governmental markings as showing positively and certainly just where its inland water line is located. And there is no danger that this line will be ambulatory since the line is now marked, and will not move as shore conditions

[10] 28 Stat. 672. This Act has been changed by substituting for the Secretary of the Treasury the Secretary of Commerce, and later by placing the responsibility with the Commandant of the Coast Guard. Now 33 U. S. C. § 151.

[11] *E. g.*, 23 Stat. 438 (1885); 26 Stat. 320 (1890).

change. Nor will future modifications in the line by the Coast Guard disrupt title to these inland waters or to the land and oil beneath them since this Court has repeated several times that a State's territory cannot be taken away from it by Congress without its consent.[17] Such was the understanding of Senator Cordon, floor manager for the Submerged Lands Act, who said:

> "The boundaries of the States cannot be changed by Congress without the consent of the States. We cannot do anything legislatively in that field, and we have not sought to do so in this measure." [18]

Acceptance of the Coast Guard's inland water mark for Louisiana fits precisely within the reasons given for utilizing the international Convention in the second *California* case. It will put a stop to eternal litigation and help relieve this Court of the heavy burden repeatedly brought upon us to make decisions none of us have the time or competence to make. It will release the time of the Court to do other and more important things. It will help to end further delay in our giving effect to the desire of Congress to grant the States full ownership and control over submerged lands three miles or three leagues from their coastlines. And it will provide the certainty and stability which are absolutely essential for useful development of our off-shore oil resources.

I dissent from the Court's holding.

[17] See, *e. g.*, *Fort Leavenworth R. Co.* v. *Lowe*, 114 U. S. 525, 541 (1885); *Geofroy* v. *Riggs*, 133 U. S. 258, 267 (1890).

[18] 99 Cong. Rec. 2634.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1968.

UNITED STATES *v.* LOUISIANA ET AL. (TEXAS BOUNDARY CASE).

ON CROSS-MOTIONS FOR THE ENTRY OF A SUPPLEMENTAL DECREE AS TO THE STATE OF TEXAS.

No. 9, Orig. Argued November 18, 1968.—Decided March 3, 1969.

Section 2 (b) of the Submerged Lands Act of 1953 confines the gulfward boundary of submerged lands granted by the Act to not more than three marine leagues from the "coast line," which Texas contends refers to the coastline as it existed in 1845, when Texas entered the Union. *Held:* The Convention on the Territorial Sea and the Contiguous Zone, whose definitions have been adopted by the Court for purposes of the Submerged Lands Act (*United States* v. *California*, 381 U. S. 139) defines "coast line" as the modern, ambulatory coastline resulting from erosion and accretion, and it is from that line that Texas' gulfward boundary must be measured. Pp. 2-6.

Louis F. Claiborne argued for the United States on its proposed supplemental decree as to the State of Texas. With him on the brief were *Solicitor General Griswold, Assistant Attorney General Martz, Roger P. Marquis,* and *George S. Swarth.*

Houghton Brownlee, Jr., Assistant Attorney General of Texas, argued for the State of Texas on supplemental decree proposed by Texas. With him on the brief were

Crawford C. Martin, Attorney General, *Nola White*, First Assistant Attorney General, *A. J. Carubbi, Jr.*, Executive Assistant Attorney General, and *J. Arthur Sandlin* and *C. Daniel Jones, Jr.*, Assistant Attorneys General.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This proceeding is a sequel to last Term's *United States* v. *Louisiana*, 389 U. S. 155 (1967), in which we held that the three-league (nine-mile) belt of submerged lands beneath the Gulf of Mexico granted to Texas by the Submerged Lands Act of 1953 [1] was not to be measured from the edge of artificial jetties built in the Gulf by Texas since 1845 but from Texas' coastline as it existed in 1845 when Texas was admitted to the Union. The cartographic work required to define the 1845 coastline and the gulfward boundary three leagues distant has been completed, and the United States and Texas have agreed upon their locations.[2] However, the 1845

[1] 67 Stat. 29, 43 U. S. C. §§ 1301–1315. In *United States* v. *Louisiana*, 363 U. S. 1, 84 (1960), we held that the Act entitled Texas, as against the United States, to the submerged lands underlying the Gulf of Mexico to a distance of three marine leagues from Texas' "coast line." We expressly reserved the question of what is the "coast line" from which to measure this three-league grant. 363 U. S., at 79. See also 389 U. S., at 156–157 and n. 1.

[2] A Stipulation filed with the Court identifies Texas' 1845/1849 coastline and also its gulfward boundary three leagues distant. An Act of November 24, 1849, Laws, 3d Tex. Leg., c. 2, p. 4, adopted with the consent of Congress, Act of July 5, 1848, 9 Stat. 245, extended Texas' boundary opposite Sabine Pass. The United States has accepted Texas' three-league boundary opposite the western half of Sabine Pass, not as a boundary as it existed when the State came into the Union in 1845, but as one approved by Congress before passage of the Submerged Lands Act, and as such equally entitled to recognition under § 2 (b). The line identified in the Stipulation as the line to be recognised as Texas' historic offshore boundary includes the 1849 extension, but the United States reserves

coastline has been substantially modified by extensive erosion and some accretion in the intervening period of more than a century. This modification has occasioned a dispute between the United States and Texas as to whether the Act's express limitation in § 2 (b), that in no event shall the boundaries of the grant of submerged lands "be interpreted as extending from the coast line . . . more than three marine leagues into the Gulf of Mexico," is to be read as measuring from the 1845 coastline, as Texas contends, or from the coastline as it exists currently or at any time in the future, as the United States contends.[8] If the limitation is read as measuring from

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the effectiveness of that extension as against other claims, for example, any that might be asserted by Louisiana. See Memorandum of United States 16–18.

[8] Section 2, 43 U. S. C. §1301, so far as relevant here, is as follows:

"(a) The term 'lands beneath navigable waters' means—

. . . . . .

"(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles,

. . . . . .

"(b) The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

"(c) The term 'coast line' means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

the modern, ambulatory coastline, Texas claims that it would be denied substantial submerged acreage as a result of post-1845 erosion.[4] We ordered oral argument. 393 U. S. 811 (1968). We agree with the United States that the term "coast line" means the modern, ambulatory coastline.

The term "coast line" also appears in § 4 of the Submerged Lands Act. Section 4 approves a seaward boundary three miles distant from the "coast line" of each coastal State, except that if a State can show that its boundary as it existed at the time of entry into the Union or as approved by Congress extended into the Gulf of Mexico more than three miles from the coastline, that State is entitled to claim the submerged lands within such boundary, subject however to the express limitation of § 2 (b). See §§ 2 and 4, 67 Stat. 29, 31, 43 U. S. C. §§ 1301, 1312; *United States* v. *Louisiana*, 363 U. S. 1 (1960).

The argument of the United States that "coast line" means the modern ambulatory coastline is based on our decision in *United States* v. *California*, 381 U. S. 139 (1965). The issue there was whether particular bodies of water on the California coast were "inland waters" within the meaning of § 2 (c) which provides that "[t]he term 'coast line' means the line . . . marking the seaward limit of inland waters." We held that the legislative history showed that Congress intended that the courts should define the term "inland waters." In discharging that assignment we concluded that the Convention on the Territorial Sea and the Contiguous Zone[5] provided "the best and most workable definitions available." Accordingly, we adopted those definitions for purposes of the Submerged Lands Act. 381 U. S., at 165.

[4] It was represented on oral argument that between 17,000 and 35,000 acres would be lost to Texas as a result of such erosion.

[5] [1964] 15 U. S. T. (pt. 2) 1607, T. I. A. S. No. 5639.

The Convention defines "coast line" as the modern, ambulatory coastline; the decree entered several months later in accordance with our opinion in *California* expressly provides that "[t]he coast line is to be taken as heretofore or hereafter modified by natural or artificial means . . . ." 382 U. S. 448, 449 (1966).

We said further in *California* that "[t]his [adoption of the Convention's definitions] establishes a single coastline for . . . the administration of the Submerged Lands Act . . . ." 381 U. S., at 165. Our conclusion in this case that "coast line" means the modern, ambulatory coastline therefore necessarily follows from our decision in *California*. See *United States* v. *Louisiana*, *supra*, 389 U. S., at 162, n. 2 (STEWART, J., concurring in result). There is no basis for a finding that "coast line" has a different meaning for the purpose of determining the baseline for measurement of the three-league maximum limitation. Nothing on the face of the Act or in its legislative history supports a different meaning.* Rather it seems evident that Congress meant that the same "coast line" should be the baseline of both the three-mile grant and the three-league limitation. Texas suggests no ground for a distinction, but argues that measurement from the modern, ambulatory coastline would produce an inequitable result and work havoc with orderly mineral development. It is true that last Term's decision that the three-league belt should be measured from the 1845 coastline and not from the edge of subsequently constructed artificial jetties deprived Texas of the benefit of post-1845 accretion. It is also true that the use of the modern, ambulatory coastline as the baseline from which the limitation is measured will penalize Texas for post-1845 erosion and may present practical difficulties for

* Our decision in *California* also forecloses any argument that the term "coast line" means the coastline as it existed at the date of passage of the Submerged Lands Act.

mineral lessees. But any alleged inequitable results, as well as any alleged detriment to orderly mineral development, derive from a consistent reading of the scheme Congress fashioned; thus Texas must look to Congress for relief.

Since the parties have agreed that the decree proposed by the United States should be entered if its view on the disputed point is sustained, we direct the entry of the supplemental decree proposed by the United States.[1]

It is so ordered.

THE CHIEF JUSTICE and MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

[For supplemental decree entered in this case, see *post*, p. 836.]

MR. JUSTICE BLACK, dissenting.

I would decide this case in favor of Texas. It is another of a long-continued and apparently never-ending series of lawsuits between the United States and Texas, trying to settle the location of the boundaries of lands submerged under ocean and Gulf waters that Congress, in 1953, validly conveyed to the States in the Submerged Lands Act.[1] The dispute is a narrow one. This Court held in *United States* v. *Louisiana*, 363 U. S. 1 (1960), that the United States had in the Submerged Lands Act conveyed to Texas submerged lands out into the Gulf

[1] Although the three-mile minimum grant measured from the modern coastline has no present application in the case of Texas, the decree includes provisions to cover the situation which would exist if accretion or artificial construction should at some future time extend the coastline more than six miles beyond the 1845–1846 position.

[1] 67 Stat. 29, 43 U. S. C. §§ 1301–1315.

1 BLACK, J., dissenting.

for a distance of three leagues, about nine miles, from the State's coastline. And we held in *United States* v. *Louisiana* (Texas boundaries), 389 U. S. 155, 161 (1967), that "the congressional grant to Texas of three marine leagues of submerged land is measured by the historical state boundaries 'as they existed' in 1845 when Texas was admitted into the Union." That case, however, did not attempt to identify with precision where the coastline was located, but that question is no longer in dispute for here the parties have stipulated the location of the seaward boundary of Texas when it was admitted into the Union. In that same case we rejected arguments that we should follow the second *California* case, *United States* v. *California*, 381 U. S. 139 (1965), in holding that a dispute over the state and national submerged boundary line should be decided by international law and treaties. In declining to apply the same treaty in the United States and Texas dispute, we said, "This is a domestic dispute which must be governed by the congressional grant," 389 U. S., at 161, and thereby rejected the idea that the question was controlled by international law or treaty. Obviously, the same principle equally applies here, in this further phase of the very same submerged land dispute. No one of the international family of nations is greatly interested and certainly none can control the way in which another nation divides itself into subordinate governmental units for control of that country's own inland waters. That is a problem for each nation to decide for itself.

Moreover, I pointed out in my dissent to the Court's holding on the counter motions in the *Louisiana Boundary Case*, decided today, reasons why the second *California* case should not be held to establish a uniform rule for deciding all controversies concerning disputed questions of submerged land boundaries arising out of the Submerged Lands Act. *Post*, p. 78. This case

now before us concerning the Texas boundary again refutes any idea that applying treaties and international law to settle such local disputes between the Federal Government and a State will bring about stability, certainty, or expedition in carrying out the will of Congress. For here we are told that even if the United States wins, it will probably take a very long time to decide this controversy under the complexities of measurement necessary in accordance with the international treaty rules.[2] We are warned also that another boundary lawsuit between State and Nation is already brewing with a second just around the corner from it. Consolation is also offered because we are told that we can continue in case after case to keep our decrees open for future lawsuits. All of this goes to emphasize to me that it has been a mistake for this Court to advance the view that these land boundaries should be settled by courts. Obviously, the best way to settle a boundary dispute, whether water or land, is to designate a governmental agency that can undertake the complex problem of determining and marking where the inland and territorial waters meet. As I have pointed out in my dissent in the *Louisiana Boundary*

[2] The United States describes the way in which the measurements will have to be taken as follows:

"This work is done by photogrammetry—that is, by aerial photographs taken when the sea is exactly at the level of mean low tide. These are then correlated with maps by use of control points, and the water line shown on the photographs is transferred to the maps. There are only limited times when the tide reaches the proper stage while there is suitable daylight for such photography and there is no offshore or onshore wind to dislocate the water line. When the necessary conditions do concur, the tide stage lasts only a few minutes. Thus, photography of an extensive coast such as that of Texas may be a protracted operation. Subsequent cartography requires skilled and painstaking work that cannot be done hurriedly or by mass production methods." Memorandum in Support of Proposed Decree, July 15, 1968, p. 28, n. 13.

Case, decided today, Congress in 1895 passed an Act specifically charging a competent government department to consider and mark such a line.[3] If the Court is willing to stay its hand and let this congressionally selected agency identify the inland water-outer sea line in future cases in accordance with this Act of Congress, we may hopefully look forward to having the courts relieved of this nonjudicial duty. I believe experience proves, however, that the effort of Congress to straighten out this muddle and give the submerged lands to the States is destined to a long, slow, almost endless delay, if the problem continues to be left to this Court.

The effect of the Court's holding today is that where the process of accretion is building up new land along the shores, the boundaries Texas may claim are not extended because, as we held last Term, they remain irrevocably fixed by the 1845 line, but as erosion gradually pushes back the present coastline at other points along the shore, the outer limit of the submerged lands owned by Texas is also pushed back toward shore. This argument of the United States, accepted today by the Court, truly deserves the ironic tribute by counsel for Texas in oral argument that it works for the United States precisely as the old game of "heads I win, tails you lose." Moreover, the Court admits that if the United States wins, the boundary between state and federal lands will be an ambulatory one, with oil leases by the State constantly subject to invalidation as erosion takes its toll on the land along the shore. The Court says that these inequitable results "derive from . . . the scheme Congress fashioned." *Ante*, at 6. I think those inequities rather result from the interpretation this Court has given the Act, chiefly by saying that Congress intended to give the

[3] 28 Stat. 672, 33 U. S. C. § 151. Congress first entrusted this duty to the Treasury Department, later to the Commerce Department, and later to the Commandant of the Coast Guard.

task of marking submerged land to judges rather than to surveyors, and by holding further that the task should be handled by reference to international treaties. The uncertainty and confusion created for those who accept oil leases from the State, and the unfairness of the one-sided rule under which only Texas can lose by future natural changes in the shoreline, can be eliminated by simply construing "coast line" in § 2 (b) of the Act to have the same natural meaning we attributed to that phrase only last Term, namely the historic coastline "as it existed" when Texas was admitted to the Union. And secondly, in future cases, all these problems and inequities could be simply avoided by choosing to follow the Coast Guard line, marked out as authorized by Act of Congress.

I dissent from the Court's acceptance of the proposed United States decree and would approve the decree of Texas.

TREATY ON THE PROHIBITION OF THE EMPLACEMENT OF NUCLEAR WEAPONS AND OTHER WEAPONS OF MASS DESTRUCTION ON THE SEA-BED AND THE OCEAN FLOOR AND IN THE SUBSOIL THEREOF

GENERAL ASSEMBLY RESOLUTIONS
TWENTY-FIFTH REGULAR SESSION

SUBJECT: Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof

DATE AND MEETING: 7 December 1970, 1919th plenary meeting

VOTE: 104 in favour, 2 against, with 2 abstentions (recorded vote)

DOCUMENT NUMBERS

REPORT TO ASSEMBLY: First Committee report A/8198

RESOLUTION ADOPTED: 2660 (XXV)

TEXT OF RESOLUTION

The General Assembly,

Recalling its resolution 2602 F (XXIV) of 16 December 1969,

Convinced that the prevention of a nuclear arms race on the sea-bed and the ocean floor serves the interests of maintaining world peace, reducing international tensions and strengthening friendly relations among States,

Recognizing the common interest of mankind in the reservation of the sea-bed and the ocean floor exclusively for peaceful purposes,

Having considered the report of the Conference of the Committee on Disarmament, dated 11 September 1970,[1/] and appreciative of the work of the Conference on the draft Treaty on the Prohibition of the Emplacement of

1/ A/8059.

Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, attached to the report,2/

Convinced that this Treaty will further the purposes and principles of the Charter of the United Nations,

1. Commends the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, the text of which is annexed to the present resolution;

2. Requests the depositary Governments to open the Treaty for signature and ratification at the earliest possible date;

3. Expresses the hope for the widest possible adherence to the Treaty.

2/ Ibid., annex A.

ANNEX

Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof

The States Parties to this Treaty,

Recognizing the common interest of mankind in the progress of the exploration and use of the sea-bed and the ocean floor for peaceful purposes,

Considering that the prevention of a nuclear arms race on the sea-bed and the ocean floor serves the interests of maintaining world peace, reduces international tensions, and strengthens friendly relations among States,

Convinced that this Treaty constitutes a step towards the exclusion of the sea-bed, the ocean floor and the subsoil thereof from the arms race,

Convinced that this Treaty constitutes a step towards a treaty on general and complete disarmament under strict and effective international control, and determined to continue negotiations to this end,

Convinced that this Treaty will further the purposes and principles of the Charter of the United Nations, in a manner consistent with the principles of international law and without infringing the freedoms of the high seas,

Have agreed as follows:

Article I

1. The States Parties to this Treaty undertake not to emplant or emplace on the sea-bed and the ocean floor and in the subsoil thereof beyond the outer limit of a sea-bed zone as defined in Article II any nuclear weapons or any

other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons.

2. The undertakings of paragraph 1 of this Article shall also apply to the sea-bed zone referred to in the same paragraph, except that within such sea-bed zone, they shall not apply either to the coastal State or to the sea-bed beneath its territorial waters.

3. The States Parties to this Treaty undertake not to assist, encourage or induce any State to carry out activities referred to in paragraph 1 of this Article and not to participate in any other way in such actions.

Article II

For the purpose of this Treaty the outer limit of the sea-bed zone referred to in Article I shall be coterminous with the twelve-mile outer limit of the zone referred to in Part II of the Convention on the Territorial Sea and the Contiguous Zone, signed in Geneva on 29 April 1958, and shall be measured in accordance with the provisions of Part I, Section II, of this Convention and in accordance with international law.

Article III

1. In order to promote the objectives of and ensure compliance with the provisions of this Treaty, each State Party to the Treaty shall have the right to verify through observation the activities of other States Parties to the Treaty on the sea-bed and the ocean floor and in the subsoil thereof beyond the zone referred to in Article I, provided that observation does not interfere with such activities.

2. If after such observation reasonable doubts remain concerning the fulfilment of the obligations assumed under the Treaty, the State Party having such doubts and the State Party that is responsible for the activities giving rise to the doubts shall consult with a view to removing the doubts. If the doubts persist, the State Party having such doubts shall notify the other States Parties, and the Parties concerned shall co-operate on such further procedures for verification as may be agreed, including appropriate inspection of objects, structures, installations or other facilities that reasonably may be expected to be of a kind described in Article I. The Parties in the region of the activities, including any coastal State, and any other Party so requesting, shall be entitled to participate in such consultation and

co-operation. After completion of the further procedures for verification, an appropriate report shall be circulated to other Parties by the Party that initiated such procedures.

3. If the State responsible for the activities giving rise to the reasonable doubts is not identifiable by observation of the object, structure, installation or other facility, the State Party having such doubts shall notify and make appropriate inquiries of States Parties in the region of the activities and of any other State Party. If it is ascertained through these inquiries that a particular State Party is responsible for the activities, that State Party shall consult and co-operate with other Parties as provided in paragraph 2 of this Article. If the identity of the State responsible for the activities cannot be ascertained through these inquiries, then further verification procedures, including inspection, may be undertaken by the inquiring State Party, which shall invite the participation of the Parties in the region of the activities, including any coastal State, and of any other Party desiring to co-operate.

4. If consultation and co-operation pursuant to paragraphs 2 and 3 of this Article have not removed the doubts concerning the activities and there remains a serious question concerning fulfilment of the obligations assumed under this Treaty, a State Party may, in accordance with the provisions of the Charter of the United Nations, refer the matter to the Security Council, which may take action in accordance with the Charter.

5. Verification pursuant to this Article may be undertaken by any State Party using its own means, or with the full or partial assistance of any other State Party, or through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

6. Verification activities pursuant to this Treaty shall not interfere with activities of other States Parties and shall be conducted with due regard for rights recognized under international law including the freedoms of the high seas and the rights of coastal States with respect to the exploration and exploitation of their continental shelves.

Article IV

Nothing in this Treaty shall be interpreted as supporting or prejudicing the position of any State Party with respect to existing international conventions, including the 1958 Convention on the Territorial Sea and the

Contiguous Zone, or with respect to rights or claims which such State Party may assert, or with respect to recognition or non-recognition of rights or claims asserted by any other State, related to waters off its coasts; including inter alia territorial seas and contiguous zones, or to the sea-bed and the ocean floor, including continental shelves.

Article V

The Parties to this Treaty undertake to continue negotiations in good faith concerning further measures in the field of disarmament for the prevention of an arms race on the sea-bed, the ocean floor and the subsoil thereof.

Article VI

Any State Party may propose amendments to this Treaty. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Treaty and thereafter for each remaining State Party on the date of acceptance by it.

Article VII

Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the preamble and the provisions of the Treaty are being realized. Such review shall take into account any relevant technological developments. The review conference shall determine in accordance with the views of a majority of those Parties attending whether and when an additional review conference shall be convened.

Article VIII

Each State Party to this Treaty shall in exercising its national sovereignty have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it considers to have jeopardized its supreme interests.

Article IX

The provisions of this Treaty shall in no way affect the obligations assumed by States Parties to the Treaty under international instruments establishing zones free from nuclear weapons.

Article X

1. This Treaty shall be open for signature to all States. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after the deposit of instruments of ratification by twenty-two Governments, including the Governments designated as Depositary Governments of this Treaty.

4. For States whose instruments of ratification or accession are deposited after the entry into force of this Treaty it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform the Governments of all signatory and acceding States of the date of each signature, of the date of deposit of each instrument of ratification or of accession, of the date of the entry into force of this Treaty, and of the receipt of other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article XI

This Treaty, the Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the States signatory and acceding thereto.

In witness whereof the undersigned, being duly authorized thereto, have signed this Treaty.

Done in_____at_____,this

_____day of_____,_____.

RECORDED VOTE: In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussia, Cambodia, Cameroon, Canada, Central African Republic, Ceylon, Chad, Chile, China, Colombia, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Ethiopia, Fiji, Finland, Gabon, Gambia, Ghana, Greece, Guatemala, Guyana, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Laos, Lebanon, Lesotho, Liberia, Libya, Luxembourg, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, People's Republic of the Congo, Philippines, Poland, Portugal, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spain, Sweden, Syria, Thailand, Togo, Tunisia, Turkey, Uganda, Ukraine, USSR, United Arab Republic, United Kingdom, United Republic of Tanzania, United States, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia.

Against: El Salvador, Peru.

Abstaining: Ecuador, France.

Absent: Albania, Barbados, Botswana, Burundi, Congo (Democratic Republic of), Costa Rica, Dominican Republic, Equatorial Guinea, Guinea, Haiti, Honduras, Malawi, Maldives, Nicaragua, Somalia, Southern Yemen, Sudan, Swaziland, Trinidad and Tobago.

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