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Should We Cut Our **LOSEs**?

U.S. Foreign Policy & International Regimes

Joseph S. Nye



Donald L. McKernan Lectures in Marine Affairs

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Joseph S. Nye

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the McKERNAN lectures

This lecture series was created to honor the memory of our close friend and colleague, Donald L. McKernan, who died in Beijing of a heart attack on May 9, 1979. Don McKernan's last job was as director of the Institute for Marine Studies, University of Washington. Before that, Don had several distinguished careers—as fishery scientist, fisheries administrator, director of the Bureau of Commercial Fisheries, and special assistant to the Secretary of State for Fisheries and Wildlife, U.S. Department of State.

Don's interests encompassed the entire range of marine policy studies, and this lecture series has been designed to incorporate the same breadth of interests. The inaugural lecture, delivered by Dean Peter Larkin of the University of British Columbia, concerned the problem of the management of Pacific salmon. This second lecture deals with the implications of the third United Nations Conference on the Law of the Sea for U.S. foreign policy vis-à-vis the creation of international regimes.

Edward Miles

October 15, 1980

Preface

I am grateful to the Institute for Marine Studies of the University of Washington and to the Washington Sea Grant Program for the opportunity to deliver the second annual McKernan lecture. I have used the occasion to relate three of my substantive interests over the past decade to a more general concern over how the United States deals with international regimes. In that sense, the lectures fit in the McKernan tradition. I am grateful for helpful comments from Edward Miles, Ann Hollick, Richard Darman, William Maynes, and James Sebenius.

Joseph S. Nye

Donald L. McKernan Lectures in Marine Affairs

Should We Cut Our **LOSEs**?

U.S. Foreign Policy & International Regimes

Ten years have passed since the initial United Nations' resolution calling for a Law of the Sea Conference, and thirteen years since Arvid Pardo's speech at the U.N. General Assembly which stimulated renewed interest in seeking a broad-based conference. In the words of *The New York Times*, "probably not since the Code of Justinian was framed 1,500 years ago has there been an equal challenge to wit of jurisprudence."¹ With some 150-odd nations negotiating a treaty of more than 400 articles, many observers have believed it would be impossible to reach a conclusion. In their view, the matrix of 150 states by 400 issues is simply too complex to sum. Some say it should not be summed; that the outcome of the conference would be a setback for the United States as well as for a reasonable international regime for the use of the oceans.

Whatever the merits of the Law of the Sea Conference and the draft treaty, they must be seen as part of a larger international political process. To what extent does the Law of the Sea Conference reflect the present and foretell the future? Certainly, the way the law of the sea is being established today is greatly different from the way it has been handled in the past.

Since 1945, conference diplomacy has been an important feature of international life. In the last decade in particular, the United Nations has held a series of giant mega-conferences starting with the Stockholm Conference on the Environment and running through food, population, employment, habitat, science and technology, the role of women, and other issues. In general, these large U.N. conferences have tended to be discussions which try to legitimize those issues as subjects of international politics rather than specific negotiations. The Law of the Sea Conference is one of the exceptions in the sense that this conference is an effort to reach agreements and to negotiate specific rules.

Some people see the conference as a harbinger for future global negotiations. For example, the Brandt Commission has called for such global negotiations, and many less developed countries have pressed for negotiations on a broad range of North-South economic issues and new international economic order. Thus, we should question whether our response to the law of the sea process may be a precedent for other demands for broader negotiations.

At first glance one might answer that the United States should avoid participation in such mega-conferences when they try to deal with specific negotiations. Global negotiations in mega-conferences load too many issues on the table and bring too many players around it. Many small weak states that participate have only marginal interests in the negotiations at hand. Moreover, they participate in rigid blocs that have characterized U.N. procedures since the first United Nations Conference on Trade and Development (UNCTAD) in 1964. Not only do rigid blocs strengthen the hands of those with extreme positions and make compromise difficult, but the broad agenda which typifies such conferences also allows weak states with few interests to extract concessions from larger states with multiple interests through the process of linking issues. If extraneous linkage and block politics tend to benefit the small participants, then one might conclude that it is in the United States' interest to avoid such large conferences for negotiating purposes.

On the other hand, as a major power in the international system, the United States has an interest in an established world order and in maintaining international regimes. International regimes are the generally accepted rules, norms, or procedures that exist in a given issue area and govern the interactions that occur within that area. Depending on the degree of elaboration and acceptance of the norms or procedures, there may be only a quasi-regime or no regime at all. As Oran Young has pointed out, we live in a world of international regimes.² Regimes vary greatly in terms of their scope, their area, and their membership. Far from being unusual, what is most striking is their sheer number. They deal with everything from monetary issues to international trade, to management of natural resources, to conservation of species, to the control of armaments, and to the management of particular geographical areas.

Traditionally, great powers interested in world order have had an interest in the formation and maintenance of regimes. But also traditionally, regimes have tended to reflect the dictates of the great powers. This tradition presents us with a basic dilemma in the case of the current law of the sea political process. Many Americans, including many senators, may not be pleased with the specific conference outcome. Nevertheless, can the United States as a great power afford to turn its back on a major ten-year effort at international regime definition? Some answer "yes," arguing that a great power has the alternative of military force available to it and that American foreign policy should rely more heavily on military capabilities in the defense of our national interests. Thus, the question in my title, "should we cut our LOSes?"

I will deal with this issue first in relation to the specific problems of the law of the sea regime. Then I will explore a contrasting case—international oil—where an international regime has broken down and conference diplomacy has been suggested as a remedy (incorrectly in my view). Then I will explore a case where a favorable but eroding regime for the non-proliferation of nuclear weapons has been bolstered by a type of conference diplomacy. Finally, I will draw conclusions from these experiences for broader questions of U.S. foreign policy in relation to international regimes.

The Changing Politics of the Ocean Regime in the Twentieth Century

The politics of the oceans have grown increasingly complex in this century and along with that complexity has come regime change.

The classical regime that was generally accepted for the governance of ocean space and resources since the mid-nineteenth century was "freedom of the seas." The high seas belonged to no one and coastal-state jurisdiction was restricted within narrow limits. Customary law was enforced by the great naval powers, particularly Great Britain. Maritime powers, given their *de facto* superiority over ocean space, had a national interest in a regime that maximized that space. At the same time, so long as the technology of navigation, fishing, and resource exploitation was limited, a regime that treated the oceans as a commons open to all was beneficial to smaller states as well.

Thus, at the beginning of this century, states claiming jurisdiction beyond 3 miles from their coasts (Scandinavia, Iberia, Mexico, Uruguay) accounted for little of the world's coastline and less than 10 percent of world shipping. In 1902, American diplomacy forced Mexico back from a 9- to a 3-mile limit. In 1905, British protests forced Uruguay to release a ship seized for fishing in its contested waters, and in 1909, British diplomatic pressure led Portugal to accept a 3-mile limit on fishing jurisdiction. In 1915, Germany enforced a 3-mile limit against Sweden.³

The one area where the classical "freedom of the seas" regime did not command full adherence was in regard to shipping during wartime. Despite efforts to establish rules for the use of ocean space during wartime (conferences were held in Paris in 1856, and in London in 1909), in this area the great powers lacked the similarity of interest necessary to make limitations work during periods of belligerence. However, belligerents' use of ocean space during wartime was treated as an exception and had little effect on adherence to the freedom of the seas regime for other uses during wartime or during the ensuing periods of peace. In large part this reflected the hegemonic position of Great Britain in the oceans issue. As prime protector and enforcer of the principle of "freedom of the seas," Great Britain could grant itself *de facto* exceptions by interfering with neutral shipping during wartime while continuing to uphold the principle in periods of peace. When Great Britain ruled the waves, she could also waive the rules.

The free seas regime was not really at issue before World War II. Although a conference at The Hague in 1930 was unable to reach agreement in codifying limits, 20 states representing 80 percent of shipping tonnage supported a 3-mile territorial limit. This included all major powers except the U.S.S.R. (12 miles) and Italy (6 miles). Twelve states supported a 6-mile limit. Efforts by Ecuador, Mexico, and Iran to extend jurisdiction in the 1930s were met with nonrecognition. Although disputes arose in the 1920s and 1930s over antismuggling zones and fisheries arrangements, the parties explicitly accepted the legitimacy of the overall regime.

During the quarter-century after the war, the overall regime was not fundamentally challenged, but there were serious signs of erosion. As a result, the major maritime powers, particularly the United States and Great Britain, led efforts to reform, codify, and protect the regime structure. Ironically, it was President Truman's extensions of shelf and fishery jurisdiction in 1945 which unlocked Pandora's box. The United States tried to argue that these were separate issues, but it provoked the Latin American states to claim broader territorial seas. Even so, there were few other claims to exclusive sovereignty or regulation in the high seas beyond 12 miles.

In contrast, the last decade has been marked by a wider challenge to the fundamental principles of the classical free seas regime. Of the 150 or so states in the current conference, only a minority were adherents to the 1958 Geneva Convention on the High Seas (42 to the territorial sea convention, 34 to the fisheries convention, and 50 to the shelf convention). The issue of deep seabed resources and the technological developments in offshore drilling and tanker construction have raised issues about the "middle and bottom" of the oceans, which were not major problems before. Less developed countries, fearing that the commons will be exploited solely by the technologically advanced under a laissez-faire regime, have stressed broad extension of national jurisdiction and/or the need for a strong international regulatory body. Countries like Canada and Australia, once closely allied with the maritime powers on oceans questions during the Cold War era, have switched to a more coastal view of their interests. Even in the United States and Great Britain, important groups like oil companies and coastal fisheries associations have led these naval powers to assert 200-mile jurisdiction over resources.

Offshore Jurisdiction

In 1960, only a quarter of all coastal states claimed offshore jurisdiction of 12 miles or beyond. By the beginning of the current conference, more than half claimed such jurisdiction. As important as the extension of jurisdiction has been the challenge to the basic principle of "freedom of the seas." The last decade has not merely been one of "nibbling away the margins of the regime," but one of pressure for an alternative regime. The principle of *res nullius* has been challenged. The 1970 Montevideo Declaration stated that "all nations have the right to claim as much of the sea and seabed near their coasts as they deem necessary to protect their actual and potential offshore wealth."⁴ The current draft LOS treaty basically fences off more than a third of the resources in the global oceans commons, and the mineral resources outside these extended national jurisdictions have been declared to be commonly owned by all nations rather than free for the taking by any nation.

There also have been important changes in the complexity and the linkage of the various aspects of the ocean policy issues. Looked at from the perspective of U.S. foreign policy, coastal fisheries and infringement of navigation to enforce antismuggling measures were the issues in the period before 1945. Since then, new issues have included continental shelf resources, distant water fisheries, breadth of the territorial sea, deep seabed resources,

arms control, freedom of scientific research, pollution, and restrictions on navigation.

Moreover, the issues have become more tightly linked. Both intra-issue and extra-issue linkages have increased during the course of the past quarter century as a result of efforts to establish agreement on an overall regime. At the Geneva conferences, discussions of a regime for the high seas, territorial sea, contiguous zone, living resources, shelf resources, and access to the sea for landlocked countries have inevitably led to increased linkage. In addition, East-West confrontations and North-South development issues affected the positions taken on votes on oceans issues.

But it is really the last decade which has seen the development of tight links among disparate subissues. In contrast to the Grotian assumption of unlimited resources that underlay the old regime, there developed a sense of actual and potential competitive usage by functions and by nations. This development in turn led to a "shrinkage of policy space"—a diminished separation among different users of the oceans. To some extent, this shrinkage of policy space reflected the real competitive uses (sea-lanes vs. drilling platforms, pollution vs. fishing), but to a large extent it was stimulated by the dynamics of conference diplomacy.

Deep Seabed Resources

The major new issue of the recent period—deep seabed resources—helped to further this linkage process. The prospect of vast treasure at the bottom of the sea increased the number of countries interested in oceans issues far beyond the number of actual major or moderate users of the oceans. With general and symbolic rather than specific interests, these new actors were a major source of linkage. The Seabed Committee established by the General Assembly in 1968 rapidly expanded from the original 35 members to 91 members by 1971. As Edward Wenk has put it, learning of their technological disadvantage on the seabed issue, the less advanced countries doggedly linked "consideration of other maritime legal regimes related to the breadth of territorial sea, rights of passage through straits, and fishing practices, all of which added not only new dimensions of complexity but also of controversy."⁵

At first the great naval powers, the United States and the Soviet Union, tried to keep the seabed separate from other issues. In 1969, both the United States and the U.S.S.R. voted against the General Assembly resolution calling for a new Law of the Sea Conference. Not until November 1970 did the United States abandon its strategy of trying to separate the territorial sea issue from the seabed issue. Essentially this move was the preference of the Navy and the Defense Department which felt other issues could be traded for protection of free access for military forces.

How Many Nations?

A final aspect of the increased complexity of oceans politics has been the dramatic increase in the number of actors involved. Between the two world wars, 40 states attended The Hague Conference in 1930. However, a study of the diplomatic correspondence during the same time period shows

serious U.S. involvement with only 15 governments. In 1945, the United States consulted four states about its shelf and fishery proclamations and seven additional states about its coastal fisheries policy. In 1958, 86 states attended the first Geneva Conference. By the time of the Caracas Conference in 1973, 149 invitations were issued, and 137 states actually participated. The major maritime states remained important, but the fragmentation of the Western bloc and the importance of leaders in the African, Latin American, Asian, and landlocked states increased the number of important states to a score or more.

This growth in the number of actors and in the number of linkages of subissues involved in oceans policy is reflected in the way our oceans policy agenda has changed during the course of the twentieth century. Before World War II, we were the country whose initiatives put oceans policy issues on our foreign policy agenda (although it was the International Law Committee of the League, searching for topics "ripe for codification," which set the agenda for The Hague Conference). After the war, it was initially U.S. government actions in response to anticipated offshore drilling and pressures by coastal fishermen that set the agenda. Subsequently, Latin American and other extensions of jurisdiction set our agenda. Today, much of the agenda results from the efforts of less developed and coastal states to control transnational fishing, to benefit from private offshore drilling, to control pollution caused by the shipping of oil, and to prevent, regulate, or benefit from transnational scientific research. Other issues, like the debate on seabed resources, arose primarily from U.N. conference diplomacy. The contrast with British naval hegemony in the nineteenth century—the simple days of fish and ships—could not be more striking.

The Debate Over the Draft Treaty

Given the political process that I have described, it is not too surprising to find a number of Americans skeptical about the draft LOS treaty that the process has produced. Some believe that it would be unwise to sign the treaty because the outcome of the process is so distant from the U.S. Senate's view of the world that the treaty could not be ratified. Indeed, some say that ratifiable or not, it is not in our interest to sign the treaty. If the United States signs the treaty, it might then come into force upon ratification by 60 states—half the Group of 77.* But if the United States then fails to ratify, it might find itself in an awkward legal position, caught between two conflicting regimes: one old, supported by a few strong states; and one new, supported by the many.

National Security Interests

U.S. critics raise several charges against the treaty. First, they argue that we have mistaken or misdefined our national security interests. As already indicated, at the beginning of the decade, we defined our security interests in terms of free passage through straits and access to as much water as possible for our naval forces. From this point of view, the great danger was "creeping jurisdiction" by coastal states and the fear that as extensions of jurisdictions to cover natural resources occurred, the extended territorial seas would interfere with movement of our naval forces. The extension of territorial seas to even 12-mile limits would close more than 100 straits of possible interest to the Navy. Thus, it was worth trying to bargain away certain aspects of the resources regime to ensure freedom of the seas for our naval forces. It was this perception which led us to agree to the comprehensive approach of a large conference with the problems of linkage and agenda that I have already described.

The critics argue that, over the course of the 10 years during which these negotiations have been prolonged, our national security interests have become more complex. Our security cannot be defined solely in terms of free passage of naval forces; raw materials have become a more significant aspect of our national security position than they were at the beginning of the decade when this process began. Furthermore, according to this view, natural resources are likely to become even more important toward the end of the century, both in establishing a backstop price for the upward rise of land-based resources and also in assuring alternative sources to those upon which we are becoming increasingly dependent. From this perspective, the seabed mining provisions of the treaty reflect an inadequate vision in terms of defining our national security interests.

The critics admit the importance of naval forces, including the ability of our navy to project force overseas and pass freely through straits. Indeed, some believe these naval interests to be so strong that they question whether

*The Group of 77 is the major coalition of developing countries within the United Nations. Although there are now almost 120 members of the coalition, the group is still referred to by its original number.

the negotiated treaty language is sufficient (both legally and practically) to protect them. Other critics, however, argue that this aspect of our security interests has been exaggerated. First, there has been an increase in the range of our submarine capabilities over the decade. In addition, they argue that the Soviet Union is more dependent upon straits than we are and finally that not all the straits are of major importance. Moreover, the critics argue that there are better alternatives for protecting passage through straits than through signing an inadequate law of the sea treaty.

In the critics' view, we can take our stand on traditional international law and reinforce that with bilateral diplomacy in the cases of the few straits that really matter to us. In certain instances, it may be necessary to use force for those passages which might be contended, but a few discreet uses of force might be less costly in terms of establishing our basic security interests than either acceding to unacceptable interference with navigation or paying an excessive price to attempt to protect navigation by treaty.

Seabed Mining Issues

The major concern of most critics is with the seabed mining regime. In this respect they have two types of complaints. One is the specific practical economic effects of the regime and the other is its precedent in terms of international power distribution. In practical economic terms, the critics argue that the key to seabed mining is to provide assured access, security of tenure, and assurances of fair and commercial terms that can make massive billion-and-a-half-dollar per mine site investments feasible. An international licensing regime or similar minimal arrangement would be sufficient to assure this necessary condition for seabed mining. Moreover, it could do so without the establishment of a cumbersome international bureaucracy or uncertain political regulations. The American interest lies in a minimal framework to assure order to allow international seabed mining. On the other hand, right from the start, the Group of 77 has wanted a unitary international system in which the international community would both own and manage seabed mining. In the early stages of the conference, these differences created a stalemate until 1976 when then Secretary of State Kissinger suggested a compromise. He tried to split the difference between the two antithetical views by establishing a parallel system: private and state companies would be licensed to mine on one "side" of the system while the other side would consist of mine sites to be managed by an international authority.

This compromise was not sufficient for the 77, and they pressed the United States to make more concessions. In a sense, having split the difference once, the Group of 77 pressed us to split the difference again to establish not only the parallel systems, but also what they called "effective parallel systems." This meant that technology would have to be transferred and finance provided to make sure that the international authority would be ready and able to control the seabed mining system. In addition, would-be land-based producers of seabed minerals insisted upon production limits on seabed mining to protect against any reduction of their potential economic rents from mining. Secretary Kissinger agreed to these additional de-

mands subject to the proviso that the negotiated regime assure U.S. access to the mineral resources on commercial terms. The critics argue that this proviso has not been effectively met.

They suggest further that the prospects for seabed mining are not so good that we can afford to sign an inadequate treaty. As the London *Economist* put it, "prospects have never looked brighter for an international agreement on mining the seabed, after 12 years of waffle. Only one snag: the economic prospects of actually mining minerals from the sea could hardly appear more bleak. Mining executives say they will need a return on their investment of at least 30% to compensate for the risks involved, the sort of return that oil companies typically look for . . . The likely rate of return is nowhere near such levels—only about 8% . . . Big cost savings in a second generation of ocean mining technology may be the only answer, but that would push big seabed mining well into the next century."⁶

Common Heritage Principle

The critics also object to the seabed mining provisions in terms of the precedent that they set. In their view, many of the less developed countries are particularly interested in establishing a unitary international management system, or close approximation of it, for purposes of setting a precedent for the redistribution of global power. Essentially, this is the first practical negotiation of the ambiguous phrase "common heritage of mankind," and the more ideological of the less developed countries want to assure that a pattern is set which reinforces their claims and interests in the future.

In that sense, many of the provisions of the treaty for seabed mining can be seen as opposed to traditional U.S. ideology and practical market experience. Such measures as production controls, technology transfer on allegedly mandatory terms, an unwieldy international authority and a complex system of voting—with a one-nation-one-vote assembly and a one-nation-one-veto council—are precedents which the critics believe would serve us ill in the future. For example, the U.N. has negotiated a moon treaty which is now open for signature. The critics believe that the way the common heritage principle is implemented in the LOS conference (as opposed to open access and market principles) may ill serve us in the draft moon treaty and in future situations such as Antarctica or other areas claimed to be subject to "common heritage" treatment.

The critics argue that the draft treaty which has been produced by the Law of the Sea Conference is not a furtherance of international justice. In their view, open market exploitation of natural resources of the seabed—combined with a fair system of taxation and revenue sharing—would do far more to lower prices, benefit consumers, and aid development in all countries than the cumbersome procedure which has been developed in the treaty. They point to the irony that the richest countries have been the biggest gainers from the extension of coastal jurisdiction which essentially robbed the common heritage of the largest part of its most immediate meaning. Indeed, six of the top ten beneficiaries of the extended exclusive economic zone are developed countries and the single largest gainer in

these narrow terms is the United States. Nonetheless, the critics argue that it is more in our interest as well as in global interests to maintain market principles (with a system of international revenue sharing) as a way of exploiting ocean resources and making the benefits of efficient exploitation broadly available to all.

Thus, the critics conclude that the best policy for the United States at this point would be to unpackage the various components of the current text of a draft treaty and to separate the various issues that have been unnecessarily linked together by conference diplomacy. In their view, we would do far better to deal with some issues under the customary international law with a touch of force as necessary.

As for other issues, they believe the United States should try to develop partial treaties or minitreaties among sets of likeminded states.⁷ In particular, they see the evolution of comparable legislation—extending protection for preliminary mine site investment—as a means of evolving toward a set of minitreaties. This is not the stated intent of the current U.S. or German legislation which is only to be ad interim before the coming into force of the U.N. treaty, but the critics would prefer to build upon this formula as a way of establishing an alternative to the U.N. draft provisions for international seabed mining.

Formulating the Issues

Finally some of the critics attack the whole process by which the law of the sea draft treaty was negotiated. In their view, we should not have agreed to negotiate a principle such as common heritage of mankind in the U.N. context. Given the unwieldiness of U.N. procedures with bloc voting and large numbers of countries dealing with vaguely formulated issues, it was inevitable that this would become a slippery slope on which we would have to make compromises which fail to protect our true interests. Not only were we unable to keep issues separate, but we also had to give away far more than we needed to. In the view of the critics, we never thought through our long-term interests at a high level. Indeed by 1970, the die was cast when the Department of Defense, which had thought more in advance about its interests, was first off the mark. The national interest was narrowly defined in terms of straits transit by low level defense officials who failed to see the broader implication of issue linkage. By the time there was systematic high level review, it was already too late. Even then, across-the-board senior review tended to be cursory and irregular. From this view of history, the whole process of negotiating the law of the seas treaty has been a mistake and is a precedent which we should be sure never to follow again either in our domestic processes or the international negotiating arena. It was a mistake, say the critics, because we had a real alternative which was to rely upon customary law and the occasional use of force as a means of defending our navigational interests, while relying upon unilateral initiatives coordinated among like-minded states as a means of advancing our resource interests.

In Defense of the LOS Treaty

Needless to say, defenders of the draft treaty do not accept these criticisms. They object in both specific and in general terms. Specifically, the defenders point to the increased importance of our naval forces in the aftermath of the Soviet invasion of Afghanistan and the fall of the Shah of Iran as policeman of the Persian Gulf. Naval power has proven to be critical in the Indian Ocean area. The defenders point to the flexibility and visibility of the carriers and their ability to establish a presence without the political problem of land bases. As for the role of straits, they point out that with more than half the oil in world trade coming through the Strait of Hormuz, free transit deserves priority.

The defenders admit the charge that our interests have evolved over the course of the decade. At least, our perceptions of our interests have changed. Certainly in the mid 1970s, our perception and definition of our ocean interest was different than it seemed at the beginning or end of the decade. By 1976, the United States was among the countries leading the charge on extension of coastal jurisdiction over offshore resources. Because of the increased pressure from Japanese and Soviet fisheries off our coast, our agreement in the mid 1970s to a 200-mile exclusive fishing zone was no longer a concession with which we could have bought continued access for military vessels in other countries' exclusive economic zones, but was a response to American domestic politics. Without the larger context of the law of the sea negotiations in which more complex trade-offs could be arranged involving the seabeds, customary international law might have evolved toward a 200-mile territorial sea rather than the present draft formulation that permits free transit through straits and access of naval ships in the exclusive economic zones of other nations.

Perhaps the most eloquent of the defenders of the new draft treaty is Elliot Richardson who was Undersecretary of State when some of the critical decisions were made at the beginning of the decade and who in 1977 returned to the oceans issue as ambassador at large and special representative of the president for the Law of the Sea Conference. Richardson argues that there has been a revived awareness in the United States of the importance of global mobility. At the same time, more and more countries are acquiring military technology of patrol boats, land-based aircraft, and ship-to-shore cruise missiles which would allow them to effectively control extended territorial jurisdictions. Thus, unilateral naval initiatives could become more costly simply in military terms. Furthermore, Richardson points out the difficulty of maintaining a consistent unilateral policy and program to enforce our jurisdictional claims. Each embassy would constantly press to exceptions and priority to the preservation of cordial bilateral relations. In Richardson's words, "there is only one way to prevent the cost both of conflict and of inaction. It is to create a common understanding and a common acceptance of rules compatible with the routine global deployment of air and naval forces. This cannot be done, quite obviously, merely by invoking what we may generally believe to be superior legal arguments in support of our view of the prevailing principles of international law. It requires building a new consensus embracing the strategically significant coastal states."⁸

Richardson admits that the seabed provisions of the draft treaty are a compromise which achieves less than our optimal position if we did not have to engage in compromise. But he argues that the parallel system of both companies and international seabed mining under the enterprise, with overall supervision by the international seabed authority (in which we have a degree of control through weighted voting), provides sufficient grounds for international seabed mining. He dismisses the idea of minitreaties for seabed mining on the grounds that "in the real world . . . this is simply not the way in which things are likely to work out. The changes in customary international law that have gained the most momentum from consensus in the Law of the Seas Conference are those that enlarge coastal state claims. While these expansive principles may not need the treaty's entry into force in order to be ultimately absorbed into customary international law, the same cannot be so confidently said of the limitation and qualifications on coastal states' rights that the treaty would attach to them. The provisions for transit passage through straits qualify the extension of the territorial sea; the provisions for sea lanes through Archipelagos limit the concept of the Archipelagic waters; the provisions preserving high seas' freedom in the exclusive economic zone, restrain coastal state claims of control; the provisions for geographic limits bar claims beyond those limits. These provisions can spell the difference between enjoying and losing high seas freedom of navigation, overflight and related uses in 40 percent of the world's oceans." In short, says Richardson, "any treaty that can win widespread acceptance is bound to have costs as well as benefits. Its measure is not whether it is as good as the constitution for ocean space we would write if we alone were responsible for its terms. Its measure is whether it serves all our interests as well as or better than those interests would be served in a treatyless world."⁹

At a more general level, Richardson argues that there was a greater inevitability about the process of negotiating the law of the sea than the critics admit. In Richardson's view, there were few real alternatives, and we got about as much out of the process as we could expect to get out of it given the overall role of the United States in the world and the nature of world politics today. Richardson argues against the conception of those who believe that we need a more nationalist conception of our foreign policy and that our view of the world and of America's role in it has been far too internationalist. He admits that the American people in their current mood seem to want rather more Theodore Roosevelt and less Woodrow Wilson in our foreign policy, but he argues that "our global situation demands a broader, not a narrower international perspective in the formulation and the conduct of U.S. policy."¹⁰ In Richardson's view, the political effectiveness of both military and economic power is diminishing. Consequently, autonomy and self-sufficiency have to make room for interdependence. Realism requires "that we face up to the implications of change, grasp them firmly, and think them through. We shall then see that the decline in our

ability to act autonomously has increased the necessity for strong dependable bonds of friendship and cooperation with other nations . . . The significance for our national interest of global institutions will also become apparent."¹¹

In short, as we look carefully at the debate between the critics and the defenders of the draft treaty text of the law of the seas, we find that it raises questions which go far beyond the oceans and go to the heart of the U.S. position in world politics today and in the future. It is to that broader question that I now turn.

The Decline of American Power?

The foreign policy mood of Americans in recent years has reflected a concern over the decline of American power in world politics. The mood was well captured by the cover of the journal *Business Week* immediately following the fall of the Shah of Iran early in 1979. The cover portrayed the Statue of Liberty with a tear rolling out of its eye and presented a caption, "The New Debate Over Guns and Butter."

To what extent has there been a decline of American power? In simple aggregate terms, the answer is relatively clear. Using such simple measures as share of total world defense expenditures or share of total gross world product, the United States accounted for roughly a third of the world total on each measure at the beginning of 1950.¹² Our responses to the Korean and Vietnam wars sharply increased our share of military expenditure, but today the United States accounts for a little less than a quarter of the world total on each measure. But one should be careful about drawing conclusions from simple aggregate measures. Power is a relational concept, and it depends on the action of others as well as ourselves. Even more important, we must be clear about what we think are the causes of the changes in the American power position in the world, for if we mistake the causes, we may apply inappropriate remedies.

To help clarify the causes of the changed American position in the world, I will distinguish between the short-run reversible and the long-term irreversible causes. Three major short-term changes contributed to the changed American power position in the decade of the 1970s. The first was our self-limiting attitudes in the aftermath of Vietnam. A second relates to the military growth of our key adversary, the Soviet Union. The third was our growing dependence on imported oil which contributed both to our economic problems and our political vulnerability. I will deal with each in turn.

The Vietnam Aftermath

American foreign policy always has been characterized by cycles of inward-turning attitudes and outward-turning attitudes. Political scientist, Frank Klingberg, identified such cycles in an article published in 1952.¹³ What's more, he predicted that on a roughly two-decade phase, there should be an inward-turning set of attitudes sometime in the late 1960s. And indeed, after our involvement in Vietnam, those inward-turning attitudes did come to dominate our foreign policy.

What is surprising, however, is that they did not persist very long, certainly not as long as a two-decade phase would lead one to expect. Neo-isolationism did not turn out to be a strong phenomenon. One need only compare the foreign policy attitudes expressed in the presidential campaign of 1976 with the foreign policy attitudes prevalent in the election campaign of 1980 to remark how strikingly U.S. foreign policy attitudes changed in the latter half of the 1970s.

Furthermore, it is interesting to note that the changes had begun even before the fall of the Shah or the Soviet invasion of Afghanistan. By 1978,

support for defense spending was at an 18-year high. Congressional movements such as the Mansfield amendment to withdraw troops from Europe had been replaced by congressional pressure to strengthen our position in NATO. Public opinion polls showed increased support for use of the Central Intelligence Agency to support pro-American governments abroad.

It is not entirely clear why the inward-turning phase of the cycle proved to be so short. Perhaps in an age when most Americans receive their news from television rather than from newspapers, attitudes are more volatile. Perhaps political generations have shortened. The phases in the Klingberg cycle may have reflected each generation reacting against the "mistakes" of its parents, and if political generations are shortened, there may be a more rapid swing between phases.

Whatever the merits of such speculation, the shortness of the inward-turning phase also reflects the reality of the outside world, in terms of both our increased interdependence and the behavior of the Soviet Union. Increased dependence on exports and imports, the increased effect of international events on the value of the dollar, and issues, such as Persian Gulf oil, all indicate to the American public that neo-isolationism is not a real option. Moreover, the behavior of the Soviet Union, the other nuclear superpower with the capability of destroying us, reminds Americans that there is military interdependence as well. This is the second short-term cause of the changing American power position.

Soviet Military Strength

Over the past decades, Soviet military capabilities have improved to a point where previous American military superiority has now been replaced by a condition of rough parity in the military balance. Depending on the method of measurement, whether in dollars or rubles, the CIA estimates that Soviet defense spending exceeds American defense spending by some 30–50 percent. While there are methodological difficulties in calculating exact comparisons of defense spending across different currencies and different socio-economic systems, nonetheless the trend lines are clear. Since the mid-1960s, the Soviets have been increasing their defense spending from 3 to 5 percent a year. Any simple knowledge of compound interest rates would indicate this rate of expenditure is likely to have a strong effect over a decade and a half. Moreover, the effects have become apparent in specific areas. For example, the Soviets' originally inaccurate large missiles have gradually become accurate enough over the past decade and a half so that a number of observers believe these missiles can threaten a significant part of at least our land-based ICBM force. While a first strike scenario is not particularly credible, a number of observers draw political conclusions from the changed balance of nuclear capabilities and such perceptions affect power.

The Soviet Union also has increased greatly its capacity to project military force beyond its borders to distant parts of the globe. Although Soviet capability is still less than ours, it is a capability which the Soviets lacked in the 1960s. Finally, the Soviets have been able to increase their military position in the European theater, particularly in terms of the theater nuclear

balance. This situation has caused concern among some of our European allies who fear that if the United States no longer dominates the ladder of escalation, it cannot credibly extend the protection of its strategic nuclear deterrent forces.

A number of steps have been taken to redress these perceived differences in the military balance. For example, NATO governments have agreed to a sustained real increase in defense spending. In December 1979, they agreed to position theater nuclear forces (cruise missiles and intermediate range ballistic missiles) in Europe to improve the theater nuclear balance. The United States has also taken steps to develop accurate new weapons such as the MX intercontinental missile and the air-launched cruise missile. In the conventional area, the United States is creating a rapid deployment task force to project conventional capabilities to distant areas more rapidly and more effectively than in the past. And despite fiscal stringency, the defense budget will increase.

It is interesting that most of these measures actually antedated the Russian invasion of Afghanistan. While these measures take time to implement, there is good reason to believe that the perceived changes in the military balance may well be remedied by the middle or latter part of this decade. Indeed, if anything, there is a danger of Americans failing to see the military balance with the Soviet Union in a larger political perspective. The United States still produces twice the gross national product of the Soviet Union. It has an ideology which is far more attractive to most of the world than is the now tired ideology of Soviet communism. In technology, we hold a significant advantage in many areas. In terms of alliances our alliance with Europe and Japan, and our improved relations with China put us in a far better position than the Soviet Union. There is reason to believe that Soviet decision makers survey what they term the "correlation of forces" in larger than military terms and see a decade in which the balance may weigh against them.

Dependence Upon Imported Oil

The third change that occurred over the course of the 1970s was the great increase in American dependence upon imported oil. Ten years ago, the United States imported 3.5 million barrels of oil a day (mbd), or about a quarter of our needs, at roughly \$2 per barrel. We were the world's largest producer (at 11.3 mbd). (Just three years earlier, our surplus capacity had allowed us to defeat easily an Arab oil embargo triggered by the 1967 June War.) By the end of the decade we were importing 8.5 mbd, or nearly half our needs, at 15 times the 1970 price, and our home production was declining. Unfortunately, the painful experience of the 1973 Arab oil embargo did not save us from repeating mistakes when the Iranian Revolution curtailed production in 1979, and the president called the situation a "clear and present danger to our national security."

Today, nearly two-fifths of the total oil consumed in the free world economy comes from the Persian Gulf, one of the world's most politically unstable areas, and is vulnerable to terrorism, accident, warfare, and extortion. The sudden loss of Persian Gulf oil for a year could stagger the world's

economy as did the depression of the 1930s. A Department of Energy study estimates that the annual losses of 3, 10, and 20 mbd (which correspond roughly to the annual loss of production from Iraq, Saudi Arabia, or the entire Persian Gulf) could cost the U.S. economy \$84 billion, \$323 billion, and \$686 billion respectively.¹⁴ The costs to our allies would be even greater.

The potential foreign policy costs are also large. Energy security problems inject a new type of tension into our allies. The source of threat lies not in Europe nor in East Asia, but in the Middle East, outside the scope of the formal alliance frameworks. Our allies are more vulnerable than are we. The necessary policy responses go beyond military measures; they involve the conflict-filled areas of domestic economic and energy policies where coordination is particularly difficult for democracies. There is a real danger of disarray in a crisis, as well as divergence in the efforts to avoid crisis. Indeed, different energy vulnerabilities among the Western nations present better opportunities to disrupt Western alliances than do direct military threats for the Soviets or others.

Looking back at American policies for energy security in the 1970s, one is struck by two strong ironies. First, we talked about energy security, but some of our policies, such as domestic price controls that subsidized oil imports, actually made us more insecure. Second, the United States acted as though government controls at home and market forces abroad would solve U.S. energy security problems when the opposite was closer to the truth. That view failed to recognize the realities of changing world politics, particularly decolonization and Britain's withdrawal from the Persian Gulf which helped to erode the international regime that had previously governed oil transactions.

Painful though it was, we learned some useful lessons from the interruption of Iranian supply. In April 1979, we began the gradual decontrol of domestic oil prices that has now ended the subsidization of imports. We also learned the folly of putting too many eggs in the Persian Gulf basket, and the Tokyo Summit in June 1979 began a process of consumer government agreements to set ceilings on imports. Finally, the shock of the Shah's fall plus the Soviet invasion of Afghanistan led to steps to repair our military posture in the area.

There is still a long way to go. Even with decontrol, oil industry sources project declines in domestic oil production levels during the 1980s, and that the U.S. will be hard pressed to meet its goal of cutting imports in half by 1990. More important will be the steps to reduce our vulnerability by building public and private reserves of oil and gas to give us surge capacity in a time of emergency. A successful strategy will have to focus on deterring and preventing interruptions and alleviating their damage in the short term while reducing our vulnerability over the decade. This will require a better integration of political-military policy, domestic energy policy, and international energy policy than we have achieved at home or in our alliance relations in the past. Nevertheless, the right policies can decrease greatly our degree of vulnerability over the course of the 1980s.

Historical Perspective

Even if the three major short-term causes of the relative decline of American power seem on their way to being overcome in the 1980s, our problems are not solved. The danger of focusing only on these short-term reversible causes is that it may mislead us about the remedies that are appropriate to the long-term American power position in the world. Increased military expenditure makes sense in terms of redressing the military deficits of the past and the excesses of the brief post-Vietnam era, but we would be mistaken to think that this is going to bring us back to the position that the United States held in world politics in the 1950s. Two longer term causes of the relative change in American power are not likely to be reversed in this century.

THE POSTWAR PERIOD. The first of these causes is simply the anomalous nature of the immediate postwar period when the American economy and dollar were so predominant. The third quarter of the twentieth century was a very odd period. Essentially, the United States emerged from World War II as the strongest power in a world destroyed. Yet our economy and our military position had been enhanced by the war rather than suffering destruction as had those of all the other prewar great powers. Hence, the American hegemonic position in the third quarter of the twentieth century was a bit like that of the boy on the block who awoke one morning to find that everybody else had been laid low by the flu and he had become the dominant kid on the block. It is only natural that this situation would change as others regained their health. Indeed, it is to the credit of U.S. foreign policy that we helped to accelerate this recovery. The key component of our postwar foreign policy has been the restoration of economic prosperity and political stability in both Europe and Japan and our close alliance with those countries.

Thus the fashionable European concerns of the 1960s over the "technology gap" and the "Défi Americain" of U.S. investment were bound to be self-curing. Conversely, without belittling the problems of inflation and productivity, the current projections of American economic decline are exaggerated by the artificial base period. As we look at the relative decline of the U.S. share of gross world product, the largest part of the share that we lost was not represented by a gain for the Soviet Union, but by the recovery of Germany and Japan. That was our deliberate foreign policy goal and a wise one. In that sense, nostalgia for our preponderant economic position of the 1950s is bound to be disappointed.

INCREASING COMPLEXITY OF WORLD POLITICS. The other long-term cause of our changed position in the world is the increase in the complexity of world politics and the reduced potential for any country to exercise power over the whole system. There are more states, more issues, and less hierarchy in international politics. For example, there are three times as many states in the United Nations today as at the time of its founding in 1945. Moreover, our foreign policy agenda has become more complex. Added to the classic issues of military security and international trade are issues such as food, population, environmental destruction, the governance of space, climate modification, terrorism, and a whole host of others.

Finally, there has been a change in the role of military force in world politics. In general, force has become more costly for great powers, particularly democratic ones, to apply effectively in world politics. This is an issue which is frequently misunderstood. It was fashionable in the mid-1970s, in the aftermath of Vietnam, to argue that force had lost its effectiveness. This was clearly not the case, then or now. Force remains the most effective form of power in many issues and in many situations. But it also may prove to be the most costly form of power. Indeed in some circumstances force is too costly to be applied to achieve certain goals. While the military balance of power remains the bedrock or necessary condition of a sound policy, military force is difficult to apply to many of the new interdependence issues on our foreign policy agenda.

The use of force is made more costly for major states by four conditions: risk of nuclear escalation; uncertain and possible negative effects on the achievement of other goals; resistance by socially awakened nationalistic populations in otherwise weak states; and domestic concern in democracies about the moral cost of the use of force. Even states such as the communist countries, relatively unaffected by the fourth condition, feel some constraints from the first three. For example, the invasion of Afghanistan may prove effective, but it also seems to have been more costly in terms of the second and third conditions than the Soviet Union initially expected. On the other hand, given modern technologies, lesser states involved in regional rivalries and terrorist groups may find it easier to use force. The net effect of these changes in the role of force is to erode somewhat international hierarchy which traditionally has been based upon military power.

This erosion of international hierarchy is sometimes portrayed as a decline of American power as though the causes lay in our own internal processes. Admittedly, from the perspective of a policy maker of the 1950s, there has been some decline, but as we have seen, American power in the sense of resources has not declined as dramatically as is often supposed. Representing nearly one quarter of world military expenditure and world economic product, the United States is still the most powerful state in the world.

To understand what has changed in the world, we must distinguish power over others from power over outcomes. What we are experiencing is not so much an erosion of our power resources as exercised against any single country (although there has been some) but an erosion of our power to control outcomes in the international system as a whole. The main reason is that this system itself has become more complex with the addition of more issues, more actors, and the erosion of hierarchy. We still have leverage over others, but we have far less leverage over the whole system. We are less well placed to extract unilaterally the positions which we prefer. Increased military spending will not be sufficient to solve this problem. In such a world, multilateral diplomacy and international institutions become more important because so much of the agenda is concerned with organizing collective actions. In short, while increased military budgets can help to remedy some aspects of our current international position, we cannot hope to simply spend ourself out of this long-term trend of increased complexity of world politics.

One must be careful, of course, not to overstate the degree of change in world politics. In a world of sovereign states, military force will always remain a necessary condition for stability. In 1977, Robert Keohane of Stanford University and I published a book, *Power and Interdependence*, which argued the necessity of distilling and blending the wisdom from the modernist and the traditionalist views of international politics and developing a coherent theoretical framework for the analysis of interdependence as an aspect of international power.¹⁵ We cautioned against the tendency to establish a false dichotomy between theories of interdependence and traditional realist theories of military power. We pointed out that asymmetrical interdependence is also an important source of power in the international system. We developed models of power based on different forms of interdependence including a model that extended classical realist analysis by adopting it for application to interdependence issues.

While the overall response to our work has been heartening, some critics have taken us to task for having "grossly expanded the scope of realist theory." In their view, "realism is not an appropriate theoretical perspective for analyzing issues stemming from interdependence as realists themselves would readily admit." But that is exactly one of the problems which Keohane and I were trying to resolve. As long as analysts insist on a false dichotomy between realism and economic interdependence, policy prescriptions will oscillate between an over- and an under-reliance on the role of force rather than the relevant task of integrating force with other policy instruments into an effective strategy. As the same critic concedes, "*Power and Interdependence* has punctured the simplistic notion by showing the ubiquity of politics across the whole range of international issues."¹⁶

We cannot understand the outcome of the law of the sea negotiating process unless we understand the changes that have occurred in the role of force and the complexity of world politics and the wielding of instruments of power in the kind of world in which we now live. Traditionalists find it anomalous that the world's greatest naval power in the postwar era was unable to impose its will upon its allies in an area where it was allegedly a regional hegemon, i.e., Latin America, or that Great Britain would lose a cold war with a weak state like Iceland.

As the politics of rule-making in the oceans have evolved in the postwar period, naval force played a role but only after passing through the distorting prism of international organizations. Prescriptions which urge returning solely to the use of force fail to understand the broader changes that have made those international organizations a significant part of international politics. The multiplicity of goals of the superpowers, the development of multiple channels of contact in an era of modern communications and transportation, as well as the increased costliness of the use of force, help to explain why the alternatives to the current law of the sea process were more limited than some of the critics admit.

On the other hand, it does not follow from our experience with the law of the sea political process, that we should never use force or that we should blindly pursue establishment of regimes in the context of megaconferences.

Our alternatives are not that limited. While we have an interest in regimes, there are a variety of options as to how we might pursue that interest.

The United States is the leading state in an era when there can only be leadership without hegemony, in contrast to the 1950s. Yet, we can still take unilateral initiatives, particularly if they are designed to help move others in the direction of multiple leadership rather than accept situations of inertia. Leadership by example often will be important. But overall, there will have to be a higher degree of coordination of our position with that of other states than was true for Great Britain in the nineteenth century or for the United States in the extraordinary period immediately following the end of World War II.

To illustrate these considerations, I will turn next to two important areas of current concern and significance for our national security. First I will discuss the problems relating to oil and security and the breakdown of the international oil regime. Then I will discuss problems of the regime for non-proliferation of nuclear weaponry and illustrate some of the difficulties and possibilities of maintaining the regime in that area including the role of conference diplomacy. Finally, I will draw conclusions for American policy from the comparison of our experience with international regimes in the oil, proliferation, and ocean issues.

The Collapse of the International Oil Regime

In 1970, world oil was still governed by and large by a loose international regime that might be termed "guided *laissez-faire*." It had two essential components. First, price and production decisions were largely made by major international oil companies for essentially their own commercial reasons. Second, the major powers (particularly the United States and Great Britain) occasionally intervened diplomatically to guarantee access for companies and generally oversee the process. With a few exceptions, these governing arrangements were stable and generally accepted. There seemed to be no real alternative.

One result of the regime was that oil prices and production levels tended to reflect supply and demand conditions in major consumer countries rather than the expected long-term scarcity value or political considerations in producing countries. As low cost Middle East oil became more plentiful in the postwar period, most of the difference in value between its low cost of production and the high cost of alternative sources of energy went to consumers who enjoyed low and declining oil prices.

A second result of the regime was that United States (and other countries') energy security policy could maintain a low profile. Basically, supply was assured by efficient operations of the companies under a *Pax Americana* that involved only an occasional diplomatic assurance of access, or antitrust measures to ensure a modicum of effective competition.

The changes in the regime by the end of the 1970s were dramatic. Prices and production levels were being set by producer governments rather than international companies, and for political as well as commercial motives. Such decisions were difficult to predict and did not follow a stable or recognizable set of international rules. Producer rather than consumer countries were capturing a large part of the difference between the low costs of production and the higher costs of alternative replacements for Middle East oil. The companies were increasingly constrained by governments at both ends of their pipelines, and their assured access to crude oil under predictable long-term contracts diminished. Moreover, guarantees of access and oversight of price and production decisions had become widely regarded as absolute sovereign prerogatives of producer governments rather than of the Western powers.

Why did such a remarkable change occur over the course of a decade? Basically because of longer term trends in the underlying structure of power, both in general political-military terms as well as in the oil area itself. In the general political structure, Western dominance of the producing countries declined with decolonization. In 1960, 6 of the 13 present OPEC members were colonies or protectorates, and the key straits of Hormuz, Aden, and Malacca were under European control. The rise of nationalism in the producer countries also made any Western intervention more controversial and more costly—witness the events in Iran in 1953 compared with those of 1979.

More specifically, a turning point occurred with the British withdrawal of its military presence from the Persian Gulf in 1971. At the same time, the Vietnam War ensured that the United States would neither replace the British as it had in the eastern Mediterranean in 1947 nor fully counter the increasing military capabilities of the Soviet Union. Instead, the United States sought to fill the power vacuum in the Gulf by building up the Shah of Iran as the local leviathan.

In addition to these general political changes, there were important changes in the structure of power in the oil issue area. A key turning point was the diminished American surplus after 1971, when our production peaked and our dependence on imports began to increase. The United States lost the spare capacity that it had called upon to supply its allies in the face of political interruptions at the time of the Suez Crisis in 1956 and the June War in 1967. The power to balance the market in a time of crisis passed from the United States to OPEC nations, particularly Saudi Arabia.

A second important change was in the relative power of the companies and the producer governments. Consistent with long-standing patterns in the relations between multinational corporations and less developed countries, original bargains became obsolete and contracts "renegotiable" as the host countries gradually developed their indigenous capabilities. This trend was accelerated by the 1950s and the 1960s. Eager to gain access to crude oil, their competition with the established majors increased the options and enhanced the bargaining power of the producer country governments.

Initially, the increased production by the new entrants had the effect of forcing the price of oil down, and producer governments tried to maintain revenue levels by increasing production. Ironically, in 1959, the United States reacted to the falling prices by imposing protectionist quotas that exacerbated the glut in world markets; increased the resentment of producer governments; and contributed to the creation of OPEC. (But it was not until the oil market tightened for other reasons that OPEC proved effective in raising prices.)

Catalysts for Change

Chronologically, the changes in the 1970s occurred in three major steps, with political events serving as catalysts in the political-economy education of the producer countries.

At the beginning of the decade, the closing of the Suez Canal and destruction of a pipeline had tightened the tanker situation. This allowed the new revolutionary regime in Libya to capitalize on its geographical location and the weak position of the independent companies to extract a price increase. This in turn triggered a similar demand upon the majors by the Persian Gulf producers. Eager for political harmony, the U.S. government sent a representative but did not support the companies in the critical meeting at Teheran in 1971. Essentially, the Middle East producers learned they could press the companies with threats of nationalization and shutdown without incurring serious penalties from the Western powers.

The second step was larger. In the context of the U.S. resupply of Israel in the October 1973 Arab-Israeli war, the Arab producers instituted a 25

percent cutback in production. Even before the cutback, the OPEC governments had decided on a 70 percent price increase that reflected tightening markets as U.S. imports increased. But the embargo created a scarcity and panic in world markets which drove prices for marginal quantities to extraordinary levels and allowed Iran to lead the other OPEC states in a 400 percent increase over prewar prices. Essentially the political catalyst of the war taught the producers the value of cutbacks and indicated that the long-run price of oil might be much higher than they had expected.

This lesson was reinforced by the third step—the Iranian Revolution in 1979—which showed that even uncoordinated curtailments can have large effects on price. In addition, the experience of the Shah led some producers to conclude that production cutbacks sometimes make domestic political as well as economic sense. The result was that control over prices, production, and, to an increasing extent, distribution channels largely passed to OPEC countries.

In summary, the loose regime that governed oil broke down in the 1970s for a complex series of reasons related to shifts of power and catalytic political events, not because of the formation of OPEC or market forces alone. The prospect of recreating a regime more satisfactory to us remains questionable so long as the structure of overall power and market power in oil remain as unfavorable to consumers as they now appear and as long as internal politics in key producer countries are unstable or unclear. The result is a world of political uncertainty with unpredictable prices; renegotiable contracts; and the lurking threat of disruptive interruptions.

Two Courses for Action

Two contrasting responses have been suggested to this breakdown of the international oil regime. Some thinkers in the traditional realist mode have suggested the use of military force. In their view, it is intolerable for the world's most powerful nation to be hostage to oil production decisions made by some of the world's otherwise weakest nations. They argue that the global (and national) costs of continued acquiescence to cartel price rises are so high as to merit a change in our frame of reference and to justify military intervention and "internationalization" of Persian Gulf oil resources.

The political and economic costs of such a remedy, however, are likely to be extremely high. First, the risk of destroying the oil infrastructure through fighting or sabotage could create a major disruption which could cost us and our allies hundreds of billions of dollars. Second, there is little prospect for developing broad international legitimacy for what would be characterized as a new colonial occupation, with resultant disruptions of our foreign policy elsewhere. Third, unless the situation approached what Kissinger termed "strangulation," it is uncertain how much public support would be maintained for such an occupation, particularly if less questionable alternatives such as demand restraint were not implemented first. How many lives spent are worth how many minutes in gasoline lines saved?

While this option is not a promising policy under foreseeable circumstances, it does call attention to more modest components of military policy

in oil strategy. An enhanced defense posture in the Middle East is a good energy investment. Our ability to deter Soviet intervention and to help protect quickly those who ask for our assistance provide important assets in the complex diplomacy of oil. But the traditional realists fail to see that force is not a sufficient strategy to respond to the collapse of the regime.

An opposite approach to the breakdown of the international oil regime calls for global negotiations to establish a new regime. The Report of the Independent Commission on International Development Issues under the chairmanship of Willy Brandt has urged immediate steps toward an international energy strategy as part of an emergency program of negotiations on North-South issues. In the commission's words, "the need to seek an international accommodation has been recognized since the oil crisis of 1973. Before the Conference on International Economic Cooperation (CIEC) in 1975-7, industrial countries wanted to concentrate first on oil and energy while the OPEC nations insisted on giving equal emphasis to the totality of the North-South dialogue The differences in perception should not conceal the important areas of common interest and potential agreement between producers and consumers and the need for continuing dialogue."¹⁷

It is not too difficult to imagine a smooth long-term transition from cheap oil to more expensive energy alternatives that would benefit both consumers and producers. Given the long lead times for alternatives and the opportunities for price gouging in conditions of political uncertainty, the mid-term (1980s) real price of oil may be pushed higher than the long-term price. This could reduce long-term producer revenues; create uncertainty for their development planning; and by destabilizing the world economy, threaten the value of their new investments. Politically, a stable world economy enhances the security of producers who depend on an unprovoked and reliable West. It also reduces the economic sources of political instability in the oil-importing, developing countries. A consumer-producer dialogue might help nations to shift their focus to these potential long-term joint gains.

Such a dialogue might seek intergovernmental agreements to stabilize the oil market. For example, consumer and producer would agree on production targets and consumption limits which would allow for modest real price rises over the decade. OPEC countries would agree to maintain sufficient spare capacity to increase production if a shortfall of production from any subgroup of producers threatened to push prices outside an agreed band. They would cut production (or permit consumers to increase demand above the agreed limits) if prices threatened to fall through the bottom of the band. Additional inducements might be added such as indexing of assets and assurances of assistance and market access for the new OPEC industries. Special credit or aid provisions might be agreed upon for oil-importing, developing countries.

While it is not difficult to imagine such a formula, it is difficult to imagine such negotiations creating a stable regime under current political conditions. Unless we can answer some hard questions in advance, we should be cautious about embarking on such a course. No one can object to dialogues that produce stable and balanced regimes. But will they? First,

could we keep the agenda focused on energy? Given the politics of the Middle East and the strong bargaining position of the producers, we might find ourselves unable to keep certain awkward political issues off the table. If other developing countries participate, we may find ourselves replaying sterile North-South debates, but with much higher stakes than in the United Nations. We need to be sure we can control the Pandora's box effect before we start down the path to serious international collective bargaining.

Is a reasonable bargain likely? At modest prices, economic interests diverge among OPEC surplus producers who lean toward conservation and high absorbers interested in maximizing revenues. Large price increases (which maximize revenues and allow painless production cutbacks) tend to reconcile that division. Would OPEC countries be able to agree to a bargain that meant higher production and lower prices than the market would otherwise determine? Or would the process of collective bargaining help OPEC to pull its act together, but at a higher price? Given the weak bargaining position of the consumers, they would be poorly placed to bring down that price.

Does OPEC have sufficient cohesion to make a bargain stick? Thus far OPEC countries have been unwilling to limit their separate sovereign control over production decisions concerning the resources that are their major source of power. They compete for power within the oil arena and they reserve the right to use oil as a weapon in wider political games. Given the politics of oil, and the domestic instability of many OPEC governments, how credible is an OPEC promise to increase production if a shortfall has political ramifications? Are we not likely to pay higher than necessary prices under normal conditions only to reap broken promises on the occasion of future disruptions?

Would the benefits exceed the costs? Basically consumers would gain a formal framework for debating production (and price) decisions that are now entirely in OPEC hands (except insofar as bilateral diplomacy has an effect). What is it worth paying for such a framework? OPEC cohesion for collective bargaining may be achieved at higher prices than would otherwise be the case. Special instruments such as indexing may prove very costly, particularly if the precedent spreads. Add the risks outlined above, and the benefits of a formal collective bargaining framework look slimmer than the costs.

This is not to argue that conversations with producer states are not useful, or that restoration of an international regime is not a worthy goal. Various bilateral and multilateral discussions are essential and there are steps we can take to pave the way for possible negotiations later. But the time is not ripe for fruitful collective bargaining when power is so imbalanced. Conference diplomacy under current circumstances is unlikely to be fruitful unless it is part of a larger strategy to enhance our energy security. We must get our own house in order rather than embark on an energy equivalent of the Law of the Sea Conference. In other words, there are some situations where we are better off living for a while with the absence of a regime, uncomfortable though that may be, rather than plunging into an open-ended set of negotiations which may have unintended and unpleasant consequences.

This does not mean that we should do nothing. I have suggested various measures elsewhere.¹⁸ But we must not divert our attention to spurious international quick fixes rather than focusing on the hard work of integrating domestic economic and international policy instruments into a realistic energy policy. Only as we deal ourselves a hand with better cards in it can we recreate an equitable international regime for international energy issues. Whether such a regime can be recreated is an open question. Certainly, there is a long-run common interest, and ideally one can think of collective energy security as a worthy goal. But we do not now have the structure of power and control of political issues that would make possible the recreation of a stable and equitable international oil regime.

Maintaining a Non-proliferation Regime

Non-proliferation of nuclear weapons provides an interesting contrast with oil. In this case, the problem has been to maintain an existing but threatened regime.

It has been said that the ultimate success of a national policy comes when a country is able to elevate its interest to the level of a general principle. In that sense, American non-proliferation policy over the years has been surprisingly successful. The United States has helped to foster an international regime which establishes a general presumption against proliferation.

Regimes are seldom perfect. They vary in coherence and degree of adherence. We measure their existence in the acceptance of normative influence and constraints on international behavior. For non-proliferation, the main regime norms and practices are found in the Non-Proliferation Treaty (NPT) and its regional counterparts like the Treaty of Tlatelolco; the safeguards, rules and procedures of the International Atomic Energy Agency (IAEA), as well as in various U.N. resolutions. While there are a few important exceptions, the large majority of states adhere to at least part of this set of norms.

The beginnings of the current non-proliferation regime date from December 1953, when President Eisenhower launched the "Atoms for Peace" program. The idea of the Atoms for Peace approach was to assist countries in their development of nuclear energy for civilian uses, in return for guarantees they would use such assistance only for peaceful purposes.

The policy was oversold and poorly thought through in its execution at a time when too little was known about the pace and cost of peaceful nuclear development. But the concept did serve to create an initial consensus on which to build. Essentially, the most powerful state in the nuclear issue area used its power in a way that attracted others to a normative framework.

Specifically, the central accomplishment of the Atoms for Peace program was the creation of a system of international safeguards and an institutional framework in the form of the International Atomic Energy Agency, established in Vienna in 1957. Under the IAEA safeguards system, non-nuclear weapons countries agree to file with the Agency regular detailed reports on nuclear civilian activities. The countries also agree to allow international inspectors to visit their nuclear facilities to verify their reports and to ensure that there is no diversion of materials from civilian to military purposes. The safeguards system is central to the basic bargain of the international regime in which countries are assisted in their peaceful nuclear energy needs in return for accepting the intrusion of safeguards and inspection.

Non-Proliferation Treaty of 1968

The regime was further developed by the signature of the Non-Proliferation Treaty in 1968.

Eight significant states have refused to sign the NPT, usually on the grounds that it is a discriminatory treaty. But of the eight, France has indicated it would not undercut the purposes of the treaty, and in Latin America, a regional treaty limiting nuclear weapons helps to fill the normative gap. Skeptics have dismissed the treaty as a modern equivalent of the Kellogg-Briand pact since any state can quit on 3 months' notice. Other detractors have argued that the treaty is imperfectly drafted and involves promises that cannot be kept fully. Nonetheless, by establishing a normative presumption against proliferation and by creating procedures for verifying intentions, the NPT has helped to build confidence and a degree of predictability in states' behavior. Like its regional counterparts, such as the Treaty of Tlatelolco, the NPT helps to strengthen the international regime by symbolizing a common interest. The NPT is not, as some enthusiasts tended to believe in the 1960s, sufficient or the same as the international nuclear regime; but with 111 adherents, it has certainly become a central part of the regime.

Threats to Stability

By the early 1970s, there was a degree of complacency about the non-proliferation regime. Such complacency was shattered, however, by three events in 1974 and 1975. One was the Indian explosion of a "peaceful" nuclear device using plutonium derived from a Canadian-supplied research reactor with U.S.-supplied heavy water. The second event was the oil embargo and fourfold increase in oil prices which created widespread insecurity in energy supply and exaggerated expectations about the importance of nuclear energy. The net effect was to accelerate governments' plans for early commercial use of plutonium fuel, which unlike the low enriched uranium currently used as fuel in most reactors, is a weapons-usable material. The IAEA projected that some 40 countries might be using plutonium fuels by the end of the 1980s. At the same time, safeguards and institutions for dealing with such a flood of weapons-usable materials had not been adequately developed.

The third set of events that shook the regime in the mid-1970s was the proposed sale of facilities for producing weapons-usable materials without regard to their economic justification or proliferation implications. Subsequently, it was disclosed in at least two cases that the recipients were attempting to develop a nuclear weapon and there would almost certainly have been violations or abrogation of safeguards. In such circumstances there has been grave danger the international regime would collapse.

The threats to stability were reinforced by trends in the power positions of the United States inside and outside the nuclear issue area. Outside the nuclear issue, the United States suffered its disastrous defeat in Vietnam with an accompanying turn in its cycle of foreign policy attitudes. Inside the nuclear issue area, America's share of the world nuclear exports began to decline as strong industrial competition for the sale of light water reactors

developed in Europe—as might have been expected. Equally important was the erosion of the American leverage over nuclear fuel supplies.

The years 1976 and 1977 saw a series of American initiatives in response to the fuel cycle events that threatened the regime. First, the Nuclear Suppliers Group was established in London to prevent commercial competition from undercutting safeguards obligations. Second, in October 1976, President Ford announced a more cautious policy toward the use of plutonium in the U.S. nuclear program. Thus, some of the main lines of response later identified with the Carter administration actually preceded it.

However necessary, these steps and some of the initial steps of the new administration created international rancor. Yet maintaining and refurbishing the international regime would require a general approach around which a broad group of nations could rally. The process of rethinking the conditions of the regime had to be shared beyond the United States alone. A confrontational approach threatened to isolate the United States and further disrupt the regime.

An approach was needed that would reinforce the existing regime, yet halt the erosion of the status quo. It was important to shake others to attention and into action to refurbish the regime, but to do so without coercion and with as little overt discrimination as possible.

International Nuclear Fuel Cycle Evaluation

Indeed, one of the basic problems in the design of non-proliferation policy is the discrimination issue. By its very nature, non-proliferation involves a degree of discrimination. Yet the way in which that discrimination is handled can spell the difference between success and failure in a policy of regime maintenance. Thus the Carter Administration deferral of reprocessing at home was not expected to lead all other countries to follow suit. But it was felt that exaggerated projections of nuclear growth and spurious economic calculations were driving decisions in this and other countries. Our diplomatic efforts to persuade others to look more carefully at their calculations and at the problems associated with plutonium would be undercut if we did not restructure our domestic programs to defer plans for thermal recycle and stretch out the timing of breeder development. Since the United States could not unilaterally impose its will on others concerning how the nuclear fuel cycle should be constructed, six of the seven points in President Carter's April 7, 1977 non-proliferation statement dealt with issues within U.S. domestic jurisdiction. The seventh point proposed an International Nuclear Fuel Cycle Evaluation program (INFCE)—a rather special form of conference diplomacy.

INFCE has been described as a pioneering effort at international technology assessment. Officially, INFCE provided a 2-year period in which nations could reexamine assumptions and search for ways to reconcile their different assessments of the energy and non-proliferation risks involved in various aspects of the nuclear fuel cycle. While officially INFCE was given a predominantly technical rationale, it was a means of attracting broad participation into what was really part of a political process of stabilizing the basis for the international regime. The 66 countries and organizations that

came together in Vienna included consumers and suppliers, rich and poor, East and West, and a dozen countries that had not signed the NPT.

In all, 519 experts from 46 countries participated in 61 meetings of 8 working groups, and produced 20,000 pages of documents. The common denominator of this diversity was the final plenary conference finding that INFCE had "strengthened the view that effective measures can and should be taken to minimize the danger of proliferation of nuclear weapons without jeopardizing energy for peaceful purposes . . . The participants were determined to preserve the climate of mutual understanding and cooperation in the nuclear energy field that is one of the major achievements of the INFCE."¹⁹

As a diplomatic device, INFCE helped to re-establish a basis for consensus on a refurbished regime for the international nuclear fuel cycle. The very process of engaging in international technology assessment helped to heighten awareness of the non-proliferation problem and the threats to the regime. In that sense, INFCE helped us to set the agenda for other governments. Moreover, it affected the process inside the other governments. Foreign offices, rather than just nuclear energy agencies, became more involved. Critics who complained that INFCE failed to discover a technical fix or failed to endorse all of the American program miss the point. Most important, attention to the problem and to regime maintenance was spread beyond the United States. While the United States did not always agree with all the details of INFCE's answers, a critical point was that INFCE focused other countries' attention on our question—non-proliferation. Equally important in regime maintenance was the way that the INFCE findings helped in diffusing some of the sharp conflicts over the tension between the suppliers' guidelines and the NPT. This was clear at the 1980 NPT Review Conference where expected friction over fuel cycle issues proved far less contentious than general disarmament questions.

A Delicate Balance

The general disarmament issue raises interesting and difficult questions about relations among regimes. International regimes co-exist in different issue areas with a degree of autonomy from each other. Nonetheless, they also exist within an overall political context and can have a net strengthening or weakening effect on each other. In one direction the non-proliferation regime interacts with other nuclear weapons and arms control regimes, and in the other direction with international energy and economic regimes. A successful non-proliferation policy in the 1980s will require attention to the connections in both directions.

The relation between non-proliferation and other arms control regimes is not so simple as it first appears. The usual connections are made by provisions like Article 6 of the NPT and by various U.N. Disarmament Committee resolutions calling for a halt to the "vertical proliferation" of the arms of the superpowers.

This gives rise to certain paradoxes in non-proliferation policy. Ironically, calculability and stability of deterrence between the United States and the U.S.S.R. have occurred over time and at high levels of weaponry. By his-

torical evolution this pattern has produced prudence in the relationship of these two nations and extended deterrence to their allies who have thus been able to eschew the development of nuclear weaponry. Changes in the balance which are perceived as weakening the credibility of deterrence not only threaten the stability of the central relationship, but also reduce the sense of security that permits allied states to foreswear proliferation. It is paradoxical but true that under some circumstances the introduction of a single weapon in a new state may be more likely to lead to nuclear use than the introduction of an additional thousand each by the United States and the U.S.S.R.

On the other hand, to profess indifference to the superpower nuclear arms relationship can weaken the non-proliferation regime in two different ways. First, a disdain for the arms control institutions and concerns expressed by non-weapons states can exacerbate the discrimination issue that is the central dilemma in non-proliferation policy. Second, nuclear doctrines and deployments which stress the usefulness of nuclear weapons in warring situations may help to increase the credibility of deterrence, but they also tend to make nuclear weapons look more attractive to others. If states that have deliberately eschewed nuclear weapons see them treated increasingly like conventional weapons, they may one day reconsider their decisions. In short, the relation between non-proliferation and the general nuclear arms control regimes will require a sensitivity to both horns of the dilemma in what promises to be a difficult period in the superpower relationship.

In the realm of energy and economic regimes, it is important that the moderate restrictions of an evolutionary approach to the nuclear fuel cycle not appear as a general posture of technology denial by advanced countries. Threats that poor countries will go nuclear to turn the terms of the North-South dialogue are not particularly credible because nuclear weapons are so ill-suited to such a purpose. But indifference to the energy and economic concerns of poor countries can weaken the non-proliferation regime. A forthcoming posture on energy and technology transfer including the development of non-nuclear energy alternatives, and other measures to deal with energy insecurity, can help take the edge off confrontations which may generate spiteful dynamics over status and attention rather than security.

While national security concerns are the dominant reason for most states to preserve and strengthen the non-proliferation regime, at the same time, it is important not to neglect the status/prestige interests that nations have. Above all, it is important on prestige grounds that overt discriminatory solutions be avoided. Justifiable temporary differentiation and permanent discrimination are not the same thing. We must be careful not to reinforce the illusion that being a nuclear weapon state provides unusual privileges or position in international affairs. The weight of a state's voice in international forums—how it does in the law of the sea, in the exchange rate for its currency, or in resource transfers—really does not have much to do with whether that state possesses a nuclear weapon. There are other more usable and directly effective forms of power. The nuclear weapons states must be careful not to try to use nuclear status to threaten in other

areas. And their general posture in international energy and economic regimes is bound to have an effect on their ability to manage the acceptability of the degree of discrimination that is inherent in the non-proliferation regime.

Three and a half decades have passed since the energy of the atom was used in warfare. Yet rather than nuclear doom, the world has seen a surprising nuclear stability—thus far. While it would be unrealistic not to expect any further nuclear spread, it is still feasible to control the rate and degree of proliferation in order to manage its most threatening and destabilizing effects.

Realistically, an international regime does not need perfect adherence to have a significant constraining effect, any more than deviant behavior means the irrelevance of domestic legal regimes. Nevertheless, there is a tipping point beyond which violations lead to breakdown of normative constraints. The police function is traditionally the domain of the great powers in international politics, but if their preponderance in the nuclear issue area erodes, and they become diverted by other issues, there is a danger that the gradual historical curve of proliferation could approach such a tipping point.

Given the natural decline in American preponderance in the nuclear issue area, it has been important that the burden of leadership in regime maintenance be more broadly shared. To a very considerable extent, INFCE helped to broaden leadership in the job of maintaining the non-proliferation regime. But collective leadership is difficult to manage. The United States still has to adjust to sharing. The wrong unilateral policies could still sacrifice the current modest success in regime maintenance on the altars of either purism or cynicism. Unfortunately, there is no simple solution to the political problem of proliferation. But maintaining the existing regime with its presumption against proliferation is very much in our national interest.²⁰

Conclusions: U.S. Foreign Policy and International Regimes

Having described one situation where we have tried to renegotiate a regime at a mega-conference, another where a regime collapsed, and a third where we used a variant of conference diplomacy to help maintain a threatened regime, I am now ready to draw some general conclusions about U.S. foreign policy and international regimes.

1. Because the United States is a great power with a general interest in world order, the maintenance and building of international regimes tends to be in our national interest.

Orderly processes allow us to pursue the multiplicity of our interests in a manner that reduces their mutual interference and the costs of trade-offs. The existence of international regimes allows for greater moderation in foreign policy and reduces the degree of the constant risks that statesmen encounter. For example, even an imperfect non-proliferation regime reduces some of the uncertainties and insecurities that we face abroad.

2. It does not follow that all international regimes are in our interest.

For example, current efforts in UNESCO to negotiate a "New World Information Order" could seriously interfere with journalists' access to news. Many aspects of the "New International Economic Order" stressed in Group of 77 rhetoric in U.N. forums would not serve our interests or the economic interests of many poor countries. It may have been inevitable that the unequal traditional regime in oil would collapse as market power and general political power shifts occurred. And it may be that the absence of a regime has made oil imports more unpredictable and increased our insecurity. But it does not follow that the kind of regime we might recreate in global negotiations under imbalanced power conditions and inadequate domestic energy policies would really reduce our uncertainty and insecurity. On the contrary, a bad regime might well increase them.

3. Even if we decide that creating or revising a regime is in our national interest, it does not follow that entering into broad-based conference negotiations is the best way to pursue that interest.

In fact, conference diplomacy is only one among a number of instruments that can be used in the process of regime formulation. While it might seem paradoxical at first, unilateral action can play an important role in regime construction. Indeed, traditionally, the unilateral actions of great powers have been major sources of regime formation. As we have seen, this is less the case under current political conditions, but there is still a role for unilateral actions. Exercising leadership often requires someone to go first. The crucial points are that the unilateral actions should not prevent subsequent inducement of others to follow and that the actions be consistent with a nation's long-term regime goals.

In the oceans area, Truman's proclamations in 1945 failed to meet these criteria. Similarly our 1976 fisheries legislation did not help regime

leadership since we were eroding constraints before the negotiations were over. On the other hand, carefully formulated interim legislation to encourage the beginning of seabed mining probably helped to move law of the sea negotiations forward. In the non-proliferation area, American announcement of domestic changes in fuel cycle practices was coupled with the invitation to all states to join in the International Nuclear Fuel Cycle Evaluation which helped to find a formula for smoothing over the tensions between the Nuclear Suppliers Group and the Non-Proliferation Treaty. Conversely, some of the unilateral provisions of the Nuclear Non-Proliferation Act of 1978, which were inserted at congressional insistence, created international friction and resentment which tended to weaken the administrations' efforts to refurbish the regime.

A special form of unilateral instrument is the use of military force. Judiciously used (or threatened), military force can play a critical role in regime formulation. The knowledge that great powers can and would, at least in principle, assert and defend their naval rights of passage through contested waters certainly played a useful background role in the bargaining at the Law of the Sea Conference. As we saw when we looked at the case of oil, force is an important background consideration in that area as well. On the other hand, indiscriminate use of force can prove too costly in relation to the particular interests sought. Trying to seize the oil fields can bring an economic disaster. Shooting our way through straits can poison bilateral relations with states whose cooperation we need in other issues on our complex foreign policy agenda. Moreover, the use of force may generate resentment which can interfere with broader alliance relationships or with negotiations for regime formulation. A key consideration is the coupling of force with legitimacy. If military actions are broadly regarded as justifiable, at home and abroad, the cost of the military instrument can be reduced. Above all, it is critical that unilateral actions, including the use of force, be considered in relation to our overall policy goals for a regime and to their impact on our bilateral or multilateral negotiations before they are attempted.

4. A conclusion that follows from the previous two is that the United States must see a real prospect that negotiations will lead to a satisfactory regime and improved conditions for our interests before we embark upon such a complex and lengthy process. We need to ask ourselves at least four questions before starting.

- First, what is the nature of the issue? If it clearly involves collective or indivisible goods, how many key actors must be involved to create or preserve an effective regime? The same questions can be asked about divisible goods with the possibility that the key players can be more limited. Given the concentration of technology and capabilities in space, as contrasted with the oceans, there is less incentive to pay the costs of multilateral conference diplomacy. Or in the arms control area, it makes sense to limit participation in the SALT regime (if it lasts), but more players are required at the nonproliferation table by the very nature of the game.

- Second, even if we decide that the nature of the issue requires broad participation, we must ask if the time is ripe for fruitful conference diplomacy. Will our ability to promote and protect our interests improve or erode with time? Would the beginning of negotiations foreclose some options and open a Pandora's box of unmanageable issues? Would failed negotiations make existing difficulties significantly worse? A priori, one would have expected the geographically disadvantaged states in the LOS negotiations to have rallied to the U.S. trusteeship and revenue-sharing proposals of 1970. But they did not. Instead they were recruited via bloc and regional politics into Group of 77 positions largely established by Latin American coastal states who had a 10-year lead in thinking about the issues. By the time the landlocked and geographically disadvantaged states had learned enough to begin careful differentiation of their interests it was largely too late. From the U.S. point of view, we got too far into conference diplomacy before the time was ripe to build the coalitions we needed. And as we have seen when looking at the oil issue, a similar case can be made that whatever the eventual prospects for multilateral negotiations, the time is not ripe for us now.
- A third and related question we must ask is whether the structure of power within an issue area and surrounding it is such that our interests would be served better with or without a regime. As we saw in the case of oil, the erosion of the previous structure of power was to our disadvantage; however, until our domestic and foreign policies have begun to remedy the situation, we may be better off with no regime—bad as that is—rather than with an unfavorable one. On the other hand, in non-proliferation where it was clear that technology would eventually spread and American dominance diminish, we wisely chose in the 1950s to begin construction of a regime before the erosion occurred and in the late 1970s to spread the task of the leadership in regime maintenance through the INFCE process.
- The fourth question we must ask before embarking on complex multilateral diplomacy relates to domestic politics. Can we ratify the results? Are the domestic and congressional perceptions so at odds with what is negotiable internationally that the process will be greeted by Senate rejections? If so, we may be worse off than if we had not entered the process at all, and we should refrain from doing so until education on the issue at home and abroad has progressed further.

5. When we enter multilateral negotiations, we need to prepare ourselves much better for that particular form of activity than we have in the past.

Before agreeing to participate in a conference, we must insist on adequate international preparations. Ideally, a suitable small body should work on texts for submission. Even when this is the case, we must pay closer attention to the effect of bloc politics on the appointment of chairman and drafting officers. Identifying in advance an able president and reasonable chairmen and firmly refusing to agree to others will be crucial.

Much of the difference in the progress between the first and second committees in the LOS conference was attributable to the difference in chairmen, and careful choice of chairmen was one of the keys to the success of INFCE. The agenda is also important. The packaging of issues in committees and sequencing of treatment can strongly affect outcomes. Again the contrast between LOS and INFCE is instructive.

In the substantive negotiations, we must be cautious about making large dramatic compromises in principle only to find that the rigidity of the Group of 77 means that we have given up a principle for nothing. We must be cautious about the slippery slope effect before we decide to alter our positions—whether it be to allow linkage of issues or suggest general approaches to a solution.

We need better preparation domestically as well as internationally. Given the protracted length of negotiations, it is essential that we plan in decade-long terms and try to identify the evolution of our interests, other countries' positions, and possible key branch points before we enter a conference. While such planning can never hope for perfect prescience, both the State Department and the National Security Council can do better in this regard. It is critical to force key trade-offs to high level attention before the real options have been traded away. Given the size and unwieldiness of our delegations (which in turn reflect the diversity of our interests), early clarity of high level instructions is doubly important.

We also need to consider how to relate our domestic and foreign interests on issues which have a leg in each domain. In such transnational systems, our domestic policy actions can complement or undercut our international actions. Often we can add leverage domestically. Certainly, failure to think through the way our domestic and international actions affect each other can lead to a countervailing rather than a reinforcing effect. Thus in 1977, the United States decided to defer the commercialization of plutonium not because we expected all others to follow suit, but because our efforts to induce rethinking and greater caution internationally would be undercut if we were seen to be plunging full speed ahead at home. Similarly, we cannot effectively persuade our allies to reduce oil imports or producers to maintain surge capacity if we are not taking appropriate domestic measures ourselves.

In the oceans area in the 1950s, when Latin American states were arresting our tuna fishermen, we took the pressure out of the transnational system by passing the Fisherman's Protective Act by which our Treasury reimbursed the fishermen for their fines. Passage of the act meant that we "blinked" in the confrontation over principle. On the other hand, on the current question of launching seabed mining, some forms of current domestic insurance for the early stages of investment against the prospect that subsequent international red tape may halt mining could make sense both domestically and internationally.

Finally on the domestic side we need to develop further procedures of congressional involvement in negotiations to protect against later failures to ratify. The LOS advisory process seems to have worked moderately well.

There may be further lessons to be learned from the successful case of the Multilateral Trade Negotiations.

6. My final conclusion from this comparison of changing regime situations in oceans, oil, and proliferation goes back to the question in my title.

Given the history of the oceans issue over the century that I described, and given the costs to our other foreign policy interests if we were to be seen as the cause of a failure, I believe that the best option among those that now face us is to sign and ratify the draft treaty—assuming the remaining issues are satisfactorily dealt with. But we *should* cut our LOSes in the sense of not engaging in another conference like this one in the way we did. That is the purpose of the various suggestions I have made to improve our position.

I expect the United States to remain a dominant power in world politics, but I also expect the complexity of world politics to increase. As a great power with diverse interests, this nation will have a strong interest in the creation and maintenance of satisfactory international regimes. A far-sighted international definition of our interest is important to our success in world politics. It is time we paid more careful attention to how we pursue that interest.

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