REPORT TO THE CONGRESS

Information On United States Ocean Interests Together With Positions And Results Of Law Of The Sea Conference At Caracas

Multiagency

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

MARCH 31 1975

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-145099

To the President of the Senate and the
Speaker of the House of Representatives

This is our report on U.S. ocean interests together with positions and results of the Law of the Sea Conference at Caracas.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of the report are being sent to the Director, Office of Management and Budget; Secretary of State; Assistant to the President for National Security Affairs; Special Representative of the President to the Law of the Sea Conference; and Chairmen, National Security Council Under Secretaries Committee and National Security Council Interagency Task Force on the Law of the Sea.

Elmer B. Staats

Comptroller General
of the United States

GLOSSARY

Allowable catch a conservation measure limiting amount of a fish species which can be caught

Anadromous species fish, such as salmon, which spawn in fresh waters, migrate to ocean waters, then return to fresh waters to spawn

Coastal species fish, such as haddock, other than highly migratory and anadromous species, inhabiting the waters off the coast

Continental shelf legally, described as the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters, or beyond, to where the depth of the superjacent waters admits of the exploitation of the natural resources of these areas.

geographically, described as the seabed area extending off the coast of a state to an outer edge, which averages 200 meters water depth.

Highly migratory species fish which spawn and migrate during their life cycle in waters of the open ocean, including but not limited to, tuna

High seas all water beyond the outer limit of the territorial sea

Innocent passage to navigate through the territorial sea to traverse that sea without entering internal waters, to procede to internal waters, or to make for the high seas from internal waters, so long as it is not prejudical to the peace, good order, or security of the coastal state

Provisional application the arrangement whereby a treaty, or certain aspects of it, would provisionally be applied after the treaty is signed, without waiting until it has been put in force. Precedents exist for a provisional regime, indicating that provisional application is legally and practically possible

State a country or nation

GLOSSARY

Territorial sea a zone off the coast of a state where complete sovereignty is maintained by the coastal state, subject to the right of innocent passage to ships of all states

Contents

		Page
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Law of the sea conferences	2
	Scope of review	4
2	UNITED STATES OCEANS POLICY	5
	Organizations responsible for establishing and implementing policy	5
	Current policy	7
3	SUMMARY OF CARACAS SESSION	10
	Accomplishments	10
	Shortcomings	11
	Preparations for Geneva session	12
	Observations	13
	Agency comments and GAO evaluation	14
	Matters for consideration by the Congress	14
4	TERRITORIAL SEA AND TRANSIT THROUGH STRAITS	15
	U.S. interests	15
	U.S. position	15
	Results of Caracas session	16
	Observations	20
5	FISHERIES	22
	Fishing industry	22
	International agreements and domestic legislation	24
	Enforcement	28
	U.S. position	29
	Results of Caracas session	30
	Observations	31

CHAPTER		Page
6	MINERAL RESOURCES	34
	Continental margin--petroleum and gas	34
	U.S. jurisdiction	34
	Federal agencies with OCS responsibilities	36
	OCS development, reserves and resources	37
	U.S. position	40
	Results of Caracas session	40
	Observations	45
	Deep Seabed--manganese nodules	47
	U.S. interests	47
	Proposed regulations for mining	48
	U.S. position	49
	Proposed legislation	51
	Results of Caracas session	52
	Observations	54
7	OTHER MAJOR ISSUES	55
	Marine environmental protection	55
	International antipollution measures	56
	U.S. position	57
	Results of Caracas session	58
	Observations	59
	Marine scientific research	60
	U.S. interests	60
	U.S. position	61
	Results of Caracas session	61
	Problems	63
	Observations	63
	Dispute settlement	63
	U.S. position	64
	Results of Caracas session	65

Page

APPENDIX

I Conventions adopted at first Law of the Sea Conference 67

II Principal officials responsible for administration of activities discussed in this report 71

ABBREVIATIONS

OCS Outer Continental Shelf

GAO General Accounting Office

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

INFORMATION ON UNITED STATES OCEAN INTERESTS TOGETHER WITH POSITIONS AND RESULTS OF LAW OF THE SEA CONFERENCE AT CARACAS
Multiagency

D I G E S T

WHY THE REVIEW WAS MADE

GAO wanted to find out what progress had been made at the third United Nations Law of the Sea Conference, Caracas session, in order to give the Congress a summary of results and how these results may affect U.S. interests.

FINDINGS AND CONCLUSIONS

The chairman of the U.S. delegation to the conference believes that a comprehensive oceans law treaty should be accomplished by the end of 1975.

Accomplishments at Caracas cited by the U.S. delegation were:

--General agreement that the interests of all nations will best be served by an acceptable and timely treaty.

--The scheduling of another session in Geneva, from March to May 1975, with a subsequent signing session to be held in Caracas and intersessional work where appropriate.

--Preparation of working papers containing precise treaty texts reflecting main trends on major issues, including territorial seas, economic zones, straits, fisheries, continental margins, marine scientific research, and dispute settlement.

--Refinements of alternative treaty texts for exploiting the deep seabed.

According to the chairman, sufficient political will to make hard negotiating choices was missing at Caracas. This was due to a general conviction that another session would be needed and to the absence of organized alternate treaty texts on many issues.

International agreement on a timely, comprehensive oceans law treaty will be difficult. The international community at Caracas did not agree on a complete treaty text on any of the issues. There are wide differences regarding general concepts as well as detailed items on the major law of the sea issues. (See ch. 3.)

Territorial seas and transit through straits

National security and economic interests are involved in insuring free movement of vessels and aircraft on, over, and under the oceans.

There was general agreement on establishing the breadth of territorial seas at a maximum distance of 12 miles from the coastline, conditional upon acceptable resolution of such other issues as a guarantee of unimpeded transit of international straits.

Territorial seas would overlap more than 100 straits, which include high seas, if territorial seas are extended to 12 miles. Ships navigating in this area would have the right of innocent passage only.

The United States believes the right of innocent passage is not an adequate guarantee of free transit through international straits, because it prohibits submerged transit and overflight and provides coastal states with the discretion to interpret subjectively what passage is innocent. The U.S. proposal, however, provides that the regime of innocent passage in the territorial sea would [illegible] (See p. 4.)

[illegible]

[illegible] United States has coastal [illegible] distant-water fishing interests. [illegible] was different [illegible] and interests. The coastal fishing industry is interested in protecting U.S. coasts from foreign fishing fleets, whose overfishing helps to deplete or threatens to deplete many fish stocks. The U.S. distant-water fishermen are interested in continuing to fish off the coasts of other nations and are subject to seizure and fines for operating in these areas.

The need for action to manage, regulate, and control fish resources is exemplified in the bills to extend the U.S. fishery zone introduced in both Houses of Congress. The executive branch is opposed to these bills. In substance, however, there is no great difference in objectives between the congressional bills and the U.S. proposal at Caracas.

Three main approaches to fisheries problems seem to have emerged at Caracas.

--The U.S. approach, which couples coastal state regulations with conservation and full-use duties and international or regional organizations for highly migratory species.

--Complete coastal state regulation, with no coastal state duties.

--Distant-water fishing state proposals, which emphasize the role of regional organizations.

Under the U.S. approach, a coastal state has exclusive

rights to regulate fishing in the 200-mile economic zone and a duty to conserve and fully use fishery stocks. The coastal state is guaranteed a share of the allowable catch, based on its harvesting capacity. It has a duty to permit foreign fishing to the extent that a fishery resource is not fully used, with priority given to nations that have traditionally fished for the resource.

Fishing for anadromous species, such as salmon, beyond the territorial sea would be prohibited except as authorized by the state of origin. In accordance with international or regional regulations, including fees, conservation, and resource allocations, fishing for highly migratory species, such as tuna, would be supervised by the coastal state within the economic zone and by the state of nationality of the vessel outside the zone.

The full-use obligation preserves a basis for U.S. access to coastal species off foreign coasts and foreign states' access to coastal species off U.S. coasts. Stocks, however, are being used up to the allowable catch in many major fishing grounds and expanding the coastal state's harvesting capacity would reduce or possibly eliminate traditional foreign fishing.

An extension of U.S. fisheries jurisdiction is no guarantee that all U.S. interests will be protected. Conservation measures and their enforcement will be important in protecting U.S. interests. (See ch. 5.)

Continental margin--petroleum and gas

Petroleum and gas potentials of the U.S. continental shelves appear to be substantial. If developed, they would increase total domestic production greatly. Coastal states have exclusive rights to explore and exploit natural resources out to 200-meters water depth, or beyond, to where the superjacent waters admit continental shelf natural resource exploitation.

The United States has the capability to exploit petroleum resources beyond 200-meters depth, and the Federal Government is leasing tracts beyond this area. The United States has proposed establishment of an economic zone with a 200-mile outer limit, in which coastal states would have sovereign and exclusive rights over continental shelf natural resources, exclusive rights over drilling and economic installations, and other rights and duties for scientific research and pollution.

There was general agreement on a 200-mile economic zone. However, there were major differences on coastal state jurisdiction over continental shelf resources beyond 200 miles and on the sharing of revenue derived from exploiting continental shelf resources.

The United States supports coastal jurisdiction to the seaward limits of the economic zone or to a precisely defined outer limit of the continental margin. The U.S. position is

that a modest portion of the revenue derived from continental shelf resources beyond 12 miles or 200-meters water depth, whichever is farther, to the seaward limit of the economic zone should be shared with less developed countries.

Under this proposal, however, it is recognized that revenue sharing, even at modest rates, could involve large amounts that would increase as offshore petroleum exploitation expanded. (See ch. 6.)

Deep seabed--manganese nodules

Many deep seabed areas are abundant with manganese nodules which contain copper, nickel, cobalt, manganese, and other minerals. The United States currently is dependent on other countries for several of these minerals.

Commercial interest in the nodules has increased as technology has developed the capability to mine the nodules. U.S. industry may have a slight technological lead in extraction techniques.

U.S. corporations appear reluctant to commence actual commercial mining until there is some assurance that their investments will be protected. Legislation has been proposed to protect investments from U.S. market encroachment by other countries and to protect U.S. technological lead. The executive branch believes [illegible] legislation at this time would be detrimental to the conclusion of a comprehensive oceans law treaty.

The U.S. position at Caracas was that access to the deep seabed resources should be guaranteed on a nondiscriminatory basis under reasonable conditions that provide the security needed to attract investment for development. A portion of any revenues generated from deep seabed mining would be shared with less developed countries.

There is general agreement that there should be an international agency to regulate deep seabed mining. The greatest differences in the U.S. positions and those of other nations concern how the international agency should function and the conditions and economic implications of exploitation. (See ch. 6.)

Marine environmental protection

Marine pollution comes from land-based, airborne, and ocean activities, including seabed exploitation and vessel-source pollution. Land-based sources contribute the most pollutants to the marine environment. Vessel-source pollution is mainly a result of oil spills and waste dumping.

The United States has proposed that pollution control for the seabed be exercised by an international authority and that the Intergovernmental Maritime Consultative Organization

establish international standards for vessels. A coastal state has the right to adopt higher standards for the seabed areas under its jurisdiction, for vessels entering its ports, and for vessels under its registry.

Articles were drafted at Caracas on several marine pollution issues, but complete agreement was not reached. (See ch. 7.)

Marine scientific research

Under the 1958 Convention on the Continental Shelf, coastal state consent is required to conduct research on the shelf off its coast but is not required in the water column above the shelf. Many coastal states have refused consent, have required unreasonable conditions, and have delayed or failed to respond to requests for permission to conduct research.

Agreement was reached at Caracas on general principles for the conduct of research, particularly for peaceful purposes. The greatest differences centered upon research in the economic zone and in the international seabed area. (See ch. 7.)

RECOMMENDATIONS OR SUGGESTIONS

This report contains no recommendations or suggestions; however, it does contain observations on major law of the sea issues and results of the Caracus session. (See pp. 13, 20, 31, 45, 54, 59, and 63.)

AGENCY COMMENTS AND OUR EVALUATION

GAO met with the Chairman, National Security Council Interagency Task Force on the Law of the Sea, to discuss the information and observations presented in this report. D.013683

The Chairman agreed with the information and with GAO s observations and believes the report fairly assesses U.S. positions taken at the Caracas session and identifies the major differences and problem areas.

GAO believes the discussions with the Chairman indicate an acknowledgement of the problems which must be overcome to successfully conclude a comprehensive oceans law treaty protecting U.S. ocean interests. (See p. 14.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

This report assesses U.S. positions taken at the Caracas session of the Law of the Sea Conference and identifies types of problems that U.S. negotiators will have to deal with during future sessions. These are matters that Committees and Members of Congress will have to consider in ratifying and enacting legislation to implement a future oceans law treaty. (See p. 14.)

CHAPTER 1

INTRODUCTION

The law of the sea comprises the rules governing the activities of men and nations in the vast ocean areas. Its fundamental premise, the freedom of the seas, provides that all states have equal rights to use the high seas, subject to reasonable regard for each others' uses and prohibits national sovereignty over the high seas. Principally because of the defense interests of coastal states, the freedom of the seas doctrine has not applied right up to the shores. A 3-mile territorial sea has generally been recognized, in which the coastal state is sovereign, subject only to a right of innocent passage for foreign vessels.

The first major break with the traditional law of the sea was the unilateral claim to a 12-mile exclusive fishing zone in 1911 by Czarist Russia. After it came to power in 1917, the Soviet Government converted that claim into an assertion of a territorial sea.

President Truman's Proclamation 2667 of September 28, 1945, established a policy which precipitated other changes in the law of the sea. It avoided a strictly territorial claim, but did assert U.S. jurisdiction and control over the natural resources of the subsoil and seabed of the continental shelf contiguous to the United States. Several other countries, therefore, felt they had a similar right to make claims consistent with their own national interests.

In 1947 Peru and Chile laid claim to sovereignty and national jurisdiction over the seas adjacent to their coasts to a distance of 200 nautical miles. They were joined by Ecuador in 1952 when all three countries signed the Santiago Declaration on the Maritime Zone, which proclaimed their sole jurisdiction and sovereignty over an area of the sea, seafloor, and subsoil extending 200 nautical miles from their coasts. The Truman Proclamation was cited as precedent for their action. Since 1952, other Latin American countries have claimed some form of jurisdiction out to 200 miles--Nicaragua in 1965, Argentine in 1966, Panama in 1967, Uruguay in 1969, and Brazil in 1970.

Other nations claiming exclusive maritime jurisdictions beyond 12 miles include

--Sierra Leone, 200-mile territorial sea;

--Cameroon, 18-mile territorial sea and fishing zone;

--Guinea, 130-mile territorial sea and fishing zone;

--Senegal, 12-mile territorial sea and 18-mile fishing zone;

--India, 12-mile territorial sea and fishing zone and the right to establish a 100-mile conservation zone;

--Korea, 20- to 200-mile fishing zone; and

--Canada, jurisdiction over shipping which could cause pollution in a zone up to 100 miles from her Arctic coasts.

Before World War II, the oceans were principally used for navigation and fishing. Today, nuclear submarines and supertankers ply the oceans, offshore oil and gas production is a major source of energy, technology is being developed to extract hard minerals from the deep seabed, scientific ocean research is growing in importance, and fishing methods are highly mechanized and sophisticated.

At the same time, these uses are creating problems, such as depletion of fish stock, insecurity for investments in deep seabed hard mineral exploitation, and damage to the marine environment from oil spills and other pollutants.

LAW OF THE SEA CONFERENCES

The United Nations has convened three conferences to resolve conflicting claims and problems associated with competing uses of the oceans.

The first Law of the Sea Conference, held in 1958, was partially successful in codifying the international law of the sea. However, nations did not agree on the breadth of

territorial seas, extent of fishery jurisdictions, and outer limits of coastal states' exclusive rights over continental shelf resources. Nations did agree that the breadths of the territorial seas and contiguous zones taken together could not exceed 12 miles. Four conventions[1] adopted at the Conference form the basis of existing international oceans law.

In 1960 a second conference was held for the purpose of agreeing on the breadth of the territorial sea, but it ended in failure. A United States-Canadian proposal for a 6-mile territorial sea and an exclusive fishing zone of another 6 miles failed by one vote to achieve the necessary two-thirds majority required for incorporation into a treaty.

The unresolved problems of the first and second Law of the Sea Conferences were combined with new problems--the growing need for protecting the marine environment and the uncertainties from such technological advances as mining manganese nodules from the deep seabed.

Ambassador Arvid Pardo of Malta proposed at a U.N. General Assembly meeting in 1967 that a study be made of the peaceful uses of the seabed and ocean floor beyond national jurisdiction. Pursuant to this proposal, the United Nations established an ad hoc committee and in 1968 established a permanent Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction (known as the Seabed Committee).

On December 17, 1970, the U.N. General Assembly declared that the seabed and ocean floor beyond the limits of national jurisdiction and the resources of the area were the "common heritage of mankind," and it called for a third Law of the Sea Conference to deal comprehensively with ocean problems.

---

[1]Territorial Sea and the Contiguous Zone, High Seas, Fishing and Conservation of the Living Resources of the High Seas, and Continental Shelf. (See app. I for summaries.)

The Seabed Committee was charged with conference preparation covering a multilateral treaty for the breadth of the territorial sea, transit through and over international straits, living resources, mineral resources of the continental shelf and margins and of the deep seabed, protection of the marine environment, marine scientific research, and settlement of disputes. Since 1971 the Seabed Committee has convened six times to draw up articles on which participating members could agree before the conference. At the meetings various countries and groupings of countries presented detailed proposals covering law of the sea issues.

The third Law of the Sea Conference began with a 2-week organizational session at U.N. Headquarters in New York, December 3 to 15, 1973. The conference resumed with a 10-week substantive session in Caracas, Venezuela, from June 20 to August 29, 1974. The General Assembly has indicated that any subsequent session or sessions which may be necessary should be held no later than 1975.

The focal points for U.S. Government participation in this conference are the National Security Council Interagency Task Force of the Law of the Sea, the Special Representative of the President for the Law of the Sea Conference, and the Office of the Law of the Sea Negotiations within the Department of State.

SCOPE OF REVIEW

We made our survey in Washington, D. C., at the Department of State and other agencies. We reviewed documents and reports on U.S. oceans policy, plans, and preparation for the third Law of the Sea Conference and reports by officials on the results of the Conference. U.S. Government officials responsible for managing U.S. participation in the Conference were interviewed and industry representatives views and positions of major issues and results of the Caracas conference were noted.

We met with the Chairman, National Security Council Interagency Task Force on the Law of the Sea, to obtain advance review and comments.

CHAPTER 2

UNITED STATES OCEANS POLICY

The United States is a seagoing nation, dependent on the oceans. Proper use and development of oceans is essential to the United States and to other countries of the world. U.S. Presidents have recognized the inadequacy of existing ocean law to prevent conflict and have urged its modernization to insure orderly and peaceful development for the benefit of all mankind.

ORGANIZATIONS RESPONSIBLE FOR ESTABLISHING AND IMPLEMENTING POLICY

The President has overall responsibility for formulating and executing U.S. oceans policy. The National Security Council, composed of the President, Vice President, Secretaries of State and Defense, and Director of the Office of Emergency Preparedness, is the principal forum for Presidential consideration of this policy. This organization includes the National Security Council Under Secretaries Committee, whose Chairman is the Deputy Secretary of State. Under his direction are the (1) Chairman of the National Security Council Interagency Task Force on the Law of the Sea to propose oceans policy alternatives, (2) Special and Deputy Special Representatives of the President for the Law of the Sea Conference to implement oceans policy, and (3) Office of the Law of the Sea Negotiations within the Department of State, which supports both the Chairman of the National Security Council Interagency Task Force on the Law of the Sea and the Special Representative of the President for the Law of the Sea Conference.

The National Security Council Interagency Task Force on the Law of the Sea evolved from an ad hoc Law of the Sea Task Force established in 1969 within the State Department. In 1973 this ad hoc Task Force was formally placed under the direction of the National Security Council. The National Security Council Interagency Task Force on the Law of the Sea analyzes the pros and cons of different courses of action and formulates ocean policy choices. These choices are reviewed by the National Security Council Under Secretaries Committee, then sent to the President,

who ultimately decides U.S. oceans policy and positions. The executive group of the Task Force consists of representatives of the Departments of State, Defense, Interior, Commerce, Justice, Treasury, and Transportation; Federal Energy Office; Office of Management and Budget· Council on Environmental Quality; National Science Foundation; and Environmental Protection Agency.

The delegation to the third Law of the Sea Conference is responsible for implementing U.S. oceans policy and positions. The Special Representative of the President for the Law of the Sea Conference is the chairman of the delegation. The Chairman of the National Security Council Interagency Task Force on the Law of the Sea who is also the Deputy Special Representative of the President for the Law of the Sea Conference is vice chairman and a U.S. delegation representative. There were 15 alternates to the Caracas session, including representatives from the Executive Office of the President; Departments of State (3), Defense (2), Interior, Commerce, Treasury, and Transportation; Ambassador to Venezuela; Federal Energy Office; Environmental Protection Agency; National Science Foundation; and United States Mission to the United Nations. In addition to the representatives and alternates, there are a number of governmental staff advisers and other special advisers. Eight Senators and seven Members of the House of Representatives have been designated as advisers.

The Office of the Law of the Sea Negotiations was established in September 1973 and supports both the Special Representative of the President for the Law of the Sea Conference and the Chairman of the National Security Council Interagency Task Force on the Law of the Sea. On matters relating to the Law of the Sea negotiations, the Office of the Law of the Sea Negotiations supervises and coordinates positions within the executive branch, is responsible for action within the Department of State and for liason between the Congress and the interested public, and acts as the interagency and Department of State backstopping office.

CURRENT POLICY

President Johnson established the general direction of U.S. oceans policy when he stated in 1966 that:

> "Under no circumstances, we believe, must we ever allow the prospects of rich harvest and mineral wealth to create a new form of colonial competition among maritime nations. We must be careful to avoid a race to grab and hold the lands under the high seas. We must ensure that the deep seas and ocean bottoms are, and remain, the legacy of all human beings."

In the same year, the Marine Resources and Engineering Development Act became law (Public Law 89-454). This act declared U.S. policy to be to develop, encourage, and maintain a coordinated, comprehensive, and long-range program in marine science for the benefit of mankind and to assist in (1) protecting health and property, (2) enhancing commerce, transportation, and national security, (3) rehabilitating commercial fisheries, and (4) increasing use of these and other resources. The act also established the cabinet-level National Council on Marine Resources and Engineering Development and created a Commission on Marine Science, Engineering, and Resources. The work of the Council and the Commission helped the Government move from a narrow scientific approach to the oceans to a broad program of activities blending engineering, educational, legal, economic, and political considerations

On May 23. 1970, President Nixon announced a new oceans policy designed to accommodate a wide variety of interests. He emphasized the inadequacy of the present law of the sea to meet the needs of modern technology and the concerns of the international community. He noted the (1) threat of unrestricted exploitation and conflicting jurisdiction if the law of the sea were not modernized on a multilateral basis, (2) ecological hazards of unregulated use of seabeds, and (3) special responsibility of major maritime powers, which have technological capacity to exploit seabeds, to provide leadership in working out an equitable international solution.

The new policy proposed that all national claims to natural resources of the seabeds beyond 200 meters in depth be renounced and that these resources be regarded as the common heritage of mankind under the jurisdiction of a new international agency. The President urged all nations to adopt a treaty embodying these principles as soon as possible. He indicated, however, that it was neither necessary nor desirable to try to halt exploration and exploitation of the seabeds beyond the depth of 200 meters during negotiations, if activities were subject to the international regime to be agreed upon and if the international regime included due protection of the integrity of investments made in the interim. In addition, President Nixon proposed that the treaty establish rules to prevent unreasonable interference with other sea uses, protect the seas from pollution, and provide for peaceful and compulsory settlement of disputes.

A central goal of the oceans policy is to achieve an agreement that accommodates rather than compromises basic interests of the United States and other nations.

To this end, U.S. objectives at the third U.N. Law of the Sea Conference are to negotiate a comprehensive treaty which would provide for

--internationally agreed territorial sea limits not to exceed 12 nautical miles;

--unimpeded transit on, over, and under straits used for international navigation;

--full use and conservation of fishing resources;

--international standards defining rights and duties of states on exploiting marine resources;

--a satisfactory international legal system for rational and efficient development of deep seabed marine resources which guarantees access to U.S. firms on reasonable terms for development to occur;

--protecting marine scientific research rights;

--preserving and protecting the marine environment; and

--agreement on compulsory settlement of disputes.

CHAPTER 3

SUMMARY OF CARACAS SESSION

The third U.N. Law of the Sea Conference is one of the largest and most important ever held. About 150 nations were invited to participate in the conference to adopt a comprehensive legal regime for over two-thirds of the earth's surface--the oceans.

The first substantive session was held in Caracas, Venezuela, from June 20 to August 29, 1974. Of the nations invited to the conference, 138 were officially registered at the Caracas session. In addition, about 15 countries and entities attended as observers.

The international community did not achieve a comprehensive oceans law treaty at the Caracas session. According to the chairman of the U.S. delegation to the conference, the session was not a failure, but the results were not all that had been hoped for.

Most nations agreed that the interests of all nations would be best served by an acceptable and timely treaty. To that end, the conference has scheduled another substantive session in Geneva, Switzerland, from March 17 to May 10, 1975. A formal final session of the conference is to be held in Caracas for the signing of the agreement. This final session is to take place in accordance with the U.N.'s completion schedule.

ACCOMPLISHMENTS

The U.S. delegation believes the Caracas session showed that a comprehensive treaty can be achieved if detailed authentic negotiation takes place without delay, and it cited as the session's most important accomplishments that:

1. The vast array of critical issues and proposals were organized into a comprehensive set of working papers containing precise treaty texts which reflected main trends on each precise issue--the territorial sea, economic zone, straits, fisheries, continental margin, and marine scientific research. Alternative treaty texts for exploiting the deep seabed were further refined.

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

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

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

5. Traditional regional and political alignments of states were being replaced by informal groups whose memberships are based on similarities of interests on particular issues.

6. The number and tempo of private meetings increased considerably and moved beyond formal positions.

7. Rules of procedure were adopted by consensus early in the session and designed to promote widespread agreement.

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

SHORTCOMINGS

According to the chairman of the U.S. delegation, sufficient political will to make hard negotiating choices was missing. Principal reasons given for this were the conviction that another session would be needed and the absence of organized alternate treaty texts on many issues. Also, most states, including the United States, believe the major decisions must be combined in a single package. Every state has different priorities, and agreement on one issue is frequently conditional on agreement on another.

PREPARATIONS FOR GENEVA SESSION

The chairman of the U.S. delegation to the conference believes that a comprehensive oceans law treaty should be accomplished by the end of 1975. To do so, however, states must come to the Geneva session ready and willing to negotiate on all critical issues.

To prepare for the Geneva session, governments must appraise the results of the Caracas session, meet informally to explore possible accommodations that go beyond stated positions, and give their delegates instructions permitting successful negotiation. Political decisions at the highest levels are necessary to make accommodation on the critical issues possible.

U.S. positions for the Geneva session will go through the National Security Council for approval. Preparatory efforts will include bilateral talks between the Secretary of State and the heads of other states and various other bilateral meetings. Embassies are to be instructed to promote U.S. positions with other countries. These preparatory efforts are designed to obtain support and facilitate agreement on a comprehensive treaty.

Many countries, including the United States, are under domestic political pressures to take legislative action to protect their oceans interests. Since the Caracas session, the chairman of the U.S. delegation and other representatives have testified at several congressional hearings, particularly those concerned with deep seabed mining and fisheries. Their testimony at these hearings gave the Congress a general overview of the results of the Caracas session and was intended to discourage passage of legislation which could be harmful to the U.S. negotiating position at the Geneva session.

Private industries and special interest organizations are also concerned with the Law of the Sea Conference because the results will affect their activities. The Advisory Committee on the Law of the Sea met after the Caracas session to report on the progress of the first session and to discuss plans for the Geneva session. Members include representatives from, among others, petroleum, hard

minerals, fisheries, maritime industries, and various environmental and marine science organizations.

OBSERVATIONS

International agreement on a timely comprehensive oceans law treaty will be difficult. After 6 years of preparatory work, the international community was unable to agree on a complete treaty text on any of the issues at the Caracas session.

In general, that session can be characterized as the technical drafting and preliminary exploratory exchanges of views stage of the conference. It revealed the outlines of agreement and the details of disagreement. Wide differences among states on the general concepts and detailed items on major law of the sea issues must be overcome before states are ready to conclude a treaty.

Each state, depending upon its situation and circumstances, has a different idea of the relative importance of different issues and how they should be accommodated. The United States and some others have stated that it is essential to preserve unimpeded passage of straits and the general rights of navigation and to protect access by U.S. firms to the deep seabed under reasonable conditions for development to occur. Differences exist as to (1) the balance of coastal state rights and duties within an economic zone, (2) how the problem of pollution within a zone should be handled and scientific research conducted so as to further research while recognizing the interests of a state, and (3) how and by whom the deep seabed should be exploited.

The U.N. General Assembly has indicated that a treaty should be completed by the end of 1975. Competing ocean uses, however, may not wait for the international community to reach agreement. There is great pressure on many nations for domestic legislation to protect their interests until a treaty is agreed upon. In his closing statement before the Caracas session, the president of the conference stated that "we should restrain ourselves in the face of the temptation to take unilateral action" and then urged states to prepare to reach agreement "without delay" since

governments cannot be expected to exercise "infinite patience."

The international communities' failure to agree on a comprehensive oceans law treaty by the end of 1975 could result in unilateral action by many states. This would make agreement on a treaty substantially more difficult, if not impossible.

AGENCY COMMENTS AND GAO EVALUATION

GAO met with the Chairman, National Security Council Interagency Task Force on the Law of the Sea, to discuss the information and observations presented in our report.

The Chairman agreed with the information and with our observations and believes the report fairly assesses U.S. positions taken at the Caracas session and identifies major differences and problem areas.

We believe the discussions with the Chairman indicate an acknowledgement of the problems which must be overcome to successfully conclude a comprehensive oceans law treaty which protects U.S. ocean interests.

MATTERS FOR CONSIDERATION BY THE CONGRESS

The report assesses U.S. positions taken at the Caracas session of Law of the Sea Conference and identifies types of problems that U.S. negotiators will have to deal with during future sessions which are matters that Committees and Members of Congress will have to consider in ratifying and enacting legislation to implement a future oceans law treaty.

CHAPTER 4

TERRITORIAL SEA AND TRANSIT THROUGH STRAITS

U.S. INTERESTS

National security as well as economic interests are involved in insuring free movement of vessels and aircraft on, over, and under the high seas and international straits. The United States has global responsibilities for maintaining a stable and peaceful international order and has Armed Forces which must be relied upon to implement those responsibilities. These forces require maximum defense and strategic mobility for their operations at sea. Freedom of navigation and overflight are also essential to U.S. commercial interests. The large U.S. merchant marine is highly dependent on freedom of commerce on the high seas to maintain the flow of trade, and total trade to and from the United States is largely by ocean transportation.

U.S. POSITION

The territorial sea is the area adjacent to a state's coast where the state may, without interference, carry on coastal functions essential to national welfare. The United States has maintained that 3 miles is the maximum breadth of the territorial sea recognized under international law. Before the Caracas session, the United States proposed that, in the context of an overall satisfactory settlement of sea issues, it would be willing to accept a 12-mile territorial sea as a maximum distance. This willingness to agree to a 12-mile territorial sea is coupled with recognition of a treaty right of unimpeded transit through and over straits used for international navigation.

The United States is insisting on this guarantee of unimpeded transit through and over international straits because, by extending the territorial sea from 3 to 12 miles, more than 100 international straits between 6 and 24 miles wide would become overlapped by territorial seas, as shown in the following chart.

In these straits foreign shipping would have the right of innocent passage only, which permits all ships to navigate in the territorial sea so long as it is not prejudicial to the peace, good order, or security of the coastal state unless there is a clear guarantee of unimpeded transit. U.S. navigational interests are highly dependent upon unimpeded transit through many of these straits between 6 and 24 miles in width, and the United States believes the right of innocent passage is not an adequate guarantee of free transit.

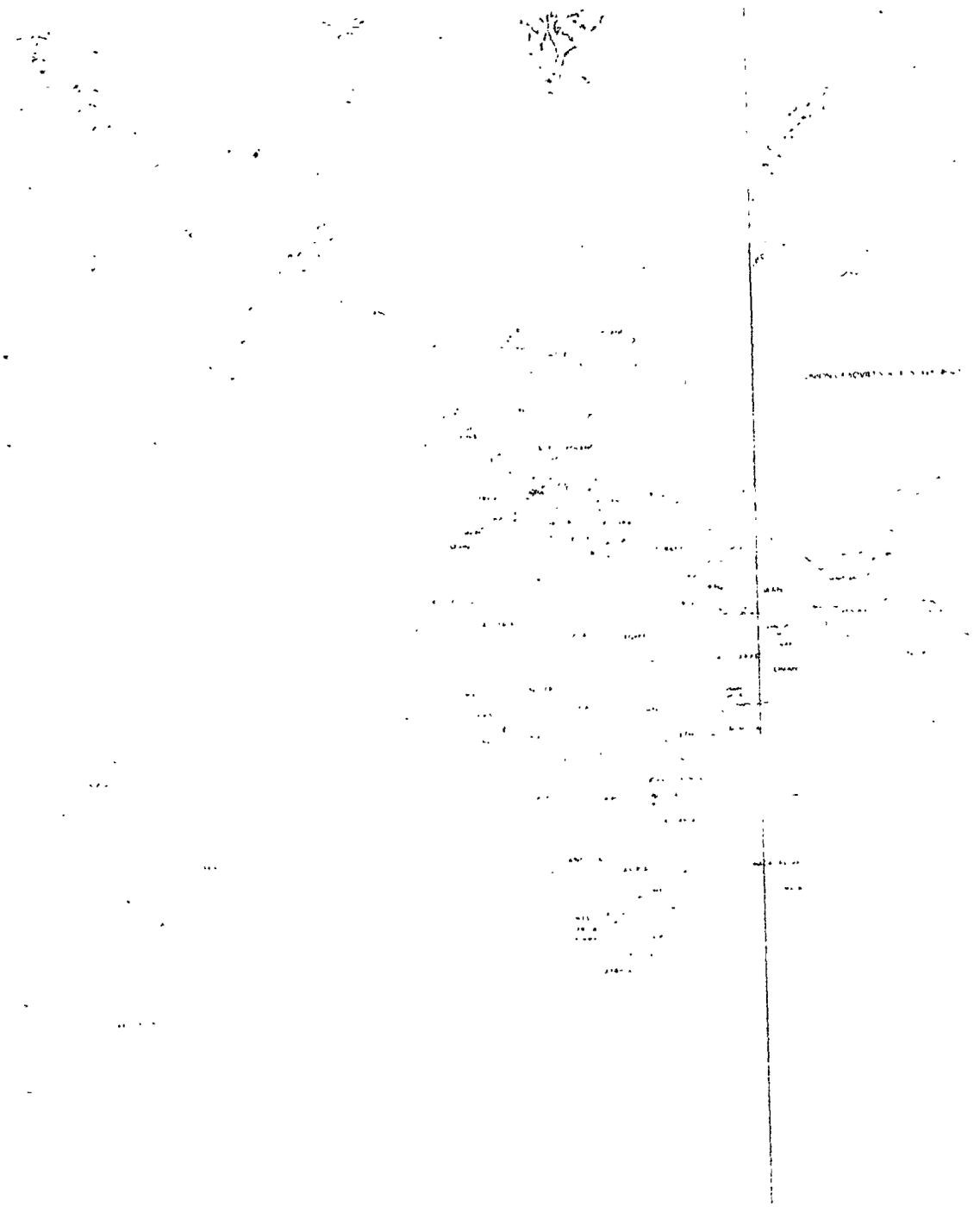
Under the 1958 Convention on the Territorial Sea, in the definition of innocent passage there is no right for submerged transit by submarines or overflight of territorial seas. In addition, a number of coastal states have interpreted innocent passage subjectively, as permitting them to prevent passage because of types of vessels, such as supertankers or nuclear-powered vessels, or the nature of the cargo, or destination of the vessel.

The United States considers that straits wider than 6 miles currently have high seas within them, where all states may exercise the freedom of the high seas. The U.S. draft treaty article, however, would provide a right of unimpeded navigation on, over, and under these international straits, which is less than that presently exercised under existing highseas principles. Under the U.S. proposal, navigation would be limited to a right in international straits to move through the strait in the normal mode of travel for the vessel or aircraft. The proposal also provides that surface ships transiting straits observe the traffic-separation schemes of the Intergovernmental Maritime Consultative Organization, that state aircraft normally comply with regulations and procedures of the International Civil Aviation Organization, and that strict liability apply for damage caused by deviating from the regulations of these organizations. The U.S. proposal is not limited to military vessels and aircraft but includes unimpeded transit for commercial vessels.

RESULTS OF CARACAS SESSION

The inclusion in the treaty of a 12-mile territorial sea was almost formally agreed upon, subject to acceptable

World Straits Affected By A 12 Mile Territorial Sea



resolution of other issues. Major conditions for accepting 12 miles as a maximum are a guarantee of unimpeded transit of straits and a 200-mile exclusive economic zone.

The U.S. delegation, noting the growing consensus on the limits of national jurisdiction, stated that the United States was prepared to accept general agreement on a 12-mile outer limit for the territorial sea and a 200-mile outer limit for the economic zone. These conditions, according to the U.S. position, must be part of a comprehensive treaty package including a satisfactory regime within and beyond the economic zone and provision for unimpeded transit of straits used for international navigation.

A variety of draft treaty articles on the territorial sea were introduced which, for the most part, paralleled the provisions of the 1958 Territorial Sea Convention. Most important among these is the question of innocent passage in territorial seas. Other draft treaty articles presented would make innocent passage more objective by restricting opportunities for coastal states to apply subjective criteria as to what is or is not innocent passage. These articles detail those activities which constitute innocent passage and those which are prohibited.

Several states made proposals on straits, and the general trend was toward unimpeded passage. However, states bordering straits frequently expressed concern over security, navigation safety, and pollution prevention. The United States, in commenting on the several proposals, reiterated the fundamental importance of unimpeded passage on, over, and under straits used for international navigation and addressed the means of accommodating the interests of states whose ships and aircraft transit a strait and the interests of states bordering the strait. In general, the United States emphasized that:

--The right of unimpeded transit is solely for the purpose of continuous and expeditious transit of the strait and that ships and aircraft in transit refrain from any threat or use of force against the territorial integrity or political independence of a state bordering the strait.

--Vessels and aircraft in transit comply with applicable international safety and pollution regulations.

--Subject to appropriate safeguards and usual exemptions for ships and aircraft entitled to sovereign immunity, states bordering straits should be able to enforce violations occurring within the strait of approved traffic-separation schemes.

--Adequate provisions for compensation be made should damage result despite the most rigorous prevention requirements.

--States bordering straits should recommend to the appropriate international organization for adoption any special traffic-separation schemes and safety or pollution standards they feel are required.

--Distinctions regarding the right of passage could not be made between commercial vessels and warships.

States were unable to begin formal negotiations on the territorial sea and straits issues at the Caracas session. They were successful, however, in preparing working papers reflecting the main trends on each issue.

OBSERVATIONS

The first and second Law of the Sea Conferences failed to establish the breadth of territorial seas, although it was agreed that the broadths of the territorial sea and contiguous zone taken together could not exceed 12 miles. Establishing such a limit is one of the most critical conference issues. The U.S. initial position on willingness to accept a 12-mile territorial sea was expanded at the Caracas session to include conditional agreement on a 200-mile economic zone. Although there is general agreement on a 12-mile territorial sea, this critical issue may be one of the last resolved at the third Law of the Sea Conference because of the conditional provisions of acceptance. The major issues are the provisions for innocent passage in the territorial sea and unimpeded transit of straits used for international navigation.

The United States has stressed that the right of innocent passage is not a satisfactory guarantee of free transit through international straits. This position is based on the inequities of the 1958 Convention on the Territorial Sea which prohibits submerged transit by submarines and overflight in the territorial sea and allows coastal states the discretion to subjectively interpret what passage is innocent in the territorial seas. The U.S. proposal provides that innocent passage in the territorial sea would continue as defined in the 1958 Convention. This would not apply to transit of straits.

The question of the regime of innocent passage in the territorial sea was reopened at the Caracas session. This is evident by the various draft treaty articles which were parallel to the provisions of the 1958 Convention. Other draft treaty articles presented listed activities considered innocent and those considered not innocent.

CHAPTER 5

FISHERIES

According to traditional international law, all nations have equal rights to fish anywhere on the high seas. In the last 15 years, as fishery technology has become extremely sophisticated and fishermen have learned that the resources of the sea are not inexhaustible, continued viability of this rule has come into question.

President Truman's Proclamation 2668 of September 28, 1945,"Policy of the United States With Respect To Coastal Fisheries In Certain Areas Of The High Seas," established as U.S. policy, that where fishing activities were developed or maintained jointly by the United States and other nations, conservation zones would be established. Shortly after this, Chile declared its exclusive jurisdiction over the seas adjacent to its coast to a distance of 200 miles and predicated its decision on the Truman Fisheries Proclamation. Since that time, approximately 35 other nations have declared exclusive fishery zones beyond 12 nautical miles.

In 1958 and 1960 the international community met to codify international rules on the law of the sea. The first Law of the Sea Conference in 1958, under the Convention on the High Seas, continued the traditional concept of freedom of the seas, including freedom of fishing. It failed to determine a maximum breadth for the territorial sea or for coastal state exclusive fisheries jurisdiction. The second Law of the Sea Conference in 1960 also failed to delineate fishing rights. At that time, many nations supported a 3-mile territorial sea and 12-mile fishery zone. In 1966 the United States adopted an exclusive contiguous fishing zone of 12-miles seaward of its coast.

FISHING INDUSTRY

The United States has both coastal and distant-water fishing industries. About 80 percent of U.S. fish harvested [illegible] of the coastal species and 9 or 10 percent the far-ranging ocean species, like the tuna. Another 8 to 10 percent is

the Pacific salmons an anadromous species, very far-ranging in its adult life. Offshore shrimp harvested off South and Central America amounts to about 3 percent of the total U.S. catch.

In 1956, the United States was the second largest fishing nation in the world; in 1972 it ranked sixth. The decline is due to several factors, most notable of which is competition from foreign vessels, particularly those operating off the North Atlantic coast.

From 1950 to 1972 world production of fish multiplied threefold, from 20 million tons to about 76 million tons. The U.S. share of the catch has ranged between 2 and 3.1 million tons. Thus, although the U.S. take of fish has remained relatively stable, foreign efforts have increased monumentally.

In 1972 the U.S. fishing industry caught about 2.5 million tons of fish worth about $765 million. During the same year, Japan caught 11.3 million tons and the Soviet Union caught 8.5 million tons. Within its 12-mile fishing zone, the U.S. fishing industry harvested about 1.9 million tons of fish worth about $400 million. About 0.3 million tons of fish worth about $210 million were caught by U.S. fishing craft off U.S. shores at a distance of 12 to 200 miles. In this same area, foreign vessels caught over 3 million tons of fish, Japan and the Soviet Union each caught over 1 million tons of fish. The U.S. fishing industry also caught about 0.3 million tons of fish worth about $155 million in international waters off foreign shores.

The foreign fleets operating off U.S. coasts have large modern fishing and support vessels using the most modern fishing methods. Development, particularly by the Soviet Union and Japan, of highly mechanized factory fleets using sophisticated sonar equipment to locate fish and recent massive fishing efforts have contributed to overfishing of stocks off the U.S. coasts. Scientists have now concluded that approximately 25 stocks of fish are depleted or threatened with depletion. Stocks damaged or threatened off the U.S. coasts of interest to U.S. fishermen include Atlantic haddock and yellowtail; Pacific

mackerel, shrimp and yellowfin sole; and Atlantic and Pacific halibut.

The U.S. distant-water fishing industry, principally tuna and shrimp, does most of its fishing off the coasts of foreign countries. Several of these countries have claimed exclusive fishery zones beyond 12 miles, which as a matter of policy are not recognized by the United States. These claims have led to numerous disputes between the United States and other countries, chiefly Ecuador and Peru, over seizing and fining U.S.-flag fishing vessels operating in these zones.

Fisheries play a large role in the national diet, but the domestic fleet is supplying less fish as more is being demanded. Meanwhile, some important and valuable fish species are being depleted. In 1969, U.S. residents consumed 2.8 million tons of seafood, and in 1973 they consumed 3.5 million tons, an increase of almost 25 percent. To meet the difference between domestic fishing fleet catches and demand for fish products, the United States has imported increasing amounts of fish from other countries. In 1950 the United States imported only 23.4 percent of its seafood, in 1972 it imported more than 60 percent. The declining fishing industry and the desire for seafood led to a 1972 adverse balance of payments of $1.3 billion in fish and fishery products, a 318-percent increase since 1960. U.S. fishery exports since 1960 have risen from $44.2 million to $157.9 million, while imports have increased from $363.3 million to $1,494.4 million.

INTERNATIONAL AGREEMENTS AND DOMESTIC LEGISLATION

In the history of the law of the sea, specific multilateral or bilateral agreements for the conservation of fisheries are relatively recent, responding to the inability of the traditional rule of freedom of fishing to conserve fish and settle controversies between nations. For the most part, international agreements have not solved the problem, in the sense that depletion of some of the most valuable species of ocean fish has not been prevented.

Presently, the United States is party to 22 international fishing agreements and periodically engages in bilateral and multilateral negotiations with foreign nations to restructure these treaties and to frame new ones seeking to conserve fish resources. Nearly all stocks of fish considered to be depleted or threatened with depletion are subject to these international agreements. The ineffectiveness of these international agreements to regulate and control fishing efforts on depleted stocks can, to some degree, be attributed to the problem of enforcement. Generally, international fishing agreements provide for enforcement by each signatory nation of its own citizens. A nation, however, which has directed its fishing fleet to return a high quota of fish may not be as diligent as is necessary to enforce full compliance with international agreements.

The United States has attempted to resolve jurisdictional fishing claim disputes through informal talks and negotiations with concerned nations. In addition, the Congress has attempted to support the rights of U.S. fishermen by legislation. The executive branch, however, has been reluctant to implement the legislation, and when permited by law, has exercised its authority to waive various sanctions. Domestic legislation designed to protect U.S. fishermen includes:

1. The Fishermen's Protective Act of 1954, as amended, provides for compensating operators of U.S. fishing vessels for fines, seizures, etc., for fishing in what the U.S. Government recognizes as international waters. It also requires that the Secretary of State take action to collect claims against foreign governments arising from these payments.

2. The Foreign Assistance Act of 1961, as amended, requires that the United States consider withholding assistance from any country that interferes with U.S. fishing vessels in international waters.

3. The Foreign Military Sales Act of 1968, as amended, prohibits sales of military equipment to countries that seize or fine U.S. vessels fishing more than 12 miles from their coasts.

4. A 1967 act concerning naval ship loans provides for terminating loans of U.S. naval vessels to any country that has seized a U.S. fishing boat in international waters.

The Department of State has information from 1954 to 1974 concerning the seizure of 287 vessels by foreign governments in territorial waters or on the high seas not recognized as such by the United States. Under the Fishermen's Protective Act, it has received and considered a total of 215 claims aggregating more than $6.4 million and has certified 204 claims for more than $6.3 million to the Secretary of the Treasury for payment. All certified claims have been paid. There are no U.S. Government claims pending against countries that seized U.S. fishing vessels, and no amounts have been recovered from such countries.

Ecuador, Peru, and Panama have received U.S. assistance under the Foreign Assistance Act and the Foreign Military Sales Act during periods when they seized U.S.-flag fishing vessels and imposed fines and fees as conditions of release. Peru also received assistance under the 1967 act concerning naval ship loans.

Pursuant to the Fishermen's Protective Act, Ecuador, Peru, and Panama were notified that reimbursements had been made resulting from seizures by them. In each case the corresponding deductions from U.S. assistance programs were waived on the basis of finding that it was not in the national interest to make the deductions.

The Foreign Military Sales Act has been applied on several occasions. Military sales were suspended to

--Ecuador and Peru in the spring of 1969 and lifted in August 1969,

--Ecuador on January 11, 1971, and lifted on January 21, 1974,

--Peru from March 30, 1971, to March 30, 1972, when the suspension period expired,

--Peru in December 1972 and lifted in May 1973

and was found to apply to Panama but was waived on October 29, 1974.

Ecuador, Peru, and Panama have not been excluded from assistance pursuant to the Foreign Assistance Act. The Administrator, Agency for International Development, has reviewed the situation on several occasions and determined that assistance should be continued.

The only vessel involved under the provisions of the 1967 act concerning naval ship loans was a destroyer loaned to Peru. The destroyer was allowed to remain in Peruvian possession without making a new agreement for extending the loan, and was subsequently sold to Peru.

The United States approach has been that actions should contribute to a negotiated solution of the fishing boat seizure problem. The executive branch feels that sanctions have been ineffective in promoting settlements and have blocked possibilities for negotiations when imposed.

For the past several years, the Congress has considered, but not passed, other legislation for the conservation and management of fisheries to protect the domestic fishing industry. One bill (S. 1988 93d Cong. 2d sess.) was intended to provide the United States with fishery management jurisdiction over fish within a 200 nautical mile zone and over anadromous species beyond such a zone for managing and conserving such fish. This was an interim bill responding to the danger to coastal and anadromous fish from overfishing. It would have automatically terminated when general international agreement of fishery jurisdiction was achieved and a universal treaty came into force or was provisionally applied. The executive branch is strongly opposed to unilaterally extending the U.S. fisheries contiguous zone, contending it (1) is harmful to overall U.S. oceans interest, (2) could seriously damage U.S. foreign policy objectives, (3) would be incompatible with existing international law, (4) would pose serious risks for our fishery interests who would receive greater protection under the U.S. proposals, (5) would seriously undercut the effort of all nations to achieve a comprehensive oceans law treaty, and (6) should be measured against the cost required to police such an area against nations which refuse to accept the claim.

Another bill (S. 3783 93d Cong. 2d sess.) was intended to implement article 7 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas. This article provides that any coastal state may adopt unilateral measures of conservation appropriate to any stock of fish or other marine resource in any area of the high seas adjacent to the territorial sea, provided that negotiations to that effect with other states concerned have not led to an agreement within 6 months. The executive branch has not expressed a formal position on the legislation, but indications are that it is potentially not as objectionable as a unilateral extension of the U.S. fisheries contiguous zone. The principal problem is that the most important nations fishing for U.S. coastal and anadromous species, including the Soviet Union and Japan, are not parties to the Convention on Fishing and Conservation, so that, to be effective, such legislation must apply to both parties and nonparties.

ENFORCEMENT

The U.S. Coast Guard has primary responsibility for enforcing legislation and agreements relating to fishing off U.S. coasts. Coast Guard enforcement efforts are coordinated with other agencies, particularly the State Department, when foreign vessels are involved. Enforcement against U.S. fishermen is easier and cheaper because boarding at sea is not required since U.S. fishing boats must return to U.S. ports. There they can be examined for conformity to regulations on type and amount of fish, fishing gear, and equipment. Foreign vessels have better opportunities to use illegal equipment and to catch prohibited species since they must be boarded at sea or observed violating regulations. Foreign fishing vessels observed in violating regulations are reported to the flag state for disposition.

The Coast Guard believes an expanded U.S. fishery zone would not create serious enforcement problems if it is given adequate resources. In planning for an extension of U.S. fishery jurisdiction, the Coast Guard has developed several approaches, but favors one based primarily on covering known fishing areas off U.S. coasts. Enforcement efforts would concentrate on areas where and when fishing is actually being done. Some coverage of the full range of jurisdiction will be provided to determine whether changes in present patterns of fishing occur, to make the U.S. presence known throughout

the area, and to facilitate apprehension. In a recent study, Coast Guard estimates that, to implement this approach, it would need to increase operating facilities by 6 high-endurance cutters, 6 long-range search aircraft, 4 medium-range search aircraft, and 10 shipboard helicopters. Start-up, acquisition, and reactivation costs are estimated at $63.2 million, and increased annual operating costs are estimated at $47.2 million.

U.S. POSITION

The advent of more efficient fishing techniques and a growing demand for fishery products have led to serious depletion of some stock and have demonstrated that there is a pressing need for a rational conservation and allocation system for the living resources of the oceans. Accordingly, in preparation for the Caracas session, the United States adopted a position of broad coastal state control over coastal stocks (e.g., haddock) and anadromous stocks (e.g., salmon) coextensive with the range of each species and international management of such highly migratory species as tuna.

Under this approach coastal nations would have broad resource management jurisdiction over coastal stocks throughout their migratory range. They would also have preferential harvesting rights, to the limit of their capacity, to such coastal stocks within the allowable catch. Other nations would be entitled to harvest the remaining allowable catch. Coastal nations from whose waters anadromous species originate would also have management jurisdiction and preferential rights over anadromous stocks throughout their range on the high seas.

Highly migratory species cover vast distances through the waters off many nations. The U.S. proposal, therefore, provides for international or regional management for such stocks.

The United States has proposed that the fishery provision be applied on a provisional basis. That is, it should be applied after signature of the treaty but before waiting for the process of ratification to bring the treaty into full legal effect.

RESULTS OF CARACAS SESSION

The maritime nations, particularly the United States, United Kingdom, and the Soviet Union, made moves at the conference toward increased coastal states rights. The U.S. draft articles proposing the establishment of a 200-mile economic zone includes a section on fishing.

The fishing section, of the 200-mile economic zone articles, gives coastal states exclusive rights for regulating fishing in the 200-mile economic zone. It is subject to a duty to conserve and insure full use of fishery stocks, taking into account environmental and economic factors. To the extent that coastal states do not fully use fishery resources, they have a duty to permit foreign fishing on the basis of specified priorities and under reasonable coastal state regulations. Priorities for permitting foreign fishing in coastal state areas are for (1) states that have normally fished for resources, (2) states in the region, particularly landlocked states and those having limited access to living resources off their coasts, and (3) all other states. Coastal state regulations would include conservation measures and provision for harvesting by coastal state vessels up to their capacity, and could include payment of reasonable license fees for foreign fishermen.

Fishing for anadromous species, such as salmon, beyond the territorial seas, proposed to be 12 miles, would be prohibited except as authorized by the state of origin.

Fishing for highly migratory species, such as tuna, would be regulated by coastal states in the 200-mile economic zone and by the flag state outside the zone. Both cases would be regulated, including fees, conservation, and resource allocations, by appropriate international or regional fishing organizations. Membership in the organizations would be mandatory for all coastal states in the region and for any states that fish the species, and the coastal state would receive reasonable fees for the highly migratory fish caught in its zone by foreign vessels.

The U.S. proposal also allows landlocked states to have access to fisheries in the economic zone of an adjoining coastal state. This privilege to fish on an equal basis

would be by agreement between the states concerned. Also, neighboring coastal states may allow each others' nationals the right to fish in specified areas of their respective economic zones on the basis of reciprocity, long and mutually recognized usage, or economic dependence of a state or region on exploitation of the resources of that area. The U.S. proposal that fishery provisions be applied on a provisional basis was retained at the Caracas session.

Three main approaches concerning fisheries in the economic zone seem to have emerged at the Caracas session. One is the U.S. approach, which couples coastal state regulation with conservation and full use duties. Another is complete coastal state regualtion, with no coastal state duties. A third approach exemplified by the proposals of distant-water fishing states, places more emphasis on the role of regional organizations. In addition to these different views, other negotiation problems encountered at the Caracas session were (1) landlocked states' access rights to fisheries, (2) regional and international organization roles in fishery management, and (3) special provisions for highly migratory and anadromous species. The negotiation and elaboration of these duties and other issues will be important in any future sessions of the Law of the Sea Conference.

OBSERVATIONS

U.S. coastal and distant-water fishing industries have different problems and interests. The coastal fishing industry is interested in being protected from highly mobile, foreign distant-water fishing fleets operating off U.S. coasts. Overfishing by these fleets has contributed to the depletion or threat of depletion of many stocks of fish of direct interest to U.S. fishermen. On the other hand, U.S. distant-water fishermen, particularly of tuna and shrimp, are interested in continuing to fish off the coasts of other nations. Several countries claim exclusive fishery zones not recognized by the United States, which has led to seizing and fining of U.S. fishing vessels operating off their coasts. Efforts to protect U.S. fishing interests have had little effect on problems affecting the U.S. fishing industry.

Current legislation allows economic sanctions to be applied to countries interfering with U.S. fishing vessels

operating in international waters. U.S. policy, however, restricts the use of these sanctions because of possible strains on foreign relations. In addition, nearly all fish stocks considered to be depleted or threatened with depletion are subject to international agreements. The agreements are designed to regulate and control fishing activities for certain fish stocks, but they have not solved the depletion problem.

The protection of U.S. fishery interests and solutions to problems can be pursued through international agreement or unilateral action. Depletion or the threat of depletion of many fish stocks of direct interest to U.S. fishermen indicates a need for emergency action to manage, regulate, and control fish resources. Legislation pending before the Congress exemplifies the need. On the other hand, according to the executive branch, unilateral action by the United States could seriously harm U.S. fishing and other ocean interests and at best probably would only anticipate a result likely to emerge from a successful conference. In substance, there is no great difference between the objectives of congressional bills to extend the U.S. fishery zone and the U.S. proposal at the Caracas session, although, according to the executive branch, the U.S. proposal would provide more protection to the U.S. fishing industry.

The full use obligation is related to the access problem by foreign states. The obligation preserves a basis for U.S. access to coastal species off foreign coasts and foreign state access to coastal species off U.S. coasts. The probability of the major maritime powers, including the United States, the Soviet Union, and Japan, accepting expanded coastal state jurisdiction over fisheries without some kind of assured access is small. A treaty without participation of the major maritime powers would be meaningless.

Another problem of the full use concept is the effect on traditional distant-water fishing as coastal state harvesting capacity increases. Stocks are being used up to the allowable catch in many major fishing grounds because of demand and depletion factors. The United States wants to increase its own guaranteed share in major fishing grounds off its coasts and to protect its fisheries for coastal

species off foreign coasts. An expansion of the coastal state guaranteed share of the allowable catch based on its harvesting capacity would require reductions in and possible elimination of traditional foreign fishing of coastal species.

Exclusive jurisdiction in an expanded U.S. contiguous fishery zone is no guarantee that all U.S. interests will be protected or that the various interests of other states will be accommodated. Establishing conservation measures, such as the size of allowable catch, and regulations governing access will play an important part in protecting U.S. interests. Equally important, however, will be implementing and enforcing these measures and regulations.

CHAPTER 6

MINERAL RESOURCES

Land areas below the oceans consist of two general geological units--the continental margin and the deep seabed. Geologically the continental margin is part of the adjoining continent. Rock formations on land extend out under the shelf and slope. The same minerals, therefore, which are found onshore will be found offshore.

The United States has an interest in the offshore mineral resources. Petroleum is being exploited by drilling farther and farther on the continental margin as technical advances permit. Manganese nodules on the deep seabed hold promise of future supplies of valuable resources.

CONTINENTAL MARGIN--PETROLEUM AND GAS

A plentiful and insured supply of energy to support the economy is essential to U.S. interests. Although potential alternatives to convential oil and gas as energy sources are in the research stage, the United States will rely heavily upon petroleum and natural gas to meet rising energy demands for some years to come. Petroleum and natural gas supplies, therefore, must be augmented rapidly and consistently with economic, environmental, and security interests.

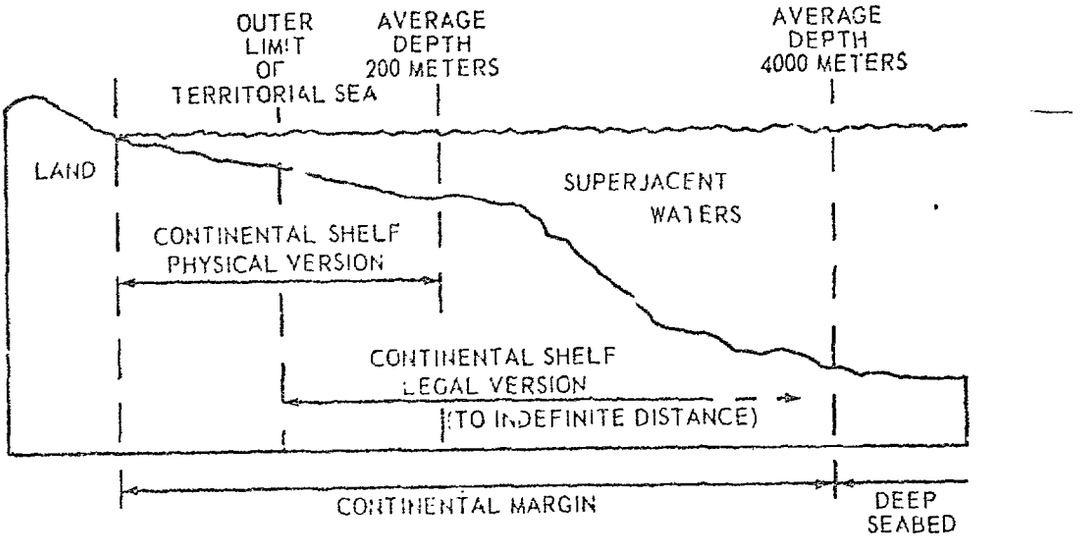
Available sources for increasing oil and gas supplies are primarily foreign imports, Northern Alaska reserves, and the large undiscovered potential reserves of the continental shelves and adjacent slopes. Of these three sources, increasing imports is the one most readily available for meeting current and near-term demands. Economic impacts and environmental concerns, as well as security considerations associated with oil and gas imports from foreign areas, provide strong incentives for accelerated development of domestic resources. The undiscovered petroleum and gas potentials of the continental shelves seem substantial and, if developed, would greatly improve levels of total domestic production.

U.S. Jurisdiction

In President Truman's Proclamation 2667 of September

1945 the United States first claimed exclusive ownership of the natural resources of the continental shelf adjacent to its coasts. The 1958 Convention on the Continental Shelf allows coastal states the exclusive rights to explore and exploit natural resources out to the 200-meter isobath or beyond, to where the depth of superjacent waters admits to exploitation. There are legal disputes, however, as to the outer boundary for exploiting these resources. This legal description of the continental shelf differs substantially from the geograhic description determined by the physical attributes. (See chart below.)

CONTINENTAL SHELF IN PROFILE



Note: Average depths obtained from U.S. Department of the Interior Conservation Yearbook Series, Number 8, 1972. Other data obtained from above source and Department of State Geographic Bulletin, Number 3, revised Oct. 1969.

The portion of the continental shelf under Federal jurisdiction was defined in the Outer Continental Shelf Lands Act and the Submerged Lands Act, both enacted in 1953. These statutes provide for an extension 3-miles seaward from the coastline being assigned to the states (of the United States). The area beyond that, the Outer Continental Shelf (OCS), is assigned to the Federal Government. This 3-mile limit has been challenged by a number of coastal states, successfully so far only by Texas and Florida which have jurisdiction over their Gulf Coast submerged lands out to 3 marine leagues or roughly 9 miles.

Federal agencies with OCS responsibilities

OCS resources are public resources. The Federal Government is responsible for managing and controling them, and this responsibility is assigned to specific Federal agencies by statute.

The Department of the Interior has the major role in regulating OCS resource development. Qualified persons can acquire the lease rights to develop a specific tract through a competitive bid system. Interior's Bureau of Land Management administers OCS leasing provisions and the United States Geological Survey administers OCS operating regulations and is also responsible for OCS geological and geophysical exploration.

The Army Corps of Engineers has responsibilities for preventing certain navigational obstructions by requiring permits for placing structures on the OCS, such as artifical islands, offshore platforms, and floating drilling rigs. The U.S. Coast Guard has other navigational responsibilities, including (1) insuring that structures are properly marked, (2) establishing and enforcing safety regulations for structures, (3) inspecting and certifying floating drilling rigs, and (4) maintaining surveillance for oil spilled or discharged into the OCS or adjacent waters.

The Outer Continental Shelf Lands Act authorizes the Secretary of the Interior to grant pipeline rights-of-way for transporting minerals on the OCS. Use of such pipelines is regulated by the Federal Power Commission with respect to natural gas and by the Interstate Commerce Commission with respect to oil.

Other agencies with OCS responsibilities include the Federal Maritime Commission which, under the Federal Water Pollution Control Act Amendments of 1972, determines the financial responsibility of oil shippers operating in the oceans adjacent to the United States. Commerce's National Oceanic and Atmospheric Administration collects weather data and makes marine climatology analyses used in platform design; provides mapping and charting services consisting of bathymetric, geophysical, and navigational information; and provides geodetic and boundary surveys.

OCS development, reserves, and resources

Until 1970, leasing developments on the OCS were controled by the fact that the United States had excess productive capacity for petroleum and natural gas. The pressures were for an orderly development of these resources so as not to abandon and reduce onshore oil and gas production. From 1954 to 1974, 10.77 million acres were placed under lease. About one-third of this total, or 3.66 million acres, were leased from 1971 to 1974.

In 1973, President Nixon announced an accelerated OCS development policy which would triple the annual acreage leased by 1979, beginning with expanded sales in 1974 and including areas beyond 200 meters in depth under conditions consistent with the President's Ocean Policy statement of May 1970. (See p. 7.) Subsequently, areas seaward of 200 meters in depth have been offered for lease offshore of Louisiana. Specifically, 414,531 acres in water depths 200 meters and beyond, including 69,120 acres in water depths of 300 meters or beyond are included in OCS Sale 33.

In January 1974 President Nixon announced a program to greatly increase the rate of leasing of the OCS for oil and gas exploration. The program sets a goal of leasing 10 million acres in 1975, with the future rate to be determined by market needs and the industry's performance on leased acreage.

The United States Geological Survey estimates that there are proved reserves of 2.2 billion barrels of oil and 2 trillion cubic feet of gas in the OCS off southern California and

3.5 billion barrels of oil and 36.8 trillion cubic feet of gas in the OCS of the Gulf of Mexico off Louisiana and Texas. This is a total of 5.7 billion barrels of oil and 38.8 trillion cubic feet of gas.

In addition to these reserves, there are believed to be very large amounts of undiscovered oil and gas resources. Based on geological inference from indirect evidence, the potential recoverable petroleum resources remaining on the continental shelf are estimated to be about 65 to 130 billion barrels of crude oil and natural gas liquids and about 395 to 790 trillion cubic feet of natural gas. In 1972 the Secretary of the Interior estimated that half the crude oil and natural gas liquid resources in areas off U.S. shores is in depths greater than 200 meters. The United States Geological Survey estimates that the petroleum resources of the U.S. continental margin seaward of 200 miles exceed 40 billion barrels. The following chart shows the resource potential of the U.S. continental margin.

Oil and gas have been produced from the OCS since 1953. In 1973, oil production averaged 1,081,000 barrels a day, of which 1,029,000 barrels came from wells in the Gulf of Mexico and 52,000 barrels from fields off southern California. Gas production totaled 8.9 billion cubic feet a day in 1973, all but 20 million cubic feet from the Gulf of Mexico.

The likelihood of expanding offshore petroleum exploitation activities in the near future is very real. According to one authority

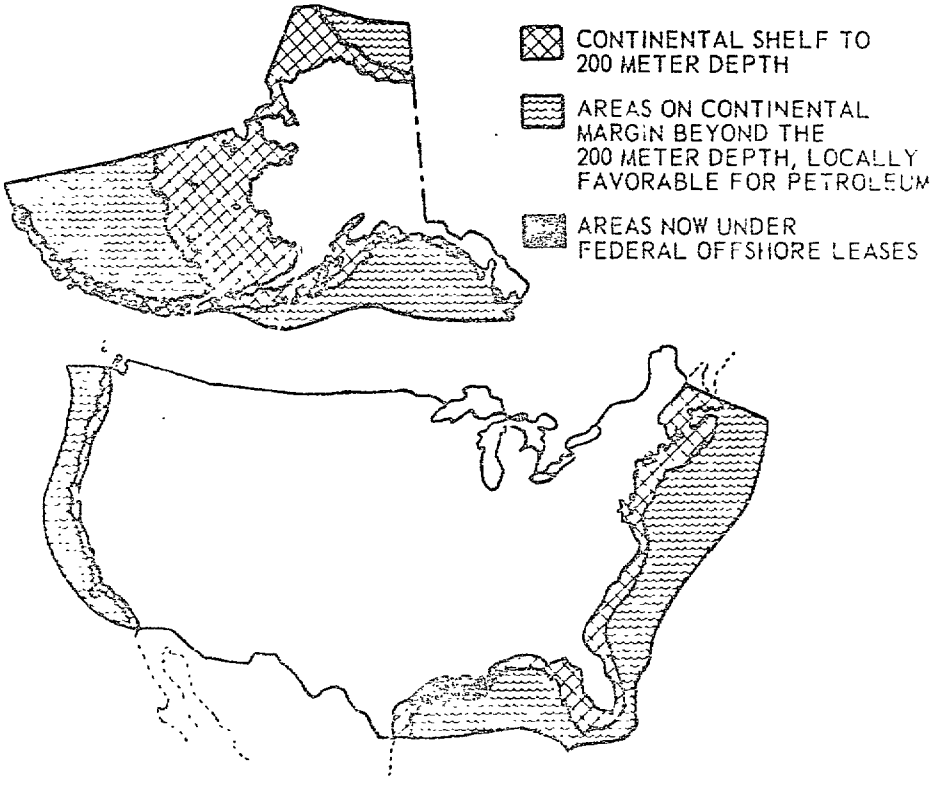
> "the petroleum industry now possesses technologies capable of developing oil and gas resources in water depths of more than 600 meters, (almost 2,000 feet) and is rapidly developing technologies which will make it feasible to develop commercial accumulations of oil and gas at virtually unlimited water depths."

The National Petroleum Council in 1969 estimated that by 1974 technology would allow drilling and exploitation in depths up to 1,500 feet (457 meters) and that within 10 years technical capability to drill and produce in depths of 4,000 to 6,000 feet (1,219-1,829 meters) would probably be attained. As of December 31, 1972, production platforms

have been installed in the Gulf of Mexico in depths up to 373 feet and drilling has been done in depths of more than 500 feet and more than 125 miles from shore. In the Santa Barbara Channel, production platforms have been installed in depths of 193 feet and drilling has been done in depths of 1,497 feet.

In addition to energy interests off the U.S. coasts, the petroleum industry is interested in developing resources off the coasts of other nations. The United States produces much of the world's offshore technology and U.S. oil companies are major investors in areas subject to foreign jurisdiction.

THE RESOURCE POTENTIAL OF THE U.S. CONTINENTAL MARGIN



Source: U.S. Department of the Interior Conservation Yearbook Number 8, 1972.

U.S. position

Before the Caracas session, the United States stated that it was prepared to accept coastal state resource jurisdiction in a broad coastal seabed economic area. Here the coastal state would have exclusive rights over offshore installations affecting its economic interests. The United States had not indicated a position on the limits of such an area, but emphasized that the area must be subject to appropriate international standards for

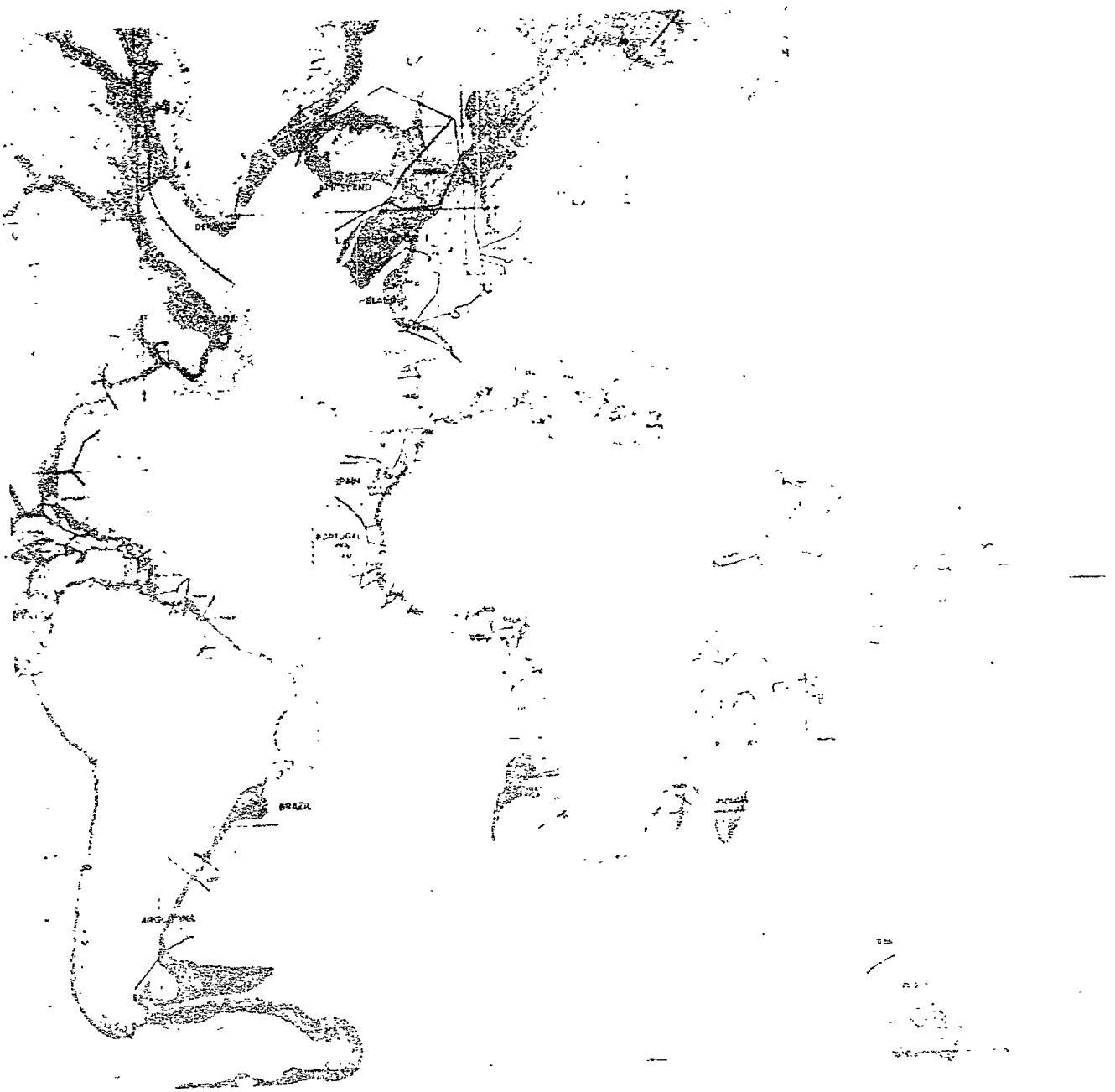
--protecting other uses of the area, particularly navigation and other high sea freedoms;
--preserving the marine environment;
--protecting the integrity of agreements and investments made in the area;
--providing for compulsory dispute settlement; and
--providing for revenue sharing for international community purposes.

Results of Caracas session

U.S. draft articles proposing the establishment of a 200-mile economic zone in the treaty consists of three sections, the economic zone, fishing (see ch. 5), and the continental shelf.

The economic zone section provides for a 200-mile outer limit with coastal state sovereign and exclusive rights over the natural resources of the continental shelf, exclusive rights over drilling and economic installations, and other rights and duties regarding scientific research and pollution to be specified in other provisions of the treaty. (See ch. 7.) There would be coastal state environmental duties on installations and seabed activities. All states would enjoy navigational freedom and other rights within their economic zones as recognized by international law. (See Department of State map on page 41 for relationship between 200-mile zone and continental shelf and 200-meter zone.)

The continental shelf is described as an extension to the limit of the economic zone or beyond to a precisely defined outer limit of the continental margin. The continental shelf section provides for coastal state sovereign rights



BEST DOCUMENT AVAILABLE

over exploration and exploitation of continental shelf resources.

Coastal states would have a duty to respect the integrity of foreign investment on the shelf and to make payments from mineral resource exploitation for international community purposes, particularly for the economic benefit of developing countries and to adhere to the common heritage of mankind principal. As part of an overall settlement, the United States suggested that these payments be at a modest and uniform rate and be applied to a revenue-sharing area which begins seaward of 12 miles or 200-meters water depth, whichever is farther seaward, and extends to the seaward limit of the economic zone. In addition, the United States has indicated a willingness to have revenue sharing apply beyond the economic zone, if this represents the majority viewpoint of states.

Coastal state jurisdiction

Coastal state jurisdiction beyond 200 miles was a major theme of debate on the continental shelf issue. Various positions were presented concerning coastal state jurisdiction beyond the economic zone. African states, with the exception of Mauritius, generally advocated a position against coastal state jurisdiction beyond 200 miles. Other opposition came principally from Japan and from landlocked and other geographically disadvantaged states. Some of these states, particularly African ones support an economic zone in which there would be complete coastal state jurisdiction, not only over resources but also over scientific research and vessel pollution, with no international standards except provisions for navigational freedom, overflight, and the right to lay submarine cables and pipelines.

Those favoring coastal state jurisdiction over the continental margin beyond 200 miles included numerous Latin American, Asian, and Western European nations and Canada, Australia, New Zealand, and Mauritius. The Soviet Union supported jurisdiction beyond 200 miles to a depth of 500 meters. The U.S. proposal provides for coastal state jurisdiction over the continental margin coupled with revenue sharing as a solution to accommodate the various interests. Although the U.S. proposal picked up additional support at

the Caracas session, it is strongly opposed by some coastal states having large continental margins.

Revenue sharing

Two proposals on revenue sharing from continental shelf resources were under formal consideration at the Caracas session. One was the U.S. proposal for revenue sharing beyond 12 miles or 200 meters water depth. Another was the Netherlands proposal for a graduated revenue sharing dependent on a combination of distance and depth. The revenue-sharing concept as a possible accommodation of interest was supported by Trinidad and Tobago, Chana, and Jamaica and was opposed by Burma.

Because states were unable to agree on the concept of revenue sharing, negotiations on a revenue-sharing rate, method of computation, responsibility for collecting revenues, and allocation methods of revenues, were not held.

Delimitation and islands

Numerous positions on the delimitation of the economic zone or continental shelf between adjacent and opposite states were advanced at the Caracas session. The U.S. delegation, however, believes that any precise formula will tend to divide the Conference, because for each coastal state supporting a particular rule another state will react in fear that it will lose some area. Further complicating this issue is disagreement over the treatment to be accorded to islands. Some states insist that islands should receive the same treatment as continental areas; other states seek to exclude or limit jurisdiction around islands. According to the U.S. delegation, the Conference could become hopelessly bogged down if it tries to deal definitively with essentially bilateral delimitation problems.

Legal status of economic zone

Another problem concerns the legal status of the economic zone, particularly the retention of rights not granted to coastal states. The proposed economic zone will not be a territorial sea with exclusive coastal state rights, but will contain areas which are currently high seas. Some traditional high seas freedoms, within the proposed economic zone, will

be eliminated or modified (e.g., fishing) while others will be retained (e.g., navigation and overflight). Until coastal state rights are further elaborated, the U.S. delegation feels some states will be reluctant to deal with the issue in precise terms. In an effort to relieve these concerns, the United States introduced the following text at the Caracas session:

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

Settling disputes

Settling disputes becomes critical with respect to the economic zone because negotiations revolve around a balance of states rights and duties. On the one hand, guarantees are sought against unreasonable interpretations, particularly as they affect navigation and overflight. On the other hand, a measure of coastal state resource management discretion is inherent in exercising resource jurisdiction. The dispute settlement question is examined further in chapter 7.

Negotiations on the key details of an economic zone and the continental shelf were not achieved at the Caracas session. The issues and proposals, however, were organized into a comprehensive set of working papers containing alternative treaty texts reflecting main trends on each issue.

Observations

U.S. proposals on the economic zone and continental shelf place the United States in the mainstream of the predominant trends. Over 100 countries spoke in support of an economic zone extending to a maximum limit of 200 nautical miles.

State positions on coastal state jurisdiction beyond

200 miles range from the belief that coastal state jurisdiction should extend to the edge of the continental margin to the belief it should not extend beyond 200 miles. The U.S. position supports coastal state jurisdiction to the economic zone (proposed 200 miles) or beyond to the outer limit of the continental margin, which would be precisely defined.

There are costs and benefits to the United States from international recognition of coastal state seabed resource jurisdiction beyond 200 miles. The basic costs will be the possible loss or increase costs of access to the potential resources of the continental margin beyond 200 miles off other states. The basic benefit would be the undisputed control of seabed resources on the continental shelf off U.S. coasts.

Under existing international law, coastal states have exclusive rights to seabed resources out to the 200-meter water depth and beyond to adjacent areas that admit to exploitation. There are legal disputes, however, as to the outer boundary for exploiting these resources. The United States currently has the capability to exploit petroleum resources beyond the 200-meter water depth and the Federal Government is now leasing tracts beyond this area. Expanding offshore petroleum exploitation activities at greater distances from coasts seems inevitable.

According to the U.S. position at the Caracas session, coastal states have a duty to make payments from mineral resource exploitation for international community purposes. The United States suggests these payments be at a modest and uniform rate and be applied to an area beyond 12 miles or 200 meters water depth, whichever is farther, to the seaward limit of the economic zone. Its position on revenue sharing is designed, in part, for accommodating the differences on the extent of coastal state jurisdiction beyond 200 miles. Although the detailed terms have not been negotiated, under the U.S. position, revenue sharing, even at modest rates, could involve large sums that would increase as offshore petroleum exploitation activities expand.

The international community was unable to formulate precise treaty articles on the economic zone and the continental margin. It was successful, however, in preparing work-

ing papers reflecting main trends. States can now focus on each issue and its alternative solutions during the intersessional period and, hopefully, be prepared to negotiate the key details at the session to be held in March 1975.

DEEP SEABED--MANGANESE NODULES

The continental shelf drops off sharply to the deep ocean seabed (see p. 35) where depths average 4,000 meters. Little is known about the composition of the area of the ocean seabed, but it is known that the ocean floor is covered, in many places, with what are usually referred to an manganese nodules. These are metallic chemical precipitates that are formed over millions of years by chemicals in the sea adhering to small pieces of debris. Their mineral content varies with their location, but averages about 25 percent manganese, 1 percent copper, 1.25 percent nickel, 0.22 percent cobalt, and the rest is other minerals.

Commercial interest in the nodules has increased in the last few years as various means to raise them from the ocean floor have been developed. Potential mining methods vary from a type of giant vacuum cleaner to an endless chain of buckets several miles long. The United States, West Germany, France, Japan, Belgium, Canada, and the United Kingdom are interested in deep seabed mining. The U.S. industry is believed to have a slight technological lead. At least three U.S. companies are said to have the capability to mine the nodules on a commercial basis, although at the present time no full-scale mining has been done.

There are no existing facilities for commercial processing of the nodules, but metals have been extracted on an experimental basis. Accurate information on the current investment in undersea mining is not available because of the competition among the corporations involved. It is estimated, however, that one corporation has spent about $100 million on research and owns a vessel built for nodule recovery, but the extent of its operations is not known.

U.S. interests

At the present time the United States depends on foreign suppliers for a large percentage of the metals which can be

obtained from undersea mining. In 1972, it imported about 7,000 short tons of cobalt at a cost of about $34 million; 400,000 short tons of copper worth about $393 million; 1,620 short tons of manganese valued at about $90 million; and 173,870 short tons of nickel costing about $458 million, totaling about $975 million. The costs of these imports are likely to increase in the future. Several copper-producing countries have formed an organization which plans to control the world copper market.

Consumption of these metals is predicted to increase in the future. Nodule mining , when developed, will help to reduce imports but, except for cobalt, will not in the immediate future entirely eliminate them. Processing the nodules for other minerals would result in producing cobalt in excess of demand. This could, however, be substituted for nickel in some applications. The manganese produced would be of a different type from the land-source metal, and its substitution for the type currently used might be difficult because technology for converting the nodules is not cost-competitive with techniques used in land-source manganese.

The use of nodule minerals will depend on their being competitive in price with those from land mines. At the present time, production costs are merely estimates, based on no prior experience.

Proposed regulations for mining

Under current international law, as recognized by the United States, any nation or corporation may engage in deep seabed mining as long as reasonable regard is given to the interests and high seas freedoms of other states. It does not, however, provide for rights which can create complete security of tenure for deep seabed mining operations. The future legal situation is uncertain, and, to a large extent, has inhibited deep ocean exploitation.

In December 1969 the U.N. General Assembly passed a resolution declaring that no deep seabed exploitation may be undertaken until an international regime is established. The United States opposed this resolution which it believes is without binding legal effect. The U.N. General Assembly Declaration of Principles Governing the Deep Seabed and the

relevant General Assembly Resolution establishing the mandate of the Law of the Sea Conference call for the establishment of an international regime and machinery for the seabed beyond national jurisdiction.

Various options for regulating deep seabed mining have been considered in preparing for the Law of the Sea Conference. The Seabed Committee has prepared alternative texts on a deep seabed regime. Most proposals generally envision an international agency to control deep seabed mining.

Many developing nations have proposed the establishment of an international seabed mining organization, frequently referred to as "The Enterprise." It would have exclusive authority to explore and develop the seabed resources beyond the limits of exclusive coastal state jurisdiction. Under this system, developing nations could deny technologically advanced states access to the seabed resources.

Many developed nations, including the United States, have favored preserving the existing high seas freedoms, including the freedom to mine ocean floor minerals. They have indicated that any international organization created should neither conduct exploration and development of deep ocean floor mineral resources nor control production. An equitable licensing system, which an international organization would have authority to administer on a ministerial rather than discretionary basis, is favored.

U.S. position

President Nixon's May 23, 1970, Oceans Policy statement supported the establishment of an international regime and machinery to authorize and regulate deep seabed mining (see p. 7). In August 1970 the United States introduced draft articles in the form of a working paper pursuant to the President's statement.

These draft articles proposed that nations agree to limit national jurisdiction over the seabed to the 200-meter water depth. The area beyond would be international. An intermediate area from the 200-meter water depth to an agreed limit on the continental margin would be mined [illegible] by coastal states on behalf of the international community.

and they would regulate exploration and exploitation under international standards and compulsory dispute settlement. A new international organization, the International Seabed Resource Authority, would be established to regulate and license exploration and exploitation and to collect revenues from such activities primarily for the benefit of developing countries. Licenses for exploitation rights could be issued for oil, other fluids, gas, and manganese nodules and other hard minerals on or beneath the seabed surface.

The International Seabed Resource Authority would be financed by fees paid for exploitation rights and a portion of such revenues would be used to promote the economic advancement of developing states. The principal organs of the International Seabed Resource Authority would be the Assembly, the Council, and the Tribunal.

--The Assembly would be composed of all contracting parties to the treaty, and its main functions would be to approve the Authority budget and any Council proposals for changing the allocation of net income.

--The Tribunal would settle disputes on all questions of treaty interpretation or application.

--The Council would be composed of 24 contracting parties, 6 designated and 18 elected. The 6 most industrially advanced contracting parties would be designated and at least 12 of the elected contracting parties must be developing countries. Council decisions would require approval by a majority of all members, including a majority of designated and elected members. The Council would be the key organ, and its powers and duties would include adopting and enforcing rules and recommended practices.

The United States believes that policy should be developed largely through rulemaking procedure. Rules would be issued to implement commission regulations after consultation with contracting parties. If approved by the Council, the rules would have to be followed by all contracting parties and be applicable to members of them. The United States has proposed that, to avoid a subjective and possibly discriminatory application of a negotiable licensing policy, the basic conditions and terms of resource extraction should be established

in the treaty itself and not be left to an organ of the international authority to determine.

In July 1973 the United States proposed draft treaty articles on state rights and duties in a broad seabed area off the coasts which modified its position. The draft articles provide that coastal states would have exclusive rights to explore and exploit seabed resources, principally petroleum and natural gas, in an area to be called the coastal seabed economic area. (See p. 39.) The United States had previously stressed that national jurisdiction be limited to the 200-meter water depth.

The United States, before the Caracas session, believed that timely international agreement on an effective international regime for deep seabed resource development was the best way to insure the stable investment climate needed to encourage development and adequate protection of the marine environment. This approach could also provide for revenue sharing from deep seabed mining for international community purposes particularly assistance to developing nations. Agreement must be timely and must genuinely promote efficient development. Efficient development will best be served by a legal order permitting access to deep seabed resources under reasonable conditions facilitating investment. Any international organization established could not have discretion to deny access to those resources or to alter conditions upon which security of investment depended.

Proposed legislation

The need to support U.S. corporations in undersea mining has received increased congressional interest in recent years. Legislation (S.1134, 93d Cong., 2d sess.) has been proposed which would authorize issuing licenses to persons under U.S. jurisdiction to recover minerals from specified sections of the seabed after January 1, 1976. Exploration would be allowed before this date upon receipt of the license. The Secretary of the Interior and other concerned agencies would advise and make detailed rules and regulations for mining operations. The legislation also provides for compensating licensees for any adverse effect of a treaty or convention ratified by the U.S. Government.

The U.S. mining industry's chief interest in passage of the legislation is to insure that its technological lead is not lost. Advocates of the legislation point out that other governments, Germany and Japan for example, have provided financial support for their undersea mining industries. Also, U.S. firms are starting to combine with foreign firms in developing mining techniques. For these reasons, U.S. mining companies want some form of investment protection, which this legislation would provide.

The executive branch and others opposed to the legislation believe, however, that its enactment at this time would be detrimental to the conclusion of a comprehensive Law of the Sea treaty. Unilateral action would, in their opinion, lessen the chances for agreement on the seabed issue and on the entire treaty. According to opponents of the legislation, it would therefore be harmful to U.S. security, navigation, fishing, and other important interests. Other nations might regard enactment of the legislation before the treaty is concluded as preempting the negotiations.

Another objection is that the legislation does not take into account the proposal for provisional application of the treaty section which would allow the seabed section and most of the Seabed Authority functions to enter into force upon signature and before formal ratification. The executive branch stated that the provisional application feature has considerable support in the international community, which might be eroded if the legislation is enacted.

The executive branch also opposes the investment insurance provision of the legislation. This requires that, in general, U.S. mining companies will be reimbursed for any losses resulting from an international agreement on the seabed. The opponents believe this would insure private industry of compensation for an act which is a formal function of the Government--conclusion of a treaty. This is in direct opposition to a mining industry view that protecting U.S. industry is a Government responsibility.

Results of Caracas session

There was, at the start of the conference, general agreement that there should be a Seabed Authority, consisting of an assembly, a council, an operational arm, and a

dispute settlement body. The assembly would provide overall policy guidance and the council would implement policy by enacting rules and regulations. The operational arm would carry on the routine work of the agency. The functions of the dispute settlement body are self-explanatory.

The greatest differences in the U.S. positions and those of other nations concerned the seabed issue, including the system, conditions, and economic implications of exploitation.

Many developing countries continued to support an exploitation system by which the Seabed Authority would conduct undersea mining. African and Asian nations gave some support to an exploitation system that would permit contractual arrangements in the early years of operation coupled with a gradual phasing out of these arrangements in favor of direct exploitation. Eurpoean countries, Canada, and Australia supported a continuing combination of direct and licensed operations. These proposals recognize that conditions for exploitation must be such as to attract investment by those having the required technology. A negotiating group was formed to consider this point.

The United States places great importance on including in the treaty detailed rules and regulations under which the Seabed Authority would operate. On the other hand, developing countries prefer to give the Authority great discretion to make regulations for exploitation, although there was some agreement among them that basic conditions of exploitation should be set forth in the treaty. The U.S. Delegation has reported that there are wide differences, however, between developing countries' concepts of basic conditions and U.S. concepts of rules and regulations governing exploitation. This point remained unresolved at the close of the Caracas session.

The question of economic implications, that is, the effect of undersea mineral production on landbased-source countries, was raised at the Caracas session. Countries which presently produce the minerals to be extracted from the seabed are generally less developed. They gained the support of other developing countries for price and production controls to lessen the impact of seabed mining. The United States, however, did succeed in pointing out that the effects of undersea production were uncertain at this time

and that consuming nations should have protection against artificially high prices and controlled production.

Observations

The wide differences evident in this issue indicate it will be difficult to reach an agreement on existing proposals. Some form of compromise will be necessary at the next session of the conference if the issue is to be resolved.

The structure of the proposed authority is somewhat similar to many existing international organizations. Past experience has shown that such organizations have had problems in establishing reasonable and workable financial management concepts and plans. For example, on several occasions these organizations have adopted unrealistic budgets despite the objections of developed nation members, who are in the minority and are outvoted by less developed countries. Frequently these budgets resulted from a lack of information provided to the agencies' budget formulating bodies. In the Seabed Authority, this would be the council. The lack of information makes it impossible for those approving the budget (in this case, the assembly) to assess justification for programs, priorities, or economic feasibilities.

Related to this budgeting-process weakness is the lack of meaningful information on actual operations and results of activities carried out by existing international organizations. Many organizations lack effective mechanisms for retrieving, analyzing, and disseminating information on their activities as a basis for making decisions directed toward improving future operations.

To lessen the possibility of similar problems occurring in the proposed Seabed Authority, it would seem appropriate that the United States, in conjunction with other members of the Authority, should strive to develop and adopt workable financial management guidelines and operating procedures.

CHAPTER 7

OTHER MAJOR ISSUES

The third United Nations Conference on the Law of the Sea deals with other major issues of importance to the United States. Marine environmental protection and scientific research are interrelated with other U.S. interests in the oceans, and a dispute settlement system will be needed to reduce friction and conflict over ocean uses.

MARINE ENVIRONMENTAL PROTECTION

The oceans are the final receptacles for almost all wastes generated by human activity, and it is increasingly evident that the oceans do not have unlimited capacity to absorb such wastes. The chief danger of marine pollution is that, if unchecked, it will lead to deterioration of the oceans to such an extent that they will not support life. Individual nations may undertake pollution control programs, but, because pollutants in the sea are spread by ocean currents and wind, total control must be international.

The principal sources of marine pollution are (1) land-based sources, including riverborne substances from domestic sewage, industrial wastes, and agricultural runoffs, (2) airborne pollutants, and (3) ocean activities, principally pollution from deep seabed mineral development, continental shelf seabed activities, such as oil and gas drilling, and either accidental or intentional discharge from vessels.

Land-based sources contribute the largest quantity of pollutants to the marine environment. Ocean pollution is increasing at a rate of 4.5 percent a year.

Pollutants from vessels enter the marine environment in four principal ways.

1. Spillage of oil and other cargoes as a result of collision and other accidents.

2. Spillage during loading or unloading operations.

3. Intentional operational discharge of oil.

4. Waste dumping, such as sewage and garbage.

International antipollution measures

The international community has already adopted certain antipollution measures. The Intergovernmental Maritime Consultative Organization of the United Nations has adopted two conventions to control pollution from vessels. One permits preventive action to be taken against vessels on the high seas which pose pollution dangers to the coast. The other provides for civil liability of owners of vessel causing damage to the coast.

1969 Amendments to the 1954 Convention for the Prevention of Pollution of the Sea by Oil establish greater control over the discharge of oil and similar wastes by tankers within 50 miles of a coast.

The Conference on the Human Environment, held in Stockholm in June 1972, was one of the largest U.N. Conferences ever held, and (1) established a U.N. unit for coordinating environmental action, (2) approved a $100 million U.N. environmental fund, of which the United States would provide $40 million since it is assumed to cause 40 percent of the world's pollution, (3) placed a moratorium on whale killing, and (4) endorsed a U.S. proposal for an international convention to regulate dumping of wastes in the oceans.

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter was adopted and signed by the United States in December 1972. It has been ratified by the Senate and implementing domestic legislation (Public Law 93-254) has been passed. The convention contains two lists of substances and regulations for disposing of them in the oceans. The first list contains completely prohibited materials, such as mercury, DDT, and high-level radioactive wastes. Items on the second list, requiring a special permit in each case, are lead, cyanide, and low-level radioactive wastes. Any substance not on either list must have a general permit and dumping must follow regulations stated in the convention. Each nation participating in the convention must apply its provisions to its own flag vessels and aircraft and to those of other nations using its ports. This was the first international treaty to deal with global pollution.

The list of regulated materials was expanded at the November 1973 Marine Pollution Conference held by the Intergovernmental Maritime Consultative Organization of the United Nations. The conference drafted an International Convention for the Prevention of Pollution from Ships which established control standards for discharging pollutants and set certain vessel-construction standards.

The United Nations has also agreed to establish a Marine Environment Protection Committee. The Committee would be open to all Intergovernmental Maritime Consultative Organization members and would propose regulations to improve control of vessel-source pollution. These regulations would then be sent to all members for approval, which should shorten the time for the regulations to become effective.

U.S. position

It is widely understood that the third U.N. Conference on the Law of the Sea must establish an adequate jurisdictional basis for protecting the marine environment against threats from all sources. The United States believes that efforts to protect the marine environment may hold a subtle danger for the law of the sea, unless the conference is careful to functionally distinguish the differing threats to the marine environment.

Before the Caracas session, the United States proposed that the international agency established for exploitation of seabed resources be given responsibility for pollution control for the deep seabed. The international agency would also set minimum standards in seabed areas under the jurisdiction of coastal states. Such states would have the right to apply higher environmental standards to economic activities under their jurisdiction in this area and the right and duty to enforce such standards.

The United States believes that recognition of coastal state jurisdiction to make and enforce pollution prevention standards, such as construction standards for vessels, could seriously endanger freedom of navigation. It has, therefore, strongly urged that standards for vessel-source pollution be set internationally only through the Intergovernmental Maritime Consultative Organization, by flag states for their own vessels, or by port states for vessels using their ports.

The U.S. position is to prevent individual coastal states from prescribing regulations for vessel-source pollution in a broad zone off their coasts. Such regulations could include standards for ship construction which would vary from country to country and interfere with normal patterns of navigation. It would also make many coastal states "zone locked," that is, having no access to the high seas unless passing through an area under the control of another state.

Results of Caracas session

During the Caracas session draft articles were prepared on several issues relating to marine pollution.

1. Basic obligations--states are obliged to protect the marine environment.

2. Rights of states to exploit their own natural resources--this right is subject to states' duty to to protect the marine environment.

3. Particular obligations--this article has several alternative texts, suggested revisions, etc.

4. Obligation not to transfer pollution from one area to another--states should avoid merely transferring damage or hazard from one area to another or from one type of pollution to another.

5. Global and regional cooperation--provides for cooperation in notification of danger, eliminating effects of pollution, research, exchanging information, and formulating rules and standards for preventing marine pollution.

6. Technical assistance--promoting assistance programs to developing countries for preserving the marine environment.

7. Economic factors of land-based sources of marine pollution--consideration of a state's economic and financial ability to provide resources for its obligations in regard to pollution.

There was not complete agreement on all these articles. The United States and others maintain that coastal states, in exploring and exploiting their own natural resources, must follow applicable internationally agreed-upon minimum pollution and environmental standards, although they recognize the right of a coastal state to establish higher standards for resource activities within its jurisdiction. The United States also opposed the implementation of a standard which would favor the economic development of a state at the expense of the international environment. This would provide a double standard--one for developing countries and one for developed countries. The environmental protection standards for developing countries would be less strict than those of developed countries because they could not afford the cost.

Monitoring, enforcement, and standards will be considered at the next session. The major issue of vessel-source pollution was also postponed until the March 1975 session. Based on private discussions, the U.S. delegation feels the trend is away from coastal state control of ship construction standards.

Observations

It does not appear that much progress was made on this issue at the Caracas session. The basic issues of vessel-source pollution and ship-construction standards were not addressed and two proposals opposed by the United States were introduced.

The major difficulty with accepting the U.S. proposals is that comparatively few nations at the conference are seriously concerned with pollution of the oceans. Developing countries, in general, have not experienced the deterioration of environment which has occurred in industrialized countries. The possibility exists that these countries may use their voting power on this issue as a tradeoff for votes on issues of more interest to them, such as fishing, mining, etc.

The Law of the Sea Treaty will not, and is not expected to, solve the problem of land-based pollution. Further work will be necessary to resolve political and technical obstacles in removing this source of ocean pollution.

It should be noted that the environmental protection provisions of the treaty will not apply to naval or other state-owned vessels. States are expected to operate their vessels consistent with treaty objectives.

MARINE SCIENTIFIC RESEARCH

The doctrine of freedom of the seas has traditionally included the right to engage in scientific research anywhere in the ocean beyond the territorial seas. This right was limited by the 1958 Convention on the Continental Shelf, which described the continental shelf as extending to a depth of 200 meters or to the limit to which it could be exploited. Coastal state consent is required to conduct research on the shelf off its coasts, but is not required in the water column above the shelf. The convention stated that coastal states should not normally withhold consent if the research was purely scientific, the states had the right to participate in the research, and all results were to be published.

In the years following adoption of the Convention, it was found that the admonition "not normally withhold consent" was inadequate. Many coastal states refused consent, required unreasonable conditions, and delayed or failed to respond to requests for permission to conduct research off their coasts. A delay in responding to a request can cause cancellation of a project because researchers must frequently follow predetermined timetables. This lack of cooperation is particularly unfortunate because the coastal areas of the world are the most important from a scientific standpoint.

U.S. Interests

U.S. interest in research parallels its interest in almost all uses of the oceans and seabeds--navigation, living and nonliving resources, and environmental protection.

Research can lead to increased reproduction of fish and other edible marine life. Marine research led to the development of undersea mining and is the basis for undersea oil and gas discoveries. An understanding of the causes of marine pollution and development of means to control it depends on scientific studies of the marine environment.

U.S. position

The United States believes that the rights of coastal states should be protected but that opportunities for scientific research should not be limited. This can be done by making the researching nations responsible for certain obligations rather than by permitting coastal states to withhold consent for research.

The draft treaty articles proposed by the United States, therefore, state that a nation or its sponsored party planning research in an area under the resource jurisdiction of a coastal state should provide the coastal state with advance notification. The government of the nation proposing the research would certify that the institution involved was engaged in purely scientific research and that it would be conducted in accordance with treaty provisions. The coastal state would be allowed to participate in the project or to have a representative present. All data and samples would be shared with the coastal state and assistance would be given in analyzing this material. The results of the work would be published for use by any interested party. The research would be conducted in accordance with international environmental protection regulations.

Results of Caracas session

General acceptance of a 200-mile economic zone at the conference emphasized the importance of agreement on regulations for conducting scientific research. The economic zone concept places one-third of the world's ocean areas under the resource jurisdiction of coastal states. This is an area of special scientific interest.

During the conference, agreement was reached on several general principles.

--Research for peaceful purposes only.

--Noninterference by researchers with other ocean uses.

--Compliance with antipollution regulations.

--Research would not be the basis for legal claims to marine resources and environment.

There was, however, considerable difference of opinion on research in the economic zone and in the international seabed. The various views may be summarized as follows.

1. Scientific research in the economic zone may be conducted only with the consent of coastal states. In the international area, research would be conducted by or under the control of an international organization.

2. The provision of the 1958 Convention on the Continental Shelf stating "consent will not normally be withheld" will be continued.

3. Requirements for conducting research are to be determined internationally for the economic zone, and freedom of research in the international area is to be maintained.

4. Complete freedom of scientific research will be allowed in the economic zone except that directed toward exploitation of resources requiring coastal state consent.

Nigeria and about 20 other nations made a proposal on technology transfer providing for transfer of both patented and nonpatented technology. The Seabed Authority would make patents on machinery and processess for undersea exploitation available to developing countries. The authority would also arrange for training developing country personnel.

The general question of technology transfer was not considered at the Caracas session due to lack of time.

These proposals will serve as a basis for negotiations at the second session in Geneva.

The United States maintains that a requirement for consent by the coastal state for scientific research would be extremely harmful. Marine research often covers areas adjoining a number of states. Consent by some states and refusal by others would make this type of work impossible.

Problems

Some difficulties at the conference were:

--Some states were apprehensive that scientific research could be used as a cover for espionage.

--Some states did not want to disclose their marine resources for fear of aggression by their neighbors.

--Some states lack scientific institutions to provide policy guidance to their delegations.

--Interdependence of the marine research issue on the outcome of other issues, such as the content of the seabed regime and environmental protection.

--Tendency of states having little or no interest in marine research to use it as a bargaining position for other issues.

--Obligations on states planning research are, in some cases, after the fact. For example, the provisions for data sharing and publication might not be followed when the research is completed.

Observations

Agreement on acceptable treaty articles for scientific research appears to depend on persuading some nations that research without unreasonable qualifications is in the interest of all nations of the world. Efforts in this direction could be undertaken not only by U.S. officials but also by private organizations interested in marine research.

DISPUTE SETTLEMENT

History has shown that there is always potential conflict over rights to use the oceans. Coastal states' jurisdictional claims have led to bilateral conflicts over various uses of the oceans. Technological advances are creating new ocean uses which are leading to conflicts between different uses of the same ocean space. For example, seabed drilling and mining may interfere with navigation and fishing, spills

from tankers with recreation on beaches, and pollution control measures with maritime trade.

One of the primary objectives of the third U.N. Conference on the Law of the Sea is to achieve an internationally agreed-upon system which will reduce friction and conflict over uses of the oceans. A comprehensive oceans law treaty, however, will not eliminate all sources of conflict. There will inevitably be differences over interpretation and application of the provisions of the treaty. A dispute settlement mechanism is, therefore, needed to define the rights and obligations of states and to provide assurance that rights under the treaty will be protected.

U.S. position

Before the Caracas session, the United States advocated a system that would insure uniform interpretation and immediate access to dispute-settlement machinery in urgent situations. At the same time, such a system should preserve the flexibility of states to agree to resolve their disputes by various means.

The U.S. draft articles on the settlement of disputes provide that parties to a dispute should be free to agree on any method of dispute settlement they consider suitable, including direct negotiation, good offices, mediation, conciliation, arbitration, or special procedures provided for by an international organization, either general or regional. However, any party who abides by the Law of the Sea Convention and cannot agree on a method of dispute settlement, may refer the dispute to a Law of the Sea tribunal.

The United States proposed the establishment of a special permanent Law of the Sea tribunal to insure compulsory third-party settlement of disputes arising under the treaty. Its members will be nominated and elected in accordance with the procedures provided for in the Statute of the International Court of Justice for the election of judges. They should also be lawyers of recognized competence in law of the sea matters and will be assisted by four technical assessors in disputes involving technical questions. In these cases the assessors will sit with and assist the tribunal, but will not have the right to vote.

The tribunal's jurisdiction would cover all disputes required by the terms of the Law of the Sea Convention to be submitted to the tribunal. Several U.S. draft treaty articles contain specific provisions for disputes of interpretation or application of the various draft article provisions, if requested by any party to the dispute, to be resolved by compulsory dispute settlement procedures. U.S. draft treaty articles on the coastal seabed economic area, marine pollution, and marine scientific research contain this provision. Reference to dispute settlement was omitted in the draft articles on the territorial sea and straits.

Fishing disputes would not be submitted to the tribunal. Provision is made in the U.S. fisheries proposal for dispute settlements by a special commission, unless parties to the dispute agree to seek a solution by another method. The commission would consist of five members, named by agreement between the states in dispute or by the U.N. Secretary General. Each party to the dispute has the right to name one national to sit with the special commission, who can participate in the proceedings but cannot vote or take part in writing the commission's decision, which is binding upon all parties.

Under the U.S. proposals, dispute settlement procedures normally would apply only to states. There are two exceptions: (1) vessel owners would have the right to bring the question of vessel detention before the tribunal in order to secure its prompt release, without prejudice to the merits of any case against the vessel and (2) a natural or juridical person who has contracted with a coastal state may, if the state of nationality has not brought action, submit investment disputes on the continental margin for settlement in accordance with the 1962 Rules of Arbitration and Conciliation for Settlement of International Disputes Between Two Parties of Which Only One Is a State. The United States also proposed that companies engaged in deep seabed operations should be able to sue the Seabed Authority.

Results of Caracas session

During the Caracas session, about 30 states from all regions interested in dispute settlement met informally to discuss ideas and provisions for a dispute settlement chapter

of the convention. At the end of the session, the United States cosponsored a working paper on settling disputes with Australia, Belgium, Bolivia, Columbia, El Salvador, Luxembourg, the Netherlands, and Singapore.

The working paper contains draft alternative texts and was designed as a possible framework for further discussions at the Geneva session of the conference. The proposals are not necessarily those of individual countries.

Three alternative forums were presented in connection with the dispute settlement obligation: (1) arbitration, (2) a special Law of the Sea Tribunal, and (3) the International Court of Justice. There was considerable support for special functional forums of some issues, such as a special dispute settlement forum within the Seabed Authority. Of main concern was whether, and to what extent, there is recourse from a special functional forum to the general procedures established by the convention.

Other areas of concern include whether, and to what extent, international organizations and natural or juridical persons could be involved; the importance of rules, such as bilateral agreements and regulations of international organizations; and whether and for what issues there would be exceptions to the dispute settlement obligations. In this last instance, several articles provide that in ratifying, acceding to, or accepting the treaty, a state may declare that it does not accept the jurisdiction of the dispute settlers to render binding decision on certain categories of disputes.

CONVENTIONS ADOPTED AT FIRST LAW OF THE SEA CONFERENCE

After World War II, in an effort to codify and develop the law of the sea, the U.N. International Law Commission prepared four draft conventions on legal regimes for the territorial sea, high seas, continental shelf, and fisheries. These formed the basis for the four conventions adopted in 1958 at the first U.N. Conference on the Law of the Sea.

CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

The convention reiterates the universally recognized principle of the sovereignty of the coastal state over its internal waters and territorial seas and that this right of sovereignty extends to the airspace over the territorial sea as well as to its bed and subsoil.

The respective rights, duties, and responsibilities of coastal states and foreign vessels in the territorial sea are defined by the convention. Ships of all states, whether coastal or not, enjoy the right of innocent passage through the territorial sea. Passage was described as navigation through the territorial sea for the purpose of traversing that sea without entering internal waters or of proceeding to internal waters or making for the high seas from internal waters. Passage is innocent as long as it is not prejudicial to the peace, good order, or security of coastal states.

The rights of passage of foreign fishing vessels and submarines are more restricted. Foreign fishing vessel passage is not considered innocent if it does not observe coastal states' laws and regulations preventing such vessels from fishing in the territorial sea. Submarines are required to navigate on the surface and to show their flags in territorial seas.

Coastal states, in zones of the high seas contiguous to their territorial seas--which may not extend beyond 12 miles from the base lines of territorial seas--may exercise controls necessary to prevent and punish infringement of their customs, fiscal, immigration, or sanitary regulations within their territories or territorial seas.

APPENDIX I

The Convention on the Territorial Sea and Contiguous Zone entered into force for the United States on September 10, 1964. As of January 1, 1974, 42 other countries were parties to the convention, and 14 of these countries had either a reservation, a statement, or a declaration concerning the convention. Fixing the breadth of the territorial sea and the extent to which coastal states should have exclusive fishing rights in the sea off their coasts were debated, but no conclusion was reached. The United States maintains that countries adhering to the 3-mile territorial sea have no obligation to recognize claims of other countries to a greater breadth of territorial seas.

CONVENTION ON THE HIGH SEAS

The convention describes high seas as comprising all parts of the sea not included in the territorial sea or internal waters of a state. It declares that the freedom of the high seas comprises, among others, freedom of navigation and fishing, and freedom to lay submarine cables and pipelines and to fly over the high seas.

Every state, whether coastal or not, has the right to sail ships under its flag on the high seas. In general, the convention deals with safety at sea, transportation of slaves, suppression of piracy, the right of warships to visit foreign merchantships, and the hot pursuit of foreign ships by coastal states.

The convention also deals with the problem of pollution on the high seas and treats separately the discharge of oil, dumping of atomic waste, and pollution of airspace resulting from any activities with radioactive materials or other harmful objects. For oil pollution and dumping of atomic waste, the convention provides that every state take measures and draw up regulations formulated by competent international organizations to prevent pollution of the seas.

The Convention on the High Seas entered into force for the United States on September 30, 1962. As of January 1, 1974, 52 other countries were parties to the convention, and 14 of these countries had either a reservation, a statement, a declaration, or a reservation and a declaration concerning the convention.

CONVENTION ON FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS

The convention confirms the historic freedom of all nations to fish upon the high seas, but also imposes a new duty upon all states to adopt, or to cooperate with other states in adopting, for their nationals necessary measures for conserving living resources of the high seas.

The fishing and coastal states have certain rights and duties outlined in the convention for international cooperation of fisheries conservation. Among other things, coastal states have special interests in conserving living resources of any high seas area adjacent to their territorial seas even though their nationals do not fish there. The convention also provides for compulsory and speedy settlements of disputes relating to negotiating and operating conservation agreements between countries.

The Convention on Fishing and Conservation of the Living Resources of the High Seas entered into force for the United States on March 20, 1966, subject to an understanding that it did not impair the applicability of the principle of abstention. The principle of abstention calls for states to abstain from fishing stocks if it will cause conservation problems in an area of the high seas adjacent to the territorial sea of a coastal state. This principle does not apply to coastal states with respect to fishing any stock in waters adjacent to their territorial seas. As of January 1, 1974, 33 other countries were parties to the convention and three of these had either a reservation or a statement concerning the convention.

CONVENTION ON THE CONTINENTAL SHELF

The convention describes the continental shelf as the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of these areas. It also includes the seabed and subsoil of similar areas adjacent to the coasts of islands.

APPENDIX I

Coastal states exercise sovereign rights over the continental shelf for exploring and exploiting its natural resources. These rights are exclusive, however, and they do not affect the legal status of the superjacent waters as high seas or that of the airspace above those waters. Natural resources are described as the mineral and other nonliving resources of the seabed and subsoil, together with living organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil. Under this definition, for example, clams, oysters, and abalone are included as natural resources.

The Convention on the Continental Shelf entered into force for the United States on June 10, 1964. As of January 1, 1974, 51 other states were parties to the convention, and 8 of these had either a reservation, statement, declaration, or a reservation and declaration concerning the convention.

APPENDIX II

PRINCIPAL OFFICIALS

RESPONSIBLE FOR ADMINISTRATION OF

ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
DEPARTMENT OF STATE		
SECRETARY OF STATE:		
Henry A. Kissinger	Sept. 1973	Present
William P. Rogers	Jan. 1969	Sept. 1973
DEPUTY SECRETARY OF STATE (note a):		
Robert S. Ingersoll	Sept. 1974	Present
Kenneth Rush	Feb. 1973	Sept. 1974
John N. Irwin, II	Sept. 1970	Feb. 1973
U. Alexis Johnson	July 1970	Sept. 1970
Elliot L. Richardson	Jan. 1969	July 1970

	Effective date of appointment
NATIONAL SECURITY COUNCIL	
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS:	
Henry A. Kissinger	Jan. 1969
CHAIRMAN OF THE NATIONAL SECURITY COUNCIL INTERAGENCY TASK FORCE ON THE LAW OF THE SEA:	
John Norton Moore	Sept. 1973

APPENDIX II

	Effective date of appointment
SPECIAL AND DEPUTY SPECIAL REPRESENTATIVES OF THE PRESIDENT	
SPECIAL REPRESENTATIVE OF THE PRESIDENT TO THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE:	
John R. Stevenson	Sept. 1973
DEPUTY SPECIAL REPRESENTATIVE OF THE PRESIDENT TO THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE:	
John Norton Moore	Oct. 1973

[a]Until July 1973 this position was designated as Under Secretary of State.