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# LAW AND FOREIGN POLICY OF THE OCEANS

JOHN NORTON MOORE\*

It is a privilege and a pleasure to meet with this distinguished group to share a few thoughts on the direction of United States oceans policy and the prognosis for the Third United Nations Conference on the Law of the Sea. If we were to step back and view the earth from outer space, the most distinctive geographic feature would be that more than two-thirds of the surface of the earth is covered by oceans. In fact, from a space perspective, Earth would more appropriately be called Oceana, as the watery planet. Every nation has a significant stake in achieving an ordering of that two-thirds of the surface on the earth which will lead to an avoidance of conflict, a fair distribution of the resources of the area, an efficient utilization of the resources of the oceans, and an intelligent protection of these areas.

But although every nation has a stake in the oceans, the United States has perhaps the largest stake. This is so in part because as a superpower with major defense commitments we must honor those commitments on a global basis crossing many of the world's oceans; because the United States, as a major technological leader in the world, simply has a broad range of specific oceans interests around the world; and because the United States is one of the major coastal nations of the world. In fact, the state of Alaska alone has a significantly longer coastline than a majority of the nations in the world.

If we were to look at some of the specific stakes that the United States has in the oceans, certainly we would focus on the defense and security needs of the United States. Unlike the case with respect to the Soviet Union, the principal allies of the United States are located across the oceans. Re-supply of Israel, for example, requires the crossing of a vast ocean area. If one shifts from the question of support for our allies, the whole issue of bringing in the

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resources that are needed for the industrial economy of the United States also requires heavy dependence on the oceans. Looking at oil alone, we import by sea over forty percent of the hydrocarbons used by the United States. The United States has relied increasingly on the naval arm of the strategic triad, the SSBN submarines, as a stable deterrent in the overall strategic equation.

If we shift to the question of trade, the United States, with approximately ten percent of its economy based almost directly on global trade, and with its European allies with about thirty to forty percent of their economies based on global trade, is very heavily dependent on the merchant marine and the ability to use the oceans to move that trade.

If we look to hydrocarbons *from* the oceans, the estimate is that about forty percent of the global potential is going to be located under salt water. To keep it in perspective in terms of our own claims versus others, approximately ninety-five percent of that potential is likely to be off the shores of other nations. Though we have a significant continental margin, our margin is approximately five percent of the worldwide margin.

If we look to the question of the living resources, both the coastal fisheries and the distant water fisheries, we believe the fisheries off the United States coast which are about twenty-five percent of the entire world's potential, should at maximum sustainable yield bear something on the order of 100 million plus dollars per year on a continuing harvesting basis. We also have a significant stake in distant water fishing as the sleek tuna boats in the San Diego harbor can attest.

We have a significant interest in access to the manganese nodules of the deep ocean floor. These nodules look like lumps of coal and contain what we believe are commercially attractive quantities of copper, nickel, cobalt, and manganese. Industry feels quite strongly that if permitted to move forward with deep seabed mining, by the year 1990 or 1995 they could supply most of the needs of the United States for all these minerals and reverse the traditional import balance of nickel, cobalt, and manganese.

We have a significant stake in the environment of the oceans on a global basis. Ultimately we have such a stake because the oceans may be a critical part of the overall ecosystem in terms of the generation of oxygen and the entire life cycle of the earth. But long before we get to that point, we must avoid the kinds of

problems that we have seen with heavy metals in Japan, or here at home with kepone or simply pollution of our beaches.

We have a significant interest in blue-water oceanographic research on a global basis. The efforts of the Glomar Explorer and our own oceanographic centers have enabled us to make a very significant breakthrough in understanding the theory of plate tectonics and sea floor spreading which could be of great importance for mankind.

And finally, something that we do not frequently think about but which may be our most significant stake in the ocean is the resolution of political disputes, that is, to bring nations together to resolve problems such as the Chile-Ecuador-Peru tuna seizures that have been so well-known here in San Diego, or our boundary disputes with the Canadians. We also have an important political stake in creating a legal regime which will provide the stability of expectations required for the investments that will have to take place in the oceans and finally to have the kinds of mechanisms in place to avoid conflict and to reach peaceful settlement when conflict does arise.

As Secretary Habib was making his superb presentation last night, I could not help thinking that the Law of the Sea negotiations and our ocean interests were perhaps the paradigm of everything that he was discussing as to the trends in modern diplomacy; the complexity of the domestic policy process, the need to develop consensus with many different constituent units, the shift toward multilateralism and dealing with truly global problems, and finally the need for optimism.

Now, if those are some of the interests which the United States has at stake in the oceans, what are some of the significant trends that are threatening those interests and indeed the common interests in the oceans? I think there are at least three very important trends to be taken into account. The first is the very substantial Soviet naval and oceans buildup since the end of World War II. At that time, the Soviet Union had a very small and coastal-oriented oceans defense force. Since World War II they have been engaged in a major buildup of ocean strength. Soviet writings indicate they understand well the importance of the oceans. Indeed, these writings read like a latter-day Alfred Thayer Mahan on seapower. At the present time, the Soviet navy has more combattant vessels than the United States in every major category of vessels except aircraft carriers. I do not think it is fruitful to get into a ship-counting exer-

cise or to believe that it is the most sophisticated way to analyze naval strength, but I think I can report accurately that even the optimists concede that the United States would be very severely pressed to protect sea lanes in the Pacific beyond Hawaii and that we would be in one serious naval battle to protect the sea lanes to Europe during some kind of sustained NATO emergency. And if you shift to the views of the pessimists, Admiral Zumwalt, a former Chief of Naval Operations, implies that the United States would lose a war at sea with the Soviet Union today. I am not in the camp of the pessimists, but wherever you may be, one has to take account of a set of trends in naval power over the past decade that have been against the United States.

Soviet ocean strength goes beyond simply the naval equation. They are having a major buildup in almost every other area of ocean strength. Their merchant marine now carries more than sixty percent of Soviet cargos and it is being expanded at a rapid rate. In comparison, our merchant marine carries less than five percent of United States cargos; during the year of the wheat deal, it was said that the Soviet Union carried more United States imports and exports in bulk cargo trades than the United States carried in its own flag vessels.

The Soviet Union is having a major buildup in Arctic capabilities with the first surface vessel excursion to the North Pole. They have significantly outspent us in the Arctic area in the past decade. They have more marine oceanographic scientists and are turning them out more rapidly. They have a larger fleet of fundamental oceanographic research ships. And one can go on and on.

The purpose of this comparison is not to indicate that a numbers comparison is an intelligent way to approach the issues. You may discover, for example, that to the Soviet Union, fisheries are a cheaper form of protein than other forms of inefficient agriculture on land. In fact, it is highly intelligent for them to have a major effort in the fisheries area where it does not make the same sense for us. So I am not seeking to predict doom by citing these figures, but merely to indicate significant trends that we must follow closely.

Now, short of a major confrontation with the Soviet Union in the oceans area, I think the most serious adverse trend is that of claims by coastal nations unilaterally to extend their jurisdiction into the world's oceans. This trend has been unmistakable, primarily since World War II. There have been claims to control transit rights through and over straits used for international navigation.

During the Yom Kippur War, for example, Spain sought to deny over-flight rights by the United States through the Strait of Gibraltar and to claim that the Strait was merely a territorial sea area controlled by Spain. That is merely indicative of many such claims by strait-states to control rights through straits. A group of mid-ocean archipelagic nations have asserted claims to draw straight base line systems around the outermost points of their outermost islands and to call all of the areas within that either internal waters, territorial sea, or some other form of restrictive national regime. To give you the most extreme example, our own trust territories of Micronesia sought to persuade the delegation to go along with declaring Micronesia an archipelago, which would have drawn these closing lines connecting the outermost points of their outermost islands. Such lines would have enclosed about 240 square miles of land territory and an area of the Pacific Ocean that would be greater than the continental United States and Alaska.

Unilateral claims have also been made in terms of environmental protection and "special areas." Sometimes these claims may run cover for national controls over navigation. For example, in 1970 the Canadians declared an Arctic Pollution Control Zone that would have given them nearly complete control over all navigation within one hundred miles of Canada within the area delimited. There have been expansive claims to a territorial sea with, of course, some of the Latins being in the forefront with claims of 200 nautical miles in which there would be no right of submerged transit, no right of overflight, and one suspects through time a variety of claims even challenging military activities and the right of naval maneuvers in those areas.

Recently, there have been more explicit claims to "military boundary zones" and other areas which would prohibit military activity. For example, North Korea, in responding to our own 200-mile fishery zone, adopted a 200-mile fishery zone plus, for good measure, a 50-mile "military boundary zone" in which even commercial shipping would be prohibited without the consent of North Korea. There have been expansive claims to continental shelves, with India, for example, claiming an area of shelf in the Indian Ocean that goes out over a thousand miles and which would turn *the* Indian Ocean into *an* Indian Ocean. There have been claims to prevent exploitation of the deep seabed by turning it into the common heritage of mankind in ways that would place it under control of a monopoly international organization controlled by the devel-

oping nations. Now I do not mean to attack the reasonable and fine permutations of the concept of the "common heritage of mankind," but I do wish to indicate that this claim also fits into a broader pattern of claims restricting national oceans uses.

Let us now shift to yet another significant trend that must concern us in the oceans; it is an area that you have already discussed extensively — the North-South dialogue and the new economic order. As it applies to the oceans — as is the case elsewhere — it would be a mistake to try an oversimplistic labelling of this rather amorphous set of trends because it really includes a variety of different things. In some of its manifestations it is a reasonable set of concerns of producing nations to free themselves from the worst kinds of extreme market fluctuations in the market economy. It is also a set of reasonable demands in some of its permutations based strongly on the Judeo-Christian tradition of help for those who are in fact underprivileged and who do not have the kinds of resources to feed their populations or to obtain development. On the other hand, the new economic order, particularly as it has been felt in the oceans, has sometimes been a cover for special interest pleading or for claims that would lead to vastly inefficient utilizations of ocean resources. For example, it is one of the great shams of all time that the extreme coastal nations of the world have been able initially to convince developing countries that a coastalist expansion of jurisdiction is in the interest of developing countries of the world. If one looks at the reality, one will see that some of the principal beneficiaries are the United States, the Soviet Union, other developed nations, and that the trend, as one would suspect, has been reflective of special interest pleading on the part of some very clever middle rank coastal nations.

I do not mean to continue to pick on the Canadians because, as our neighbors to the north and a nation with a major ocean stake, they have been leaders in seeking a new convention. But, on the other hand, one has to take note of the fact that, in efforts to extend the continental margin beyond 200 miles, we estimate that economically fifty percent of the entire world hydrocarbon potential of that area may be Canadian. They of course are in the forefront of that trend.

You also find a concern in this rhetoric of the new economic order for state centrist models; for example, the idea of the enterprise which is to be a centrist model of development on behalf of the international community. The issue there is not really one of

sharing and the maximum rate of return to developing countries — it has not been approached in that fashion. I think a very excellent case can be made that a licensing system in which any nation or firm is free to mine the deep seabed subject to certain licensing restrictions and a significant tax which would go to developing countries would in fact generate higher revenues for developing countries.

Let us turn from trends threatening ocean interests to the United States response. I am not a specialist in the naval issues, so I will not discuss our response to those issues, except to say that for me the most important aspects of the question are really what happens over a fairly long period of time; that is, not this year on the issue of the nuclear carrier versus another conventional carrier or precisely what happens next year, but the question of the trend through a ten to twenty-year period of time. It is a question of the general levels of defense expenditures on the part of the Soviet Union and the United States, which in turn are likely to be highly dependent on the general economic strength of the United States *vis-à-vis* the Soviet Union. Those are the kinds of long term concerns that we must particularly focus on. It is the big picture that counts, and not simply the details of the moment.

But if we shift to the other trends, those of the claims to extend jurisdiction unilaterally, and the North-South permutations that are closely associated with that, I think there are some things we can say about what our strategy ought to be in dealing with those problems and dealing with them responsibly; not simply in a negative sense, but in an affirmative way that provides the kinds of incentives for others that Secretary Habib mentioned last night and which I believe are indeed a very important part of a successful and lasting negotiation.

In examining the spectrum of strategies we see they range from unilateralism — the kind of issues that Len Theberge mentioned to us — to complete multilateralism. It would be a question of making our own oceans claims, of limited bilateral agreements, limited multilateral agreements or some mix of those to deal with the problem, or a comprehensive oceans agreement which itself would have to be supplemented by a variety of limited multilateral, bilateral, and perhaps some unilateral actions. And as we did that within the National Security Council, one answer emerged that was very clear to me. For the United States, multilateralism — successful multilateralism with a good outcome and a good treaty that reasonably



protected our oceans interest — was substantially preferable to any other kind of alternative, particularly to unilateral approaches. Now why is that? Well there are a number of reasons that make sense both theoretically and in terms of what we have been seeing happening in the oceans. One is that if the threat is unilateralism on the part of others, how in the world does one control unilateralism by making a set of unilateral claims of one's own? You simply cannot limit the other fellow's unilateral claim by saying, "Look, I claim a 200-mile fishery zone, therefore you ought to claim only a 200-mile fishery zone." The principle that is likely to stand out in that example is that if you have made a unilateral claim over the oceans for things you believe are in your national interest to control, others can make similar unilateral judgments. It is unilateralism itself that is endorsed by that decision, and that is precisely what happens. Since we have the broadest and most complex range of oceans interests — the other fellow's claims being much more simplistic — our interests systematically suffer around the world while his are protected. The process also leaves out the landlocked and geographically disadvantaged states who have no way of making unilateral claims and who in many respects strongly support United States oceans interests. They are for freedom of navigation, for example, and have no reason to see navigation or marine scientific research restricted on the world's oceans.

Even leaving aside the landlocked and geographically disadvantaged states, when one looks at the pattern of coastal states, one discovers that more than a majority of all the coastal states of the world become totally zone-locked before reaching a 200-mile area. What this means is that when one gets to about 180 miles in the world's oceans, there is a break-even point in which there is absolutely no further gain for a majority of those coastal nations of the world because they have run up against someone else's oceans boundary or their 200-mile claim, or whatever it may be. From a theoretical standpoint, it is not surprising that one would expect to do better in a reasonable multilateral conference that brings these groups together than in a pattern of unilateralism in which the claims of the most extreme claimants become the leaders in the rhetoric of the Group of 77.

Although we have arrived at efforts at multilateral agreement as the best strategy, if one looks back over the history of United States oceans policy, one realizes that our policy has been in fact a mixture; we perhaps have not always acted in our best interests in

the oceans area. The Truman Proclamation in 1945 is cited repeatedly as the beginning wedge for unilateral oceans claims. It was strongly urged by the Interior Department, and in that case there was no violation of international law; there was no controlling treaty violated and it was accepted very quickly by almost every nation in the world. In 1958 and 1960, we resumed the multilateral course in the First and Second United Nations Conferences on the Law of the Sea which led to four reasonably good conventions on oceans law that continue very substantially to govern oceans law today, although there were a number of significant omissions and failures. The 1960 Conference was unable to agree on the maximum breadth of a territorial sea. Similarly, there was never any definitive agreement reached on the outer limits of coastal state fishery and resource jurisdiction. In the interim between 1960 and 1970, the failure to reach agreement on the maximum breadth of a territorial sea, the problems associated with the emergence of newer states claiming that "we want a share in developing this new law," and a whole series of new problems like deep seabed mining and the emergence of environmental issues on which all four Geneva Conventions give only passing mention — all of these problems — came together. Between 1970 and 1973, we had a series of meetings in something called the *Ad Hoc* Seabed Committee which initially focused on the question of a regime for manganese nodule mining in areas beyond national jurisdiction, but which ended up being a preparatory effort over three years for a comprehensive conference on the law of the sea. That Conference held its first session in 1973; it has now completed seven sessions and its eighth session will be held in Geneva in March of 1979.

One hears a great many varying assessments of the work of the Third United Nations Conference. On the one hand, you will hear some say that the materials contained in this Informal Composite Negotiating Text (ICNT), which is roughly the work of the Conference plus some other materials, are very poor; someone said to me that it had all of the lyrical qualities of the Manhattan telephone directory with none of its accuracy. I think that is an overly pessimistic perception. My own feeling is that about ninety to ninety-five percent of the work of the Conference has been completed in a manner that is satisfactory for United States oceans interests and for the common interest in general. That includes agreement on a maximum breadth of a territorial sea to twelve nautical miles, which is rather unheard of if you remember the strength of the

Latin push for the 200-mile territorial sea. By "consensus" on this I am talking about a behind-the-scenes conference leadership consensus of what that treaty is going to contain, as well as the article that is now in the treaty. That does not mean that every nation will accept the idea. There has been agreement on a twenty-four mile contiguous zone; there is agreement on the question of transit rights through and over straits used for international navigation; an improved regime of innocent passage in the territorial sea that is both a more definite and objective regime and a regime that better protects the marine environment. The question of mid-ocean archipelagic nations has been resolved with a restriction on the kinds of claims that could be made to a reasonable limitation, again with the full transit rights through, over, and under very broad archipelagic sea lanes. There has been agreement on a 200-mile economic zone with essentially every article worked out, although there are still a few problems in this area. That would mean coastal state resource jurisdiction over coastal resources out to 200 miles as well as continental margin resources. There is agreement upon a basic framework for continental margin jurisdiction that would either extend to 200 miles or, where a nation has a margin that goes beyond 200 miles, to the outer edge of the continental margin. The framework includes revenue-sharing for developing countries beginning at the 200-mile mark. As we will see, there is still an unresolved question as to what the outer edge of the continental margin means.

There is a rather extraordinary chapter on protection of the marine environment. I say extraordinary not because it is everything our environmentalists would have preferred (nor could any of us objectively say it was everything we wanted), but because it is a stronger set of environmental guarantees than we have ever had before in oceans law. At the same time, these articles resolved the most difficult of the environmental problems — the vessel source pollution problem — in ways that protect navigational freedom. There is an extraordinary set of provisions on compulsory dispute settlement, which, I believe, is quite flexible and which has gained the strong support of the Soviet Union. And again, this is something — as those of you who have worked with the Soviets in many of these conferences know — that is a fairly recent departure for the Soviet Union; I can tell you that they have gone beyond even their sort of reluctant acceptance of dispute settlement in other areas when it comes to law of the sea.

Now if you look to the issues remaining — the negative side of

the law of the sea ledger at the present time — there are really only between eight and twelve significant political issues that remain to be resolved. In my judgment, essentially all of those can fall rapidly into place if the most serious of all, the deep seabed mining problem, is resolved. Before getting to the mining problem, let me just quickly mention a couple of the remaining issues: the character of the economic zone, which, most importantly, is really an issue of the interface between coastal state resource jurisdiction and navigational freedom; the question of the outer limit of the continental margin — how it will be determined; the problem of landlocked and geographically disadvantaged states' access to the fisheries in neighboring economic zones; the question of the protection of cetaceans and conservation of marine mammals; the issue of the comprehensiveness of the dispute settlement system, particularly as it applies to the economic zone; the question of marine scientific research in the economic zone; and a whole set of issues surrounding the final articles that have not yet been discussed meaningfully. These last issues include such important things as how many states have to sign before the Convention becomes binding or before it comes into force; even more important is the problem of a package — where are reservations to be permitted if at all in an overall treaty which may contain more than 300 articles in a comprehensive set of oceans issues. And there are other problems as well. But I think that all of these can be resolved if and when we can solve the question of deep seabed mining.

There are several polar positions on seabed mining. The extreme Group of 77 position was for a single operating monopoly to mine deep seabeds on a socialist state centrist model. The initial developed countries position led by the United States was that there should be a licensing system in the seabed area in which firms would, subject to environmental regulations made by the international authority and other reasonable regulations, be free to mine and then pay a significant portion of the revenues to an international authority for distribution to developing countries. Over the years these positions have evolved into a fairly tenuous and uncertain framework for compromise about something called a "parallel system," or what I prefer to call a "balanced development system," in which one half of the area is based on the model of the enterprise and the other half on an assured access system. The key to having it work is a provision to the effect that every time a firm wants to go over on the assured access side of the system, they must put up two

sites, not knowing which site they will get — the enterprise selects the site and then keeps the other in a bank for its own operations on the enterprise track. And at the present time the extremely detailed and complex negotiations are proceeding in this framework. We have made a series of very forthright and I believe forthcoming proposals on the enterprise side of the system for mandatory technology transfer, mandatory financing of the first operation of the system on the enterprise side, and fairly great freedoms in the way the enterprise would operate on this side of the system. In turn, my own feeling is that we are going to have to get very clear assured access on the other half of the system; if we do not there is virtually no chance of Senate advice and consent to a law of the sea treaty. And at the present time we do not have that in the text. I think the issue to watch will be the clarity with which the “assured access” side of the equation evolves.

As an overall reaction to where UNCLOS III is at the present time, I feel something like the President of the University of Chicago who, when asked whether the University was a great university, replied, “No, but it is the best there is.” The Law of the Sea Conference is not only the best there is, it is the only game in town in terms of optimal ways of protecting United States oceans interests. Now that does not mean we do not have fall-back options; that does not mean that others might not suffer a great deal more than we if there is a failure. It is merely to recognize that if we can promote a successful comprehensive treaty, it is in our national interest to do so.

Let me conclude by discussing very briefly some recommendations for United States policy in the oceans. I think the first and most important thing is for us to recognize honestly that we need a foreign policy for the oceans. And that is not something that is obvious or something that we have ever had in a sense of a conscious, coherent policy. Rather, oceans policy has tended to be made either on an *ad hoc* basis by setting up a negotiating group for a conference or on a country-by-country basis as when a Peruvian tuna seizure crisis emerges. So I think the starting point is to recognize that there are a range of issues that are coherent and that require more than a country-by-country type of uncoordinated response.

The second recommendation is to recognize very clearly our foreign policy stake in the oceans — the international relations side of the issue; here the consistent problem that we have had is that

over and over we think of ourselves as a coastal state. And if you look at the whole history of congressional involvement, particularly in this, it is a coastal congressional effort; it is those concerned with extending jurisdiction to 200 miles in a fishery zone without worrying too much about whether we violate our treaty obligations or about what happens to us off the shores of North Korea or other parts of the world until something happens and hence is too late. Part of the problem here, I think, has been that the executive branch has not been the agency with leadership in oceans policy. It has only been recently that we have had any kind of bureau of oceans even in the State Department and indeed that was fought until Senator Pell finally mandated the creation of an oceans bureau.

Another aspect of our oceans policy is that we should be willing to stay the course in the Law of the Sea Negotiations — to be a calm sustaining influence underpinning the United Nations Conference on the Law of the Sea. We should seek to avoid a rhetoric of eminent conference failure at the very next session if we cannot reach agreement. At home, we must be patient and understand the nature of the complexities and the long term nature of the process required. Just comparing it to 1958, for example, the International Law Commission began work in the early 1950's; it was not until 1958 that we agreed upon the four Geneva Conventions, and we even went to 1960 with another conference on the territorial sea. So there was a period of at least ten years required for simple agreement with fewer countries. It was not until about 1970 that we started the current exercise meaningfully, and we are not yet ten years from there. If you look at the SALT process, it is significantly longer than UNCLOS III as a process up until the present. So I think we have to get over the unrealistic notions that you can pressure cook this kind of enormously complex treaty overnight. It cannot be done. It takes a long time and it is in our interest to persevere and get a good agreement.

At the same time I think frankly that the United States is going to have to toughen up a bit in a couple of the areas if we hope to get this past the Senate. And I am particularly concerned about the deep seabed mining issue, although I think that there are significant precedential implications for the new economic order as well as significant interest in access to the minerals of the deep seabed. The one thing that concerns me the most is that I am afraid that the whole process is going to be lost if we do not insist on clear assured

access to seabed minerals on our side of a balanced system. And I believe there are a few other things that we could do on the character of the economic zone and on marine scientific research as well, although those issues are extremely difficult, and they are certainly not amenable to simplistic solutions. Now going along with all of this, we should avoid illegal unilateral claims. It should be a cardinal tenet of United States oceans policy to avoid illegal unilateralism in violation of our oceans freedom, yet we have just gone through a period of making a 200-mile fishery zone claim that, in my judgment, was illegal when made. We have just gone through yet another process in which Senator Muskie and one of his staffers forced through a claim over vessel source pollution in the Clean Water Act Amendments — the section 311 problem; not only a claim over 200 miles but in any area potentially affecting United States resource jurisdiction. It looks like that claim has finally been walked back with quiet amendment. I could give you two or three more situations currently going on where domestic agencies are pushing strongly for oceans activities in violation of the current treaty obligations of the United States. Along with that we should not merely avoid a unilateral illegal claim, but we should protest the illegal claims of others that go beyond the kinds of things we can accept. Obviously, we can not protest the 200-mile fishery zone today, but we can certainly protest beyond that, and we can coordinate with our allies to protest with a variety of oceans allies rather than unilaterally; frankly on this point, I think we could even get Soviet Union cooperation to protest systematically as well. What is the record? We have not sent a protest note from the Department of State on an oceans claim in recent years — an era which has seen an expansion of 200-mile zones, not just with our fishery zone but with many other claims that followed our claim, to the point where today, eighty-five percent of all of the oceans areas that can be potentially claimed to 200 miles has been claimed.

And finally, I think we need to strengthen the foreign policy apparatus dealing with the coordination of oceans issues. I believe it is commendable that the Department of State has set up the Oceans Bureau though I would be somewhat happier if it were an oceans and environment bureau rather than an oceans, environment, and science bureau. Why should the same bureau focus on nuclear nonproliferation problems as well as oceans issues? Historically it was an accident, with the Department putting together leftovers when the Bureau was created. The Defense Department

is weak at the present time in oceans issues. They have very little ability to focus on the issues though they have some extraordinarily capable people. The National Security Council (NSC) has not a single policy officer today focused on the question of oceans coordination, yet in past administrations they have. In this administration it fell to the wayside, I think, because the person who was in charge went over to Mondale's staff, and also perhaps because Ambassador Richardson is such a strong personality that it was felt no one was needed on the NSC to coordinate the policy on this area.

And finally, we should take a look at organization of domestic oceans issues. Are we going to have an organizational arrangement that will take into account the foreign policy aspects, or are we going to have a domestic organization that treats this area as Department of Interior issues? I am sorry to say that the leaks all over Washington indicate that the President's reorganization project will be making a recommendation to fold the National Oceanic and Atmospheric Administration (NOAA) into an enlarged Interior Department to be called the Department of Resource Conservation or some such thing. It is even unclear whether it will be splintered within the Interior Department or whether NOAA will retain its existence. I think such a move would be an enormous step backward in the oceans area and that the right thing would be to establish an independent Oceans and Atmosphere Agency. One might even adopt the recent recommendation of NACOA, the President's Advisory Committee on Oceans that discussed adding to an independent Oceans and Atmosphere Agency the capability to deal with polar areas and space, and combining NASA with it as well. Such a suggestion has some attractive elements, though I can also see some significant problems in getting NASA involved; I for one would like to see the first step be an oceans and atmosphere agency. Well, those are simply a few comments on what I think the problems are and where I think we ought to go. For me the choice is one between continuing to muddle through or adopting a coherent foreign policy for the oceans.

Thank you.

*Q. The Conference has been deadlocked for a number of years on the deep seabed mining issue. Although your report on this issue is optimistic, so have been the reports in the last two or three years. What is the basis of your optimism, and don't you think it would be*



*best to conclude a treaty on the basis of what has been agreed upon to date, leaving the mining issue to be dealt with separately?*

A. Your perception is accurate, I believe, when you say that the report I have just given on the mining issue sounds very similar to the report of one, two, and three years ago on the impasse reached in this issue. I think the only major differences are that, first, there has now been general agreement on an overall framework for the negotiation on the mining issue. If it is a complex issue that has thirty sub-elements, then how does one negotiate the specifics of those articles that allow a serious effort at compromise before all can agree on the overall framework? And yet what has happened for the last two or three years is a shifting back and forth between hard line demands for a single operating enterprise, demands on the other hand for no enterprise at all, demands for a parallel system, demands for a unitary joint venture system, or demands for combinations of unitary joint venture systems with clean access systems, and so on. Until that fundamental framework problem was resolved, it was impossible to go anywhere in the deep seabed mining problem. Now I am somewhat optimistic, because at the last session it seemed to me that the framework problem came closer to resolution. There seems to be a more generalized, behind the scenes understanding that we are going for a parallel or balanced system. I am somewhat pessimistic, however, because I still see forces from a variety of different directions that are trying to interject new conceptions about how to resolve the deep seabed problem; in my judgment, until the initial framework issue is resolved, no progress will be made on the other.

Another thing that was fairly useful at the last session was the procedural work. It went forward intelligently. We had a number of different subcommittees. For the most part they did good work. I think the finest example was that done by Ambassador Koh on the financial arrangements, in which he worked out a detailed provision on the financing — the revenue-sharing — based on an econometric model done at the Massachusetts Institute of Technology. And although we think the figures are high, I think the calibre of the work is superb and generally the type of study, though in need of some alterations, that deserves our strong support. So I see some progress, and my sense is that Ambassador Richardson is more encouraged by what happened at the last session as well.

Then the issue is whether one can speed it all up by splitting off deep seabed mining and concluding the rest of it. Two points in

response to that: first, there is a slight chance that it could be done. Second, since there is a slight chance, it should be tried. And by slight I think the chance is something like one in twenty that it could be done. One of Ambassador Richardson's former negotiators wrote an article in the *Virginia Journal of International Law* urging the adoption of this proposal as the sole United States response to the Law of the Sea impasse at the present time. I think it is such a small chance that, although I would try it and certainly float feelers to get reactions from conference leadership, the key is to develop a package of amendments, a specific package on the deep seabed text that illustrates precisely in the overall working of the system what we must have to get it past the Senate. Then take that package, coordinate it with our NATO allies — the kind of action Secretary Habib says is always the automatic second step and I agree completely — and also try to coordinate it with the Soviets. At that point, behind the scenes and without ever surfacing a draft, get conference acceptance of the overall package. I think that is the way to proceed. It will be painful even if we do it right, and it is likely to take two or three years.

*Q. Traditionally, high seas resources, whether living or nonliving, are considered res nullius. If these resources indeed belong to no one, why cannot the United States simply proceed unilaterally to mine the deep seabed?*

*A.* I think there is one problem that differing persons think is more or less overwhelming on the other side, that is, that most of the rest of the world does not accept the United States claim that every nation has a high seas right to mine the deep seabed. It is an empirically observable fact that a strong majority of the world says that is not the case. And whether you accept it merely as something that is a political position on their part or whether you accept their international legal claim, which I do not, it is likely that in time a sustained effort to mine the deep seabed — solely by the United States — without further agreement would lead to a variety of costs which we would pay. Those costs might be to defense and security interests through the breakdown of the overall law of the sea negotiations. A pattern of systematic law suits against the assets around the world of the companies involved, such as Kennecot or Lockheed, on a theory of theft of the common heritage of mankind might result. It might simply result in increased political harrass-

ment and difficulty in bilateral relations in some areas. But although one can make differing assessments of the cost, it is fairly clear that there would be costs. I think the real issue is, what are our chances of concluding a good treaty that protects our interest in deep seabed mining, because absent such a treaty we will mine unilaterally or with our allies, whatever the costs. I still think that if we go about it right we have a good chance of concluding a treaty. And by the way, I would at this time support passage of the deep seabed mining legislation just as Ambassador Richardson is supporting the passage of that legislation. In my judgment, it is not a form of illegal unilateralism. We have consistently maintained our right to do it. It is clearly interim. The legislation says we are mining the deep seabed until such time as a comprehensive treaty is adopted, and given the difficulty in the negotiation, I think the legislation is on balance a risk worth taking in an effort to move the conference from dead center.