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United States Interests and the Law of the Sea

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In 1973 the Third United Nations Conference on the Law of the Sea began the formidable task of developing a comprehensive legal regime to govern the world's oceans. In the brief paper that follows, I will attempt to outline the major concerns that have guided the United States in this long and arduous, yet vital treaty-making process.

GLOBAL ORDER

In general terms, U.S. foreign policy aims at stability, predictability, and order in world affairs. We seek ways of avoiding or, if necessary, resolving international conflicts by peaceful means within the framework of an established international legal regime. These goals take on concrete meaning in the law of the sea context, since the world's oceans are fast becoming an area of dispute over competing or overlapping claims. A comprehensive Law of the Sea (LOS) treaty might, for example, have prevented the "Cod War" between the United Kingdom and Iceland in 1976.

Recent trends indicate that such conflicts are likely to increase in the absence of international remedial action. A treaty can provide the basis for generally agreed perceptions of the various rights and duties of states in the oceans and create relative stability of expectations. Moreover, if the Law of the Sea Conference should succeed in producing a widely-accepted treaty, it would provide a precedent for solving global problems on a universal basis, particularly in the U.N. framework.

In addition to demonstrating the capacity of multilateral negotiations to substitute the rule of law for the clash of conflicting claims, the treaty should provide specific means of resolving the disputes which will inevitably result from its interpretation and application. The United States has accordingly advocated the inclusion in the LOS Treaty of a system of compulsory and binding dispute settlement.

Before the LOS Conference commenced its work, many countries refused to accept a compulsory and binding international dispute settlement mechanism in any important area. Agreement on such a

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mechanism would mark an important precedent and could provide a new and dependable basis for both the settlement of interpretive disputes and for the application of rules to changing circumstances. If a state chose to ignore a binding decision, any sanctions applied against it would rest on a firm foundation of legitimacy. The creation of a satisfactory LOS disputes settlement mechanism could also have a favorable spillover effect by serving as a model for the creation of other international functional tribunals.

Apart from our general interest in global stability, the United States has several specific interests that must be protected in any treaty that emerges from the Law of the Sea negotiations.

MINERAL RESOURCES OF THE DEEP SEABED

One such interest is in the development of the mineral resources of the deep seabed.

The most important known resources of the deep seabed are manganese nodules, which contain exploitable quantities of nickel, manganese, cobalt, and copper. Heavy concentrations of nodules are unevenly distributed over the floors of the world's oceans. Estimates of their potential to supply world needs for the constituent metals vary widely, and, of course, the financial viability of seabed mining depends upon comparative costs between land-based and seabed production. Nevertheless, it is widely agreed that nodules represent a very important and potentially major source of these metals for the future. Other resources of the deep seabed, such as metalliferous muds, radiolarian ooze, and geothermal energy may be important in the future.

Although there is no immediate threat of a physical shortage of any of the materials existing or thought to exist on the seabed, we must plan for the time when rich land-based reserves are depleted and the seabed may well become the most cost-efficient, and perhaps essential, source of vital materials. Although seabed mining will not become a large industry until late in this century, the possibility of supply restrictions could arise if seabed resources were then controlled by a supranational organization which in turn was controlled by countries indifferent or unfriendly to our interests. Assuring states and their citizens direct access to seabed resources on a nondiscriminatory basis would eliminate this danger and avert the concomitant danger to world order that would arise should attempts be made on political grounds to deny the industrialized countries resources then essential to their welfare.

Developing the technology needed to exploit the deep seabeds should be a matter of considerable interest to all nations. Consumers and potential consumers have a stake in the outcome of this effort, for their own national development may be linked indissolubly to an assured supply of the minerals found on the ocean floor.

Four consortia of multinational companies have already invested \$150 million in research and development. If it proves economically and technologically feasible, commercial mining could begin in the mid or late 1980's. The ultimate investments involved (including on-shore processing) are about \$700-900 million in current dollars for a three million ton per year dry nodule operation.

With these concerns in mind, it has been a basic U.S. objective at the LOS Conference to establish a seabed mining system that would ensure the economically efficient and environmentally sound development of seabed mining. Thus, we require that a treaty provide for assured access and security of tenure for states and their citizens to deep seabed mineral resources, on a nondiscriminatory basis, and on reasonable terms and conditions. Such a system would include governing and administrative organs reflecting the real interests of the various states involved, and would establish financial conditions that would allow operators a reasonable return and a real choice between mining independently or in cooperation with an entity established to mine on behalf of the international community. On a broader scale, we wish to create successful international institutions in the seabeds negotiations that could serve as models for other forms of North-South economic cooperation.

Our aims are in harmony with the concept voiced by the United Nations General Assembly in 1970 that deep seabed resources are the "common heritage of mankind." Implicit in this declaration is the view, which we support, that the deep seabeds will be exploited to the advantage of all countries, especially those that are less developed. It is through a treaty that the common heritage will become a reality.

NON-LIVING RESOURCES OF THE CONTINENTAL SHELF

Close to sixty percent of the world's oil and gas reserves are estimated to be in the continental margin. Customary international law and the 1958 Geneva Convention on the Continental Shelf provide for coastal state continental shelf resource jurisdiction to the extent such resources are exploitable. The United States has a broad continental margin and benefits from coastal state control over these

resources. The major outstanding issue in this regard is how far coastal jurisdiction should extend where the margin is more than 200 miles from shore.

The United States has a significant interest in maximizing world energy supplies and thus in encouraging exploration and exploitation of hydrocarbons of the continental margin, including those parts located beyond 200 miles. Our immediate goals are to decrease U.S. dependence on petroleum imports and to increase petroleum supply in the interests of stable markets until such time as alternative and renewable energy sources become economical. We also wish to foster broad international acceptance of a precise legal and scientific definition of the outer limit of the continental margin. At the same time we support the equity of sharing the revenues derived from the exploitation of the hydrocarbon resources of the continental margin beyond 200 miles with the less developed countries of the world.

LIVING RESOURCES

The United States has a major interest in the rational and orderly development of the oceans' living resources. Fish constitute an important source of protein for both the United States and the world (presently ten percent of world protein consumption—and increasing). The world catch of fish has tripled in the last thirty years, and U.S. consumption has doubled since 1945. Most governments realize that due to increasing fishing pressure, these resources need to be conserved and managed judiciously. Thus, the general acceptance of rational international standards and principles for conservation and optimum utilization of marine living resources is a major U.S. objective.

A Law of the Sea Treaty would establish fundamental and critical standards and principles pertaining to fisheries—standards and principles which, given a comprehensive treaty regime, would be viewed by most states as binding. As in other issues involved in the LOS negotiations, the United States also has several specific interests regarding fisheries resources.

We have a substantial economic and commercial interest in highly migratory species, particularly tuna. Our tuna fleet is the largest and most sophisticated in the world and we consume about fifty percent of the total world catch of tuna.

We have a major economic and conservation interest in ensuring recognition of the U.S. primary interest in U.S. origin salmon, both inside and outside our 200-mile zone.

Protection and conservation of marine mammals is of no less importance. In the course of negotiations we have put forward a proposal that clarifies the present text and permits states and international organizations to prohibit or limit the harvesting of marine mammals. This proposal permits them to implement standards more stringent than international standards contained in any LOS treaty.

Another of our aims is to acquire and maintain access to fish stocks within the 200-mile zones of other countries. A comprehensive treaty could serve our national interest in gaining access to fisheries off the coasts of other States because it would enhance recognition of the principles of access and optimum utilization. Bilateral agreements will still be needed to implement the principles.

MARINE SCIENTIFIC RESEARCH

The American marine scientific research community occupies a leadership role in seeking new knowledge of the ocean environment. It believes that such information can benefit humanity on a global scale. Increased understanding of the monsoon, for example, may be critical to the development—and indeed, the survival—of millions of people. In a like vein, marine scientific research can lead to the development of new sources of protein and energy. Human demand for these is great today. That future demand will be greater by magnitudes is inexorable.

Much of this research would be carried out within 200 miles of foreign coasts. The United States seeks to promote the greatest access possible to the 200-mile economic zone of all states so that research can be conducted systematically under predictable conditions.

Almost all coastal developing countries, however, feel that their resource and national security interests can be adversely affected by scientific research carried out off their coasts. Consequently, they have argued that such research should require coastal state consent.

Finally, the United States seeks to protect the freedom of research beyond the proposed exclusive economic zone both in the water column and on the deep seabed.

PROTECTION OF THE MARINE ENVIRONMENT

Our objective in negotiations on protection of the marine environment has been to achieve a general obligation by the world community to apply international regulations to all sources of marine pollution. This objective reflects more than self-interest: the benefits to

humanity now and for generations to come are obvious.

We have been successful in achieving agreement on ocean dumping and continental shelf development regulations. In addition, we seek to retain our right to control vessel source pollution in our ports and territorial sea consistent with domestic legislation, which authorizes the establishment of standards for vessels within our ports and territorial sea stricter than existing or contemplated international standards.

In view of the futility of trying to deal unilaterally or even regionally with certain forms of pollution that have no geographic bounds, however, the United States has attempted at the LOS Conference to foster international acceptance of a legal duty of all states to observe minimum international environmental standards.

Most countries can accept our approach, except insofar as we maintain the right to establish and enforce higher than international standards in the territorial sea against non-United States flag vessels. In that regard, we are opposed both by the major maritime nations, which are concerned with potential interference with their vessels, and by some developing countries which want to develop commercial fleets.

COMMERCE AND NATIONAL SECURITY

Ninety percent of U.S. international trade is carried on the oceans. Our oil imports, virtually all by tanker, now amount to eight million barrels per day, and although forecasts differ, some experts predict substantially higher imports in the coming decade. Liquefied natural gas tankers are also expected to make an increasing contribution to our imported energy supply. Both the embargo of 1973 and the severe winter of 1977 have highlighted the importance of the uninterrupted movement of energy. Protection of freedom of navigation for tankers and other commercial vessels is extremely important.

Since our Armed Forces operate on a worldwide basis, the United States has a compelling interest in assuring global mobility and freedom to use the seas and the airspace above them for national security purposes. Most, but not all, countries recognize that our security interests and those of other major powers must be satisfied if there is to be general agreement on a treaty.

In recent years challenges to traditional high seas freedoms have caused problems in two major categories. First, many States have extended their territorial sea limits beyond the traditional three miles recognized by the United States. Second, certain States have pur-

ported to assert jurisdiction over navigation and overflight in broad expanses of the high seas. We do not recognize such claims and indeed we exercise our high seas freedoms of navigation and overflight in such high seas areas.

At the LOS Conference we have agreed to a 12-mile territorial sea, but only if there is agreement that assures free transit through, over, and under straits used for international navigation that would be overlapped by such seas.

National assertions of jurisdiction over living and non-living resources out to 200 miles has increased. There is broad agreement at the Conference on a 200-mile exclusive economic zone (EEZ) as part of a treaty so long as other traditional high seas freedoms beyond the territorial sea are preserved.

SUMMARY AND CONCLUSION

The negotiating text currently before the Conference adequately meets our concerns in most of the areas previously discussed. An important exception is the regime for the development of deep seabed mineral resources. During the first part of the Seventh Session of the Conference at Geneva this spring, the text on deep seabed mining was improved over the former negotiating text. The seabed text remains seriously deficient, however, in many respects. Only if further improvements are made will we be able to accept a comprehensive treaty that includes a seabed regime, no matter how advantageous that treaty might be for other purposes.

Our conviction that a comprehensive treaty is highly desirable remains firm. Establishment of a rule of law embodying both new and traditional principles governing mankind's use of the oceans is a goal deserving of all of our dedication, patience, and negotiating skill. Greater stability in international affairs, reduction of tensions and conflict, and peaceful settlement of disputes are some of the benefits that can accrue to the world community.