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Synopsis

RECENT DEVELOPMENTS IN THE LAW OF THE SEA 1983-1984

This synopsis examines major events occurring between December, 1983, and December, 1984, that affect the law of the sea. It discusses military uses of the world's ocean space that impaired free and peaceful navigation of the world's seas in 1984, the United Nations Convention on the Law of the Sea and related issues, marine environment pollution, marine mammals, Antarctica, and the St. Georges Bank controversy.

MILITARY IMPAIRMENT OF FREE NAVIGATION OF THE WORLD'S OCEAN SPACE

Introduction

Military abuses of the world's ocean space occurred with frequency and intensity in 1984. The mining of Nicaraguan waters,¹ the attacks on neutral ships in the Persian Gulf,² and the mining of the Red Sea³ threatened and impaired free use of the world's seas by innocent vessels in contravention of international law as embodied in the recently adopted United Nations Convention on the Law of the Sea (Convention).⁴ These incidents of violent assault on non-belligerent vessels by countries or organizations immersed in military and political conflicts underline the failures of international law to main-

1. See *infra* notes 7-52 and accompanying text.

2. See *infra* notes 53-153 and accompanying text.

3. See *infra* notes 154-210 and accompanying text.

4. United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, U.N. Doc. A/CONF.62/122 [hereinafter cited as 1982 Convention]. See especially art. 17 (which concerns the right of innocent passage in the territorial sea); art. 38 (which guarantees the right of transit passage through straits); art. 58(1) (which assures freedom of navigation in the Exclusive Economic Zone of a nation); art. 87 (which covers the right of free navigation on the high seas). *Id.*

tain the peaceful stability of the world's ocean environment.⁵ Moreover, these occurrences highlight the Convention's failure to address meaningfully the significant issue of military interference with the free navigation of neutral, innocent vessels on the world's seas.⁶

Mining of Nicaraguan Waters

On February 25, 1984, two fishing vessels sank after apparently hitting mines in the port of El Bluff near Bluefields, Nicaragua's largest Atlantic coast town.⁷ Nicaragua's Minister of Interior issued warnings on March 4, 1984, that Nicaraguan rebels, aided by the United States, would increase violence against economic targets. According to the minister, this violence would include the mining of Nicaraguan ports, the most significant of which is Corinto, an important fuel-unloading facility on the Pacific Coast about ninety miles northwest of Managua.⁸ During the first week of March, a Dutch dredger struck a mine in the narrow approach channel to Corinto and was severely damaged.⁹ A Panamanian ship hit a mine the evening of March 7, 1984, and, at the time, appeared to be sinking.¹⁰ It was, however, able to return to Corinto.¹¹ The 3500-ton tanker had just left port "laden with exports which are life blood to the besieged Nicaraguan economy."¹² Later in March vessels from the Soviet Union, Japan, and Liberia were damaged by mines planted in Nicaraguan ports.¹³

In early April it was learned from reliable United States government sources that the Central Intelligence Agency (CIA) was deeply embroiled in the mining of Nicaraguan harbors and ports. According to Reagan administration and congressional officials, this involvement included the presence of CIA-employed Americans supervising the mining from a ship off Nicaragua's Pacific coast.¹⁴ Americans did not actually position the mines in the water; this job was per-

5. One of the articulated purposes of the Convention is to establish a "legal order for the seas and oceans . . . [that] will promote the peaceful uses of the seas and oceans." 1982 Convention, *supra* note 4, preamble.

6. See A. PARDO, *Opportunity Lost, LAW OF THE SEA: U.S. POLICY DILEMMA* 13 (Oxman ed. 1983). In his article Dr. Pardo criticizes the Convention for not addressing the "highly delicate" issue of "military uses of the marine environment." *Id.* at 18.

7. N.Y. Times, Mar. 7, 1984, at A3, col. 4.

8. The Times (London), Mar. 5, 1984, at 4, col. 5.

9. The Times (London), Mar. 7, 1984, at 7, col. 4-5.

10. N.Y. Times, Mar. 9, 1984, at A4, col. 4.

11. The Times (London), Mar. 10, 1984, at 5, col. 2.

12. *Id.* These attacks on neutral vessels violate Art. 17 of the Convention. 1982 Convention, *supra* note 4, art. 17.

13. N.Y. Times, Apr. 7, 1984, at A4, col. 2. A Soviet oil tanker struck a mine in the port of Puerto Sandino on March 20, 1984. London Times, Mar. 22, 1984, at 8, col. 7. Thus, evidence now existed that at least three major Nicaraguan ports, Corinto, El Bluff, and Puerto Sandino, were mined.

14. N.Y. Times, Apr. 8, 1984, at A1, col. 6.

formed by highly trained Latin American commandos who used small, high-speed boats to penetrate shipping lanes near the shore.¹⁵ Because the ship on which the Americans worked never violated Nicaragua's territorial waters,¹⁶ unnamed intelligence officers asserted that the United States was not directly engaged in military operations against Nicaragua, but instead only served in an advisory capacity.¹⁷

Although the mining of Nicaraguan waters began in late January or early February of 1984, the Senate Select Committee on Intelligence was not briefed on CIA involvement until March.¹⁸ The House Select Committee on Intelligence, however, was informed about the United States and CIA entanglement in the mining in late January.¹⁹ President Reagan's approval of a recommendation from an inter-agency national security committee that called for the CIA to plan and implement the mining of Nicaraguan harbors transpired at some unknown date during December 1983.²⁰ At a news conference held on April 4, 1984, a reporter asked President Reagan if he was concerned that mines planted in Nicaraguan harbors might be struck by neutral freighters. The President refused to comment on "the tactics that are used in a war of that kind."²¹ He responded forcefully about the need to "inconvenience" Nicaragua in its effort to export revolution to its neighboring country, El Salvador.²²

On April 6, 1984, while the full extent of CIA involvement was still not publically known, Great Britain, one of the United States' closest allies, harshly criticized the United States government for its part in the mining of Nicaraguan waters as unwarranted interference with international shipping. The British government clearly disapproved of "any threat to the principle of freedom of navigation."²³ Another American ally, France, offered on April 5, 1984, to help

15. *Id.*

16. Nicaragua claims territorial waters up to 200 miles, but the United States respects only a twelve mile limit. *Id.* The Convention permits each nation to establish a territorial sea not to exceed the limit of twelve nautical miles. 1982 Convention, *supra* note 4, art. 3.

17. N.Y. Times, April 8, 1984, at A1, col. 6. The CIA claimed this advisory capacity was analagous to the role of Honduras-based Americans who train and help to supervise rebel forces inside Nicaragua. *Id.*

18. N.Y. Times, Apr. 14, 1984, at A6, col. 4.

19. *Id.* at A1, col. 5.

20. N.Y. Times, Apr. 16, 1984, at A8, col. 5.

21. 20 WEEKLY COMP. PRES. DOC. 479 (1984).

22. *Id.*

23. N.Y. Times, Apr. 7, 1984, at A1, col. 4. (quoting Andrew Burns, press counselor of the British Embassy).

Nicaragua clear its ports and harbors of mines.²⁴ French Foreign Minister, Claude Cheysson, labelled the mining of these ports "a blockade undertaken in a time of peace against a small country, which presents a serious problem of political ethics."²⁵

A United Nations Security Council resolution condemning the mining of Nicaraguan ports was vetoed by the United States on April 4, 1984.²⁶ Except for the United States and Great Britain, which abstained, all members of the Security Council voted in favor of the draft resolution that "[c]ondemns and calls for an immediate end to the mining of the main ports of Nicaragua, which has caused the loss of Nicaraguan lives . . . and the hampering of free navigation and commerce, thereby violating international law."²⁷ The Soviet Union and Nicaragua, both current members of the Security Council, actively encouraged the drafting of the resolution and the vote, which implicitly rebuked the United States for its involvement in the mining.²⁸

On April 6, 1984, the United States acted²⁹ to preempt jurisdiction of the International Court of Justice (sometimes referred to as the World Court) in order to preclude Court hearing of an action about to be brought by Nicaragua against the United States concerning American involvement in the mining of Nicaraguan harbors.³⁰ The United States Secretary of State sent a letter to Javier Perez de Cueller, Secretary General of the United Nations, formally notifying the United Nations that it would not accept International Court of Justice jurisdiction in disputes involving Central America for the next two years.³¹ In this letter the United States offered as a rationale for its two year suspension of Court jurisdiction the need "to foster the continuing regional dispute settlement process which seeks a negotiated solution to the interrelated political, economic, and security problems of Central America."³² On April 9, 1984, Nicaragua filed an application with the Court instituting proceedings against the United States and charging the United States

24. N.Y. Times, Apr. 6, 1984, at A7, col. 1.

25. *Id.*

26. 23 I.L.M. 457, 669 (1984) (reproduced from U.N. Doc. S/16463 of Apr. 4, 1984).

27. *Id.*

28. N.Y. Times, Aug. 16, 1984, at A7, col. 1.

29. See *infra* notes 31-32 and accompanying text.

30. See *infra* notes 43-52 and accompanying text.

31. Text of the letter provided by the United States Department of State, reprinted in 23 I.L.M. 457, 670 (1984). The International Court of Justice is the central judicial organ of the United Nations. The Court has, however, no mechanism for implementing its judgments. It relies instead entirely on moral persuasion and the impact of world opinion. In previous years, a number of nations, including France, Italy, West Germany, and the Soviet Union, have refused to accept the Court's jurisdiction. N.Y. Times, Apr. 9, 1984, at A8, col. 3-4.

32. 23 I.L.M., *supra* note 26, at 670.

with engaging in military and paramilitary activities against Nicaragua.³³

The United States Senate adopted on April 10, 1984, by an eighty-four to twelve vote, a non-binding resolution opposing the expenditure of federal funds to mine the harbors and ports of Nicaragua.³⁴ The Senate resolution states in full: "It is the sense of Congress that no funds heretofore or hereafter appropriated in any act of Congress shall be obligated or expended for the purpose of planning, directing, executing or supporting the mining of the ports or territorial waters of Nicaragua."³⁵

Two days following the passage of the Senate resolution, the United States House of Representatives passed a similar non-binding resolution, urging that no funds be used for the purpose of mining the ports or territorial waters of Nicaragua.³⁶ The vote in the House, 281 to 111,³⁷ coupled with the Senate resolution, virtually guaranteed an end to United States (CIA) involvement in the mining.³⁸ This overwhelmingly bipartisan vote was perceived by many observers to be an angry rebuke to President Reagan's policy of permitting covert and direct CIA entanglement in the mining of Nicaraguan waters.³⁹

In April, as a result of the mining of Nicaragua's territorial waters, at least two shipping companies halted the sailing of their ships into Nicaraguan ports.⁴⁰ Their actions furnished tangible evidence that the mining of Nicaraguan harbors was impeding free navigation and interfering with innocent passage of vessels in Nicaragua's territorial waters.⁴¹ Not until mid-April did a major group of anti-Sandinista rebels announce it would discontinue mining Nicaraguan

33. *Id.* at 488; *see also* N.Y. Times, Apr. 10, 1984, at A1, col. 6 and A8, col. 1-2. The State Department, on the day the complaint was filed, asserted that the International Court of Justice lacked jurisdiction over any dispute between the United States and Nicaragua because the letter mailed to the Secretary General on April 6, 1984, prevented the Court from hearing the suit. *Id.* at A1, col. 6.

34. 130 CONG. REC. § 54205 (daily ed. Apr. 10, 1984).

35. *Id.*

36. 130 CONG. REC. H2878 (daily ed. Apr. 12, 1984).

37. *Id.*

38. N.Y. Times, Apr. 13, 1984, at A4, col. 3.

39. N.Y. Times, Apr. 11, 1984, at A1, col. 6. Senate Membership was extremely unhappy that its own Intelligence Committee was not adequately informed of CIA participation in the mining. The vote followed an acrimonious exchange between members of the Intelligence Committee and William J. Casey, Director of the CIA. *Id.*

40. N.Y. Times, Apr. 12, 1984, at A11, col. 1-6. The two companies were the Hapag-Lloyd American, Inc., and the Grancolomiana New York, Inc. *Id.*

41. *See* 1982 Convention, *supra* note 4, art. 17.

ports.⁴²

The International Court of Justice ruled unanimously (15-0) on May 10, 1984, that “[t]he United States of America should immediately cease and refrain from any action restricting, blocking, or endangering access to or from Nicaraguan ports, and, in particular, the laying of mines.”⁴³ The Court decision came in the form of a provisional order granting Nicaragua’s request for a preliminary restraining order.⁴⁴ By a vote of fourteen to one the Court also declared that Nicaragua’s sovereignty and political independence should be respected and not threatened by “any military or paramilitary activities which are prohibited by the principles of international law.”⁴⁵

Although a significant portion of the Court’s opinion discussed the claim by the United States that the International Court of Justice lacked jurisdiction to entertain Nicaragua’s complaint,⁴⁶ the Court delivered its provisional decision without issuing a final ruling on the merits of the jurisdictional question.⁴⁷ It left unresolved the American contention that its April 6, 1984, letter effectively stripped the Court of jurisdiction over the dispute. The United States maintained that by its Declaration of August 14, 1946, in which it assented to compulsory World Court jurisdiction, the United States reserved the right to renounce Court jurisdiction if it took preemptive action before the filing of any complaint against the United States.⁴⁸ Additionally, the World Court failed to rule on another United States claim (made in a letter to the Court dated April 23, 1984) that Nicaragua never accepted the compulsory jurisdiction of the Court because Nicaragua never formally ratified the Protocol of Signature of the Statute of the Permanent Court of International Justice.⁴⁹

42. The Times (London), Apr. 16, 1984, at 6, col. 1. The halting of mining by the largest rebel group, the Nicaraguan Democratic Force, was precipitated by the negative reactions of the United States Congress and rebel fears that Congress would cut off aid to the “contras” (the popular name for the anti-Sandinista rebels). *Id.*

43. Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States of America*), 1984 I.C.J. 1 (Provisional Order of May 10), *reprinted in* 23 I.L.M. 457, 468-77 (1984).

44. *Id.* at 477.

45. *Id.*

46. *Id.* at 471-74.

47. *Id.* at 477.

48. *Id.* at 471, *see supra* notes 31-33 and accompanying text.

49. 23 I.L.M. 457, 471 (1984). The Court cited two cases to support its decision to issue a provisional order without making a final determination on the merits of the jurisdictional question; *see e.g.*, Fisheries Jurisdiction (*U. K. v. Ice.*), 1972 I.C.J. 17 (Interim Protection Order of Aug. 17, *reprinted in* 23 I.L.M. at 477). On October 8, 1984, the International Court of Justice delayed an expected decision on the Nicaraguan complaint. Instead, the Court convened hearings to determine if it has jurisdiction over the complaint. The World Court focused on the contention of the United States that the Court lacks jurisdiction because Nicaragua never recognized its authority. Nicaragua claims that its membership in the United Nations constitutes implicit recognition of the

On November 26, 1984, the International Court of Justice ruled fifteen to one that it had jurisdiction over the complaint brought by Nicaragua against the United States.⁵⁰ Having established its jurisdiction, the World Court voted unanimously to hear the case on its merits; it rejected the argument of the United States that, even if it had jurisdiction, the Court should refrain from deciding the case.⁵¹ Reagan administration officials responded to the decision of the Court by intimating that the United States may be forced to boycott further proceedings of the International Court of Justice regarding Nicaragua's suit.⁵²

Persian Gulf Shipping Attacks

During 1984 more than fifty neutral vessels were attacked in the Persian Gulf.⁵³ Throughout this period the Iran-Iraq war (now over four years old) engendered a sustained threat to the free flow of international shipping in the Persian Gulf and through the Strait of Hormuz.⁵⁴ The continued willingness of Iran and Iraq to strike at neutral vessels⁵⁵ within and beyond the so-called militarized zone illuminates unhappily the ease with which principles of international law are flouted.⁵⁶ Failure of the Convention to adequately confront

authority of the World Court. L.A. Times, Oct. 9, 1984, at I2, col. 2. The United Nations Charter states: "[a]ll members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice." U.N. CHARTER art. 93, para. 1.

50. N.Y. Times, Nov. 27, 1984, at A1, col. 6. Justice Schwebel of the United States was the lone dissenting judge. *Id.*

51. *Id.*

52. *Id.* at A12, col. 4.

53. L.A. Times, Dec. 10, 1984, at A14, col. 1; *see also* N.Y. Times, Dec. 4, 1984, at A12, col. 3.

54. *See* 1982 Convention, *supra* note 4, art. 38, 45. These articles delineate the rights of transit passage and innocent passage through straits used for international navigation, one of which is the strategically critical Strait of Hormuz that connects the Persian Gulf with the Gulf of Oman and the open sea. Keeping the Strait open for shipping is of paramount importance to maintaining the free flow of crucial Middle Eastern oil to the rest of the world. *See* RAMAGANI, THE PERSIAN GULF AND THE STRAIT OF HORMUZ 9-23 (1979) (which provides an astute analysis of the overall significance of the Strait of Hormuz).

55. On Dec. 3, 1984, an Iranian warplane struck a Cypriot supertanker south of Kharg Island, the Iranian main oil terminal. N.Y. Times, Dec. 4, 1984, at A12, col. 1-3. On Dec. 26, 1984, Iranian warplanes attacked a Spanish tanker ten miles north of the Shah Olam Shoals, which lies midway between Qatar and the Iranian island Lavan. The tanker had taken on its oil cargo at Ras Tanurah, Saudi Arabia, and was leaving the Persian Gulf bound for India when the bombing occurred. Persian Gulf shipping sources reported that the attack constituted retaliation for Iraqi attacks on oil tankers near Kharg Island over the previous three weeks. L.A. Times, Oct. 9, 1984, at I8, col. 5-6.

56. The Convention failed to address military matters because they are very sensitive. Pardo, *supra* note 6, at 18. "All military uses of the sea are relevant to the law of the sea," stated Dr. Pardo. Conversation with Dr. Arvid Pardo, professor of international

military uses of world waterways must be evaluated in the broader context of American inability⁵⁷ to stop the attacks on neutral vessels.⁵⁸

In early February two Greek cargo ships were struck by Iraqi missiles in the Persian Gulf off Iran.⁵⁹ Almost simultaneously, the Reagan administration developed contingency plans with Great Britain for keeping the Strait of Hormuz open.⁶⁰ Great Britain agreed with the United States to form a convoy system to assure free navigation of commercial tankers entering and leaving the Gulf, if, as it threatened, Iran tried to block the Strait of Hormuz.⁶¹ The United States and Britain were ready to use military ships to keep the Strait open to international trade.⁶² But, because no real effort was made by Iran to seal off the Strait,⁶³ neither the United States nor Britain was forced to activate any contingency plan for maintaining free access through the Strait.

On February 27, 1984, Iraq announced that it had begun a blockade of the Iranian main oil export terminal at Kharg Island (near the head of the Persian Gulf) by attacking oil tankers berthed there with air strikes.⁶⁴ An Iraqi attack on a fifteen-ship convoy of vessels heading for the Iranian port of Bandar Khomeini on March 1, 1984, extensively damaged a British cargo ship that had to be abandoned.⁶⁵ No lives were lost in the incident,⁶⁶ but the evidence that Iraq was carrying out its threat to attack merchant ships approaching Iranian ports caused Lloyd's of London to double war-risk premiums for ships in the Persian Gulf.⁶⁷ Additionally, a Turkish vessel

relations and senior research fellow at the Institute for Marine and Coastal Studies, University of Southern California, in Los Angeles, Calif. (July 19, 1984).

57. Perhaps, the realities of politics among nations almost inevitably dictate the failure of *any* international law or body to effectively provide for order in a world populated by highly volatile, individualistic nation-states (e.g., Iran and Iraq).

58. See *supra* notes 56-57.

59. The Times (London), Feb. 3, 1984, at 5, col. 2.

60. *Id.* at col. 1. Their plans involved sweeping for mines in the Strait of Hormuz. See also The Times (London), Feb. 23, 1984, at 7, col. 7-8.

61. The Times (London), Feb. 3, 1984, at 5, col. 1.

62. *Id.* Japan, which gets 60-80% of its oil from the Persian Gulf, was unwilling to participate in a military convoy system. Japanese firms are deeply involved in projects in Iran and feared their involvement in such a system might jeopardize these projects. *Id.* Accelerated fighting between Iran and Iraq during the month of February accentuated the dependence of Japan on Mideast oil. N.Y. Times, Feb. 26, 1984, at A6, col. 1-6.

63. See *infra* notes 128-32 and accompanying text.

64. N.Y. Times, Feb. 28, 1984, at A1, col. 5. Iraq at this time promised to sustain the blockade until Iran halted the war. *Id.*

65. The Times (London), Mar. 8, 1984, at 1, col. 1-2. Seven vessels were hit in the attack. *Id.* The assault occurred within Iranian territorial waters. The Times (London), Mar. 9, 1984, at 4, col. 5.

66. The Times (London), Mar. 9, 1984, at 4, col. 5.

67. *Id.* Due to the constant threat of attack, insurers declared 150 by 50 miles in the northeast section of the Persian Gulf a "war risk area." The Times (London), Mar. 10, 1984, at 6, col. 6.

was reportedly sunk in this same raid, while an Indian ship apparently suffered some damage.⁶⁸

On March 8, 1984, the British government officially protested this attack to the Iranian ambassador in London.⁶⁹ One British Parliament member noted a current United Nations resolution⁷⁰ calling for a cease-fire between Iran and Iraq and for freedom of navigation in international waters. He entreated Richard Luce, British Minister of State for Foreign and Commonwealth Affairs, to explain how the United Nations could be made more effective.⁷¹ Luce was unable to explain the inefficacy of the United Nations regarding this conflict and could only state that neither Iran nor Iraq was willing to receive a representative of the United Nations Secretary General.⁷²

Throughout March and most of April, commercial ships sailing the Persian Gulf remained relatively free from attacks arising out of the Iran-Iraq war. On March 27, 1984, however, a Greek oil tanker southeast of the Strait of Hormuz was hit by a missile, apparently fired from an Iraqi aircraft.⁷³ This assault occurred outside the Iran-Iraq militarized zone.⁷⁴ Moreover, on April 18, 1984, a Panamanian tanker was struck by an Iraqi missile near Kharg Island.⁷⁵

Throughout a three-week period beginning April 25, 1984, Iraqi and Iranian aircraft attacked five oil tankers in the Persian Gulf.⁷⁶ Two Saudi Arabian tankers were hit by Iraqi attacks in an area of the Gulf around Kharg Island that Iraq has labelled the "exclusion zone."⁷⁷ The third attack on a Saudi tanker⁷⁸ came outside this "ex-

68. N.Y. Times, Mar. 8, 1984, at A8, col. 1.

69. The Times (London), Mar. 9, 1984, at 4, col. 5.

70. S.C. Res. 540, 38 U.N. SCOR (2493d mtg.) at 6, U.N. Doc. S/INF/39 (1983). Summary of the resolution reprinted in U.N. CHRONICLE, Jan. 1984, at 103 (s/16092). Included in the resolution is a request for all nations "to respect the right of free navigation and commerce in international waters," and "to refrain from any action that might endanger peace and security as well as marine life in the Gulf region." *Id.*

71. The Times (London), Mar. 9, 1984, at 4, col. 6.

72. *Id.* In a prepared statement, Luce averred that the government was "working vigorously with the international community" to bring an end to the "destructive conflict" between Iran and Iraq. *Id.*

73. N.Y. Times, Apr. 6, 1984, at A9, col. 5-6. United States Navy explosive experts defused the unexploded missile as it lay stuck in the hull of the ship. At the time of the assault, Iraq claimed to have attacked two naval targets southwest of the Iranian oil terminal at Kharg Island. Both Navy Department spokesmen and an agent for the Greek shipping line that owned the tanker denied that the Greek ship was anywhere near Kharg Island. *Id.* If Iraq committed this strike, it was the only assault by Iraq reported to have occurred in 1984 outside the Iran-Iraq militarized zone.

74. See *infra* note 77.

75. The Times (London), Apr. 18, 1984, at 1, col. 2.

76. N.Y. Times, May 17, 1984, at A1, col. 1.

77. *Id.* at A5, col. 1. The Iraqi government continued to warn tankers and

clusion zone," sixty miles north of the Saudi oil refining center at Ras Tanura.⁷⁹ Reliable United States State Department officials disclosed that Iran was responsible,⁸⁰ although Iran never admitted this responsibility.

Iranian aircraft hit a Kuwaiti tanker on May 13, 1984, east of the Saudi coast and outside the Iran-Iraq "war zone."⁸¹ One day later, a second Kuwaiti tanker was struck by two unidentified, but apparently Iranian, rockets in this same area, as it was on its way back to pick up crude oil from a Kuwaiti oil terminal.⁸² These attacks seemed to demonstrate wanton disrespect for the principles of international law that guarantee free and peaceful use of the world's ocean space by innocent, neutral vessels.⁸³

On May 16, 1984, it became public knowledge that prior to these five attacks the United States offered to supply air cover to defend Kuwaiti and Saudi tankers against Persian Gulf air attacks.⁸⁴ At a May 22, 1984, news conference, President Reagan refused to specify what steps the United States government was willing to take regarding assaults on commercial shipping in the Gulf.⁸⁵ Nevertheless, the President declared that neither the United States nor the western world would permit the Strait of Hormuz or the Persian Gulf to be closed to international traffic.⁸⁶

The Arab League⁸⁷ met on May 19, 1984, and, at the urging of the Gulf Cooperation Council,⁸⁸ condemned the bombing of neutral

freighters to stay out of the "exclusion zone" that extends radially fifty miles around Kharg Island. Any ship found within this zone was subject to attack by Iraq. These two attacks occurred on April 25, 1984, and May 7, 1984. *Id.*

78. This tanker was jointly owned by the Mobil Oil Company of the United States and a private Saudi Arabian company. *Id.*

79. *Id.* This May 16, 1984, attack on a Saudi tanker close to its own port and outside the normal perimeter of the Iran-Iraq war zone precipitated a sharp rise in the cost of marine insurance and a steep increase in the price of oil in the spot and futures markets. *Id.* at A6, col. 1-2.

80. *Id.* at A1, col. 4.

81. *Id.* at A1, col. 1. The tanker carried oil bound for Britain. *Id.* This attack was the first reported one by an Iranian aircraft. N.Y. Times, May 24, 1984, at A5, col. 1.

82. N.Y. Times, May 17, 1984, at A1, col. 1.

83. See 1982 Convention, *supra* note 4, at art. 301. Article 301 is entitled "Peaceful uses of the sea." It states that nations should not use "force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations."

84. N.Y. Times, May 17, 1984, at A1, col. 4.

85. 20 WEEKLY COMP. PRES. DOC. 748 (May 22, 1984).

86. *Id.* In a letter delivered on May 20, 1984, President Reagan asked King Fahd of Saudi Arabia to permit the United States access to Saudi airstrips for American aircraft, if the United States decided to protect Persian Gulf shipping from attacks by Iran. L.A. Times, May 22, 1984, at I1, col. 5.

87. The Arab League was formed in 1945 by Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria, and Yemen. Joining later were Algeria, Bahrain, Djibouti, Kuwait, Libya, Mauritania, Morocco, Oman, Qatar, Somalia, Sudan, Tunisia, United Arab Emirates and South Yemen. 1 WORLD BOOK ENCYCLOPEDIA 546 (1984).

88. The Gulf Cooperation Council has as members six countries: Bahrain, Jordan,

ships in the Persian Gulf.⁸⁹ The Arab League also agreed to refer recent attacks on Kuwaiti and Saudi vessels to the United Nations Security Council.⁹⁰ At a May 22, 1984, meeting, the Gulf Cooperation Council denounced "Iranian aggression," but refused to criticize Iraq.⁹¹ This selective denunciation reflected the fact that, although Iran attacked fewer commercial vessels than Iraq, Iran struck at targets far removed from the Iran-Iraq militarized zone.⁹²

The United Nations Security Council convened a session on May 25, 1984, to discuss the assaults on shipping in the Persian Gulf.⁹³ Six members of the Gulf Cooperation Council formally demanded this meeting.⁹⁴ The session focused almost entirely on Arab censures of Iranian air strikes against neutral ships.⁹⁵ No mention was made of the Iraqi attacks.⁹⁶ The Arab speakers noted that the Iranian air attacks occurred in international waters outside the war zones claimed by either Iran or Iraq.⁹⁷

On May 26, 1984, Japanese shipowners stated that they would stop sending their own oil tankers into the northern section of the Persian Gulf.⁹⁸ Japan would continue, however, to charter foreign tankers to bring crude oil to Japan from the Gulf.⁹⁹ Japanese shipping companies and maritime unions jointly announced the decision to restrict tanker shipping in the Gulf.¹⁰⁰

By May 27, 1984, the number of oil tankers docked in ports just

Kuwait, Qatar, Saudi Arabia, and the United Arab Emirates. N.Y. Times, May 23, 1984, at A4, col. 1.

89. *Id.*

90. *Id.*

91. *Id.*

92. L.A. Times, May 22, 1984, at I6, col. 1. For example, after the Gulf Cooperation Council meeting on May 24, 1984, following an Iraqi air assault on Kharg Island, Iranian jets attacked a Liberian-registered tanker (chartered by Japan) in a section of the Gulf near the Saudi port city of Jubail. This attack took place far from the Iran-Iraq war zone. N.Y. Times, May 25, 1984, at A1, col. 1.

93. N.Y. Times, May 26, 1984, at A4, col. 1.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* During the debate, Arab speakers specifically mentioned the May 13, and May 14, 1984, attacks on Kuwaiti ships and the May 16, 1984, attack on the Saudi ship. *Id.*

98. N.Y. Times, May 27, 1984, at A1, col. 1. The decision was almost certainly made after consultation with the Japanese government. The trade issue of oil is of singularly vital importance to Japan, since it has no oil of its own. *Id.* at A18, col. 4.

99. *Id.*

100. *Id.* The ban on Japanese shipping in the northern region of the Persian Gulf may have been implemented at the insistence of the Japanese seamen's unions. See L.A. Times, May 26, 1984, at I13, col. 3.

outside the Persian Gulf had increased dramatically from ten to greater than sixty in a three-week period.¹⁰¹ Even without an overt blockade of the Strait of Hormuz by Iran, Iranian and Iraqi attacks on commercial shipping in the Persian Gulf managed to succeed indirectly in limiting the free flow of neutral vessels through the Strait and in the shipping lanes of the Gulf.¹⁰² In late May, one major Swedish tanker operator recalled its vessels from the Gulf.¹⁰³ Moreover, on May 27, 1984, an American-based oil tanker company, controlled by Texaco and Standard Oil of California, barred its tankers from the northern Persian Gulf.¹⁰⁴

Reagan administration officials announced on May 28, 1984, United States plans to send 400 Stinger anti-aircraft missiles to Saudi Arabia.¹⁰⁵ The missiles furnished support for the Saudis and their allies in an effort to establish a protected zone for shipping along the western coast of the Persian Gulf.¹⁰⁶ Almost immediately, Iran denounced American military intervention in the Persian Gulf.¹⁰⁷ "If Americans are prepared to sink in the depths of the Persian Gulf for nothing, then let them come," said President Ali Khomeini of Iran.¹⁰⁸

President Reagan, in an interview with foreign television correspondents on May 31, 1984, condemned Iranian attacks on commercial ships from neutral countries outside the war zone.¹⁰⁹ The President condoned Iraqi attacks on "shipping that was vital to Iran's economy" because "in a time of war the enemy's commerce and trade is a fair target."¹¹⁰ Iran, however, had "gone beyond bounds" when it attacked neutral ships that were doing business with third-party countries, such as Saudi Arabia and Kuwait.¹¹¹

After failing to garner sufficient votes in the United Nations Security Council to censure Iran explicitly,¹¹² the Gulf Cooperation Council pushed through on June 1, 1984, an Arab-sponsored Security Council resolution tactily condemning Iranian attacks on commercial shipping in the Persian Gulf.¹¹³ Because the Arabs compro-

101. N.Y. Times, May 28, 1984, at A4, col. 5-6.

102. See 1982 Convention, *supra* note 4, art. 45. Article 45 provides for innocent passage through straits used for international navigation.

103. N.Y. Times, May 28, 1984, at A4, col. 1.

104. *Id.*, col. 2.

105. N.Y. Times, May 29, 1984, at A1, col. 6.

106. *Id.*

107. N.Y. Times, May 30, 1984, at A1, col. 5.

108. *Id.*

109. Interview with Television Correspondents Representing Nations Attending the London Economic Summit May 31, 1984, 20 WEEKLY COMP. PRES. DOC. 794-95 (1984).

110. *Id.* at 794.

111. *Id.* at 794-95.

112. The Times (London), May 31, 1984, at 6, col. 1-3.

113. N.Y. Times, June 2, 1984, at A1, col. 5.

mised their demand that Iran specifically be named in the resolution, the Council approved a text that condemns "attacks on commercial ships in route to and from ports of Saudi Arabia and Kuwait."¹¹⁴ Nevertheless, Iran is blamed for all such attacks by the Gulf Cooperation Council.¹¹⁵

On June 2, 1984, Iran formally rejected this United Nations resolution.¹¹⁶ In a statement by the Iranian Foreign Minister, Iran declared that the Security Council action assured Persian Gulf instability and effectively approved future Iraqi attacks on Iranian shipping.¹¹⁷ "It [the United Nations] is, therefore, directly responsible for the intensification of the crisis . . . ," stated the Foreign Minister.¹¹⁸

A June 3, 1984, Iraqi missile attack on a Turkish tanker set the vessel ablaze¹¹⁹ and caused the Turkish government to temporarily halt sailing its tankers to the Iranian oil terminal at Kharg Island.¹²⁰ This assault occurred barely forty-eight hours after the United Nations Security Council had passed the resolution condemning air attacks on ships in the Persian Gulf.¹²¹

On June 10, 1984, a rocket fired from an unidentified plane, presumably Iranian, struck a Kuwaiti oil supertanker in the lower Persian Gulf.¹²² This assault was the first to occur in the southern region of the Gulf since Iraq and Iran began attacks on neutral ships earlier in 1984 as an outgrowth of the Iran-Iraq war.¹²³

While this was occurring, an emergency meeting of the six Gulf Cooperation Council nations¹²⁴ was being held to discuss the means of maintaining the flow of oil through the Persian Gulf (Gulf).¹²⁵ At the same time Saudi Arabia greatly expanded its territorial waters

114. *Id.*115. *Id.*

116. N.Y. Times, June 3, 1984, at 6, col. 1-6.

117. *Id.*118. *Id.*

119. N.Y. Times, June 4, 1984, at A1, col. 5.

120. N.Y. Times, June 5, 1984, at A4, col. 6.

121. *Id.* The resolution was clearly directed at Iranian attacks on neutral ships.*See supra* notes 112-18 and accompanying text.122. N.Y. Times, June 11, 1984, at A3, col. 1. Iran refused to confirm or deny its attacks on neutral vessels. Nonetheless, it was generally known that Iran was responsible for several attacks on shipping outside the Iraq-Iran war zone, and Iran warned several times that, if it cannot safely export oil, no ships will have free and safe passage in the Persian Gulf. *Id.*123. *Id.*124. *See supra* note 88.125. *See supra* note 122.

by including ocean regions twelve miles off the Al Arabiyah Island, in the middle of the Gulf and about seventy miles from the Saudi coast.¹²⁶ Saudi Arabia evinced determination to protect oil tankers in the Persian Gulf shipping lanes from Iranian air attacks.¹²⁷

The first week in June, Iran introduced a new stop and search zone¹²⁸ in and around the Strait of Hormuz, directly interfering with the free and innocent passage of vessels.¹²⁹ Before its announcement of the stop and search zone, Iran boarded a Singapore-registered cargo ship in the lower Gulf purportedly to search for weapons.¹³⁰ The ship was far from the war zone defined by Iran and Iraq.¹³¹ This action by Iran appeared to be a form of harassment designed to implement the Iranian policy of inconveniencing shipping throughout the entire Persian Gulf as retaliation for Iraqi attacks on ships in and around Kharg Island.¹³²

On June 15, 1984, a senior Iranian official announced a desire by Iran to see the current moratorium on attacks against Iranian and Iraqi border cities expanded to include shipping in the Persian Gulf.¹³³ This moratorium was proposed by United Nations Secretary General Javier Perez de Cuellar the first week of June.¹³⁴ Initially offering no response to this proposal,¹³⁵ Iraq eventually rejected the Iranian call for the United Nations mediation.¹³⁶

After a short lull in shipping attacks, Iraq resumed its assaults on tankers in or near the Iranian Kharg Island oil terminal on June 24, 1984.¹³⁷ A Greek tanker was slightly damaged in one attack.¹³⁸ On June 27, 1984, an Iraqi missile attack on a Swiss supertanker¹³⁹ resulted in the death of eight crewmen.¹⁴⁰ Subsequently, a South Korean tanker was set ablaze by an Iraqi missile attack in the Khor Musa channel of the northern Persian Gulf.¹⁴¹ In apparent retalia-

126. N.Y. Times, June 12, 1984, at A12, col. 3-6.

127. *Id.*

128. *Id.* Iran tried this method to deal with what it called "hostile" shipping. The zone was reported to have extended from Jask Peninsula in the Gulf of Oman to sea lanes off the island of Abu Rusa. *Id.*

129. *See supra* note 102.

130. N.Y. Times, *supra* note 126.

131. *Id.*

132. *Id.*

133. N.Y. Times, June 16, 1984, at 3, col. 3-6.

134. *Id.*

135. *Id.* at 3, col. 3. Because Iran controls the Shatt al Arab estuary, Iraqi oil shipments through the Persian Gulf have been curtailed during the four-year war. Since February, Iraq attacked ships sporadically yet regularly in an effort to stem the flow of Iranian oil in the Gulf. *Id.* *See also supra* notes 64-68 and accompanying text.

136. L.A. Times, July 3, 1984, at I16, col. 6.

137. N.Y. Times, June 15, 1984, at A1, col. 3.

138. *Id.*

139. N.Y. Times, June 28, 1984, at A3, col. 1.

140. N.Y. Times, June 29, 1984, at A3, col. 1.

141. L.A. Times, July 3, 1984, at I16, col. 1-4. The ship was part of a seven vessel

tion for these Iraqi attacks, Iranian missiles¹⁴² damaged a Japanese-owned supertanker as it headed southward through the lower region of the Gulf toward the Strait of Hormuz.¹⁴³ The tanker was hit twice, but damage was so minimal that the ship was able to continue en route to the Strait.¹⁴⁴

On July 11, 1984, Kuwaiti Defense Minister Sheik Salim al-Sabah announced in Moscow that Kuwait had signed a 327 million dollar arms agreement with the Soviet Union.¹⁴⁵ The arms purchase was made to aid Kuwait in defending commercial shipping in the Persian Gulf from Iranian attacks.¹⁴⁶ Because of close proximity to Iraq and a position in the upper-half of the Persian Gulf, Kuwait is extremely vulnerable to Iranian attacks on its oil tankers.¹⁴⁷

A one-month respite of Persian Gulf attacks on commercial shipping ended August 7, 1984, with an Iraqi assault on a Greek-owned tanker south of Kharg Island.¹⁴⁸ In mid August assaults were made against oil tankers sailing the southern section of the Persian Gulf.¹⁴⁹ According to reliable shipping sources, these two strikes were perpetrated by Iran.¹⁵⁰ One of these attacks set fire to the main tank of a Panamanian-registered tanker as it sailed 100 miles east of Bahrain in the southern part of the Gulf, but the fire was quickly extinguished.¹⁵¹

From late August through December 1984, sporadic attacks on commercial shipping continued to occur in the Persian Gulf.¹⁵² The

convoy; the Khor Musa Channel leads to the major Iranian trading port of Bandar Khomeini. *Id.*

142. Iran consistently refuses to acknowledge its attacks on Gulf shipping, but reliable shipping sources said the attacks were almost certainly instigated by Iran. L.A. Times, July 6, 1984, at I8, col. 6.

143. N.Y. Times, July 6, 1984, at A3, col. 4. The attacks occurred east of Qatar; the tanker had just taken on oil at Saudi Arabia's oil terminal at Ras Tanura. L.A. Times, July 6, 1984, at I8, col. 5.

144. N.Y. Times, July 6, 1984, at A3, col. 4.

145. N.Y. Times, Aug. 16, 1984, at A7, col. 1.

146. *Id.*

147. N.Y. Times, July 6, 1984, at A3, col. 6. The distance from Kuwait to the Strait of Hormuz makes it impossible for oil tankers carrying Kuwaiti oil to make the entire trip at night, protected by darkness. *Id.*

148. L.A. Times, Aug. 8, 1984, at I14, col. 2-3.

149. L.A. Times, Aug. 19, 1984, at I29, col. 1-4.

150. *Id.*

151. *Id.*

152. A Cypriot tanker was attacked by Iraqi missiles and reportedly sunk in waters just south of Kharg Island on August 24, 1984. N.Y. Times, Aug. 25, 1984, at A4, col. 1. A Greek-owned tanker was struck by an Iranian missile on August 27, 1984, in the lower part of the gulf, apparently in retaliation for the August 24, 1984, Iraqi attack. L.A. Times, Aug. 27, 1984, at I4, col. 4. On September 12, 1984, Iraq claimed to have

freedom of vessels to peacefully sail the seas of the world, arguably the most important right to be guaranteed and protected by any "law of the sea,"¹⁵³ was egregiously impaired throughout most of 1984 in the Persian Gulf, and this right of free navigation continues to be endangered. No United Nations mediation, International Court of Justice decision, or action taken pursuant to the 1982 United Nations Convention on the Law of the Sea treaty materialized to curtail Iranian and Iraqi interference with nonbelligerent, neutral shipping in the Persian Gulf.

Mining of the Red Sea and the Gulf of Suez

Between early July¹⁵⁴ and mid-August 1984, at least eighteen commercial ships were damaged by explosions in the Red Sea and the Gulf of Suez; these explosions were apparently caused by underwater mines.¹⁵⁵ The last verified explosion took place on August 11, 1984, when a Polish ship struck an explosive device in the Red Sea.¹⁵⁶ This incident occurred between the Yemeni and Ethiopian coasts, about 150 miles north of the seventeen-mile wide Bab el Mandeb Strait.¹⁵⁷ The location of explosions was concentrated in the Gulf of Suez, at the northern end of the Red Sea near the Suez Canal, and in a second area near the Bab el Mandeb Strait, 1200 miles south of the Gulf of Suez.¹⁵⁸ The Bab el Mandeb Strait connects the Red Sea to the Gulf of Aden;¹⁵⁹ it is the important gateway to the Indian Ocean, the Persian Gulf, and Asia.¹⁶⁰

destroyed four ships in a convoy near Bandar Khomeini in the northern reaches of the Gulf. L.A. Times, Sept. 13, 1984, at I5, col. 4. Missiles apparently fired by Iranian aircraft struck a Greek-owned tanker and a South Korean-owned tanker on September 16. Both vessels were well outside the war zone. L.A. Times, Sept. 17, 1984, at I14, col. 1-2. *See also supra* note 52. A three-week lull in air assaults on commercial shipping ended October 8, 1984, when Iraqi warplanes attacked a Greek-owned supertanker southwest of Kharg Island. Six men were killed in the incident. L.A. Times, Oct. 9, 1984, at I7, col. 1-3. On October 12, 1984, unidentified warplanes, but presumably Iranian aircraft, attacked a Greek-owned tanker, inflicting heavy damage. The incident occurred near the Saudi Arabian port of Ras Tanura. N.Y. Times, Oct. 15, 1984, at A3, col. 1. *See also supra* notes 53 and 55.

153. *See* 1982 Convention, *supra* note 4, preamble and art. 301; *see also supra* notes 1-6 and accompanying text and notes 56-57 and accompanying text.

154. A Soviet ship was damaged by an explosion in the Red Sea on July 9, 1984. N.Y. Times, Aug. 15, 1984, at A6, col. 6.

155. L.A. Times, Sept. 20, 1984, at I5, col. 1. Some accounts place the number of ships struck by explosives at nineteen. L.A. Times, Sept. 22, 1984, at 125, col. 6. Ships from diverse countries were hit, including Soviet, Chinese, Greek, Turkish, Liberian, and East German vessels. L.A. Times, Aug. 12, 1984, at I1, col. 2.

156. L.A. Times, Aug. 12, 1984, at I1, col. 2.

157. *Id.*

158. Wall St. J., Aug. 6, 1984, at 21, col. 3. Because the explosions occurred in these two locations, United States analysts believed from early August 1984 that they involved purposeful acts of sabotage. *Id.*

159. *Id.*

160. L.A. Times, Aug. 27, 1984, at I27, col. 2.

As in the Persian Gulf,¹⁶¹ the rights of free navigation by neutral, nonbelligerent vessels were impaired and threatened by acts of militaristic violence.¹⁶² Once again, international law governing the free and peaceful use of world seas and the recently drafted Convention treaty were flagrantly violated.¹⁶³

What makes the Red Sea mining so crucially significant to the entire world is the disruptive threat it poses to the free passage of vessels through the Suez Canal, one of the world's most important international waterways.¹⁶⁴ One thousand seven hundred vessels a month transit this canal that connects Europe to South and East Asia.¹⁶⁵ The Suez Canal, linking the Mediterranean Sea and the Gulf of Suez, is essential to commercial shipping. Additionally, it earns Egypt about one billion dollars a year in tolls.¹⁶⁶ There have been no explosions in the Canal itself, the closest explosion occurring twelve miles south in the Gulf of Suez.¹⁶⁷

First indications pointed to either Libya or Iran as the source of the Red Sea and Gulf of Suez explosives.¹⁶⁸ Egyptian Defense Minister Abdel-Halim abu Ghazala spoke on August 10, 1984, of being "seventy percent sure" that Libya and Iran planted the mines.¹⁶⁹ On August 1, 1984, the Islamic Jihand, a pro-Iranian terrorist organization,¹⁷⁰ claimed responsibility for planting 190 mines throughout the Red Sea.¹⁷¹ Iran's official (state-controlled) Teheran radio reported on August 7, 1984, that this extremist group was responsible for the mining, and during the same broadcast praised the group.¹⁷² Nonetheless, the following day, the Iranian Foreign Ministry condemned the mining and blamed the United States.¹⁷³ Later, the Ayatollah Ruhollah Khomeini, Iran's supreme leader, also criticized the bomb-

161. See *supra* notes 50-153 and accompanying text.

162. L.A. Times, Aug. 19, 1984, at I27, col. 1.

163. See 1982 Convention, *supra* note 4, preamble and art. 300-01.

164. L.A. Times, Aug. 19, 1984, at I27, col. 1.

165. L.A. Times, Aug. 12, 1984, at I1, col. 2.

166. L.A. Times, Aug. 19, 1984, at I27, col. 1.

167. L.A. Times, Aug. 11, 1984, at I6, col. 2.

168. *Id.* at col. 1.

169. *Id.*

170. L.A. Times, Aug. 14, 1984, at I4, col. 5.

171. L.A. Times, Aug. 12, 1984, at IV1, col. 4.

172. N.Y. Times, Aug. 8, 1984, at A8, col. 1-2. "All the arrogant powers are helpless, unable to save the dozens of ships facing destruction in the Gulf of Suez and the Red Sea every day," said the Teheran broadcast. *Id.*

173. L.A. Times, Aug. 12, 1984, at I35, col. 3; see also N.Y. Times, Aug. 8, 1984, at A8, col. 3.

ing and said it was "against world feeling and Islam."¹⁷⁴

By August 13, 1984, Egypt, at least, declined to blame Iran for the Red Sea attacks.¹⁷⁵ Egyptian President Mubarak expressed suspicion that Libya was involved in the explosions in the Red Sea.¹⁷⁶ Military experts believe the mining of the Gulf of Suez and Red Sea must have been the work of sophisticated international terrorists supported by a national government.¹⁷⁷ Egypt continued in late September to suspect Libya as being ultimately guilty of placing the mines.¹⁷⁸

The cynosure of Egyptian suspicion is the Libyan ship *Ghat* (originally reported by Egypt to be the *Ghada*).¹⁷⁹ The *Ghat* made a mysterious, meandering journey in July through the Gulf of Suez and the Red Sea.¹⁸⁰ The Libyan vessel arrived unannounced at the Suez Canal on July 6, 1984, having failed to give the forty-eight-hour advance notice the Suez Canal Authority customarily requires of all ships wanting to transit the Canal.¹⁸¹ The ship was either not searched or only given a cursory inspection. It then travelled down the Gulf of Suez and the Red Sea to Assab, an Ethiopian port, where it unloaded its cargo.¹⁸² The *Ghat* then returned to the Canal, but its entire round trip took fifteen days instead of the normal four.¹⁸³ All the explosions occurred after the *Ghat's* voyage.¹⁸⁴ When the ship first entered the Canal, it had a crew of twenty-eight; when it returned fifteen days later, the vessel had a crew of only twenty-six.¹⁸⁵ Intelligence experts hypothesized that the extra time the *Ghat* took to make the journey was spent weaving a convoluted course through the Red Sea and the Gulf of Suez, as it planted explosive

174. L.A. Times, *supra* note 173.

175. L.A. Times, Aug. 14, 1984, at I4, col. 6.

176. *Id.* In an interview published October 18, 1984, President Mubarak unequivocally declared that Iran was not involved in the Red Sea mining. He reiterated his charge that Libya was responsible for the mining. N.Y. Times, Oct. 19, 1984, at 6, col. 6.

177. L.A. Times, Aug. 14, 1984, at I4, col. 4. Colonel Jonathan Alford, deputy director of the International Institute for Strategic Studies (based in London) said, "I think, in the absence of other information, we have to assume this is a relatively sophisticated group of terrorists with relatively sophisticated mines It is hard to see how any group could do this without the support of some nation." *Id.* at col. 4-5.

178. L.A. Times, Sept. 20, 1984, at I5, col. 1. The Egyptian defense minister admitted that there still was no proof. *Id.* *But see infra* notes 201-05 and accompanying text.

179. N.Y. Times, Aug. 22, 1984, at A3, col. 1.

180. N.Y. Times, Aug. 16, 1984, at A8, col. 1-3.

181. *Id.* at col. 2.

182. *Id.* at col. 1.

183. N.Y. Times, Aug. 16, 1984, at A8, col. 2. Other canal sources say that the journey could normally have taken as long as eight days. L.A. Times, Aug. 16, 1984, at I28, col. 2.

184. N.Y. Times, Aug. 16, 1984, at A8, col. 2.

185. L.A. Times, Aug. 16, 1984, at I28, col. 2-3.

devices.¹⁸⁶

On August 6, 1984, Egypt requested the assistance of the United States in clearing the Red Sea shipping lanes of mines.¹⁸⁷ The United States used minesweeping helicopters,¹⁸⁸ as well as United States troops and a sonar-equipped U.S. Navy ship, in an attempt to locate the mines.¹⁸⁹ These efforts failed to discover any mines in the Gulf of Suez or in the Red Sea.¹⁹⁰

American minesweeping efforts were also brought to bear in Saudi Arabian territorial waters, sea routes and approaches to Saudi Red Sea ports.¹⁹¹ Here, also, American helicopters and French minesweepers were unable to find any explosive devices in the Saudi waters.¹⁹²

The search for mines in the Gulf of Suez and the Red Sea, which began in mid-August, was a multinational effort. British and French minesweepers and support vessels immediately joined the Americans in looking for the mines.¹⁹³ Also, several Soviet minesweepers, conducting operations independent of the Western nations, scoured the southern portion of the Red Sea near South Yemen.¹⁹⁴ Additionally, four Italian minesweepers began searching for mines in the Gulf of Suez in late August or early September.¹⁹⁵

On August 26, 1984, the commander of the British minesweeping forces declared that the minesweeping project might last as long as three months.¹⁹⁶ Though the Americans discontinued their search in mid-September,¹⁹⁷ the British, French and Italian forces continued to search for mines.¹⁹⁸ Early in September, the French found two Soviet-made mines that dated back to the 1973 Arab-Israeli war.¹⁹⁹

186. *Id.*

187. L.A. Times, Aug. 7, 1984, at I1, col. 6.

188. *Id.*

189. L.A. Times, Aug. 15, 1984, at I1, col. 5.

190. L.A. Times, Sept. 22, 1984, at I25, col. 6. These efforts continued for a month, beginning August 17, 1984. *Id.*

191. L.A. Times, Aug. 26, 1984, at I4, col. 4.

192. *Id.*

193. L.A. Times, Aug. 15, 1984, at I1, col. 5.

194. L.A. Times, Aug. 27, 1984, at I7, col. 2.

195. *Id.* In late August, Egypt also began requesting ships using the Suez Canal to declare any dangerous cargo they were carrying. Any ship failing to declare the cargo was to be fined, while a ship failing to make any declaration at all was to be barred from the canal for two years. *Id.* at col. 3.

196. *Id.* at col. 1.

197. See *supra* note 190 and accompanying text.

198. L.A. Times, Sept. 22, 1984, at I25, col. 1-6; see also L.A. Times, Sept. 20, 1984, at I5, col. 1-3.

199. L.A. Times, Sept. 22, 1984, at I25, col. 2-3. On Sept. 20, 1984, the French

After a mysterious explosion damaged a Saudi Arabian passenger ship on September 20, 1984, the French and Italian minesweeping forces extended their Gulf of Suez exploration.²⁰⁰

The first breakthrough in this multinational minesweeping effort came on September 19, 1984, when the defense minister of Egypt announced that the British Navy had found a mine that was "almost brand new."²⁰¹ A few days later, Egyptian military sources and others close to the investigation of this cylindrical "mine-like object" intimated that it was a tube-launched mine manufactured by the Soviet Union.²⁰² British and Egyptian mine experts were "ninety percent sure" the device was a mine made by the Soviet Union for export.²⁰³ This conclusion solidified previous Egyptian and Western conjecture that Libya was probably responsible for planting the mines in the Red Sea and Gulf of Suez,²⁰⁴ because the Soviet Union has been a major supplier of military armaments to Libya since Colonel Qaddafi became ruler of Libya fifteen years ago.²⁰⁵

In an August 21, 1984, editorial, *The New York Times* noted that the effect of having a multinational minesweeping force which included the Soviet Union, albeit operating independently, should be perceived as a "two-sided endorsement of free navigation."²⁰⁶ The newspaper opined that the mining seemed to be designed to "humiliate a vulnerable Egypt."²⁰⁷ The editorial urged Egypt, if it was established that Libya was responsible for the mining, to take its case against Libya before the "underused" International Court of Justice.²⁰⁸ The editorial further recognized that a World Court decision could never restrain a "rogue" nation such as Libya from perpetrat-

found "a few mine-like objects which appear to be a part of an old mine field," according to a French Embassy source in Cairo. *Id.* at col. 1-2.

200. *Id.* at col. 1-5.

201. *L.A. Times*, Sept. 25, 1984, at I5, col. 2.

202. *N.Y. Times*, Sept. 25, 1984, at A13, col. 1-6.

203. *Id.* One Egyptian source, who was closely involved in the mining investigation, stated that the detonator and instrumentation of the mine appeared to be of Soviet origin. The tubular nature of the mine indicated that it would normally be launched by a submarine. Egyptian and Western sources stated that an ordinary ship could be modified to launch such a device. *Id.* at col. 2-6.

204. *N.Y. Times*, Sept. 25, 1984, at A13, col. 5. On October 3, 1984, a United States State Department official stated that "there is persuasive circumstantial evidence indicating that Libya was involved in mining the entrance to the Red Sea." *N.Y. Times*, Oct. 4, 1984, at A10, col. 6.

205. *N.Y. Times*, Sept. 25, 1984, at A13, col. 3.

206. *N.Y. Times*, Aug. 21, 1984, at A28, col. 1-2.

207. *Id.*

208. *Id.* The editorial analogized the situation to Nicaragua's taking its case involving mining against the United States to the International Court of Justice. On October 22, 1984, the Foreign Minister of Italy complained that member countries of the United Nations should make more use of the World Court. "The question of the mines recklessly scattered in the Red Sea last summer" presented the appropriate problem which the United Nations "as a whole should have and could have tackled," according to the minister. *N.Y. Times*, Oct. 3, 1984, at 4, col. 3.

ing similar terrorist activities. A court opinion could, however, shame the criminal and help build an international movement for punitive measures.²⁰⁹ The editorial concluded by stating: "Asserting the freedom of navigation by international flotilla is the essential immediate remedy. Reasserting that freedom in court would affirm a principle that all civilized nations recognize as a basic international law."²¹⁰

Conclusion

Freedom of navigation lies at the heart of the law of the sea. This fundamental international right was repeatedly violated in 1984. This fact should serve to educate us that public international law²¹¹ is of meager consequence when it is flouted by violent terrorist and military uses of the world's oceans and seas.²¹² Perhaps this depressing reality is the actual reason the Convention failed to address the issue of military uses of the sea.²¹³

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: DEVELOPMENTS AND RELATED ISSUES

The United Nations Convention on the Law of the Sea (Convention) concluded at Montego Bay on December 10, 1982. On this date the Convention was opened for signature.²¹⁴ It remained open until December 9, 1984, at the Ministry of Foreign Affairs of Jamaica, and also from July 1, 1983, until December 9, 1984, at the United Nations headquarters in New York.²¹⁵ One year after sixty States ratify or accede to it, the Convention will become effective.²¹⁶ The final date for ratification was December 9, 1984.²¹⁷ The Convention, however, will remain open indefinitely for any nation wishing to

209. N.Y. Times, Aug. 21, 1984, at A24, col. 2.

210. *Id.*

211. 1982 Convention, *supra* note 4.

212. *See supra* notes 207-10 and accompanying text.

213. *See supra* notes 5-6 and accompanying text. *See also* note 153 and accompanying text.

214. 1982 Convention, *supra* note 4, art. 305 defines "signature" as it is used in the Convention. *Id.* at art. 305.

215. *Id.* at art. 305(2). For a capsule history of the Convention, see *Synopsis: Recent Developments in the Law of the Sea 1982-83*, 21 SAN DIEGO L. REV. 769, 770-72 (1984).

216. 1982 Convention, *supra* note 4, art. 308(1). Art. 305-06 define ratification and accession as they are used in the Convention. 1982 Convention, *supra* note 4, art. 305-06.

217. U.N. Dep't of Pub. Information, Press Release SEA/561, at 2 [hereinafter cited as Press Release SEA/561].

accede to it.²¹⁸

With ratification by the Ivory Coast on March 26, 1984,²¹⁹ and the Philippines on May 8, 1984,²²⁰ eleven states have ratified the Convention.²²¹ As of January 30, 1984, 134 States signed the Convention.²²² Earlier in 1984, there were indications that Belgium, West Germany (Federal Republic of Germany), Italy, and the United Kingdom would sign the Convention by the December 9, 1984, deadline.²²³ But by late November it became apparent that none of these European countries would sign the treaty.²²⁴

On December 14, 1983, the United Nations General Assembly adopted a resolution urging all states to consider signing and ratifying the Convention; it entreated all nations "to refrain from taking any action directed at undermining the Convention or defeating its purpose."²²⁵ The recorded vote was 136 in favor and two against (Turkey, United States), with six abstentions (Belgium, Bolivia, Federal Republic of Germany, Israel, Italy, United Kingdom).²²⁶ The resolution also included approval of recommendations contained in the Secretary-General's report on the Third United Nations Conference on the Law of the Sea (Conference).²²⁷

One recommendation contained in the Secretary-General's report urged that the Office of Special Representative of the Secretary-General for the Law of the Sea be continued as the core office of the United Nations for law of the sea matters.²²⁸ Bernardo Zuleto, Special Representative of the Secretary-General for the Law of the Sea Conference since November 1974, died on December 1, 1983.²²⁹ He was replaced by Satya Nandan, a national of Fiji, on January 16, 1984.²³⁰

During the debate on the resolution, the financing of the Prepara-

218. *Id.*

219. Citizens for Ocean Law, Update, May 1984, at 1 [hereinafter cited as Update].

220. Citizens for Ocean Law, Update, June 1984, at 1.

221. Recent Actions Regarding to Which the United States Is Not a Party, 23 I.L.M. 235 (Jan. 1984). The additional ratifying States are Bahamas, Belize, Egypt, Fiji, Ghana, Jamaica, Mexico, Namibia, and Zambia.

222. *Id.*

223. Citizens for Ocean Law, Update, July 1984, at 1.

224. N.Y. Times, Nov. 24, 1984, at 3, col. 4-6.

225. *Law of the Sea: Refrain from Undermining the Convention*, UN CHRON. Feb. 1984, at 95.

226. *Id.*

227. *Id.*

228. *Id.* The Secretary General's report said that the Office "possessed the necessary background knowledge and experience of the work of the Conference, the political and economic objectives of States, the intricacies of the formal and informal documentation of the Conference and the detailed features of the different parts of the Convention."
Id.

229. *Id.* at 96. Mr. Zuleta was a national of Columbia.

230. *Id.*

tory Commission (Commission) established by the Conference chiefly to draft rules and regulations governing deep seabed mining, became the subject of objections, particularly from Turkey and the United States.²³¹ Turkey clearly reserved its right not to contribute funds spent on implementing the Convention. The United States argued that the nation parties to the Convention should help bear the costs of the Commission.²³² The United States has indicated that it will continue to withhold its portion of the regular United Nations budget allocated for support of Part XI of the Convention, a section the United States adamantly opposes because of its treatment of deep seabed development.²³³

In May 1984 President Reagan reiterated these objections to the Convention.²³⁴ According to the President, the deep seabed mining provisions conflict with United States objectives.²³⁵ The President stated that deep seabed mining regime problems include:

- provisions that would actually deter future development of deep seabed resources, when such development should serve the interest of all countries;
- a decisionmaking process that would not give the United States or others a role that fairly reflects and protects their interests;
- provisions that would allow amendments without United States approval. This is incompatible with our approach to treaties;
- stipulations relating to mandatory transfer of private technology and the possibility of national liberation movements sharing in benefits; and
- the absence of assured access for future qualified deep seabed miners to promote the development of these resources.²³⁶

The President noted many positive achievements of the Convention and affirmed that the United States would obey the international law embodied in the Convention that pertains "to traditional uses of the ocean."²³⁷ On the other hand, the President did not foresee any forthcoming Convention amendments that would permit the United States to sign the treaty.²³⁸

The Commission for the International SeaBed Authority (Author-

231. *Id.* at 95. Resolution I of the Conference established the Preparatory Commission and defined its responsibilities. Final Act of the Third United Nations Conference on the Law of the Sea U.N. Doc. A/CONF.62/C.1/L.30, Annex I, res. I (1982). See *infra* notes 239-68 and accompanying text (discussing the 1984 work of the Preparatory Commission).

232. See *supra* note 223.

233. *Id.*

234. U.S. Policy in the Pacific Island Region, 20 WEEKLY COMP. PRES. DOC. 649-50 (May 4, 1984).

235. *Id.* at 650.

236. *Id.*

237. *Id.*

238. *Id.*

ity) and the International Tribunal for the Law of the Sea held its second formal meeting in Kingston, Jamaica from March 19 to April 13, 1984.²³⁹ The Commission decided at its first session in 1984 to hold a second informal gathering from August 13 to September 5, 1984, in Geneva, Switzerland.²⁴⁰ The following regular meeting was held in Kingston from March 11 to April 5, 1985.²⁴¹

To meet the needs of several Western industrialized countries whose companies or consortia had engaged in exploration, research, and development pertaining to polymetallic nodules, Conference Resolution II²⁴² established a regime to accommodate such preparatory investment in deep seabed mining activities.²⁴³ Certain national governmental or private enterprises, designated as "pioneer investors," are virtually guaranteed to receive seabed mining contracts from the Authority.²⁴⁴ Resolution II named eight pioneers that will receive these rights: France, India, the Soviet Union, and Japan (all of which are Convention signatories); and four multinational consortia composed of member companies from Canada, Japan, and the Netherlands, which have signed the Convention, and from Belgium, West Germany, Italy, the United Kingdom, and the United States, which have not signed the treaty.²⁴⁵

During its first 1984 session the Commission provisionally adopted twenty rules for registering the applications of pioneer investors for deep seabed mining contracts.²⁴⁶ These draft rules resulted from the high priority assigned at the 1983 meeting to the completion of rules to implement Resolution II.²⁴⁷ This resolution protects pioneer investors in deep seabed mining so registration can begin.²⁴⁸ The Com-

239. Press Release SEA/561, *supra* note 217, at 1. The Commission held its first meeting in two sessions last year: from March 15 to April 18, 1983, and from August 15 to September 19, 1983. *Id.*

240. *Id.*

241. *Id.*

242. Final act of the Third United Nations Conference on the Law of the Sea, U.N. Doc. A/CONF.62/121, Annex I, res. II (1982). Resolution II of the Final Act is entitled "Governing Preparatory Investment in Pioneer Activities Relating to Polymetallic Nodules."

243. Press Release SEA/561, *supra* note 217, at 3. For an excellent discussion of polymetallic nodules and the deep seabed, see Halback, *Deep-Sea Metallic Deposits*, 9 OCEAN MANAGEMENT 35-60 (1984). The author concludes that deep-sea polymetallic nodules might be feasibly mined sometime in the 1990's, "when various economic and technical factors become more favorable." Polymetallic nodules are rounded, irregularly shaped mineral masses that lie at or near the surface of deep ocean beds. The nodules contain nickel, manganese, cobalt, copper, and traces of other metals.

244. Press Release SEA/561, *supra* note 217, at 3. For an overview of the issue of "pioneer investors" see *Synopsis: Recent Developments in the Law of the Sea 1981-1982* 20 SAN DIEGO L. REV. 679, 696-98 (1983).

245. *Id.* See *supra* note 221 and accompanying text.

246. Press Release SEA/561, *supra* note 217, at 4.

247. Update, *supra* note 219, at 1-2.

248. *Id.*

mission also began considering the crucial issues of the composition and functions of the group of experts who will review pioneer investor applications, the confidentiality of data provided by pioneer investors, and the overlapping claims for tracts of the ocean floor by pioneer investors.²⁴⁹ The session members agreed that Resolution II will not allow the Commission to solve the overlapping claims issue, which involves a timetable to extinguish these claims.²⁵⁰

With respect to the divisive issue of overlapping claims, two related problems have emerged. First, to obtain pioneer rights a consortium must have a sponsoring country ("certifying State") that has signed the Convention.²⁵¹ Five of the eight states constituting the consortia have not signed the Convention.²⁵² The second problem, which emanates from the first, is that Resolution II requires that the sponsor guarantee that no overlapping claims exist with those of other potential sponsors.²⁵³ The crux of this difficulty is that Resolution II does not specify a "deadline after which pending applications may be processed, regardless of whether or not all eight pioneers named have found a sponsor that qualifies by having signed the 1982 treaty."²⁵⁴

The Chairman of the Commission, Joseph S. Warioba of the United Republic of Tanzania, decided that the rules to implement Resolution II cannot be finalized until the above quandary is clarified and resolved.²⁵⁵ Nonetheless, the Soviet Union and India submitted letters of application to register as pioneer investors on July 21, 1983, and January 10, 1984, respectively.²⁵⁶ They determined between themselves that the areas of the ocean floor designated in their applications do not overlap.²⁵⁷ However, these pending applications cannot be processed until the relevant rules and procedures are enacted by the Commission.²⁵⁸ Thus, the Soviet Union has pressed the Commission to act quickly in adopting the requisite rules so that the pending applications can be registered.²⁵⁹ On the other hand, the

249. Press Release SEA/561, *supra* note 217, at 1-2.

250. Update, *supra* note 219, at 1-2.

251. Press Release SEA/561, *supra* note 217, at 3.

252. *Id.*

253. Update, *supra* note 219, at 2.

254. *Id.*

255. *Id.*

256. Press Release SEA/561, *supra* note 217, at 3.

257. *Id.*

258. *Id.*

259. Update, *supra* note 219, at 2. The Soviet Union and India agree that they must consult with France and Japan concerning possible overlaps because all four states

Europeans and Japanese contend that no application may be processed until overlapping ocean floor claims are resolved among all the pioneers named in Resolution II, even though some potential sponsoring countries have yet to sign the Convention.²⁶⁰

Between the Spring Commission session and the session scheduled August 13 to September 5, 1984, efforts continued in attempt to reach an accord on a procedure for determining the absence of overlapping claims among the potential pioneer investors named in Resolution II and to proceed to register pioneers.²⁶¹ If such an agreement can be achieved and the rules completed to implement Resolution II, then the 1985 session of Commission in Kingston should be able to process pioneer applications and register those that conform with Resolution II and are not subject to disputed overlapping claims.²⁶²

Significantly, on August 3, 1984, a "Provisional Understanding Regarding Deep Seabed Matters" was signed by the United Kingdom, Belgium, the Netherlands, France, Italy, West Germany, Japan, and the United States.²⁶³ These eight industrialized nations agreed on procedures to avoid conflicts over ocean floor mining sites.²⁶⁴ Each country will not infringe on the area of the claim of another nation, where an application for a license or registration has been filed either with the Commission or an individual country.²⁶⁵ At the August meeting of the Commission in Geneva, the Soviet Union threatened to introduce a resolution labelling the agreement among the eight nations "illegal."²⁶⁶

The first 1984 meeting of the Commission in Kingston also included a rule by rule consideration of the draft rules for administering the Authority.²⁶⁷ At the second session the Commission planned to continue its reading of the draft rules, and the U.N. Secretariat was to have prepared several additional papers for the Preparatory Commission's four Special Commissions.²⁶⁸

have signed the Convention. *Id.*

260. *Id.* At the time of the Spring Convention meeting, no qualified sponsors had stepped forward for the four multinational consortia. *Id.*

261. Citizens for Ocean Law, Update, July 1984, at 1.

262. *Id.*

263. Nautilus, Ocean Sci. News, Aug. 21, 1984, at 6.

264. *Id.*

265. *Id.* The agreement also calls for a moratorium on mining before 1988. On April 23, 1984, the United States, under Public Law 96-283, certified five applications to conduct seabed mining exploration. Five licenses are expected to be issued in the Clarion-Clipperton zone of the northeast equatorial Pacific. The four United States consortia involved in the seabed mining exploration resolved any mine site overlaps last December 1983. Citizens for Ocean Law, Update, July 1984, at 1-2.

266. Nautilus, Ocean Sci. News, Sept. 11, 1984, at 5.

267. Press Release SEA/561, *supra* note 217, at 2.

268. Update, *supra* note 219, at 3. The four Special Commissions established at the first session in 1983, deal respectively with: 1) Problems of land-based producers; 2) The Enterprise; 3) The seabed mining code; and 4) The International Tribunal on the

In late February 1984 the Soviet Union's Presidium issued a decree establishing a 200 mile exclusive economic zone that incorporates "the corresponding provisions of the United Nations Convention on the Law of the Sea."²⁶⁹ The Soviet exclusive economic zone became effective March 1, 1984; it will be measured from "the same basic lines" that determine Soviet territorial waters.²⁷⁰ The Soviet decree is extremely detailed, including provisions on freedom of navigation, fishing, scientific research, and pollution.²⁷¹ It also allows for overflight, the laying of underwater cables, pipelines, and other activities "permitted by international law."²⁷²

MARINE ENVIRONMENT POLLUTION

East African Marine Pollution Treaty

In December 1983 eight East African countries with coasts on the Indian Ocean sent legal representatives to a marine environment meeting in Nairobi.²⁷³ The purpose of this United Nations sponsored meeting was to construct a draft treaty to protect the East African coastal regions from marine pollution.²⁷⁴ The countries represented ranged from Somalia in the north to Mozambique and Madagascar in the south.²⁷⁵ The legal experts focused on measures to combat pollution from land-based sources, as well as on ways to control oil spills from tankers travelling along the East African coast.²⁷⁶

Caribbean Marine Environment Protection Convention

In January 1984 President Reagan submitted for Senate ratification the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean region (also known as the Cartagena Convention).²⁷⁷ The Cartagena Convention creates

Law of the Sea. Press Release SEA/561, *supra* note 217 at 2.

269. Nautilus, Ocean Sci. News, Mar. 26, 1984, at 1. *See* 1982 Convention, *supra* note 4, art. 4, art. 55-75 (setting forth the exclusive economic zone provisions of the Convention).

270. Nautilus, Ocean Sci. News, Mar. 26, 1984, at 1.

271. *Id.*

272. *Id.* at 2. For details of the Soviet exclusive economic zone, *see generally id.* at 1-4.

273. The Times (London), Dec. 7, 1983, at 10, col. 7.

274. *Id.*

275. *Id.*

276. *Id.*

277. Message to the Senate Transmitting the Convention and Related Documents, 20 WEEKLY COMP. PRES. DOC. 106-07 (Jan. 27, 1984). The President also sent to the Senate a Protocol to the Convention concerned with oil spills and the Final Act of the

general legal obligations for its contracting parties to preserve the marine environment of the Caribbean Sea, the Gulf of Mexico, and immediately proximate areas of the Atlantic Ocean.²⁷⁸ It covers multifarious forms of marine pollution: from ships, from seabed activities, and from the air.²⁷⁹ The Cartagena Convention also provides for specifically protected areas, for cooperation in emergency circumstances, and for environmental impact assessments.²⁸⁰ The first meeting of the contracting parties will occur no later than two years after the Cartagena Convention takes effect, which will happen when the ninth nation ratifies this convention.²⁸¹

Incineration of Hazardous Wastes at Sea

The at-sea incineration of hazardous wastes continues to stir controversy. Presently, the only incineration site is one in the Gulf of Mexico.²⁸² In November 1983 thousands of Texans protested the decision of the Environmental Protection Agency (EPA) to tentatively permit the incinerator ships *Vulcanus I* and *Vulcanus II* to burn hazardous wastes 150 miles offshore in the Gulf of Mexico.²⁸³

The *Vulcanus I* has been allowed to make thirteen tests in United States waters since 1974.²⁸⁴ An official of Chemical Waste Management, which owns the incinerator ships, contended in April 1984 that enough information had been gathered from these tests to approve permanent at-sea burning.²⁸⁵ On April 23, 1984, Steven Schatzow, an EPA official, recommended that the commercial incineration of toxic wastes be impermissible until 1985.²⁸⁶ He proposed more tests that would mean burning 3.3 million gallons of waste in the Gulf to study how completely chemicals are destroyed by incinerator ships and to further examine the impact of the burning on the sea and air.²⁸⁷ Schatzow confirmed that EPA scientists continue to believe

Cartagena Conference that adopted the Convention and Protocol. Sixteen nations drafted and signed the Cartagena Convention at a conference in Cartagena de Indias, Colombia on March 24, 1983. Frazer and Petersen, *Protecting Caribbean Waters: The Cartagena Convention*, OCEANUS, Spring 1984, at 85, 86. The sixteen signatories are Colombia, Costa Rica, Cuba, France, Grenada, Guatemala, Honduras, Jamaica, Mexico, the Netherlands, Nicaragua, Panama, St. Lucia, the United Kingdom, the United States, and Venezuela. *Id.*

278. Message to the Senate, 20 WEEKLY COMP. PRES. DOC. 106 (Jan. 27, 1984).

279. *Id.*

280. *Id.*

281. *Id.* at 107; see Frazer and Petersen, *supra* note 277, at 88.

282. Nautilus, Ocean Sci. News, Aug. 14, 1984, at 5.

283. N.Y. Times, Dec. 25, 1983, at E10, col. 1. Earlier in 1983, the EPA reported that 150 million metric tons of toxic wastes are generated each year. Many widely used methods of disposing the wastes, including landfills, have been found unsatisfactory. *Id.*

284. N.Y. Times, Apr. 24, 1984, at A16, col. 6.

285. *Id.*

286. *Id.*

287. *Id.* See Bond, *At-Sea Incineration of Hazardous Wastes*, ENVTL. SCI. TECH.,

that at-sea incineration offers a feasible way to dispose of hazardous wastes.²⁸⁸ Nonetheless, other groups disagree. For instance, a Greenpeace U.S.A. director stated that more "test burning will not resolve the gravest environmental fear, the risk of a spill."²⁸⁹

In August the House of Representatives Committee on Government Operations began to investigate the EPA regulatory program for at-sea incineration of hazardous waste.²⁹⁰ A hearing was held in July 1984 in San Rafael, California, by the committee's environmental subcommittee.²⁹¹ The chairman of the subcommittee, Representative Mike Synar, observed that plans were being made by the EPA to name incineration sites in the Atlantic and Pacific Oceans.²⁹² Although the EPA intended to issue final regulations governing the at-sea incineration of hazardous wastes by December 1984,²⁹³ the agency still had not enacted the pertinent regulations by the end of 1984.²⁹⁴

Disposal of Radioactive Wastes at Sea

The disposal of both high and low-level radioactive wastes occupied most of the agenda at the London Dumping Convention (LDC), conducted in London from February 20-24, 1984.²⁹⁵ An attempt by some nations to achieve an agreement banning the burying of high-level radioactive waste beneath the seabed failed.²⁹⁶ They argued that "subseabed emplacement" of high-level radioactive wastes is illegal under the terms of the LDC.²⁹⁷ Nevertheless, this interpretation, advocated by the Scandinavian countries, was voted down.²⁹⁸

An opposing view is that the "subseabed emplacement" of con-

May 1984, 148-52. The author examines testing done by the Vulcanus I and other incinerator ships since 1972 and concludes that the "reputed success of ocean incineration of hazardous waste rests on invalid measurements and assumptions." *Id.* at 148.

288. N.Y. Times, Apr. 24, 1984, at A16, col. 6.

289. *Id.*

290. Nautilus, Ocean Sci. News, Aug. 14, 1984, at 5.

291. *Id.*

292. *Id.*

293. *Id.* at 5-6.

294. Nautilus, Ocean Sci. News, Jan. 14, 1985, at 5.

295. Nautilus, Ocean Sci. News, Mar. 19, 1984, at 1. In attendance were representatives of forty-four nations. *Id.* The LDC is the major international agreement governing the dumping of wastes into the oceans. See Comment, *Extension of Ocean Dumping Legislation Under the Marine Protection, Research, and Sanctuaries Act to a United States Exclusive Economic Zone*, 21 SAN DIEGO L. REV., 733, 738-40 (1984).

296. Nautilus, *supra* note 295, at 1.

297. *Id.*

298. *Id.*

tainers of highly radioactive waste is not within the scope of the LDC.²⁹⁹ Nine nations, including the United States and Great Britain, are conducting research into the feasibility of embedding "torpedo-cannisters" of high-level waste in deep pockets of seabed soil.³⁰⁰ With the support of the United States, an agreement was reached whereby research would continue on this subject, while no emplacement would be undertaken until regulations had been approved by the LDC.³⁰¹

The LDC ban on the disposal of low-level radioactive wastes was extended until September 1985.³⁰² This extension will permit scientists to complete a study on the environmental effects of dumping low-level radioactive wastes into the sea.³⁰³ With no firm decision forthcoming on either the issue of high-level or low-level radioactive waste, the meeting of the LDC was described by one observer as having "ended in disarray."³⁰⁴

The National Advisory Committee on Oceans and Atmosphere (NACOA), a presidential advisory body, recommended in July 1984 that the United States consider revising its policy of not allowing ocean dumping of low-level radioactive waste.³⁰⁵ The group did not unequivocally endorse the ocean as a site for waste disposal, but it did suggest that a failure to contemplate the ocean as a possible dumping location could have the effect of drying up government funds needed for research into the impact of disposal at sea.³⁰⁶ "If there are reasons why the ocean is unacceptable, we need to know them" said the committee.³⁰⁷ NACOA did not urge a major shift from "land-oriented" policy at the present time.³⁰⁸ It did call, however, for sufficient funding and adequate monitoring and research efforts to accurately assess the effects of ocean disposal of low-level radioactive wastes.³⁰⁹

299. The Times (London), Feb. 25, 1984, at 2, col. 3.

300. N.Y. Times, Feb. 26, 1984, at A18, col. 4. See generally Sopher and Penrose, *Burying Radioactive Waste in the Deep-Sea Floor*, 29 SEA FRONTIERS 210 (July-Aug. 1983). The authors' research seems to predict favorable results for deep seabed burying of radioactive waste.

301. Nautilus, *supra* note 295, at 1.

302. N.Y. Times, Feb. 26, 1984, at A18, col. 3.

303. *Id.*

304. The Times (London), Feb. 25, 1984, at 2, col. 2-3.

305. Nautilus, Ocean Sci. News, July 17, 1984, at 5-6. The group published a 213-page report, "Nuclear Waste Management & the Use of the Sea." *Id.* at 5.

306. *Id.*

307. *Id.*

308. *Id.*

309. *Id.* The argument for the use of the oceans is summarized by NACOA as: The ocean already contains a large amount of natural radioactivity, either long-lived radionuclides and their daughter products that have been on earth from the beginning or relatively short-lived radionuclides formed by the interaction of cosmic radiation with the atmosphere . . . Our knowledge of ocean processes is good enough to make adequate estimates of the fate of any anthropogenic

On June 4, 1984, the United States Navy released a report announcing that it was abandoning plans to dispose of aging nuclear submarines at sea.³¹⁰ An original Navy plan, four years old in 1984, called for disposal of entire submarines, including their nuclear compartments, two and a half miles deep in the ocean, far from the shores of the United States.³¹¹ As an alternative, earlier in 1984, the Navy considered burying some of its 100 aging nuclear-powered submarines³¹² in the ocean with the nuclear core of the engines removed.³¹³ Environmental groups opposed all Navy plans for disposal of the nuclear-powered submarines.³¹⁴ The Navy has now chosen to bury nine decommissioned submarines on government land rather than in the ocean.³¹⁵

Transportation of Nuclear Materials by Sea

A collision on August 25, 1984, between a French freighter and a West German passenger ferry that resulted in the sinking of the freighter with a 360-ton cargo of uranium hexafluoride, created fresh controversy and fears over the use of the sea to transport nuclear materials.³¹⁶ The uranium hexafluoride, a raw material from which nuclear fuel is made, never posed a severe radiation danger. On board the freighter, however, were three barrels of partially processed uranium, which is more hazardous.³¹⁷ Following the sinking, daily water readings detected no signs of leaking radioactivity.³¹⁸

Fear was initially spread because the French shipowner was not prompt in revealing the true nature of the cargo.³¹⁹ Only after pres-

radioactivity placed in the ocean . . . [and] the potential danger to humans is much less if radioactivity is placed in the ocean than in the various land-based alternatives.

Id. at 6.

310. N.Y. Times, June 5, 1984, at A7, col. 1-6.

311. *Id.* at col. 2.

312. N.Y. Times, Jan. 19, 1984, at A13, col. 1.

313. *Id.* at col. 2.

314. *Id.* at col. 2-3.

315. N.Y. Times, June 5, 1984, at A7, col. 3. The Navy report stated: "Based on a consideration of all current factors bearing on a disposal action of the kind contemplated, the Navy's preferred alternative at this time is to dispose of the reactor compartments by land burial. This is the method currently used in the United States for disposal of low-level radioactive waste." *Id.* at col. 5-6.

316. Angier, *A Shipwreck Sends a Warning*, TIME, Sept. 10, 1984, at 33.

317. *Id.*

318. *Id.*

319. *Id.*

sure was exerted by Greenpeace, the international environmental organization, did the true details emerge about the potentially dangerous cargo.³²⁰ The uranium was being shipped to the Soviet Union to be processed into nuclear fuel; after processing, it was to be returned to France for use in nuclear power plants.³²¹ Criticism arose from Europeans and environmental groups that inadequate safety measures are taken on ships that increasingly transport nuclear cargo.³²² The International Maritime Dangerous Goods Code governs the transport of radioactive materials over Western European waters. The regulations included in this code, however, are antiquated, and are currently being rewritten by the International Maritime Organization (IMO).³²³

Oil Pollution

On April 19, 1984, a federal district court in Chicago held that Standard Oil of Indiana was liable³²⁴ for up to 700 million dollars in damages resulting from a massive oil spill on the French coast, caused by the 1978 wreck of an oil supertanker.³²⁵ The suit involved claims against the oil company by the French government, local French towns, French fishing organizations, local hotel keepers, and environmentalist groups.³²⁶ The court concluded that the owner of the ship had failed to ensure the seaworthiness of the tanker and was negligent in training its crew.³²⁷ The decision was described as landmark environmental law because it established for the first time that responsibility for marine pollution rests with the ultimate owner of a vessel.³²⁸

The IMO sponsored a conference in London on liability and compensation for oil pollution from April 30 to May 25, 1984.³²⁹ The

320. *Id.*

321. *Id.* Belgium, Italy, and Switzerland have made similar arrangements with the Soviet Union.

322. *Id.*

323. *Id.* The International Maritime Organization (IMO) is a United Nations agency, comprising about 120 countries; until 1982 the IMO was known as IMCO, the Intergovernmental Maritime Consultative Organization. R. CHURCHILL AND A. LOWE, *THE LAW OF THE SEA* 18 (1983). IMO mainly concentrates on international shipping; it has issued a number of significant regulations concerning navigation and pollution. It also has drafted more than two dozen major documents (conventions), many of which have been ratified by the IMO member states. *Id.*

324. *In re Oil Spill by AMOCO Cadiz*, N.Y. Times, Apr. 28, 1984, at A2, col. 3-4 (N.D. Ill. Apr. 19, 1984); see 7 INT'L ENV'T REP. (BNA) No. 5, at 129-30 (May 9, 1984).

325. N.Y. Times, Apr. 28, 1984, at A2, col. 3-4.

326. *Id.* at col. 4.

327. 7 INT'L ENV'T REP. (BNA) No. 5, at 129-30.

328. N.Y. Times, Apr. 28, 1984, at A2., col. 3-4.

329. Citizens for Ocean Law, Update, June 1984, at 1; see also Citizens for Ocean Law, Update, May 1984, at 4.

conference considered and adopted revised protocols to the 1969 International Convention in Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.³³⁰ The protocols will probably not become effective until 1990.³³¹

The revised protocols increased possible liability for vessel owners by eliminating a fourteen million dollar liability ceiling and erecting a three million dollar floor with a ceiling of up to sixty million dollars.³³² Among other changes, the pollution damage definition was altered to incorporate costs for restoring the marine environment.³³³ The protocols also expanded their ambit beyond the territorial seas to cover incidents occurring within the 200 mile Exclusive Zone of nation parties.³³⁴ No agreement was reached, however, on how to update the liability and compensation limits in a continuously timely fashion.³³⁵

MARINE MAMMALS

At its annual meeting of 1984, held in Buenos Aires, the International Whaling Commission (IWC) sharply lowered the annual whaling quotas from 9,390 permitted in 1984 to 6,623 for the 1985 season.³³⁶ The 1985 season will be the last one before the start of a worldwide moratorium on all commercial whale hunting.³³⁷ The moratorium was approved by the IWC in 1982, but three nations (Japan, Norway, and the Soviet Union) still have continuing formal objections.³³⁸ Under IWC rules, nations are not restricted by decisions to which they formally object.³³⁹ The world must wait to see if the moratorium actually comes to fruition because the IWC lacks actual enforcement powers.³⁴⁰

John Byrne, then chief of the National Oceanic and Atmospheric

330. Citizens for Ocean Law, Update, June 1984, at 1; see 23 I.L.M. 151-213 (Jan. 1984) (reprinting a draft convention for the conference and the protocols).

331. Citizens for Ocean Law, Update, June 1984, at 1.

332. *Id.* at 1-2.

333. *Id.* at 2.

334. *Id.*

335. *Id.*

336. Nautilus, *Marine Mammal News*, May-June 1984, at 1. The IWC was established by the International Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849, 161 U.N.T.S. 72. See *Synopsis*, *supra* note 215, at 787-89 & n.178.

337. Nautilus, *supra* note 336, at 1.

338. *Id.*

339. *Id.*

340. L.A. Times, June 23, 1984, at I6, col. 3.

Administration, headed the United States delegation to the 1984 IWC meeting and served as the United States IWC commissioner.³⁴¹ Byrne left government in November 1984, but was asked to remain as commissioner to the IWC because of the upcoming moratorium.³⁴² He characterized the 1984 meeting as a success³⁴³ at which "the United States has achieved its objective" of realizing lower quotas in 1985.³⁴⁴

The most significant whaling cut involved the Southern Hemisphere minke whales, with the quota being slashed from 6,655 last season to 4,244 in the coming season.³⁴⁵ Dr. Roger Payne, spokesman for the World Wildlife Fund-U.S., said, "We had a triumphant vote on the South Atlantic Minkes."³⁴⁶ Conservationists were generally pleased with the results of this year's IWC meeting.³⁴⁷

Japan, the Soviet Union, and Norway, the three major whaling countries, objected vigorously to the IWC actions.³⁴⁸ Japan and the Soviet Union absorbed all the lowered quotas for 1984, while Norway retained its old quotas.³⁴⁹ All three nations have already indicated that they will not observe the moratorium which is to begin in 1986.³⁵⁰ If they fail to obey the moratorium or if they exceed their 1985 quotas, substantial fishing sanctions and restrictions on imports to the United States may be imposed on the three countries by the United States.³⁵¹

Eduardo Iglesias of Argentina was expected to depart as president of the IWC in 1984, but due to the upcoming moratorium the present officers, including Iglesias, will remain in office for another

341. *Nautilus*, *supra* note 336, at 1.

342. *Id.*

343. *Id.* at 2.

344. *L.A. Times*, June 23, 1984, at 11, col. 2.

345. *Nautilus*, *supra* note 336, at 1 (which supplies an area by area count).

346. *L.A. Times*, June 23, 1984, at 16, col. 1.

347. *Id.* at 11, col. 2.

348. *Id.*

349. *Nautilus*, *supra* note 336, at 1.

350. *L.A. Times*, June 23, 1984, at 16, col. 3.

351. *Id.* The United States Fisheries, Conservation and Management Act provides that any nation that "diminishes the effectiveness" of an international whaling measure will have its authorized catch from United States waters reduced by at least half. 16 U.S.C. § 1821 (e)(2)(1982).

On November 13, 1984, the United States Commerce Department announced that an agreement had been reached between Japan and the United States that will permit Japan to continue whaling in United States waters until the end of 1987. *N.Y. Times*, Nov. 14, 1984, at A12, col. 1. The agreement allowed Japanese whalers to take 400 sperm whales in 1984 and will allow them to take 400 more in 1985. If Japan agrees to withdraw its objections to the IWC general ban on whaling, effective for Japan in 1988, by April 1, 1985, Japan may take 200 sperm whales in 1986 and 1987. *Id.* at col. 1-2. On November 9, 1984, conservationists filed suit in the United States District Court for the District of Columbia to compel the United States government to enforce sanctions against Japan if it violates American law. *Id.* at 3; see 16 U.S.C. § 1821 (e)(2)(1982).

year.³⁵² The 1985 IWC meeting will take place in England at a date not yet arranged.³⁵³

Sea otters in a crucial offshore California habitat may be endangered³⁵⁴ by a recent United States Supreme Court decision.³⁵⁵ In its January 11, 1984, ruling, the Court rejected the argument of the coastal states that the consistency clause of the Coastal Zone Management Act³⁵⁶ applied to leasing activities beyond the three mile limit.³⁵⁷ By a five to four vote, the Supreme Court held that the sale of outer continental shelf oil and gas leases is not an activity that directly affects the coastal zone, and a consistency review is therefore not required.³⁵⁸ Oil spills from drilling activities could threaten the southern sea otter, whose habitat lies within twelve miles of the twenty-nine tracts that may be leased and ultimately drilled.³⁵⁹

The United States and Japan concurred in a memorandum of understanding, dated June 5, 1984, that provides for Japanese cooperation with the United States in an effort to save the Dall porpoise.³⁶⁰ The agreement will stay in effect until June 9, 1987, and for as long as the Japanese are allowed to fish for gillnet salmon within the United States fishery conservation zone.³⁶¹

Japan promised that its fishermen will furnish accurate information concerning the condition of the Dall porpoise.³⁶² Additionally, Japan will annually report the number of marine mammals, especially the Dall porpoise, that are captured during each fishing season.³⁶³ Japanese and American scientists will cooperate in formulat-

352. Nautilus, *supra* note 336, at 1.

353. *Id.*

354. Nautilus, Marine Mammal News, Jan. 1984, at 3.

355. Secretary of Interior v. California, 104 S.Ct. 656 (1984).

356. 16 U.S.C. § 1456(c)(1982).

357. *Secretary*, 104 S. Ct. at 672.

358. *Id.* The consistency review clause of the Coastal Zone Management Act requires that "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs." 16 U.S.C. § 1456 (c)(1)(1982).

359. Nautilus, *supra* note 354, at 3.

360. Nautilus, Marine Mammal News, May-June 1984, at 6.

361. *Id.* The United fishery conservation zone extends seaward two hundred miles from the seaward boundary of each of the United States coastal states. 16 U.S.C. § 1811 (1982). The United States claims exclusive fishery management authority within its fishery conservation zone. 16 U.S.C. § 1812 (1982).

362. Nautilus, *supra* note 360, at 6.

363. *Id.* This computerized information will concentrate on those porpoises entangled in nets and the size of the mesh of the nets. Japan will also record the number of porpoises that escape while they are being taken aboard. *Id.*

ing a three-year plan to calculate methods of decreasing or eliminating the accidental take of Dall porpoises during Japanese fishing of the gillnet salmon.³⁶⁴ Furthermore, American scientific observers will be permitted on board Japanese fishing vessels within the United States fishery conservation zone.³⁶⁵ These observers will record data on the incidental capture of marine mammals, as well as observe environmental conditions and evaluate gear characteristics of the Japanese fishing operations.³⁶⁶

ANTARCTICA

The United Nations First Committee (political and security) adopted a resolution November 30, 1983, requesting a United Nations study on the status of Antarctica that could threaten the Antarctic Treaty.³⁶⁷ The resolution asked the United Nations Secretary General "to prepare a comprehensive factual and objective study of all aspects of the Antarctic Treaty and other relevant factors."³⁶⁸ Led by Malaysia, the so-called "non-aligned countries" invoked a favorite United Nations theme, "the common heritage of mankind," in voting for the resolution.³⁶⁹ The third world countries would like to have Antarctica declared the "common heritage of mankind," which would make its vast, largely unexploited resources available to all countries.³⁷⁰ The Secretary General was given a year in which to prepare his report.³⁷¹

The Antarctic Treaty was originally signed in 1959.³⁷² It gives to treaty signatories administrative responsibility for the continent.³⁷³ The United Nations action jeopardizes this system of administration and the parties' territorial claims in Antarctica.³⁷⁴ The United States and the Soviet Union, in a rare cooperative effort, are expected to oppose strongly any United Nations action that might undermine the

364. *Id.* Scientific information will be exchanged regularly, annual progress reports issued, and reviews and recommendations for further action will be produced. *Id.*

365. *Id.*

366. *Id.*

367. *Nautilus*, *Ocean Sci. News*, Jan. 2, 1984, at 1-2. See *infra* notes 372-75 and accompanying text, which discuss the Antarctic Treaty.

368. *Nautilus*, *supra* note 367, at 1-2. One topic the study may address is the applicability of Law of the Sea Convention provisions on oil and gas exploration to Antarctica's outer continental shelf.

369. *Id.* at 2. Malaysia would like to make the continent an international trusteeship.

370. *The Times* (London), Dec. 17, 1983, at 6, col. 5.

371. *Id.*

372. *Nautilus*, *supra* note 367, at 2.

373. *Id.*

374. *Id.* Parties to the Antarctic Treaty include the United States, the Soviet Union, Australia, Argentina, Belgium, Brazil, Chile, France, Japan, New Zealand, Norway, Poland, South Africa, West Germany, and India.

treaty.³⁷⁵

CANADA-UNITED STATES GEORGES BANK DISPUTE

The International Court of Justice, in an October 12, 1984, ruling delimited an ocean boundary in an area between New England and Nova Scotia, awarding part of the resource rich Georges Bank to Canada but giving the larger section to the United States.³⁷⁶ A special World Court panel voted four to one in favor of the ruling.³⁷⁷ The Court gave approximately one-sixth of the bank to Canada, while the rest went to the United States.³⁷⁸ The World Court decision was an attempt to resolve a protracted twenty-year dispute between the United States and Canada.³⁷⁹ Both countries acceded to Court jurisdiction in 1979³⁸⁰ and agreed to abide by its ruling.³⁸¹

Besides being the site of productive fishing waters, the Georges Bank contains a potentially large source of oil and natural gas.³⁸² United States Geographical Survey analysts estimate the bank could hold 1.5 billion barrels of oil and 12.2 trillion cubic feet of natural gas.³⁸³ Nevertheless, the few holes drilled in the underwater plateau have discovered no oil.³⁸⁴

The United States argued that the International Court of Justice should give the entire Georges Bank area to the United States.³⁸⁵ The United States based this claim on the contention that American fishermen discovered and developed the bank.³⁸⁶ Canada asked, however, for just over a third of the bank.³⁸⁷ Canada considers fishing

375. The Times (London), Dec. 17, 1983, at 6, col. 6.

376. L.A. Times, Oct. 13, 1984, at I3, col. 1.

377. *Id.*

378. *Id.* The Canadian share of the bank may be closer to one-fourth, and it apparently contains the most productive fishing waters. N.Y. Times, Oct. 22, 1984, at A1, col. 2.

379. L.A. Times, Oct. 13, 1984, at 13, col. 1. The controversy arose in 1964 when Canada issued oil and gas exploration permits in the Georges Bank area. *Id.* at col. 3. Additionally, in the 1960's, Canadians began to fish the bank for the first time. Americans, on the other hand, have fished in the disputed area since the 1820's. N.Y. Times, May 5, 1984, at A2, col. 5.

380. Submission by the United States to World Court authority stands in sharp contrast to a United States attempt to preempt Court jurisdiction over the United States-Nicaragua embroglio. See notes 29-32 and accompanying text.

381. L.A. Times, Oct. 13, 1984, at I3, col. 1.

382. *Id.*

383. *Id.* at col. 2-3.

384. N.Y. Times, May 5, 1984, at A2, col. 5.

385. L.A. Times, Oct. 13, 1984, at I3, col. 1.

386. *Id.* See *supra* note 379.

387. L.A. Times, Oct. 13, 1984, at I3, col. 1.

rights on the bank to be of critical importance because about 3,700 jobs in Nova Scotia depend on the fishing resources of the bank.³⁸⁸

The World Court ruling drew a line through the Gulf of Maine beginning about thirty miles off the northeastern coast of Maine and ending about 180 miles southeast of Cape Cod, Massachusetts.³⁸⁹ This division, considered a compromise, gave each country about one-half of what each wanted in the disputed area.³⁹⁰ Moreover, the decision may serve as precedent for resolving other maritime border disagreements between the United States and Canada.³⁹¹

CONCLUSION

In 1984, interference with rights of free navigation dominated developments in the law of the sea. Work continued, albeit in a low key, pursuant to the law of the sea treaty, with the issue of pioneer investment in deep seabed mining being the cynosure of the Preparatory Commission meeting. Efforts to combat oceanic pollution continued on both a global and regional level. The International Whaling Commission lowered whaling quotas for 1985 in anticipation of a total ban on commercial whaling in 1986. Finally, the International Court of Justice delivered an important decision resolving a Canada-United States ocean boundary controversy. This ruling demonstrates the largely untapped possibilities of using international law and a supranational tribunal to achieve positive results in solving a problem related to the marine environment.³⁹²

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388. *Id.*; see also N.Y. Times, May 5, 1984, at A2, col. 3.

389. L.A. Times, Oct. 13, 1984, at I3, col. 3.

390. *Id.* at col. 1. A senior United States official stated that neither side obtained what it wanted and that the World Court rejected most of the arguments of both sides. *Id.* New England fishermen were extremely upset by the decision, saying it took away waters that they had fished for years. N.Y. Times, Oct. 22, 1984, at 1, col. 1 and at 9, col. 2-4. The decision of the Court will probably force many American fishermen out of business. About 2000 New England Fishermen will have to shift their fishing operations. *Id.* at 9, col. 3.

391. N.Y. Times, May 5, 1984, at A2, col. 3. Currently, Canada and the United States dispute all four of their maritime boundaries: Maine-New Brunswick, Washington-British Columbia, Alaska-British Columbia, and Alaska-Yukon. *Id.*

392. Dr. Arvid Pardo views the World Court ruling far less optimistically. He perceives it as an example of the continuing propensity of the International Court of Justice to sacrifice legal principle to "political and pragmatic considerations." Letter from Dr. Arvid Pardo to John A. Clemons (November 19, 1984). Dr. Pardo believes that this ruling is cause for concern because the World Court is contributing support to a trend that is "rapidly" extinguishing "the relevance of legal principles in cases of delimitation of marine areas between States opposite or adjacent to each other." *Id.*