COMMENT

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I
INTRODUCTION

The topic of navigation and overflight in the post-UNCLOS III environment has been frequently discussed in recent months, given the U.S. decision not to sign the treaty as adopted. Some tend to view the situation with alarm and foretell severe mobility constraints in the maritime environment if the United States remains outside the UNCLOS III treaty. The treaty, they say, is an indivisible contract; nonparties to that contract will have no rights thereunder and will therefore be left without protection for their basic maritime interests. Others decry U.S. attempts to "pick and choose" among the provisions of the treaty. They characterize any attempt to extract benefit from discrete portions of the text as an arrogant flouting of international law and the so-called package deal.

With due respect to the distinguished individuals who have adopted these positions, I must admit to having difficulty with the merits of either argument. I would like to share with you some brief thoughts reflecting the views of the Department of Defense on these arguments, particularly as they pertain to those provisions of the draft treaty concerning transit passage through straits used for international navigation.

II
THE CONTRACTUAL ARGUMENT

Initially it should be pointed out that the contractual argument must be viewed from a political as well as a legal frame of reference. From the political perspective, the argument has one obvious objective: raising the level of apprehension within U.S. domestic and allied circles to produce a move of major maritime users toward signature and ratification of the treaty. The tactic is clear, but it is equally clear that this approach fails to take certain basic policy considerations into account.

First, the United States should not for any reason allow itself to be pushed into a treaty that contains an unacceptable mining regime. A treaty which overall is unacceptable must, of course, be rejected as not in the U.S. national interest. Second, if the United States were to succumb to this strategy of apprehension over navigational rights, its credibility would be compromised with regard to the firmness of its position on deep seabed mining. Additionally, such a sign of weakness could have a spillover effect into other areas including even that of navigation

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and overflight. It has been U.S. firmness that has helped to ensure that the navigation and overflight provisions contained in the new treaty reflect longstanding maritime interests; weakness at this point could give adventurous states the courage to further test U.S. timidity by pushing excessive maritime claims that are inconsistent with the treaty.

From preliminary indications it appears that the contractual argument is having little impact in other major maritime capitals. If certain western industrialized states eventually decide to sign or ratify the treaty, they will not do so out of fear that they could somehow lose pre-existing maritime rights by failing to subscribe to a treaty which in fact confirms those rights. If one looks to the 1958 Law of the Sea Conventions,[1] one will find a number of western maritime states absent from the ledger of states parties; I doubt, however, that any of those nonparties feel that they have been prejudiced in pursuing the maritime interests reflected in those treaties for lack of the stroke of a pen.

Having said this, I in no way wish to impugn the sincerity of those who have expressed concern in this area. I only point out that one objective of some of those making the contractual argument is political—they wish to create pressure for the signature and/or ratification of the treaty rather than to present a purely juridical argument.

One further aspect of the contractual argument which should be mentioned is the fact that it presumes something that, at this stage, seems extremely premature to presume: that key Third World states, especially those athwart the main sea-lanes of maritime communication, will become parties to the treaty. If they do not, then reliance on the navigation and overflight provisions of the treaty viewed in a contractual light would be of little utility in protecting maritime interests. Only if one views those provisions as being reflective of customary international law or generally intended for universal application do they take on importance in securing meaningful respect for the navigational rights of all.

It also seems premature at this stage to discuss the treaty as if it were already operative as a treaty per se. If the 1958 treaties are taken as an example, four years passed after negotiations were completed before those treaties began to enter into force. The UNCLOS III treaty may take even longer, as it requires more ratifications to enter into force than any of the 1958 Conventions have received even to this day. The draft treaty deals with such diverse and complicated issues in its three hundred-odd articles and annexes that one may assume that many states will deliberate long and hard about whether the treaty will best serve their overall interests.

It is of course possible that the Group of 77[2] could move as a group toward rapid ratification, but I consider it unlikely that concepts of Third World soli-

1. 1958 Geneva Convention on the Territorial Sea and the Contiguous Zones, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205; 1958 Geneva Convention on the Continental Shelf, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311; 1958 Geneva Convention on the High Seas, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82; 1958 Geneva Convention on Fishing and the Conservation of the Living Resources of the High Seas, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.

2. The Group of 77 consists of some 120 developing countries. The Group is active in a number of international fora, combining on common issues to increase their negotiating and voting strength.

darity will impel individual nations to ratify the treaty if their review uncovers provisions that run at cross purposes to what they consider to be important national interests. For example, what was to be called the Caracas Convention[3] has had to undergo a recent name change due precisely to such a review by the Government of Venezuela; and Argentina, an otherwise active force in the Group of 77, has announced that it may not sign the treaty due to concerns over Resolution III and its impact on the recent Argentina-United Kingdom dispute in the South Atlantic.[4] Such examples may lead others to come down from what I view as the euphoria of April 30th[5] and undertake a sober reconsideration of the treaty as a whole.

Given the above considerations, one might question just wherein lies the urgency for the United States to sign. A further question would be just how the treaty, if viewed as a contract, could protect U.S. maritime interests prior to its entry into force, or at any point thereafter, if key coastal states are not parties. The answer seems clear: the navigation and overflight provisions in the proposed treaty will serve maritime stability very little if viewed as relevant only among parties. One must look to the underlying principles of customary international law that are reflected in the treaty. This is exactly what the United States will do and what other countries are likely to do.

III
"PICK AND CHOOSE"

When the United States expresses a customary international law posture with regard to the treaty, one hears rumblings about bad faith on the part of the United States in attempting to "destroy the package" by illegal "pick and choose" tactics. I would like to make just a few comments about such characterizations.

First, what must be recognized about the post-UNCLOS III environment is that continued emphasis on the overall negotiating package makes little sense. During the ten-year period of negotiations leading up to the treaty, the Conference operated on the principle of progress by package; references were repeatedly made to total packages, committee packages, even packages within the paragraphs of a single article. Such a package approach was the only way that a group of more than 150 delegations with diverse national and ideological interests could be expected to deal with such an amalgam of sensitive and complex issues. The eleventh and final negotiating session is now behind us, however, and legal analysis of the Convention ultimately adopted cannot be inextricably bound to the negotiational methodology used in reaching it.

I do not think any serious international lawyer would maintain that the treaty must be viewed monolithically, that it must be seen as entirely law declaratory, or

3. The first session of UNCLOS III was held in Caracas in 1974. It was always assumed that the final session would likewise be in Caracas and that the unofficial title of the treaty would carry that city's name.

4. Resolution III declares the position of UNCLOS III on the implementation of the treaty in regard to nonself-governing and disputed territories. The resolution states in part: "[T]he interests of the people of the territory concerned shall be a fundamental consideration." Argentina perceives this statement as being prejudicial to its position on the British populated Falkland/Malvinas Islands.

5. On April 30, 1982, the Conference adopted the draft law of the sea treaty over U.S. objection.

entirely law making. The deep seabed mining provisions are an obvious example of the latter. Those provisions are intended to be prospective and are presently without a basis in practice because the industry that will someday establish that practice is still in its infancy. Other articles in the Convention, however, are clearly codifications of pre-existing custom, binding on all nations regardless of whether they accede to the overall Convention.

This distinction between law declaratory and law making articles within one and the same treaty is not unique to UNCLOS III. In previous Law of the Sea treaties it was the rule, not the exception. When, for example, the International Court of Justice decided the *North Sea Continental Shelf Cases,*[6] it found certain of the provisions of the 1958 Convention on the Continental Shelf to be reflective of customary international law, others not so. There is evidence that the delegations in Geneva in 1958 negotiated the Continental Shelf Convention as a package, but that did not make all of its provisions law making.

Over the course of the UNCLOS III negotiations, eminent delegates and scholars have repeatedly reflected on various portions of the draft texts and concluded that this article or that part was already established in the practice of states and therefore part of the fabric of customary international law. I have no doubt that many of you here today who have published articles on the treaty process have come to similar conclusions. This sort of analysis has nothing to do with an illegal exercise of "pick and choose"; it is simply a legitimate evaluation of the various articles and parts of the text in order to ascertain which ones stem from the legislative efforts of the Conference and which from the codification of existing practice.

IV
COMMENTS ON THE STRAITS ARTICLES

A. General Considerations

My comments will focus on Part III of the draft treaty which concerns transit passage through straits used for international navigation. The issue is whether that part of the treaty is law declaratory or law making. A number of respected scholars have concluded that the principles underlying that part, particularly those regarding transit in a submerged mode, are not reflective of customary international law and therefore are not applicable to nonparties to the treaty. I disagree with this assessment and will address a number of points that lead me to the opposite conclusion: that the basic parameters of the Convention's transit passage regime, including the rights of submerged transit and of overflight, are in fact reflective of rights available to all nations who sail the world's oceans.

The treaty language itself evidences such a view of the law. In the deep seabed mining provisions frequent references are made to "states parties" and other phrases are used which indicate only contractual obligations. In contrast to this contractually oriented language, the navigation and overflight provisions refer to

6. North Sea Continental Shelf (W. Ger. v. Den., W. Ger. v. Neth.), 1969 I.C.J. 3 (Judgment of Feb. 20).

"states" in general and "all ships and aircraft." This distinction is significant in two ways: (1) references to "states" in general and to "all ships and aircraft" evidence an acknowledgment on the part of the drafters that such provisions are intended for universal application and/or stem from recognized custom binding on all states; and (2) even if viewed from a purely legislative standpoint, these references evidence the intent of the drafters to extend rights to third states, assuming that the third state assents to the rights extended and complies with the conditions for their exercise. This third party beneficiary approach is consistent with the guidelines laid down in Article 36 of the Vienna Convention on the Law of the Treaties. That article provides:

> 1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.
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> 2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.[7]

The Vienna Convention, by the way, is another example of a treaty which was over a decade coming into force and which contains numerous provisions which are widely recognized as law declaratory, codifying law that already existed in custom. Article 36 is itself an example of such a provision for it is considered by the United States to be part of the law of nations, even though the United States is not a party to the Vienna Convention.

The intent that the navigation and overflight provisions be universally applicable can also be gleaned from the very nature of the rights involved. The world community's interest in maritime freedoms and in open access to the world's oceans for trade and mutual- or self-defense has been assiduously protected for centuries under the customary law of the sea. Against this historical backdrop and in light of the vital importance of these communication rights to the stability of law and the peaceful use of the maritime environment, the argument that the navigation and overflight provisions of the treaty were intended for universal application—with the rights and duties contained therein extended to all states, coastal or landlocked, major power or minor, party or nonparty—becomes all the more compelling. It is indicative of the settled nature of the navigation and overflight principles reflected in the treaty that the Committee II[8] package has remained basically unchanged since the mid-seventies, while other portions of the negotiating text seesawed until the eleventh hour.

Assuming for the sake of argument that the third party beneficiary rule were not applicable, third states would, of course, still be able to benefit from rights conferred by customary international law. It is simply untenable to maintain that a treaty can *extinguish* customary rights of nonparties. To say that the United States or any other major maritime nation must subscribe to an unacceptable

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7. Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, U.N. Doc. A/Conf. 39/27, art. 36, *reprinted in* 63 AM. J. INT'L. L. 875 (1969).

8. During the UNCLOS III negotiations, Committee II was charged with traditional law of the sea matters, including parts II through X of the treaty.

arrangement concerning deep seabed exploitation in order to retain a right to continued exercise of existing navigational freedoms is to turn international law on its head. Such an argument is particularly curious coming from participants in the UNCLOS III process, if one recalls that Third World delegations consistently supported principles of sovereignty and sovereign rights throughout the decade of negotiations. Requiring a sovereign state to accept the unacceptable or else lose other rights under customary international law is nothing but an attempt through coercion to deny that state its basic sovereign rights.

B. Specific Analysis

These general considerations present a cogent case for the applicability of the navigation and overflight provisions to all states. The specific issue is whether customary international law has come to recognize the basic rights and duties of transit passage, including the rights of submerged transit and overflight, as those rights and duties are reflected in Part III of the draft treaty. A preliminary question is whether Part III in fact includes a right of submerged transit.

The draft treaty's provisions on international straits present a balanced reflection of the customary law which has evolved to protect the world's vital interest in freedom of transit without neglecting the legitimate interests of the bordering states. Under those provisions the strait states' pollution, marine safety, and resource interests are carefully accommodated through such means as flag state obligations and international standards, while the flag states' navigational interests are simultaneously protected from unilateral interference.

Because the straits articles are structured to prevent this unilateral interdiction of a flag state's navigational interests, it is difficult to understand how some authors continue to derive from the text of the treaty a competence on the part of the strait state to prohibit transit in a submerged mode. A number of learned articles have addressed this issue in detail and concluded that no such competence exists. Allow me here to highlight the major points which, in my opinion, are dispositive for purposes of continuing state practice.

The absence of any specific reference to the right of submerged transit in the straits articles is sometimes proffered as an argument against the existence of such a right. The weakness of this argument, however, becomes clear when one compares the straits articles to the high seas articles. There is no specific mention of a right of submerged navigation in the high seas articles, but the fact that such a right exists is beyond question. Where special rules relating to submarines are to be applied, specific provision is made, as, for example, in Article 20 of the Convention. The absence of any specific reference to submerged navigation in the straits regime thus serves as a confirmation, rather than as a derogation, of the right.

Article 39(1)(c) of the draft treaty specifically refers to "normal modes of continuous and expeditious transit" through straits. When analyzing the meaning of the phrase "normal mode," it is difficult to argue that for submarines normal is

anything other than submerged.[9] Their speed and maneuverability are significantly reduced on the surface. When these factors are coupled with the limited visibility that a submarine's above-water structure affords, it becomes evident that a surface mode of transit would be quite abnormal under a regime that has the promotion of safety in circumstances of dense traffic as one of its objectives. There is no evidence in the negotiating history that the word "normal" was somehow intended as a restrictive term of art, and common sense is otherwise sufficient to discern what mode of navigation would be "normal" for a ship called a submarine.

Article 38(2) of the Convention makes specific provision for "freedom of navigation" and incorporates it as an integral part of the transit passage regime. The phrase "freedom of navigation" was carefully chosen by the original drafters of the straits provisions because it carries over into the transit passage regime, except as explicitly restricted, the high seas connotation of the words. The import of the phrase was well understood long before 1958, and the High Seas Convention[10] of that year served to confirm and codify its traditional meaning: freedom of the flag state to exercise its discretion in the method of navigation, subject only to the "due regard" standard in order not to unreasonably interfere with the exercise of the maritime freedoms of others. "Freedom of navigation and overflight" clearly connotes the right of transit on, over, and under the waters in question; and the negotiators clearly understood that, in the absence of a specific limiting provision, the right of submerged transit would continue to pertain.

The intent of the major maritime powers on the point was unmistakable. Each of their proposed drafts for the straits regime relied on the assumption that the phrase "freedom of navigation" clearly included submerged transit, and it was the draft offered by the United Kingdom that was ultimately adopted into the composite text. In submitting its draft, the United Kingdom made specific reference to the need "to ensure that *unrestricted navigation* through those vital links in the world network of communications should *remain* available for use by the international community."[11]

Some authors have made the argument that, in the absence of specific provisions to the contrary, rules of innocent passage are controlling in transit passage situations. This argument relies on the residuum clause in Article 34 as a vehicle for incorporating general territorial sea principles, including the "surface and show the flag" requirement of Article 20, into the transit passage regime. This intricate argument ignores, however, the basic purpose behind the transit passage provisions: the codification of a juridically distinct regime to deal with operationally distinct interests.

If the negotiators had contemplated a regime bottomed on principles of innocent passage, they could have easily adopted the language of Article 16(4) of the 1958 Territorial Sea Convention,[12] with an additional provision for nonsuspend-

9. The discussion on normal mode in transit passage applies equally to archipelagic sea lanes transit as can be seen in article 53(3) of the Convention. This and other parallels of construction between the two regimes lead to the same conclusion as to the right of submerged navigation through archipelagic sea lanes.

10. *See supra* note 1.

11. Emphasis added.

12. *See supra* note 1.

able overflight. Instead, the drafters adopted the distinct terminology of "transit passage" and "normal mode," and incorporated the high seas concept of freedom of navigation and overflight. Unless one is to assume that 150 delegations staffed with notable experts on the law of the sea were drafting by accident rather than by design, the conclusion is inescapable that transit passage is distinct from, and independent of, principles of innocent passage. When principles of innocent passage were intended to apply in the straits articles, the negotiators made that intent clear, as is evidenced in Article 45.

Clearly Article 38(2) does not carry over the full spectrum of discretion that a flag state would otherwise have in a high seas setting; the straits articles carefully define necessary limitations to tailor the freedom of navigation and overflight to the straits environment. But freedom of navigation and overflight remains the cornerstone upon which the straits articles are built. The regime is one of freedom with specific limitations, not one of innocent passage with specific additions.

It is also the case that the straits states were under no misgivings as to the import of the text. The Conference's negotiating history attests to a number of instances in which certain states unsuccessfully attempted to eliminate the right of submerged transit from the straits regime. Had it not been clear that the right existed in the text, such efforts would have made little sense. Those objections provide convincing evidence that the straits articles preserved the freedom of navigation, including submerged transit and overflight.[13]

Given that the right of submerged transit and overflight through straits under Part III of the treaty has been established, the next question is whether this part of the treaty is law declaratory, that is, reflective of the current state of customary international law. I am convinced that it is.

Since the adoption of the 1958 Conventions, the evolution of the law of the sea *concerning resources* has been triggered to a great extent by major technological advances. The technology of offshore hydrocarbon exploitation has developed to the point that the entire continental margin is within range. Developments in distant water processing ships and fisheries exploitation have led to the need for both increased coastal state management and for conservation zones to stem the depletion of offshore stocks. Significant advances in submarine power technology for long term submerged navigation, however, have simply resulted in the perpetuation of longstanding state practice for submarines in straits.

While I doubt that anyone here questions the reality of that state practice, some scholars have maintained that submerged passage, by its nature, is not the

13. The situation here is similar to interpretational arguments which attempt to read into the provisions on the Exclusive Economic Zone (EEZ) a coastal state competence to restrict the exercise of high seas navigation and overflight freedoms (such as routine military exercises) in the zone. If the text were not clear that the coastal state lacks such competence outside the territorial sea, why would delegations wanting broader coastal state jurisdiction continue to complain? During informal meetings of Committee II at various sessions of UNCLOS III certain states unsuccessfully argued for a revision of the negotiating text to preclude military exercises in the EEZ without coastal state authorization. Such instances again point out the clarity of the text to the Conference participants, whether the issue is the right of submerged transit through international straits or the right to conduct certain high seas activities in the EEZ or on the continental shelf.

sort of practice that generates customary rights. As Professor Reisman has written: "The notoriety and opportunity for protest by parties thereafter subordinated—requisite components of formation of prescriptive rights—can hardly be fulfilled when the strait state does not or cannot know of the passage or lacks the means of stopping it."[14] I would like to take issue with this analysis because I believe it can be readily shown that most strait states have known or should have known of this practice, and that this knowledge—actual or constructive—has been more than adequate for purposes of the development of a general prescriptive right.

First, it may be assumed that certain technologically developed strait states have listening arrays and other detection devices that monitor the movement of submerged traffic. For this category of states, no further analysis of the knowledge issue seems necessary. The fact that these states may have made an internal decision not to reveal their knowledge outside of need-to-know circles is of no legal consequence. The only pertinent matter here is the fact that these states have acquiesced in a practice over time, not that they have chosen to handle information dissemination in a particular fashion. If they have chosen to hold the information close—away from the public and the academic community—this in no way diminishes the fact of state acquiescence.

The second category of strait states, those who do not possess detection technology and thus lack empirical documentation of the practice of submerged transit, presents a more interesting question concerning the element of knowledge. Again, given the realities of state practice over the last two decades, a persuasive case can be made that they have known of the practice.

Throughout the era of the Seabed Committee and the UNCLOS III negotiations, the major maritime powers repeatedly expressed their position that any provisions in a new treaty which would require submarines to transit straits on the surface or would prohibit overflight would be unacceptable because they would compromise vital security interests and deterrence capabilities. The thrust of those repeated expressions was clear: the security interests and attendant practices were not speculative or contingent; they were current and factual. The posture was not one of demanding that a new legal right be created, but rather one of insisting that a vital existing right be preserved.

Second, the strait states around the world had intelligence and public information from which the existence of the practice could be easily determined. When a port call notice reveals the presence of a submarine at point A, and then a short time later the submarine is sighted or makes a port call at point B, it requires little shrewdness to conclude that the strait located between points A and B has been utilized for transit. If the states bordering that strait maintain no monitoring mechanism for surface traffic, they might claim that they had no empirical knowledge that the transit was submerged. That does not preclude them from being charged with constructive notice of the practice, however, because the information necessary to confirm the practice was available even though they chose not to avail

14. Reisman, *The Regime of Straits and National Security: An Appraisal of International Lawmaking*, 74 AM. J. INT'L L. 48, 57 (1980).

themselves of it. As an aside, it might be noted that if such states do not monitor even surface traffic in the strait, their conduct discredits their claim, often heard during the UNCLOS III negotiations, that vital security interests of the strait states are involved in the straits transit issue. If security interests are so vital at least a minimum of vigilance can be presumed.

Some might respond that the bordering state cannot be charged with constructive knowledge because the state bears no positive duty to monitor. In other words, the state should be able to presume flag state compliance with Articles 14(6) and 16(4) of the 1958 Territorial Sea Convention, which afford only a right of nonsuspendable surface passage through international straits. This line of reasoning, however, contradicts the very principle underlying the prescriptive right process by which a new right develops to replace an old right that was not enforced. The absence of vigilance in preserving an old right is not a defense against, but a basic element in, the development over time of a new prescriptive right.

Another argument is that in straits wider than six nautical miles (NM), the practice of submerged transit was conducted under the theory of a high seas corridor and thus would not generate a prescriptive right. This argument ignores the fact that many strait states were already claiming a twelve-NM territorial sea, and, more importantly, that a number of the flag states involved, including the Soviet Union, have themselves recognized a twelve-NM territorial sea. The practice that has evolved has thus not been based on a corridor principle, but on the basis of the juridical uniqueness of straits.[15]

State practice concerning passage through international straits has thus evolved since the early 1960's and the transit passage regime in the UNCLOS III treaty reflects a basic recognition of that practice. As noted above, international straits are juridically unique and distinct from general territorial seas, and a different balance of interests is involved. Ships and aircraft transiting these connecting points of the high seas may look to the provisions of Part III of the draft treaty as a current expression of their international rights and responsibilities. The freedom of navigation and overflight pertains, and all states enjoy the right of continuous and expeditious transit through the strait. The transit may be executed in a normal operational mode, consistent with the safety and security requirements of the type of vessel involved. Submarines may proceed through the strait submerged, and surface vessels may continue normal and necessary defensive measures integral to perimeter security.[16]

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15. If the impact of recognizing a twelve-NM territorial sea would be the loss of the freedoms of navigation and overflight through straits, then this would be yet another reason why the United States should hold hard to the traditional three-NM limit, and why it would be under such circumstances entirely within its international legal rights to do so. Obviously a sovereign cannot be expected or required to abandon its historic rights if such abandonment could undermine the foundations of its national security. What I am suggesting, however, is that the recognition of the twelve-NM territorial sea need not have that impact. The unique juridical character of straits remains the same, regardless of the territorial sea breadth recognized.

16. The requirement for perimeter security for an aircraft carrier, for example, would include defensive deployment of acoustical buoys and a protective helo net, both activities being normal to the vessel,

The careful balance reflected in Part III of the treaty protects the legitimate interests of both the international community and the coastal state. The practices codified by those provisions ensure that the avenues of access between the high seas will remain free from unilateral obstruction and provide practical protection against any flag state encroachment of the residual rights of the strait state involved.

V
CONCLUSION

My reference to this careful and considered balance of rights and responsibilities, not only in the straits articles, but throughout the Committee II text, brings me to a final thought. I am sure there are scholars who might take issue with my juridical viewpoint, just as I might take issue with theirs. Such is the nature of international law. What I hope we all agree on, regardless of our legal philosophies, is the vital interest of the international community in a stable maritime environment. As a practical matter, it is difficult to perceive the international community administering two sets of navigation rules, one set for parties to the treaty and another set for nonparties.

It would seem in the interest of all, therefore, if we could set legal arguments aside for the moment in order to address the more basic issue of what is the most constructive tack we all can take to promote world order with regard to the navigation of the world's oceans. I would suggest that the Committee II provisions of the law of the sea treaty provide us with the best roadmap, the best practical reference point around which international consensus can be maintained.

I anticipate that the United States, recognizing the overarching need for stability in its operational practice, will continue to conduct itself in a manner consistent with the balance reflected in those provisions. It is logical to expect that other states will similarly come to recognize that international disagreement over prospective rules for deep seabed exploitation is no reason to question or disrupt current, workable rules governing other international maritime activities. Adopting a course of confrontation about these navigational practices will serve neither national nor international objectives. I would hope that the post-treaty environment will reflect this reality, with cooperation, not confrontation, being the norm in navigation on, under, and over the seas.

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purely defensive in nature, and in no way directed at, or posing a threat to, the resource rights or security interests of the coastal state.