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THE UNITED STATES DRAFT UNITED NATIONS CONVENTION ON THE INTERNATIONAL SEA-BED AREA AND THE ACCOMMODATION OF OCEAN USES

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My comments will be suggestive of the role of the United States Navy in the formulation of United States policy as it relates to the exploitation of resources from the deep ocean floor. Although I will outline some of the particular interests of the Navy, it is my view that the time is past to draw distinctions between "Navy positions" and United States Government positions. As one of the principal users of ocean space, the Navy is critically interested in the course of development of the law of the sea and seabed. During the formative stage of Government policy, the Navy, as well as other interested agencies, was actively involved in exchanges which contributed to the public views put forth by the United States Government.

In 1967, discussions were begun with several nations concerning the possibility of a new Law of the Sea Convention, in order to resolve the issues of the breadth of the territorial sea, free transit through and over international straits, and establishment of preferential fishing rights for coastal nations in adjacent high seas areas beyond twelve miles from their coasts. The then Judge Advocate General of the Navy was the Special Department of Defense Representative at these talks.

Public announcement of these discussions was first made by Mr. John R. Stevenson, the Legal Advisor of the Department of State, in a speech to the Philadelphia World Affairs Council in February of 1970.[1] As you are aware, the United Nations General Assembly, in December of 1969, had passed a resolution calling for the Secretary General to canvass member States as to their views on the desirability of convening at an early date a new Law of the Sea Conference to address some unresolved Law of the Sea issues.[2] Ultimately, it became evident that the member Nations wished to have such a conference, but desired the conference to deal with a much broader spectrum of questions than had been articulated in the initial United States proposals.

President Nixon's May 23rd statement on Ocean Policy [3] and the

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1. Dep't of State Press Release No. 49, Feb. 18, 1970; 62 DEP'T STATE BULL., 339 (1970).

2. G.A. Res. 2574 A. (XXIV), U.N. GAOR Supp. 30 at 10, U.N. Doc. A/7630 (1969). Resolution 2754 contained four distinct resolutions A through D. The other three resolutions dealt with various sea-bed matters.

3. 62 DEP'T STATE BULL. 737 (1970).

subsequent presentation of the United States Draft United Nations Convention on the International Seabeds Area to the United Nations Sea-Bed Committee in August of 1970 [4] reflected this international desire. The comprehensive list of items contained in the December, 1970, Law of the Sea Conference Resolution [5] included several issues of particular concern to the Navy.

The Navy's primary responsibility is its role in national defense. This rather vague statement can be further refined in the case of the Navy by noting that the Navy must retain reasonable capabilities to move on, in, and through the world's oceans in order to adequately fulfill its primary function. The concept of naval and general military mobility gains even greater significance in the overall world strategic posture of the United States when viewed in the light of expanding Soviet naval and merchant marine capabilities and the reduction in United States overseas bases. The necessity of retaining the ability to respond around the world without the luxury of close-at-hand military bases is becoming more and more the primary responsibility of the Navy.

The increasing need for mobility to meet and implement the global responsibilities of the United States clearly suggests a desire on the part of the Navy to see reasonably narrow limits imposed on coastal State offshore jurisdiction. It can be argued, of course, that in the context of a negotiated settlement of pending Law of the Sea issues, it should be possible for the United States to obtain guarantees for the rights of navigation and overflight without necessarily impairing the desires of other States to have broader offshore jurisdiction for other specialized purposes. The theory is that broad grants of offshore jurisdictional control with respect to resources, for example, could be given to the coastal States and rights of navigation and overflight specifically preserved in the final agreement.

The trend of the past two decades, however, proves this theory false. Initially limited forms of offshore jurisdictional control have been expanded into full claims of sovereignty.[6] Those in Government concerned with Law of the Sea matters have termed this phenomenon

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4. *Draft United Nations Convention on the International Sea-Bed Area: Working Paper*, U.N. Doc. A/AC. 138/25 (1970), *reprinted in* 1970 *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, 25 U.N. GAOR Supp. 21 at 130, U.N. Doc. A/8021 (1970) [hereinafter cited as *1970 Sea-Bed Committee Report*].

5. The "conference resolution" was part C of General Assembly Resolution 2750 (XXV), 25 U.N. GAOR Supp. 28 at 25, U.N. Doc. A/8028 (1970). It was adopted on December 17, 1970 by a vote of 108 to 7 with 6 abstentions. The text of these resolutions may also be found in 64 DEP'T STATE BULL. 157 (1971).

6. Ratiner, *United States Oceans Policy: An Analysis*, 2 J. OF MARITIME L. & COMMERCE 225, 238 (1971).

"creeping jurisdiction." It is an appropriate designation for the proclivity of coastal States to expand initially limited offshore controls or to imitate unilateral jurisdictional assertions of other Nations without including provisions which limit the scope of such jurisdictional claims. Inevitably, pressing national needs are cited in an attempt to justify such unilateral acts. Since the middle of the Twentieth Century, such actions have been a major unsettling factor in the Law of the Sea.[7]

Little can be gained, however, by debating the merits of drawbacks of "creeping jurisdiction." The United States and many other nations have concluded that the growing tendency of coastal states to unilaterally extend their maritime jurisdiction to broad ocean areas is not the desired method for developing the Law of the Sea. Inherent in the passage of the Law of the Sea conference resolution is the recognition that inaction in seeking multilateral solutions of law of the sea questions can only lead to further conflicting claims and situations ripe for confrontation.

The Navy has long been aware of the need to recognize other special interests and uses of the oceans. However, while recognizing such other legitimate ocean uses, the Navy must still preserve the essential freedom of navigation and overflight which it requires to perform its mission. In its general approach to this problem as it is reflected in current law of the sea issues, the Navy has drawn upon past experience in meeting and solving the problems of multiple shared uses of the ocean are not new. For example, numerous Texas towers dot the Gulf of Mexico, yet, through careful planning and the establishment of fairways, the Navy still plys its trade in those areas. Major offshore weapons testing ranges, when originally established, were located in little-used ocean areas. This situation has changed dramatically. Increased energy demands coupled with advanced technology in offshore operations have now made many such areas of great interest for oil exploration. Similarly, formerly remote offshore areas are now viewed as prime recreation locations. Such intensified usage has created numerous problems of shared use. Added to this basic problem of accommodation has been the passage of necessary pollution abatement statutes and regulations which have necessitated Navy reassessment and adjustment of many of its operations.[8] Many devices have been used in such accommodations. Admittedly, all instances of adjustment to allow for conflicting ocean uses have not been easily or fully resolved.

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7. Newton, *The New Quest for Atlantis: Proposed Regimes for Seabeds Resources*, XXV JAG J., Dec. 1970-Jan. 1971, 79, 82n.28 and accompanying text.

8. An example of recent environmental protection legislation is the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-47 (1970).

Nevertheless, the general approach taken by the Navy and other involved services has been to seek reasonable accommodation with other ocean users. It must be stressed that true accommodation does not envisage exclusion of one use, but calls for shared use. Those instances in which the Navy has been least successful in resolving questions of offshore conflicting uses have been where one side or the other has taken the position that no accommodation is possible and that either the Navy or other users must discontinue their operations entirely.

The Navy has approached present Law of the Sea issues with the same recognition of the need for accommodation. Early in the discussions concerning the breadth of the territorial sea, it became evident that a considerable number of States would accept no less breadth than twelve miles. Rather than continue the inflexible defense of the three mile limit, as was done at the 1958 and 1960 Conferences on the Law of the Sea, the Navy in large part accepted the twelve mile formulation so long as provision is made for preserving the essential rights of transit through and over international straits.[9]

In considering the U.S. sea-bed proposal, the Navy has taken a similar approach. It has recognized that technology cannot be turned back; that legitimate needs and desires of Nations with respect to the management of offshore resources must be met. Accommodation, however, is a two-way street. Reasonable use of the high seas for military and commercial navigation purposes must also be recognized. A regime for exploitation of ocean resources which failed to place such activities in a shared use status, and attempted to give them pre-eminence over classic ocean uses would not be an effort to accommodate. It would be an effort to exclude. A Navy position that all exploration and exploitation activities by their nature unjustifiably interfered with high seas navigation would be equally untenable.

The United States Draft Sea-Bed Convention implementing President Nixon's commitment to the common heritage of mankind concept is a dynamic application of the principle of true accommodation in the broadest sense. It is drafted on the assumption that prior to or simultaneously with its coming into force there will be international agreement on a twelve mile territorial sea breadth coupled with free straits transit. By necessity it recognizes the need to design coastal state rights with respect to the resources of the sea-bed beyond the two

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9. Palmer, *Territorial Sea Agreements—Key to Progress in the Law of the Sea*, XXV JAG J., Dec. 1970-Jan. 1971, at 69. Treatment of the territorial sea breadth issue at the 1958 and 1960 Geneva Conferences on the Law of the Sea is discussed at pages 73-74. The United States reappraisal of its position on territorial sea breadth appears at pages 75-76.

hundred meter isobath with maximum circumspection so as to preclude assertions of coastal state jurisdiction to the superjacent water column and air space. It thus addresses the need to regulate in a fair and orderly fashion the exploitation of sea-bed resources while meeting the needs of other ocean uses by means of mutual accommodation provisions.[10]

Article 4 of the Draft Convention declares that the international seabeds area shall be reserved exclusively for peaceful purposes. This is, of course, as it should be and comports with previous General Assembly resolutions.[11] The United States viewpoint is that "peaceful purposes" does not mean that deployment of military equipment or personnel is precluded, so long as such activities operate within the provisions of the United Nations Charter.[12] Thus, we have again the recognition of the need to accommodate present ocean uses within the framework of international cooperation.

This balancing of future and present needs with relation to the world's seabeds is perhaps the greatest strength of the United States draft proposal. However, the Draft Convention never overlooks what obviously was and should have been its primary purpose—to implement for the first time in history an equitable sharing of a common resource without continuing the historic pattern of national rivalry and selfishness. Again and again instances of this guiding principle appear in the Draft Convention. For instance, Article I recognizes the international sea-bed area as the common heritage of mankind. Subsequent articles guarantee non-discriminatory participation in the regime by all states and the devotion of the revenues derived by the international authority to the benefit of all mankind—particularly the economic advancement of the developing states. These articles apply irrespective of the geographic location of nations, a clear recognition of the beneficial community goals in the orderly development of the resources of the ocean.

There are certainly many technical and organizational aspects of the United States proposal which can and should be further refined. Accordingly, detailed studies of the current state of the art with respect

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10. *1970 Sea-Bed Committee Report*, *supra* note 4, at 133-34.

11. The phrase "peaceful purposes" was initially introduced by Ambassador Pardo of Malta in 1967. The earliest United Nations resolution to incorporate such language was General Assembly Resolution 2340 (XXII), U.N. GAOR Supp. 16 at 14, U.N. Doc. A/6716 (1967).

12. This has consistently been the United States view as to the meaning of "peaceful purposes." See statement by Hon. David H. Popper, Deputy Secretary of State for International Organization Affairs, to the *Ad Hoc* Sea-Bed Committee on Aug. 23, 1968, U.N. Doc. A/AC. 135/SR. 17 at 50; H.R. Rep. No. 1957, 90th Cong., 2d Sess. 119, 121 (1968).

to exploitation of sea-bed resources and realistic debate as to the most workable and efficient organizational structure should form the basis for such refinements. This is the type of constructive consideration that the Draft should receive.[13] A proliferation of proposals designed primarily to serve narrow and particular national interests will not produce a viable substitute—rather, it will delay, if not doom, progress in formulating an international regime for the sea-bed. It becomes a basic question of what are the real goals of the international community. If the real desire of states is to take a meaningful first step in a new and exciting international experiment in cooperation, the United States proposal appears to be a significant move toward that goal. Ultimately, only a formulation which embodies this type of balancing of interests of coastal and maritime states, of developed and developing states, of shelf and non-shelf countries, can hope to gain widespread international acceptance and thus forward equity and stable development of the resources of the deep oceans, while preserving, through reasonable accommodation, other essential ocean uses.

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13. These issues are addressed primarily in chapters IV and V of the Draft Convention. *1970 Sea-Bed Committee Report*, *supra* note 4, at 141-54.