

[Omitted here are eleven pages listing members of the U.S. delegation, Conference officers, and countries represented in all Conference committees.]

~~CONFIDENTIAL~~

AN ANALYTICAL STUDY

LAW OF THE SEA: ISSUES AND IMPLICATIONS

I. INTRODUCTION: CONCERNS AND UNCERTAINTIES

When the third UN conference on the Law of the Sea (LOS) convenes in Caracas in June 1974, some 150 states will consider proposals for setting new international standards for the use of the seas. Since the last LOS conference, in 1960, the proliferation of new nations, and rising nationalism among developing countries generally, have intensified conflicts of interest on the uses of the seas, while rapid technological advances in ocean mining and rising demand for the newly exploitable minerals have sharpened the competition for the seas' resources. The conflicting claims and interests generate pressures to establish a recognized international regime for the seas; they also

NOTE--This study was prepared by the Office of Political Research of the Central Intelligence Agency. Although the subject matter was discussed with representatives of other offices and agencies, no formal attempt at coordination has been undertaken. The views presented represent the best judgments of the issuing office, which is aware that the complex and controversial issues discussed lend themselves to other interpretations. For further information about this study, please call [REDACTED]

[REDACTED]

reflect diverging national interests which will complicate and possibly forestall major progress toward a treaty at Caracas.

How will US interests in LOS issues be affected? Regarding the Caracas conference, there can be few confident answers on the chances for specific US initiatives. A large number of participants are still uncertain of their positions on the issues in contention; for many, perhaps most, LOS matters are subordinate to other foreign policy aims they will hope to advance at the conference. Nonetheless, certain general trends for the future of LOS seem clear even before the conference begins. Important among these are that the old laws of the sea are being bypassed and that some changes, with or without a comprehensive treaty, are inevitable over the next several years.

This study -- intended more for the concerned generalist than the involved specialist -- identifies the key issues and their interrelationships, assesses the likely character of the Caracas conference, and, in a final section, Prospects and Implications, sets forth some general propositions and considers their implications for US interests in the post-Caracas period.

II. THE ISSUES: MOVEMENT AND ACCESS

The idealized goal of the Caracas conference is to create an international regime which will permit orderly and equitable use of the ocean and its resources. In practical terms, the US and most other industrialized nations are primarily interested in obtaining provisions for relatively unobstructed movement and access. They hope to avert the growing threats to navigation and development of ocean resources posed by the claims of a growing number of coastal states to wide zones of national control, extending in some cases to 200 miles. Put simply, provisions that will protect the activities of naval and commercial vessels, fishing fleets, and offshore mining enterprises are considered vital by the major maritime powers.

The large majority of countries, however, have no navies, merchant marines, global fishing fleets, or offshore mining corporations to protect. They will concede guarantees of movement and access only at a price. Thus, a key objective of the less developed countries (LDC's) at Caracas is to get some share of the profits from, and control over, ocean exploitation. In preliminary negotiations during the past several years, proposals have been advanced, in good part by US participants, in hopes of striking a bargain which will gain the support of both industrialized states and the LDC's.

[REDACTED]

Movement. The primary issues affecting freedom of movement are territorial waters, straits, and contiguous zones. Preliminary negotiations have made more progress on the width of *territorial waters* than on any other point.* There are good prospects for agreement on a maximum 12-mile territorial sea which would substantially reduce the 50-200 miles now claimed by many of the LDC's and expand the 3-6 mile seas generally claimed by industrialized states. Any compromise on a 12-mile limit depends, however, on agreement on two other issues affecting movement -- straits and coastal zones. Maritime powers, led by the US, have declared their unwillingness to agree to the 12-mile limit unless they can have guarantees of unobstructed transit through straits for commercial and military vessels. For their part, most LDC's will not reduce their claim to a wide territorial sea unless they can have jurisdiction over resources in a contiguous zone beyond the proposed 12-mile limit.

Straits. A 12-mile territorial sea would enclose more than a dozen important straits. Such militarily and commercially vital

* *Territorial waters are those adjacent seas in which a coastal state enjoys full sovereignty limited only by the right of innocent passage for ships. (There is no right of passage in the airspace above territorial waters.)*

[REDACTED]

~~CONFIDENTIAL~~

straits as Gibraltar and Malacca are less than 24 miles wide and would, therefore, fall entirely within the territorial waters of the coastal states. The US has insisted that the right of *free transit* be granted for passage through and above such straits. Free transit would mean that the coastal state could establish traffic corridors but that in all other respects vessels and aircraft in transit would enjoy the same freedoms as they have on the high seas. Most states want to concede only the more limited right of *innocent passage* which would, among other strictures, require submarines to surface.* There is some dispute whether submarines must be able to pass through these straits submerged and unannounced in order to maintain their strategic value. Innocent passage would also restrict rights to use the airspace above the straits. The military value of unobstructed overflight rights was underlined during the 1973 Middle East war when the US airlift to Israel depended upon routes over the Gibraltar strait for access to the Mediterranean.

Contiguous Zones. There is a growing consensus to concede to coastal states a contiguous zone of partial national authority

* *Innocent passage is defined as uninterrupted transit which does not prejudice the peace, good order, or security of the coastal state. This concept has been subject to somewhat arbitrary interpretations by coastal states.*

[REDACTED]

beyond the territorial waters. In this area the coastal state would control resources, have the right to regulate against pollution and over-exploitation, and authorize all scientific research. The US and other maritime powers are concerned that the authority of the coastal states in this zone would, sooner or later, be used to restrict navigation. Enforcement of pollution standards could, for example, slow shipping or prevent passage of certain kinds of vessels, such as oil tankers. Since a broad contiguous zone -- say 200 miles -- would encompass many important shipping routes, it could become a serious impediment to free navigation. Coastal states, such as Brazil and Peru, which do not have global maritime interests feel that a broad contiguous zone is necessary to protect the fish, petroleum, and other mineral resources which many already claim as part of their shelf or territorial waters. Although this is primarily a demand of the LDC's to offset concessions on a narrow territorial sea, industrialized states with rich offshore resources -- such as the US and Canada -- also have an interest in extending their seaward jurisdiction.

Access to Fisheries. Fish are a related problem since the most valuable fishing banks are generally located within 200 miles of

[REDACTED]

[REDACTED]

land and would probably be encompassed in a contiguous zone. The US, the Soviet Union, and Japan are particularly concerned with preserving their historic rights of access to distant fisheries. Since most coastal states, however, have only local fishing industries, their concern is to control immediate offshore fishing grounds. The problem of establishing fishery jurisdictions is complicated by the necessity of providing not only for those species which remain within a given state's jurisdiction but also for those *migratory species*, such as tuna, which range throughout the oceans. *Anadromous species* like salmon also cross jurisdictions by dividing their life cycles between inland waterways and the deep ocean. The US has strong economic interests in ensuring adequate access and conservation measures for both kinds of fish.

Access to Minerals. Oil and other mineral resources constitute the ocean's greatest wealth. Minerals in the *deep seabed* are also the most difficult and costly ocean resource to exploit; only a handful of the most technically advanced states will be capable of engaging in such ocean mining for the foreseeable future, and the US will be by far the most active among them. The chief benefit from a treaty agreement covering the seabed would be the promotion of an orderly system for licensing and protecting mine claims.

[REDACTED]

For the near future, however, manganese nodules will be the primary exploitable resource, and the abundance of mine sites and the relatively small number of deep-sea miners would seem to reduce the need for claims protection. On the *continental shelf*, oil is the primary exploitable mineral. Although there will be more competition for mining rights there than in the deep seabed, the US has substantial petroleum resources in its own shelf and has had little difficulty in negotiating access to the shelves of the LDC's, such as Nigeria.

In short, for many years to come, industrial states will have much less need for treaty guarantees to protect their interests in mining than in navigation or fishing. The disposition of mineral resources is, however, a major issue for the LDC's -- their price for acceding to the interests of developed states on other issues.

International Seabed Authority. In pre-conference deliberations of recent years, an international authority has been proposed to regulate and tax deep-sea mining. Proceeds would be used to aid the LDC's. In the area beyond national jurisdiction -- roughly the deep seabed past the continental margin* -- this authority would

* *The continental margin extends from the low-water mark to the seabed, including the continental shelf, slope, and rise in descending order. The margin is thought to contain almost all commercially valuable underwater oil deposits.*



license all exploration and exploitation and possibly engage in exploitation itself. Depending on its powers and composition, such an authority could have clear drawbacks for the industrialized states. It could be subject to the influence of the LDC majority membership, add extraneous political obstacles, and reduce the profits from seabed mining. The voting procedures of the executive organ that would give final approval of licensing is a contentious issue, and the LDC's will be very reluctant to agree to provisions which would substantially limit their influence through weighted voting or other such safeguards for the industrial states.

Many LDC's, especially the landlocked ones, see the funds and political leverage they would draw from a seabed authority as their only real benefit under a LOS treaty. Their demand for a share of the profits has the force of numbers and dogma. LDC's will command a clear majority of the votes at the conference: without them, industrialized states cannot get a LOS treaty protecting free movement and fishing rights. Moreover, the "common heritage" principle -- the doctrine that the oceans belong to all mankind -- has been so broadly and repeatedly endorsed that it has become dogma in international debates on ocean law.* Since the common heritage

* *This doctrine of common heritage has superseded earlier classifications of the oceans as res communis (those things which are opened to the use of all men but owned by no individual) or as res nullius (those things owned by none but subject to possession by appropriation).*



[REDACTED]

principle was first broached in 1968, it has been interpreted to mean in application that LDC's would receive some direct benefits from seabed exploitation. In the parliamentary atmosphere of the LOS negotiations, such ideological points are effective tools of argument.

III. DYNAMICS OF THE NEGOTIATIONS

The simplified formula of a trade-off between industrialized states and LDC's does not, of course, take into account either the cross-cutting interests within both groups or the influence of extraneous political issues. Neither the industrialized nations nor the LDC's will come to Caracas as homogeneous groups. Within each group there are special and conflicting interests. These divisions will certainly slow and complicate the negotiations; in combination with other pressures, they could also deadlock the conference or produce a major realignment of the negotiations. The most apparent potential realignment would be a shift from bargaining between the LDC's and industrial states to bargaining between states with and without major offshore resources.

Conflicting Interests among the Developed States. Many of the industrial nations -- such as the US, USSR, and Canada --

have valuable coastal resources which they, like the LDC's, would prefer to protect from foreign exploitation. The diversity among developed states lies principally in the amount of secondary emphasis given their coastal interests. So far, Canada has been the only one clearly willing to put its coastal interests ahead of its interests in movement and access. Canada's claim of a 100-mile pollution-control zone has significantly weakened the unity of industrial states against expanded coastal state jurisdiction.

The USSR has strongly opposed such coastal jurisdictions as claimed by Canada. The Soviet Union has suggested instead that LDC's simply be permitted to reserve for themselves the volume of fish that their fleets can catch in the high seas* contiguous to their coasts, a more restrictive position than that advanced by the US. Moscow, moreover, has shown considerably less enthusiasm for the concept of an international seabed authority than Washington. Although such differences among the developed states serve to weaken the US bargaining position, Washington may gain some leverage from the fact that most developing states find US positions more palatable than Soviet positions.

* *Now defined as seaward of the territorial waters*

Conflicting Interests among LDC's. The much larger group of LDC's is subject to a greater variety of substantive conflicts. These are further complicated by *regional allegiances* -- Latin American, African, and Asian states each caucus separately and guard their distinct interests and identities. Moreover, the Latin American and African groups are competing for leadership of the LDC's. Latin American states have been initiators of many LOS proposals, the adoption of which will ultimately be dependent upon the support of the more numerous Africans.

LDC's are also divided between those with offshore resources to protect and *landlocked, shelflocked*, and coastal states with little hope for offshore wealth.* LDC's with valuable coastal resources intend to claim them; they see broad contiguous zones as having far more direct value to them than the more distant benefits of an international seabed authority. Their less richly endowed associates, however, want a minimum of ocean territory deeded to coastal state control and as much as possible reserved for an international authority which would provide their only benefit from the LOS treaty.

* About 30 landlocked states are expected to participate in the LOS conference. Shelflocked states are those whose continental shelf abuts only the shelf of neighboring states and does not adjoin the seabed. They number 26 (see Annex).

Still another interest group is composed of *straits states* which are united in their common insistence on retaining authority over traffic passing through straits within their territorial waters. Spain has become a leader of the group. (Gibraltar is perhaps the most vital international strait which would be enclosed by 12-mile territorial waters.) *Archipelago states*, such as Indonesia, the Philippines, and Greece, have been equally active in claiming that all waters encompassing their islands should be considered internal waters. Although their position is compatible with that of the straits states, it clashes with those LDC's that hope to reserve as much of the oceans as possible for international control.

In the face of their many conflicting aims, the cohesion of the LDC's depends mainly on the strength of their ties and commitments outside the LOS context. Outside political ties and issues will, in fact, impinge upon most aspects of the conference. While no conference is fully insulated from external politics, the LOS forum will be particularly open. The Caracas meeting may begin with no more than a third of the participants having focused on the LOS treaty as a matter of major significance or having arrived at clear policy positions. Many nations are too burdened with the problems of the

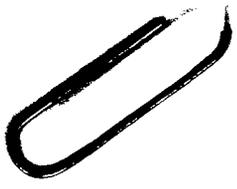
land to accord full attention to the problems of the seas. Most, however, will have identified their conference vote as a potential source of leverage against industrial states, particularly against the US which has taken such an active role in preparing for the conference. Quite a few states may be prepared to exchange their votes on particular aspects of the LOS treaty for something of greater importance to their governments -- e.g., concessions on trade, promises of sophisticated weapons, or steps against white-dominated regimes in Africa.

In more general terms, external events will also influence the overall atmosphere of the conference. Not only the cohesion of LDC's, but also the unity of the industrial nations and the tenor of bargaining will be affected by extraneous developments. Strains among the non-aligned caucus, within the Atlantic Alliance, or in superpower relations would have varying impacts on these negotiations. A weakening of the Washington-Peking rapprochement could, for example, lead to an intensification of China's efforts at the conference to take part of the LDC's against "superpower hegemony."

IV. PROSPECTS AND IMPLICATIONS

Despite the complicating factors that discourage confident estimates of how certain important issues will fare at Caracas,

~~CONFIDENTIAL~~



general judgments and conclusions on the outlook for LOS at the conference and over the next several years can be made. Propositions, qualified as necessary, which have important implications for US interests in the LOS in the years ahead are presented below:

1. *Existing laws of the sea are becoming obsolete; with or without progress on the proposed omnibus treaty, codification of some of the ongoing changes is inevitable over the next several years.* Radical changes in the nature and intensity of ocean use are by-passing existing international agreements for movement and access. In this sense, the third LOS conference has been called not to institute change but to adjust to it. Failure to agree upon a treaty would not mean that changes could be avoided but only that other patterns of adjustment would evolve.

2. *Precipitous action toward a treaty unfavorable to US positions, while possible, is unlikely.* Precipitous action could occur under such circumstances as a successful effort by the LDC majority to steamroller the conference. An unexpected development of this nature would almost

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

certainly have to be stimulated by startling events outside the LOS framework, such as an upheaval at the UN General Assembly Emergency Session on raw materials, which may close not long before the Caracas session. The scenario would also depend upon the failure of industrialized states to attain procedural restraints on the voting majority. Among other restraints, industrialized states are asking for a "gentleman's agreement" that there should be no final votes until all efforts at consensus have been exhausted. Despite persistent attempts to settle the matter, voting procedures to be used during the conference remain a controversial issue. The primary political constraint against such steamrolling is the realization of many LDC's that it would be a hollow victory to gain conference approval for a treaty which industrialized states would not ratify.

3. *Smooth progress toward a treaty encompassing all the US positions on LOS (as presented in pre-conference deliberations of recent years) is also unlikely.* The stand of most of the LDC's on the issues of the seabed authority, straits, and contiguous zones will hamper significant negotiating progress unless and until the industrial states

~~CONFIDENTIAL~~

respond with at least some concessions. The most favorable treaty agreement obtainable for the US over the next year or two might be a compromise dividing the oceans into three zones of authority: a 12-mile territorial sea; a broad -- probably 200-mile -- contiguous zone under shared coastal state and international control; and a deep-sea area under an international seabed authority in which LDC's would enjoy political influence and from which they would derive economic benefits. Free movement would be protected not only by the relatively narrow territorial waters -- the only zone in which navigation could be directly obstructed by the coastal states -- but also by provisions for modified free transit through and above important straits. The contiguous zone would become a mixed regime in which the littoral state would have jurisdiction over resources but would also be bound by international standards protecting other states' rights of access and movement.

4. Protracted delay -- calling into question whether any version of the proposed omnibus treaty can be completed over the next several years -- is the most likely prospect. Delays could result from many factors, singly or in combination:

-- As presently structured, the negotiations are bound in a web of cross-cutting interests and issues. It is unlikely

that any one major issue can be resolved singly; delay on one point can occasion stasis on all. Repudiation of the international seabed authority by the industrialized powers could, for example, immobilize the negotiations because, in the anticipated trade-off between developed states and LDC's, the seabed authority is the only common goal for all LDC's. Unless the negotiations were reordered to find new attractive concessions for the LDC's, many of them might choose to obstruct or abandon the conference.

-- Continued disagreement over the application of voting procedures could occasion delay. The issue is primarily a question of what restraints should be placed on the majority of LDC's to protect the small minority of industrialized states that will be the primary users of the oceans; that is, how should power be divided. Not only is this an inherently difficult issue in itself, but voting procedures are also an ideal topic for any participants that may wish to slow the conference for other purposes.

-- A reconsideration of bargaining positions by many of the major participants could delay the conference.

~~CONFIDENTIAL~~

Many states have permitted preliminary negotiations to proceed without attention from the chief political authority or resolution of conflicting interests among government and private groups. The prospect of serious negotiations has prompted a flurry of policy reexaminations which could mean a significant number of delegations in Caracas with instructions countermanding earlier positions.

-- Extraneous events could preoccupy the conference and substantially slow forward movement. Some states-- particularly those with small diplomatic corps--will tend to use the occasion of such a large gathering to pursue a variety of subjects, much as the UN General Assembly has become the site for diplomatic contacts and business that range well beyond agenda items. Any traumatic international development, such as a reopening of the conflict in the Middle East, would almost certainly block progress. International trade disruptions involving oil or other important products would also seriously distract the conference. There is a further possibility that participants will attempt to inject disruptive issues, such as the status of Portuguese Guinea.

3
3
3

3
3

~~CONFIDENTIAL~~

5. *Developments likely in a period of protracted delay might undermine the basis for any omnibus LOS treaty that the US could find acceptable.* Delay would allow more time for the steady expansion of areas declared to be under exclusive national control and give coastal states more bartering chips to gain favorable consideration of their interests. Delay would also permit nonaligned states more time to prepare united bargaining positions. Although the additional time might sharpen their conflicting interests, it seems more likely that China, Algeria, and other leaders of the non-aligned would use the opportunity for better coordination of their policies.

6. *Although the failure of efforts toward the omnibus treaty now under discussion would not be severely damaging to US interests in the near term, it would permit the growth of certain disadvantageous trends already in train.* Without a LOS treaty there would be a steady expansion of coastal states' claims both in terms of ocean areas and degree of control. Although bilateral agreements permitting access and movement in these areas would also proliferate, such arrangements would be continually subject to renegotiation and

~~CONFIDENTIAL~~

dependent upon the quality of overall relations among the parties. The political and monetary costs of access would likely rise with the value of fish and petroleum. In the absence of a treaty, there would be no generally accepted standards for allocating ocean areas, and even among allies jurisdictional disputes, such as the "cod war" between Britain and Iceland, would become more common and more disruptive.

7. *Failure to conclude an omnibus treaty would leave the field open to bilateral, regional, and even global arrangements on certain of the contentious issues. There would be advantages as well as disadvantages to this piecemeal, evolutionary course.* Collapse of the LOS effort at Caracas could strengthen the alternatives to the omnibus treaty now under consideration: a markedly different kind of comprehensive treaty or no general LOS treaty at all. All of the participants, the US among them, would be in a new position--released from earlier commitments and free to consider alternative approaches to LOS matters. There would be a clearer reading by all concerned on what parts of a treaty package could be negotiated and what parts not. Although the US would receive a share of the blame for a breakdown in the talks, responsibility would presumably be distributed among all major conference participants, both the other industrial

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

powers, including the USSR, and the more outspoken LDC's.

Delay, moreover, would lead to segmentation of the negotiations. There is already discussion of a "provisional application" of some aspects of the treaty -- fisheries and the seabed regime -- because of anticipated delays. Although this is now being considered as a preliminary step toward the presently constructed proposals for an omnibus treaty, partial agreements could substantially restructure the negotiations and increase the prospects of different tradeoffs. Current negotiations are based on the assumption of one treaty for all ocean uses and a mass trade-off among all participants; securing one set of agreements free of concession on other aspects of ocean claims and uses would substantially break this aggregate approach.

8. *With or without an omnibus treaty, certain tendencies are predictable: movement will be more encumbered; access to ocean resources will require concessions; and readjustment of legal and political instruments will continue.* Maritime powers will face problems of increased use of the seas and increased competition for ocean resources, regardless of the legal and diplomatic arrangements. Industrialized states will not have control of all resources

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

and ocean areas used by their navies and industries. They will have to make some concessions -- bilaterally, multilaterally, or in combination -- in return for increasingly valuable rights of access and movement. If there is no LOS treaty, ocean politics will be subject to continual unstructured evolution; if there is a treaty the continuing pressures for change will be accommodated not only by substantial modifications in use, but also by formal amendment. In short, the need to maintain workable international arrangements for use of the oceans will demand continuing attention from statesmen for decades.

~~CONFIDENTIAL~~

Annex: Landlocked and Shelflocked States

The landlocked states:

Afghanistan	Luxembourg
Andorra	Malawi
Austria	Mali
Bhutan	Mongolia
Bolivia	Nepal
Botswana	Niger
Burundi	Paraguay
Byelorussian SSR	Rwanda
Central African Republic	San Marino
Chad	Swaziland
Czechoslovakia	Switzerland
Hungary	Uganda
Laos	Upper Volta
Lesotho	Vatican City
Liechtenstein	Zambia

The shelflocked states:

Bahrain	Poland
Belgium	Qatar
Cambodia	Saudia Arabia
Denmark	Singapore
Ethiopia	Sudan
Finland	Sweden
Germany, Democratic Republic	Thailand
Germany, Federal Republic	Togo
Iraq	United Arab Emirates
Jordan	Yemen (Sana)
Kuwait	Yugoslavia
Malaysia	Zaire
Netherlands	
North Vietnam	

Note--These lists of states were provided by the Office of Basic and Geographic Intelligence.