

1233-8

THE DEPUTY SECRETARY OF STATE
WASHINGTON

NSC UNDER SECRETARIES COMMITTEE

~~_____~~
NSC-U/DM-109D

February 6, 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Report on the Caracas Session of
the Third United Nations Conference
on the Law of the Sea

In response to NSDM 260, I am forwarding herewith a report concerning the Caracas session of the Law of the Sea Conference by Ambassador John R. Stevenson and John Norton Moore, your Special Representative and Deputy Special Representative for the Conference, and reports of the US Delegation.

The next session of the Conference will be held in Geneva from March 17 to May 10. The Under Secretaries Committee is currently reviewing proposed changes in the instructions to the US Delegation and will be forwarding recommendations to you in the near future.

Robert S. Ingersoll
Robert S. Ingersoll
Chairman

Attachments:

As stated

~~CONFIDENTIAL~~
GDS



DEPARTMENT OF STATE

Washington, D.C. 20520

55

[REDACTED]

Subject: Report on the Caracas Session of the
Third United Nations Conference on the
Law of the Sea

Background:

The United States has the largest and most varied stake in the oceans of any nation. Important United States oceans interests include protection of navigational freedom for military and commercial vessels and aircraft, protection of our coastal fish stocks and the salmon which spawn in our streams, exclusive rights to the mineral resources, including the hydrocarbons, of the U.S. continental margin, continued access to highly migratory species such as tuna, access to the mineral resources of the deep seabed under reasonable terms for development to occur, protection of the oceans environment, protection of marine scientific research, and a strong political interest in resolving bilateral oceans disputes and in promoting a stable legal order for the oceans. Because of the range and complexity of these U.S. oceans interests, a comprehensive oceans treaty provides the best means of protecting them.

Following five years of preparatory work within the United Nations, in 1973 the General Assembly formally convened the Third United Nations Conference on the Law of the Sea and charged it with developing a comprehensive oceans treaty. A two week organizational session was held in New York during December of 1973 and a ten week substantive session was held in Caracas last summer from June 20 to August 29. The

[REDACTED]
GDS

DECLASSIFIED

A/ISS/IPS, Department of State

E.O. 12958, as amended

December 18, 2008

next substantive session of the Conference will be held in Geneva from March 17 to May 10 of this year.

Achievements of the Caracas Session:

Although the Caracas session did not produce a treaty or agreed articles in any area, significant progress was made toward a comprehensive treaty. This progress includes:

- the Conference agreed on rules of procedure, including voting rules, which provide safeguards against premature voting or steam-roller tactics;
 - the transition from the U.N. Seabed Committee of 90 states to a Conference of over 140 was achieved without major new stumbling blocks and with a minimum delay;
 - the inclusion in the treaty of a 12-mile territorial sea and a 200-mile economic zone was supported by over 100 countries, subject to acceptable resolution of other issues, including unimpeded transit of straits. Accordingly, broad jurisdiction over our coastal fish stocks and the hydrocarbons of our margin appears virtually assured;
 - there is general agreement on freedom of navigation and overflight in the economic zone;
 - there is general agreement that there will be a new international organization for the mineral resources of the deep seabed and a beginning was made in negotiation of the essential elements of this new organization;
 - the vast array of law of the sea issues and proposals within the mandate of Committee II was organized into a comprehensive set of
- [REDACTED]

Working Papers reflecting main trends on each precise issue;

- extensive Committee work sharpened the issues and narrowed the differences throughout a broad range of issues including protection of the marine environment, marine scientific research, and dispute settlement machinery.

Problems and Prospects:

After Caracas there is general agreement on the overall outlines of a comprehensive oceans treaty. Progress, however, has been slow and there is a broad range of important issues yet to be resolved. These include:

- guarantees for unimpeded transit through, over and under straits used for international navigation;
 - the archipelago principle by which mid-ocean island states would draw archipelagic closing lines connecting their outermost islands and enclosing the waters within subject to transit guarantees through such waters;
 - treatment of traditional fishing for coastal species of fish;
 - special treatment for tuna (highly migratory species), and salmon (anadromous species);
 - rights to mineral resources of the continental margin when such margins extend beyond 200 miles (the US has only from 1 to 7% of its potential margin hydrocarbons beyond 200 miles);
 - jurisdiction to set and enforce standards for protection of the marine environment, particularly jurisdiction with respect to the important vessel-source pollution issue;
- [REDACTED]

- rights and duties concerning marine scientific research;
- the structure and functions of the new organization for the resources of the seabed in areas beyond national jurisdiction (the deep seabed);
- the nature and scope of machinery for the settlement of disputes arising under the treaty.

The most important of these unresolved issues are (a) the regime of straits and archipelagos and (b) the structure and functions of the new organization for the mineral resources of the deep seabeds.

For the first time at Caracas, more states spoke in favor of unimpeded transit of straits (the U.S. position) than spoke in favor of innocent passage. Taken together with the progress in our efforts to reach an accommodation with archipelagic states such as Indonesia and the Bahamas, there has been a strengthening of our position on straits. Nevertheless, some straits states such as Spain have been active in opposition to our straits objectives, particularly with respect to military transit of straits, submerged transit, and overflight. We are hopeful that the favorable trend begun in Caracas will continue as the resource elements, which are of greater importance to most developing countries, are resolved.

The most difficult issue remaining in the negotiation is the structure and functions of the new organization for deep seabed mining. The United States seeks guaranteed access to the mineral resources of the deep seabed on reasonable terms to promote development. As such we have proposed legal arrangements which would minimize the discretion of the new international authority, which would protect the integrity of investments made in deep seabed mining, and which would ensure a balanced decision-making structure to protect the interests of deep seabed mining states and minerals consumers. Many developing countries seek a strong

[REDACTED]

enterprise which would directly engage in mining of deep seabed mineral resources and which would be empowered to regulate prices and production for the protection of existing land-based producers of deep seabed minerals (largely copper, nickel, manganese and cobalt contained in manganese nodules). Willingness of both sides to work out a reasonable solution protecting the interests of all states is of crucial importance to further progress in the negotiations.

During the course of the law of the sea negotiations the United States has stressed the importance of all nations holding off on new unilateral claims in the oceans. It is of particular importance that the United States set an example for others by not passing the legislation pending in Congress which would unilaterally extend the U.S. fisheries contiguous zone from the present 12 miles to 200 miles. Our fishing as well as our other important oceans interests will be far better served by continuing to vigorously pursue a comprehensive oceans treaty.


John R. Stevenson

John R. Stevenson
Special Representative of the
President for the Law of the
Sea Conference

John Norton Moore

John Norton Moore
Deputy Special Representative of
the President for the Law of the
Sea Conference and Chairman, the
NSC Interagency Task Force on the
Law of the Sea