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Conference Reports

THE THIRD UNITED NATIONS LAW
OF THE SEA CONFERENCE:
THE CARACAS SESSION
AND ITS AFTERMATH*

ROSTER OF MEMBERS,
SUBCOMMITTEE ON INTERNATIONAL LAW
AND RELATIONS, as of January, 1975:


INTRODUCTION. This is the second report of the Subcommittee on International Law and Relations ("Subcommittee") pursuant to a Ford Foundation grant to the American Society of International Law. The grant supports activities of the Subcommittee with respect to the international law of the sea negotiations and the Third United Nations Conference on the Law of the Sea ("Conference"). The first report consisted of recommendations for research prior to the first substantive session of the Conference. As a result of those recommendations, three studies were prepared and distributed during the Caracas session of the Conference.1

* This is the second report of the Subcommittee on International Law and Relations of the Advisory Committee on the Law of the Sea. The Committee, established in 1972, is composed of private citizens appointed by the Chairman of the National Security Council Interagency Task Force on the Law of the Sea to "provide adequate representation of the diverse interests involved in the law of the sea." Members of the Committee serve solely in an advisory capacity and the views stated herein do not necessarily represent those of the United States Government.

The present report is in three parts:

1. A factual account of the proceedings at the Caracas session of the Conference;

2. A distillation of analyses provided by Subcommittee members utilizing the above-mentioned grant funds for the purpose of attending the Caracas session; and

3. Recommendations for intersessional research which the Subcommittee members felt would be of value to negotiators at the Geneva session which began March 17, 1975.

I. FACTUAL ACCOUNT OF THE CARACAS SESSION

A. Adoption of the Rules of Procedure

The rules of procedure had been scheduled for adoption at the first session of the Conference held in New York from December 3-14, 1973. However, difficulties in the negotiations precluded conclusion of the matter there, and only after intersessional negotiations plus one week of work in Caracas were the rules of procedure finally adopted.2 The only substantial issues involved in the adoption of the rules concerned implementation of the so-called "gentleman’s agreement" and the requisite majority for substantive decision making at the Conference.

The General Assembly had approved the "gentleman’s agreement" at its 2169th meeting on November 16, 1973, its purpose being to ensure that the Conference would exhaust all efforts at reaching agreement on substantive matters by way of consensus and that there should be no voting on such matters until all efforts at consensus had been exhausted. This language was endorsed by the Conference in the form of a statement by the President made on June 27, 1974.3 Its implementation in the chapter of the rules concerning decision making presented some difficult negotiating obstacles which were ultimately overcome largely through the personal diplomacy of Conference President Hamilton Shirley Amerasinghe (Sri Lanka). Since the principles embodied in rules 37 and 39 of the rules of procedure constitute a departure from

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past international conference practice, their contents will be briefly summarized.

Rule 37 establishes the requirements for voting which, in essence, constitute an implementation of the "gentleman's agreement." Two types of deferrals of voting on substantive issues are available, the first being a one-time only presidential option to defer the question of taking a vote for up to 10 days (which deferral is mandatory if requested by 15 representatives). The second method of deferral, which may be used any number of times, requires a proposal by the president or a motion by a representative, the decision to be taken by a majority of the representatives present and voting. When all deferment periods have been exhausted, the Conference must then make a decision whether or not all efforts to reach general agreement have been exhausted. This decision is taken by the same majority required for decisions of the Conference on matters of substance. If the decision is reached that all efforts at general agreement have been exhausted, the matter will then be put to a vote (after an automatic 2 day notice period).^4

The required majority for substantive decision is "a two-thirds majority of the representatives present and voting, provided that such majority shall include at least a majority of the States participating in that session of the Conference." This language was a compromise between the views of those nations (predominately the technologically advanced) which wished high voting majorities in order to avoid tyranny by the majority and to ensure universal or near universal acceptance of the treaty ultimately adopted, and those nations (principally developing countries) which wished lower requisite majorities in order to make the most effective use of their numbers. The compromise, an Australian-Indian proposal, was adopted in lieu of either of these single formula positions.^5

B. Committee Structure and Allocation of Agenda Items

The Conference created a number of subsidiary bodies: (1) three main committees to deal with the substantive issues, (2) a

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^5 Official registration figures showed 138 nations participating in the Caracas session of the Conference. Thus, at least 70 affirmative votes would be required to adopt a substantive treaty article, though 2/3 of the states present and voting at a given meeting might be less than 70 [e.g., under the 2/3 quorum requirement, substantive action could be taken with only 92 nations present; 2/3 of that number is 62; but 62 votes would be insufficient to carry the point, for it is less than a majority of states participating in the session (70)].
general or "steering" committee, (3) a drafting committee (whose
duty was to formulate drafts and give advice on drafting as re-
quested, and to coordinate and refine the drafting of all texts re-
ferred to it), and (4) a credentials committee. Most significant
was the fact that the drafting committee did not meet until the
final week of the Conference and then commented that no drafts
had been submitted to it during the Caracas session. This, more
than any other single factor, was indicative of the lack of progress
toward a treaty during the Caracas session.

The three main committees were allocated agenda items from
the list of subjects and issues on the law of the sea constituting the
agenda for the Conference. The First Committee was given re-
sponsibility for seabed mining beyond the limits of national juris-
diction, the Second Committee for general law of the sea matters
(including the economic resource zone, the continental shelf, fish-
ing, and navigation), and the Third Committee for marine pollu-
tion and scientific research. All three main committees were
empowered to consider other issues insofar as relevant to the
specific items allocated.

C. Program of Work and Accomplishments

1. Plenary Sessions. For the first two weeks of the Confer-
ence, activity was concentrated exclusively in plenary sessions.
Opening ceremonies were held on June 20 and the period from
June 21 through June 27 was taken up with the adoption of the
rules of procedure (see above). On June 28 a general debate was
initiated which continued through July 15. During this time 115
nations and nine non-governmental organizations took the podium
to explain their views on the law of the sea. It was originally in-
tended that the general debate be limited to new participants (i.e.
those which had not been members of the United Nations Seabed
Committee) but it soon became obvious that a large majority of
nations at the Conference intended to express or reiterate their
positions on the major issues. Few significant changes in position
were made, however, the most interesting being the condi-
tional acceptance of the 200 mile economic resource zone concept
by the United Kingdom, the Soviet Union, and the United

After two weeks of general debate the three main committees began informal efforts to develop their work programs which were adopted for the First, Second, and Third Committees on July 10, July 3, and July 11, respectively. Following general debate, the plenary session met sporadically, primarily to hear progress reports from the main committees and to engage in ceremonial activities. The remainder of the work of the Conference took place in the main committees or other groups.

2. First Committee. As noted above, the First Committee adopted its program of work on July 10. This program envisioned a week of general debate followed by a "third reading" of the articles prepared by the Seabed Committee concerning the legal regime for deep seabed mining. The work program was left open-ended thereafter and ultimately developed around three main issues: the economic implications of seabed mining; the question of who might exploit the resources of the area beyond the limits of national jurisdiction; and the conditions of exploitation (i.e., the rules and regulations governing deep seabed mining).

The Chairman of the Committee, Paul Bamela Engo (Cameroon) chaired the general debate sessions, while Christopher Pinto (Sri Lanka) chaired the subsequent informal working sessions which addressed the main issues identified above.

Very little substantive progress was made on the matters in the First Committee. The third reading of draft articles for a seabed mining regime resulted in very few changes and virtually no reduction of the number of alternative texts representing the various national and group positions. Although the debates and discussions on the various issues served to bring into sharper focus the problems separating the various groups involved, little if any progress was made toward compromising those positions. Thus at the conclusion of the Caracas session, the issues remained about as they were at its opening with respect to the major issues in seabed mining. These issues and the principal positions thereon may be summarized as follows.

The first issue is the question of "who may exploit the area."
Technologically developed countries seek a nondiscriminatory form of licensing similar to that used by the U.S. Department of the Interior for allocating oil and gas leases on its continental shelf. Proponents of such a view tend to visualize companies and technologically developed nations as the only entities competent to engage in the development of seabed resources. Developing countries, however, perceive the same likelihood of domination of this field by the technologically advanced nations as has occurred in other areas and are thus seeking to limit the impact of corporate technology. They insist that the seabed agency itself be granted monopoly rights to exploit the area, though most recognize the necessity for utilizing corporate technology in the near term under joint ventures or negotiated contracts. Nonetheless, the agency would be the dominant force and the developing nations would be the controlling element of the agency in this approach.

The second issue relates to rules and regulations to govern seabed mining. On the one hand, technologically developed nations would like to see a detailed "mining code" written into the treaty itself so that the entrepreneurs would know precisely the content of rules for securing access to the resources as well as the regulations which would govern conduct of their activities in the ocean. Developing countries, on the other hand, seeking to give the international seabed authority maximum flexibility to deal with the corporate technologists, would prefer that only very general guidelines be placed in the treaty with rules and regulations to be adopted by the agency on an ad hoc basis after it comes into existence. Specific proposals on this subject were submitted toward the close of the Caracas session by the United States, Japan, the European Economic Community nations, and the "Group of 77."

The third major issue concerns the question of the economic implications of seabed mining. If minerals such as manganese, copper, cobalt, and nickel are extracted from manganese nodules in substantial quantities, and if demand remains the same, a price

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"Article 9" in the draft articles on the regime considered by the First Committee [A/CONF.62/C.1/L.3 (5 August 1974)].


17 See, e.g., the proposal submitted by the "Group of 77" [A/CONF.62/C.1/L7 (16 August 1974)].

18 See supra notes 16 and 17.
reduction could occur. If this happens, it would not be likely to have adverse effects for diversified, complex economies, but could have negative impacts on the economies of certain developing countries which are heavily dependent upon the exports of a single commodity. In addition to a United Nations Secretariat study on the topic, the U.N. Conference on Trade and Development has published a series of documents analyzing the specific metals involved. Industrial studies as well as a study by the United States Department of State were also conducted over the past three or four years. All of these studies, with the exception of the UNCTAD reports, anticipate minor economic implications. The UNCTAD studies, as well as a recent supplement to the U.N. Secretariat study, which were introduced and distributed at Caracas, indicate more serious consequences for the economies of mineral exporting developing countries if seabed mining is permitted to go unchecked. The issue has generated a great amount of heat, but very little light. It boils down essentially to a question of whose figures one believes. In any event, the developing countries have proposed that the seabed authority be granted authority to limit production and to fix prices if necessary in order to maintain the economies of developing nations, a suggestion which most technologically developed nations regard as anathema.

3. Second Committee. The second committee adopted its work program on July 3, the earliest of any of the three main committees. Chairman Andres Aguilar's (Venezuela) proposal, as adopted, set the stage for the committee to entertain general debate on each of the 15 agenda items assigned to the committee.

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20 See UNCTAD Docs. Nos. TD/113/Supp. 4 (7 March 1972); TD/B/447 (18 June 1973); TD/B/449 (25 June 1973); TD/B/449/Add.1 (26 June 1973); TD/B(XIII)/Misc.3 (31 July 1973); TD/B/483 (23 April 1974); TD/B/483/Add.1 (23 April 1974); and TD/B/484 (28 May 1974).
following each of which the officers of the committee would prepare a working paper reflective of the main trends evidenced on the particular issue under consideration. When the working papers were ready, whatever general debate was then underway was interrupted for a consideration of the working paper which could be put through as many as two revisions. The end product was a series of 15 working papers each of which constituted, in draft treaty article form, the major alternatives presented on each of the substantive issues. During this process nearly 100 proposals were submitted on the 15 agenda items.26

Though this constituted essentially a preparatory exercise rather than a negotiation of the differences involved, and thus could be criticized for not providing any indication of progress in the substantive negotiations, the enterprise was nonetheless completed prior to the end of the session and provides the negotiators who will assemble in Geneva in 1975 with a consolidated set of alternatives in treaty form for their negotiating activities.26a

Though it would not be appropriate in a summary report such as this to discuss all of the issues involved in the work of the Second Committee, the broad outlines of the major controversies can be briefly indicated.

a. Economic Resource Zone. This concept, which would allocate to coastal states exclusive jurisdiction over living and non-living resources up to 200 miles from the baselines is strongly supported by developing coastal states.27 Landlocked and other geographically disadvantaged nations are less enthusiastic about the idea, unless appropriate access and resource/revenue sharing provisions are included for their benefit.28 Maritime powers, with few exceptions, indicated a conditional willingness to accept the notion, provided the treaty included guarantees for the conduct of non-resource activities by nations other than the coastal state.

Developing nations want that "residual" authority for themselves, while developed nations want non-allocated rights to fall within the scope of the international community at large (to be developed through subsequent agreement or emergence of customary law rules). Specifically, the United States insisted that the 200 mile economic zone concept would not be acceptable unless the obligations of coastal states to respect other uses of the area were spelled out in detail in the treaty.

b. Fishing. Most developing coastal nations wish to have exclusive jurisdiction over fishery resources within their economic zone jurisdiction — i.e., foreign fishing would be permitted only at the discretion of the coastal state. Distant water fishing states, and other developed nations, argue that such coastal states should be preferential only — i.e., the coastal state would be under an obligation to admit foreign fishing where the allowable catch was not entirely taken by the coastal state. Developing nations concede the interest of neighboring states and neighboring landlocked states, but resist the preferential concept for other nations on the basis that it interferes with their "sovereignty" over natural resources in the economic zone.

Controversy also exists over treatment to be afforded highly migratory species and anadromous species. Developing coastal states wish jurisdiction over all fish passing through their economic zone, regardless of their migratory habits, while states with tuna and other migratory fishery interests seek their regulation pursuant to international agreement. Likewise, host states for anadromous species wish exclusive jurisdiction throughout their migratory cycle, while nations engaged in high seas salmon (and other) fisheries want to retain freedom of fishing beyond an economic zone.

c. Continental Shelf. Since the economic resource zone concept would duplicate the continental shelf doctrine with regard to coastal state competence over nonliving resources off its coast, the only issue is whether that exclusive competence should extend beyond 200 miles in cases where the physical continental shelf ex-
tends beyond 200 miles. Self-interest and geological endowment largely dictate the positions on this issue.32

d. Navigation. Two major navigation issues are at stake in the negotiations. First, the maritime powers insist on treaty guarantees of free navigation within economic resource zones (but without the territorial sea); developing nations agree with the principle but argue that (under the "plurality of regimes" concept) the determination of rights within the 200-mile zone is up to the coastal state. Second, military and maritime powers seek a regime of unimpeded transit through international straits. Straits states are concerned that they be permitted to regulate that passage in the interests of environmental protection and national security. There appears to be a common agreement that merchant shipping should be as little restricted as possible, but many developing nations strongly oppose the idea of unimpeded transit for military vessels, especially submerged nuclear submarines and overflight. Proposals were introduced which would require advance notification and coastal state permission for passage of warships through international straits, a position completely unacceptable to the major military powers.33

e. Territorial Sea. Very little dispute exists on a 12-mile breadth for the territorial sea,34 provided that (i) developing coastal states are assured of jurisdiction over living and non-living resources in a broad area beyond 12 miles, and (ii) maritime powers are assured of unimpeded navigation through straits which, though possessing corridors of high seas under a 3-mile limit, would consist entirely of territorial waters under a 12-mile limit.35

f. Archipelagos. Archipelago states wish a legal regime by


33 For this and other proposals on straits, see U.N. Docs. A/CONF.62/C.2/L.3 (3 July 1974) [a comprehensive proposal by the United Kingdom], L.6 (10 July 1974), L.11 (17 July 1974) [a comprehensive proposal by the Soviet Union and others], L.16 (22 July 1974), L.19 (23 July 1974) [a revision of a comprehensive proposal submitted to the U.N. Seabed Committee by Fiji], L.20 (23 July 1974), L.59 (14 August 1974), and L.83 (26 August 1974).


which, pursuant to some agreed formula, they could join the outermost points of their outermost islands by baselines from which the other zones of ocean space jurisdiction would be measured. Since the area encompassed would in almost all cases fall within their economic resource zone jurisdiction anyway (even if measured from the individual islands), there is little argument over the resource aspects of this proposal. However, maritime powers object to the potential for closing off traditionally used lanes of navigation, particularly in the Indonesia-Malaysia-Philippines area. Thus they argue for a formula which will guarantee passage, either on a general basis or in acceptable corridors.

g. Islands. A hotly contested issue, the question of islands involves such sub-problems as: (i) should islands generate economic resource zones in the same manner as mainland masses, regardless of their size, population, or political status; (ii) should islands forming colonial dependencies have the same rights to offshore resources as independent nation islands; and (iii) should islands be given full effect in applying equidistance or other formulas in the allocation of offshore areas between adjacent or opposite states. By and large, geography determines the national positions on most of these questions.

4. Third Committee. Chaired by Alexander Yankov (Bulgaria), the Third Committee was the last of the main committees to adopt its organizational program. The committee created two informal groups, one dealing with pollution, the other with scientific research, each of which heard general debate statements. Separate informal sessions were then conducted in an attempt to reduce the treaty text alternatives and to negotiate the outstanding issues. The informal session on pollution was chaired by Jose-Luis Vallarta (Mexico) and the informal sessions on scientific research by Cornel Metternich (Federal Republic of Germany). As with the other main committees, however, there was virtually no prog-


ress toward negotiating solutions to the issues involved in the protection of the marine environment and oceanographic research in the ocean. Rather, the issues were drawn more sharply into focus and the groundwork laid for future negotiation. The major issues in the two sub-areas may be summarized as follows.

a. Pollution. Among the more important issues discussed at the Caracas session was the question of the creation of minimum international standards for marine based activities in an economic resource zone. The United States appears to have little support in its quest for such standards — developing nations view it as an imposition on their concept of coastal state “sovereignty” in the economic zone, and some industrialized nations fear increased costs as a result of high standards. For whatever reasons, the outlook for such international standards in the zone is bleak.

Equally frustrating was the attempt to secure some general obligation to protect the marine environment. Even though there is no real disagreement on the need for such a general obligation, implementation in treaty language has run afoul of developing countries’ attempts to qualify the obligation by such language as “best practicable means,” “in accordance with their capabilities,” and “in accordance with their national environmental policies.” Some view such language as undercutting the purpose of such an obligation.

As to land-based sources of pollution, the Seabed Committee and the Conference have taken the position that, as a general proposition, the matter is beyond the competence of the law of the sea negotiations and must be left essentially to the U.N. Environment Program.

With respect to vessel source pollution, there is a polarization over whether enforcement ought to be by the coastal nation in whose waters a violation of law takes place, or whether enforcement should be by some combination of flag-state and port-state, with coastal states authorized to act only in emergency situations.


b. *Scientific Research.* As with so many other issues involved in the law of the sea negotiations, the dispute over scientific research in the ocean is basically a developed-developing nation controversy. Developed nations seek maximum freedom for the conduct of oceanographic research in all parts of the ocean. Developing coastal states seek to maximize their control over all activities, including scientific research expeditions, in the waters and seabed adjacent to their coast out to the limits of their resource jurisdiction (which could be as far out as 200 miles under the economic resource zone concept).

The critical question concerns the conditions under which such oceanographic research can be conducted within the economic zone area. Proposals range from total freedom of access to a requirement of securing advance consent from the coastal state. More moderate positions would (i) require the expedition only to give advance notice of its intention, consent to be implied unless word is given to the contrary, and (ii) require compliance with internationally agreed obligations for the conduct of such research, including open publication of results and the participation of representatives of the coastal state if it so desired.

### D. Special Negotiating Groups

Because of the obvious impracticability of negotiating the issues among the 138 nations officially registered for the Caracas session of the Conference, a number of smaller groups — both formal and informal — were established or convened. Within the main committees there were some informal meetings of smaller groups, some by acquiescence of the committee at large and others simply by reason of common interest.

There were, of course, regular meetings of the five regional groups — Western European and Others, Eastern European, African, Asian, and Latin American (the United States is not a member of any regional group). All matters of organizational work were cleared by the main committee chairmen with the designated
representatives of the regional groups which in turn cleared the proposals with the membership of their respective groups.

A number of functional groups were also established, including the so-called "Group of 77" numbering over 100 developing countries. There was a "coastal states group," the "Juridical Experts group," the "geographically disadvantaged" states, and a few others, all of which attempted to negotiate compromise solutions. However, none of these efforts resulted in any substantial degree of agreement over the broad range of positions, most simply reflecting the dominant position of those in the particular group. One possible exception was the proposal submitted by the "coastal states group" which attempted to reconcile some rather divergent views. By and large, however, the special groups did not appear to produce the type of negotiating agreements sought by their creation.

E. Conclusion of the Session

The session was completed on August 29, 1974. A subsequent session in Geneva was scheduled for March 17-May 3, 1975. Nearly all delegations favored the earlier spring meeting, ostensibly for the purpose of providing additional time later in the summer for another session or, should the Geneva meeting be successful, for a return to Caracas where the final documents would be signed. Some nations indicated the necessity of continuing the Conference beyond 1975, but this runs counter to the position of the United States delegation that it may no longer object to domestic legislative initiatives in the areas of fishing, seabed mining, and perhaps others after 1975. Thus, the fate of the Conference would seem to hinge on the progress made at Geneva.

II. ANALYSIS

The following analysis does not purport to be a comprehensive overview of the Caracas session of the Conference. Rather, it is in part a distillation and summation of the views expressed by those members of the Subcommittee who utilized Ford Foundation grant funds to spend at least two weeks each in Caracas observing the proceedings and serving as experts attached to the United States delegation. It also reflects the observations of Subcommittee members who did not participate in the grant supported activities but who nonetheless were in Caracas and indicated their

feelings on various issues to the rapporteur. The use of the term "observers" in this section, then, refers only to those Subcommittee members making some form (written or oral) of direct input to the rapporteur for purposes of this report.

The section is broken up into two parts — the first deals with the substantive issues at the international level; the second deals with the United States delegation, its operation and its substantive positions at the session.

A. Substantive Matters at the International Level

There is a consensus among observers that the Caracas session was preparatory in nature and thus did not constitute a forum for the negotiation of the outstanding issues. Given the size and complexity of the Conference, the lack of participation by some states in the work of the United Nations Seabed Committee, the prospects for additional sessions in 1975 and perhaps beyond, the logistical difficulties involved, and perhaps most importantly the lack of preparation by a number of states, Caracas probably produced as much progress toward a law of the sea treaty as could be expected, though that progress was minimal.

In spite of the modicum of successful preparatory work, however, a large conceptual gap still remains between developing and developed countries on almost all issues. Caracas produced no appreciable drawing together of the nations reflecting quite diverse interests in and positions on the issues. It therefore appears to most observers that a successful treaty — that is, one which deals with all law of the sea issues in a manner acceptable to the vast majority of nations — is unlikely to emerge by the end of 1975.

One of the critical factors preventing progress toward a law of the sea treaty was the physical size of the Conference and the number and complexity of the issues involved. The impression that a spectator might have of the Conference is that it resembled a computer into which too much data had been fed and which had been called upon to perform calculations beyond its capacity. In addition to size and complexity, progress was also inhibited by the difficulty of coordinating positions internally among the various blocs at the session. This was particularly true of the so-called "Group of 77," which numbers over 100 developing countries of quite diverse geographic, economic, and political situations.

Alternatives to the present system of seeking to negotiate a comprehensive "package deal" encompassing all law of the sea
matters appear to offer little hope of speeding up negotiations. Both the approach of singling out issues for negotiation and seeking general rather than specific agreements are unacceptable to the developed countries which can achieve their non-resource objectives only through the package approach and which are not willing to accept general concepts such as the 200-mile economic resource zone without a concomitant expression of the rights of the international community and the duties of coastal states in such zones.

There seems also to be a consensus that the current trend toward a nationally oriented economic zone is shortsighted, and is probably more a function of the decision-making forum than of a thorough assessment of policy options. Given the complexity of the issues and the inability of many nations to assess their long-term impacts, there is a tendency to rely upon essentially short-term economic considerations.

The trend toward the assertion of national jurisdiction over all coastal resources, coupled with the voting power possessed by the developing countries, could result in the adoption of a treaty which would be, in whole or in part, unacceptable to the major maritime powers. Most observers felt that this result would be worse than a complete failure to reach any treaty agreement because it could result in a polarization of the issues rather than leaving them open for further development in the context of the process of customary international law.

In this light, there was some support among observers for the United States to proceed to unilateral action to preserve its interests and to further the development of international law.

B. The United States Delegation

1. Procedural Matters. There was a common concern over the operation of the delegation. The delegation was so large and national interests so diverse that at times there appeared to be a "conference within a conference." It was also observed that although the participation of the Advisory Committee reflects an admirable openness on the part of the Government, better use of its members might have been made in some instances. Some observers felt that they should have been more involved at the stage of policy formulation.

2. Substantive Matters. There seemed to be a lack of support for various positions of the United States during the Caracas session. For example, an analysis of the positions expressed by the
115 delegations making general debate statements in the early plenary sessions indicated limited support for United States positions on freedom of transit through international straits, full utilization of living resources in the economic zone, freedom of scientific research in the economic zone, adoption of international pollution control standards with flag state enforcement, a licensing seabed authority, and compulsory dispute settlement.

III. RECOMMENDATIONS FOR FURTHER RESEARCH

Recommendations by grant recipients were submitted in two areas, for example, research useful to the negotiators on an intersessional basis, and research useful in the event that the Conference fails in one way or another to produce a universal, comprehensive law of the sea treaty.

A. Recommended Intersessional Research

1. Conditions for Full Utilization of Living Resources in the Economic Zone. The full utilization principle raises a number of issues on which there have been to date few studies. First is the determination of "optimal yield," or whatever the limiting figure for total annual allowable catch is based upon. Critics of the full utilization concept can certainly claim that little basis at present exists for determining any such limit except the maximum sustainable yield concept. Attention should also be given to criteria for setting priorities for harvesting the unutilized stocks by foreign fishermen. What role would joint-venture companies play? How will enforcement costs be allocated? Should general rules be adopted to take care of countries with historic fishing rights, of countries within the regional group, of states with heavy investments in fishing capacity, but with limited fisheries resources in their own economic zone? What provisions might be made for land-locked and other geographically-disadvantaged states both within and beyond the region?

2. Groupings of States According to Common Interests. One of the difficulties of any decision matrix for LOS III is clearly the great variety of overlapping interests of the nearly 150 states in attendance. Matrices might be prepared indicating "membership" in various interest groups, and commonalities of the "membership" in such groups.
3. Archipelagos. Despite considerable work carried out by the State Department, there still is room for considerable analysis of archipelagos, of possible sealanes through archipelagic waters, and of alternative regimes for passage. These issues should be addressed not only to archipelagic states, but also to mainland states with coastal archipelagos, and to archipelagos some distance removed from the mainland state which has jurisdiction over them.

4. Seabed Regime. Research should be undertaken on the questions of (a) the nature of mutually satisfactory arrangements between the authority and private companies for joint ventures with appropriate profit sharing (consideration of the Production Sharing Contracts between private companies and the Indonesian government and other existing production or profit sharing precedent would be appropriate), and (b) the nature of decision-making arrangements in the authority to take adequate account of the special interests and responsibilities of the major maritime and technologically advanced countries.

5. The Rights of Coastal States to Prescribe and Enforce Environmental Standards in the Economic Zone. It would seem useful to examine whether any adjustment might be appropriate in the U.S. position with respect to (a) coastal state enforcement of international standards, (b) coastal state rights to prescribe discharge standards higher than the international standards, and (c) special arrangements for ecologically vulnerable areas like the Canadian Arctic, where special international construction standards could be established, or, alternatively, the country concerned could establish interim construction standards subject to disapproval by IMCO.

6. Legal Problems Arising out of Cables and Pipelines. Submarine cables and pipelines give rise to a multitude of problems — pollution, safety standards, interference with other uses, differing legal treatment depending on whether the cable or pipeline comes ashore in a particular state or merely passes through the territorial sea or 200-mile economic zone of a state, and so forth.

7. Mechanisms for Facilitating Work of International Ocean Institutions (IMCO, IOC, FAO and Regional Fisheries Organizations). Research could define objectives of ocean resource management; evaluate and compare decision-making machinery for management and enforcement; assess and compare existing data collecting and processing systems and the adequacy of scientific input into management decisions; examine existing and potential liaison and coordination to accommodate multiple uses; and review procedures for compulsory settlement of disputes.
8. *Composition and Membership of an International Seabed Executive Organ: Explore and Compare Alternatives, Models from Other Areas.* With respect to fishery institutions, examine (a) regional fishery agreements, (b) user fishery agreements, (c) bilateral fishery agreements, and (d) FAO. Research capabilities required to enable fishery organizations to recommend (a) total allowable catch for each species and (b) annual allowable catch for states entitled to fish in an area. Further, research nature of politically acceptable controls on and regulation of marine pollution: (a) type of international decision making body; and (b) areas of jurisdiction (vessel size, cargoes, means of propulsion, training of crews, insurance provisions).

**B. Conference Research**

1. *The Nature and Rights of Geographically-Disadvantaged States.* During the Caracas session many references were made to the existence of geographically-disadvantaged states, and to the need for "compensations" for such countries. Efforts should be made to assess the conditions of "disadvantage," the alternative compensations these states might receive, and the approximate costs of such compensations to other states. Sharing these costs may prove to be one of the most contentious issues of post-Conference developments.

2. *Boundaries of the Economic Zone.* Two problems exist here. First are the bases for delimiting economic zones. What distinctions should be made among islands, rocks, etc.? Should there be a difference between independent and dependent areas so far as their use for basepoints is concerned? Second is the question of boundaries between opposite and adjacent zones. There has been trouble enough with respect to boundaries of the territorial sea and continental shelves; these troubles will be exacerbated with the establishment of 200-mile economic zones. Should there be a Committee of Experts and dispute-settlement machinery to handle such boundary problems?

3. *Multi-Regional Arrangements.* At the Caracas session reference was frequently made to the need for regional arrangements. These might be either of two types. First are mutual-benefit arrangements, such as in semi-enclosed seas, where littoral countries band together for pollution control, fisheries conservation, or other matters of common interest. Second are the "compensatory" arrangements, such as access to the sea for land-locked states, and sharing in resource development of neighbors' eco-
nomic zones with a regional framework. The criteria for such regional arrangements, and the parameters within which they should be established, are issues for which additional study is necessary.