

86TH CONGRESS  
1st Session

SENATE

EXECUTIVES  
J to N, Inclusive

FOUR CONVENTIONS AND AN OPTIONAL PROTOCOL  
FORMULATED AT THE UNITED NATIONS CONFERENCE  
ON THE LAW OF THE SEA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

FOUR CONVENTIONS AND AN OPTIONAL PROTOCOL OF SIGNATURE CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES; WHICH AGREEMENTS WERE FORMULATED AT THE UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, HELD AT GENEVA FROM FEBRUARY 24 TO APRIL 27, 1958; WERE DATED AT GENEVA ON APRIL 29, 1958, AND WERE SIGNED ON BEHALF OF THE UNITED STATES OF AMERICA ON SEPTEMBER 15, 1958, AND ON BEHALF OF A NUMBER OF OTHER STATES

EXECUTIVE J (86TH CONG., 1ST SESS.), A CONVENTION ON THE TERRITORIAL SEA AND CONTIGUOUS ZONE (see p. 14); EXECUTIVE K (86TH CONG., 1ST SESS.), A CONVENTION ON THE HIGH SEAS (see p. 28); EXECUTIVE L (86TH CONG., 1ST SESS.), A CONVENTION ON FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS (see p. 42); EXECUTIVE M (86TH CONG., 1ST SESS.), A CONVENTION ON THE CONTINENTAL SHELF (see p. 52); EXECUTIVE N (86TH CONG., 1ST SESS.), AN OPTIONAL PROTOCOL OF SIGNATURE CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES (see p. 61)

SEPTEMBER 9, 1959.—Treaties and protocol were read the first time, the injunction of secrecy was removed therefrom, and the conventions and protocol were referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a certified copy of each of the following agreements:

- (1) convention on the territorial sea and the contiguous zone;
- (2) convention on the high seas;
- (3) convention on fishing and conservation of the living resources of the high seas;
- (4) convention on the continental shelf; and
- (5) optional protocol of signature concerning the compulsory settlement of disputes;

which agreements were formulated at the United Nations Conference on the Law of the Sea, held at Geneva from February 24, 1958, to April 27, 1958, and were dated at Geneva on April 29, 1958. The conventions, which were open for signature from April 29, 1958, until October 31, 1958, and the optional protocol, which was open for signature from the same date and continues open indefinitely, were signed on behalf of the United States of America on September 15, 1958, and have been signed on behalf of a number of other States.

I transmit also, for the information of the Senate, the report which the Acting Secretary of State has addressed to me in regard to this matter, together with the enclosures thereto.

In the event that the Senate advises and consents to ratification of the convention on fishing and conservation of the living resources of the high seas, it is requested that it enter an understanding in its resolution of advice and consent as follows:

*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of Executive —, Eighty-Sixth Congress, first session, an agreement entitled "Convention on Fishing and Conservation of the Living Resources of the High Seas," adopted by the United Nations Conference on the Law of the Sea at Geneva on April 29, 1958.

It is the understanding of the Senate, which understanding inheres in its advice and consent to the ratification of this agreement, that such ratification shall not be construed to impair the applicability of the principle of "abstention," as defined in paragraph A.1 of the documents of record in the proceedings of the Conference above referred to, identified as A/CONF.13/C.3/L69, 8 April 1958.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *September 9, 1959.*

(Enclosures: (1) Report of the Acting Secretary of State; (2) commentaries; (3) certified copies of agreements of April 29, 1958; (4) certified copy of final act of the Conference, together with annexed resolutions.)

DEPARTMENT OF STATE,  
*Washington, September 2, 1959.*

THE PRESIDENT,  
*The White House:*

I have the honor to submit to the President, with a view to their transmission to the Senate to receive the advice and consent of that body to ratification, if the President approve thereof, a certified copy of each of the following agreements:

- (1) convention on the territorial sea and the contiguous zone,

- (2) convention on the high seas;
- (3) convention on fishing and conservation of the living resources of the high seas;
- (4) convention on the continental shelf; and
- (5) optional protocol of signature concerning the compulsory settlement of disputes;

which agreements were formulated at the United Nations Conference on the Law of the Sea, held at Geneva from February 24, 1958, to April 27, 1958, and were dated at Geneva on April 29, 1958. The conventions, which were open for signature from April 29, 1958, until October 31, 1958, and the optional protocol, which was open for signature from the same date and continues open indefinitely, were signed on behalf of the United States of America on September 15, 1958, and have been signed on behalf of a number of other states.

I transmit also, for the information of the Senate, a certified copy of the final act of the Conference, together with the annexed resolutions adopted by the Conference.

The International Law Commission of the United Nations at its first session in 1949 listed the regime of the high seas and the regime of the territorial sea as topics to be studied with a view to codification. Different aspects of this law were considered at the subsequent sessions, draft rules were prepared, and comments of governments were received and considered. The Commission completed its work at its eighth session (1956) and pursuant to General Assembly Resolution 899 (IX) of December 14, 1954, the Commission grouped together in its report all the rules it had adopted concerning the high seas, the territorial sea, the Continental Shelf, the contiguous zone, and the conservation of the living resources of the sea. These draft rules contained in 73 articles were divided into 2 parts; the first dealing with the territorial sea and the second with the high seas. The second part was divided into three sections: (1) General Regime of the High Seas, (2) Contiguous Zone, (3) Continental Shelf. Each article was accompanied by a commentary.

The final report of the Commission stated that its draft rules on the law of the sea were a mixture of codification of existing international law and recommendations for the progressive development of international law and that it had been unable to separate the two. In these circumstances the Commission pointed out that, to give effect to the project as a whole, it would be necessary to have recourse to conventional means. It therefore recommended that the United Nations General Assembly should summon an international conference of plenipotentiaries to examine the law of the sea, and to embody the results of its work in one or more international conventions.

Pursuant to that recommendation the General Assembly by Resolution 1105 (XI) of February 21, 1957, decided to convene an International Conference of Plenipotentiaries to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic, and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it might deem appropriate. The General Assembly also recommended that the Conference should study the question of free access to the sea of land-locked countries, as established by international practice or treaties.

The Conference met at the European Office of the United Nations at Geneva from February 24 to April 27, 1958. The governments of 86 states were represented. The principal working paper of the Conference was the International Law Commission draft report containing the 73 articles. On the basis of its deliberations, the Conference prepared and opened for signature the present conventions and optional protocol.

There are transmitted herewith brief commentaries dealing with each of the agreements. Provisions relating to land-locked countries, which provisions are included in two conventions, are discussed separately in the commentaries. Each convention provides that it will come into force on the 30th day following the date of deposit of the 22d instrument of ratification or accession with the Secretary General of the United Nations. In view of its nature, the optional protocol concerning the compulsory settlement of disputes contains no specific provisions on entry into force. It will, however, be applicable under the circumstances set forth therein as between any countries which are parties to the protocol and to any one or more of the conventions on the law of the sea.

It is recommended that the Senate, if it approves the convention on fishing and conservation of the living resources of the high seas, enter an understanding in its resolution of advice and consent as follows:

*Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Executive —, Eighty-sixth Congress, first session, an agreement entitled "Convention on Fishing and Conservation of the Living Resources of the High Seas," adopted by the United Nations Conference on the Law of the Sea at Geneva on April 29, 1958.*

It is the understanding of the Senate, which understanding inheres in its advice and consent to the ratification of this agreement, that such ratification shall not be construed to impair the applicability of the principle of "abstention," as defined in paragraph A.1 of the documents of record in the proceedings of the Conference above referred to, identified as A/CONF.13/C.3/L.69, 8 April 1958.

The text of paragraph A.1 of document A/CONF.13/C.3/L.69, April 8, 1958, referred to above, as well as background information regarding the proposed understanding, is included in the enclosed commentary on the convention on fishing and conservation of the living resources of the high seas.

In view of the failure of the Conference to agree on the breadth of the territorial sea and on the related problem of exclusive fisheries rights in a contiguous zone, as set forth in the enclosed commentaries, there is a popular impression that the Conference was not a success. It is believed that the commentaries indicate this is far from the truth. Had the Conference only agreed on the other rules in the convention on the territorial sea, particularly those on straight baselines, the right of innocent passage and the contiguous zone, it would have been well worth while. But it did a great deal more. The conventions on the high seas and the Continental Shelf, while largely expressive of existing international law and practice, nevertheless by much needed codification give agreed form and certainty to the law. The convention on fisheries conservation lays down rules of law based on sound conservation principles which should do much to assure the preservation and increase of an important source of the world's food. Ratification of these conventions by a large number of states will be an outstanding contribution to international law. Finally, by agreeing on these

rules, the Conference has cleared the way for concentration on the unresolved questions of the breadth of the territorial sea and exclusive fisheries rights for the coastal state.

The United States has played an active and prominent role in formulating the present agreements and it is hoped that the agreements will be given early and favorable consideration by the Senate.

The Departments of Defense, Interior, and Justice, the Atomic Energy Commission, the Federal Communications Commission, and the Maritime Administration, to the extent such Departments and agencies are concerned therewith, concur in such submission of the agreements to the Senate.

Respectfully submitted.

DOUGLAS DILLON,  
*Acting Secretary.*

(Enclosures: (1) Commentaries; (2) certified copies of agreements of April 29, 1958; (3) certified copy of final act of the Conference, together with annexed resolutions.)

## COMMENTARIES

### I. CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

This convention is the work of the First Committee of the United Nations Conference on the Law of the Sea. It contains 32 articles. The first two articles provide that the sovereignty of a state extends beyond its land territory and its internal waters to a belt of sea adjacent to its coast described as the territorial sea; and that its sovereignty extends also to the airspace over the territorial sea as well as to its bed and subsoil.

Article 3 provides that the normal base line for measuring the breadth of the territorial sea is the low-water line along the coast.

Article 4 provides that the method of straight baselines joining appropriate points may be used in drawing the baseline for the territorial sea in localities where the coast is deeply indented and cut into or if there is a fringe of islands along the coast in its immediate vicinity. Where straight baselines are justified by these criteria account may be taken in determining particular baselines of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage. Thus, while the use of straight baselines is not permissible on economic grounds alone, nevertheless where straight baselines are justified by geographic conditions, economic interests of long standing may be taken into account in determining particular baselines. Where the use of straight baselines results in enclosing as internal waters areas which had previously been part of the territorial sea or of the high seas, a right of innocent passage is guaranteed by article 5. These articles on straight baselines are among the most important in the convention. While the use in certain circumstances of the straight baseline method in delimiting the territorial sea was confirmed as international law by the International Court of Justice in the *Norwegian Fisheries* case, the decision is in such imprecise terms that the limits of the rule are difficult of ascertainment. It is believed that the formulation of the straight baseline rule set out in the convention is a distinct advance.

Article 7 of the convention relates to bays, the coasts of which belong to a single state. Its most significant change of existing international law is the provision for a 24-mile closing line for bays. Prior to the decision of the International Court of Justice in the *Norwegian Fisheries* case, the United States and other important maritime countries had regarded the 10-mile closing line rule as established international law. The Court's holding that this rule was not sufficiently established left the true legal situation in doubt. Adoption of article 7 will remove that uncertainty.

The convention also provides that roadsteads are included in the territorial sea and that islands have a territorial sea of their own.

Article 12 of the convention provides that in delimiting the territorial sea where the coasts of two states are opposite or adjacent to each other neither state is entitled to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured.

Articles 14 through 17 deal with the right of innocent passage through the territorial sea. Passage is defined as "innocent" so long as it is not prejudicial to the peace, good order, or security of the coastal state. It is believed that this definition furnishes a clear, simple, and precise definition of innocent passage, something which has not heretofore existed in international law, and that it affords to maritime navigation the greatest freedom of movement consistent with the necessity of the coastal state to protect itself. So far as foreign fishing vessels are concerned, however, the right of passage is restricted more. Their passage is not considered innocent if they do not also observe the laws and regulations made and published by the coastal state to prevent such vessels from fishing in the territorial sea. Article 16 provides for the temporary suspension in specified areas of the territorial sea of the right of innocent passage for security reasons but no suspension of the right of innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state is permissible.

The convention contains articles along traditional lines providing that the coastal state should not exercise criminal or civil jurisdiction with respect to foreign ships passing through the territorial sea or with respect to persons on board except in the unusual circumstances enumerated in the convention.

The convention also provides in article 21 that government ships operated for commercial purposes are subject to the same rules as other merchant ships. This provision was opposed by the Soviet Union and other state-trading countries which desired immunity for such vessels.

Of special importance is article 24, which provides that in a zone of the high seas contiguous to its territorial sea—which zone may not extend beyond 12 miles from the base line of the territorial sea—the coastal state may exercise the control necessary to (a) prevent infringement of its customs, fiscal, immigration, or sanitary regulations within its territory or territorial sea; (b) punish infringement of the above regulations committed within its territory or territorial sea. The Hague Codification Conference of 1930 failed to agree on a contiguous zone and, although it has become fairly common practice in

the meantime for the coastal state to exercise a special jurisdiction in a limited area of the high seas contiguous to the territorial sea, particularly in customs matters, no definite rule of international law had heretofore been agreed upon.

The International Law Commission draft contained an article providing that the coastal state could make the passage of warships through its territorial sea subject to previous authorization or notification, although normally it would grant innocent passage. Neither this proposal nor substitute proposals making the right of innocent passage of warships subject only to previous notification to the coastal state could obtain the two-thirds majority required for adoption by the conference.

There is one patent and serious omission from this convention. It contains no article on the breadth of the territorial sea. The International Law Commission was unable to agree on any rule on the breadth of the territorial sea and the conference fared no better. This subject and the closely related one of the extent to which the coastal state should have exclusive fishing rights in the sea off its coast were topics of long and sometimes bitter debate without any conclusion being reached. No proposal received an absolute majority of the votes of the conference except the United States proposal for a 6-mile territorial sea, plus exclusive fishing rights for the coastal state in a contiguous 6-mile zone subject to fishing rights of other states established through fishing over a 5-year period. The vote on this proposal was 45 in favor and 33 against, thus failing the two-thirds required for adoption.

The U.S. proposal was a compromise proposal in an effort to achieve agreement on the breadth of the territorial sea. When that effort failed, the chairman of the American delegation to the conference, Arthur H. Dean, stated:

Our offer to agree on a 6-mile breadth of the territorial sea, provided agreement could be reached on such a breadth under certain conditions, was simply an offer and nothing more. Its nonacceptance leaves the preexisting situation intact.

We have made it clear from the beginning that in our view the 3-mile rule is and will continue to be established international law, to which we adhere. It is the only breadth of the territorial sea on which there has ever been anything like common agreement. Unilateral acts of states claiming greater territorial seas are not only not sanctioned by any principle of international law, but are indeed in conflict with the universally accepted principle of freedom of the seas.

He noted further that—

We have made it clear that in our view there is no obligation on the part of the states adhering to the 3-mile rule to recognize claims on the part of other states to a greater breadth of the territorial sea. On that we stand.

## II. CONVENTION ON THE HIGH SEAS

This convention is the work of the Second Committee of the Conference. It contains 37 articles. These articles define the term "high seas" as comprising all parts of the sea that are not included in the territorial sea or in the internal waters of a state and declare that the freedom of the high seas comprises, inter alia, freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, and freedom to fly over the high seas. With respect to these provisions, a proposal to insert provisions in the convention banning nuclear testing on the high seas and military exercises areas near foreign coast or on international sea routes was defeated. A resolution was passed

referring the matter of nuclear testing to the General Assembly of the United Nations for appropriate action.

The convention also establishes that every state, whether coastal or not, has the right to sail ships under its flag on the high seas. In this connection, article 5 of the convention declares that each state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. This proviso was subjected to the caveat that there must exist a genuine link between the state and the ship and that, in particular, the state must effectively exercise its jurisdiction and control in administrative, technical, and social matters over ships flying its flag. With respect to the provisions of article 5, the United States supported the successful efforts of the newer nations of Africa, Asia, and Latin America to eliminate from this article a provision contained in the original International Law Commission draft which would have enabled states other than the flat state to withhold recognition of the national character of a ship if they considered there was no "genuine link" between the state and the ship. In the absence of any definition of "genuine link" such a provision would have been capable of much mischief. The convention also provides that ships shall sail under the flag of one state only and that a ship which sails under the flags of two or more states, using them according to convenience, may be assimilated to a ship without nationality.

Article 8 of the convention defines warships and states that such ships on the high seas have complete immunity from the jurisdiction of any state other than the flag state. Another article states that ships owned or operated by a state and used only on government non-commercial service shall, on the high seas, have the same immunity as warships. With respect to this article, the Soviet bloc sought unsuccessfully to assimilate all government ships, whether commercial or noncommercial, to warships.

Also included in the convention is an article pertaining to safety at sea which requires states to issue regulations with regard, inter alia, to the use of signals, the manning of ships, labor conditions for crews, and the construction, equipment and seaworthiness of ships. These provisions concerning safety of navigation are very similar to the provisions in existing conventions.

Article 11 of the convention in effect reverses the decision of the Permanent Court of International Justice in the *Lotus* case and states that only the flag state, or the state of which the accused is a national, may exercise penal jurisdiction in matters of collision or with respect to any other incident of navigation concerning a ship on the high seas. This article also provides that only the issuing state may withdraw licenses, masters' certificates, or certificates of competence and finally that only the authorities of the flag state may order the arrest or detention of a ship.

The convention also obliges a state to require masters of ships flying its flag to render assistance to and to proceed to the rescue of persons and ships in distress on the high seas. These provisions with respect to the duty to render assistance are already to a large extent reflected in our domestic legislation.

Article 13 of the convention declares that every state shall adopt effective measures to prevent and punish the transport of slaves in

ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose.

Also included in the convention are eight articles dealing with the suppression of piracy. These articles dealing with slavery and piracy correspond closely to those drafted by the International Law Commission and reflect the existing state of international law on the subject.

Article 22 establishes the right of warships to visit foreign merchant ships on the high seas if there is reasonable ground for suspecting that the ship is engaged in piracy or the slave trade or if the ship, though flying a foreign flag or refusing to show its flag, is actually of the same nationality as the warship.

Article 23 of the convention states that hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal state have good reason to believe that the ship has violated the laws and regulations of that state. The article sets forth in some detail in what manner and under what conditions such pursuit may be undertaken. It permits hot pursuit of a ship which is in the contiguous zone of the pursuing state, if there has been a violation of the rights for the protection of which the zone was established. (See art. 24 of the convention on the territorial sea and the contiguous zone.)

The convention contains two articles dealing with the pollution of the high seas. Article 24 requires every state to draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil. A separate article was adopted which requires states to take measures to prevent the pollution of the seas from the dumping of radioactive waste. States are also required, by the provisions of this article, to cooperate with competent international organizations in the prevention of the pollution of the seas or superjacent airspace. The conference also adopted a joint resolution proposed by the United States and the United Kingdom referring the matter of pollution of the sea by radioactive waste to the International Atomic Energy Agency.

The convention contains four articles regulating the placing of submarine cables and pipelines on the bed of the high seas. The United States at first urged that the Conference refrain from dealing with this subject in view of the existing conventions on the subject, but withdrew its objection on the understanding that existing conventions or other international agreements already in force would not be affected. This understanding is embodied in article 30 of the convention.

The convention on the high seas is, as is stated in its preamble, "generally declaratory of established principles of international law." Although many of the provisions of this convention are already embodied in existing conventions, the present convention gives the opportunity to the newer nations of the international community to subscribe formally to these principles of international law without becoming parties to the existing specialized conventions which may not on the whole serve their needs.

## III. CONVENTION ON FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS

This convention resulted from the work of the Third Committee. It contains 22 articles.

Article 1 of the convention confirms the historic freedom of all nations to fish upon the high seas, but also imposes a new duty upon all states to adopt, or to cooperate with other states in adopting, for their nationals such measures as may be necessary for the conservation of the living resources of the high seas.

Article 2 defines the term "conservation of the living resources of the sea" as referring to "the aggregate of the measures rendering possible the optimum sustainable yield from these resources so as to secure a maximum supply of food and other marine products."

The framework for a new system of international cooperation for fishery conservation purposes is provided for by articles 3 to 8 which spell out new rights and duties for both the fishing and coastal states which become parties to the convention. Thus, under article 3, a state whose nationals fish in any area of the high seas where nationals of other states do not fish must adopt conservation measures when necessary. Article 4 provides that if the nationals of two or more states fish the same stock or stocks of fish in a given area or areas of the high seas, these states shall, upon the request of any of them, enter into negotiations to prescribe any necessary conservation measures for their nationals. Article 5 obliges other states which subsequently fish an area to apply measures adopted for that area under articles 3 and 4 to their own nationals not later than seven months after these measures have been notified to the Director General of the Food and Agricultural Organization of the United Nations. If the other states concerned do not accept the existing measures and if no agreement is reached within twelve months, any interested party can resort to a compulsory method for the settlement of disputes.

Article 6 recognizes that a coastal state has a special interest in the conservation of the living resources of any high seas area adjacent to its territorial sea even though its nationals do not fish there.

Article 7 provides that a coastal state may, if negotiations with the interested fishing states have not led to agreement within 6 months and if an emergency situation exists, unilaterally promulgate non-discriminatory conservation regulations which will be binding upon other states.

Another important section of the convention (Arts. 9-11) provides for a compulsory and speedy settlement by a five-man special commission of any dispute arising under articles 4 through 8. Article 10 sets forth the criteria to be applied by the Commission in determining the necessity for or the adequacy of conservation measures.

While the traditional freedom of fishing in the high seas is confirmed by this convention, it is subject to the obligation to comply with conservation measures under the conditions and in the circumstances foreseen by the convention.

The United States would have preferred that the convention include a provision on abstention. Agreement could not, however, be reached on inclusion of such a provision and a resolution was proposed on the subject, which resolution failed by a narrow margin to secure the necessary two-thirds vote.

The provision on abstention which was proposed for inclusion in the convention is contained in paragraph A.1 of the documents of record in the proceedings of the Conference, identified as "A/CONF.13/C.3/L.69, 8 April 1958," and reads as follows:

1. Where the nationals of a coastal State, alone or with the nationals of one or more other States, are (a) fishing a stock of fish in an area of the high seas adjacent to the territorial sea of the coastal State with such intensity that an increase in fishing effort will not result in a substantial increase in the yield which can be maintained year after year, and (b) where the maintenance of the current yield, or when possible, the further development of it is dependent upon a conservation programme carried out by those States, involving research and limitations upon the size or quantity of the fish which may be caught, then (c) States whose nationals are not fishing the stock regularly or which have not theretofore done so within a reasonable period of time, shall abstain from fishing such stock, provided however that this shall not apply to any coastal State with respect to fishing any stock in waters adjacent to its territorial sea.

At the conclusion of the Conference the chairman of the United States delegation made the following statement:

The delegation of the United States of America considers that the agreement concerning fisheries reached at the Conference represents a significant forward step by the international community toward the achievement of the objective of conservation of marine resources and the maximum utilization of such resources in behalf of the general interests. The delegation regrets nevertheless that the resolution regarding the abstention procedure did not receive the two-thirds majority required for its adoption by the Conference. The U.S. Government considers that this procedure is an essential measure to protect and conserve the living resources of the sea. Experience demonstrates that in certain situations it is the only factor which will encourage states to expend the time, effort, and money on research and management, and to impose the restraints on their fishermen that are required to restore and maintain the productivity of a stock of fish.

For these reasons the United States will continue to pursue the objective of the general acceptance of the procedure of abstention, and will enter into agreements with interested states which will incorporate this sound conservation measure.

It is considered desirable that the Senate of the United States advise and consent to ratification of the agreement with the understanding that ratification of the agreement shall not be construed to impair the applicability of the principle of abstention.

#### IV. CONVENTION ON THE CONTINENTAL SHELF

This convention is the work of the Fourth Committee of the Conference. It contains 15 articles. Probably the most important of these are the first three articles.

Article 1 defines the term "Continental Shelf" as meaning the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas. It also includes the seabed and subsoil of similar areas adjacent to the coasts of islands.

The Continental Shelf as a legal concept is only of recent origin. The first important formulation of this concept was the Truman proclamation of September 28, 1945, which stated that the Government of the United States regarded the natural resources of the subsoil and seabed of the Continental Shelf contiguous to the coast of the United States as "appertaining" to the United States and subject to its "jurisdiction and control." The Truman proclamation did not define the term "Continental Shelf" but a contemporaneous White

House press release indicated that the term referred to submerged land contiguous to the coast which is covered by no more than 100 fathoms of water. The definition in the convention combines both the depth and exploitability tests as did the International Law Commission draft.

Article 2 of the convention provides that the coastal state exercises over the continental shelf "sovereign rights" for the purpose of exploring and exploiting its natural resources. These rights are exclusive. The term "sovereign rights" was contained in the International Law Commission draft and was a compromise between the views of those states which desired to use the term "sovereignty" and those which preferred "jurisdiction and control." As article 2 makes clear that the rights of the coastal state are exclusive and as article 3 of the convention provides that the rights of the coastal state over the continental shelf do not affect the legal status of the superjacent waters as high seas or that of the airspace above those waters, the distinctions between sovereignty, sovereign rights, and exclusive jurisdiction and control are perhaps not of great practical importance.

The Continental Shelf doctrine is well established in international practice and all the substantive articles of the convention were adopted by large majorities. The only real controversy concerned the definition of "natural resources" of the shelf. The International Law Commission draft contains no definition. The Conference adopted a joint proposal of Australia, Ceylon, Malaya, India, Norway, and the United Kingdom defining natural resources as the mineral and other nonliving resources of the seabed and subsoil, together with living organisms which at the harvestable stage either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil.

#### LANDLOCKED COUNTRIES

As has been indicated above, the Conference on the Law of the Sea was asked by the United Nations General Assembly (Res. 1105 (XI) of February 21, 1957) to—

\* \* \* study the question of free access to the sea of land-locked countries as established by international practice or treaties.

This subject was considered by the Fifth Committee of the Conference. As a result of the work of the Fifth Committee, article 14 of the convention on the territorial sea and the contiguous zone, *supra*, contains the words "whether coastal or not" to indicate clearly that the right of innocent passage through the territorial sea applies to ships of landlocked countries as well as to ships of coastal states. This phrase "whether coastal or not" was also inserted in article 4 of the convention on the high seas to clearly establish that landlocked states as well as coastal states have the right to sail ships under their own maritime flags on the high seas.

The Fifth Committee also drafted several provisions which are incorporated in the convention on the high seas as article 3 of that convention. These provisions declare that states without a seacoast should have free access to the sea, and that by common agreement with the coastal states and in conformity with existing international conventions, land-locked states shall enjoy free transit to the sea, on a basis of reciprocity. These provisions also give to the ships of

land-locked states, subject to the accord of the coastal state, national and most-favored-nation treatment in the ports of coastal states.

In its deliberations and in accordance with its mandate from the United Nations General Assembly, the Fifth Committee took into consideration a number of existing international conventions and agreements affecting land-locked countries such as the convention and statute of freedom of transit, the convention, statute, and protocol on the regime of navigable waterways of international concern, and the declaration recognizing the right to a flag of states having no seacoast, all signed at Barcelona on April 20, 1921. Also taken into consideration by the committee was the convention and statute on the international regime of maritime ports and protocol of signature, concluded at Geneva on December 9, 1923.

The result of the work of the Fifth Committee clearly established the principles that land-locked countries should have free access to the sea and that they should enjoy the freedom of the seas on a basis of equality with coastal states. The provisions which the conference adopted concerning land-locked countries squarely placed these principles in the conventions on the law of the sea. These provisions also make it possible for the newer nations of the international community to adhere to principles which had been established by conventions which came into force prior to the emergence of some of these countries as sovereign states.

The provisions formulated by the Fifth Committee also protect the rights of coastal states by making the consent of the coastal states a necessary condition precedent to the enjoyment by land locked states of any facilities or privileges in the coastal states. The provisions, furthermore, state that the right of free transit must be enjoyed on a basis of reciprocity.

In the course of the deliberations of the Fifth Committee, the United States and a number of other countries that were neither land locked nor transit states were instrumental in formulating the eventual compromise provisions which embodied to a large extent the aspirations of the states without a seacoast while at the same time protecting the legitimate interests of the transit states.

#### V. OPTIONAL PROTOCOL OF SIGNATURE CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES

This protocol developed from proposals which were made by various governments to the Conference and was formulated by the Conference and the Drafting Committee.

Article I provides that disputes arising out of the interpretation or application of any convention on the law of the sea shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the protocol.

Article II provides that this undertaking relates to all the provisions of any convention on the law of the sea except, in the convention on fishing and conservation of the living resources of the high seas, articles 4, 5, 6, 7, and 8, to which articles 9, 10, 11, and 12 of that convention remain applicable.

The parties may agree to resort to an arbitral tribunal, pursuant to article III, or may agree to adopt a conciliation procedure, pursuant to article IV, before resorting to the International Court of Justice.