
John King Gamble Jr.

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The Third Conference on the Law of the Sea worked for more than a decade, producing in 1982 the United Nations Convention on the Law of the Sea. An important aspect of that treaty is the stand taken on reservations. Article 309 prohibits all reservations, while article 310 permits declarations and statements provided these do not purport to exclude or modify the legal effect of the Convention. This Article examines all declarations to determine if the letter and spirit of articles 309 and 310 are being met. Further, some observations are offered about the effects of article 309 on participation levels in the treaty.

INTRODUCTION

Reservations to multilateral treaties have become a fixture of international law as it has developed in this century. At first blush, the number of reservations seems enormous. At least 1500 reservations have been offered to multilateral treaties since World War I.1 This record, however, is not nearly so disturbing when considered in the context of the total number of multilateral treaties:

Overall, there are no reservations at all to 85 percent of multilateral treaties, and more than three to only 4 percent of such treaties. From the perspective of the state itself, the average since World War II is about one


reservation per state every 5 years . . . . The attempt at categorizing suggests that fully 70 percent [of reservations] cannot under any circumstances have a seriously negative impact on the treaty.²

It has long been recognized that reservations are a two-edged sword. On the one hand, a lenient stance on the use of reservations will make it easier for states to become parties and probably will bring wider participation.³ Conversely, if reservations are permitted without restriction, eventually the treaty may begin to unravel. The International Law Commission put the matter this way:

"[I]t may often be more important to maintain the integrity of a convention than to aim, at any price, at the widest possible acceptance of it. A reserving State proposes, in effect, to insert into a convention a provision which will exempt that State from certain of the consequences which would otherwise devolve upon it from the convention, while leaving the other States which are or may become parties to it fully subject to those consequences in their relations inter se."⁴

However, the modal view seems to be that reservations are a necessary part of international law. They can be messy and inconvenient, but they are part of the price that must be paid for living in an imperfect world. Given this climate, it is not surprising that very few treaties contain a blanket prohibition of reservations.⁵ Thus, it is noteworthy when an important convention does precisely that: permits no reservations. This is the stance taken by the 1982 United Nations Convention on the Law of the Sea (LOS Convention or the

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² Id. at 392.
³ For an excellent discussion of the advantages and disadvantages of treaty reservations, see Knight, The Potential Use of Reservations to International Agreements Produced by the Third UN Conference on the Law of the Sea, POL’Y ISSUES IN OCEAN L. 1-8 (1975).
The LOS Convention states in unequivocal language: “[n]o reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention.”

Some maneuvering room, however, may have been provided. When signing, ratifying or acceding to the LOS convention, a state may make declarations or statements in an attempt to harmonize “its laws and regulations with the provisions of [the] Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of [the] Convention in their application to that State.”

The LOS Convention was opened for signature on December 10, 1982, and remained open for two years. Although the Convention to date has collected only half of the sixty parties required for entry into force, some tentative observations may be offered about the operation of articles 309 and 310. Two distinct aspects to this question exist. The first is whether participation in the Convention has been reduced by states’ inability to make reservations. It is possible to speculate about this issue by examining the number of parties and the pronouncements of states about the effect of the prohibition. But there is no precise way to obtain an accurate assessment of the effect of article 309 on participation levels. The second, and more researchable, question is whether “the declarations and statements” made so far are really reservations in disguise. The balance of this Article will consist of a few observations about the former question and a detailed assessment of the latter.

**Effects on Participation Levels**

As stated earlier, ascertaining the exact effect article 309 will have on participation levels is impossible. The dominant initial im-

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7. LOS Convention, supra note 6, art. 309. The wording adopted here is interesting. The Convention never expressly permits reservations; this language may be a remnant from earlier drafts. Alternatively, it might be argued that this applies to dispute settlement provisions, some of which may be avoided.

8. Id. art. 310.

9. Id. art. 305; OFFICIAL TEXT, supra note 6, at xix.

10. LOS Convention, supra note 6, art. 308.
pression is that article 309 was not of major concern at the LOS Convention. During the signing ceremony in Montego Bay, Jamaica, Bernardo Zuleta, special representative of the United Nations Secretary General, Javier Perez de Cueller, and Tommy T. B. Koh, President of the Third Conference on the Law of the Sea (UNCLOS III), each made eloquent speeches designed, in essence, to highlight the successes of the Conference and to push for rapid acceptance of the treaty. Only Ambassador Koh’s remarks touched the reservation issue and did so rather gently: “My final point is addressed to those who intend to make declarations under article 310. I would simply remind them that such declarations should not purport to exclude or modify the legal effect of the provisions of this Convention in their application to that State.” Mr. Koh mentioned the prohibition on reservations about as subtly as possible. Further, when Ambassador Koh made essentially the same points for an official United Nations publication, no mention of this issue was made.

Before analyzing formal understandings and declarations made by states when signing or ratifying the LOS Convention, it is instructive to examine some of the statements made during the signing ceremony. While these often are informal and have no legal significance unless they are repeated as formal declarations, the statements do give some indication of the probable effect of article 309 on participation levels. The spokesman for the Ukrainian Soviet Socialist Republic (Ukrainian S.S.R.) made the following points:

Therefore, we are going to object categorically to the proposals aimed at amending by any pretext the provisions of the Conventions and related resolutions of the Conference . . . Our delegation would like to note at the same time that in signing the Convention the Ukrainian S.S.R. will abstain from the declarations provided for in Article 310 of the Convention. We expect the same approach from other delegations.

This position, surely reflective of Soviet policy, seems to anticipate abuse of article 310. Interestingly, socialist states are among the most active users—some would say excessively so—of reservations to their multilateral treaties. Thus, the above statement marks either a change in Soviet policy or an attempt to gain political advantage without any intention of ratifying the treaty.

In its remarks, the Government of India seemed to be hinting at a reservation-like position. In contrast to the Indian position, the

12. OFFICIAL TEXT, supra note 6, at xxxiii-xxxvii.
Netherlands expressed a willingness to take the good with the bad because, on balance, the Convention was judged to be in the Dutch national interest. One would not expect the Dutch, upon ratification, to offer a reservation disguised in declaration's clothing. The tone of the Indian statement — "such distinction is neither logical nor justified" — leads one to conclude that India is unsure that the balance is acceptable. The statement by the People's Republic of China seems to fall between the Indian and Dutch statements — China is going to sign, but seems adamant in its objection to certain provisions:

[T]here were no clear provisions regarding the regime of the passage of foreign warships through territorial sea . . . . It should also be pointed out that 'Resolution II' . . . has done too much in the way of meeting the demands of a few industrial nations and given them and their companies some privileges and priorities.

One issue surrounding these informal statements concerns the United Kingdom. The United Kingdom indicated that certain statements made about the status of the Exclusive Economic Zone “appear to be in conflict with article 310, in that they purport to modify the effect of the Convention’s provisions.” The British position seems presumptuous — as a nonsignatory, the United Kingdom has no right to object to the declarations of other states. In many ways, the statements made by the United States are the litmus test, since the decision by the United States neither to sign nor ratify was the most important single event at the end of the Conference. One might expect the United States to have made some mention of article 309, perhaps saying that a less rigid requirement would have made it possible (or more likely) for it to sign. No mention whatsoever was made of the reservation issue.

What can one conclude from this? Has participation been reduced by article 309? Surely if participation is measured by signatures, it

hardly could have been expanded. The final United Nations figures show that 155 states have signed — there are very few holdouts. But one could argue that the real rub may come with ratification. As this behemothian treaty continues to navigate the internal political processes of states, article 309 may have a more significant impact. It is possible that the rather slow accumulation of ratifications is due in part to this issue.

**Assessing the Declarations**

It hardly can be overemphasized that the ultimate success or failure of articles 309 and 310 cannot be judged for some time. What follows is nothing more than a "midstream" assessment, so characterized because the LOS Convention now has amassed about half the parties required for entry into force. An earlier, and hence necessarily more tentative, work was prepared by Daniel Vignes. Professor Vignes first divides declarations into two broad categories, "general" and "particular," somewhat similar to the categories used by the United Nations. He discovered four types of general declarations: (1) those dealing with compatibility with national legislation; (2) those asserting that signature does not prejudice future actions, for example, stand on ratification or existing treaties; (3) those dealing with nonrecognition, often directed against the State of Israel; and (4) those dealing with rights created under the LOS Convention, often stating that these rights will be applied only on a reciprocal basis.

Professor Vignes subdivided particular declarations according to the relevant portion of the LOS Convention. He finds declarations relative to most parts of the treaty, including innocent passage, straits, archipelagoes, the Exclusive Economic Zone, the conti-

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22. The figure of 155 state signatories cannot increase because the LOS Convention is no longer open for signature.
23. As of October 15, 1986, the LOS Convention had 31 ratifications. No "major" power has ratified the Convention. China possibly will ratify in the near future, and this may accelerate other ratifications.
25. Id. at 719-35.
26. Id. at 719.
27. Id. at 720.
28. Id. at 721.
29. Id.
30. Id. at 723.
31. Id. at 723-26.
32. Id. at 726-29.
33. Id. at 729.
34. Id. at 720-32.

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nental shelf, delimitation with nearby uninhabited islands, islands, enclosed and semi-enclosed seas, right of access for landlocked states, the Area, the marine environment, and general provisions. The discussion is interesting as it attempts to put the article 309 and 310 'tandem' in perspective. Professor Vignes is unsure about the exact future of these declarations. They will be more important than travaux préparatoires and their use in future litigation will clarify their nature.

The approach taken here differs from that of Professor Vignes in several important ways. First, almost four years after the signing ceremony, far more state declarations and reactions to them are available for analysis. Professor Vignes based his conclusions on the declarations of twenty-seven states and now almost twice that many are available. Second, while the specific referent of each declaration is important, the focus here is on whether article 310 is being followed: do the declarations "purport to exclude or to modify the legal effect" of the Convention? The relatively small number of declarations makes it desirable to focus on this one, central attribute. Further, now that objections to declarations have begun to appear, it is possible to gain another vantage point on the article 309 and 310 threshold.

Any analysis of these declarations shorter than book length must try to describe the overall contours of the statements, focusing on a few of them as either illustrative or noteworthy because they test the declaration/reservation threshold. In first adopting this general approach, one has to decide what to count — a significant undertaking. Setting aside the substance of the declaration, if a state has signed the LOS Convention and offers a statement, presumably this constitutes a declaration. But, how does one handle the noncomparability of these declarations? For example, the United Republic of Tanzania offered a thirty-two word statement expressing its choice

35. Id. at 732.
36. Id.
37. Id. at 733.
38. Id.
39. Id.
40. Id.
41. Id. at 734.
42. Id.
43. Id. at 717.
44. Id. at 735.
45. LOS Convention, supra note 6, art. 310.
for dispute settlement under the Convention.\textsuperscript{46} In stark contrast, the Philippines submitted a far-reaching statement\textsuperscript{47} that was judged by many to be unacceptable.\textsuperscript{48} It seems that the most reasonable approach would count the Tanzanian statement as one declaration and the Philippine as several, depending upon the number of distinct points made. This procedure, which incidentally is similar to the United Nation’s reporting procedure, produced a total of 146 declarations made by forty-three states. Two groups of statements have been omitted from consideration here. First, those made by nonsignatories have been excluded. While these provide insight into state policy positions, they are peripheral to a discussion of what constitutes a reservation, if the state has not signed, let alone ratified, the Convention.\textsuperscript{48} Second, objections to other declarations also are omitted. These are an important barometer of the legal and political forces that ultimately determine the fate of the Convention — but they are derivative of, and fundamentally different from, declarations.

There are many possible categorizations of these declarations — it is a pie that can be sliced in many different ways, each readily defensible. But a prudent and conservative approach is to use the categories adopted by the United Nations.\textsuperscript{49} Figure 1 uses these categories and lists all states with declarations that apply.

\begin{itemize}
\item \textsuperscript{46} Office of the Special Representative of the Secretary-General for the Law of the Sea, \textit{7 Law of the Sea Bulletin} 7 (1985) [hereinafter LOS Bulletin No. 7].
\item \textsuperscript{47} Office of the Special Representative of the Secretary-General for the Law of the Sea, \textit{5 Law of the Sea Bulletin} 18-19 (1985) [hereinafter LOS Bulletin No. 5].
\item \textsuperscript{50} LOS Bulletin No. 5, supra note 47, at iv.
\end{itemize}

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### FIGURE 1

**OVERVIEW OF DECLARATIONS**

[RATIFYING STATES ARE UNDERLINED]

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<th>non-prej.</th>
<th>recogn.</th>
<th>others</th>
<th>t.s. + c.z.</th>
<th>straits</th>
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<th>INTERPRETATIVE DECLARATIONS</th>
<th>DISPUTE SETTLEMENT</th>
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*Note: The table lists the countries and their legal statuses regarding declarations.*
OVERVIEW OF DECLARATIONS

General Declarations

General declarations (see the far left four columns in Figure 1) are so named because they have applicability beyond specific provisions of the LOS Convention. The first subcategory of these deals with compatibility, usually between municipal law and the Convention. Compatibility can be harmless, as in the case of Cape Verde — “[t]he provisions of the Convention . . . are compatible with the fundamental objectives and aims that inspire the legislation of the Republic of Cape Verde . . . ”51 In contrast, the declaration of the Philippines creates many more difficulties:

The provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic State over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty, independence, and security.52

It is apparent from many objections (some of which will be discussed later) that many states feel that the Philippines went too far.

The second category of general declarations (indicated in column 2 of Figure 1) deals with statements intended not to prejudice the position of a state. These can take many different forms. Some are as benign as that of the German Democratic Republic, which stated that it reserved the right to make declarations under article 310 when it ratified the Convention.53 At the opposite extreme is the statement of Mali that its signature “has no effect on the course of Mali’s foreign policy or on the rights it derives from its sovereignty under its Constitution or the Charter of the United Nations and any other relevant rule of international law.”54 It is entirely possible that Mali will apply the LOS Convention in good faith, but such declarations create unpleasant possibilities. One is tempted to ask: If the Convention will have no effect on foreign policy, why should any state become a party in the first place?

The third, and most numerous, subcategory of general declarations concerns matters of recognition. Three different types of recognition have been subsumed under one heading: recognition of states, recognition of rights under the Convention, and nonrecognition of territorial claims. In most cases, this category of declaration poses no problems whatsoever for the integrity of the LOS Convention. Some declarations in this group relate to territory — for example, Argentina’s claim to the Falkland (Malvinas) Islands55 and Spain’s claim

51. Id. at 30.
52. Id.
53. Id. at 32.
54. Id.
55. Id. at 35.
to Gibraltar.\textsuperscript{56} While certain of these territorial claims have clear implications for hydrospace, one cannot imagine them seriously compromising the Convention. Other declarations are purely political: Not surprisingly, many Arab-sympathizing states inserted a disclaimer that signing the LOS Convention does not imply recognition of Israel.\textsuperscript{57}

\textit{Interpretive Declarations}

The largest group of declarations deals with the substantive articles of the LOS Convention — the United Nations calls these “interpretative” declarations. In order to simplify Figure 1 somewhat, only four subcategories are used: territorial sea and contiguous zone (17 statements); straits (11 statements); Exclusive Economic Zone (26 statements); and all other parts (23 statements). At first blush, this may seem like a huge number of statements, but considering the 320 articles and 155 state signatories of the LOS Convention, it probably is not excessive.

Many of the declarations directed toward the territorial sea express concern about innocent passage. Some of these statements, for example, those by Finland and Cape Verde, do no more than assert that their current laws and regulations conform with the LOS Convention.\textsuperscript{58} Of course, the cynic might suggest that if current law was completely and unambiguously consistent with the Convention, no reason for the declaration would exist in the first place. In a few instances, states go further, perhaps approaching the reservation threshold:

\begin{quote}
The Yemen Arab Republic adheres to the concept of general international law concerning free passage as applying exclusively to merchant ships and aircraft; nuclear-powered craft, as well as warships and warplanes in general, must obtain prior agreement from the Yemen Arab Republic before passing through its territorial waters.\textsuperscript{60}
\end{quote}

This declaration by Yemen might be regarded as an attempt to upset the careful balance struck by the Convention. The terminology “free passage” is almost irrelevant. The LOS Convention developed intricate rules for innocent passage through the territorial sea.\textsuperscript{60} But innocent passage is not free passage — it is assured passage provided

\begin{itemize}
\item \textsuperscript{56} \textit{Id.} at 36.
\item \textsuperscript{57} \textit{Id.} at 34.
\item \textsuperscript{58} \textit{Id.} at 39.
\item \textsuperscript{59} \textit{Id.} at 40.
\item \textsuperscript{60} LOS Convention, \textit{supra} note 6, arts. 17-32.
\end{itemize}

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certain specified conditions are met. The conditions are rigorous, but the intent is clear that all ships can exercise the right of innocent passage if the stipulations are followed. By requiring prior agreement, Yemen may be offering a reservation.

Eleven declarations concern passage through straits. These are predictable, if a little disquieting. In almost all cases they seek to assert special status or treatment for a strait on which a state borders. For example, Finland exempts itself from the transit passage regime on the grounds of LOS Convention article 35: "the legal régime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits."

Sweden offered a completely parallel statement with respect to straits bordering Denmark and Finland. Of all the declarations dealing with straits, the one offered by the Philippines is the most troubling: "[t]he concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high seas from the rights of foreign vessels to transit passage for international navigation." In one fell swoop the Philippines upset a delicate balance that took the Conference years to establish. Predictably, many states have objected to the statement by the Philippines.

Twenty-six declarations deal with the Exclusive Economic Zone (EEZ). It is not surprising that this zone would have attracted attention, since it is one of the principal new creations of the Convention. Several of these declarations (for example, those of Cape Verde, Chile, and Uruguay) assert that the EEZ is a unique zone, neither territorial sea nor high seas. This still may cause problems for some states, but the matter seems of diminishing significance. Maritime states especially would have preferred a formulation that defined the EEZ as part of the high seas, possibly providing legal inertia for those states so that residual or derivative rights in the EEZ would be more difficult to claim. The LOS Convention itself could have resolved the matter had it offered a precise definition of high seas. Unfortunately, it did not:

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State . . . This article does not entail any abridgment of the free-

61. Id. art. 19.
62. LOS BULLETIN No. 5, supra note 47, at 41.
63. LOS Convention, supra note 6, art. 35(c).
64. LOS BULLETIN No. 5, supra note 47, at 43.
65. Id. at 42.
66. Id. at 43.
67. Id. at 44.
68. Id.
dams enjoyed by all States in the exclusive economic zone in accordance with article 58.69

The language is an interesting bit of diplomatic dexterity. The high seas provisions do not apply to the EEZ, but the text never states explicitly that the EEZ is not part of the high seas. A sea by any other name would navigate as freely!

Three declarations — those of Cape Verde,70 Italy,71 and Uruguay72 — deal directly with the matter of residual rights in the EEZ. The positions of Cape Verde and Uruguay are virtually identical, stating that these rights reside with the coastal state “provided that such regulation does not prevent the enjoyment of the freedom of international communication which is recognized to other States.73

Italy's position, on the other hand, is diametrically opposed: “the coastal State does not enjoy residual rights in the exclusive economic zone.”74

Four declarations pertain to artificial islands and installations in the EEZ.75 The positions presented here again diverge over the issue of residual rights. Brazil,76 Cape Verde,77 and Uruguay78 all maintain that coastal state authorization is required for any type of artificial installation. By contrast, Italy maintains that authorization is limited “to the categories of such installations and structures as listed in article 60 of the Convention.”79 The strong difference of positions here creates grounds for additional claims and counter-claims. But, in practical terms, the categories specified in article 60 are so broad that the consequences of the disagreement probably will be minimal.

The other declarations concerning the EEZ deal with fisheries rights. Most seem relatively minor, probably not challenging the declaration/reservation threshold. The provisions of the LOS Convention are somewhat equivocal when specifying the obligations of coastal states to permit other states to fish within their EEZs. For example, after the coastal state determines that it cannot harvest the

69. LOS Convention, supra note 6, art. 86.
70. LOS BULLETIN No. 5, supra note 47, at 45.
71. Id.
72. Id. at 46.
73. Id.
74. Id. at 45.
75. LOS Convention, supra note 6, art. 60.
76. LOS BULLETIN No. 5, supra note 47, at 46.
77. Id.
78. Id.
79. Id.
total allowable catch in its EEZ, "it shall ... give other States access to the surplus of the allowable catch ... tak[ing] into account all relevant factors." The declarations are attempts to shade the interpretation of the Convention provisions to suit the particular interests of states. Cape Verde held that foreign states fishing within an EEZ "are duty bound to enter into arrangements with the coastal State."

Twenty-three additional declarations exist in the interpretative declarations category. They are spread fairly evenly among the remaining parts of the LOS Convention. Most do not seem too significant, save two exceptions. Iran makes an interesting point about islands. Article 121 of the LOS Convention states that islands unable to "sustain human habitation or economic life of their own" will not have an economic zone or continental shelf. Iran's declaration claims the right to use islands for boundary delimitation when those islands "potentially can sustain human habitation or economic life of their own, but due to climatic conditions, resources restriction or other limitations, have not yet been put into development." If a state chooses to develop an island thus meeting the requirements of article 121, it surely could use that island for measuring its zone. But this kind of anticipatory use of uninhabited islands strains the intent of the Convention.

Chile offered the other questionable declaration, expressing grave concern about part XI of the Convention, the section dealing with the international seabed regime. Chile asserts that the core of the seabed regime is *jus cogens*. Hence, any activity pursued outside the framework of the Convention would be "totally invalid and illegal." It is very difficult to prove that the seabed regime is part of customary law. To attribute *jus cogens* status to it stretches the point. Professor Sinclair's admonition seems to apply:

If it is invoked indiscriminately and to serve short-term political purposes, it could rapidly be destructive of confidence in the security of treaties; if it is developed with wisdom and restraint in the overall interest of the international community it could constitute a useful check upon the unbridled will of individual States.

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80. LOS Convention, *supra* note 6, art. 62.
81. LOS BULLETIN No. 5, *supra* note 47, at 46.
82. LOS Convention, *supra* note 6, art. 121.3.
83. LOS BULLETIN No. 5, *supra* note 47, at 50.
84. *Id.* at 54.
Other Declarations

Many of the remaining declarations (see Figure 1, the rightmost two columns) pertain to dispute settlement. The issue of dispute settlement provisions is somewhat parallel to that of reservations. Non-binding dispute settlement provisions may increase participation while weakening the integrity of the Convention; restrictive dispute settlement provisions may have the opposite effect. The LOS Convention took a middle position, setting out elaborate procedures but providing parties with both the option to select among many dispute settlement modes and, in some instances, the right to exclude certain activities from dispute settlement. 87

The first group of declarations in this category is among the most innocent offered in response to the LOS Convention. They say only that the declaring state wishes to delay making any comment about dispute settlement until some later time, often ratification of the Convention. 88 The balance of these statements, twenty-five in number, seems to stay completely within the letter and spirit of the LOS Convention. States merely are exercising their rights under the Convention to select certain dispute settlement procedures and, occasionally, to exclude certain activities from the purview of compulsory dispute settlement. The statement of the Soviet Union is typical of many formulations:

The Union of Soviet Socialist Republics declares that, under article 287 of the United Nations Convention on the Law of the Sea, it chooses an arbitral tribunal constituted in accordance with Annex VIII as the basic means for the settlement of disputes concerning the interpretation or application of the Convention. 89

Almost identical declarations were made by the German Democratic Republic, 90 the Ukrainian S.S.R. 91 and the Byelorussian Soviet Socialist Republic. 92

A relatively small group of declarations remains that deserves special attention, usually because these declarations may exclude or modify the legal effect of the Convention. This group is highly varied, falls into many of the aforementioned categories, and defies facile description. The first of these was put forth by Angola and falls under the “non-prejudice of future position” category. Angola

87. LOS BULLETIN No. 5, supra note 47, at 56.
88. LOS Convention, supra note 6, arts. 279-99.
89. LOS BULLETIN No. 5, supra note 47, at 59.
90. Id.
91. Id.
92. Id. at 60.
desires to retain the right "to interpret any and all articles of the Convention in the context of and with due regard to Angolan Sovereignty and territorial integrity . . . ."\textsuperscript{93} Guinea offered a very similar statement.\textsuperscript{94} It is impossible to predict how these provisions might be used, but they carry the potential for abuse of the Convention.

One of the more surprising declarations was made by Egypt. Although the EEZ was designed to be distinct from the continental shelf, the Egyptian declaration seeks to claim continental shelf resources via the EEZ concept: "Egypt will also exercise its sovereign rights in this zone for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters . . . ."\textsuperscript{95} The stand taken by Egypt is defensible because of the broad scope of the EEZ provisions. But it does seem to represent a loose interpretation of the Convention that, if adopted by other states in other contexts, could be serious.

France introduced a declaration that may be troubling principally because of its sweeping character:

\begin{quote}
The provisions of the Convention relating to the status of the different maritime spaces . . . confirm and consolidate the general rules of the law of the sea and thus entitle the French Republic not to recognize as enforceable against it any foreign laws or regulations that are not in conformity with those general rules.\textsuperscript{96}
\end{quote}

This may be nothing more than an attempt by France to protect itself from unreasonable claims from other states. It has the potential, however, under the massive umbrella of "general rules of the law of the sea," to circumvent provisions of the LOS Convention.

So far, relatively few objections to declarations have been made, indicating that article 310 is working — one would assume that an objection is offered only when the objecting state considers the target statement to be a reservation, not merely a declaration. Most of the objections come from the Soviet Union and East European states.\textsuperscript{97} They usually make a general statement about abuse of article 310. For example, Bulgaria "is seriously concerned by the actions of a number of States which . . . have made reservations . . . ."\textsuperscript{98} Czechoslovakia does not seem quite so concerned, believing that "certain States" have made reservations.\textsuperscript{99} The Soviet Union's objec-

\textsuperscript{93} Id. at 2.
\textsuperscript{94} Id. at 13.
\textsuperscript{95} Multilateral Treaties Deposited with the Secretary-General, U.N. Doc. ST/LEG./SER.e/4, at 707 (1986) [hereinafter Multilateral Treaties].
\textsuperscript{96} LOS BULLETIN No. 5, supra note 47, at 11.
\textsuperscript{97} Id. at 41-43.
\textsuperscript{98} LOS BULLETIN No.7, supra note 46, at 7.
\textsuperscript{99} Multilateral Treaties, supra note 95, at 717.
tion assesses the overall magnitude of reservations.\textsuperscript{100} It elaborates in some detail its objections to the Philippine declaration:

The discrepancy between the Philippine statement and the Convention can be seen . . . from the affirmation by the Philippines that 'the concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines . . . [The Government of the Philippines in its] statement emphasizes more than once that, despite its ratification of the Convention, the Philippines will continue to be guided in matters relating to the sea, not by the Convention and the obligations under it, but by its domestic law and by agreements, it has already concluded which are not in line with the Convention.'\textsuperscript{101} Almost identical sentiments were expressed by Bulgaria\textsuperscript{102} and Czechoslovakia.\textsuperscript{103} It is possible to speculate about why the Philippines was the target of so many objections. Little doubt remains that the Philippines' declaration goes a long way to challenge the archipelagic waters' provisions of the LOS Convention. But other declarations, while perhaps less specific, seem to offer a comparable challenge.\textsuperscript{105} Apparently, reaction to the Philippine position was intensified by (1) the size and location of the Philippine archipelago, and (2) the political posture of the Marcos government. The first of these factors is immutable; it remains to be seen whether the second will change with the Aquino government in Manila.

The only other objections listed by the United Nations were made by Ecuador,\textsuperscript{106} Israel,\textsuperscript{107} and Venezuela.\textsuperscript{108} Perhaps these should not be discussed in this category, since none of these three states signed the LOS Convention. Ecuador wishes to reassert it claims to a 200-mile territorial sea.\textsuperscript{109} Israel and Venezuela wish to be certain that no additional meaning is read into their signing of the Final Act of the Conference.\textsuperscript{110}

\textsuperscript{100.} Id. at 718-19.
\textsuperscript{101.} Id.
\textsuperscript{102.} LOS BULLETIN NO. 7, supra note 46, at 7.
\textsuperscript{103.} Multilateral Treaties, supra note 95, at 717.
\textsuperscript{104.} LOS Convention, supra note 6, art. 45-46.
\textsuperscript{105.} Chile, for example. LOS BULLETIN NO. 5, supra note 47, at 54.
\textsuperscript{106.} Multilateral Treaties, supra note 95, at 720.
\textsuperscript{107.} Id.
\textsuperscript{108.} Id.
\textsuperscript{109.} Id.
\textsuperscript{110.} Id.
CONCLUSION

It is imperative to remember that this Article can be considered nothing more than an interim assessment of the operation of articles 309 and 310. The LOS Convention is only half way to entry into force. Clearly, many more declarations will be made. Further, as more states ratify the Convention, it will be possible to test the durability of declarations that were made at signature and evaluate whether they will be repeated, revised, or dropped at ratification.

So far, the only supportable conclusion is that article 310 appears to be working fairly well. Certain declarations probably do cross the reservations threshold, the most notable being that of the Philippines, but these are rare exceptions. At least half of the declarations are totally harmless. Most of the others are so vague that their effect is impossible to determine, or so narrowly or peripherally focused that they will have little impact on the operation of the LOS Convention.

It now is possible to offer a few more observations about the matter of participation levels raised earlier in this work. If the impact of the LOS Convention is to be sustained, the Convention must enter into force. The Convention now has about half of the sixty ratifications required for force.¹¹¹ Let us compare two sets of figures. There were 155 state signatures to the LOS Convention, of which thirty-one (20%) have ratified the Convention.¹¹² Forty-three states offered some sort of a declaration, nine (21%) of which have ratified. Is the glass half empty or half full? One explanation is that because declarations are still permitted, this group of states is as likely to ratify as those which felt no need to make declarations. From the other vantage point, the declarations offered so far have made these states no more likely to become party to the LOS Convention.

Although a final assessment cannot be made for some years, article 310 seems to be working. The Third United Nations Conference on the Law of the Sea departed radically from existing practice by completely prohibiting all reservations. In general, states seem to be following the provisions. Most have offered no declarations. A total of forty-three states have made declarations. Most pose no problem whatsoever. Only about a dozen (from a total of 146 statements) arguably might constitute reservations. The exact disposition of these will depend on the continued operation of the declaration/objection process and, in some cases, court tests.

¹¹¹ LOS Convention, supra note 6, art. 308.