Recent Developments in the Law of the Sea 1983-1984

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Synopsis

RECENT DEVELOPMENTS IN THE LAW OF THE SEA 1983-1984

This synopsis examines major events occurring between December, 1983, and December, 1984, that affect the law of the sea. It discusses military uses of the world’s ocean space that impaired free and peaceful navigation of the world’s seas in 1984, the United Nations Convention on the Law of the Sea and related issues, marine environment pollution, marine mammals, Antarctica, and the St. Georges Bank controversy.

MILITARY IMPAIRMENT OF FREE NAVIGATION OF THE WORLD’S OCEAN SPACE

Introduction

Military abuses of the world’s ocean space occurred with frequency and intensity in 1984. The mining of Nicaraguan waters,\(^1\) the attacks on neutral ships in the Persian Gulf,\(^2\) and the mining of the Red Sea\(^3\) threatened and impaired free use of the world’s seas by innocent vessels in contravention of international law as embodied in the recently adopted United Nations Convention on the Law of the Sea (Convention).\(^4\) These incidents of violent assault on non-belligerent vessels by countries or organizations immersed in military and political conflicts underline the failures of international law to main-

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1. See infra notes 7-52 and accompanying text.
2. See infra notes 53-153 and accompanying text.
3. See infra notes 154-210 and accompanying text.
tain the peaceful stability of the world’s ocean environment. Moreover, these occurrences highlight the Convention’s failure to address meaningfully the significant issue of military interference with the free navigation of neutral, innocent vessels on the world’s seas.

**Mining of Nicaraguan Waters**

On February 25, 1984, two fishing vessels sank after apparently hitting mines in the port of El Bluff near Bluefields, Nicaragua’s largest Atlantic coast town. Nicaragua’s Minister of Interior issued warnings on March 4, 1984, that Nicaraguan rebels, aided by the United States, would increase violence against economic targets. According to the minister, this violence would include the mining of Nicaraguan ports, the most significant of which is Corinto, an important fuel-unloading facility on the Pacific Coast about ninety miles northwest of Managua. During the first week of March, a Dutch dredger struck a mine in the narrow approach channel to Corinto and was severely damaged. A Panamanian ship hit a mine the evening of March 7, 1984, and, at the time, appeared to be sinking. It was, however, able to return to Corinto. The 3500-ton tanker had just left port “laden with exports which are life blood to the beseiged Nicaraguan economy.” Later in March vessels from the Soviet Union, Japan, and Liberia were damaged by mines planted in Nicaraguan ports.

In early April it was learned from reliable United States government sources that the Central Intelligence Agency (CIA) was deeply embroiled in the mining of Nicaraguan harbors and ports. According to Reagan administration and congressional officials, this involvement included the presence of CIA-employed Americans supervising the mining from a ship off Nicaragua’s Pacific coast. Americans did not actually position the mines in the water; this job was per-

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5. One of the articulated purposes of the Convention is to establish a “legal order for the seas and oceans . . . [that] will promote the peaceful uses of the seas and oceans.” 1982 Convention, supra note 4, preamble.
6. See A. PARDO, Opportunity Lost, LAW OF THE SEA: U.S. POLICY DILEMMA 13 (Oxman ed. 1983). In his article Dr. Pardo criticizes the Convention for not addressing the “highly delicate” issue of “military uses of the marine environment.” Id. at 18.
8. The Times (London), Mar. 5, 1984, at 4, col. 5.
12. Id. These attacks on neutral vessels violate Art. 17 of the Convention. 1982 Convention, supra note 4, art. 17.
formed by highly trained Latin American commandos who used small, high-speed boats to penetrate shipping lanes near the shore. 15

Because the ship on which the Americans worked never violated Nicaragua's territorial waters, 16 unnamed intelligence officers asserted that the United States was not directly engaged in military operations against Nicaragua, but instead only served in an advisory capacity. 17

Although the mining of Nicaraguan waters began in late January or early February of 1984, the Senate Select Committee on Intelligence was not briefed on CIA involvement until March. 18 The House Select Committee on Intelligence, however, was informed about the United States and CIA entanglement in the mining in late January. 19 President Reagan's approval of a recommendation from an interagency national security committee that called for the CIA to plan and implement the mining of Nicaraguan harbors transpired at some unknown date during December 1983. 20 At a news conference held on April 4, 1984, a reporter asked President Reagan if he was concerned that mines planted in Nicaraguan harbors might be struck by neutral freighters. The President refused to comment on "the tactics that are used in a war of that kind." 21 He responded forcefully about the need to "inconvenience" Nicaragua in its effort to export revolution to its neighboring country, El Salvador. 22

On April 6, 1984, while the full extent of CIA involvement was still not publicly known, Great Britain, one of the United States' closest allies, harshly criticized the United States government for its part in the mining of Nicaraguan waters as unwarranted interference with international shipping. The British government clearly disapproved of "any threat to the principle of freedom of navigation." 23 Another American ally, France, offered on April 5, 1984, to help

15. Id.
16. Nicaragua claims territorial waters up to 200 miles, but the United States respects only a twelve mile limit. Id. The Convention permits each nation to establish a territorial sea not to exceed the limit of twelve nautical miles. 1982 Convention, supra note 4, art. 3.
17. N.Y. Times, April 8, 1984, at A1, col. 6. The CIA claimed this advisory capacity was analagous to the role of Honduras-based Americans who train and help to supervise rebel forces inside Nicaragua. Id.
19. Id. at A1, col. 5.
22. Id.
Nicaragua clear its ports and harbors of mines. French Foreign Minister, Claude Cheysson, labelled the mining of these ports "a blockade undertaken in a time of peace against a small country, which presents a serious problem of political ethics."

A United Nations Security Council resolution condemning the mining of Nicaraguan ports was vetoed by the United States on April 4, 1984. Except for the United States and Great Britain, which abstained, all members of the Security Council voted in favor of the draft resolution that "condemns and calls for an immediate end to the mining of the main ports of Nicaragua, which has caused the loss of Nicaraguan lives . . . and the hampering of free navigation and commerce, thereby violating international law." The Soviet Union and Nicaragua, both current members of the Security Council, actively encouraged the drafting of the resolution and the vote, which implicitly rebuked the United States for its involvement in the mining.

On April 6, 1984, the United States acted to preempt jurisdiction of the International Court of Justice (sometimes referred to as the World Court) in order to preclude Court hearing of an action about to be brought by Nicaragua against the United States concerning American involvement in the mining of Nicaraguan harbors. The United States Secretary of State sent a letter to Javier Perez de Cueller, Secretary General of the United Nations, formally notifying the United Nations that it would not accept International Court of Justice jurisdiction in disputes involving Central America for the next two years. In this letter the United States offered as a rationale for its two year suspension of Court jurisdiction the need "to foster the continuing regional dispute settlement process which seeks a negotiated solution to the interrelated political, economic, and security problems of Central America." On April 9, 1984, Nicaragua filed an application with the Court instituting proceedings against the United States and charging the United States

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25. Id.
27. Id.
29. See infra notes 31-32 and accompanying text.
30. See infra notes 43-52 and accompanying text.
31. Text of the letter provided by the United States Department of State, reprinted in 23 I.L.M. 457, 670 (1984). The International Court of Justice is the central judicial organ of the United Nations. The Court has, however, no mechanism for implementing its judgments. It relies instead entirely on moral persuasion and the impact of world opinion. In previous years, a number of nations, including France, Italy, West Germany, and the Soviet Union, have refused to accept the Court's jurisdiction. N.Y. Times, Apr. 9, 1984, at A8, col. 3-4.
32. 23 I.L.M., supra note 26, at 670.
with engaging in military and paramilitary activities against Nicaragua.\textsuperscript{33}

The United States Senate adopted on April 10, 1984, by an eighty-four to twelve vote, a non-binding resolution opposing the expenditure of federal funds to mine the harbors and ports of Nicaragua.\textsuperscript{34} The Senate resolution states in full: “It is the sense of Congress that no funds heretofore or hereafter appropriated in any act of Congress shall be obligated or expended for the purpose of planning, directing, executing or supporting the mining of the ports or territorial waters of Nicaragua.”\textsuperscript{35}

Two days following the passage of the Senate resolution, the United States House of Representatives passed a similar non-binding resolution, urging that no funds be used for the purpose of mining the ports or territorial waters of Nicaragua.\textsuperscript{36} The vote in the House, 281 to 111,\textsuperscript{37} coupled with the Senate resolution, virtually guaranteed an end to United States (CIA) involvement in the mining.\textsuperscript{38} This overwhelmingly bipartisan vote was perceived by many observers to be an angry rebuke to President Reagan’s policy of permitting covert and direct CIA entanglement in the mining of Nicaraguan waters.\textsuperscript{39}

In April, as a result of the mining of Nicaragua’s territorial waters, at least two shipping companies halted the sailing of their ships into Nicaraguan ports.\textsuperscript{40} Their actions furnished tangible evidence that the mining of Nicaraguan harbors was impeding free navigation and interfering with innocent passage of vessels in Nicaragua’s territorial waters.\textsuperscript{41} Not until mid-April did a major group of anti-Sandinista rebels announce it would discontinue mining Nicaraguan

\textsuperscript{33} Id. at 488; see also N.Y. Times, Apr. 10, 1984, at A1, col. 6 and A8, col. 1-2.

\textsuperscript{34} The State Department, on the day the complaint was filed, asserted that the International Court of Justice lacked jurisdiction over any dispute between the United States and Nicaragua because the letter mailed to the Secretary General on April 6, 1984, prevented the Court from hearing the suit. Id. at A1, col. 6.

\textsuperscript{35} 130 CONG. REC. § 54205 (daily ed. Apr. 10, 1984).

\textsuperscript{36} Id.

\textsuperscript{37} 130 CONG. REC. H2878 (daily ed. Apr. 12, 1984).

\textsuperscript{38} Id.

\textsuperscript{39} N.Y. Times, Apr. 13, 1984, at A4, col. 3.

\textsuperscript{40} N.Y. Times, Apr. 11, 1984, at A1, col. 6. Senate Membership was extremely unhappy that its own Intelligence Committee was not adequately informed of CIA participation in the mining. The vote followed an acrimonious exchange between members of the Intelligence Committee and William J. Casey, Director of the CIA. Id.

\textsuperscript{41} Id. at A1, col. 1-6. The two companies were the Hapag-Lloyd American, Inc., and the Grancolomiana New York, Inc. Id.

\textsuperscript{41} See 1982 Convention, supra note 4, art. 17.
The International Court of Justice ruled unanimously (15-0) on May 10, 1984, that "[t]he United States of America should immediately cease and refrain from any action restricting, blocking, or endangering access to or from Nicaraguan ports, and, in particular, the laying of mines." The Court decision came in the form of a provisional order granting Nicaragua's request for a preliminary restraining order. By a vote of fourteen to one the Court also declared that Nicaragua's sovereignty and political independence should be respected and not threatened by "any military or paramilitary activities which are prohibited by the principles of international law."

Although a significant portion of the Court's opinion discussed the claim by the United States that the International Court of Justice lacked jurisdiction to entertain Nicaragua's complaint, the Court delivered its provisional decision without issuing a final ruling on the merits of the jurisdictional question. It left unresolved the American contention that its April 6, 1984, letter effectively stripped the Court of jurisdiction over the dispute. The United States maintained that by its Declaration of August 14, 1946, in which it assented to compulsory World Court jurisdiction, the United States reserved the right to renounce Court jurisdiction if it took preemptive action before the filing of any complaint against the United States. Additionally, the World Court failed to rule on another United States claim (made in a letter to the Court dated April 23, 1984) that Nicaragua never accepted the compulsory jurisdiction of the Court because Nicaragua never formally ratified the Protocol of Signature of the Statute of the Permanent Court of International Justice.

The halting of mining by the largest rebel group, the Nicaraguan Democratic Force, was precipitated by the negative reactions of the United States Congress and rebel fears that Congress would cut off aid to the "contras" (the popular name for the anti-Sandinista rebels). The Court cited two cases to support its decision to issue a provisional order without making a final determination on the merits of the jurisdictional question; see e.g., Fisheries Jurisdiction (U. K. v. Ice.), 1972 I.C.J. 17 (Interim Protection Order of Aug. 17, reprinted in 23 I.L.M. at 477). On October 8, 1984, the International Court of Justice delayed an expected decision on the Nicaraguan complaint. Instead, the Court convened hearings to determine if it has jurisdiction over the complaint. The World Court focused on the contention of the United States that the Court lacks jurisdiction because Nicaragua never recognized its authority. Nicaragua claims that its membership in the United Nations constitutes implicit recognition of the

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42. The Times (London), Apr. 16, 1984, at 6, col. 1. The halting of mining by the largest rebel group, the Nicaraguan Democratic Force, was precipitated by the negative reactions of the United States Congress and rebel fears that Congress would cut off aid to the "contras" (the popular name for the anti-Sandinista rebels). Id.
44. Id. at 477.
45. Id.
46. Id. at 471-74.
47. Id. at 477.
48. Id. at 471, see supra notes 31-33 and accompanying text.
49. 23 I.L.M. 457, 471 (1984). The Court cited two cases to support its decision to issue a provisional order without making a final determination on the merits of the jurisdictional question; see e.g., Fisheries Jurisdiction (U. K. v. Ice.), 1972 I.C.J. 17 (Interim Protection Order of Aug. 17, reprinted in 23 I.L.M. at 477). On October 8, 1984, the International Court of Justice delayed an expected decision on the Nicaraguan complaint. Instead, the Court convened hearings to determine if it has jurisdiction over the complaint. The World Court focused on the contention of the United States that the Court lacks jurisdiction because Nicaragua never recognized its authority. Nicaragua claims that its membership in the United Nations constitutes implicit recognition of the
On November 26, 1984, the International Court of Justice ruled fifteen to one that it had jurisdiction over the complaint brought by Nicaragua against the United States.\(^5\) Having established its jurisdiction, the World Court voted unanimously to hear the case on its merits; it rejected the argument of the United States that, even if it had jurisdiction, the Court should refrain from deciding the case.\(^5\) Reagan administration officials responded to the decision of the Court by intimating that the United States may be forced to boycott further proceedings of the International Court of Justice regarding Nicaragua’s suit.\(^5\)

**Persian Gulf Shipping Attacks**

During 1984 more than fifty neutral vessels were attacked in the Persian Gulf.\(^5\) Throughout this period the Iran-Iraq war (now over four years old) engendered a sustained threat to the free flow of international shipping in the Persian Gulf and through the Strait of Hormuz.\(^4\) The continued willingness of Iran and Iraq to strike at neutral vessels\(^5\) within and beyond the so-called militarized zone illuminates unhappily the ease with which principles of international law are flouted.\(^6\) Failure of the Convention to adequately confront authority of the World Court. L.A. Times, Oct. 9, 1984, at I2, col. 2. The United Nations Charter states: “[a]ll members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.” U.N. CHARTER art. 93, para. I.

50. N.Y. Times, Nov. 27, 1984, at A1, col. 6. Justice Schwebel of the United States was the lone dissenting judge. *Id.*

51. *Id.*

52. *Id.* at A12, col. 4.


54. See 1982 Convention, *supra* note 4, art. 38, 45. These articles delineate the rights of transit passage and innocent passage through straits used for international navigation, one of which is the strategically critical Strait of Hormuz that connects the Persian Gulf with the Gulf of Oman and the open sea. Keeping the Strait open for shipping is of paramount importance to maintaining the free flow of crucial Middle Eastern oil to the rest of the world. See RAMAGANI, THE PERSIAN GULF AND THE STRAIT OF HORMUZ 9-23 (1979) (which provides an astute analysis of the overall significance of the Strait of Hormuz).

55. On Dec. 3, 1984, an Iranian warplane struck a Cypriot supertanker south of Kharg Island, the Iranian main oil terminal. N.Y. Times, Dec. 4, 1984, at A12, col. 1-3. On Dec. 26, 1984, Iranian warplanes attacked a Spanish tanker ten miles north of the Shah Olam Shoals, which lies midway between Qatar and the Iranian island Lavan. The tanker had taken on its oil cargo at Ras Tanurah, Saudi Arabia, and was leaving the Persian Gulf bound for India when the bombing occurred. Persian Gulf shipping sources reported that the attack constituted retaliation for Iraqi attacks on oil tankers near Kharg Island over the previous three weeks. L.A. Times, Oct. 9, 1984, at I8, col. 5-6.

56. The Convention failed to address military matters because they are very sensitive. Pardo, *supra* note 6, at I8. “All military uses of the sea are relevant to the law of the sea,” stated Dr. Pardo. Conversation with Dr. Arvid Pardo, professor of international law.
military uses of world waterways must be evaluated in the broader context of American inability to stop the attacks on neutral vessels. In early February two Greek cargo ships were struck by Iraqi missiles in the Persian Gulf off Iran. Almost simultaneously, the Reagan administration developed contingency plans with Great Britain for keeping the Strait of Hormuz open. Great Britain agreed with the United States to form a convoy system to assure free navigation of commercial tankers entering and leaving the Gulf, if, as it threatened, Iran tried to block the Strait of Hormuz. The United States and Britain were ready to use military ships to keep the Strait open to international trade. But, because no real effort was made by Iran to seal off the Strait, neither the United States nor Britain was forced to activate any contingency plan for maintaining free access through the Strait.

On February 27, 1984, Iraq announced that it had begun a blockade of the Iranian main oil export terminal at Kharg Island (near the head of the Persian Gulf) by attacking oil tankers berthed there with air strikes. An Iraqi attack on a fifteen-ship convoy of vessels heading for the Iranian port of Bandar Khomeini on March 1, 1984, extensively damaged a British cargo ship that had to be abandoned. No lives were lost in the incident, but the evidence that Iraq was carrying out its threat to attack merchant ships approaching Iranian ports caused Lloyd's of London to double war-risk premiums for ships in the Persian Gulf. Additionally, a Turkish vessel

relations and senior research fellow at the Institute for Marine and Coastal Studies, University of Southern California, in Los Angeles, Calif. (July 19, 1984).

57. Perhaps, the realities of politics among nations almost inevitably dictate the failure of any international law or body to effectively provide for order in a world populated by highly volatile, individualistic nation-states (e.g., Iran and Iraq).

58. See supra notes 56-57.


60. Id. at col. 1. Their plans involved sweeping for mines in the Strait of Hormuz. See also The Times (London), Feb. 23, 1984, at 7, col. 7-8.


62. Id. Japan, which gets 60-80% of its oil from the Persian Gulf, was unwilling to participate in a military convoy system. Japanese firms are deeply involved in projects in Iran and feared their involvement in such a system might jeopardize these projects. Id. Accelerated fighting between Iran and Iraq during the month of February accentuated the dependence of Japan on Mideast oil. N.Y. Times, Feb. 26, 1984, at A6, col. 1-6.

63. See infra notes 128-32 and accompanying text.

64. N.Y. Times, Feb. 28, 1984, at A1, col. 5. Iraq at this time promised to sustain the blockade until Iran halted the war. Id.

65. The Times (London), Mar. 8, 1984, at 1, col. 1-2. Seven vessels were hit in the attack. Id. The assault occurred within Iranian territorial waters. The Times (London), Mar. 9, 1984, at 4, col. 5.

66. The Times (London), Mar. 9, 1984, at 4, col. 5.

67. Id. Due to the constant threat of attack, insurers declared 150 by 50 miles in the northeast section of the Persian Gulf a "war risk area." The Times (London), Mar. 10, 1984, at 6, col. 6.
was reportedly sunk in this same raid, while an Indian ship apparently suffered some damage.68

On March 8, 1984, the British government officially protested this attack to the Iranian ambassador in London.69 One British Parliament member noted a current United Nations resolution 70 calling for a cease-fire between Iran and Iraq and for freedom of navigation in international waters. He entreated Richard Luce, British Minister of State for Foreign and Commonwealth Affairs, to explain how the United Nations could be made more effective.71 Luce was unable to explain the inefficacy of the United Nations regarding this conflict and could only state that neither Iran nor Iraq was willing to receive a representative of the United Nations Secretary General.72

Throughout March and most of April, commercial ships sailing the Persian Gulf remained relatively free from attacks arising out of the Iran-Iraq war. On March 27, 1984, however, a Greek oil tanker southeast of the Strait of Hormuz was hit by a missile, apparently fired from an Iraqi aircraft.73 This assault occurred outside the Iran-Iraq militarized zone.74 Moreover, on April 18, 1984, a Panamanian tanker was struck by an Iraqi missile near Kharg Island.75

Throughout a three-week period beginning April 25, 1984, Iraqi and Iranian aircraft attacked five oil tankers in the Persian Gulf.76 Two Saudi Arabian tankers were hit by Iraqi attacks in an area of the Gulf around Kharg Island that Iraq has labelled the “exclusion zone.”77 The third attack on a Saudi tanker78 came outside this “ex-

69. The Times (London), Mar. 9, 1984, at 4, col. 5.
70. S.C. Res. 540, 38 U.N. SCOR (2493d mtg.) at 6, U.N. Doc. S/INF/39 (1983), Summary of the resolution reprinted in U.N. CHRONICLE, Jan. 1984, at 103 (s/16092). Included in the resolution is a request for all nations “to respect the right of free navigation and commerce in international waters,” and “to refrain from any action that might endanger peace and security as well as marine life in the Gulf region.” Id.
71. The Times (London), Mar. 9, 1984, at 4, col. 6.
72. Id. In a prepared statement, Luce averred that the government was “working vigorously with the international community” to bring an end to the “destructive conflict” between Iran and Iraq. Id.
73. N.Y. Times, Apr. 6, 1984, at A9, col. 5-6. United States Navy explosive experts defused the unexploded missile as it lay stuck in the hull of the ship. At the time of the assault, Iraq claimed to have attacked two naval targets southwest of the Iranian oil terminal at Kharg Island. Both Navy Department spokesmen and an agent for the Greek shipping line that owned the tanker denied that the Greek ship was anywhere near Kharg Island. Id. If Iraq committed this strike, it was the only assault by Iraq reported to have occurred in 1984 outside the Iran-Iraq militarized zone.
74. See infra note 77.
75. The Times (London), Apr. 18, 1984, at 1, col. 2.
77. Id. at A5, col. 1. The Iraqi government continued to warn tankers and
clusion zone,” sixty miles north of the Saudi oil refining center at Ras Tanura.79 Reliable United States State Department officials disclosed that Iran was responsible,80 although Iran never admitted this responsibility.

Iranian aircraft hit a Kuwaiti tanker on May 13, 1984, east of the Saudi coast and outside the Iran-Iraq “war zone.”81 One day later, a second Kuwaiti tanker was struck by two unidentified, but apparently Iranian, rockets in this same area, as it was on its way back to pick up crude oil from a Kuwaiti oil terminal.82 These attacks seemed to demonstrate wanton disrespect for the principles of international law that guarantee free and peaceful use of the world’s ocean space by innocent, neutral vessels.83

On May 16, 1984, it became public knowledge that prior to these five attacks the United States offered to supply air cover to defend Kuwaiti and Saudi tankers against Persian Gulf air attacks.84 At a May 22, 1984, news conference, President Reagan refused to specify what steps the United States government was willing to take regarding assaults on commercial shipping in the Gulf.85 Nevertheless, the President declared that neither the United States nor the western world would permit the Strait of Hormuz or the Persian Gulf to be closed to international traffic.86

The Arab League87 met on May 19, 1984, and, at the urging of the Gulf Cooperation Council,88 condemned the bombing of neutral freighters to stay out of the “exclusion zone” that extends radially fifty miles around Kharg Island. Any ship found within this zone was subject to attack by Iraq. These two attacks occurred on April 25, 1984, and May 7, 1984. Id.

78. This tanker was jointly owned by the Mobil Oil Company of the United States and a private Saudi Arabian company. Id.

79. Id. This May 16, 1984, attack on a Saudi tanker close to its own port and outside the normal perimeter of the Iran-Iraq war zone precipitated a sharp rise in the cost of marine insurance and a steep increase in the price of oil in the spot and futures markets. Id. at A6, col. 1-2.

80. Id. at A1, col. 4.

81. Id. at A1, col. 1. The tanker carried oil bound for Britain. Id. This attack was the first reported one by an Iranian aircraft. N.Y. Times, May 24, 1984, at A5, col. 1.


83. See 1982 Convention, supra note 4, at art. 301. Article 301 is entitled “Peaceful uses of the sea.” It states that nations should not use “force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.”


85. 20 WEEKLY COMP. PRES. DOC. 748 (May 22, 1984).

86. Id. In a letter delivered on May 20, 1984, President Reagan asked King Fahd of Saudi Arabia to permit the United States access to Saudi airstrips for American aircraft, if the United States decided to protect Persian Gulf shipping from attacks by Iran. L.A. Times, May 22, 1984, at I1, col. 5.

87. The Arab League was formed in 1945 by Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria, and Yemen. Joining later were Algeria, Bahrain, Djibouti, Kuwait, Libya, Mauritania, Morocco, Oman, Qatar, Somalia, Sudan, Tunisia, United Arab Emirates and South Yemen. 1 WORLD BOOK ENCYCLOPEDIA 546 (1984).

88. The Gulf Cooperation Council has as members six countries: Bahrain, Jordan,
ships in the Persian Gulf. The Arab League also agreed to refer recent attacks on Kuwaiti and Saudi vessels to the United Nations Security Council. At a May 22, 1984, meeting, the Gulf Cooperation Council denounced “Iranian aggression,” but refused to criticize Iraq. This selective denunciation reflected the fact that, although Iran attacked fewer commercial vessels than Iraq, Iran struck at targets far removed from the Iran-Iraq militarized zone.

The United Nations Security Council convened a session on May 25, 1984, to discuss the assaults on shipping in the Persian Gulf. Six members of the Gulf Cooperation Council formally demanded this meeting. The session focused almost entirely on Arab censures of Iranian air strikes against neutral ships. No mention was made of the Iraqi attacks. The Arab speakers noted that the Iranian air attacks occurred in international waters outside the war zones claimed by either Iran or Iraq.

On May 26, 1984, Japanese shipowners stated that they would stop sending their own oil tankers into the northern section of the Persian Gulf. Japan would continue, however, to charter foreign tankers to bring crude oil to Japan from the Gulf. Japanese shipping companies and maritime unions jointly announced the decision to restrict tanker shipping in the Gulf.

By May 27, 1984, the number of oil tankers docked in ports just

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89. Id.
90. Id.
91. Id.
94. Id.
95. Id.
96. Id.
97. Id. During the debate, Arab speakers specifically mentioned the May 13, and May 14, 1984, attacks on Kuwaiti ships and the May 16, 1984, attack on the Saudi ship. Id.
98. N.Y. Times, May 27, 1984, at A1, col. 1. The decision was almost certainly made after consultation with the Japanese government. The trade issue of oil is of singularly vital importance to Japan, since it has no oil of its own. Id. at A18, col. 4.
99. Id.
100. Id. The ban on Japanese shipping in the northern region of the Persian Gulf may have been implemented at the insistence of the Japanese seamen’s unions. See L.A. Times, May 26, 1984, at 113, col. 3.
outside the Persian Gulf had increased dramatically from ten to greater than sixty in a three-week period. Even without an overt blockade of the Strait of Hormuz by Iran, Iranian and Iraqi attacks on commercial shipping in the Persian Gulf managed to succeed indirectly in limiting the free flow of neutral vessels through the Strait and in the shipping lanes of the Gulf. In late May, one major Swedish tanker operator recalled its vessels from the Gulf. Moreover, on May 27, 1984, an American-based oil tanker company, controlled by Texaco and Standard Oil of California, barred its tankers from the northern Persian Gulf.

Reagan administration officials announced on May 28, 1984, United States plans to send 400 Stinger anti-aircraft missiles to Saudi Arabia. The missiles furnished support for the Saudis and their allies in an effort to establish a protected zone for shipping along the western coast of the Persian Gulf. Almost immediately, Iran denounced American military intervention in the Persian Gulf. "If Americans are prepared to sink in the depths of the Persian Gulf for nothing, then let them come," said President Ali Khomeini of Iran.

President Reagan, in an interview with foreign television correspondents on May 31, 1984, condemned Iranian attacks on commercial ships from neutral countries outside the war zone. The President condoned Iraqi attacks on "shipping that was vital to Iran's economy" because "in a time of war the enemy's commerce and trade is a fair target." Iran, however, had "gone beyond bounds" when it attacked neutral ships that were doing business with third-party countries, such as Saudi Arabia and Kuwait.

After failing to garner sufficient votes in the United Nations Security Council to censure Iran explicitly, the Gulf Cooperation Council pushed through on June 1, 1984, an Arab-sponsored Security Council resolution tactfully condemning Iranian attacks on commercial shipping in the Persian Gulf. Because the Arabs compro-

102. See 1982 Convention, supra note 4, art. 45. Article 45 provides for innocent passage through straits used for international navigation.
104. Id., col. 2.
106. Id.
108. Id.
110. Id. at 794.
111. Id. at 794-95.
112. The Times (London), May 31, 1984, at 6, col. 1-3.
mised their demand that Iran specifically be named in the resolution, the Council approved a text that condemns "attacks on commercial ships in route to and from ports of Saudi Arabia and Kuwait." Nevertheless, Iran is blamed for all such attacks by the Gulf Cooperation Council.118

On June 2, 1984, Iran formally rejected this United Nations resolution.118 In a statement by the Iranian Foreign Minister, Iran declared that the Security Council action assured Persian Gulf instability and effectively approved future Iraqi attacks on Iranian shipping.117 "It [the United Nations] is, therefore, directly responsible for the intensification of the crisis . . . ," stated the Foreign Minister.118

A June 3, 1984, Iraqi missile attack on a Turkish tanker set the vessel ablaze119 and caused the Turkish government to temporarily halt sailing its tankers to the Iranian oil terminal at Kharg Island.120 This assault occurred barely forty-eight hours after the United Nations Security Council had passed the resolution condemning air attacks on ships in the Persian Gulf.121

On June 10, 1984, a rocket fired from an unidentified plane, presumably Iranian, struck a Kuwaiti oil supertanker in the lower Persian Gulf.122 This assault was the first to occur in the southern region of the Gulf since Iraq and Iran began attacks on neutral ships earlier in 1984 as an outgrowth of the Iran-Iraq war.123

While this was occurring, an emergency meeting of the six Gulf Cooperation Council nations124 was being held to discuss the means of maintaining the flow of oil through the Persian Gulf (Gulf).125 At the same time Saudi Arabia greatly expanded its territorial waters

114. Id.
115. Id.
117. Id.
118. Id.
121. Id. The resolution was clearly directed at Iranian attacks on neutral ships. See supra notes 112-18 and accompanying text.
122. N.Y. Times, June 11, 1984, at A3, col. 1. Iran refused to confirm or deny its attacks on neutral vessels. Nonetheless, it was generally known that Iran was responsible for several attacks on shipping outside the Iraq-Iran war zone, and Iran warned several times that, if it cannot safely export oil, no ships will have free and safe passage in the Persian Gulf. Id.
123. Id.
124. See supra note 88.
125. See supra note 122.
by including ocean regions twelve miles off the Al Arabiyah Island, in the middle of the Gulf and about seventy miles from the Saudi coast. Saudi Arabia evinced determination to protect oil tankers in the Persian Gulf shipping lanes from Iranian air attacks.

The first week in June, Iran introduced a new stop and search zone in and around the Strait of Hormuz, directly interfering with the free and innocent passage of vessels. Before its announcement of the stop and search zone, Iran boarded a Singapore-registered cargo ship in the lower Gulf purportedly to search for weapons. The ship was far from the war zone defined by Iran and Iraq. This action by Iran appeared to be a form of harassment designed to implement the Iranian policy of inconveniencing shipping throughout the entire Persian Gulf as retaliation for Iraqi attacks on ships in and around Kharg Island.

On June 15, 1984, a senior Iranian official announced a desire by Iran to see the current moratorium on attacks against Iranian and Iraqi border cities expanded to include shipping in the Persian Gulf. This moratorium was proposed by United Nations Secretary General Javier Perez de Cuellar the first week of June. Initially offering no response to this proposal, Iran eventually rejected the Iranian call for the United Nations mediation.

After a short lull in shipping attacks, Iraq resumed its assaults on tankers in or near the Iranian Kharg Island oil terminal on June 24, 1984. A Greek tanker was slightly damaged in one attack. On June 27, 1984, an Iraqi missile attack on a Swiss supertanker resulted in the death of eight crewmen. Subsequently, a South Korean tanker was set ablaze by an Iraqi missile attack in the Khor Musa channel of the northern Persian Gulf. In apparent retaliation.

126. N.Y. Times, June 12, 1984, at A12, col. 3-6.
127. Id.
128. Id. Iran tried this method to deal with what it called "hostile" shipping. The zone was reported to have extended from Jask Peninsula in the Gulf of Oman to sea lanes off the island of Abu Rusa. Id.
129. See supra note 102.
130. N.Y. Times, supra note 126.
131. Id.
132. Id.
133. N.Y. Times, June 16, 1984, at 3, col. 3-6.
134. Id.
135. Id. at 3, col. 3. Because Iran controls the Shatt al Arab estuary, Iraqi oil shipments through the Persian Gulf have been curtailed during the four-year war. Since February, Iraq attacked ships sporadically yet regularly in an effort to stem the flow of Iranian oil in the Gulf. Id. See also supra notes 64-68 and accompanying text.
138. Id.
141. L.A. Times, July 3, 1984, at 116, col. 1-4. The ship was part of a seven vessel
tion for these Iraqi attacks, Iranian missiles\textsuperscript{142} damaged a Japanese-owned supertanker as it headed southward through the lower region of the Gulf toward the Strait of Hormuz.\textsuperscript{143} The tanker was hit twice, but damage was so minimal that the ship was able to continue en route to the Strait.\textsuperscript{144}

On July 11, 1984, Kuwaiti Defense Minister Sheik Salim al-Sabah announced in Moscow that Kuwait had signed a 327 million dollar arms agreement with the Soviet Union.\textsuperscript{145} The arms purchase was made to aid Kuwait in defending commercial shipping in the Persian Gulf from Iranian attacks.\textsuperscript{146} Because of close proximity to Iraq and a position in the upper-half of the Persian Gulf, Kuwait is extremely vulnerable to Iranian attacks on its oil tankers.\textsuperscript{147}

A one-month respite of Persian Gulf attacks on commercial shipping ended August 7, 1984, with an Iraqi assault on a Greek-owned tanker south of Kharg Island.\textsuperscript{148} In mid-August assaults were made against oil tankers sailing the southern section of the Persian Gulf.\textsuperscript{149} According to reliable shipping sources, these two strikes were perpetrated by Iran.\textsuperscript{150} One of these attacks set fire to the main tank of a Panamanian-registered tanker as it sailed 100 miles east of Bahrain in the southern part of the Gulf, but the fire was quickly extinguished.\textsuperscript{151}

From late August through December 1984, sporadic attacks on commercial shipping continued to occur in the Persian Gulf.\textsuperscript{152} The

\textsuperscript{142} Iran consistently refuses to acknowledge its attacks on Gulf shipping, but reliable shipping sources said the attacks were almost certainly instigated by Iran. L.A. Times, July 6, 1984, at I8, col. 6.

\textsuperscript{143} N.Y. Times, July 6, 1984, at A3, col. 4. The attacks occurred east of Qatar; the tanker had just taken on oil at Saudi Arabia's oil terminal at Ras Tanura. L.A. Times, July 6, 1984, at I8, col. 5.

\textsuperscript{144} N.Y. Times, July 6, 1984, at A3, col. 4.

\textsuperscript{145} N.Y. Times, Aug. 16, 1984, at A7, col. 1.

\textsuperscript{146} Id.

\textsuperscript{147} N.Y. Times, July 6, 1984, at A3, col. 6. The distance from Kuwait to the Strait of Hormuz makes it impossible for oil tankers carrying Kuwaiti oil to make the entire trip at night, protected by darkness. Id.

\textsuperscript{148} L.A. Times, Aug. 8, 1984, at 114, col. 2-3.


\textsuperscript{150} Id.

\textsuperscript{151} Id.

\textsuperscript{152} A Cypriot tanker was attacked by Iraqi missiles and reportedly sunk in waters just south of Kharg Island on August 24, 1984. N.Y. Times, Aug. 25, 1984, at A4, col. 1. A Greek-owned tanker was struck by an Iranian missile on August 27, 1984, in the lower part of the gulf, apparently in retaliation for the August 24, 1984, Iraqi attack. L.A. Times, Aug. 27, 1984, at 14, col. 4. On September 12, 1984, Iraq claimed to have
freedom of vessels to peacefully sail the seas of the world, arguably the most important right to be guaranteed and protected by any "law of the sea," was egregiously impaired throughout most of 1984 in the Persian Gulf, and this right of free navigation continues to be endangered. No United Nations mediation, International Court of Justice decision, or action taken pursuant to the 1982 United Nations Convention on the Law of the Sea treaty materialized to curtail Iranian and Iraqi interference with nonbelligerent, neutral shipping in the Persian Gulf.

**Mining of the Red Sea and the Gulf of Suez**

Between early July and mid-August 1984, at least eighteen commercial ships were damaged by explosions in the Red Sea and the Gulf of Suez; these explosions were apparently caused by underwater mines. The last verified explosion took place on August 11, 1984, when a Polish ship struck an explosive device in the Red Sea. This incident occurred between the Yemeni and Ethiopian coasts, about 150 miles north of the seventeen-mile wide Bab el Mandeb Strait. The location of explosions was concentrated in the Gulf of Suez, at the northern end of the Red Sea near the Suez Canal, and in a second area near the Bab el Mandeb Strait, 1200 miles south of the Gulf of Suez. The Bab el Mandeb Strait connects the Red Sea to the Gulf of Aden; it is the important gateway to the Indian Ocean, the Persian Gulf, and Asia.
As in the Persian Gulf, the rights of free navigation by neutral, nonbelligerent vessels were impaired and threatened by acts of militaristic violence. Once again, international law governing the free and peaceful use of world seas and the recently drafted Convention treaty were flagrantly violated.

What makes the Red Sea mining so crucially significant to the entire world is the disruptive threat it poses to the free passage of vessels through the Suez Canal, one of the world’s most important international waterways. One thousand seven hundred vessels a month transit this canal that connects Europe to South and East Asia. The Suez Canal, linking the Mediterranean Sea and the Gulf of Suez, is essential to commercial shipping. Additionally, it earns Egypt about one billion dollars a year in tolls. There have been no explosions in the Canal itself, the closest explosion occurring twelve miles south in the Gulf of Suez.

First indications pointed to either Libya or Iran as the source of the Red Sea and Gulf of Suez explosives. Egyptian Defense Minister Abdel-Halim abu Ghazala spoke on August 10, 1984, of being “seventy percent sure” that Libya and Iran planted the mines. On August 1, 1984, the Islamic Jihad, a pro-Iranian terrorist organization, claimed responsibility for planting 190 mines throughout the Red Sea. Iran’s official (state-controlled) Teheran radio reported on August 7, 1984, that this extremist group was responsible for the mining, and during the same broadcast praised the group. Nevertheless, the following day, the Iranian Foreign Ministry condemned the mining and blamed the United States. Later, the Ayatolla Ruhollah Khomeini, Iran’s supreme leader, also criticized the bomb-
ing and said it was "against world feeling and Islam."174

By August 13, 1984, Egypt, at least, declined to blame Iran for the Red Sea attacks.175 Egyptian President Mubarak expressed suspicion that Libya was involved in the explosions in the Red Sea.176 Military experts believe the mining of the Gulf of Suez and Red Sea must have been the work of sophisticated international terrorists supported by a national government.177 Egypt continued in late September to suspect Libya as being ultimately guilty of placing the mines.178

The cynosure of Egyptian suspicion is the Libyan ship Ghat (originally reported by Egypt to be the Ghada).179 The Ghat made a mysterious, meandering journey in July through the Gulf of Suez and the Red Sea.180 The Libyan vessel arrived unannounced at the Suez Canal on July 6, 1984, having failed to give the forty-eight-hour advance notice the Suez Canal Authority customarily requires of all ships wanting to transit the Canal.181 The ship was either not searched or only given a cursory inspection. It then travelled down the Gulf of Suez and the Red Sea to Assab, an Ethiopian port, where it unloaded its cargo.182 The Ghat then returned to the Canal, but its entire round trip took fifteen days instead of the normal four.183 All the explosions occurred after the Ghat's voyage.184 When the ship first entered the Canal, it had a crew of twenty-eight; when it returned fifteen days later, the vessel had a crew of only twenty-six.185 Intelligence experts hypothesized that the extra time the Ghat took to make the journey was spent weaving a convoluted course through the Red Sea and the Gulf of Suez, as it planted explosive

176. Id. In an interview published October 18, 1984, President Mubarak unequivocally declared that Iran was not involved in the Red Sea mining. He reiterated his charge that Libya was responsible for the mining. N.Y. Times, Oct. 19, 1984, at 6, col. 6.
177. L.A. Times, Aug. 14, 1984, at I4, col. 4. Colonel Jonathan Alford, deputy director of the International Institute for Strategic Studies (based in London) said, "I think, in the absence of other information, we have to assume this is a relatively sophisticated group of terrorists with relatively sophisticated mines . . . . It is hard to see how any group could do this without the support of some nation." Id. at col. 4-5.
178. L.A. Times, Sept. 20, 1984, at 15, col. 1. The Egyptian defense minister admitted that there still was no proof. Id. But see infra notes 201-05 and accompanying text.
181. Id. at col. 2.
182. Id. at col. 1.
183. N.Y. Times, Aug. 16, 1984, at A8, col. 2. Other canal sources say that the journey could normally have taken as long as eight days. L.A. Times, Aug. 16, 1984, at I28, col. 2.
On August 6, 1984, Egypt requested the assistance of the United States in clearing the Red Sea shipping lanes of mines. The United States used minesweeping helicopters, as well as United States troops and a sonar-equipped U.S. Navy ship, in an attempt to locate the mines. These efforts failed to discover any mines in the Gulf of Suez or in the Red Sea.

American minesweeping efforts were also brought to bear in Saudi Arabian territorial waters, sea routes and approaches to Saudi Red Sea ports. Here, also, American helicopters and French minesweepers were unable to find any explosive devices in the Saudi waters.

The search for mines in the Gulf of Suez and the Red Sea, which began in mid-August, was a multinational effort. British and French minesweepers and support vessels immediately joined the Americans in looking for the mines. Also, several Soviet minesweepers, conducting operations independent of the Western nations, scoured the southern portion of the Red Sea near South Yemen. Additionally, four Italian minesweepers began searching for mines in the Gulf of Suez in late August or early September.

On August 26, 1984, the commander of the British minesweeping forces declared that the minesweeping project might last as long as three months. Though the Americans discontinued their search in mid-September, the British, French and Italian forces continued to search for mines. Early in September, the French found two Soviet-made mines that dated back to the 1973 Arab-Israeli war.

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186. *Id.*
188. *Id.*
192. *Id.*
195. *Id.* In late August, Egypt also began requesting ships using the Suez Canal to declare any dangerous cargo they were carrying. Any ship failing to declare the cargo was to be fined, while a ship failing to make any declaration at all was to be barred from the canal for two years. *Id.* at col. 3.
196. *Id.* at col. 1.
197. *See supra* note 190 and accompanying text.
After a mysterious explosion damaged a Saudi Arabian passenger ship on September 20, 1984, the French and Italian minesweeping forces extended their Gulf of Suez exploration.200

The first breakthrough in this multinational minesweeping effort came on September 19, 1984, when the defense minister of Egypt announced that the British Navy had found a mine that was “almost brand new.”201 A few days later, Egyptian military sources and others close to the investigation of this cylindrical “mine-like object” intimated that it was a tube-launched mine manufactured by the Soviet Union.202 British and Egyptian mine experts were “ninety percent sure” the device was a mine made by the Soviet Union for export.203 This conclusion solidified previous Egyptian and Western conjecture that Libya was probably responsible for planting the mines in the Red Sea and Gulf of Suez,204 because the Soviet Union has been a major supplier of military armaments to Libya since Colonel Qaddafi became ruler of Libya fifteen years ago.205

In an August 21, 1984, editorial, The New York Times noted that the effect of having a multinational minesweeping force which included the Soviet Union, albeit operating independently, should be perceived as a “two-sided endorsement of free navigation.”206 The newspaper opined that the mining seemed to be designed to “humiliate a vulnerable Egypt.”207 The editorial urged Egypt, if it was established that Libya was responsible for the mining, to take its case against Libya before the “underused” International Court of Justice.208 The editorial further recognized that a World Court decision could never restrain a “rogue” nation such as Libya from perpetrat-

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200. Id. at col. 1-2.
200. Id., at col. 1-5.
203. Id. One Egyptian source, who was closely involved in the mining investigation, stated that the detonator and instrumentation of the mine appeared to be of Soviet origin. The tubular nature of the mine indicated that it would normally be launched by a submarine. Egyptian and Western sources stated that an ordinary ship could be modified to launch such a device. Id. at col. 2-6.
204. N.Y. Times, Sept. 25, 1984, at A13, col. 5. On October 3, 1984, a United States State Department official stated that “there is persuasive circumstantial evidence indicating that Libya was involved in mining the entrance to the Red Sea.” N.Y. Times, Oct. 4, 1984, at A10, col. 6.
207. Id.
208. Id. The editorial analogized the situation to Nicaragua’s taking its case involving mining against the United States to the International Court of Justice. On October 22, 1984, the Foreign Minister of Italy complained that member countries of the United Nations should make more use of the World Court. “The question of the mines recklessly scattered in the Red Sea last summer” presented the appropriate problem which the United Nations “as a whole should have and could have tackled,” according to the minister. N.Y. Times, Oct. 3, 1984, at 4, col. 3.
ing similar terrorist activities. A court opinion could, however, shame the criminal and help build an international movement for punitive measures.209 The editorial concluded by stating: "Asserting the freedom of navigation by international flotilla is the essential immediate remedy. Reasserting that freedom in court would affirm a principle that all civilized nations recognize as a basic international law."210

**Conclusion**

Freedom of navigation lies at the heart of the law of the sea. This fundamental international right was repeatedly violated in 1984. This fact should serve to educate us that public international law211 is of meager consequence when it is flouted by violent terrorist and military uses of the world's oceans and seas.212 Perhaps this depressing reality is the actual reason the Convention failed to address the issue of military uses of the sea.213

**UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: DEVELOPMENTS AND RELATED ISSUES**

The United Nations Convention on the Law of the Sea (Convention) concluded at Montego Bay on December 10, 1982. On this date the Convention was opened for signature.214 It remained open until December 9, 1984, at the Ministry of Foreign Affairs of Jamaica, and also from July 1, 1983, until December 9, 1984, at the United Nations headquarters in New York.215 One year after sixty States ratify or accede to it, the Convention will become effective.216 The final date for ratification was December 9, 1984.217 The Convention, however, will remain open indefinitely for any nation wishing to

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210. Id.
211. 1982 Convention, supra note 4.
212. See supra notes 207-10 and accompanying text.
213. See supra notes 5-6 and accompanying text. See also note 153 and accompanying text.
214. 1982 Convention, supra note 4, art. 305 defines "signature" as it is used in the Convention. Id. at art. 305.
216. 1982 Convention, supra note 4, art. 308(1). Art. 305-06 define ratification and accession as they are used in the Convention. 1982 Convention, supra note 4, art. 305-06.
With ratification by the Ivory Coast on March 26, 1984, and the Philippines on May 8, 1984, eleven states have ratified the Convention. As of January 30, 1984, 134 States signed the Convention. Earlier in 1984, there were indications that Belgium, West Germany (Federal Republic of Germany), Italy, and the United Kingdom would sign the Convention by the December 9, 1984, deadline. But by late November it became apparent that none of these European countries would sign the treaty.

On December 14, 1983, the United Nations General Assembly adopted a resolution urging all states to consider signing and ratifying the Convention; it entreated all nations “to refrain from taking any action directed at undermining the Convention or defeating its purpose.” The recorded vote was 136 in favor and two against (Turkey, United States), with six abstentions (Belgium, Bolivia, Federal Republic of Germany, Israel, Italy, United Kingdom). The resolution also included approval of recommendations contained in the Secretary-General’s report on the Third United Nations Conference on the Law of the Sea (Conference).

One recommendation contained in the Secretary-General’s report urged that the Office of Special Representative of the Secretary-General for the Law of the Sea be continued as the core office of the United Nations for law of the sea matters. Bernardo Zuleto, Special Representative of the Secretary-General for the Law of the Sea Conference since November 1974, died on December 1, 1983. He was replaced by Satya Nandan, a national of Fiji, on January 16, 1984.

During the debate on the resolution, the financing of the Prepara-
Preparatory Commission (Commission) established by the Conference chiefly to draft rules and regulations governing deep seabed mining, became the subject of objections, particularly from Turkey and the United States.\(^{231}\) Turkey clearly reserved its right not to contribute funds spent on implementing the Convention. The United States argued that the nation parties to the Convention should help bear the costs of the Commission.\(^ {232}\) The United States has indicated that it will continue to withhold its portion of the regular United Nations budget allocated for support of Part XI of the Convention, a section the United States adamantly opposes because of its treatment of deep seabed development.\(^{233}\)

In May 1984 President Reagan reiterated these objections to the Convention.\(^{234}\) According to the President, the deep seabed mining provisions conflict with United States objectives.\(^{235}\) The President stated that deep seabed mining regime problems include:

- provisions that would actually deter future development of deep seabed resources, when such development should serve the interest of all countries;
- a decisionmaking process that would not give the United States or others a role that fairly reflects and protects their interests;
- provisions that would allow amendments without United States approval. This is incompatible with our approach to treaties;
- stipulations relating to mandatory transfer of private technology and the possibility of national liberation movements sharing in benefits; and
- the absence of assured access for future qualified deep seabed miners to promote the development of these resources.\(^{236}\)

The President noted many positive achievements of the Convention and affirmed that the United States would obey the international law embodied in the Convention that pertains “to traditional uses of the ocean.”\(^{237}\) On the other hand, the President did not foresee any forthcoming Convention amendments that would permit the United States to sign the treaty.\(^{238}\)

The Commission for the International SeaBed Authority (Author-
ity) and the International Tribunal for the Law of the Sea held its second formal meeting in Kingston, Jamaica from March 19 to April 13, 1984.\(^{239}\) The Commission decided at its first session in 1984 to hold a second informal gathering from August 13 to September 5, 1984, in Geneva, Switzerland.\(^{240}\) The following regular meeting was held in Kingston from March 11 to April 5, 1985.\(^{241}\)

To meet the needs of several Western industrialized countries whose companies or consortia had engaged in exploration, research, and development pertaining to polymetallic nodules, Conference Resolution II\(^{242}\) established a regime to accommodate such preparatory investment in deep seabed mining activities.\(^{243}\) Certain national governmental or private enterprises, designated as “pioneer investors,” are virtually guaranteed to receive seabed mining contracts from the Authority.\(^{244}\) Resolution II named eight pioneers that will receive these rights: France, India, the Soviet Union, and Japan (all of which are Convention signatories); and four multinational consortia composed of member companies from Canada, Japan, and the Netherlands, which have joined the Convention, and from Belgium, West Germany, Italy, the United Kingdom, and the United States, which have not signed the treaty.\(^{245}\)

During its first 1984 session the Commission provisionally adopted twenty rules for registering the applications of pioneer investors for deep seabed mining contracts.\(^{246}\) These draft rules resulted from the high priority assigned at the 1983 meeting to the completion of rules to implement Resolution II.\(^{247}\) This resolution protects pioneer investors in deep seabed mining so registration can begin.\(^{248}\) The Com-

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239. Press Release SEA/561, supra note 217, at 1. The Commission held its first meeting in two sessions last year: from March 15 to April 18, 1983, and from August 15 to September 19, 1983. Id.
240. Id.
241. Id.
243. Press Release SEA/561, supra note 217, at 3. For an excellent discussion of polymetallic nodules and the deep seabed, see Halback, Deep-Sea Metallic Deposits, 9 OCEAN MANAGEMENT 35-60 (1984). The author concludes that deep-sea polymetallic nodules might be feasibly mined sometime in the 1990’s, “when various economic and technical factors become more favorable.” Polymetallic nodules are rounded, irregularly shaped mineral masses that lie at or near the surface of deep ocean beds. The nodules contain nickel, manganese, cobalt, copper, and traces of other metals.
245. Id. See supra note 221 and accompanying text.
248. Id.
mission also began considering the crucial issues of the composition and functions of the group of experts who will review pioneer investor applications, the confidentiality of data provided by pioneer investors, and the overlapping claims for tracts of the ocean floor by pioneer investors. The session members agreed that Resolution II will not allow the Commission to solve the overlapping claims issue, which involves a timetable to extinguish these claims.

With respect to the divisive issue of overlapping claims, two related problems have emerged. First, to obtain pioneer rights a consortium must have a sponsoring country ("certifying State") that has signed the Convention. Five of the eight states constituting the consortia have not signed the Convention. The second problem, which emanates from the first, is that Resolution II requires that the sponsor guarantee that no overlapping claims exist with those of other potential sponsors. The crux of this difficulty is that Resolution II does not specify a "deadline after which pending applications may be processed, regardless of whether or not all eight pioneers named have found a sponsor that qualifies by having signed the 1982 treaty."

The Chairman of the Commission, Joseph S. Warioba of the United Republic of Tanzania, decided that the rules to implement Resolution II cannot be finalized until the above quandary is clarified and resolved. Nonetheless, the Soviet Union and India submitted letters of application to register as pioneer investors on July 21, 1983, and January 10, 1984, respectively. They determined between themselves that the areas of the ocean floor designated in their applications do not overlap. However, these pending applications cannot be processed until the relevant rules and procedures are enacted by the Commission. Thus, the Soviet Union has pressed the Commission to act quickly in adopting the requisite rules so that the pending applications can be registered. On the other hand, the

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250. Update, supra note 219, at 1-2.
252. Id.
254. Id.
255. Id.
256. Press Release SEA/561, supra note 217, at 3.
257. Id.
258. Id.
259. Update, supra note 219, at 2. The Soviet Union and India agree that they must consult with France and Japan concerning possible overlaps because all four states
Europeans and Japanese contend that no application may be processed until overlapping ocean floor claims are resolved among all the pioneers named in Resolution II, even though some potential sponsoring countries have yet to sign the Convention.  

Between the Spring Convention session and the session scheduled August 13 to September 5, 1984, efforts continued in attempt to reach an accord on a procedure for determining the absence of overlapping claims among the potential pioneer investors named in Resolution II and to proceed to register pioneers. If such an agreement can be achieved and the rules completed to implement Resolution II, then the 1985 session of Commission in Kingston should be able to process pioneer applications and register those that conform with Resolution II and are not subject to disputed overlapping claims.

Significantly, on August 3, 1984, a "Provisional Understanding Regarding Deep Seabed Matters" was signed by the United Kingdom, Belgium, the Netherlands, France, Italy, West Germany, Japan, and the United States. These eight industrialized nations agreed on procedures to avoid conflicts over ocean floor mining sites. Each country will not infringe on the area of the claim of another nation, where an application for a license or registration has been filed either with the Commission or an individual country. At the August meeting of the Commission in Geneva, the Soviet Union threatened to introduce a resolution labelling the agreement among the eight nations "illegal."

The first 1984 meeting of the Commission in Kingston also included a rule by rule consideration of the draft rules for administering the Authority. At the second session the Commission planned to continue its reading of the draft rules, and the U.N. Secretariat was to have prepared several additional papers for the Preparatory Commission's four Special Commissions.

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260. Id. At the time of the Spring Convention meeting, no qualified sponsors had stepped forward for the four multinational consortia. Id.


262. Id.


264. Id.

265. Id. The agreement also calls for a moratorium on mining before 1988. On April 23, 1984, the United States, under Public Law 96-283, certified five applications to conduct seabed mining exploration. Five licenses are expected to be issued in the Clarion-Clipperton zone of the northeast equatorial Pacific. The four United States consortia involved in the seabed mining exploration resolved any mine site overlaps last December 1983. Citizens for Ocean Law, Update, July 1984, at 1-2.


268. Update, supra note 219, at 3. The four Special Commissions established at the first session in 1983, deal respectively with: 1) Problems of land-based producers; 2) The Enterprise; 3) The seabed mining code; and 4) The International Tribunal on the
In late February 1984 the Soviet Union’s Presidium issued a decree establishing a 200 mile exclusive economic zone that incorporates “the corresponding provisions of the United Nations Convention on the Law of the Sea.” The Soviet exclusive economic zone became effective March 1, 1984; it will be measured from “the same basic lines” that determine Soviet territorial waters. The Soviet decree is extremely detailed, including provisions on freedom of navigation, fishing, scientific research, and pollution. It also allows for overflight, the laying of underwater cables, pipelines, and other activities “permitted by international law.”

**MARINE ENVIRONMENT POLLUTION**

**East African Marine Pollution Treaty**

In December 1983 eight East African countries with coasts on the Indian Ocean sent legal representatives to a marine environment meeting in Nairobi. The purpose of this United Nations sponsored meeting was to construct a draft treaty to protect the East African coastal regions from marine pollution. The countries represented ranged from Somalia in the north to Mozambique and Madagascar in the south. The legal experts focused on measures to combat pollution from land-based sources, as well as on ways to control oil spills from tankers travelling along the East African coast.

**Caribbean Marine Environment Protection Convention**

In January 1984 President Reagan submitted for Senate ratification the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean region (also known as the Cartagena Convention). The Cartagena Convention creates
general legal obligations for its contracting parties to preserve the marine environment of the Caribbean Sea, the Gulf of Mexico, and immediately proximate areas of the Atlantic Ocean.\textsuperscript{278} It covers multifarious forms of marine pollution: from ships, from seabed activities, and from the air.\textsuperscript{279} The Cartagena Convention also provides for specifically protected areas, for cooperation in emergency circumstances, and for environmental impact assessments.\textsuperscript{280} The first meeting of the contracting parties will occur no later than two years after the Cartagena Convention takes effect, which will happen when the ninth nation ratifies this convention.\textsuperscript{281}

**Incineration of Hazardous Wastes at Sea**

The at-sea incineration of hazardous wastes continues to stir controversy. Presently, the only incineration site is one in the Gulf of Mexico.\textsuperscript{282} In November 1983 thousands of Texans protested the decision of the Environmental Protection Agency (EPA) to tentatively permit the incinerator ships *Vulcanus I* and *Vulcanus II* to burn hazardous wastes 150 miles offshore in the Gulf of Mexico.\textsuperscript{283}

The *Vulcanus I* has been allowed to make thirteen tests in United States waters since 1974.\textsuperscript{284} An official of Chemical Waste Management, which owns the incinerator ships, contended in April 1984 that enough information had been gathered from these tests to approve permanent at-sea burning.\textsuperscript{285} On April 23, 1984, Steven Schatzow, an EPA official, recommended that the commercial incineration of toxic wastes be impermissible until 1985.\textsuperscript{286} He proposed more tests that would mean burning 3.3 million gallons of waste in the Gulf to study how completely chemicals are destroyed by incinerator ships and to further examine the impact of the burning on the sea and air.\textsuperscript{287} Schatzow confirmed that EPA scientists continue to believe

\begin{footnotesize}
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\item \textsuperscript{278} Cartagena Conference that adopted the Convention and Protocol. Sixteen nations drafted and signed the Cartagena Convention at a conference in Cartagena de Indias, Colombia on March 24, 1983. Frazer and Petersen, *Protecting Caribbean Waters: The Cartagena Convention*, OCEANUS, Spring 1984, at 85, 86. The sixteen signatories are Colombia, Costa Rica, Cuba, France, Grenada, Guatemala, Honduras, Jamaica, Mexico, the Netherlands, Nicaragua, Panama, St. Lucia, the United Kingdom, the United States, and Venezuela. \textit{Id.}
\item \textsuperscript{279} Id.
\item \textsuperscript{280} Id.
\item \textsuperscript{281} Id. at 107; see Frazer and Petersen, \textit{supra} note 277, at 88.
\item \textsuperscript{283} N.Y. Times, Dec. 25, 1983, at E10, col. 1. Earlier in 1983, the EPA reported that 150 million metric tons of toxic wastes are generated each year. Many widely used methods of disposing the wastes, including landfills, have been found unsatisfactory. \textit{Id.}
\item \textsuperscript{284} N.Y. Times, Apr. 24, 1984, at A16, col. 6.
\item \textsuperscript{285} Id.
\item \textsuperscript{286} Id.
\item \textsuperscript{287} Id. \textit{See} Bond, \textit{At-Sea Incineration of Hazardous Wastes}, ENVTL. SCI. TECH.,
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\end{footnotesize}
that at-sea incineration offers a feasible way to dispose of hazardous wastes. Nonetheless, other groups disagree. For instance, a Greenpeace U.S.A. director stated that more “test burning will not resolve the gravest environmental fear, the risk of a spill.”

In August the House of Representatives Committee on Government Operations began to investigate the EPA regulatory program for at-sea incineration of hazardous waste. A hearing was held in July 1984 in San Rafael, California, by the committee’s environmental subcommittee. The chairman of the subcommittee, Representative Mike Synar, observed that plans were being made by the EPA to name incineration sites in the Atlantic and Pacific Oceans. Although the EPA intended to issue final regulations governing the at-sea incineration of hazardous wastes by December 1984, the agency still had not enacted the pertinent regulations by the end of 1984.

Disposal of Radioactive Wastes at Sea

The disposal of both high and low-level radioactive wastes occupied most of the agenda at the London Dumping Convention (LDC), conducted in London from February 20-24, 1984. An attempt by some nations to achieve an agreement banning the burying of high-level radioactive waste beneath the seabed failed. They argued that “subseabed emplacement” of high-level radioactive wastes is illegal under the terms of the LDC. Nevertheless, this interpretation, advocated by the Scandinavian countries, was voted down.

An opposing view is that the “subseabed emplacement” of con-
tainers of highly radioactive waste is not within the scope of the LDC. Nine nations, including the United States and Great Britain, are conducting research into the feasibility of embedding "torpedo-cannisters" of high-level waste in deep pockets of seabed soil. With the support of the United States, an agreement was reached whereby research would continue on this subject, while no emplacement would be undertaken until regulations had been approved by the LDC.

The LDC ban on the disposal of low-level radioactive wastes was extended until September 1985. This extension will permit scientists to complete a study on the environmental effects of dumping low-level radioactive wastes into the sea. With no firm decision forthcoming on either the issue of high-level or low-level radioactive waste, the meeting of the LDC was described by one observer as having "ended in disarray."

The National Advisory Committee on Oceans and Atmosphere (NACOA), a presidential advisory body, recommended in July 1984 that the United States consider revising its policy of not allowing ocean dumping of low-level radioactive waste. The group did not unequivocally endorse the ocean as a site for waste disposal, but it did suggest that a failure to contemplate the ocean as a possible dumping location could have the effect of drying up government funds needed for research into the impact of disposal at sea. "If there are reasons why the ocean is unacceptable, we need to know them" said the committee. NACOA did not urge a major shift from "land-oriented" policy at the present time. It did call, however, for sufficient funding and adequate monitoring and research efforts to accurately assess the effects of ocean disposal of low-level radioactive wastes.

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301. Nautilus, supra note 295, at 1.
303. Id.
306. Id.
307. Id.
308. Id.
309. Id. The argument for the use of the oceans is summarized by NACOA as: The ocean already contains a large amount of natural radioactivity, either long-lived radionuclides and their daughter products that have been on earth from the beginning or relatively short-lived radionuclides formed by the interaction of cosmic radiation with the atmosphere . . . . Our knowledge of ocean processes is good enough to make adequate estimates of the fate of any anthropogenic
On June 4, 1984, the United States Navy released a report announcing that it was abandoning plans to dispose of aging nuclear submarines at sea.\(^\text{310}\) An original Navy plan, four years old in 1984, called for disposal of entire submarines, including their nuclear compartments, two and a half miles deep in the ocean, far from the shores of the United States.\(^\text{311}\) As an alternative, earlier in 1984, the Navy considered burying some of its 100 aging nuclear-powered submarines\(^\text{312}\) in the ocean with the nuclear core of the engines removed.\(^\text{313}\) Environmental groups opposed all Navy plans for disposal of the nuclear-powered submarines.\(^\text{314}\) The Navy has now chosen to bury nine decommissioned submarines on government land rather than in the ocean.\(^\text{315}\)

**Transportation of Nuclear Materials by Sea**

A collision on August 25, 1984, between a French freighter and a West German passenger ferry that resulted in the sinking of the freighter with a 360-ton cargo of uranium hexafluoride, created fresh controversy and fears over the use of the sea to transport nuclear materials.\(^\text{316}\) The uranium hexafluoride, a raw material from which nuclear fuel is made, never posed a severe radiation danger. On board the freighter, however, were three barrels of partially processed uranium, which is more hazardous.\(^\text{317}\) Following the sinking, daily water readings detected no signs of leaking radioactivity.\(^\text{318}\)

Fear was initially spread because the French shipowner was not prompt in revealing the true nature of the cargo.\(^\text{319}\) Only after pres-
sure was exerted by Greenpeace, the international environmental organization, did the true details emerge about the potentially dangerous cargo. The uranium was being shipped to the Soviet Union to be processed into nuclear fuel; after processing, it was to be returned to France for use in nuclear power plants. Criticism arose from Europeans and environmental groups that inadequate safety measures are taken on ships that increasingly transport nuclear cargo. The International Maritime Dangerous Goods Code governs the transport of radioactive materials over Western European waters. The regulations included in this code, however, are antiquated, and are currently being rewritten by the International Maritime Organization (IMO).

Oil Pollution

On April 19, 1984, a federal district court in Chicago held that Standard Oil of Indiana was liable for up to 700 million dollars in damages resulting from a massive oil spill on the French coast, caused by the 1978 wreck of an oil supertanker. The suit involved claims against the oil company by the French government, local French towns, French fishing organizations, local hotel keepers, and environmentalist groups. The court concluded that the owner of the ship had failed to ensure the seaworthiness of the tanker and was negligent in training its crew. The decision was described as landmark environmental law because it established for the first time that responsibility for marine pollution rests with the ultimate owner of a vessel.

The IMO sponsored a conference in London on liability and compensation for oil pollution from April 30 to May 25, 1984. The

320. Id.
321. Id. Belgium, Italy, and Switzerland have made similar arrangements with the Soviet Union.
322. Id.
323. Id. The International Maritime Organization (IMO) is a United Nations agency, comprising about 126 countries; until 1982 the IMO was known as IMCO, the Intergovernmental Maritime Consultative Organization. R. Churchill and A. Lowe, The Law of the Sea, (1983). IMO mainly concentrates on international shipping; it has issued a number of significant regulations concerning navigation and pollution. It also has drafted more than two dozen major documents (conventions), many of which have been ratified by the IMO member states. Id.
326. Id. at col. 4.
conference considered and adopted revised protocols to the 1969 International Convention in Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.\textsuperscript{330} The protocols will probably not become effective until 1990.\textsuperscript{331}

The revised protocols increased possible liability for vessel owners by eliminating a fourteen million dollar liability ceiling and erecting a three million dollar floor with a ceiling of up to sixty million dollars.\textsuperscript{332} Among other changes, the pollution damage definition was altered to incorporate costs for restoring the marine environment.\textsuperscript{333} The protocols also expanded their ambit beyond the territorial seas to cover incidents occurring within the 200 mile Exclusive Zone of nation parties.\textsuperscript{334} No agreement was reached, however, on how to update the liability and compensation limits in a continuously timely fashion.\textsuperscript{335}

**MARINE MAMMALS**

At its annual meeting of 1984, held in Buenos Aires, the International Whaling Commission (IWC) sharply lowered the annual whaling quotas from 9,390 permitted in 1984 to 6,623 for the 1985 season.\textsuperscript{336} The 1985 season will be the last one before the start of a worldwide moratorium on all commercial whale hunting.\textsuperscript{337} The moratorium was approved by the IWC in 1982, but three nations (Japan, Norway, and the Soviet Union) still have continuing formal objections.\textsuperscript{338} Under IWC rules, nations are not restricted by decisions to which they formally object.\textsuperscript{339} The world must wait to see if the moratorium actually comes to fruition because the IWC lacks actual enforcement powers.\textsuperscript{340}

John Byrne, then chief of the National Oceanic and Atmospheric...
Administration, headed the United States delegation to the 1984
IWC meeting and served as the United States IWC commissioner.\textsuperscript{341} Byrne left government in November 1984, but was asked to remain
as commissioner to the IWC because of the upcoming morato-
rium.\textsuperscript{342} He characterized the 1984 meeting as a success\textsuperscript{343} at which
"the United States has achieved its objective" of realizing lower quo-
tas in 1985.\textsuperscript{344}

The most significant whaling cut involved the Southern Hemi-
sphere minke whales, with the quota being slashed from 6,655 last
season to 4,244 in the coming season.\textsuperscript{345} Dr. Roger Payne, spokes-
man for the World Wildlife Fund-U.S., said, "We had a triumphant
vote on the South Atlantic Minkes."\textsuperscript{346} Conservationists were gener-
ally pleased with the results of this year's IWC meeting.\textsuperscript{347}

Japan, the Soviet Union, and Norway, the three major whaling
countries, objected vigorously to the IWC actions.\textsuperscript{348} Japan and the
Soviet Union absorbed all the lowered quotas for 1984, while Nor-
way retained its old quotas.\textsuperscript{349} All three nations have already indi-
cated that they will not observe the moratorium which is to begin in
1986.\textsuperscript{350} If they fail to obey the moratorium or if they exceed their
1985 quotas, substantial fishing sanctions and restrictions on imports
to the United States may be imposed on the three countries by the
United States.\textsuperscript{351}

Eduardo Iglesias of Argentina was expected to depart as president
of the IWC in 1984, but due to the upcoming moratorium the pre-
sent officers, including Iglesias, will remain in office for another

\textsuperscript{341} Nautilus, supra note 336, at 1.
\textsuperscript{342} Id.
\textsuperscript{343} Id. at 2.
\textsuperscript{344} L.A. Times, June 23, 1984, at I1, col. 2.
\textsuperscript{345} Nautilus, supra note 336, at 1 (which supplies an area by area count).
\textsuperscript{346} L.A. Times, June 23, 1984, at I6, col. 1.
\textsuperscript{347} Id. at I1, col. 2.
\textsuperscript{348} Id.
\textsuperscript{349} Nautilus, supra note 336, at 1.
\textsuperscript{350} L.A. Times, June 23, 1984, at I6, col. 3.
\textsuperscript{351} Id. The United States Fisheries, Conservation and Management Act provides
that any nation that "diminishes the effectiveness" of an international whaling measure
will have its authorized catch from United States waters reduced by at least half. 16

On November 13, 1984, the United States Commerce Department announced that an
agreement had been reached between Japan and the United States that will permit Ja-
pan to continue whaling in United States waters until the end of 1987. N.Y. Times, Nov.
14, 1984, at A12, col. 1. The agreement allowed Japanese whalers to take 400 sperm
whales in 1984 and will allow them to take 400 more in 1985. If Japan agrees to with-
draw its objections to the IWC general ban on whaling, effective for Japan in 1988, by
April 1, 1985, Japan may take 200 sperm whales in 1986 and 1987. Id. at col. 1-2. On
November 9, 1984, conservationists filed suit in the United States District Court for the
District of Columbia to compel the United States government to enforce sanctions
against Japan if it violates American law. Id. at 3; see 16 U.S.C. § 1821 (e)(2)(1982).
The 1985 IWC meeting will take place in England at a date not yet arranged.

Sea otters in a crucial offshore California habitat may be endangered by a recent United States Supreme Court decision. In its January 11, 1984, ruling, the Court rejected the argument of the coastal states that the consistency clause of the Coastal Zone Management Act applied to leasing activities beyond the three mile limit. By a five to four vote, the Supreme Court held that the sale of outer continental shelf oil and gas leases is not an activity that directly affects the coastal zone, and a consistency review is therefore not required. Oil spills from drilling activities could threaten the southern sea otter, whose habitat lies within twelve miles of the twenty-nine tracts that may be leased and ultimately drilled.

The United States and Japan concurred in a memorandum of understanding, dated June 5, 1984, that provides for Japanese cooperation with the United States in an effort to save the Dall porpoise. The agreement will stay in effect until June 9, 1987, and for as long as the Japanese are allowed to fish for gillnet salmon within the United States fishery conservation zone.

Japan promised that its fishermen will furnish accurate information concerning the condition of the Dall porpoise. Additionally, Japan will annually report the number of marine mammals, especially the Dall porpoise, that are captured during each fishing season.

Japanese and American scientists will cooperate in formulat-
ing a three-year plan to calculate methods of decreasing or eliminating the accidental take of Dall porpoises during Japanese fishing of the gillnet salmon.\textsuperscript{364} Furthermore, American scientific observers will be permitted on board Japanese fishing vessels within the United States fishery conservation zone.\textsuperscript{365} These observers will record data on the incidental capture of marine mammals, as well as observe environmental conditions and evaluate gear characteristics of the Japanese fishing operations.\textsuperscript{366}

**ANTARCTICA**

The United Nations First Committee (political and security) adopted a resolution November 30, 1983, requesting a United Nations study on the status of Antarctica that could threaten the Antarctic Treaty.\textsuperscript{367} The resolution asked the United Nations Secretary General “to prepare a comprehensive factual and objective study of all aspects of the Antarctic Treaty and other relevant factors.”\textsuperscript{368} Led by Malaysia, the so-called “non-aligned countries” invoked a favorite United Nations theme, “the common heritage of mankind,” in voting for the resolution.\textsuperscript{369} The third world countries would like to have Antarctica declared the “common heritage of mankind,” which would make its vast, largely unexploited resources available to all countries.\textsuperscript{370} The Secretary General was given a year in which to prepare his report.\textsuperscript{371}

The Antarctic Treaty was originally signed in 1959.\textsuperscript{372} It gives to treaty signatories administrative responsibility for the continent.\textsuperscript{373} The United Nations action jeopardizes this system of administration and the parties’ territorial claims in Antarctica.\textsuperscript{374} The United States and the Soviet Union, in a rare cooperative effort, are expected to oppose strongly any United Nations action that might undermine the

\textsuperscript{364} Id. Scientific information will be exchanged regularly, annual progress reports issued, and reviews and recommendations for further action will be produced. \textit{Id.}
\textsuperscript{365} \textit{Id.}
\textsuperscript{366} \textit{Id.}
\textsuperscript{368} Nautilus, \textit{supra} note 367, at 1-2. One topic the study may address is the applicability of Law of the Sea Convention provisions on oil and gas exploration to Antarctica’s outer continental shelf.
\textsuperscript{369} \textit{Id.} at 2. Malaysia would like to make the continent an international trusteeship.
\textsuperscript{370} The Times (London), Dec. 17, 1983, at 6, col. 5.
\textsuperscript{371} \textit{Id.}
\textsuperscript{372} Nautilus, \textit{supra} note 367, at 2.
\textsuperscript{373} \textit{Id.}
\textsuperscript{374} \textit{Id.} Parties to the Antarctic Treaty include the United States, the Soviet Union, Australia, Argentina, Belgium, Brazil, Chile, France, Japan, New Zealand, Norway, Poland, South Africa, West Germany, and India.
Recent Developments

CANADA-UNITED STATES GEORGES BANK DISPUTE

The International Court of Justice, in an October 12, 1984, ruling delimited an ocean boundary in an area between New England and Nova Scotia, awarding part of the resource rich Georges Bank to Canada but giving the larger section to the United States.376 A special World Court panel voted four to one in favor of the ruling.377 The Court gave approximately one-sixth of the bank to Canada, while the rest went to the United States.378 The World Court decision was an attempt to resolve a protracted twenty-year dispute between the United States and Canada.379 Both countries acceded to Court jurisdiction in 1979380 and agreed to abide by its ruling.381

Besides being the site of productive fishing waters, the Georges Bank contains a potentially large source of oil and natural gas.382 United States Geographical Survey analysts estimate the bank could hold 1.5 billion barrels of oil and 12.2 trillion cubic feet of natural gas.383 Nevertheless, the few holes drilled in the underwater plateau have discovered no oil.384

The United States argued that the International Court of Justice should give the entire Georges Bank area to the United States.385 The United States based this claim on the contention that American fishermen discovered and developed the bank.386 Canada asked, however, for just over a third of the bank.387 Canada considers fishing

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377. Id.
378. Id. The Canadian share of the bank may be closer to one-fourth, and it apparently contains the most productive fishing waters. N.Y. Times, Oct. 22, 1984, at A1, col. 2.
379. L.A. Times, Oct. 13, 1984, at 13, col. 1. The controversy arose in 1964 when Canada issued oil and gas exploration permits in the Georges Bank area. Id. at col. 3. Additionally, in the 1960's, Canadians began to fish the bank for the first time. Americans, on the other hand, have fished in the disputed area since the 1820's. N.Y. Times, May 5, 1984, at A2, col. 5.
380. Submission by the United States to World Court authority stands in sharp contrast to a United States attempt to preempt Court jurisdiction over the United States-Nicaragua embroglio. See notes 29-32 and accompanying text.
382. Id.
383. Id. at col. 2-3.
386. Id. See supra note 379.
rights on the bank to be of critical importance because about 3,700 jobs in Nova Scotia depend on the fishing resources of the bank. 388

The World Court ruling drew a line through the Gulf of Maine beginning about thirty miles off the northeastern coast of Maine and ending about 180 miles southeast of Cape Cod, Massachusetts. 389 This division, considered a compromise, gave each country about one-half of what each wanted in the disputed area. 390 Moreover, the decision may serve as precedent for resolving other maritime border disagreements between the United States and Canada. 391

CONCLUSION

In 1984, interference with rights of free navigation dominated developments in the law of the sea. Work continued, albeit in a low key, pursuant to the law of the sea treaty, with the issue of pioneer investment in deep seabed mining being the cynosure of the Preparatory Commission meeting. Efforts to combat oceanic pollution continued on both a global and regional level. The International Whaling Commission lowered whaling quotas for 1985 in anticipation of a total ban on commercial whaling in 1986. Finally, the International Court of Justice delivered an important decision resolving a Canada-United States ocean boundary controversy. This ruling demonstrates the largely untapped possibilities of using international law and a supranational tribunal to achieve positive results in solving a problem related to the marine environment. 392

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388. Id; see also N.Y. Times, May 5, 1984, at A2, col. 3.
390. Id. at col. 1. A senior United States official stated that neither side obtained what it wanted and that the World Court rejected most of the arguments of both sides. Id. New England fishermen were extremely upset by the decision, saying it took away waters that they had fished for years. N.Y. Times, Oct. 22, 1984, at 1, col. 1 and at 9, col. 2-4. The decision of the Court will probably force many American fishermen out of business. About 2000 New England Fishermen will have to shift their fishing operations. Id. at 9, col. 3.
392. Dr. Arvid Pardo views the World Court ruling far less optimistically. He perceives it as an example of the continuing propensity of the International Court of Justice to sacrifice legal principle to “political and pragmatic considerations.” Letter from Dr. Arvid Pardo to John A. Clemons (November 19, 1984). Dr. Pardo believes that this ruling is cause for concern because the World Court is contributing support to a trend that is “rapidly” extinguishing “the relevance of legal principles in cases of delimitation of marine areas between States opposite or adjacent to each other.” Id.