SPECIAL CLAIMS IMPACTING UPON MARINE POLLUTION ISSUES AT THE THIRD U.N. CONFERENCE ON THE LAW OF THE SEA

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I. INTRODUCTION

Within the context of the negotiations being conducted at the Third United Nations Conference on the Law of the Sea (UNCLOS III), there are special claims which impact upon marine pollution issues. While there have been many alleged justifications for these claims, this analysis will focus upon unilateral extensions relating to fisheries jurisdiction and protection of the marine environment. These unilateral claims will be briefly examined within the overall context of UNCLOS III, and the classic "process of claim" will be outlined. Then, those claims which allegedly justify unilateral action on the basis of "fisheries conservation" and "protection of the marine environment" will be explored.

The South and Latin American countries originated the modern concept of unilateral extensions, justifying them as necessary for the protection and conservation of fish stocks, particularly tuna. The recent claims and policy arguments used to justify them will also be examined, with special emphasis being given to the major unilateral extension of fisheries jurisdiction promulgated by the United States and its impact on the international community.

This analysis will then focus upon "protection of the marine environment" as a justification for unilateral extensions of marine jurisdiction. An examination of recent trends will demonstrate that claims for jurisdiction over marine pollution have paralleled, and will continue to parallel, the assertions of fisheries jurisdiction. Although the jurisdictional claims over marine pollution have generally developed at a slower rate than the claims over fisheries, an analysis of the recent claims and policy arguments involving

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marine pollution will demonstrate that this latter justification is gaining momentum. If a generally acceptable treaty is not forthcoming from the UNCLOS III negotiations, there will be a rash of claims extending jurisdiction on the basis of protecting the marine environment.

II. Unilateral Claims within the Overall Context of UNCLOS III

One of the major reasons for convening UNCLOS III was the proliferation of unilateral action resulting in extensions of maritime jurisdiction.[1] Of particular concern were the "unilateral extensions of the territorial sea and other forms of coastal state jurisdiction"[2] which affected narrow straits, fisheries, and major commercial routes.[3]

Unilateral actions regarding marine pollution were virtually nonexistent at the beginning of UNCLOS III. In fact, both the marine pollution and scientific research issues assigned to Subcommittee III of the Conference were impliedly if not officially treated as being less important than the other UNCLOS III issue areas. The Seabed Committee, which was responsible for the preparations at UNCLOS III, left the preparatory work of Subcommittee III largely unfinished. The Working Group on Marine Pollution was established late in the 1972 session of the Seabed Committee meetings, and no formal proposals were submitted to them until the spring of 1973.[4] The number of major pollution control issues considered by the working group was small, and most of the proposals were tabled.[5]

For commercial and security reasons the major maritime powers felt that it was essential to maintain the maritime principles of "freedom of navigation" and "innocent passage" to the greatest possible extent. Hence, the first serious unilateral actions were considered more with regard to their effects on maritime commerce and navigation than with regard to their influence on marine pollution and conservation issues, despite the fact that they related to

1. Stevenson & Oxman, *The Preparations for the Law of the Sea Conference*, 68 Am. J. Int'l L. 1, 2 (1974) [hereinafter cited as *Preparations*]; *see* Martens, *Evolution Of Coastal State Jurisdiction: A Conflict Between Developed and Developing Nations*, 5 Ecology L.Q. 531, 543-53 (1976).

2. *Preparations*, *supra* note 1, at 2.

3. *See id.* at 9, 10, 19, 20.

4. *Id.* at 23-24.

5. *Id.* at 23-26.

fisheries jurisdiction and protection of the marine environment. Even with regard to the underdeveloped countries, this policy was correct since maritime commerce considerations demand a maximum amount of freedom of navigation as an essential element in industrializing the underdeveloped countries (commonly referred to as the South or the Third World). For a better perspective of the general marine pollution problems, an examination of the early claims is important in understanding the theoretical aspects of the "process of claim."[6]

III. THE PROCESS OF CLAIM

An examination of the classic works in this area reveals that "[t]he process of claim may be most conveniently described in terms of certain participants in the world arena, asserting, for many different objectives, a wide range of claims to authority over the oceans of the world."[7]

> Through several centuries of interaction, of particular claim and general community acceptance or rejection, a body of principles and process of decision were thus developed which achieved a compromise between demands of coastal and noncoastal states, roughly corresponding to exclusive and inclusive claims effectively internationalizing in the common interest a great resource covering two thirds of the earth's surface.[8]

The process of claim requires an analysis of participants, objectives, and authority, including the methodology of claim.

> The methods employed include both unilateral assertion and multilateral agreement and are supported by all the contemporary instruments of policy. The claims, made under all the changing conditions of the world social processes, have certain observable effects upon the participants' individual and common values. As an integral part of this continuous process, participants invoke both authoritative decision-makers and the application of a great variety of technical concepts to assert claims concerning the lawfulness or unlawfulness of the various specific demands they make against each other to exercise authority on

6. McDougal & Burke, *Crisis In The Law Of The Sea: Community Perspectives Versus National Egoism*, 67 YALE L.J. 539, 548 (1958) [hereinafter cited as McDougal & Burke]; *see* M. MCDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 28-34 (1962) [hereinafter cited as PUBLIC ORDER]; *see* McDougal & Schneider, *The Protection Of The Environment And World Public Order: Some Recent Developments*, 45 MISS. L.J. 1085 (1974).

7. McDougal & Burke, *supra* note 6, at 548.

8. *Id.* at 540.

or over the oceans.[9]

Nation-states, international governmental organizations, private groups and associations, and individuals are all involved in the process of claim.[10] The "objectives" of claimant countries "embrace all the characteristic demands of the nation-state for the protection and enhancement of its bases of power,"[11] and they include: power, wealth, well-being, respect, skill, solidarity, and rectitude.[12]

> All these general objectives, as well as the various particular claims to the exercise of authority to be described, relate at a lower level of abstraction to very concrete demands by claimants to specific uses of the oceans or ocean areas, such as the movement of vessels, the taking of fish, the laying of cables or pipelines, the extraction of minerals, the testing of weapons, the flying of aircraft, the detention of persons or vessels and so on. In terms of modalities particularly relevant to the clarification of community policy, such concrete demands may be further described in any necessary detail as exclusive or inclusive, as relating to an area close to or distant from the coasts of the claimant state, as substantial or insubstantial in scope of authority demanded, as relating to the vital or nonvital values of the claimant state, as for permanent or temporary enjoyment, as appropriate or inappropriate to the economic use of the area in which asserted, as proportionate or disproportionate to the interests sought to be protected, as interfering or not interfering with uses by other states, as causing serious or minor damage to the interests of other states, as causing avoidable or unavoidable injury and so on.[13]

For purposes of the present discussion, these objectives will be limited specifically to their effects upon marine pollution and conservation issues. "The specific claims to authority asserted by states in seeking their diverse objectives may be categorized in terms of the degree of comprehensiveness of authority claimed and of the geographical area in which it is asserted,"[14] and for each claim to authority "there is an opposing counterclaim by other states asserting both freedom from the claimant's authority and a competence to exercise their own authority."[15]

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9. *Id.* at 548; *see* PUBLIC ORDER, *supra* note 6, at 28-34; McDougal & Burke, *supra* note 6, at 555, 559-67.
10. McDougal & Burke, *supra* note 6, at 548-49.
11. *Id.* at 549.
12. *Id.* at 549-50.
13. *Id.* at 550.
14. *Id.* at 550; *see* PUBLIC ORDER, *supra* note 6, at 36-49.
15. McDougal & Burke, *supra* note 6, at 551.

The classic delimitations of claims in accordance with the "process of claim," as one of the fundamental elements of an analysis in a community context,[16] are as follows:

a. claims to authority over internal waters,
b. claims to authority over the territorial sea,
c. claims to delimit the boundary between internal waters and territorial sea,
d. claims to determine the width of the territorial sea,
e. claims to authority in ocean areas adjacent to the territorial sea, and
f. claims to shared use and competence upon the high seas.[17]

The first category, "claims to authority over internal waters,"[18] involves the subcategory of, "claims to resources" in internal waters, which includes marine pollution issues. Since these resources are exclusively within the control of the coastal nation, coastal nations have traditionally had the exclusive right to regulate or ignore marine pollution in their internal waters.[19] This traditional right has been modified somewhat by the marine pollution provisions of the Informal Composite Negotiating Text/Revision 2 (ICNT/Rev.2),[20] currently being negotiated at UNCLOS III. Article 192 of the ICNT/Rev.2 provides that "States have the obligation to protect and preserve the marine environment."[21] Under articles 193 and 194 "claims to resources" are limited by general anti-pollution provisions.[22] Article 193 provides that "States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment,"[23] while article 194 requires that "States shall take all necessary measures consistent with this Convention to prevent, reduce and control pollution of the marine environment from any source,"[24] including land-based pollution, airborne pollution, dumping, and pollution from vessels and installations (exploiting marine resources).[25] The specific requirement is that "States shall adopt laws and regulations to prevent, reduce and

16. *See* PUBLIC ORDER, *supra* note 6, at 1-87.
17. *See id.* at xv-xx; McDougal & Burke, *supra* note 6, at 551-54.
18. PUBLIC ORDER, *supra* note 6, at 89-173; McDougal & Burke, *supra* note 6, at 551-52.
19. *See* PUBLIC ORDER, *supra* note 6, at 173.
20. U.N. Doc. A/CONF.62/WP. 10/Rev. 2 (1980), *reprinted in* 18 INT'L LEGAL MATS. 686 (1979) [hereinafter cited as ICNT/Rev.2].
21. *Id.* art. 192.
22. *Id.* arts. 193 & 194.
23. *Id.* art. 193.
24. *Id.* art. 194, para. 1.
25. *Id.* art. 194, para. 3(a)-(d); *see id.* arts. 207-12.

control"[26] marine pollution from land-based sources,[27] sea-bed activities,[28] activities in the Area[29] (*i.e.*, the oceans space beyond national jurisdiction), dumping,[30] vessels,[31] and the atmosphere.[32]

The second category, "claims to authority over the territorial sea,"[33] is limited in the area of marine pollution by the same ICNT/Rev.2 articles. Traditionally, there was "wide agreement that coastal competence over a marginal belt *of relatively narrow width* should include exclusive control over all resources therein."[34] This was especially true for fisheries, which were considered the most important resource in the territorial sea until the comparatively recent discoveries of valuable nonliving resources such as oil and gas.[35]

In 1702 Bynkershoek formulated the "cannon-shot doctrine" which stated that permanent dominion over offshore areas could be maintained only by coastal fortifications. Eight decades later, Galiani suggested that these territorial waters be limited to one marine league or 3 nautical miles, even though this distance was beyond the range of land-based cannons at that time.[36] Prior versions of the 3-mile rule had been used during the 1600's to exclude the Dutch from fishing near the British coasts. Under this theory the Dutch agreed that on a clear day they would not fish within eyesight of the British coast.[37] Thus, "the bitter, centuries-old controversy over the limit of the territorial sea indicates the abiding strength of the expectation that the coastal state is entitled to exercise exclusive disposition of fisheries within it."[38]

> At the Hague Codification Conference in 1930, 42 nations attempted but failed to agree on a common limit. Many states argued for six miles, while others wanted to avoid a uniform lim-

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26. *See id.* arts. 207-12.
27. *Id.* art. 207, paras. 1 & 7.
28. *Id.* art. 208, paras. 1-3.
29. *Id.* art. 209, paras. 1-2.
30. *Id.* art. 210, paras. 1-3, 5-6.
31. *Id.* art. 211, paras. 2-6.
32. *Id.* art. 212, paras. 1-2.
33. *See* PUBLIC ORDER, *supra* note 6, at 174-304; McDougal & Burke, *supra* note 6, at 552.
34. PUBLIC ORDER, *supra* note 6, at 302 (emphasis added).
35. *See id.*, Franssen, *Oil And Gas In The Oceans*, 26 NAVAL WAR C. REV. 50 (1974) [hereinafter cited as Franssen].
36. Alexander & Hodgson, *The Impact of the 200-Mile Economic Zone on the Law of the Sea*, 12 SAN DIEGO L. REV. 569, 569 (1975); *see* Martens, *supra* note 1, at 532.
37. PUBLIC ORDER, *supra* note 6, at 303-04 nn.319-20. *See generally* S. SWARZTRAUBER, THE THREE MILE LIMIT OF TERRITORIAL SEAS (1972).
38. PUBLIC ORDER, *supra* note 6, at 303.

> itation for all countries or insisted on the inclusion of a contiguous zone with special rights for the coastal state. Neither course was acceptable to Great Britain, the United States, Japan, and the other maritime nations who strongly advocated the three mile limit.[39]

The third traditional category of claims, "claims to delimit the boundary between internal waters and territorial sea,"[40] evolves from variations in the methods used for drawing baselines in the coastal configuration. When a particular method of delimitation is asserted it can result in too great an encroachment upon the high seas, increasing the area over which exclusive authority is exercised to the detriment of freedom of navigation and fishing.[41] However, these is general consensus on the ICNT/Rev.2 articles relating to this issue probably because the focus of limiting unilateral extensions has shifted out to 200 miles and because baseline distinctions are *de minimus* when compared to the 200 mile disputes.[42]

"Claims to determine the width of the territorial sea"[43] have been resolved in a similar manner. Article 3 of the ICNT/Rev.2 specifically provides that "[e]very State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention."[44] Whether or not the ICNT/Rev.2 is eventually adopted by the world community is irrelevant with regard to the 12-mile limit, because article 3 is merely a restatement of customary international law.

"Claims to authority in ocean areas adjacent to the territorial sea,"[45] the fifth category, may be subdivided into claims for exclusive control of living and nonliving (mineral) resources. Historically, "[c]laims have been made for customs inspection, anti-smuggling measures, conservation and exclusive exploitation of animal resources, exclusive exploitation of mineral resources, defensive measures such as radar platforms, defensive areas within which navigation is limited or temporarily excluded and so

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39. Martens, *supra* note 1, at 533.

40. McDougal & Burke, *supra* note 6, at 552. *See generally* PUBLIC ORDER, *supra* note 6, at 305-445.

41. McDougal & Burke, *supra* note 6, at 553.

42. *See* ICNT/Rev.2, *supra* note 21, arts. 2-16; Krueger & Nordquist, *The Evolution Of The 200-Mile Exclusive Economic Zone: State Practice In The Pacific Basin*, 19 VA. J. INT'L L. 321, 321-22 (1979).

43. *See* McDougal & Burke, *supra* note 6, at 553. *See generally* PUBLIC ORDER, *supra* note 6, at 446-563.

44. ICNT/Rev.2, *supra* note 20, art. 3.

45. McDougal & Burke, *supra* note 6, at 553-54.

forth."[46] With regard to the valuable nonliving resources[47] of the oceans, "it would appear genuinely within the common interests of all peoples to promote exploitation and production of the mineral resources of the ocean floor."[48] The dearth of protests to unilateral claims exacerbated the problem.

> The number and pattern of state claims, unilaterally made and exhibiting divergencies of considerable importance but also expressing practically universal consensus on the desirability of exclusive coastal control, coupled with the lack of protest in relation to the control over mineral resources, gave substantial ground for suggestion that the honoring by others of these claims was within the reasonable expectations of those making them. Within only five years of the initial unilateral claim by the United States [via the Truman Proclamations],[49] authoritative commentators on international law were not unwilling to express, in print, the opinion that the continental shelf doctrine, the shorthand articulation for exclusive control over adjacent submarine areas by coastal states, had become a principle of customary international law.[50]

In the area of valuable living resources,[51] the "primary goal of general community policy . . . must of course be, as it was with respect to mineral resources in the same areas, that of encouraging the highest possible productivity in the use of resources which is compatible with equitable and orderly development."[52]

The final category of claims consists of "claims to shared use and competence upon the high seas."[53] This category includes "claims relating to the control of pollution,"[54] which was originally concerned with pollution caused by "the discharge of oil from ships and from the deposit of radioactive materials through weapons tests and waste disposal."[55] This category was also concerned with "claims for the appropriation and conservation of marine animal resources."[56]

This traditional categorization is important because it provides

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46. *Id.* at 554.
47. *See* Franssen, *supra* note 35, at 50-51.
48. PUBLIC ORDER, *supra* note 6, at 631.
49. For a review of the Truman Proclamations, *see* notes 108-12 *infra* and accompanying text.
50. PUBLIC ORDER, *supra* note 6, at 637-38.
51. *See* Franssen, *supra* note 35, at 50-51.
52. PUBLIC ORDER, *supra* note 6, at 642.
53. *Id.* at 730-1007; McDougal & Burke, *supra* note 6, at 554-55.
54. PUBLIC ORDER, *supra* note 6, at 848-67.
55. *Id.* at 848; *see id.* at 848-67.
56. *See generally id.* at 923-1007.

a perspective on the differing specialized claims impacting on marine pollution issues. In addition, analyses of the well-known claims for marine conservation and protection, which in the past have been used as a justification for unilateral action, are better understood when viewed within the over-all context of the "process of claim." The impact of unilateral claims on marine protection issues received most of its early impetus from two areas: (1) unilateral extensions to claim extended fisheries jurisdiction, and (2) unilateral extensions to claim protection over the marine environment.

IV. CLAIMS ALLEGEDLY JUSTIFYING UNILATERAL ACTION

A. Claims Involving Unilateral Extensions of Fisheries Jurisdiction

1. *Trends in Decision.* There is nearly a 30-year history of Eastern Pacific fishing disputes over tuna.[57] After World War II, fourteen nations became involved in Eastern Pacific tuna fishing.[58] As production increased, it soon became apparent that over-fishing was a definite threat, and disputes arose.[59] In 1950 the United States and Costa Rica founded the Inter-American Tropical Tuna Commission (IATTC),[60] via a convention which was adhered to by several other countries.[61] Ecuador joined IATTC in 1951 but withdrew in 1968 due to a conflict over territorial sea claims.[62] Thereafter, the Peru, Ecuador, Chile group (PEC) was formed, and it assumed a leadership role in this area, speaking on behalf of several South and Latin American countries. "For some years now claims to a 200-mile zone have been accumulating—with Latin American

57. *See* Loring, *The United States—Peruvian "Fisheries" Dispute*, 23 STAN. L. REV. 391, 391-94 (1971).

58. Fisher, Wood, & Burge, *Latin American Unilateral Declarations Of 200-Mile Offshore Exclusive Fisheries: Toward Resolving The Problems Of Access Faced By The U.S. Tunafish Industry*, 9 SW. U.L. REV. 643, 644 (1977) [hereinafter cited as Fisher]; *see* Loring, *supra* note 57, at 391-99.

59. Fisher, *supra* note 58, at 644.

60. Convention for the Establishment of an Inter-American Tropical Tuna Commission, *signed* May 31, 1949, [1950] 1 U.S.T. 230, T.I.A.S. No. 2044, 80 U.N.T.S. 3.

61. The traditional members of IATTC have been Canada, Costa Rica, Japan, Mexico, Nicaragua, Panama, and the United States. Due to the recent revolution in Nicaragua, it is still unsettled as to Nicaragua's current status in IATTC.

62. Fisher, *supra* note 58, at 645. Similarly, in the area of marine mammals, several Latin American countries belong to the Permanent Commission of the Conference on the Use and Conservation of the Marine Resources of the South Pacific, an international organization which competes with the more well-known International Whaling Commission (IWC). *See* Agreement Establishing the South Pacific Commission, *signed* Feb. 6, 1947, [1951] 2 U.S.T. 1787, T.I.A.S. No. 2317, 97 U.N.T.S. 277; Pijanowski, *Comments on Fisheries and the Law of the Sea*, 11 MARINE TECH. SOC'Y J. 34, 34 (1977).

countries being notable among the early claimants."[63] While some countries have claimed 200-mile territorial seas, others have claimed 200-mile "exclusive fishing zones" or "economic zones." These claims are summarized in Table I, and are important because "[o]ver 90 percent by volume of the world commercial catch is estimated as being taken within 200 miles of land."[64]

TABLE I

200-MILE CLAIMS AS OF NOVEMBER 1978

Territorial Sea	Fishery Zone	Exclusive Economic Zone
Argentina[1]	Angola	Bangladesh
Benin	Australia[2]	Barbados
Brazil	Bahamas	Burma
Congo	Belgium[10]	Cape Verde
Ecuador	Bermuda[3]	Columbia
El Salvador	Brazil	Comores Islands
Ghana	Canada	Cook Islands[3, 7]
Guinea	Cayman Islands[3]	Costa Rica
Liberia	Chile	Cuba
Panama	Denmark[10]	Dem. Kampuchea
Peru	Germany, Dem. Rep.	Dominican Republic
Sierra Leone	Germany, Fed. Rep.	Fiji[8]
Somalia	Gilbert Islands[3]	France[11]
Uruguay	Guyana	French Pacific Is. Terr.[3]
	Iceland	Grenada
	Ireland[4, 10]	Guatemala
	Italy	Guinea-Bissau
	Japan[5]	Guyana
	Korea, Rep. of[6]	Haiti
	Micronesia[3]	Honduras
	Netherlands[10]	India
	Nicaragua	Ivory Coast
	Northern Marianas	Korea, Dem. Rep.
	Oman	Malagasy Republic[9]
	Poland	Maldive Islands[8]
	Sao Tome & Principe	Mauritania
	Solomon Islands	Mauritius
	South Africa	Mexico
	Sweden	Mozambique
	Tuvalu	New Zealand[11]
	U.S.S.R.	Nigeria
	Ukranian S.S.R.	Niue (N.Z.)
	United Kingdom[10]	Norway[11]
	U.S.A.[5]	Pakistan
		Papua New Guinea[8]
		Portugal
		Senegal
		Seychelles Island
		Spain
		Sri Lanka
		Surinam

63. Copes, *The Law of the Sea and Management of Anadromous Fish Stocks*, 4 OCEAN DEV. & INT'L L.J. 233, 234 (1977).

64. Alexander & Hodgson, *supra* note 36, at 586, *see* Krueger & Nordquist, *supra* note 42, at 321.

TABLE I (con't.)

	Togo
	Tokelau[3]
	Venezuela
	Vietnam
	Western Samoa
	Yemen (Aden)

1. Does not affect right of navigation or overflight.
2. Pending proclamation of the 200-mile provisions of Fisheries Amendment Act, 1978.
3. Territory not yet independent.
4. 50-mile exclusive fishery zone.
5. Excludes highly migratory species.
6. 20 to 200-mile zone.
7. Subject to preemption by UNCLOS treaty.
8. Modified archipelago.
9. 150-mile exclusive economic zone.
10. Member of European Economic Community, which voted to extend the fishing limits of members to 200 miles.
11. Has passed EEZ legislation but currently enforces only fishery jurisdiction.

Source: Krueger & Nordquist, *supra* note 42, at 373.

Claims to jurisdiction over the continental shelf and claims to a resource-oriented zone extending beyond the territorial sea, originated in South America. In addition, claims to fisheries jurisdiction also received much of their impetus from the South American countries. Consequently, South and Latin American claims will be examined, while those involving the Asian and African countries[65] will generally be omitted since they basically followed the lead of the American countries.

In 1919 Columbia claimed the right to exploit offshore hydrocarbons located within its territorial sea.[66] In 1923 this right was expanded when Columbia extended its jurisdiction over hydrocarbons and fisheries from the traditional three mile limit to twelve miles.[67] Panama claimed jurisdiction over pearls situated beyond its territorial sea in 1921,[68] and in 1935 Venezuela did the same.[69] By 1941 Venezuela claimed the fishery resources of its continental

65. For a summary of the unilateral claims of Asian countries, *see* Martens, *supra* note 1, at 542. *See also*, Krueger & Nordquist, *supra* note 42, at 337-73. For a summary of the unilateral claims of African countries, *see* Martens, *supra* note 1, at 541. *See also* Krueger & Nordquist, *supra* note 42, at 327-28, 337-73.

66. Law No. 120 of 30 December 1919 concerning deposits of hydrocarbons, art. 38, *reprinted in* U.N. Doc. ST/LEG/SER.B/15, at 58 (1970); *see* 1 A. SZEKELY, LATIN AMERICA AND DEVELOPMENT OF THE LAW OF THE SEA 38 (1976).

67. Law No. 14 of 31 January 1923 amending the law concerning deposits of hydrocarbons, art. 17, *reprinted in* U.N. Doc. ST/LEG/SER.B/15, at 59 (1970); *see* SZEKELY, *supra* note 66, at 38.

68. 1931 Fiscal Code of Panama, tit. V, ch. III, *cited in* SZEKELY, *supra* note 66, at 38, *and in* Krueger & Nordquist, *supra* note 42, at 324 n.15.

shelf[70] and during 1942 concluded a treaty with the United Kingdom dividing the seabed and subsoil of the Gulf of Paria.[71] Argentina made a claim in 1944 over the mineral reserves of its continental shelf,[72] and in 1945, Mexico asserted jurisdiction over its continental shelf, including a fishery conservation zone.[73] Argentina expanded its claims in 1946 to include both the resources of the continental shelf and the superjacent waters,[74] although there was some doubt surrounding Argentina's interpretation of the term "epicontinental sea."[75] In a similar manner, Panama made claims to regulate "shark fishing."[76]

In 1947 an important step was taken when Chile[77] and Peru[78] claimed a 200-mile "patrimonial sea" in which they could assert national sovereignty to preserve and exploit all of the living and nonliving "patrimonial" resources. Peru calls this 200-mile zone a "maritime zone,"[79] but this claim is arguably a claim to a 200-mile territorial sea when read within the context of Peru's 1952 Petroleum Law,[80] the 1955 resolution on the maritime zone,[81] the 1965 law on civil aeronautics,[82] the 1970 decree on maritime mining,[83]

69. Venezuelan Pearl Fisheries Act No. 19,143 of 22 July 1935, *cited in* SZEKELY, *supra* note 66, at 39, *and in* Krueger & Nordquist, *supra* note 42, at 324 n.15.

70. Venezuelan Act of 22 July 1941, arts. 7-8, *reprinted in* SZEKELY, *supra* note 66, at 39.

71. Treaty relating to the submarine areas of the Gulf of Paria, 26 February 1942, U.K.-Venezuela, [1942] Gr. Brit. T.S. No. 10. (Cmd. 6400), *reprinted in* U.N. Doc. ST/LEG/SER.B/1, at 44 (1951).

72. Decree No. 1,386, concerning mineral reserves, 24 January 1944, art. 2 (Argentina), *reprinted in* U.N. Doc. ST/LEG/SER.B/1, at 3 (1951).

73. Presidential Declaration with respect to continental shelf, 29 October 1945 (Mexico), *reprinted in* U.N. Doc. ST/LEG/SER.B/1, at 13-14 (1951); *see* Martens, *supra* note 1, at 533.

74. Decree No. 14,708, concerning national sovereignty over epicontinental sea and the Argentine continental shelf, 11 October 1946, *reprinted in* U.N. Doc. ST/LEG/SER.B/1, at 4-5 (1951).

75. Martens, *supra* note 1, at 534 n.17.

76. Decree No. 449, for the regulation of shark fishing by foreign vessels in the waters under the jurisdiction of the Republic, 17 December 1946, art. 3 (Panama), *reprinted in* U.N. Doc. ST/LEG/SER.B/1, at 16 (1951).

77. Presidential Declaration concerning continental shelf, 23 June 1947 (Chile), *reprinted in* U.N. Doc. ST/LEG/SER.B/1, at 6-7 (1951); *see* Alexander & Hodgson, *supra* note 36, at 585-86.

78. Presidential Decree No. 781, concerning submerged continental or insular shelf, 1 August 1947 (Peru), *reprinted in* U.N. Doc. ST/LEG/SER.B/1, at 16-18 (1951).

79. *Id.*

80. Petroleum Law of 12 March 1952, No. 11780 of 1952, art. 14 (Peru), *reprinted in* U.N. Doc. ST/LEG/SER.B/16, at 163 (1974).

81. Supreme Resolution No. 23 of 12 January 1955 determining the Peruvian 200-mile maritime zone, *reprinted in* U.N. Doc. ST/LEG/SER.B/16, at 27 (1974).

82. Law No. 15720 of 11 November 1965 on civil aeronautics, art. 2 (Peru), *reprinted in* U.N. Doc. ST/LEG/SER.B/16, at 28 (1974).

and the 1971 General Fishing Law.[84] These early claims laid the foundation for the Santiago Declaration of 1952[85] in which Peru, Ecuador, and Chile claimed national sovereignty over 200-mile zones, while keeping the right of innocent passage inviolate. In 1966 Ecuador claimed a 200-mile territorial sea.[86]

By 1970 several Latin American countries had joined this trend toward exercising national sovereignty over marine resources. There appeared to be no limit to these claims other than the "reasonableness," which was specified in the subsequent declarations; namely, the Montevideo Declaration on the Law of the Sea (Declaration of Montevideo)[87] and the Declaration of the Latin American States on the Law of the Sea (Declaration of Lima).[88] However, limits were later specified in the Declaration of Santo Domingo.[89] The declaration asserted the right to a 12-mile territorial sea and a 200-mile patrimonial sea. Within the 200-mile patrimonial sea the traditional freedoms of navigation, overflight, and the laying of submarine cables and pipelines were maintained, with the coastal nations assuming jurisdiction over all marine resources, marine

83. Normative Legislative Decree No. 18225 of 14 April 1970, concerning the mining industry, art. 2 (Peru), *reprinted in* U.N. Doc. ST/LEG/SER.B/16, at 98 (1974).

84. General Fishing Law of 1971, Legislative Decree No. 18810 of March 1971 (Peru), *reprinted in* U.N. Doc. ST/LEG/SER.B/16, at 315-16 (1974).

85. Agreements between Chile, Ecuador and Peru, signed at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Santiago, 18 August 1952, Declaration on the Maritime Zone, U.N. Doc. ST/LEG/SER.B/6, at 723-24 (1957) and U.N. Doc. A/AC.135/10/Rev.1, at 11-12 (1968), *reprinted in* 1 NEW DIRECTIONS IN THE LAW OF THE SEA 231 (S. Lay, R. Churchill, & M. Nordquist eds. 1973) [hereinafter cited as 1 NEW DIRECTIONS]; *see* Loring, *supra* note 57, at 402-03; Martens, *supra* note 1, at 534-35.

86. Ecuadorian Civil Code of 20 August 1960, bk. II, tit. III, art. 633, *as amended* Decree No. 1542 of 10 November 1966, *reprinted in* U.N. Doc. ST/LEG/SER.B/15, at 78 (1970). For an analysis of Latin American claims after 1965, *see* Martens, *supra* note 1, at 538-41.

87. Montevideo Declaration on Law of the Sea, May 8, 1970, U.N. Doc. A/AC.138/34 (1970), *reprinted in* 9 INT'L LEGAL MATS. 1081 (1970) *and in* 1 NEW DIRECTIONS, *supra* note 85, at 106. Participants in the Declaration of Montevideo were Argentina, Brazil, Chile, Ecuador, El Salvador, Nicaragua, Panama, Peru, and Uruguay. *Id.*, Martens, *supra* note 1, at 539.

88. Declaration of the Latin American States on the Law of the Sea, U.N. Doc. A/AC. 138/28 (1970), *reprinted in* 10 INT'L LEGAL MATS. 107 (1971). The nine countries which agreed to the Declaration of Montevideo also agreed to the Declaration of Lima, and they were joined by Columbia, the Dominican Republic, Guatemala, Honduras, and Mexico. The landlocked countries of Bolivia and Paraguay objected to the Declaration of Lima as being unresponsive to the problems of landlocked countries, and Barbados, Jamaica, Trinidad and Tobago, and Venezuela objected to the criterion of reasonableness. Martens, *supra* note 1, at 539-40 nn.55 & 56.

89. Declaration of Santo Domingo, June 7, 1972, 27 U.N. GAOR, Supp. (No. 21) (A/8721) 70, U.N. Doc. A/AC. 138/80 (1972), *reprinted in* 11 INT'L LEGAL MATS. 892 (1972).

pollution, and scientific research.[90]

2. *Recent Claims and Policy Arguments.* Historically, unilateral claims have created problems for the fishing industry. One notable incident occurred in November, 1954, when Peru seized five whaling vessels and a subsequent fine of $3 million was paid by their owner, Aristotle Onassis.[91] Recently, the Ecuadorian Decree of December, 1974, was issued. It prohibits all foreign vessels of more than 600 tons from fishing within Ecuador's 200-mile zone and requires all fishing vessels under 600 tons to obtain an Ecuadorian fishing license.[92] On January 25, 1975, Ecuadorian warships seized four United States tuna boats. A few days later they seized one Spanish, two Canadian, and three more United States boats.[93] Considering the fact that UNCLOS III was debating the 200-mile issue at the time, these seizures were inexcusable.[94] Although United States fishing vessels can generally receive reimbursements for such losses under the Fishermen's Protective Act,[95] this unilateral action by Ecuador caused serious concern not only in the United States, but also among the other maritime powers. PEC was obviously trying to establish precedent for unilateral extensions in an attempt to realize profits from future concession agreements, joint ventures, and licenses for foreign fishermen.[96] In addition, PEC had political reasons for asserting this viewpoint:

> The governments of the smaller South American countries take pride in their resistance to mega-power incursions. This ethnocentric posture, of dubious transnational value, is nevertheless significant in its intransigence. It demands accommodation before any lasting access agreement can be reached.[97]

The specific legal arguments asserted by PEC began with the "bioma theory," an appeal for equity. The bioma theory was based on PEC's biological dependence upon the ecosystem supported by the Humboldt Current, which flows by the South American west

90. *Id.* Participants approving the Declaration of Santo Domingo were: Columbia, Costa Rica, the Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Trinidad and Tobago, and Venezuela. Participants abstaining were: Barbados, El Salvador, Guyana, Jamaica, and Panama. Martens, *supra* note 1, at 540-41, 540 n.64.

91. Martens, *supra* note 1, at 535; *see* Loring, *supra* note 57, at 403-04.

92. Fisher, *supra* note 58, at 643; *see 7 Tuna Vessels Fined $1.7 Million in Ecuador*, L.A. Times, Feb. 15, 1975, § 1, at 23, col. 1.

93. Fisher, *supra* note 58, at 643.

94. *See Preparations, supra* note 1, at 2, 8-23.

95. Fishermen's Protective Act of 1967, 22 U.S.C. § 1971 *et. seq.* (1977).

96. Fisher, *supra* note 58, at 646.

97. *Id.*

coast and is approximately 200 miles wide.[98] This west coast area, particularly Chile, is arid because the cold Humboldt Current prevents cloud formation.[99] The run-off from the Andes mountains causes a high erosion rate along this dry coast which fertilizes the adjacent sea, resulting in large amounts of anchoveta which support the seabirds that create the valuable guano deposits.[100] "Because the land is deprived by the sea current and erosion wash-off, and the marine life enriched, PEC argues that it has a right to compensation in the form of fishing resources within the 200-mile belt."[101] The nutrition and income of the people in this area allegedly depends upon the fish that are caught.[102] "The bioma theorists further claim that indiscriminate foreign fishing in the Humboldt will rupture the ecosystem,"[103] thus destroying the tuna, achoveta, and other marine resources.

The bioma theory was "a clever response to the Truman Proclamation of 1945."[104] The Truman Proclamation consisted of two proclamations and two companion executive orders; the first proclamation[105] and its companion executive order claimed[106] "the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, [and] subject to its jurisdiction and control."[107] The United States carefully limited its claim and preserved freedom of navigation in this area. The second proclamation,[108] and its companion executive order,[109] claimed the right to establish fishery conservation zones in the waters con-

98. *Id.* at 648.

99. *Id.; see* Loring, *supra* note 57, at 416-17.

100. Fisher, *supra* note 58, at 648; *see* Loring, *supra* note 57, at 416-17.

101. Fisher, *supra* note 58, at 648.

102. Martens, *supra* note 1, at 534.

103. Fisher, *supra* note 58, at 648.

104. *Id.* at 649; *see* Hollick, *U.S. Oceans Policy: The Truman Proclamations*, 17 VA. J. INT'L L. 23 (1976). *See also* STAFF OF SENATE COMM. ON COM., SCI., & TRANSP., 95TH CONG., 1ST SESS., CONGRESS & THE OCEANS: MARINE AFFAIRS IN THE 94TH CONGRESS 109 (Comm. Print 1977) [hereinafter cited as CONGRESS & THE OCEANS]. *See generally* Morris & Kindt, *The Law of the Sea: Domestic and International Considerations Arising from the Classification of Floating Nuclear Power Plants and Their Breakwaters as Artificial Islands*, 19 VA. J. INT'L L. 299, 305 (1979).

105. *Policy of the United States With Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf*, Pres. Proc. No. 2667, 3 C.F.R. 67 (1943-48 Compilation), *reprinted in* 1 NEW DIRECTIONS, *supra* note 85, at 106. When most writers mention the "Truman Proclamation," they are generally referring only to this first proclamation.

106. Exec. Order No. 9633, 3 C.F.R. 437 (1943-48 Compilation), *reprinted in* 1 NEW DIRECTIONS, *supra* note 85, at 108.

107. *Id.*

108. *Policy of the United States With Respect to Coastal Fisheries in Certain Areas of the*

tiguous to the United States.[110] The purpose of the Truman Proclamations was to preserve and protect the marine resources of the United States continental shelves. This "same rationale of conservation is, of course, applicable to the Humboldt Current."[111]

These arguments are not only misleading, but also invalid. The Truman Proclamations were unilateral actions of dubious international validity. They were more a statement of policy by the United States executive branch, implemented by "executive orders," not "federal statues," which ostensibly carry more authority in the international community. The thrust of the Truman Proclamations was also directed primarily at the subsoil and seabed of the continental shelves and not at the living resources.[112] They acted provisionally to fill a void in international law, and "although this unilateral action was not recognized internationally at . . . [the] time, the doctrine was subsequently ratified by the First Law of the Sea Conference [UNCLOS I] held in Geneva in 1958."[113]

One of the four 1958 conventions, the Convention on the Continental Shelf[114] (hereinafter referred to as Continental Shelf Convention), stated that a coastal nation "exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources."[115] Further, "natural resources . . . consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in

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High Seas, Pres. Proc. No. 2668, 3 C.F.R. 68 (1943-48 Compilation), *reprinted in* 1 NEW DIRECTIONS, *supra* note 85, at 95.

109. Exec. Order No. 9634, 3 C.F.R. 437 (1943-48 Compilation), *reprinted in* 1 NEW DIRECTIONS, *supra* note 85, at 97.

110. Hollick, *supra* note 104, at 23; *see* Krueger & Nordquist, *supra* note 42, at 324-26.

111. Fisher, *supra* note 58, at 649.

112. Exec. Order No. 9633, 3 C.F.R. 437 (1943-48 Compilation); *see* CONGRESS & THE OCEANS, *supra* note 104, at 109.

113. CONGRESS & THE OCEANS, *supra* note 104, at 109.

114. Convention on the Continental Shelf, *done* Apr. 29, 1958, [1964] 1 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 [hereinafter cited as Continental Shelf Convention]. The three other 1958 conventions are: Convention on Fishing and Conservation of the Living Resources of the High Seas, *done* Apr. 29, 1958, [1966] 1 U.S.T. 138, T.I.A.S. No. 5969, 599 U.N.T.S. 285 [hereinafter cited as Fishing Convention]; Convention on the High Seas, *done* Apr. 29, 1958, [1962] 2 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 [hereinafter cited as High Seas Convention]; Convention on the Territorial Sea and the Contiguous Zone, *done* Apr. 29, 1958, [1964] 2 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter cited as Territorial Sea Convention].

115. Continental Shelf Convention, *supra* note 114, at art. 2, para. 1.

constant physical contact with the seabed or the subsoil."[116] Under these provisons the PEC countries could validly claim jurisdiction not over living resources, but only over the nonliving resources and sedentary species of their relatively narrow continental shelves.

Furthermore, the 1958 Convention on the High Seas[117] (hereinafter referred to as High Seas Convention), states that no country may "validly purport to subject any part of . . . [the high seas] to its sovereignty,"[118] with the "freedom of fishing" being expressly retained.[119] The United States has consistently relied upon records of the 1960 Geneva Conference (UNCLOS II) and reports of the International Law Commission to support the position that the "high seas" are those waters beyond a 12-mile limit.[120] The United States-Canadian resolution seeking to establish a 6-mile territorial sea and a 12-mile fisheries limit, failed by one vote to achieve the two-thirds majority of the 88 countries attending UNCLOS II.[121] Although some authors would view this vote as an indication of strong opposition to the concept of a 12-mile limit,[122] the close vote indicates otherwise. Additionally, the ICNT/Rev.2, which constitutes the latest pronouncement on this subject, specifically states that the maximum territorial sea which can be claimed is 12 nautical miles.[123]

The Convention on Fishing and Conservation of the Living Resources of the High Seas[124] (hereinafter referred to as Fishing Convention) further states "[i]f the nationals of two or more States are engaged in fishing the same stock, . . . these States shall, at the request of either of them, enter into negotiations . . . ."[125] Other dispute settlement provisions may be found in article 4, paragraph 2, and in article 9.[126] During the tuna disputes these provisions were apparently ignored. Regardless of whether a nation has specifically acceded to any of the four 1958 Conventions, all nations

116. *Id.* art. 2, para. 4.

117. High Seas Convention, *supra* note 114.

118. *Id.* art. 2.

119. *Id.*

120. Fisher, *supra* note 58, at 647; *see* Loring, *supra* note 57, at 410-12; Martens, *supra* note 1, at 536-37.

121. Second U.N. Conference on the Law of the Sea, Annex, U.N. Doc. A/CONF.19/L.12 (1960); *see* Fisher, *supra* note 58, at 647; Loring, *supra* note 57, at 412; Martens, *supra* note 1, at 537.

122. Fisher, *supra* note 58, at 647.

123. ICNT/Rev.2, *supra* note 20, art. 3.

124. Fishing Convention, *supra* note 114.

125. *Id.* art. 4, para. 1.

126. *Id.* art. 9 and art. 4, para. 2.

are impliedly bound, as these conventions now constitute customary international law. One of the overriding considerations in these conventions is the prevention of unilateral extensions of jurisdiction.

Those countries opposing an extension of the territorial sea point to the fact that "[f]or over 300 years coastal States have exercised jurisdiction over only a narrow belt encircling their coasts; the entire area beyond has been considered the high seas, available for inclusive use by all nations, but not subject to appropriation by any nation."[127] The 1974 Fisheries Jurisdiction Case[128] decided by the International Court of Justice (ICJ) held in part that Iceland's claim of a 50-mile exclusive fishing zone violated international law.[129] Prior to this 1974 case, reliance was placed on the 1951 Anglo-Norwegian Fisheries Case,[130] which recognized the right of coastal nations "to make claims to an exclusive fishery jurisdiction beyond three miles";[131] however, claims had to be "moderate and reasonable."[132] Since only 18 countries claimed a territorial sea greater than 12 miles[133] in 1974, it is difficult to conceive of Ecuador's 200-mile territorial sea claim of 1966[134] as moderate and reasonable, since Ecuador was basically alone in the international community in asserting such a claim.[135] However, considering the current trends as evidenced in the ICNT/Rev.2 which provides for a 200-mile economic zone,[136] a 200-mile "economic zone" would now be considered moderate and reasonable. It is incorrect to refer to this 200-mile zone as an "exclusive economic zone," because the rights which are granted to coastal nations under the ICNT/Rev.2 are by no means "exclusive."[137]

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127. Krueger & Nordquist, *supra* note 42, at 321-22; *see* Fisher, *supra* note 58, at 647.

128. Fisheries Jurisdiction Case, [1974] I.C.J. 3, 175.

129. *Id.* The dispute between the United Kingdom and Iceland over the Icelandic fisheries had its beginnings in 1952, and in 1961 it was temporarily settled when the two countries agreed to submit future disputes to the ICJ. Exchange of Notes between the Governments of Iceland and of the United Kingdom, Mar. 11, 1961, 397 U.N.T.S. 275. For a brief history of the Icelandic fisheries disputes, *see* Martens, *supra* note 1, at 535-36.

130. Anglo-Norwegian Fisheries Case, [1951] I.C.J. 86, 116.

131. Fisher, *supra* note 58, at 649.

132. [1951] I.C.J. 86, at 142. *Contra*, Fisher, *supra* note 58, at 649.

133. Fisher, *supra* note 58, at 647.

134. Ecuadorian Civil Code of 20 August 1960, bk. II., tit. III, art. 633, *as amended* Decree No. 1542 of 10 November 1966, *reprinted in* U.N. Doc. ST/LEG/SER.B/15, at 78 (1970).

135. *See* Krueger & Nordquist, *supra* note 42, at 326-27.

136. ICNT/Rev.2, *supra* note 20, arts. 55-75. *See generally* Krueger & Nordquist, *supra* note 42, at 321-400.

137. *See, e.g.*, ICNT/Rev.2, *supra* note 20, art. 58.

During the tuna disputes PEC claimed that under the Charter of the Organization of American States[138] (OAS Charter), member countries, such as the United States, were obligated to respect PEC's (and particularly Ecuador's) fundamental rights.[139] The claim was that the 200-mile limit was necessary to defend Ecuador's "integrity and independence" under article 9 of the OAS Charter.[140] A secondary claim alleged that United States objections to the 200-mile limit "constituted interference" directed at an internal policy decision, thus violating the 1936 Inter-American Additional Protocol Relative to Non-Intervention.[141] An in-depth look at the substance of these claims reveals that they are specious, tainted with the South American resistance to anything associated with the developed countries.[142]

A final argument by PEC was founded in the doctrine of estoppel, the claim being that the United States and other countries which had made unilateral and multilateral claims were estopped to deny similar claims by PEC.[143] Reference was made to the 1939 Declaration of Panama[144] in which several American nations, including the United States, "created a 300-mile sovereign jurisdiction for purposes of economic survival."[145] Circumstances surrounding this declaration reveal, however, that the purpose of the declaration was self-defense;[146] it was not a unilateral declaration. The declaration was made at the beginning of World War II, and was reasonable in light of the existing global situation. These "common law" estoppel arguments asserted by the "civil law" countries comprising PEC are interesting, since PEC has consistently discounted other common law principles which have been used to support certain positions at UNCLOS III. Consistent with this line of reasoning, PEC is now estopped to deny these other common law principles. Thus, statements to the effect that "[o]n balance, the PEC arguments seem more cogent and more firmly rooted in substantive international law,"[147] are unfounded, and re-

138. *Signed* Apr. 30, 1948, [1951] 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3.
139. *See id.* art. 9.
140. *Id.*
141. Dec. 23, 1936, 51 Stat. 41, T.S. No. 923.
142. *See* notes 96-97 *supra* and accompanying text.
143. *See* Fisher, *supra* note 58, at 649-50; Loring, *supra* note 57, at 420-21.
144. 5 Foreign Rel. U.S. 36-57 (1939).
145. Fisher, *supra* note 58, at 650.
146. Loring, *supra* note 57, at 496-97.
147. Fisher, *supra* note 58, at 650. Statements mentioning a United States "law extending the United States' territorial sea to 200 miles" are not only misleading but also puz-

veal a lack of understanding of even the basic tenets of international law.[148] An in-depth analysis of each of PEC's arguments in the tuna disputes demonstrates that when those arguments were made substantive international law definitely refuted such claims to a 200-mile "territorial sea," "exclusive fishing zone," or "economic zone."

3. *The Fishery Conservation and Management Act of 1976: A Unilateral Disaster for the United States*

The enactment of the Fishery Conservation and Management Act of 1976 (FCMA)[149] by the United States, which unilaterally extended United States fisheries jurisdiction from 12 miles to 200 miles, appeared to be a major blow to the arguments against unilateralism. It soon became apparent however, that the FCMA could not be supported by international law and was an obvious treaty violation.[150] As enacted, the FCMA violated articles 2, 6, and 22 of the High Seas Convention.[151] Article 2 was violated when the traditional freedom of fishing[152] was abridged and the high seas subjected to national sovereignty.[153] Similarly, article 6

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zling. *See id.* It is almost inconceivable that the United States would declare a 200-mile territorial sea.

148. For a brief analysis of the McDougal/Lasswell approach to international law as applied to marine pollution and conservation issues, *see* Kindt, *Prolegomenon to Marine Pollution and the Law of the Sea: An Overview of the Pollution Problem*, 11 ENVT'L L. 67 (1980).

149. 16 U.S.C. § 1801 *et seq.* (1977) [hereinafter cited as FCMA]; *see* Christy, *The Fishery Conservation And Management Act Of 1976: Management Objectives And The Distribution Of Benefits And Costs*, 52 WASH. L. REV. 657 (1977); U.S. Department of State, *Fishery Conservation Management Act*, 78 DEP'T STATE BULL. 39-40 (Aug. 1978).

150. Moore, *Foreign Policy and Fidelity to Law: The Anatomy of a Treaty Violation*, 70 AM. J. INT'L L. 802 (1976) [hereinafter cited as Moore]; Statement by Deputy Secretary Kenneth Rush, before the Senate Committee on Commerce (May 3, 1974), *reprinted in Department Opposes Unilateral Extension of U.S. Fisheries Jurisdiction*, 70 DEP'T STATE BULL. 555, 556-58 (Apr.-June 1974) [hereinafter cited as Rush Statement]; Statement by Under Secretary for Security Assistance Carlyle E. Maw, Special Representative for the President for the Third U.N. Concerence on the Law of the Sea [hereinafter cited as Maw Statement], and Statement by John Norton Moore, Chairman of the National Security Council Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Third U.N. Conference on the Law of the Sea [hereinafter cited as Moore Statement], and Statement by Thomas A. Clingan, Deputy Assistant Secretary for Oceans and Fisheries Affairs [hereinafter cited as Clingan Statement] (Sept. 24, 1975), *reprinted in Department Opposes Unilateral Establishment of 200-Mile U.S. Fisheries Zone*, 73 DEP'T STATE BULL. 623, 624-27 (Oct.-Dec. 1975).

151. Moore, *supra* note 150, at 805; High Seas Convention, *supra* note 114, arts. 2, 6, 22.

152. High Seas Convention, *supra* note 114, art. 2; *see* Rush Statement, *supra* note 150, at 557.

153. High Seas Convention, *supra* note 114, art. 2; *see* notes 119-23 *supra* and accompanying text.

of the High Seas Convention is violated since a ship "shall be subject to its [the registering country's] exclusive jurisdiction on the high seas."[154] Pursuant to article 22, a warship may board another ship on the high seas only if it is suspected of conducting piracy, engaging in the slave trade, or being the same nationality as the warship (but refusing to fly its flag).[155] As these pronouncements constitute customary international law,[156] these arguments would apply *a fortiori* to Ecuador's 200-mile claim of a territorial sea (and similar claims) since the traditional jurisdictional rights and powers associated with territorial seas are much more exclusive and onerous than just a claim of fisheries jurisdiction.

The FCMA also violates articles 1, 7, and 9-12 of the Fishing Convention.[157] Article 1, paragraph 1, specifically enumerates the right of different nationals "to engage in fishing on the high seas,"[158] and paragraph 2 imposes a duty upon countries "to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas."[159] Without cooperating with other countries, and absent multilateral or bilateral agreements, the United States can not restrict the fishermen of other countries. Prior to the enactment of the FCMA, the United States interim fisheries policy regarding pressure on domestic fish stocks had focused on "negotiating yearly bilateral agreements (with the Soviets, Japanese, Koreans, and others) and limited multilateral agreements (within the International Commission for Northwest Atlantic Fisheries, the International North Pacific Fisheries Commission, and other commissions) to alleviate the pressure until a comprehensive law of the sea treaty could be concluded."[160]

While the FCMA may have alleviated pressure on United States fish stocks,[161] the 200-mile limit created jurisdictional pressures. The traditional cooperation between Canada and the United States was blemished when Canada decided to abrogate the provi-

154. High Seas Convention, *supra* note 114, art. 6, para. 1.

155. *Id.* art. 22, para. 1. "If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained." *Id.* art. 22, para. 3. As a part of customary international law, this principle would apply to Ecuador's seizure of the tuna ships mentioned earlier, even though Ecuador was not a member per se of the High Seas Convention.

156. *See* Moore, *supra* note 150, at 804.

157. *Id.* at 805; Fishing Convention, *supra* note 114, arts. 1, 7, 9-12.

158. Fishing Convention, *supra* note 114, art. 1, para. 1.

159. *Id.* art. 1, para. 2.

160. Moore, *supra* note 150, at 803; *see* Maw Statement, *supra* note 150, at 623.

161. *See* Christy, *supra* note 149, at 658-64.

sional effect of the 1978 interim fisheries agreement, which provided for reciprocal fishing in United States and Canadian 200-mile fisheries zones.[162] This dispute arose because the FCMA constitutes an invalid interim extension of jurisdiction, replacing the valid interim bilateral and multilateral agreements formerly in effect. The United States Department of State cited this problem as an illustration of "the weakness of interim reciprocal fisheries agreements as compared with a long-term arrangement."[163] This statement is misleading, however, since the original interim agreements governing United States fisheries were functioning relatively well until enactment of the FCMA. Even so, the statement lends tangential support to the proposition that an overall law of the sea treaty would be beneficial.

Article 7 of the Fishing Convention "contemplates unilateral coastal state conservation measures for protection of threatened coastal stocks provided certain specified criteria, such as nondiscrimination against foreign fisherman, a prior six-month effort to find a negotiated solution, and submission of disputed actions to impartial arbitration are met."[164] While the Soviet Union, Japan, and other fishing nations are not parties to the Fishing Convention, "the prevailing legal opinion is that article 7 reflects customary international law and that the United States could lawfully apply these measures against nonparties."[165] In fact, the Soviet Union, Japan, and the United Kingdom indicated that they were receptive to the article 7 approach, as opposed to the FCMA's unilateral extensions, and this approach received substantial support in the United States Senate as an alternative to the FCMA.[166] Articles 9 to 12 of the Fishing Convention, which specify the dispute settlement mechanisms supporting article 7, are also ignored by the FCMA.[167]

Finally, the FCMA violated "a number of fishery bilateral and limited multilateral agreements though most of these . . . [were] relatively short-term . . . ."[168] In those areas in which there were no express agreements, negotiations were pending, and the Japa-

162. U.S. Department of State, *Oceans: U.S.-Canada Interim Reciprocal Fisheries Agreement*, 78 DEP'T STATE BULL. 38, 38 (Aug. 1978).

163. *Id.*

164. Moore, *supra* note 150, at 804; *see* Fishing Convention, *supra* note 114, art. 7, paras. 1-4.

165. Moore, *supra* note 150, at 804.

166. *Id.* at 804-05.

167. Fishing Convention, *supra* note 114, arts. 9-12.

168. Moore, *supra* note 150, at 805.

nese, for example, had made significant concessions on halibut.[169] When the FCMA was passed there were at least 11 bilateral fisheries agreements subject to renegotiation as well as regular meetings of six multilateral fisheries commissions.[170] The goal of the United States Department of State at that time was "to establish through phased negotiations, rather than by unilateral action, the functional equivalent of a 200-mile fisheries zone."[171] The FCMA, in apparent disregard of these facts, constituted a unilateral extension of fisheries jurisdiction which terminated United States responsibility under several multilateral agreements and other interim fisheries agreements. A violation of the international legal principle of *pacta sunt servanda*[172] occurred not just once, but several times.

The FCMA constituted a type of interim fisheries extension, which replaced a series of valid interim agreements that were functioning relatively well.[173] "The Office of the Law of the Sea of the Department of State estimated during late 1975 that as a result of recent breakthroughs in fishery agreements only nine stocks out of more than 100 off . . . [the United States] coasts were below maximum sustainable yield and continuing to decline as a result of foreign fishing."[174] Even though some stocks such as haddock had a zero quota, the FCMA was unnecessary as "there were other approaches which in combination with the fishery negotiations could have dramatically improved protection of coastal fish stocks without violating the legal obligations of the United States or severely impairing overall United States ocean interests."[175] Negotiating new agreements or modifying the existing fisheries agreements was a viable alternative to the FCMA in 1976. These actions should have been taken in conjunction with the provisions of the High Seas Convention[176] and the Fishing Convention,[177] but passage of the FCMA foreclosed the possibility of taking "legal" approaches to the problem.

From a foreign policy standpoint, the FCMA was particularly

169. Rush Statement, *supra* note 150, at 555.
170. Clingan Statement, *supra* note 150, at 627.
171. *Id.*
172. *Pacta sunt servanda* means "agreements (of the parties) are to be observed." BLACK'S LAW DICTIONARY (5th ed. 1979).
173. Rush Statement, *supra* note 150, at 555-58.
174. Moore, *supra* note 150, at 803; *see* Rush Statement, *supra* note 150, at 555.
175. Moore, *supra* note 150, at 803.
176. *See* notes 151-56 *supra* and accompanying text.
177. *See* notes 157-67 *supra* and accompanying text.

damaging to the United States. Before passage there was little doubt that "[t]he unilateral extension of jurisdiction required by the bill would have serious foreign policy implications which could create political tensions internationally."[178] In 1974 Deputy Secretary Kenneth Rush testified before the Senate Committee on Commerce that a potential FCMA "could seriously prejudice the achievement of satisfactory resolutions of the fisheries and other issues at the Law of the Sea Conference; it would be harmful, on a long-term basis, to all United States fishing interests; and, it would be a violation of international law."[179] After enactment of the FCMA it was again predicted that it would have a negative impact on the foreign policy of the United States.

> [T]he bill would undercut the cardinal tenet of United States oceans policy: no illegal unilateral oceans claims. As the largest user of the world's oceans the United States has the most to lose by a pattern of unrestrained national extensions. If we can make such claims over others' oceans interests others can make their own claims over ours. This is not merely an imaginary horrible. In only three months following passage of the 200-mile bill, Canada, France, Guatemala, Japan, Spain, India, Sri Lanka, Mexico, Senegal, and other nations have announced or have begun planning new unilateral oceans claims. The claim by Senegal to a 150-mile territorial sea, among other claims, has been specifically justified by reference to the United States action; . . . .[180]

History has demonstrated that this prediction was essentially correct, and subsequent analysis has revealed its remarkable accuracy with regard to the specific countries mentioned:

a. in 1977 Canada claimed a 200-mile fisheries zone[181] as part of a 200-mile economic resources zone;[182]
b. in 1976 France claimed a 200-mile economic zone;[183]
c. in 1976 Guatemala claimed a 200-mile economic zone;[184]

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178. Rush Statement, *supra* note 150, at 556.

179. *Id.*

180. Moore, *supra* note 150, at 805.

181. In January of 1977, Canada issued an order under the Territorial Sea and Fishing Zone Act of 1964 (as amended in 1970) which delimited 200-mile fishing zones on the Atlantic and Pacific coasts. Fishing Zones of Canada (Zones 4 and 6) Order, 110 Can. Gaz., Extra No. 101 (Nov. 1, 1976), *as authorized by* Territorial Sea and Fishing Zone Act of 1964, CAN. REV. STAT. c. T-7 (1970), *as amended* CAN. REV. STAT. c. 45 (1st Supp. 1970). A similar 200-mile zone was established in the Arctic in March of 1977. Fishing Zones of Canada (Zone 6) Order (Mar. 1, 1977).

182. Krueger & Nordquist, *supra* note 42, at 357.

183. *See id.* at 394.

184. Legislative Decree No. 20-76 of 9 June 1976 Concerning the Breadth of the Territorial Sea and the Establishment of an Exclusive Economic Zone, art. 3 (Guatemala), *reprinted*

d. in 1977 Japan declared a 200-mile fishery zone;[185]
e. in 1978 Spain claimed a 200-mile economic zone;[186]
f. in 1976 India asserted a 200-mile economic zone[187] to coincide with a 12-mile territorial sea, a 24-mile contiguous zone, and a 24-mile fisheries zone;[188]
g. in 1976 and January of 1977 Sri Lanka asserted a 200-mile economic zone,[189] a 12-mile territorial sea, a 24-mile contiguous zone, and a 200-mile pollution zone;[190]
h. in 1976 Mexico established a 200-mile economic zone;[191] and
i. in 1976 Senegal claimed a 150-mile territorial sea and a 200-mile economic zone.[192]

Prior to the FCMA there were only about a dozen 200-mile claims and none of these claims was by a current maritime power. In 1975 there were only three new 200-mile claims. Then on April 13, 1976 President Ford signed the bill enacting the FCMA.[193] This event served as the catalyst which triggered major unilateral claims by other countries, and by the end of 1976 another nineteen countries had asserted 200-mile jurisdictional extensions.[194] In 1977 an additional thirty-six countries asserted 200-mile claims and in 1978, ten more countries extended jurisdiction to 200-miles.[195] It would be erroneous to contend that these 200-mile extensions would have occurred anyway and that the FCMA merely anticipated a trend toward 200-mile claims. The paucity of 200-mile

in U.N. Doc. ST/LEG/SER.B/19, at 64 (prelim. issue 1978); *see* Krueger & Nordquist, *supra* note 42, at 395.

185. Enforcement Order of June 17, 1977 of Law No. 31 of May 2, 1977 on Provisional Measures Relating to the Fishing Zone (Japan), *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 235 (prelim. issue 1978); *see* Krueger & Nordquist, *supra* note 42, at 392.

186. *See* Krueger & Nordquist, *supra* note 42, at 394.

187. The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act (Act No. 80 of 1976), § 7, vol. 63, pt. 755, All India Reporter [A.I.R.] 270-71 (1976), *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 81 (prelim. issue 1978).

188. *Id.; see* Krueger & Nordquist, *supra* note 42, at 397.

189. Proclamation by the President of the Republic of Sri Lanka of 15 January 1977 in Pursuance of Maritime Zones Law No. 22 of 1976, *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 130-35 (prelim. issue 1978); *see* Krueger & Nordquist, *supra* note 42, at 393.

190. *See* Krueger & Nordquist, *supra* note 42, at 393, 399 n.24.

191. Decree of 26 January 1976 Adding a New Paragraph 8 to Article 27 of the Constitution of the United Mexican States (entered into force June 5, 1976), *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 244 (prelim. issue 1978); *see* Krueger & Nordquist, *supra* note 42, at 395.

192. *See* Krueger & Nordquist, *supra* note 42, at 391.

193. *See* Statement of the President Upon Signing the 200-Mile Fishing Legislation, 12 WEEKLY COMP. OF PRESS. DOC. 644 (Apr. 13, 1976).

194. *See* Table II *infra*.

195. *Id.*

claims made before April of 1976, and the degree and frequency of claims made after April of 1976, demonstrate that the FCMA was the major cause of approximately 65 unilateral extensions of jurisdiction—most of which were more comprehensive and onerous than those extensions asserted via the FCMA.[196] An analysis of trends and conditioning factors before 1976 affirms this conclusion.[197] Regrettably, the United States Congress did not accept the following analysis of the Department of State.

> The United States has consistently opposed unilateral claims by other countries. Moreover, because we view a proliferation of unilateral claims at this time as being seriously detrimental to a successful Law of the Sea Conference, we have urged other nations to hold back on unilateral claims. Indeed, we have even indicated to nations with interim problems that we will be glad to help them resolve these problems on a bilateral or multilateral basis.
>
> For the United States to extend its fisheries jurisdiction unilaterally at this time would seriously impair our credibility internationally. It would also weaken the hand of our negotiations and reduce our ability to negotiate a law of the sea treaty which meets our objectives.[198]

The FCMA also undermined the Law of the Sea (LOS) negotiations in a number of subtle ways.[199] The fear that the United States would enact a bill like the FCMA was a major bargaining lever which the United States used to support its position of maintaining a maximum amount of "freedom of navigation." In addition, the 200-mile fisheries claims by PEC were discounted because of the traditional refusal of the United States to enact a bill like the FCMA. Conversely, the PEC claims obtained a semblance of legitimacy only after the enactment of the FCMA and the concomitant unilateral extensions made by other countries. United States leadership in this area was not only diminished, but the policies of those nations opposing unilateral extensions of jurisdiction were undermined.[200] Although the United States "endorsement of the 200-mile limit . . . [was] unlikely to and has not resulted in the collapse of the negotiations,"[201] the result was that the United States was "rob-

196. *See* Tables II-VII *infra*.

197. *See* Martens, *supra* note 1, at 531.

198. Rush Statement, *supra* note 150, at 556-57; *see* Maw Statement, *supra* note 150, at 623.

199. Moore, *supra* note 150, at 805; Moore Statement, *supra* note 150, at 625-26.

200. *See* Martens, *supra* note 1, at 531-51.

201. Moore, *supra* note 150, at 805.

bing Peter to pay PEC."[202] Passage of the FCMA therefore enhanced the PEC claims, while undercutting the most promising negotiations in the 20-year history of the tuna disputes.[203]

It was also predicted that the FCMA could "increase the potential for conflict around the world,"[204] that it "could lead to a risky confrontation with the Soviet Union, Japan, or other nations"[205] fishing off United States coasts, and that the "potential for international incidents, particularly with such nations as Japan and the Soviet Union, would be grave."[206] This prediction came true when two Soviet vessels fishing within 200-miles of the United States coast were arrested by the United States Coast Guard, forced into Boston harbor, and charged with violating the FCMA.[207] Although the Soviet Union did not retaliate with severe measures, they did subsequently establish their own 200-mile fishery zone.[208]

Even without confrontation, it was hypothesized that the FCMA would significantly harm United States relations with nations fishing within the jurisdiction of the FCMA. Japan, with its reliance on fishing, was particularly incensed at the unilateral FCMA.[209] Japanese Prime Minister Miki protested passage of the FCMA directly to President Ford.[210] Shortly thereafter, in 1977, Japan provisionally established a 200-mile fishing zone,[211] which came into force 2 months later.[212]

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202. *See* notes 98-148 *supra* and accompanying text.

203. Moore, *supra* note 150, at 806; *see* Moore Statement, *supra* note 150, at 625.

204. Maw Statement, *supra* note 150, at 624.

205. Moore, *supra* note 150, at 806; *see* Moore Statement, *supra* note 150, at 625; Rush Statement, *supra* note 150, at 555-56.

206. Rush Statement, *supra* note 150, at 556.

207. *See A Little Stink About a Lot of Fish*, TIME, Apr. 25, 1977, at 42, 47.

208. *See* Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of December 10, 1976 on Provisional Measures to Conserve Living Resources and Regulate Fishing in the Sea Areas Adjacent to the Coast of the U.S.S.R., *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 264 (prelim. issue 1978); Decision No. 163 of the Council of Ministers of the U.S.S.R. of February 24, 1977 on the Introduction of Provisional Measures to Protect the Living Resources and Regulate Fishing in the Areas of the Pacific and Arctic Oceans adjacent to the Coastline of the U.S.S.R., *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 266 (prelim. issue 1978); Regulations on the Protection of Fishery and Other Living Resources in the Coastal Waters of the U.S.S.R. (1977), *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 266 (prelim. issue 1978); Decision of the Presidium of the Supreme Soviet of the U.S.S.R. of March 22, 1977 on the System for the Application of Article 7 of the Presidium Decree of December 10, 1976, *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 270 (prelim. issue 1978).

209. Moore, *supra* note 150, at 806.

210. *Id.*

211. Law No. 31 of May 2, 1977 on Provisional Measures Relating to the Fishery Zone (Japan), *as amended* Law No. 83 of Nov. 29, 1977, art. 3(3), *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 277 (prelim. issue 1978).

212. Enforcement Order of June 17, 1977 of Law No. 31 of May 2, 1977 on Provisional

Subsequent to these events, the United States utilized a provision of the FCMA to negotiate several bilateral "Agreements Concerning Fisheries off the Coasts of the United States," which are popularly referred to as "Governing International Fishery Agreements" (GIFAs). To the extent that other countries are parties to GIFAs, the FCMA is valid under international law. Even so, the trend of other countries to extend unilaterally their jurisdictions was not noticeably obviated by GIFAs.

It was further postulated that the FCMA "would undermine United States efforts to obtain binding international conservation standards and other reasonable restraints on coastal nations. . . ."[213] In 1974 it was predicted that "unilateral action in this area by the United States could trigger damaging unilateral claims by other nations, thereby affecting United States national interests in navigation and overflight, *protection of the marine evironment*, and marine scientific research."[214] Secretary of State Kissinger, who did little to prevent passage of the FCMA,[215] conceded that the FCMA was a "unilateral extension" by the United States that "would lead to a set of unilateral moves by other countries."[216] The 200-mile unilateral claims now asserted by approximately 81 countries[217] effectively destroy the traditional concept of "freedom of navigation," and seriously harm the United States "opportunity to achieve international agreement accommodating vital security interests, strategic mobility on the oceans, and freedom of navigation for the movement of commercial cargoes, such as oil. . . ."[218] If the United States and other countries do not adopt the more moderate 200-mile provisions embodied in the ICNT/Rev.2, then the major maritime powers are necessarily going to be driven into conflict with those countries asserting restrictive 200-mile extensions, such as 200-mile territorial seas. This problem

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Measures Relating to the Fishery Zone (Japan), *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 235 (prelim. issue 1978).

213. Moore, *supra* note 150, at 806.

214. Rush Statement, *supra* note 150, at 557 (emphasis added).

215. Moore, *supra* note 150, at 806; *see* News Conference of Secretary of State Henry Kissinger, at Elmendorf Air Force Base; in Anchorage, Alaska (Oct. 18, 1975), *reprinted in Secretary Kissinger's News Conference at Anchorage, Alaska, October 18*, 73 DEP'T STATE BULL. 686, 687 (Oct.-Dec. 1975) [hereinafter cited as *News Conference*].

216. Remarks by Secretary of State Henry Kissinger, following a meeting with U.N. Secretary General Kurt Waldheim, at U.N. Headquarters in New York City (Sept. 2, 1976), *reprinted in Secretary Kissinger Meets with U.N. Secretary General Waldheim*, 75 DEP'T STATE BULL. 399, 401 (July-Sept. 1975); *see News Conference, supra* note 215, at 686-87.

217. *See* Table II *infra*.

218. Moore Statement, *supra* note 150, at 626.

will be exacerbated over time if greater numbers of countries claim restrictive 200-mile extensions as part of "an uncontrollable pattern of inconsistent claims."[219] The FCMA may have forced the United States into accepting a potential LOS treaty for the "freedom of navigation" provisions which are vital to United States national security interests. This may occur regardless of the other potential treaty provisions, such as unfavorable provisions involving deep seabed mining.[220] If the ICNT/Rev.2 provisions reached consensus as they now stand, and if Congress was forced to accept or reject the LOS treaty at this juncture, there is little doubt that the FCMA would have increased the pressure on the United States to accept unfavorable provisions and ratify the overall LOS treaty. In any event, the FCMA has limited the options available to the United States and has restricted the flexibility which the United States needs in the LOS negotiations. As such, the FCMA "may also prove the greatest mistake in the history of United States oceans policy."[221]

TABLE II

NUMBER OF 200-MILES CLAIMS BY YEARS

Year	Number of Claims/Year	Accumulated Claims
Prior to 1970	7	7
1970	2	9
1971	1	10
1972	1	11
1973	0	11
1974	2	13
1975	3	16
1976	20	36
1977	36	72
1978	10	82

219. Maw Statement, *supra* note 150, at 624.

220. *See* Moore, *In Search of Common Nodules at UNCLOS III*, 18 VA. J. INT'L L. 1 (1977); Moore, *Salvaging UNCLOS III from the Rocks of the Deep Seabed*, 17 VA. J. INT'L L. 1 (1976). For an in-depth compromise to the current deadlock over deep seabed mining issues, *see* J. MOORE, R. WOLFRUM, P. STOPFORD, & J. STENDER, DEEP SEABED MINING IN THE LAW OF THE SEA NEGOTIATION (II): TOWARD A BALANCED DEVELOPMENT SYSTEM 2-280 (Center for Oceans Law & Pol'y, Mar. 1978). *See also* Martens, *supra* note 1, at 545-47.

221. Moore, *supra* note 150, at 802.

TABLE III

EXCESSIVE JURISDICTIONAL CLAIMS AS OF 1975

Country	Date	Territorial/Contiguous Sea	Territorial/Contiguous Zone	Fishery Zone	Economic Zone
Africa					
Angola	1975	20		200	
Cameroon	1974	50			
Gabon	1972	100		150	
Gambia	1971	50			
Guinea	1965	200			
Guinea-Bissau	1974	150			
Malagasy Rep.	1973	50			150
Mauritania	1972	70		36	
Morocco	1973	12		70	
Sierra Leone	1971	200			
Somalia	1972	200			
Tanzania	1973	50			
East Asia & Pacific					
Bangladesh	1974	12	6		200
Philippines	1961	Rectang. Claim	Poly.		
Europe					
Iceland	1975	4		200	
Italy	1974	12		200	
Netherlands	1889	3		200	
Latin America					
Brazil	1970	200		200	
Chile	1947	3		200	
Columbia	1975				200
Ecuador	1970	200			
Nicaragua	1965	3		200	
Panama	1967	200			
Peru	1947	200			
Uruguay	1969	200			
North America & Caribbean					
Southern Asia & the Middle East					
Iran (plus may establish 100-mile conservation zone)	1959	12		50	

Note: None of these pre-1976 claims was by a current maritime power.

Sources: Krueger & Nordquist, *supra* note 42, at 373, 390-99; *see* Fisher, *supra* note 58, at 667.

TABLE IV

EXCESSIVE JURISDICTIONAL CLAIMS MADE IN 1976

Country	Territorial/Contiguous Sea Zone	Fishery Zone	Economic Zone
Africa			
Benin	200		
Comoro Isl.	12		200
Mozambique	6		200
Senegal	150		200
East Asia & Pacific			
Fiji	12		212
Northern Marianas	12	200	
Sri Lanka (plus 200-mile pollution zone)	12 / 24		200
Europe			
Denmark	3	200	
France	12		200
Ireland	3	200	
Norway	4		200
United Kingdom	12	200	
U.S.S.R.	12	200	
Ukranian S.S.R.	12	200	
Latin America			
El Salvador	200		
Guatemala	12		200
Mexico	12		200
North America & Caribbean			
United States of America	3	200	
Southern Asia & the Middle East			
India	12 / 24	24	200
Maldive Islands	Rectang. Poly. Claim	100-150	
Pakistan	12 / 24		200

Sources: Krueger & Nordquist, *supra* note 42, at 373, 390-99; *see* Fisher, *supra* note 58, at 667.

TABLE V

EXCESSIVE JURISDICTIONAL CLAIMS MADE IN 1977

Country	Territorial/Contiguous Sea Zone	Fishery Zone	Economic Zone
Africa			
Cape Verde	100		200
Congo	200		
Ghana	200		
Ivory Coast	12		200
Liberia	200		
Mauritius	12		200
South Africa	6	200	
Togo	12		200
East Asia & Pacific			
Burma	12 / 24		200
Cook Islands	12		200
Democratic Kampuchea	12		200
Japan	12	200	
Korea, Democratic Rep. of	12		200
Korea, Republic of	12	200	
Micronesia	3	200	
New Zealand	12		200
Papua New Guinea	12	200	
Solomon Isl.		200	
Tokelau (N.Z.)	12		200
Vietnam	12		200
Europe			
Belgium	3	200	
Germany, Democratic Rep.	3	200	
Germany, Federal Rep.	3	200	
Poland	12	200	
Portugal	12		200
Latin America			
Argentina	200		
Costa Rica	12		200
Guyana	12	200	
North America & Caribbean			
Bahamas	12	200	
Bermuda (U.K.)		200	
Canada (plus 100-mile Arctic pollution zone)	12	200	
Cuba	12		200
Dominican Rep.	12 / 24		200
Haiti	12		200

TABLE V (con't.)

Country	Territorial/Contiguous Sea	Zone	Fishery Zone	Economic Zone
Southern Asia & the Middle East				
Oman	12			200
Yemen (Aden)	12	/ 24		200

Sources Krueger & Nordquist, *supra* note 42, at 373, 390-99; *see* Fisher, *supra* note 58, at 667.

TABLE VI

EXCESSIVE JURISDICTIONAL CLAIMS MADE IN 1978

Country	Territorial/Contiguous Sea	Zone	Fishery Zone	Economic Zone
Africa				
Seychelles Isl.	12			200
East Asia & Pacific				
Australia	3		200	
Gilbert Isl.	3		200	
Tuvalu			200	
Europe				
Spain	12			200
Latin America				
Surinam	12			200
Venezuela	12			200
North America & Caribbean				
Barbados	12			200
Cayman Isl. (U.K.)			200	
Grenada	12		200	
Southern Asia & the Middle East				

Sources: Krueger & Nordquist, *supra* note 42, at 373, 390-99; *see* Fisher, *supra* note 58, at 667.

TABLE VII

MODERATE JURISDICTIONAL CLAIMS AS OF 1978

Country	Date	Territorial/Contiguous Sea	Territorial/Contiguous Zone	Fishery Zone
Africa				
Ethiopia	1953	12		
Kenya	1969	12		
Libya	1959	12		
São Tomé e Prin.		6		12
Sudan	1970	12		
Tunisia	1973	12		
Zaire	1977	12		
East Asia & Pacific				
China, Peoples Rep. of	1958	12		
China, Rep. of	1930	3		
Indonesia	1960	12		
Malaysia	1969	12		
Nauru	1972	12		
Niue (N.Z.)				
Singapore	1878	3		
Thailand	1966	12		
Tonga	1887	12		
Western Samoa	1977	12		
Europe				
Albania	1970	15		15
Bulgaria	1970	12		
Finland	1920	4		
Greece	1936	6		
Malta	1975	6		12
Monaco	1973	12		
Romania	1951	12		
Sweden	1779	4		12
Yugoslavia	1965	12		
Latin America				
Honduras	1965	12		
North America & Caribbean				
Jamaica	1971	12		
Trinidad & Tobago	1969	12		
Southern Asia & the Middle East				
Algeria	1963	12		
Bahrain		3		
Cyprus	1964	12		
Egypt	1958	12		
Iraq	1958	12		
Israel	1956	6		
Jordan	1943	3		
Kuwait	1967	12		
Lebanon				
Libya	1959	12		
Qatar		3		

TABLE VII (con't.)

Country	Date	Territorial/Contiguous Sea	Territorial/Contiguous Zone	Fishery Zone
Saudi Arabia	1958	12		
Syria	1963	12		
Turkey	1964	6		12
United Arab Emirates		3		

Sources: Krueger & Nordquist, *supra* note 42, at 373, 390-99; *see* Fisher, *supra* note 58, at 667.

TABLE VIII

AREAS APPROPRIATED BY THE PROPOSED 200-MILE ECONOMIC ZONE

Country*	Approximate Area Appropriated (in square nautical miles)
United States	2,222,000
Australia	2,043,300
Indonesia	1,577,300
New Zealand	1,409,500
Canada	1,370,000
Soviet Union	1,309,500
Japan	1,126,000
Brazil	924,000
Mexico	831,500
Chile	667,300
Norway	590,500
India	587,000
Philippines	551,400
Portugal	517,400
Madagascar	376,800
Total	16,103,500

*These countries are listed in decreasing order by the size of the appropriated area.

Source: Alexander & Hodgson, *supra* note 36, at 574-75.

Note: Regardless of their justifications, huge areas of the sea are appropriated by these claims.

B. Claims Involving Unilateral Extensions of Jurisdiction over Marine Pollution

1. *Trends in Decision.* Marine pollution claims traditionally involve oil and radioactive elements. "The two principal possibilities of significant oceanic pollution . . . [were] from the discharge of oil from ships and from the deposit of radioactive materials through weapons tests and waste disposal."[222] Since the concern over oil pollution[223] preceded the concern over nuclear pollution[224] by approximately twenty-five years, the focus of the present analysis will be on oil pollution.

International concern over oil pollution "appears to have originated in the decade after World War I when first the United States, and then the League of Nations undertook to foster agreement upon measures to combat pollution."[225] In 1926 an international conference dealing with "oil discharge" (the old term for vessel-source pollution) was held in Washington, but the agreement drafted at the conference was never ratified and interest waned until after World War II.[226] "After the United Nations was established in 1945,[227] it appeared that the subject of pollution of the seas would be dealt with by the proposed Intergovernmental Maritime Consultative Organization (IMCO)";[228] however, thirteen years elapsed before IMCO was established in 1958.[229] The first concrete achievement occurred in 1954 when the London conference on oil pollution produced the Convention for the Prevention

222. PUBLIC ORDER, *supra* note 6, at 848; *see* D. BOWETT, THE LAW OF THE SEA 45-50 (1967).

223. PUBLIC ORDER, *supra* note 6, at 848-51.

224. *Id.* at 852-67.

225. *Id.* at 849; Comment, *International Law And Canadian Arctic Pollution Control*, 38 ALB. L. REV. 921, 924 (1974) [hereinafter cited as *Pollution Control*]; *see* Draft Convention, League of Nations, Communications and Transit Organization, Pollution of the Sea by Oil, Report on the Second Session of the Committee of Experts 8 (L.N. Doc. No. e.499.M.235.1935.VIII); League of Nations, Communications and Transit Organization, Pollution of the Sea by Oil (L.N. Doc. No. A.20.1935.VIII); Gold, *Pollution of the Sea and International Law: A Canadian Perspective*, 3 J. MARITIME L. & COM. 13, 18 (1971). *See also Final Report of the Preliminary Conference on Oil Pollution of Navigable Waters*, in 1 FOR. REL. U.S. 1926, 238 (1941).

226. Gold, *supra* note 225, at 18; *Pollution Control, supra* note 225, at 924; *see* PUBLIC ORDER, *supra* note 6, at 850.

227. *See* The Charter of the United Nations and Statute of the International Court of Justice, 59 Stat. 1031 (1945), T.S. No. 933 (effective Oct. 24, 1945).

228. *Pollution Control, supra* note 225, at 924; *see* Convention on the Intergovernmental Maritime Consultative Organization, *signed* Mar. 6, 1948, [1958] 1 U.S.T. 621, T.I.A.S. 4044, 289 U.N.T.S. 48; Gold, *supra* note 225, at 19.

229. *Pollution Control, supra* note 225, at 924.

of the Pollution of the Sea by Oil (hereinafter referred to as London Convention).[230] The major shortcoming of the London Convention was that all enforcement was left to the country in which the vessel was registered, not to the country aggrieved. This provision encouraged vessels to sail under "flags of convenience," that is, to register either in those countries not bound by the London Convention or in countries which place few restrictions on their vessels.[231]

The Geneva Conventions[232] of 1958 established some needed policy-oriented principles in the area of marine pollution. Article 24, paragraph 1, of the Convention on the Territorial Sea and the Contiguous Zone[233] (hereinafter referred to as Territorial Sea Convention) states:

> 1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise control necessary to:
> (a) Prevent infringement of its customs, fiscal, immigration or *sanitary regulations* within its territory or territorial sea;
> (b) Punish infringement of the above regulations committed within its territory or territorial sea.[234]

While "sanitary regulations" have been construed as including marine pollution,[235] however, the maximum limit for the contiguous zone is limited to twelve miles from the territorial sea baseline under article 24, paragraph 2.[236] "Any argument that pollution problems were not contemplated by the Law of the Sea Conventions, and that article 24(2) of the Territorial Sea Convention is thus not pertinent to the issue of contiguous zones established for the specific purpose of pollution prevention, seems refuted by the express reference to oil pollution in article 24 of the 1958 Geneva Convention on the High Seas, drafted at the same conference as the Territorial Sea Convention . . . ."[237] Article 24 of the High Seas Convention states:

> Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and

230. May 12, 1954, [1961] 3 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3, *as amended* May 18 & June 28, 1967, [1966] 2 U.S.T. 1523, T.I.A.S. No. 6109, 600 U.N.T.S. 332.

231. *See* Bilder, *The Candian Arctic Waters Pollution Prevention Act: New Stresses On The Law Of The Sea*, 69 MICH. L. REV. 1, 15-16, 34 n.120 (1970); *Pollution Control, supra* note 225, at 925. *See also* Gold, *supra* note 225, at 19.

232. *See supra* note 114.

233. Territorial Sea Convention, *supra* note 114.

234. *Id.* at art. 24, para. 1 (emphasis added).

235. *See* Bilder, *supra* note 231, at 14.

236. Territorial Sea Convention, *supra* note 114, art. 24, para. 2.

237. Bilder, *supra* note 231, at 14-15.

its subsoil, taking account of *existing treaty provisions* on the subject.[238]

The reference to "existing treaty provisions" might be directed at the three other 1958 Genva Conventions. The language however, would indicate that it is probably directed at the 1954 London Convention, the only major pollution convention then in existence.[239] In addition, article 25 of the High Seas Convention dealt with radioactive materials:

1. Every State shall take measures to prevent pollution of the seas from the dumping of radio-active waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radio-active materials or other harmful agents.[240]

The separate treatment of oil pollution[241] indicates that "oil" was not to be included within the "harmful agents" provision of article 25.[242] Indeed, the High Seas Convention focused on the potential harm caused by nuclear fallout, and was not aimed at being an effective agent for policing marine pollution.[243] The Fishing Convention[244] and the Continental Shelf Convention[245] paid even less regard to marine pollution issues.

IMCO was established in 1958, and in July, 1959, Copenhagen hosted an international conference on oil pollution to recommend changes in the London Convention.[246] However, the London Convention was not amended until 1962 when the Second Conference on Oil Pollution was held in London.[247] The 1962 amendments were finally ratified in 1967, extending the effectiveness of the London Convention and subjecting a greater number of vessels to its control.[248]

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238. High Seas Convention, *supra* note 114, art. 24 (emphasis added).

239. Bilder, *supra* note 231, at 15; *see* PUBLIC ORDER, *supra* note 6, at 851; Gold, *supra* note 225, at 20.

240. High Seas Convention, *supra* note 114, art. 25; *see* PUBLIC ORDER, *supra* note 6, at 867; *Pollution Control, supra* note 225, at 925-26.

241. High Seas Convention, *supra* note 114, art. 24.

242. *Id.* art. 25; *Pollution Control, supra* note 225, at 926.

243. *Pollution Control, supra* note 225, at 926.

244. *See* Fishing Convention, *supra* note 114, art. 4.

245. *See* Continental Shelf Convention, *supra* note 114, art. 2.

246. Gold, *supra* note 225, at 19; *see* Alexander & Hodgson, *supra* note 36, at 591-92.

247. *Pollution Control, supra* note 225, at 926.

248. Gold, *supra* note 225, at 20; *Pollution Control, supra* note 225, at 926-27.

International concern over marine pollution was stimulated by the well-publicized *Torrey Canyon* incident. In March, 1967, the tanker *S.S. Torrey Canyon* went aground on the Cornwall coast of England spreading over 80,000 tons of crude oil[249] up to 225 miles away.[250] Following the *Torrey Canyon* incident oil spills occurred with increasing regularity. In 1968 the tanker *Ocean Eagle* broke up in Puerto Rican waters.[251] The offshore oil well blowout near Santa Barbara in 1969 polluted 400 square miles of ocean and 40 miles of the California coast.[252] The *Delian Apollon* ran aground in Tampa Bay in 1970 spilling 10,000 gallons of fuel oil and contaminating 100 square miles of ocean.[253] Oil spills still occur with regularity, and an additional problem is created by their size as evidenced by: the *Amoco Cadiz* which dumped 1.3 million barrels of oil on France's Brittany coast in 1978, the 1.5 million barrels of oil spilled in 1979 when two tankers collided near Trinidad and Tobago, and the Pemex blowout in Campeche Bay which released approximately 3.1 million barrels and created an oil slick 500 miles long and 50 miles wide.[254] For the international environmentalist, the *Torrey Canyon* incident was a "blessing in disguise," as it ended the *laissez-faire* attitude of goverments toward oil pollution[255]and stimulated attempts to curb marine pollution.

The *Torrey Canyon* incident prompted IMCO to convene an extraordinary session in May, 1967.[256] Until *Torrey Canyon*, IMCO had been limited to technical matters affecting international shipping, leaving the legal and policy considerations to the Comité Maritime International (CMI), an international organization founded in 1867 by various maritime associations, involving maritime insurance, cargo, and chartering interests.[257] After 1967, the private shipping interests represented by CMI and the public inter-

249. Gold, *supra* note 225, at 21-22; *see* E. COWAN, OIL AND WATER: THE TORREY CANYON DISASTER (1968); C. GILL, F. BOOKER, & T. SOPER, THE WRECK OF THE TORREY CANYON (1967); Nanda, *The "Torrey Canyon" Disaster: Some Legal Aspects*, 44 DENVER L.J. 400 (1967).

250. Gold, *supra* note 225, at 22.

251. A. REITZE, ENVIRONMENTAL LAW ch. 4, at 78 (2d ed. 1972).

252. *Environment: Tragedy in Oil*, TIME, Feb. 14, 1968, at 23-25; *see* Baldwin, *The Santa Barbara Oil Spill*, 42 COLO. L. REV. 33 (1970).

253. REITZE, *supra* note 251, ch. 4, at 78.

254. Beck & Henkoff, *Texas: The Oil Spill Is Coming*, NEWSWEEK, Aug. 13, 1979, at 24; *see The Great Gulf Oil Spill Wrangle*, NEWSWEEK, Sept. 10, 1979, at 26; *When a Giant Oil Slick Hits U.S. Shores*, U.S. NEWS & WORLD REP., Aug. 20, 1979, at 50.

255. Gold, *supra* note 225, at 22.

256. *Id.*

257. *Id.* at 22-23.

ests represented by IMCO began to cooperate with each other, resulting in the International Legal Conference on Marine Pollution Damage, being held in Brussels in November 1969.[258] Two conventions emerged from the conference. One Convention was the Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties[259] (hereinafter referred to as Intervention Convention), which allowed a country to intervene to protect its coastline if a maritime casualty could reasonably be expected to result in major damage.[260] The Intervention Convention has been called the "public law convention" of the Brussels Conference, with the "private law convention" being the Convention on Civil Liability for Oil Pollution Damage[261] (hereinafter referred to as Brussels Liability Convention).[262] The United States has ratified the Intervention Convention which entered into force in 1975, but it has not yet ratified the Brussels Liability Convention. A complement to the Brussels Liability Convention was the Convention on the Establishment of the International Fund for Compensation for Oil Pollution Damage[263] (hereinafter referred to as Fund Convention), and although it was adopted in 1971, it has not been ratified by the United States.[264] The Fund Convention limits the shipowner's liability, and if the Brussels Liability Convention does not adequately compensate the injured parties, the Fund Convention provides limited recovery via the International Oil Pollution Compensation Fund.[265]

There are two significant private agreements relating to oil spills which were negotiated between the major oil companies and the owners of the oil tankers. In 1969 the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution[266](TOVALOP) was negotiated to compensate national

258. *Id.* at 23-24; Note, *Federal Common Law and Ocean Pollution*, 8 ENVT'L L. 1, 7 (1977) [hereinafter cited as *Common Law*]; *Pollution Control, supra* note 225, at 927.

259. *Done* Nov. 29, 1969, [1975] 1 U.S.T. 765, T.I.A.S. No. 8068.

260. *Pollution Control, supra* note 225, at 927; *see* Bilder, *supra* note 231, at 16-18.

261. *Done* Nov. 29, 1969, *reprinted in* 9 INT'L LEGAL MATS. 45 (1970); *see Pollution Control, supra* note 225, at 927-28.

262. Bilder, *supra* note 231, at 16-17.

263. *Done* Dec. 18, 1971, *reprinted in* 11 INT'L LEGAL MATS. 284 (1972) [hereinafter cited as Fund Convention].

264. *See Common Law, supra* note 258, at 9. Professor Goldie expressed his opinion that the Senate will give its advice and consent to the ratification. *See* Goldie, *Liability for Oil Pollution Disasters: International Law and the Delimitation of Competences in a Federal Policy*, 6 J. MARITIME L. & COM. 303 (1975).

265. *See* Fund Convention, *supra* note 263, arts. II & IV.

266. *Signed* Jan. 7, 1969, *reprinted in* 8 INT'L LEGAL MATS. 497 (1969).

governments for the costs of cleaning up oil spills — if the tankers were negligent.[267] Additional coverage was provided under the Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution[268] (CRISTAL), which covers governmental costs, damages to private parties, and environmental damage to land or within territorial seas.[269] When the Fund Convention enters into force, CRISTAL will expire.[270] A list of the major international documents relevant to this area are given in Appendix II.

2. *Recent Claims and Policy Arguments.* The first significant claim involving a unilateral extension on the basis of marine pollution was prompted by the *Torrey Canyon* accident. In 1971 the United Kingdom enacted the Prevention of Oil Pollution Act,[271] which prohibited the discharge of certain oils both inside and outside its territorial sea.[272] The second significant claim occured in 1972 when the Althing (Parliament) of Iceland unanimously approved its well-known fisheries resolution.[273] This resolution authorized Iceland's Government to "declare unilaterally a special jurisdiction with regard to pollution in the seas surrounding Iceland."[274]

Perhaps the most famous unilateral extension of pollution jurisdiction occurred shortly after the Humble Oil and Refining Company[275] sent a modified ice-breaking supertanker, the *S.S. Manhattan*, through the Northwest Passage in 1969.[276] The purpose of the voyage was to demonstrate that ice-breaking supertankers could transport oil from the Alaskan oil fields to the east coast of the United States.[277] Canada was unimpressed by the voyage, and instead, was concerned about potential oil pollution of the hyper-sensitive Arctic.[278] The Canadian Parliament became

267. *Id.* art. IV(A)-(B). *See also* Gold, *supra* note 225, at 30-36.

268. *Signed* Jan. 14, 1971, *reprinted in* 10 INT'L LEGAL MATS. 137 (1971).

269. *Id.* art. IV.

270. *Id.* art III(C)(1). *See also* Gold, *supra* note 225, at 30-31.

271. C.60 (1971), *reprinted in* 11 INT'L LEGAL MATS. 849 (1972).

272. *See id.* § § 1-2.

273. Resolution of February 15, 1972, of the Althing on Fisheries Jurisdiction, *reprinted in* 11 INT'L LEGAL MATS. 643 (1972).

274. *Id.* § 5.

275. The Humble Oil and Refining Company is a subsidiary of the Standard Oil Company of New Jersey.

276. *See* Smith, *Tanker Leaves to Conquer Fabled Northwest*, N.Y. Times, Aug. 25, 1969, at 1, col. 3; Smith, *Northwest Passage Opened*, N.Y. Times, Sept. 15, 1969, at 1, col. 3.

277. Bilder, *supra* note 231, at 3-4.

278. *Id.* at 4-5; Note, *Candian and Soviet Arctic Policy: An Icy Reception for the Law of the Sea?*, 16 VA. J. INT'L L. 609, 612 (1976) [hereinafter cited as *Canadian Policy*].

alarmed when in February of 1970 a Liberian tanker, the *Arrow*, ran aground in Chadabucto Bay off Nova Scotia and polluted the Canadian coast.[279] As a result, the Parliament passed the Arctic Waters Pollution Prevention Act,[280] (hereinafter referred to as Pollution Act) which quickly became the object of heated international debate.[281] Most nations contended that the 100-mile pollution jurisdiction asserted by Canada via its Pollution Act was patently illegal under existing international law.[282] Canada "struck a blow against pollution and for . . . [the] crusade for the environment, but it . . . [was] a blow also at international law and its law of lawmaking."[283]

Most of the debate involving the marine pollution justification for extending jurisdiction has centered around the Pollution Act of Canada, but there have been other unilateral extensions. A 1971 Soviet statute[284] claimed jurisdiction to suspend navigation in the Arctic which threatened "to pollute the marine environment or the northern coasts of the Soviet Union."[285]

In 1959 Iran passed legislation authorizing a 100-mile "conservation zone," which was different from a fishing zone and which

279. *Grounded Tanker, Leaking Oil, Spills Off Nova Scotia*, N.Y. Times, Feb. 9, 1970, at 78, col. 1; Gold, *supra* note 225, at 32-33; *see* Bilder, *supra* note 231, at 4.

280. CAN. REV. STAT. c.2 (1st Supp. 1970).

281. *See* Bilder, *supra* note 231, at 1; Gold, *supra* note 225, at 13; Henkin, *Arctic Anti-Pollution: Does Canada Make—or Break—International Law?*, 65 AM. J. INT'L L. 131 (1971) [hereinafter cited as Henkin]; M'Gonigle, *Unilateralism and International Law: The Arctic Waters Pollution Prevention Act*, 34 U. TORONTO FACULTY L. REV. 180 (1976); *Canadian Policy, supra* note 278, at 609. *See generally* Thomson, The Law of the Sea—With Special Reference to Canada; A Select Bibliography 4-6 (Pamphlet of the Norman Paterson School of Int'l Aff., Carleton U., 1976).

282. Bilder, *supra* note 231, at 18; Henkin, *supra* note 281, at 135-36; *see Canadian Policy, supra* note 278, at 612-16, 629-30. *Contra*, Gold, *supra* note 225, at 36-39; M'Gonigle, *supra* note 281, at 196-98.

283. Henkin, *supra* note 281, at 135.

284. Law of Sept. 16, 1971, [1971] 1 Sobr. Post Sov. Min. S.S.S.R. Item 124, *as translated in* 11 INT'L LEGAL MATS. 645 (1972).

285. Butler, *Pollution Control and the Soviet Arctic*, 21 INT'L & COMP. L.Q. 557, 559 (1972). *See also* Kolbasov, *Legal Protection of the Environment in the USSR*, 1 EARTH L.J. 51 (1975). Canadian and Soviet claims for protecting the Arctic are now specifically covered in article 234 of the ICNT/Rev.2 which states:

> Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

could be established at the discretion of the Iranian Government.[286] The Declaration of Santo Domingo issued in 1972[287] included jurisdiction over marine pollution within its concept of a 200-mile "patrimonial sea."[288] In 1973 Kenya submitted draft articles to the Seabed Committee of UNCLOS III which specified a 200-mile economic zone including coastal State jurisdiction over pollution prevention.[289] The Kenyan proposal was adopted by the Organization of African Unity (OAU) as the official position of the OAU.[290] Although the Santo Domingo Declaration and the OAU position were not expressly unilateral extensions, they codified the trend of their individual members toward adding jurisdiction over marine pollution to their 200-mile extensions.

In 1976 Guatemala established a 200-mile economic zone[291] stating that pending future enactment of marine pollution provisions and other provisions, the laws and regulations governing the territorial sea would apply to the economic zone.[292] During the same year India asserted a 200-mile jurisdictional zone to protect the marine environment as part of its 200-mile economic zone.[293] In January, 1977, Sri Lanka proclaimed a 200-mile economic zone[294] which included jurisdiction "to control and prevent pollution and to preserve the ecological balance of the pollution prevention zone."[295] In addition, New Zealand claimed the right to a 200-

286. Krueger & Nordquist, *supra* note 42, at 397, 399 n.27.

287. *See* notes 89-90 *supra* and accompanying text.

288. Krueger & Nordquist, *supra* note 42, at 327.

289. Draft Articles on Exclusive Economic Zone Concept, U.N. Doc. A/AC.138/S.C.II/L.10 (1972), *reprinted in* 12 INT'L LEGAL MATS. 33 (1973).

290. Krueger & Nordquist, *supra* note 42, at 328; *see* Declaration of the Organization of African Unity on the Issues of the Law of the Sea, U.N. Doc. A/CONF.62/33, at 3; OFFICIAL RECORDS OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA 63 (1975).

291. Legislative Decree No. 20-76 of 9 June 1976 Concerning the Breadth of the Territorial Sea and the Establishment of an Exclusive Economic Zone (Guatemala), *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 64 (prelim. issue 1978).

292. *Id.* art. 5; *see* Decree No. 1470 of 23 June 1961 (Guatemala), *reprinted in part in* U.N. Doc. ST/LEG/SER.B/15, at 637-38 (1970); Government Resolution of 16 August 1962 containing the regulations for applying the Act concerning the rational exploitation of the country's fishing resources, *reprinted in part in* U.N. Doc. ST/LEG/SER.B/15, at 638-39 (1970).

293. The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act (Act No. 80 of 1976), § 7(6), vol. 63, pt. 755, All India Reporter [A.I.R.] 270-71 (1976), *reprinted in* U.N. Doc. ST/LEG/SER.B/19, at 81 (prelim. issue 1978).

294. Maritime Zones Law No. 22 of 1976 § 7(2), *reprinted in part in* U.N. Doc. ST/LEG/SER.B/19, at 130, 134 (prelim. issue 1978).

295. Krueger & Nordquist, *supra* note 42, at 347.

mile economic zone in 1977,[296] which included the power to protect the marine environment within that zone.[297]

The unilateral claims after 1973 were based primarily on concepts which developed at UNCLOS III. Under article 45, paragraph 1, of the Informal Single Negotiating Text[298] (SNT) of UNCLOS III, the concept of the 200-mile economic zone incorporated a grant to each coastal State of "jurisdiction with regard to the preservation of the marine environment, including pollution control and abatement; . . . ."[299] Article 46 of the SNT provided that jurisdiction could be asserted out to 200 miles.[300] The 1976 provisions of the Revised Single Negotiating Text[301] (RSNT) remained substantially identical in this area,[302] but in 1977 the Informal Composite Negotiating Text[303] (ICNT) shortened this provision to state that there was jurisdiction with regard to "the preservation of the marine environment; . . . ."[304] The ICNT version was shortened to accommodate a general expansion of other marine pollution provisions. The parallel article in the ICNT/Rev.1[305] is identical to the provision in the ICNT; however, the ICNT/Rev.2 provision was expanded to read "the *protection and* preservation of the marine environment."[306]

Similar to the situation mentioned earlier regarding the FCMA,[307]the United States and other countries will probably find that their diplomatic flexibility and options are being reduced. Unilateral assertions such as the FCMA and the Pollution Act pressure countries with the knowledge that failure to reach an accepta-

296. Territorial Sea and Exclusive Economic Zone Act 1977, Public Act No. 28, pt. II, [1977-1] New Zealand Statutes 92.

297. *Id.* § 27.

298. U.N. Doc. A/CONF.62/WP.8/Parts I, II, III, 4 OFFICIAL RECORDS OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA 137 (1975) [hereinafter cited as SNT]; U.N. Doc. A/CONF.62/WP.9/Part IV, 5 OFFICIAL RECORDS OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA 111 (1976).

299. SNT, *supra* note 298, pt. II, art. 45, para. 1(d).

300. *Id.* art. 46.

301. U.N. Doc. A/CONF.62/WP.8/Rev.1/Parts I, II, III, 5 OFFICIAL RECORDS OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA 125 (1976) [hereinafter cited as RSNT]; U.N. Doc. A/CONF.62/WP.8/Rev.1/Part IV, 6 OFFICIAL RECORDS OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA 144 (1977).

302. RSNT, *supra* note 301, at pt. II, art. 44, para. 1(d).

303. U.N. Doc. A/CONF.62/WP.10, 8 OFFICIAL RECORDS OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA 1 (1977) [hereinafter cited as ICNT].

304. *Id.* art 56, para. 1(b)(iii).

305. U.N. Doc. A/CONF.62/WP.10/Rev.1 [hereinafter cited as ICNT/Rev.1].

306. ICNT/Rev.2, *supra* note 20, art. 56, para. 1(b)(iii) (emphasis added).

307. *See* notes 214-21 *supra* and accompanying text.

ble LOS treaty will precipitate a rash of unilateral claims over marine pollution out to 200 miles—without the safeguards of the ICNT/Rev.2.[308]

Environmental issues relating to the emerging 200-mile economic zone of the ICNT/Rev.2 involve jurisdictional questions, such as who shall establish and enforce standards to control marine pollution outside territorial waters; the international community, the coastal State, or the flag State.

Most maritime countries at the early sessions of UNCLOS III favored international standards to control marine pollution in the 200-mile economic zone, and they were supported by such Third World countries as Argentina, Bahrain, Honduras, Kuwait, Pakistan, Somalia, and Thailand.[309] The authority of the coastal State to supply supplementary regulations was supported by Australia and Canada, but Belgium believed that it could be dangerous to allow coastal States to add regulations.[310] "Opposing the 'internationalists'[311] were such countries as Bangladesh, France, and Spain which felt that the coastal State had special rights to pollution control activities in its economic zone."[312] There were also several countries advocating flag-State enforcement, and they included France, Greece, Japan, the United Kingdom, and the United States.[313]

Current ICNT/Rev.2 provisions state that pollution from vessels is to be regulated by the Intergovernmental Maritime Consultative Organization (IMCO). Under article 211, paragraph 2, flag-State standards are a secondary mechanism and they must be at least as effective as IMCO's standards.[314] These provisions apparently will govern shipping, particularly on the high seas. If a vessel is headed for a particular port, the port-State may promulgate pollution standards for that vessel provided the standards conform to IMCO's policies.[315] Naturally, the territorial seas are governed by coastal-State sovereignty,[316]but passage through the economic zone

308. *See* ICNT/Rev.2, *supra* note 20, arts. 207-37.
309. Alexander & Hodgson, *supra* note 36, at 595.
310. *Id.*
311. *See* Kindt, *The Effect of Claims by Developing Countries On LOS International Marine Pollution Negotiations*, 20 VA. J. INT'L L. 313 (1980).
312. Alexander & Hodgson, *supra* note 36, at 595.
313. *Id.*
314. ICNT/Rev.2, *supra* note 20, art. 211, para. 2.
315. *Id.* art. 211, para. 3.
316. *Id.* art. 211, para. 4.

may be regulated only in accordance with IMCO's standards.[317]

Despite the ICNT/Rev.2 safeguards, "it is likely that there may be serious interference at times with international navigation, as vessels (particularly potential polluters such as oil tankers, LNG[318] carriers, and ammunition ships) pass through foreign economic zones."[319] An early proposal by Barbados to the effect that pollution control measures should not impede the industrialization of the developing countries[320] found acceptance throughout the ICNT/Rev.2 provisions relating to marine pollution.[321] Although one goal of the marine pollution provisions was to maintain a maximum amount of navigational freedoms, it has been recognized that the "possibility of double standards in the economic zones of some developing nations is a very real one: one set of standards for ships of the major maritime powers and another set for the coastal State and for other developing countries."[322] Any such dual set of standards would violate the international legal principle of "reciprocity," and although it would be cloaked by an eventual LOS treaty, it would be tainted with unilateralism. Pollution standards established via the authority of a future LOS treaty must not discriminate against one nation or group of nations. If standards do discriminate, they become traditional unilateral extensions and are invalid under customary international law.

V. Conclusion

The special claims impacting upon marine pollution issues at the Third United Nations Conference on the Law of the Sea (UNCLOS III) focus on extensions of maritime jurisdiction over various areas of concern, with particular emphasis on claims to greater fisheries jurisdiction or to protection of the marine environment. "While national sovereignty may permit adequate management of fixed mineral resources, it cannot suffice to regulate marine pollution or stocks of certain fish."[323] The South and Latin American countries initiated unilateral claims over fisheries, bootstrap-

317. *Id.* art. 211, para. 5. The typographical error in the ICNT/Rev.1 in this section, "international organizations," has been corrected in the ICNT/Rev.2 to read in the singular; *i.e.*, "international organization" (meaning IMCO).

318. LNG refers to "liquefied natural gas."

319. Alexander & Hodgson, *supra* note 36, at 595.

320. *Id.*

321. *See, e.g.*, ICNT/Rev.2, *supra* note 20, arts. 202-03.

322. Alexander & Hodgson, *supra* note 36, at 595.

323. Hollick, *LOS III: Prospects and Problems*, 14 Colum. J. Transnat'l L. 102, 110 (1975).

ping their maritime jurisdictions out to unreasonable limits, such as 200 miles. These 200-mile fisheries claims and similar unilateral claims violated both customary international law and international treaties, as well as the general gentlemen's agreement at UNCLOS III not to assert unilateral claims pending the outcome of the negotiations.[324] However, most maritime and Third World powers exercised restraint and limited unilateral extensions of maritime jurisdiction.

With passage of the Fishery Conservation Management Act (FCMA) declaring a 200-mile fisheries jurisdiction, the propagation of unilateral claims by other nations began. Most of the unilateral extensions of jurisdiction by other countries were more onerous in their terms and impact than the 200-mile fisheries jurisdiction asserted by the United States. To the extent that other countries have joined the United States in bilateral "Governing International Fishery Agreements" (GIFAs) under a provision of the FCMA, the FCMA is valid under international law. Even so, the trend of other countries to extend unilaterally their jurisdictions was not noticeably obviated by GIFAs. The FCMA violated international law, and its impact will be felt by the United States when a Law of the Sea (LOS) treaty comes to the Senate for ratification. Increasingly, the FCMA will reduce the diplomatic flexibility and options of the United States. The FCMA will subject the United States to greater pressure to accept unfavorable provisions (such as in the area of deep seabed mining) in order to maintain the more moderate provisions involving the navigational freedoms essential to United States national security. Without a treaty guaranteeing navigational freedoms and limiting unilateral extensions of jurisdiction, the potential for conflict is not only enhanced, but imminent.[325]

Unilateral claims to protect the marine environment from pollution have paralleled the development of claims involving fisheries, although claims over marine pollution have been fewer in number due to the subordinate role of marine pollution issues at UNCLOS III. Even so, if a major environmental disaster such as the Pemex oil well blowout occurred in a geographic area already sensitized to 200-mile claims, there would be a number of unilateral extensions of jurisdiction over marine pollution. The hyper-sensitivity demonstrated by the Mexican Government regarding its own Pemex blowout would apply *a fortiori* to a blowout by a United

324. *See, e.g., id.* at 105 n.5.
325. *See id.* at 110-11.

States oil well. The United States needs to view the Pemex accident in its proper perspective and not be pressured by domestic politics into declaring a 200-mile jurisdiction over marine pollution. Like the FCMA, such a declaration would violate international law and constitute a disaster for United States oceans policy.

Even the unilateral Canadian declaration of a 100-mile Arctic pollution zone in 1970 had unpredictable ramifications. The Canadian action laid the groundwork for the jurisdiction to protect the marine environment in the 200-mile zone as limited by the regular marine pollution provisions of the Informal Composite Negotiating Text/Revision 2 (ICNT/Rev.2). The "limitations" on marine pollution jurisdiction are an essential part of the ICNT/Rev.2, and they place further pressure on the United States to accept a future LOS treaty, or the United States be faced with broad claims against the traditional navigational freedoms.

If 200-mile claims extending jurisdiction over fisheries, marine pollution, or other maritime matters were asserted by all coastal countries, approximately 105 million square nautical miles (or 36 percent of the surface of the oceans) would be under unilateral jurisdictional control.[326]

> Within these waters, fishermen take over ninety percent of the world's fish catch and eighty-seven percent of the globe's known submarine oil deposits is found. Also, certain bodies of water which are now only semi-enclosed, such as the Persian Gulf, the Gulf of Mexico, the Bay of Bengal, and the Norwegian and Ockhotask Seas, are becoming zone-locked by such jurisdictional claims. Even the North Pole, long the symbol of international scientific cooperation, is being hemmed in by 200-mile zones around the Canadian Arctic archipelago, Greenland, Svalbard, and Franz Josefland and other Soviet island groups.[327]

It is thus imperative that unilateral extensions of maritime jurisdiction be decried. Unilateral assertions are invalid under customary international law and under existing treaties on the law of the sea. Extensions of maritime jurisdiction can be valid only within the context of multilateral agreements, supported by a majority of the major maritime countries and a substantial number of the non-maritime countries. Unilateral extensions of maritime jurisdiction, for whatever reason, are invalid under international law. Unilateral extensions of maritime jurisdiction are a blight upon the community of Man.

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326. Krueger & Nordquist, *supra* note 42, at 321.
327. *Id.* at 321-22.

APPENDIX I
SELECTED MAJOR AGREEMENTS RELATED TO FISHERIES

A. *Multilateral Treaties to which the United States has Acceded as of 1979**

1. *Fisheries*

Convention on Fishing and Conservation of the Living Resources of the High Seas, *done* Apr. 29, 1958, [1966] 1 U.S.T. 138, T.I.A.S. No. 5969, 599 U.N.T.S. 285 (*entered into force* Mar. 20, 1966).

Amended Agreement for the Establishment of the Indo-Pacific Fisheries Council, *approved* Nov. 23, 1961, [1962] 2 U.S.T. 2511, T.I.A.S. No. 5218, 418 U.N.T.S. 348 (*entered into force* Nov. 23, 1961).

Convention for the Establishment of an Inter-American Tropical Tuna Commission, *signed* May 31, 1949, [1950] 1 U.S.T. 230, T.I.A.S. No. 2044, 80 U.N.T.S. 3 (*entered into force* Mar. 3, 1950).

International Convention for the High Seas Fisheries of the North Pacific Ocean, *signed* May 9, 1952, [1953] 1 U.S.T. 380, T.I.A.S. No. 2786, 205 U.N.T.S. 65 (*entered into force* June 12, 1953).

U.N. Special Fund Project on Caribbean Fishery Development, *signed* Apr. 6, 1966, [1968] 4 U.S.T. 4938, T.I.A.S. No. 6501 (*entered into force* Apr. 6, 1966).

Convention for the Conservation of Atlantic Tunas, *done* May 14, 1966, [1969] 3 U.S.T. 2887, T.I.A.S. No. 6767, 673 U.N.T.S. 63 (*entered into force* Mar. 21, 1969).

2. *South Pacific Commission*

Agreement Establishing the South Pacific Commission, *signed* Feb. 6, 1947, [1951] 2 U.S.T. 1787, T.I.A.S. No. 2317, 97 U.N.T.S. 227 (*entered into force* July 29, 1948).

* Those cites without U.N.T.S. references are caused by the slowness of the U.N. system in printing the U.N.T.S.

3. *Whaling*

Convention for the Regulation of Whaling, *concluded* Sept. 24, 1931, 49 Stat. 3079, T.S. No. 880, 3 Bevans 26, 155 L.N.T.S. 349 (*entered into force* Jan. 16, 1935).

International Convention for the Regulation of Whaling with Schedule of Whaling Regulations, *signed* Dec. 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849, 4 Bevans 248, 161 U.N.T.S. 72 (*entered into force* Nov. 10, 1948).

Protocol to the International Convention for the Regulation of Whaling Signed Under Date of Dec. 2, 1946, *done* Nov. 19, 1956, [1959] 1 U.S.T. 952, T.I.A.S. No. 4228, 338 U.N.T.S. 336 (*entered into force* May 4, 1959).

B. *Multilateral Treaties Not Involving the United States*

1952 Convention for the High Seas Fisheries of the North Pacific Ocean, 205 U.N.T.S. 65.

London Fisheries Convention, Mar. 9, 1964, 581 U.N.T.S. 57, *reprinted in* U.N. DOC. ST/LEG.SER.B/15, at 862 (1970).

Draft Convention on Wetlands of International Importance Especially as Waterfront Habitat, *done* Feb. 3, 1971, *reprinted in* 11 INT'L LEGAL MATS. 969 (1972).

APPENDIX II
SELECTED MAJOR POLLUTION AGREEMENTS

A. *Multilateral Treaties to which the United States has Acceded as of 1979**

Convention on the Intergovernmental Consultative Organization, *signed* Mar. 6, 1948, [1958] 1 U.S.T. 621, T.I.A.S. 4044, 289 U.N.T.S. 48 (*entered into force* Mar. 17, 1958, subject to a reservation and understanding).

* Those cities without U.N.T.S. references are caused by the slowness of the U.N. system in printing the U.N.T.S.

Convention for the Prevention of Pollution of the Sea by Oil, May 12, 1954, [1961] 3 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3 (*entered into force* Dec. 8, 1961, subject to an understanding, reservations, and a recommendation), *as amended* May 18 & June 28, 1967, [1966] 2 U.S.T. 1523, T.I.A.S. No. 6109, 600 U.N.T.S. 322.

Convention on the High Seas, *done* Apr. 29, 1958, [1962] 2 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (*entered into force* Sept. 30, 1962).

Convention on the Continental Shelf, *done* Apr. 29, 1958, [1964] 1 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 (*entered into force* June 10, 1964).

Convention on the Territorial Sea and the Contiguous Zone, *done* Apr. 29, 1958, [1964] 2 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 2205 (*entered into force* Sept. 10, 1964).

Convention on Facilitation of International Maritime Traffic, *done* Apr. 9, 1965, [1967] 1 U.S.T. 411, T.I.A.S. No. 6251, 591 U.N.T.S. 265 (*entered into force* May 16, 1967).

Convention for the International Council for the Exploration of the Sea, *done* Sept. 12, 1964, [1973] 1 U.S.T. 1080, T.I.A.S. No. 7628, 652 U.N.T.S. 237 (*entered into force* Apr. 18, 1973).

Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, *done* Nov. 29, 1969, [1975] 1 U.S.T. 765, T.I.A.S. No. 8068 (*entered into force* May 6, 1975).

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, *done* Dec. 29, 1972, [1975] 2 U.S.T. 2403, T.I.A.S. No. 8165 (*entered into force* Aug. 30, 1975).

Convention on the International Regulations for Preventing of Collisions at Sea, *done* Oct. 20, 1972, [1976-77] 3 U.S.T. 3459, T.I.A.S. No. 8587 (*entered into force* July 15, 1977).

B. *Multilateral Treaties Not Involving the United States*

1. *Treaties*

Convention on the Pollution of the North Sea by Oil,

signed June 9, 1969, 704 U.N.T.S. 3, *reprinted in* 9 INT'L LEGAL MATS. 20 (1970).

Convention on Civil Liability for Oil Pollution Damage, *done* Nov. 29, 1969, *reprinted in* 9 INT'L LEGAL MATS. 45 (1970) (commonly referred to as Brussels Liability Convention).

Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damge, *done* Dec. 18, 1971, *reprinted in* 11 INT'L LEGAL MATS. 284 (1972) (commonly referred to as Fund Convention).

Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, *done* Feb. 15, 1972, *reprinted in* 11 INT'L LEGAL MATS. 262 (1972) (commonly referred to as Oslo Convention).

Convention for the Prevention of Pollution by Ships, *done* Nov. 2, 1973, 12 INT'L LEGAL MATS. 1319 (1973).

Convention on the Protection of the Environment, *done* Feb. 19, 1974, *reprinted in* 13 INT'L LEGAL MATS. 591 (1974).

Convention on the Protection of the Marine Environment of the Baltic Sea Area, *done* Mar. 22, 1974, *reprinted in* 13 INT'L LEGAL MATS. 544 (1974).

Convention for the Prevention of Marine Pollution from Land-Based Sources, *opened for signature* June 4, 1974, *reprinted in* 13 INT'L LEGAL MATS. 352 (1974).

Draft Convention for the Protection of the Marine Environment Against Pollution in the Mediterranean Area, U.N. DOC. UNEP/WG.2/INF.3 (Jan. 13, 1975), *reprinted in* 14 INT'L LEGAL MATS. 481 (1975).

2. *Private Agreements***

Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution, *signed* Jan. 7, 1969, *reprinted in* 8 INT'L LEGAL MATS. 497 (1969) (commonly referred to as TOVALOP).

Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution, *signed* Jan. 14, 1971, *reprinted in* 10 INT'L LEGAL MATS. 137 (1971) (commonly referred to as CRISTAL).

** United States oil companies are parties to these agreements.

APPENDIX III
COUNTRIES WHO ARE SIGNATORIES TO BILATERAL AGREEMENTS UNDER THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976: GOVERNING INTERNATIONAL FISHERY AGREEMENTS (GIFAs)*

1. GIFA, U.S.-Bulgaria, Dec. 17, 1976, — U.S.T. —, T.I.A.S. No. 9045 (*entered into force* Feb. 28, 1977).
2. GIFA, U.S.-Cuba, Apr. 27, 1977, [1976-77] 6 U.S.T. 6769, T.I.A.S. No. 8689 (*entered into force* Sept. 26, 1977).
3. GIFA, U.S.-German Democratic Republic, Oct. 5, 1976, [1976-77] 2 U.S.T. 1793, T.I.A.S. No. 8527 (*entered into force* Mar. 4, 1977).
4. GIFA, U.S.-Japan, March 18, 1977, [1976-77] 6 U.S.T. 7507, T.I.A.S. No. 8728 (*entered into force* Nov. 29, 1977).
5. GIFA, U.S.-Korea, Jan. 4, 1977, [1976-77] 2 U.S.T. 1753, T.I.A.S. No. 8526 (*entered into force* Mar. 3, 1977).
6. GIFA, U.S.-Mexico, Aug. 26, 1977, [1978-79] 1 U.S.T. 781, T.I.A.S. No. 8852 (*entered into force* Dec. 29, 1977).
7. GIFA, U.S.-Poland, Aug. 2, 1976, [1976-77] 2 U.S.T. 1681, T.I.A.S. No. 8524 (*entered into force* Feb. 28, 1977).
8. GIFA, U.S.-Romania, Nov. 23, 1976, [1978-79] 1 U.S.T. 387, T.I.A.S. No. 8825 (*entered into force* Jan. 18, 1978).
9. GIFA, U.S.-Spain, Feb. 16, 1977, [1976-77] 2 U.S.T. 1631, T.I.A.S. No. 8523 (*entered into force* Mar. 10, 1977).
10. GIFA, U.S.-Taiwan, Sept. 15, 1976, [1976-77] 2 U.S.T. 7903, T.I.A.S. No. 8529 (*entered into force* Feb. 28, 1977).
11. Reciprocal fisheries agreement, U.S.-U.K., June 24, 1977, — U.S.T. —, T.I.A.S. No. 9140 (*entered into force* Nov. 7, 1978).
12. GIFA, U.S.-USSR, Nov. 26, 1976, [1976-77] 2 U.S.T. 1847, T.I.A.S. No. 8528 (*entered into force* Feb. 28, 1977).

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* GIFA is the general abbreviation for a bilateral treaty negotiated under the FCMA and properly entitled an "Agreement Concerning Fisheries off the Coasts of the United States." The GIFAs initials derived from the popular general term for such an agreement; namely, a "Governing International Fishery Agreement." As of the date this chart was prepared, several U.S.T. cites were not yet available.