**Appendix 1A**

US Statement in Right of Reply, March 8, 1983

United States Of America

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*Rights and duties of non-parties*

Some speakers discussed the legal question of the rights and duties of States which do not become party to the Convention adopted by the Conference. Some of these speakers alleged that such States must either accept the provisions of the Convention as a “package deal” or forgo all of the rights referred to in the Convention. This supposed election is without foundation or precedent in international law. It is a basic principle of law that parties may not, by agreement among themselves, impair the rights of third parties or their obligations to third parties. Neither the Conference nor the States indicating an intention to become parties to the Convention have been granted global legislative power.

The Convention includes provisions, such as those related to the regime of innocent passage in the territorial sea, which codify existing rules of international law which all States enjoy and are bound by. Other provisions, such as those relating to the exclusive economic zone, elaborate a new concept which has been recognized in international law. Still others, such as those relating to deep sea-bed mining beyond the limits of national jurisdiction, are wholly new ideas which are binding only upon parties to the Convention. To blur the distinction between codification of customary international law and the creation of new law between parties to a convention undercuts the principle of the sovereign equality of States.

The United States will continue to exercise its rights and fulfil its duties in a manner consistent with international law, including those aspects of the Convention which either codify customary international law or refine and elaborate concepts which represent an accommodation of the interests of all States and form part of international law.

*Deep sea-bed mining*

Some speakers asserted that existing principles of international law, or the Convention, prohibit any State, including a non-party, from exploring for and exploiting the mineral resources of the deep sea-bed except in accordance with the Convention. The United States does not believe that such assertions have any merit. The deep sea-bed mining regime of the Convention adopted by the Conference is purely contractual in character. The United States and other non-parties do not incur the obligations provided for therein to which they object.

Article 137 of the Convention may not as a matter of law prohibit sea-bed mining activities by non-parties to the Convention; nor may it relieve a party from the duty to respect the exercise of high seas freedoms, including the exploration for and exploitation of deep sea-bed minerals, by non-parties. Mining of the sea-bed is a lawful use of the high seas open to all States. United States participation in the Conference and its support for certain General Assembly resolutions concerning sea-bed mining do not constitute acquiescence by the United States in the elaboration of the concept of the common heritage of mankind contained in Part XI, nor in the concept itself as having any effect on the lawfulness of deep sea-bed mining. The United States has consistently maintained that the concept of the common heritage of mankind can only be given legal content by a universally acceptable regime for its implementation, which was not achieved by the Conference. The practice of the United States and the other States principally interested in sea-bed mining makes it clear that sea-bed mining continues to be a lawful use of the high seas within the traditional meaning of the freedom of the high seas.

The concept of the common heritage of mankind contained in the Convention adopted by the Conference is not *jus cogens*. The Convention text and the negotiating record of the Conference demonstrate that a proposal by some delegations to include a provision on jus cogens was rejected.

*Innocent passage in the territorial sea*

Some speakers spoke to the right of innocent passage in the territorial sea and asserted that a coastal State may require prior notification or authorization before warships or other governmental ships on non-commercial service may enter the territorial sea. Such assertions are contrary to the clear import of the Convention’s provisions on innocent passage. Those provisions, which reflect long-standing international law, are clear in denying coastal State competence to impose such restrictions. During the eleventh session of the Conference, formal amendments which would have afforded such competence were withdrawn. The withdrawal was accompanied by a statement read from the Chair, and that statement clearly placed coastal State security interests within the context of articles 19 and 25. Neither of those articles permits the imposition of notification or authorization requirements on foreign ships exercising the right of innocent passage.

*Exclusive economic zone*

Some speakers described the concept of the exclusive economic zone in a manner inconsistent with the text of the relevant provisions of the Convention adopted by the Conference.

The International Court of Justice has noted that the exclusive economic zone “may be regarded as part of modern international law” (Continental Shelf Tunisia/Libya Judgment (*I.C.J. Reports 1982*, p. 18), para. 100). This concept, as set forth in the Convention, recognizes the interest of the coastal State in the resources of the zone and authorizes it to assert jurisdiction over resource-related activities therein. At the same time, all States continue to enjoy in the zone traditional high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, which remain qualitatively and quantitatively the same as those freedoms when exercised seaward of the zone. Military operations, exercises and activities have always been regarded as internationally lawful uses of the sea. The right to conduct such activities will continue to be enjoyed by all States in the exclusive economic zone. This is the import of article 58 of the Convention. Moreover, Parts XII and XIII of the Convention have no bearing on such activities.

In this zone beyond its territory and territorial sea, a coastal State may assert sovereign rights over natural resources and related jurisdiction, but may not claim or exercise sovereignty. The extent of coastal State authority is carefully defined in the Convention adopted by the Conference. For instance, the Convention, in codifying customary international law, recognizes the authority of the coastal State to control all fishing (except for the highly migratory tuna) in its exclusive economic zone, subject only to the duty to maintain the living resources through proper conservation and management measures and to promote the objective of optimum utilization. Article 64 of the Convention adopted by the Conference recognizes the traditional position of the United States that highly migratory species of tuna cannot be adequately conserved or managed by a single coastal State and that effective management can only be achieved through international cooperation. With respect to artificial islands, installations and structures, the Convention recognizes that the coastal State has the exclusive right to control the construction, operation and use of all artificial islands, of those installations and structures having economic purposes and of those installations and structures that may interfere with the coastal State’s exercise of its resource rights in the zone. This right of control is limited to those categories.

*Continental shelf*

Some speakers made observations concerning the continental shelf. The Convention adopted by the Conference recognizes that the legal character of the continental shelf remains the natural prolongation of the land territory of the coastal State wherein the coastal State has sovereign rights for the purpose of exploring and exploiting its natural resources. In describing the outer limits of the continental shelf, the Convention applies, in a practical manner, the basic elements of natural prolongation and adjacency fundamental to the doctrine of the continental shelf under international law. This description prejudices neither the existing sovereign rights of all coastal States with respect to the natural prolongation of their land territory into and under the sea, which exists ipso facto and ab initio by virtue of their sovereignty over the land territory, nor freedom of the high seas, including the freedom to exploit the sea-bed and subsoil beyond the limits of coastal State jurisdiction.

*Boundaries of the continental shelf and exclusive economic zone*

Some speakers directed statements to the boundary provisions found in articles 74 and 83 of the Convention adopted by the Conference. Those provisions do no more than reflect existing law in that they require boundaries to be established by agreement in accordance with equitable principles and in that they give no precedence to any particular delimitation method.

*Archipelagic sea lanes passage and transit passage*

A small number of speakers asserted that archipelagic sea lanes passage, or transit passage, is a “new” right reflected in the Convention adopted by the Conference. To the contrary, long-standing international practice bears out the right of all States to transit straits used for international navigation and waters which may be eligible for archipelagic status. Moreover, these rights are well established in international law. Continued exercise of these freedoms of navigation and overflight cannot be denied a State without its consent.

One speaker also asserted that archipelagic sea lanes passage may be exercised only in sea lanes designated and established by the archipelagic State. This assertion fails to account for circumstances in which all normal sea lanes and air routes have not been designated by the archipelagic state in accordance with Part IV, including articles 53 and 54. In such circumstances, archipelagic sea lanes passage may be exercised through all sea lanes and air routes normally used for international navigation. The United States regards these rights as essential components of the archipelagic regime if it is to find acceptance in international law.

*Consistency of certain claims with provisions of the Convention adopted by the Conference*

Some speakers also called attention to specific claims of maritime jurisdiction and to the application of certain provisions of the Convention adopted by the Conference to specific geographical areas. These statements included assertions that certain claims are in conformity with the Convention; that certain claims are not in conformity with the Convention but are nevertheless consistent with international law; that certain baselines have been drawn in conformity with international law; and that transit passage is not to be enjoyed in particular straits due to the purported applicability of certain provisions of the Convention.

The lawfulness of any coastal State claim and the application of any Convention provision or rule of law to a specific geographic area or circumstance must be analysed on a case-by-case basis. Except where the United States has specifically accepted or rejected a particular claim or the application of a rule of law to a specific area, the United States reserves its judgement. This reservation of judgement on such questions does not constitute acquiescence in any unilateral declaration or claim. In addition, the United States reserves its judgement with respect to any matter addressed by a speaker and not included in this right of reply, except where the United States has specifically indicated its agreement with the position asserted.

Third United Nations Conference on the Law of the Sea (1973–1982), vol. XVII: *Resumed Eleventh and Final Part of the Eleventh Session, Written statements of the Plenary*, Note by the Secretariat, A/CONF.62/WS/37, at 243–244 <https://legal.un.org/docs/?path=../diplomaticconferences/1973\_los/docs/english/vol\_17/a\_conf62\_ws\_37\_and\_add1\_2.pdf&lang=E 243-244>.