

# SUMMARIES OF INTERNATIONAL MATERIALS

## **BRUSSELS CONVENTION OF 1910:**

### **Convention for the Unification of Certain Rules of Law with Respect to Collisions Between Vessels, 1910**

signed September 23, 1910; 37 Stat. 1658.

This Convention establishes the principles in settling the compensation due for a collision between vessels. Article 2 states that if the collision is accidental, caused by *force majeure*, or if the cause is in doubt, the damage is borne by those who suffered them. If it is clear that one vessel is liable, then liability rests with that vessel. If two or more vessels are at fault then liability is divided proportionally. Article 7 establishes a two year statute of limitation for collisions between vessels, however, the 'High Contracting Parties' to the treaty reserve the right to provide for an extended statute of limitation if the defendant is not held in their territorial waters. Article 8 states that after a collision, the masters of the vessels must render assistance to the other vessel, her crew, and her passengers if it can safely do so. This convention does not apply to ships of war or government owned ships.

## **CARTAGENA CONVENTION:**

### **Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 1983**

TIAS 11085.

The Cartagena Convention, which entered into force in 1984, is a framework convention negotiated under the auspices of the United Nations Environment Programme, Regional Seas Program. It is aimed at the protection of the marine environment and the promotion of environmentally sound development in the wider Caribbean region, including the Gulf of Mexico. The Cartagena Convention is similar in form to nine other regional agreements negotiated under the auspices of the Regional Seas Program, including one for the South Pacific, to which the United States is a party.

The Cartagena Convention contains general obligations of parties to protect the marine environment of the region from a variety of pollution sources, including oil pollution from ships, dumping, and pollution from land-based activities. It is intended to be supplemented by protocols containing more specific obligations in these areas. A Protocol on Combating Oil Spills was negotiated and entered into force with the Cartagena Convention. A Protocol on Specially Protected Areas and Wildlife was negotiated in 1990 but has not entered into force. This Protocol has been transmitted to the U.S. Senate for advice and consent to ratification. A protocol on pollution from land-based activities, which accounts for about 80 percent of the pollution entering the marine environment, is currently under negotiation.

### **Convention on the Continental Shelf**

signed June 10, 1964; 15 U.S.T. 471.

This Convention defines and delimits the rights of States to explore and exploit the natural resources of the continental shelf. This treaty states that coastal states have sovereign and exclusive rights over the continental shelf for the purpose of exploration and exploitation (art.1). Also, such exploration or exploitation must not cause unjustifiable interference with navigation, fishing, or the conservation of the living resources of the sea; or with oceanographic or other scientific research (art. 5).

### **Convention on Fishing and Conservation of the Living Resources of the High Seas**

signed April 29, 1958; 17 U.S.T. 138.

This convention attempts, through international cooperation, to solve the problems involved in the conservation of the living resources of the high seas, considering that through the development of modern techniques some of these resources are in danger of being over-exploited. Under this treaty, all states have a duty to adopt, or cooperate with other states in adopting, measures necessary for the conservation of the living resources of the high seas (art. 1). The treaty announces that such measures should be formulated with a view to securing a supply of food for human consumption (art. 2). Coastal states have special interests in the high seas adjacent to their territorial seas and may unilaterally adopt conservation measures for such areas. These measures shall be valid for other states if there is an urgent need for such measures and if the measures are based on scientific findings and do not discriminate against foreign fishermen (arts. 6 and 7). Disputes are to be settled by a special commission of five members whose decisions shall be binding on the States concerned (arts. 9 and 11).

### **Convention on the High Seas**

signed April 29, 1958; 13 U.S.T. 2312.

This treaty codifies the rules of international law relating to the high seas. The environmental provisions of this treaty call for states to draw up regulations to prevent pollution of the sea by oil from ships and pipelines or resulting from the exploration and exploitation of the sea-bed (art. 24). States must take measures to prevent pollution of the sea by the dumping of radioactive waste and to cooperate with international agencies in taking such measures to prevent pollution of the seas or airspace above them resulting from radioactive materials or other harmful agents (art. 25).

### **Convention on the Territorial Sea and the Contiguous Zone**

signed April 29, 1958; 15 U.S.T. 1606.

This convention codified the pre-existing rules of international customary law but, in clarifying some of the more uncertain of them, introduces a degree of precision previously lacking and incorporated a measure of novel development. While the rules governing delimitation of the territorial sea involved essentially a restatement of the law, the convention added precision to the rules of bays and the articles dealing with innocent passage, especially passage through straits. Article 4 provides that “The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.” Article 17 of the Convention provides that “Foreign ships exercising the

right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these Articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.” This convention was ratified by the Senate in 1961.

### **General Agreement on Tariffs and Trade**

signed October 30, 1947; TIAS 1700.

The GATT came into being as part of an attempt to draft an elaborate agreement for a strong International Trade Organization. When it became apparent that such an institution could not win early approval, a partial agreement was reached. It came into effect when a group of initial members signed the Protocol of Provisional Application of October 30, 1947. The GATT, as originally concluded, consists of three parts. Part I deals largely with tariffs but contains other general principles applicable to all trade restraints. Part II deals largely with restrictions other than tariffs and includes a number of exceptions to the commitments not to restrict trade. Part III contains procedural and administrative provisions as well as ground rules for tariff negotiations. Part IV, dealing with developing states, was added in 1965. The key provisions as to tariffs are Article I, whereby member states undertake to grant each other most-favored-nation treatment, and Article II, containing a commitment by each party to adhere to the tariffs listed in the schedules that it has negotiated pursuant to GATT. Those two sections in effect replaced the bilateral negotiation process of the 1930's with a multilateral process designed to enable states to balance all the concessions they make to all parties against all concessions they receive, regardless of which party granted them.

### **Inter-American Convention for the Protection and Conservation of Sea Turtles**

signed December 1, 1996; S.T.D. 105-48.

The Inter-American Convention for the Protection and Conservation of Sea Turtles is the first regional agreement with broad coverage for protecting sea turtles and their habitats in the Western Hemisphere. The Convention entered into force in May 2001, after receiving the required number of ratifications. The United States was one of nine Western Hemisphere nations originally ratifying the Convention. Under the Convention, each party agrees to address threats to sea turtle survival by conserving sea turtle habitat, protecting nesting beaches, limiting intentional and accidental capture, prohibiting international trade in sea turtles and their products, and supporting research on sea turtle populations. The Convention addresses one of the major causes of sea turtle mortality—accidental capture and drowning in shrimp nets. Under the Convention, each member nation agrees to require its shrimping industry to use Turtle Excluder Devices (TEDs). TEDs are installations that allow sea turtles and other marine creatures to escape shrimp nets. The Convention does not require the U.S. to adopt additional laws because U.S. legislation already meets Convention requirements.

### **International Convention for the Prevention of Pollution of the Sea by Oil**

signed October 21, 1969; 28 U.S.T. 1205.

This treaty represents an attempt to take action in preventing pollution of the sea by oil discharged from ships. This treaty applies to all ships, except tankers of under 150 tons gross tonnage and other ships of under 500 tons gross tonnage, registered in the territory of, or having the nationality of, a Party. Naval

ships and ships engaged in whaling are also exempt (art. 2). The treaty also contains a prohibition of discharges, except when a ship is proceeding en route or when the instantaneous rate of discharge does not exceed 60 litres per mile. The prohibition is not applicable when the following conditions are satisfied: in the case of a ship—the oil content of the discharge is less than 100 parts per million of the mixture, or the discharge is made as far as practicable from land; in the case of a tanker—the total quantity of oil discharged on a ballast voyage does not exceed one fifteen-thousandth (.0015) of the total cargo-carrying capacity or the tanker is more than 50 miles from the nearest land (art. 3). There are exceptions to article 3 in cases of necessity to secure safety of ships, to save life or prevent damage to cargo, or where leakage is unavoidable and all measures have been taken to minimize it (art. 4). The treaty calls for ships to be fitted within 12 months to prevent escape of oil into the bilges (art. 7). Parties are to provide appropriate facilities at ports and oil-loading terminals (art. 8). All ships covered by the Convention are to carry an oil recordbook in a form specified in the annex, to be completed whenever certain operations take place (art. 9). Parties are to send texts of laws, decrees, orders and regulations giving effect to the Convention to the United Nations.

#### **International Convention on Civil Liability for Oil Pollution Damage, 1969**

Entered into force June 19, 1975; 973 U.N.T.S. 3.

#### **International Convention Establishing a Fund for Compensation of Oil Pollution Damage, 1971** 1971 U.N.J.Y.B. 103.

The Convention on Civil Liability and Oil Pollution Damage and Fund Conventions were negotiated in 1969 and 1971 respectively, to establish an international regime of liability and compensation for pollution damage from oil tanker spills. The Civil Liability Convention established a regime of strict liability on tanker owners to pay for damage up to \$20 million. The international fund created by the Fund Convention provides additional compensation up to a total of \$86 million per incident. The United States never ratified these conventions, due in large part to the fact that the limits were considered insufficient to cover damages and clean up costs from major oil spills. In 1984, Protocols were negotiated at both conventions which increased ship owner liability to a maximum of nearly \$86 million, and increased the total per incident compensation to about \$194 million ( the total compensation would rise to about \$260 million if the United States were a party). After further technical amendments, these Protocols were adopted in 1992 and entered into force internationally in 1996. The United States is not a party to either Protocol and has adopted a unilateral domestic liability and compensation regime.

#### **International Convention for the Regulation of Whaling, 1942**

161 U.N.T.S. 193.

The International Convention on the Regulation of Whaling, drafted in 1946 after a conference hosted by the U.S., was subsequently ratified and entered into force in 1948. The Convention was the culmination of a series of agreements beginning in the 1920s, the purpose of which was to establish a system of international regulation of whaling in order to ensure the conservation and development of whale stocks and develop the whaling industry. The Convention created the International Whaling Commission, which has authority over the conservation and management of whale stocks worldwide. In 1982, the International Whaling Commission adopted a commercial whaling moratorium, which took effect in 1986 and remains

in place.



### **International Convention on Salvage, 1989**

IMO/LEG/CONF. 7/27 (1989); S. Treaty Doc. No. 102-12 (1991).

This treaty provides for uniform international rules regarding salvage operations in light of the need for timely operations and to protect the environment. The Convention provides mainly for salvage of commercial vessels in navigable waters. It also provides for the rights and duties of a salvor and the contents of contracts for salvage. Article 9 recognizes the right of a coastal state to take measures in accordance with international law to protect its coastline from pollution, the threat of pollution from a casualty or acts related thereto that may lead to harmful consequences. The state may give directions in relation to salvage operations. In making such directions, the state shall take into account the need to ensure the success of the salvage operation in order to save life or property, and prevent damage to the environment in general. Special compensation is payable by the owner of the vessel to a salvor in respect to a vessel that by itself or its cargo threatens environmental damage and if the compensation has not been paid under the normal criteria for fixing reward (arts. 13 and 14).

### **LONDON CONVENTION:**

#### **Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972**

1046 U.N.T.S. 120; 26 U.S.T. 2403.

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, known as the London Convention of 1972, is the primary international agreement controlling the deliberate dumping of non-ship generated wastes at sea. Since entering into force in 1975, the London Convention has provided a structure by which its now 77 contracting parties have made consistent progress in combating marine pollution caused by dumping at sea. The London Convention has become more restrictive over the years. In 1993, bans on the ocean disposal of low-level radioactive wastes and industrial wastes were adopted.

In 1996, a Protocol to the London Convention was adopted, at a special meeting of the contracting parties, and signed by the United States, subject to ratification. The Protocol is a free-standing agreement to which both contracting and non-contracting parties to the London Convention may become party. The Protocol embodies a major structural revision of the Convention—the so-called “reverse list” approach. Parties are obligated to prohibit the dumping of any waste or other matter that is not listed in Annex 1 (“the reverse list”) of the Protocol. Dumping of wastes or other matter on the reverse list requires a permit. Parties to the Protocol are further obliged to adopt measures to ensure that the issuance of permits and permit conditions for the dumping of reverse list substances comply with Annex 2 (the Waste Assessment Annex) of the Protocol. There are seven categories of substances on the reverse list. These include offshore platforms or other man-made structures at sea; inert, inorganic geological material; organic material of natural origin; and bulky items including iron, steel, concrete, and materials that could cause physical impact.

## **MARPOL:**

### **International Convention for the Prevention of Pollution from Ships, 1973/1978**

November 2, 1973; 1313 U.N.T.S. 3.

The MARPOL Convention, which entered in force in 1983, is the primary international agreement aimed at preventing or reducing intentional and accidental discharges from ships into the marine environment. The MARPOL Convention and mandatory Annexes I and II deal with discharges of oil and noxious liquid substances in bulk, respectively. Optional Annexes III, IV, and V deal with packaged harmful substances, sewage, and garbage, respectively. MARPOL and Annexes I, II, III, and V are in force both internationally and for the United States. Annex VI, dealing with air pollution from ships, was negotiated in 1997 but is not yet in force. Another Annex, currently under negotiation, will be aimed at preventing the introduction of aquatic nuisance species, such as the zebra mussel, through ships ballast water.

The MARPOL Convention greatly reduces the amount of oil and ship generated waste which can be discharged into the sea by ships and bans such discharges completely in certain special areas. For example, the Caribbean and Gulf of Mexico have been designated as special areas where the dumping of ship generated waste, including plastic, is prohibited. This designation will become effective as soon as adequate reception facilities for such waste are available in the region.

## **PACIFIC SALMON TREATY:**

### **Treaty Between the United States and Canada Concerning Pacific Salmon, 1985**

TIAS 11091.

#### **Pacific Salmon Treaty Act**

16 U.S.C. 3631.

The mission of the Pacific Salmon Commission is to serve as a forum for cooperation between the United States and Canada in the establishment of general fishery management regimes for the international conservation and harvest sharing of intermingling North Pacific salmon stocks.

### **Treaty on Maritime Boundaries Between the United States of America and the United Mexican States, 1978**

17 ILM 1073.

Relevant U.S. Code citation: 22 U.S.C. § 277d-34

On October 18, 2000, the United States Senate gave its advice and consent to ratification of a treaty with Mexico that establishes a continental shelf boundary in the western Gulf of Mexico beyond 200 nautical miles of their respective coasts. The treaty does not affect the water column above the continental shelf, which will remain high seas. The treaty will enter into force upon the exchange of instruments of ratification.

This treaty is the third regarding maritime boundaries between the two countries. In 1970, the countries signed an agreement establishing maritime boundaries out to 12 nautical miles off their Pacific coasts and from the mouth of the Rio Grande into the Gulf of Mexico. This treaty entered into force in 1972. In 1978, a second treaty extended both of these boundaries seaward to the limit of their respective 200-mile zones. In the Gulf of Mexico, this resulted in the creation of two boundary segments where their 200-mile zones

overlapped.

The 1978 boundary treaty created a "western gap" of approximately 135 miles in length. In March of 1998, U.S. and Mexican delegations began discussions on a treaty that would delimit a continental shelf area in this "western gap". After two years of negotiations, this treaty was signed in Washington on June 9, 2000. This boundary was determined using the same method as was used to delimit boundaries in the 1970 and 1978 treaties. U.S. and Mexican technical experts calculated an equidistant line (a line midway between the respective coastlines, including islands, of the United States and Mexico). At its end points, it joins two segments of the 1978 maritime boundary.

To address the possibility of trans-boundary oil and gas reservoirs, the treaty creates a buffer zone 1.4 nautical miles wide on each side of the boundary. For the U.S., this represents slightly less than 10 percent of its portion of the western gap. Within the buffer zone, the nations have agreed to a 10-year moratorium on commercial oil and gas exploitation. The treaty creates a regime in which the parties will exchange information to help determine the possible existence of any trans-boundary reservoirs in the area and commit to address the equitable development of any such reservoirs.

#### **UNCLOS:**

##### **United Nations Convention on the Law of the Sea**

entered into force November 16, 1994; 21 ILM 1261.

The United Nations Convention on the Law of the Sea (UNCLOS), with Annexes and the Agreement Relating to the Implementation of Part XI, provide a comprehensive framework that sets forth the rights and obligations of states with respect to the uses of the ocean. Its provisions would guarantee United States' control of economic activities off its coasts, such as fishing and oil and gas development, and enhance the United States' ability to protect the marine environment. At the same time, it preserves and reinforces the freedoms of navigation and overflight essential to national strategic and commercial interests.

The Convention authorizes a territorial sea of up to 12 nautical miles and coastal state sovereign rights over living and nonliving resources in their Exclusive Economic Zone that may extend to 200 nautical miles from the baseline.

The 1994 Agreement fundamentally changed the provisions of Part XI of the Convention that establish a system for regulating the mining of mineral resources from the deep seabed beyond national jurisdiction. Part XI was renegotiated to remove the obstacles to the acceptance of the Convention that had prevented the United States and other industrialized countries from becoming parties. The United States signed the Agreement and has submitted the Law of the Sea Convention and the Agreement together as a package to the Senate for ratification. The entry into force of the Law of the Sea Convention has been a consistent objective of the United States since negotiations began on such a convention over two decades ago. The Convention entered into force in 1994 and over 120 States are parties including the United Kingdom, Germany, Italy, Japan, South Korea, Australia, Russia, China, and France.

