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Dalian, China
June 27, 1991

Thank you, Joe, I am reconfiguring this just a little bit because I am going to be using quite a bit of these transparencies to guide you through a number of the international law questions that have been raised by these presentations and some of the other ones that we've had for this meeting. My mission is to help you with the shipping aspects but bear with me, I will have some comments as well on some of the other legal issues that come up. I have an outline that is being distributed to you and looks something like this and, if you can find your copy and follow along, that may provide some guidance to you.

Well, what I hope to do is to guide you through a little bit of the international laws of the sea that is relevant to these questions and first, of course, is the question of what international law is, what its sources are, how we find it, and our primary source is the United Nations' Conventions of the Law of the Sea which was signed by 130 or so nations in 1982 and has now been ratified by over forty nations and will come into effect when fifty nations ratify it. None of the East Asian nations have ratified the Convention. None of the nations that are here at this meeting, but many have signed and signing a Convention, of course, has legal importance in that it means that you agree to support the purposes of the Convention and not defeat its fundamental objectives. The fact that we don't have any ratification forces us to ask: Is this Convention now customary international law in some or all of its component, and we will be talking about some parts of the Convention that are new that

introduce new ideas and so the question arises as to whether those ideas can be thought of as now customary international law and binding on nations, and I will talk in some detail about some of the questions that are specifically raised in that regard.

Now, the first category of waters that is of importance is internal waters. Internal waters in their classic sense consist of rivers and lakes that are totally within a country. It can also include bays and in this area we have, of course, the Bohai (Po Hai) Bay which is claimed the Peoples' Republic of China as internal waters and, as I understand it, no other nation has challenged that. The Bohai is a deep bay that has a closing mouth with islands across it, and so it has fairly strong claim for being in internal waters. The Peoples' Republic of China also made a claim for waters around Shanghai as internal waters and also the straits connecting Hanan Islands and the mainland as internal waters. Each of these cases present its own problems and some may, at some point, be challenged or not as the case may be. The second category of water is the territorial sea, and the territorial sea, as you know, consists of twelve nautical miles from the baseline or the coastline of a country. And the territorial sea is a zone of sovereignty. Countries own the waters in its territorial sea and have total and absolute authority over those waters with the exception that they must permit innocent passage of vessels through the territorial sea and that exception is of substantial importance to us because we

need to understand what passages are considered to be innocent and to what extent they can be controlled. The concept of innocent passage is not new, but in the 1982 Convention, it has been given substantial new definition and Article 19 tells us that passage is innocent so long as it is not prejudicial to the seas, good order or security of the coastal state. And then Article 19 goes on to list in some detail the types of activities that would be considered to be prejudicial or not innocent and some are obvious threat for use of force exercise involving weapons, intelligence gathering activities, propaganda, than any act of wilful and serious pollution but this becomes important to us any fishing activities and generally any other activities not having direct bearing on passage. So we have now a good idea of what is innocent and what is not innocent.

Article 21 allows coastal states to establish laws and regulations that can affect the innocent passage. One can regulate what other nations do when they pass but those regulations must conform to internationally recognized standards and cannot impose burdens that effectively interfere with the right of passage. If Article 22 permits traffic separation schemes inside their areas, but again, there must be some ways the passage can be permitted, and Article 23 says that if we are dealing with nuclear powered ships or ships carrying noxious or inherently dangerous substances that we can have special rules requiring the ships to carry documents and observe special

precautionary measures. In this region, we have a number of situations where innocent passage is restricted. The Chinese Government has required that permission be granted to warships that pass through the territorial sea. The Republic of Korea has required advance notice of passage three days advance notice for warships, and the Democratic Peoples' Republic of Korea also has restrictions for passage and so the question then arises are these restrictions legitimate and will those countries have to review their rules if they ratify the Law of the Sea Convention. I would like to just talk about the situation in another part of the world. In the Black Sea, south of the Soviet Union and north of Turkey, the United States has had the practice of sending warships into that sea. The Soviet Union has always argued that it is inappropriate because U.S. vessels doesn't have any place to go in the Black Sea; it's simply going there snooping around. In an incident that took place in 1986, the U.S. vessel came to east part of the Black Sea and then passed just south of a Soviet naval base in the Crimea within twelve nautical miles and then passed on after spending several hours slowly passing through the Soviet territorial sea. The Soviet Union protested and, when this happened the second time several years later, a Soviet vessel actually came out and shouldered the U.S. vessel away. The U.S. insisted on its position that it was free to engage in innocent passage through this territorial sea and subsequently there was an agreement between the United States and the Soviet Union in 1989 which resolved this matter at least for then, and I

wanted to just show you this because it may be of relevance to issues in this part of the world. This was the agreement between the United States and the Soviet Union and they start by saying that the relevant rules of international law governing innocent passage are found in the 1982 Convention. Now this is important because neither the United States nor the Soviet Union has ratified the 1982 Convention, but they both find that the relevant rules are found there as customary international law and then they say all ships, including warships, regardless of cargo, armament, or means of propulsion enjoy the right of innocent passage through the territorial sea in accordance with international law for which neither prior notification nor authorization is required. So this is a strong reaffirmation of the proposition that innocent passage even for warships does not require notification or permission, and so I bring this to your attention because in this region we may have a different regional rule that has emerged and that, of course, is possible that a region could have its own special rule and it need not necessarily appear to be international rule, but the rules that seem to govern here do seem to be in conflict with those in other parts of the world.

The next type of regime that is important is the regime that in the 1982 Convention is called transit passage through international straits. And this is a new concept in the 1982 Convention to deal with the fact that the territorial sea has

expanded to twelve miles and thereby put a number of international straits into the territorial sea of the coastal nations, and so this right of transit passage was created and it exists with regard to any strait that connects a body of the high seas and another body of the high seas or part of the exclusive economic zone in another part of the exclusive economic zone. And it is different from the right of innocent passage in one very important respect, namely, that it cannot be suspended. It is a non-suspendable right and also with regard to submarines, the submarines do not have to surface. In innocent passage, submarines have to surface. They are not innocent if they are proceeding below the surface. But in transit passage they can go below the surface because they do not need to be innocent and so it becomes important then to determine what are the straits in which this regime applied. And in this region, we have many straits of importance -- the Korea Strait is perhaps the most important for our purposes and we have two areas where passage through the Korea Strait becomes important. In the northeastern area, an interesting thing has happened around the Toshima Island the countries have claimed only three mile territorial seas thus leaving open areas for passage and so we do not have a situation where the territorial sea covers the whole strait so these maps were given to me by General Parker a couple of years ago and they show the opening, but if a twelve-mile territorial sea were claimed by Japan and Korea in this situation, nothing would be left of the passageways in terms of open seas and more difficult

questions would arise. Now, with regard to this, the second part of the straits, the ~~Ceju~~^{Cheju} (?) Island part of the straits, we have a different situation because here we have a territorial sea claim by Korea that do fill in the whole gap. In this situation, Korea has taken the position that they want international shipping to go south of ~~Ceju~~^{Cheju} (?) Islands rather than north and they argue that this northern area is not an international strait. Now, the Convention is a bit ambiguous here. It tends to say if there are two alternatives equally usable, you should use the one in the straits south of ~~Ceju~~^{Cheju}. But are the two routes equally usable, or is the southern route more onerous or more of a hardship on navigation. It appears that a lot of Soviet ships seem to like to go through that northern way and it is still unclear to what extent that will be deemed an international strait. Again, I mention the situation around Hanan Island where the same problems arise. Is the strait between Hanan and mainland China an international strait is still unresolved.

Now the next category of waters beyond the territorial sea is important is the exclusive economic zone which extends out to 200 nautical miles. In this region, a number of nations have not yet claimed an exclusive economic zone. North Korea has. Japan has but only with regard to the East Coast of Japan not with regard with the West Coast which is of interest to us. Here, China has not, South Korea has not, and Taiwan has not, so we don't yet have a full regime, but I would like nonetheless talk a

little about the exclusive economic zone because the Convention raises a lot of important issues. Now, in the exclusive economic zone, the theory is that vessels are free to navigate through it, but there cannot be any restrictions on navigation and that even military maneuvers can take place in exclusive economic zones. Many nations don't approve of this solution though and a number of nations would argue that military maneuvers should not take place in exclusive economic zones. China took that position during the negotiations and it's not clear what their current position is on that issue. The exclusive economic zone is a resource zone so nations have the right and power to protect their resources against pollution and that may affect shipping, and so I want to spend a moment talking about the possible impact on shipping of pollution-type regulations. In the Convention, we have a very strong obligation in Article 192. It is one of our shortest Articles but it is very important. It imposes upon each nation the obligation to protect and preserve the marine environment. and then Article 194 says the states shall act separately and together to protect their environment in different ways. And pollution comes, of course, from a number of sources. Land based sources are the primary source but pollution does come from vessels as well and so the Convention has a very long article -- Article 211 -- which in some detail outlines the responsibility of vessels with regard to ocean pollution and basically the obligations are to not pollute and to conduct your ship in such a way that you don't cause pollution into the ocean

environment. The coastal states can impose regulations. These regulations must conform to internationally recognized standards and in some limited situations according to 211(6) higher standards can be introduced if there are special circumstances that require them. In those situations, there should be coordination with the International Maritime Organization. And now, how are these enforced? How are the pollution measures enforced? The traditional way we enforce pollution is by the flag states. The state that has registered the vessel determines and authorizes the enforcement of pollution mechanisms and the 1982 Convention continues that idea. But this is no longer the exclusive method. Two other methods of enforcement are introduced and this is of importance to us. The first, according to Article 218, is enforcement by port states. If a vessel comes into a port voluntarily, the state can investigate and institute proceedings with respect to discharges from that vessel outside internal waters, territorial sea, or exclusive economic zone of that state. In other words, with regard to discharges that occur on the high seas beyond 200-mile or discharges that occur in the exclusive economic zones of other countries if the country approves and authorizes that enforcement. And then we have a third type of enforcement, in Article 220, which is enforcement by coastal states and this again is new. A coastal state can with regard to vessels that are in the territorial sea can undertake physical inspection of the vessel and institute proceedings including detention of the vessel. So a coastal

state can go out and seize a vessel passing through the territorial sea if pollution takes place. Now if the vessel is in the exclusive economic zone, the coastal state, if it has clear ground, the coastal state may require the vessel to give information regarding its identity, port of registry and so on, and then in paragraph 5 if there are clear grounds that the vessel has done something that has caused a substantial discharge with present significance the pollution of the marine environment then the state may undertake physical inspection of the vessel and ultimately detain the vessel. So we have now the power of coastal states to go out and seize the vessel. Now again an interesting question comes up -- what about nations that have not yet ratified the Convention? Can they do this? -- arguing that this is customary international law. And it would depend to some extent on whether they had claim to the exclusive economic zone, whether they had put other nations on notice and so on. So this is a new regime -- it's an important regime -- and it can lead to a whole range of new threat to shipping if coastal nations become aggressive in trying to protect their environment. There are some safeguards. The flag state can preempt the coastal state according to Article 228 and, according to Article 230, the penalties must be monetary and if bonds are put up the vessel must be released. They can't stay and arrest a vessel forever and then other safeguard and this is very important has to do with dispute resolution procedures. The Convention has a very elaborate and sophisticated set of mechanisms for resolving

disputes and this type of dispute where the environment is pitted against shipping is the dispute that they really deal with a lot of detail because they do not want navigation to be held up because of these environmental concerns. Again, for those dispute resolution mechanisms to be important and to be mandatory, the nations must have ratified the Convention and, if they have not, then we have some interesting questions. Now, in this area of the world, we have military security zones that I want to mention. China has a military security zone here in the area from the mouth of the Bohai as to this point here North Korea has military security zones here and here and up here South Korea apparently has one designed to deal with the Korean security situation. Are these enforceable against merchant shipping? Are they enforceable against military vessels? This map imagines a vessel going from Inchon to ~~Xiangging~~ ^{Tientsin} (?). Map up here in _____. If it went the direct way, it would be obliged to go through two military security zones. Would it be free to do so? Well, under the Law of the Sea Convention, it would. The military security zones would be without legal basis and the right of innocent passage would exist. But given that the Convention not enforce, given that we have the strong regional commitment apparently to military security zones, it could be argued that we have a different regime in this part of the world and that different rules apply. This is a big unresolved area. There are of course costs that occur with regard to military security zones. The cost to shipping is

obvious if the ship has to go around the zone. It is more expensive. I was intrigued as I was flying on China Air two days ago from Tokyo to Beijing that the plane did not go over Korea but instead took a rather long way around because it apparently did not have permission to fly over Korean territory. The flight took an extra hour or more obviously requiring much more gasoline and the same impact can occur when these military security zones are established on sea. And so this, I think, is a big question for this region as to whether or not these military security zones should be enforced, should stay in place or not. Now, we also in this region have unresolved boundaries, and there has been a lot of talk already about the boundary disputes that occur and the point has been made several times already that this has an impact on the development. As long as these boundaries are unresolved, investors are going to be reluctant to invest and people of this region would be denied access to resources that may exist. Now, the Convention gives us some very vague language on boundary delimitation. There is a delimitation on the exclusive economic zone and the same language is used for the continental shelf between states that are offset or adjacent to shall be affected by agreement on the basis of international law as referred to Article 38 of the statute of International Court of Justice in order to achieve an equitable solution. This language was developed after years of negotiation and is wonderfully ambiguous but it does have certain meaning. It means first of all that there is no one magic formula and that the

media and equidistance line is not mandatory and that the result should be equitable and that means that the views of each nation have to be considered and the geographical circumstances have to be looked at in some detail. Now, we have had a number of maps put on the screen here in the last two days about the geography of this area -- let me put up one more map for you. This map similar to the ones we have seen shows that we have a broad floating continental shelf off the East Coast of China leading to the Okinawa trough and then the islands over here. The Chinese position has always been that this continental shelf (the whole continental shelf) to the trough is part of the Chinese continent and that, therefore, belongs to China. Obviously, the other nations are less enthusiastic about that position. The question, therefore, comes up -- is this idea of the natural prolongation of the continental shelf one that is now a norm with international law? And the other interesting question is what about these little islands. Do they act to generate ocean zones to offset a big continental land mass? The idea of the natural prolongation was mentioned by the International Court of Justice in the North Sea case in the late 1960s. It has not been mentioned nearly as often recently though and seems to not be as important a principle. More recently, the court has more or less looked at the equidistant line but then modified it in terms of the length of the coastline of the various countries. And when it has dealt with islands, it has almost always reduced the importance of islands and said that the islands simply do not

have the power to generate an ocean zone in the same way that a continent does. There are many cases that could be cited for the proposition. The one that I find most interesting was a dispute between Malta, which is an island of a 118 square miles versus Libya, in the north coast of North Africa. And the court says that little Malta simply didn't have the same power generated zone as Libya so Libya was given more ocean space than Malta. And so I mention this because we have, in this part of the world, a lot of disputes over islands. And we have already been talking about the Shintakus, Sado, and Kyodai (?) Islands. In the South China Sea, you are all aware of disputes there, too. The Convention has a provision on islands which says in paragraph 3 "that rocks which does not sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." So we need to be clear that not all islands generate zones and, if we are talking about uninhabited islands, as we are when we talk about the Shintakus, the _____ or most of the Spratlys or ~~Paracels~~^{Paracels}, and they may not have any power to generate zones. Even if they have some power, it will be a limited power and, therefore, in my judgment, the big dispute about islands is overblown. There is an interesting situation in a little teeny place called Okinotorishima, which is a little bit east of the area we are talking about, which, in its natural formation, was the size of about two King-size beds and rapidly eroding away. The Japanese apparently because they hoped this would be able to generate a 200-mile zone spent many, many

millions of yen to build this little island into a more substantial place that would not erode away nearly as fast. Now, should they, after spending all this money, be then entitled to claim a 200-mile zone around Okinotorishima? In my judgment, they should not. The island was not habitable, it had no economic life of its own, it's an artificial island at this point, and the Convention is very clear that artificial islands should not be able to generate zones. We don't want to encourage nations to do this sort of thing. So, in any event, as we look at these boundary disputes here, we ought not to allow the islands themselves to be the determining factor. Instead we should look at the whole geo-political situation, the coastline, the historical claims, and resolve those boundary disputes according to other factors or as many speakers has suggested look forward to a joint development approach.

The final point I want to make here is just to tidy up some environmental questions. The Convention introduces a mandatory requirement that environmental impact assessments be conducted whenever a planned activity under a country's jurisdiction may cause substantial pollution of or significant and harmful changes to the marine environment. And that language is pretty broad. Whenever any state does anything that may cause substantial pollution or significant and harmful changes to the marine environment, they must conduct an assessment and publish the reports of that assessment. In the United States, we have had

about twenty years of experience with environmental impact assessment, and they have proved to be very, very useful to make sure that planned projects are carefully thought through. Every project is a test sooner or later, and we find that it is much better to assess it before you start the project than after you finish when its harder to change it. Now, an environmental impact assessment should consist of a number of things. First, it should discuss the probable impact of the proposed action on the environment, the adverse environmental impacts cannot be avoided if the proposal is implemented, and then it should analyze the alternatives that can be looked at including the alternative of doing nothing and compare the costs and benefits of each approach to each other and, in that process, you should look at both the long and short term impacts of this proposal and analyze any irreversible and irretrievable commitment to resources that the project would require. These last two points are very important. The environmental impact assessment should be interdisciplinary in nature. It should not be just scientists looking at the science this matter because ultimately what is involved is the scientific data is being assembled so a policy decision could be made. So you need social sciences as well as sciences working together to effect this environmental impact assessment. And then, finally, there must be public input because it is almost inevitable that some things will be ignored and left out in the planning process and some opportunity for public input is of great corrective force. In the United States,

we publish a draft environmental impact assessment with public comments on it. The draft is then obliged to respond to the comments explaining why they have rejected if they did reject it or how they have been incorporated into the report if they have been found to be valid. This process is now, as I say, mandatory under the Law of the Sea Convention and so we should all be having more experience about how this should happen. I have been spending most of my time talking about the Law of the Sea Convention but just in closing you should know that there are other relative conventions, too. The MARPOL Convention, the International Convention for the Prevention of Pollution from Ships, have been ratified by all the nations of this region since 1973, and it establishes discharge criteria and prohibits certain kinds of discharge and is an important Convention. The other Convention that I want to quickly mention is the London Dumping Convention which has been ratified by China and Japan in this region. The London Dumping Convention is a comprehensive Convention dealing with all matters of dumping. There is in the paper by _____ Li in tomorrow morning's session. It is said that a number of nations in this region is planning to dump industrial waste actively in the next few years. The London Dumping Convention regulates such dumping, and there has been a major move in the London Dumping Convention to prohibit all industrial waste dumping because of the detrimental effects that it will have in other parts of the world so before this area

begins that process, I hope there is sensitivity to the London Dumping Convention and its regime.