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Crafting the Law of the Sea: Elliot Richardson and the Search for Order on the Oceans (1977-1980)

Vivek Viswanathan

Harvard College

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CRAFTING THE LAW OF THE SEA

Elliot Richardson and the Search for Order on the Oceans

1977-1980

by

Vivek Viswanathan

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Introduction

“The Man for All Seasons”

Between 1969 and 1980, Elliot Lee Richardson served in a succession of influential positions in American government: Under Secretary of State; Secretary of Health, Education, and Welfare; Secretary of Defense; Attorney General; Ambassador to the Court of St. James’s in the United Kingdom; Secretary of Commerce; and Ambassador to the United Nations Convention on the Law of the Sea. He had served before in Massachusetts as the United States Attorney, the Attorney General, and the Lieutenant Governor. In his youth, he had participated in the D-Day invasion of Normandy, for which he received the Bronze Star; served as president of the *Harvard Law Review*; and clerked for two of the most eminent jurists in American history, Judge Learned Hand and Justice Felix Frankfurter. In old age, he received the Presidential Medal of Freedom, the nation’s highest civilian honor. In his prime, he played a pivotal role in the events that led to the only resignation of an American president.

He was, former congressman James Leach remembered when Richardson passed away in 1999, the Republican Party’s “man for all seasons.”¹ Yet we know little about him. There are plenty of archival sources: Richardson’s personal papers at the Library of Congress consist of 165,000 items, contained in more than 400 boxes that together occupy 238 linear feet of shelf space.² In addition to his government memoranda, Richardson wrote letters, delivered speeches, granted interviews, composed notes to himself, and published scholarly as well as popular articles. He also completed two books

¹ James A. Leach, “Standing Up for Republicanism,” *New York Times* 15 Jan. 2000.

² Allan J. Teichroew and Brad E. Gernard, eds., *Register of the Papers of Elliot Lee Richardson*, Manuscript Division, Library of Congress, Washington, D.C., 1994.

that drew on his experience in public life: *The Creative Balance: Government, Politics, and the Individual in America's Third Century*, which he had the opportunity to write after his unplanned exit from the Nixon administration in what became known as the Saturday Night Massacre;³ and *Reflections of a Radical Moderate*, a series of essays that he published shortly before his death.⁴ But he never recounted his life or explained what he believed to be his political legacy. When asked to write a memoir, he would reply, "I don't know where to start."⁵

The scholarly work on Richardson's life is sparse. While Richardson is cited in hundreds of books about American politics in the 1970s, especially those that discuss Watergate, he is not the subject of a single one, although Donald Carr, an attorney in Washington, D.C., is researching a biography.⁶ The most substantive essay on Richardson's life is Thomas Vance's "Elliot Richardson and the Virtue of Politics: A Brief Biography," a 25,000-word piece published by the Council for Excellence in Government.⁷ Vance, a retired Army Reserve officer, also recently published "The Mentors of Elliot Richardson" in the *Massachusetts Historical Review*.⁸ An essay in *Public Integrity* by James Pfiffner, a public policy professor at George Mason University

³ The Saturday Night Massacre refers to the resignation of Richardson as Attorney General on the night of Saturday, October 20, 1973. Richardson had refused to comply with Richard Nixon's order to fire the Watergate special prosecutor, Archibald Cox. Richardson's deputy, William Ruckelshaus, also resigned rather than comply with the order. Solicitor General Robert Bork, the highest-ranking official remaining at the Justice Department, dismissed Cox later that night.

⁴ Elliot L. Richardson, *The Creative Balance: Government, Politics, and the Individual in America's Third Century* (London: Hamish Hamilton, 1976); Elliot L. Richardson, *Reflections of a Radical Moderate* (New York: Pantheon Books, 1996). Richardson also wrote a third book, *The Uses and Limitations of Law* (New Delhi: Tata McGraw-Hill, 1982), which received less attention.

⁵ Janet H. Brown, telephone interview, 12 Jan. 2009.

⁶ Donald Carr, telephone interview, 13 Jan. 2009.

⁷ Thomas J. Vance, *Elliot Richardson and the Virtue of Politics: A Brief Biography* (Washington, D.C.: Council for Excellence in Government, 2000), <<http://www.excelgov.org/files/FileDownloads/-richardsonbio.pdf>> [accessed 18 Jan. 2009].

⁸ Thomas J. Vance, "The Mentors of Elliot Richardson," *Massachusetts Historical Review*, vol. 8 (2006): 105-129.

who had co-authored several articles with Richardson, explores Richardson's career and philosophy of government.⁹ Richardson is also featured in Geoffrey Kabaservice's *The Guardians: Kingman Brewster, His Circle, and the Rise of the Liberal Establishment*.¹⁰ But that is all. What else we know about his life has been cobbled together from news items, magazine profiles, memoirs, and the recollections of those who knew him well.

The first purpose of this thesis is biographical: to serve as a resource for those interested in his remarkable public life. While this project began as a biography, it has become something quite different. Readers may wonder why, given all of the posts that Richardson held, this thesis focuses on the four years during which he chaired the American delegation to the Law of the Sea conference. In its 1,960-word obituary of Richardson, the *Boston Globe* devoted two sentences to Richardson's participation in the Law of the Sea conference, while the *New York Times* and *Washington Post* each included just one sentence in their own retrospectives.¹¹ The 1,200-word entry for Richardson in the *American National Biography* addresses his participation at the Law of the Sea conference in a dependent clause.¹² "There is possibly no international topic more likely to produce a large yawn than the Third United Nations Conference on the Law of the Sea," admitted John Temple Swing, who served on the delegation.¹³ The

⁹ James P. Pfiffner, "Elliot L. Richardson: Exemplar of Integrity and Public Service," *Public Integrity*, vol. 5, no. 3 (Summer 2003): 251-269.

¹⁰ Geoffrey Kabaservice, *The Guardians: Kingman Brewster, His Circle, and the Rise of the Liberal Establishment* (New York: Henry Holt, 2004).

¹¹ Mark Feeney, "Elliot Richardson, Versatile Man, is Dead," *Boston Globe* 1 Jan. 2000; Neil A. Lewis, "Elliot Richardson Dies at 79: Stood Up to Nixon and Resigned in 'Saturday Night Massacre,'" *New York Times* 1 Jan. 2000; Bart Barnes, "Elliot Richardson Dies at 79: 1973 Resignation as Attorney General Shocked the Nation," *Washington Post* 1 Jan. 2000.

¹² Edward L. Lach, Jr., "Richardson, Elliot," *American National Biography Online* (April 2000), <<http://www.anb.org/ezp-prod1.hul.harvard.edu/articles/07/07-00738.html> [accessed 18 Jan. 2009].

¹³ Letter, Elliot L. Richardson to John Temple Swing, 6 Nov. 1979, "'S' miscellaneous—1979," Box 393, Elliot Lee Richardson Papers (henceforth ELR Papers), Manuscript Division, Library of Congress, Washington, D.C.

conference cannot match the excitement of policymaking at the Cabinet level, let alone the high drama of the Saturday Night Massacre.

Yet Richardson's participation at the Law of the Sea conference encompassed much that is riveting about his life. Watergate has established Richardson as a historical figure, and Richardson's résumé is enough reason for scholars of history and government to examine his life, if only to wonder how one individual managed to serve with distinction in so many roles. Rather than assessing Richardson's performance in each of the positions that he held, however, this thesis aims to use his involvement at the Law of the Sea conference as a lens to evaluate those qualities that distinguished his public life and that are the most important parts of his legacy. Chairing the American delegation to the conference was, Richardson later wrote, "my longest and most demanding tour of duty in any government job."¹⁴ The post, which he held from 1977 to 1980, called on his strengths, challenged his weaknesses, and tested his patience. It may not have been his most well-known assignment. It certainly was not, when he left the post, his most successful assignment. But at the time that he accepted it, he believed that it could be the most important.¹⁵

He accepted the assignment at an uncommon moment in his political life. Born in 1920 into a family of physicians, he had instead embarked on an alternate path. "Medicine is like reading a book where you know what's going to happen," he later

¹⁴ Richardson, *Reflections*, 218.

¹⁵ "I don't necessarily go along with Henry Kissinger on everything," Richardson said near the end of his tenure at the Law of the Sea conference, "but I've collected half a dozen statements from him saying these [Law of the Sea negotiations] are the most important negotiations ever conducted." Tracy Early, "An Interview with Elliot Richardson," *New World Outlook* (May 1980): 35, "Clippings (Richardson)," Box 364, ELR Papers.

explained. “I wanted a life with more surprises.”¹⁶ He attended Milton Academy, Harvard College, and, following his war service, Harvard Law School, receiving his law degree in 1947. In addition to learning the law from clerkships with Learned Hand and Felix Frankfurter, Richardson learned politics from his uncle, Boston City Council member Henry Lee Shattuck, and from Senator Leverett Saltonstall, for whom he worked in Washington, D.C. “It would be difficult,” Vance wrote in his study of Richardson’s mentors, “to imagine a richer collection of people engaged in shaping the direction of an individual’s life.”¹⁷ By 1977, he had not only cemented his reputation for integrity but had demonstrated his ability in the posts that he had held. His Clark Kent-like appearance and elegant manner reinforced the perception of his ability. “I approach any job in essentially the same way,” he would say. “I don’t consider that the subject matter makes any particular difference. If I don’t know it, I learn it. I try to find out what it is necessary to do, and then do it.”¹⁸ Gerald Ford was reported to have considered him for the vice presidency, and many believed Richardson had his sights set on the presidency.

Richardson did not discourage such talk. “I’ve spent most of my adult life holding public office in one form or another,” he often responded when asked about his political ambitions. “The presidency is the top job in my line of work.”¹⁹ But when Jimmy Carter defeated Ford in 1976, Richardson was unsure of his next step. With a Democrat entering the White House, commentators discussed the possibility of Richardson returning home to Massachusetts, after a decade in Washington, D.C., to challenge then-Governor

¹⁶ Feeney, “Elliot Richardson, Versatile Man, is Dead.” The obituary noted: “The family calling was medicine. Mr. Richardson’s great-grandfather, both grandfathers, a grandmother, three uncles, his father, and both his brothers were physicians.”

¹⁷ Thomas J. Vance, “The Mentors of Elliot Richardson,” 106.

¹⁸ Feeney, “Elliot Richardson, Versatile Man, is Dead.”

¹⁹ Robert L. Hassett, “Elliot’s Eye isn’t on Dukakis,” *Boston Herald American* 5 Oct. 1977, “Political—Clippings,” Box 389, ELR Papers.

Michael Dukakis in 1978. One poll showed him with a positive rating of 73 percent and a negative rating of 13 percent, comparable to Senator Edward Kennedy's 75-22 rating and making Richardson "better known and better liked in Massachusetts than at any point in his political career."²⁰ Some speculated that Richardson planned to enter the race for the Republican presidential nomination in 1980. Other than the fifteen months that elapsed between Richardson's resignation in the Saturday Night Massacre and his appointment as Ambassador to the Court of St. James's by Ford, Richardson had held public office continuously since January of 1965. It seemed an opportune moment to pause, to "survey the horizon" in his phrase, and to reflect on his next move.²¹

Except that Richardson had never been one to plot his path upward. "Each job, each case, carries its own reward, and beyond that there are no worthwhile rewards," he once said. "The reward is in doing the job well, in doing the best you can, and in the belief that it was useful."²² Jonathan Moore, one of Richardson's closest advisers and his former chief of staff, remembered that if Richardson "had a chance to do a job that was important, regarded as important, that he was challenged by, he would tend to do that...thinking that it would not foreclose his possibility of a higher political future, but he would not tend to be distracted by the fact that it might not be the best way to get

²⁰ John F. Becker, "Eight Years Later, Teddy's Back on Top as Favorite Son," *Boston Herald American* 1977 (date not listed), "Political—Clippings," Box 389, ELR Papers.

²¹ "I will survey the horizon very carefully and should I then decide to run [for office] I will certainly let you know," Richardson wrote to a supporter. Letter, Elliot L. Richardson to David F. Asman, 3 Aug. 1979, "'A' miscellaneous," Box 357, ELR Papers.

²² "Legends in the Law: A Conversation with Elliot L. Richardson," *Bar Report*, vol. 23 (1995). Richardson recalled the advice that Felix Frankfurter had given him on the subject of building a successful career: "Elliot, I don't think you ought to develop career goals. I've known quite a few men who did this, and then they did everything in their power to fulfill this ambition. They were constantly calculating how to take advantage of some opportunity or connection that would move them along toward their goal. Yet most of them awaken in their fifties to the realization that they are never going to achieve their great ambition. On top of that disappointment, they realize that they undercut the satisfaction of what they were doing by trying to use it for the sake of something else." Richardson agreed. "I thought that was very insightful advice," he said later, "and I took it to heart."

there.”²³ Henry Richardson also recalled that his father “tended to really appreciate what was in front of him.”²⁴ During the 1976 presidential campaign, Richardson had attacked Carter, declaring that Carter’s inexperience in foreign affairs “makes me shudder.”²⁵ Yet there was, Moore recalled, “considerable congeniality” between Carter and Richardson’s foreign policy views, helped by the fact that both Richardson and Carter’s Secretary of State, Cyrus Vance, were “patrician internationalists, the successors to the [John] McCloy, [Robert] Murphy, Dean Acheson group.”²⁶ J. T. Smith, another close Richardson adviser, added that the decision to offer a position to Richardson was Vance’s idea and, given their friendship, “wasn’t a surprising idea.”²⁷ Vance, when asked later in life why he chose Richardson, emphasized that “I’ve known him and liked him and admired him for all these many years...To me there was only one person to take hold of the [Law of the Sea assignment] and really lead it because it is probably one of the most difficult tasks that anybody has ever had put before them.”²⁸ So it was that Richardson accepted the opportunity to head the American delegation to the Law of the Sea conference in January of 1977, not foreclosing the possibility of leaving his post to run for governor or president but with the understanding that he had not chosen the most direct path to those offices. While serving at the Law of the Sea conference, Richardson often wrestled with his political ambition, a subject that this thesis will explore in some detail. But he focused on the task in front of him, a task that in this instance offered the

²³ Jonathan Moore, personal interview, Cambridge, MA, 18 Nov. 2008.

²⁴ Henry Richardson, telephone interview, 16 Feb. 2009. [References to Henry Richardson in the text and footnotes will include his full name. Citations of “Richardson” that do not include a first name should be understood as referring to Elliot L. Richardson.]

²⁵ “Speech prepared for delivery by Secretary of Commerce Elliot L. Richardson to a combined luncheon of the Chairman’s Club, Republican Executive Committee on Monroe County, and elected officials—Rochester, N.Y.,” 26 Oct. 1976, “1976—22 Oct.-13 Dec.,” Box 352, ELR Papers.

²⁶ Jonathan Moore, interview.

²⁷ John Thomas Smith II, telephone interview, 9 Jan. 2009.

²⁸ Cyrus R. Vance, telephone interview by Thomas J. Vance (no relation), 24 Apr. 1995.

chance to participate in what he called an “exciting collective experiment on behalf of mankind.”²⁹

The four years that Richardson spent in the Law of the Sea assignment illustrate, to an extent greater than in any other position that he held, the characteristics that animated his public life. First was his love of complexity. “The difficulty of the choices confronting the democratic process is bound to increase in rough proportion to the increase in complexity,” he wrote.³⁰ Yet such choices are necessary, he emphasized. “You can’t set priorities without making choices, and you can’t fulfill priorities without formulating workable strategies. And none of the above is possible without establishing and communicating goals.” The core strength that Richardson brought to government service, enabling him to serve in posts across the government, was his ability to manage this process. He and his chief aides became so adept at transitioning from one agency to the next that the *Washington Monthly* published an article, “How to Take Over the Government,” that detailed their skill.³¹ One staffer referred to his time working for Richardson as the “equivalent of several Ph.D.’s in public administration.”³² Richardson relished the opportunity to solve public problems that had defied solution.

The intractability of the Law of the Sea conference therefore piqued, and held, his interest. Three years into the position, he wrote to Lincoln Bloomfield, his college classmate serving on the National Security Council as Director of Global Issues, “I cannot conceive of a more complex corpus of multilayered and multifaceted issues.”³³

²⁹ “Comments on Financing by Ambassador Elliot L. Richardson,” 10 Mar. 1977, NSA-Global Issues, “Law of the Sea (LOS), 2-6/77,” Box 37, Jimmy Carter Library.

³⁰ Richardson, *Reflections*, 55.

³¹ Charles Peters, “How to Take Over the Government,” *Washington Monthly* (September 1974): 15-23.

³² Thomas J. Vance, “The Mentors of Elliot Richardson,” 124.

³³ Letter, Elliot L. Richardson to Lincoln P. Bloomfield, 2 Aug. 1979, “‘B’ miscellaneous,” Box 359, ELR Papers.

That difficulty, which Caitlyn Lance Antrim, a member of the American delegation, compared to “putting your hands on a puzzle in which you didn’t have all the pieces,” only enhanced his enjoyment.³⁴ Richardson, who as a judicial clerk had implored Justice Frankfurter for an hour every morning to read Shakespeare, loved the life of the mind.³⁵ He once summed up his interest on a book he was reading on nineteenth-century Japanese military strategy by saying, “If I had known that I was going to die this afternoon at 2 p.m., I would still have kept reading that book.”³⁶ That attitude carried over to the Law of the Sea conference where, Donald Carr recalled, he “was absolutely fascinated by the number of moving parts.”³⁷ “I really do think it was his favorite job,” Henry Richardson later remembered of his father’s participation in the conference.³⁸

The job also illuminated Richardson’s humility. Humility was not the quality that most of those introduced to Richardson associated with him. Richardson, one profile noted, “could make a bad first impression: frosty, arrogant, pedantic.”³⁹ This tendency was particularly pronounced on television where, according to Carr, Richardson “looked wooden and stiff.”⁴⁰ Yet underneath was a profound lack of condescension that stemmed from his early life. Richardson was a “well-to-do scion of Massachusetts history and money” and “somewhat of a playboy in college,” remembered Bloomfield, who attended Harvard with Richardson, but his war service “bespoke his character.”⁴¹ Richardson

³⁴ Caitlyn Lance Antrim, telephone interview, 20 Feb. 2009.

³⁵ Lewis, “Elliot Richardson Dies at 79: Stood Up to Nixon and Resigned in ‘Saturday Night Massacre.’” According to the obituary, Frankfurter “was so impressed with Mr. Richardson that in 1953 he recommended that he be named president of Harvard even though he was only 33 years old.”

³⁶ Pfiffner, “Elliot L. Richardson: Exemplar of Integrity and Public Service,” 268.

³⁷ Carr, interview.

³⁸ Henry Richardson, interview.

³⁹ James Bennet, “The Lives They Lived: Elliot Richardson, b. 1920; The Longest Day,” *New York Times Magazine* 7 Jan. 2001.

⁴⁰ Carr, interview.

⁴¹ Lincoln P. Bloomfield, telephone interview, 20 Feb. 2009.

himself recalled the influence of his war experience, saying that he came away with a “sense of our common humanity as individuals. During those many months of combat, I felt a very strong sense of the equal dignity and value of all my fellow soldiers. That...has stayed with me.”⁴² When he meditated on the virtues of those who had influenced his life, he always pointed to their humility. Learned Hand not only possessed a brilliant mind but was “down-to-earth, friendly, and funny.”⁴³ Of his uncle, Henry Lee Shattuck, Richardson said that the “one thing he could not abide was pretense...He literally treated everybody the same way.”⁴⁴

In noting his uncle’s “disinclination to distinguish among people on the basis of background, rank, or wealth,” Richardson identified a quality that he cultivated in himself.⁴⁵ He displayed this quality in his work with the civil service. Every time he entered a Cabinet department, Jonathan Moore remembered, Richardson made a “major commitment to win the respect and mobilize the talent of that bureaucracy.”⁴⁶ Arriving at the Justice Department, he encountered what he labeled the “greatest administrative chaos in the American government.” Yet his first message to employees expressed his “respect for the integrity and competence with which you do your jobs.”⁴⁷ In his personal interactions he was “one of the funniest, most enthusiastic, silliest people I have ever met,” remembered Janet Brown, who helped research Richardson’s book, *The Creative Balance*, before joining his staff in 1977. “We had some of our best conversations walking around his home while he was picking up sticks.”⁴⁸ At the Law of the Sea

⁴² “Legends in the Law: A Conversation with Elliot L. Richardson.”

⁴³ Thomas J. Vance, “The Mentors of Elliot Richardson,” 113.

⁴⁴ *Ibid.*, 108.

⁴⁵ *Ibid.*

⁴⁶ Jonathan Moore, interview.

⁴⁷ Peters, “How to Take Over the Government,” 21.

⁴⁸ Brown, interview.

conference, his penchant for working on equal footing with other delegations earned him their respect. “He was trusted by everyone,” remembered Tommy Koh of Singapore, who assumed the presidency of the conference in 1980.⁴⁹

The negotiations symbolized, finally, Richardson’s commitment to and love of government service. Following his clerkships with Learned Hand and Felix Frankfurter, he had declined an invitation to serve as an assistant to Secretary of State Dean Acheson because he believed that he should experience the work of a practicing attorney. Yet he discovered that private practice “didn’t match the satisfaction of doing a good job for the public.”⁵⁰ For the rest of his life, however, his interest in government work was all-encompassing. In addition to his aforementioned love of its complexity, he possessed a keen sense of its importance. A deputy assistant secretary, he later wrote, “can have a wider impact on the national interest than all but a few senior corporate positions.”⁵¹ He also possessed an inveterate optimism about government work that enabled him to work through frustration. “I have always been one of those that H. L. Mencken called the ‘optimists and chronic hoppers of the world’ and so I view the kinds of problems you bring up as ones that can be solved,” he wrote in 1975 to a student disillusioned by Watergate. “It is always easier to wave away the whole process and forget it, dismissing it as worthless and not worth trying to save,” he said, but added that “despite the complexity of government today, despite its vastness and often remote nature, I think each of us truly can make a difference.”⁵² He carried that attitude into each post that he held.

⁴⁹ Tommy T. B. Koh, e-mail interview, 19 Feb. 2009.

⁵⁰ Edward L. Lach, Jr., “Richardson, Elliot,” *American National Biography Online*.

⁵¹ Richardson, *Reflections*, 89.

⁵² Letter, Elliot L. Richardson to Gary Lorenz, 2 Jul. 1975, “L’ miscellaneous,” Box 296, ELR Papers.

It was not a matter of noblesse oblige. Richardson's background and Harvard education resembled that of those public-minded members of the Establishment who moved seamlessly between government and business interests, as did his dress, a "proper Yankee costume of linen suit, red tie, white shirt and scrimshaw cuff links."⁵³ But Richardson in fact "had nothing in common with those people," Jonathan Moore remembered.⁵⁴ "The reason why the Republican National Committee has not recently received a major contribution from me," Richardson wrote in response to a fundraising solicitation in 1979, "is simple—too much time in government with an income that has never kept up with my cost of living."⁵⁵ More than duty or obligation, the sense of being engaged in a collective enterprise appealed to him. "Whatever success I've had is the product of several ingredients, in what proportion it would be is hard to say," he wrote in the midst of the Law of the Sea conference to a nineteen-year-old asking for advice. "But perhaps most important is the fact that I always tried to enlist the people I've worked with in a common approach to the public interest on the merits with the minimum intrusion of purely personal considerations."⁵⁶ The possibility that he could encourage such an effort on a global scale, with developing and industrialized nations working side-by-side to draft a workable agreement, drew him to the Law of the Sea conference.

Richardson was fond of saying that we all have the defects of our qualities.⁵⁷ The Law of the Sea assignment, more than any other post that he held, demonstrated the truth

⁵³ Martin F. Nolan, "Richardson: Soon a Time for Decisions," 1977 (date not listed), "Clippings (general), Box 364, ELR Papers.

⁵⁴ Jonathan Moore, interview.

⁵⁵ Letter, Elliot L. Richardson to Anne Armstrong, 5 Nov. 1979, "'A' miscellaneous," Box 357, ELR Papers.

⁵⁶ Letter, Elliot L. Richardson to Bill Butts, 21 Jan. 1980, "Nov. 1979 – Oct. 1980," Box 363, ELR Papers. Richardson also identified stamina, hard work, and the "combination of a good education and some measure of native ability" as factors in his success.

⁵⁷ Richardson, *Reflections*, xi.

of this observation in his own life.⁵⁸ His love of complexity often shackled him when he attempted to make his case to others. “Richardson preferred prose like his own, not overly succinct,” said one of his assistants.⁵⁹ Bloomfield, who wrote that “some of Carter’s fellow Georgians found Boston Brahmin Richardson a kind of alien life form,”⁶⁰ recalled having once set up a briefing in the White House Situation Room so that Richardson could explain the importance of the Law of the Sea conference to members of the White House staff. It was “a fiasco,” Bloomfield remembered. “Elliot was at his dullest rather than at his most scintillating.”⁶¹ This tendency interfered with the task of building support for eventual ratification of the Law of the Sea treaty.

His respect for others and his belief in resolving public matters on the merits, both of them admirable qualities, also led to missteps at the conference. Richardson marveled, his son remembered, at the extent to which the “influence of the ambassadors at the conference was not proportional to the influence of the country that they represented, but to their intellect and mastery of issues.”⁶² He had reason to admire his fellow ambassadors. In other nations, Janet Brown noted, the position of ambassador to the Law of the Sea conference was “attached to somebody that was seen as a rising star...Elliot’s counterparts were really big deals.”⁶³ But there were occasions when his respect for his counterparts should have been leavened with greater skepticism. Richardson was “not as

⁵⁸ An even more potent example from Richardson’s life was his unsuccessful run for the U.S. Senate in 1984, a campaign discussed in the conclusion of this thesis. That example, however, exhibited his weaknesses as a candidate rather than as an administrator, policymaker, or negotiator.

⁵⁹ Peters, “How to Take Over the Government,” 22. In his bestselling guide, *On Writing Well*, William Zinsser singled out Richardson for his verbosity, citing his evaluation of affirmative action—“And yet, on balance, affirmative action has, I think, been a qualified success”—as the “most wishy-washy sentence in modern public discourse.” William Zinsser, *On Writing Well* (New York: Collins, 2001), 22.

⁶⁰ Lincoln P. Bloomfield, *Accidental Encounters with History* (Cohasset, MA: Hot House Press, 2005), 48.

⁶¹ Bloomfield, interview.

⁶² Henry Richardson, interview.

⁶³ Brown, interview.

tough in terms of the bottom line on some things that he needed to be tough on, [especially on] deep seabed mining,” according to John Norton Moore, an international law professor who had preceded Richardson at the conference. Richardson himself later admitted that when he arrived at the Law of the Sea conference, he had much to learn not only of its substance but of the process of international negotiation. His optimism that other nations were up to the challenge of setting an example of effective international cooperation could venture into exuberance, as it did at the beginning as well as the end of his tenure. Richardson’s participation at the Law of the Sea conference is a valuable lens for examining his life because his performance revealed the limits as well as the possibilities of his political style.

An examination of Richardson’s approach to the Law of the Sea conference can, in addition to serving a biographical purpose, prove useful for students of the conference and, more broadly, those interested in the subject of international cooperation. The Third United Nations Conference on the Law of the Sea lasted from 1973 to 1982, and many books and essays have been published on the subject. This thesis, while not a history of American participation in the conference in the four years that Richardson served in his post, will be of interest to scholars of the Law of the Sea who wish to learn more about the evolution of the United States’ position at the conference. The thesis exhibits the habits that Richardson brought to the position; the strategic adjustments that he and members of his delegation made when they encountered obstacles in the negotiations; the difficulty that he had in building support within the Executive Branch, the Congress, and the mining industry; and the disappointment that he felt when the treaty, which he would

refer to later in life as his “baby,” was rejected by the Reagan White House.⁶⁴ It also assesses his performance: his stumbling start; his recovery of his footing through the rest of the negotiation; and his inability to persuade the United States to sign, let alone ratify, the resulting agreement. It details his missteps but also underscores his accomplishments, which were considerable. While Richardson fell short of his objective, his effort and skill made a difference, and it is unlikely that anyone could have done better.

That the United States rejected the treaty that Richardson worked for four years to negotiate is not remarkable. Several scholars have noted the United States’ “consistent rejection of the application of international norms,” and its refusal to sign the Law of the Sea treaty is a part of that trend.⁶⁵ Nonetheless, the history of the conference warrants the attention of students, historians, and practitioners interested in the possibility of international cooperation. “Major policymaking episodes,” Ernest R. May and Philip Zelikow have noted, “repay the closest possible examination.”⁶⁶ Today, the belief that the United States must act in concert with others has become commonplace.⁶⁷ But a commitment to working with others is only the first step. The day-to-day practice of international cooperation is an art of its own. As Richardson discovered, it is an art in which vision is often less important than detail. “All hard questions,” he had learned from

⁶⁴ Carr, interview.

⁶⁵ Andrew Moravcsik, “The Paradox of U.S. Human Rights Policy,” in Michael Ignatieff, ed. *American Exceptionalism and Human Rights* (Princeton, NJ: Princeton University Press, 2005). Beth Simmons suggested that it was “notable that a major seafaring country involved in international trade would have backed off” the Law of the Sea treaty, and she pointed out that the United States’ distrust of international agreements is “truer in the human rights area than it is in the trade area.” But given the complexity of the Law of the Sea treaty and the inability of its proponents to build support among American industry, she said, the United States’ rejection of the treaty is not surprising. Beth A. Simmons, personal interview, Cambridge, MA, 24 Feb. 2009.

⁶⁶ Ernest R. May and Philip D. Zelikow, *The Kennedy Tapes*, concise edition (New York: W. W. Norton, 2002), 449-450.

⁶⁷ Joseph S. Nye, *The Paradox of American Power: Why the World’s Only Superpower Can’t Go It Alone* (New York: Oxford University Press, 2003); Fareed Zakaria, *The Post-American World* (New York: W. W. Norton, 2008).

Professor Thomas Reed Powell at Harvard Law School, “are questions of degree.”⁶⁸ The Law of the Sea treaty was patched together in degrees.

Knowledge of how Richardson managed the task of international cooperation on a subject as vexing as the Law of the Sea can inform similar efforts today. J. T. Smith noted that Richardson’s career has direct relevance to the present not because of its length but because of what made his service in each post distinctive: his competence. We are witnessing a “resurgence in interest in the efficacy of the federal government as a means to address national problems,” Smith said.⁶⁹ Just as the qualities that marked Richardson’s career may be instructive for government officials, his performance at the Law of the Sea conference may be instructive for international negotiators. No direct analogy is possible, as Richardson himself understood. “In my view, the true value of history lies not in the ‘lessons’ it teaches,” he later wrote, “but in the awareness it creates of the ways in which large forces interact with each other and are acted upon by individuals and ideas.”⁷⁰ His example at the Law of the Sea conference is a testament to the difficulty of engagement but also, he believed, of its possibility.

This thesis draws on archival research at the Library of Congress and at the Jimmy Carter Presidential Library. Richardson’s personal papers, memoranda, and correspondence form the basis of my views of his thinking on the Law of the Sea as well as insights into his character. He participated in exchanges on matters related to the negotiation, often highly technical in nature, with other ambassadors at the conference, fellow members of his delegation, the White House, members of Congress, domestic pressure groups, and interested citizens. He also answered letters from people in all walks

⁶⁸ Richardson, *Reflections*, 112.

⁶⁹ Smith, interview.

⁷⁰ Richardson, *Reflections*, 124.

of life, including the many letters that urged him to pursue the presidency. His papers, in addition to exhibiting his beliefs, provide a sense of his habits. In his reading he underlined heavily, always with his same blue felt-tip pen, often pausing to pose questions in the margin and, on occasion, to correct grammar. He took voluminous notes, though his handwriting often was indecipherable. And he doodled constantly, drawing elaborate sketches on page after page. Richardson, one account noted, “kept himself sane through the years of negotiations by drawing hundreds of thousands of beautiful owls.”⁷¹

While the Richardson papers provide insight into his character and philosophy, the Carter documents that relate to the Law of the Sea conference, many of which have only been declassified within the last decade, detail his interactions with the White House. Richardson sought, unsuccessfully, for Carter to involve himself in the issue, and on key occasions he faced off against various departments on Law of the Sea policy. Documents from the National Security Council illuminate how the administration’s strategy on Law of the Sea matters evolved during this time. In addition to using books, journal essays, and newspaper accounts, this thesis relies extensively on interviews with individuals who knew Richardson well and who worked closely with him at the Law of the Sea conference.

The first chapter of this thesis will discuss the background of the Law of the Sea conference, the difficult first year that Richardson experienced as chair of the American delegation, and the consideration that he gave to running for governor of Massachusetts. The second chapter will discuss the remainder of Richardson’s tenure at the conference,

⁷¹ Martin Mayer, *The Diplomats* (New York: Doubleday, 1983), 293. According to the *New York Times*, Richardson’s “incessant doodling during Cabinet meetings at the White House irritated President Nixon.” Richardson responded, “He thought I wasn’t paying attention.” Marjorie Hunter, “Carter Economies Turn Elliot Richardson to Art,” *New York Times* 9 Mar. 1978.

at the end of which he appeared on the verge of agreement. The third chapter will discuss the rejection of the treaty by the Reagan administration, as well as the consideration that Richardson gave to running for the presidency. The conclusion touches on Richardson's life after he left the Law of the Sea conference in 1980 and considers his political legacy.

After 1980, Richardson's involvement in politics would never be the same. Yet he remained persuaded that politics is "still the most difficult of the arts and the noblest of the professions...No other occupation subjects its practitioners to such a constant flow of difficult, demanding, and sometimes painful choices."⁷² Richardson relished the work, which, he believed, "more than fully engage[s] the highest level of ability."⁷³ That ability, he learned in the four years that he chaired the American delegation to the Law of the Sea conference, may not trump circumstance. But Richardson, who chose as the working title of his last book *The Cynics Are Always Wrong*, believed that multilateralism was worth pursuing even if the odds of success were low.⁷⁴ The story of his participation at the Law of the Sea conference is an important story, an overlooked chapter in an oft-overlooked life. It is key to what Donald Carr called the "very important legacy of an almost entirely forgotten man."⁷⁵

⁷² Richardson, *Reflections*, 205.

⁷³ *Ibid.*, 87.

⁷⁴ "Legends in the Law: A Conversation with Elliot L. Richardson." "I dislike cynicism," Richardson said, "because it passes itself off as being realistic when in fact it is as far off the true center of reality as naïve idealism."

⁷⁵ Carr, interview.

1.

“A Constitution for the Oceans”

“Rarely has any generation had so clear a choice to make between order and anarchy,” Elliot Richardson declared in May of 1977 on the eve of the sixth session of the Third United Nations Convention on the Law of the Sea. It would be Richardson’s first session as head of the American delegation. The United States, he said, was “proceeding on the assumption that there is an emerging consensus in favor of order and is determined to support it.”¹ While aware of the difficulty of reaching agreement at the conference, especially on the charged issue of deep seabed mining, Richardson was confident that, with preparation and diligence and the application of analytical skill, success would be achieved. “I do not approach this assignment in the spirit of a haggler in a rug bazaar,” he told an audience soon after his appointment. “I see myself, rather, as a contributor to rational accommodations among valid competing interests.”²

Participation at the sixth session that summer in New York dispelled that illusion. “Within weeks I had been introduced to real negotiation,” Richardson later reflected. “It’s a matter, I discovered, of convincing the other guy that what you have to offer is worth more than he realized and that he doesn’t have much time to get it, while simultaneously convincing him that what he’s offering is worth less to you than he thought and that you have all the time in the world.”³ Richardson had excelled in every government post that he had held. He was the “man to rely on in almost every administrative challenge,” wrote

¹ “150 Nations Try to Reach Law of the Sea Agreement,” *UPI Wire* 23 May 1977, “Clippings (general),” Box 364, Elliot Lee Richardson Papers (henceforth ELR Papers), Manuscript Division, Library of Congress, Washington, D.C.

² Elliot L. Richardson, *Reflections of a Radical Moderate* (New York: Pantheon Books, 1996), 142.

³ *Ibid.*

one newspaper editorial board.⁴ Now he confronted an assignment that appeared to exceed his grasp. At the end of that sixth session, a frustrated Richardson called for “a most serious and searching review of both the substance and procedures of the conference.”⁵ His words presaged the nature, and length, of the task ahead.

It was a task that had consumed his predecessors. “All of us,” wrote John Norton Moore, an American representative to the Law of the Sea conference during the Nixon and Ford administrations, “underestimated the complexity of negotiating 92 substantive items with 150 nations, with no voting.”⁶ The scale of the challenge was “monumental,” John R. Stevenson, former head of the American delegation and later the senior partner at the Sullivan & Cromwell law firm, said in 1975, “nothing short of drafting a constitution for the oceans that will gain the support of the world’s nations.”⁷ By the time Richardson assumed his post, the international community had made important progress. But unresolved matters, most notably deep seabed mining, threatened to unravel the conference. It was the deep seabed mining provisions that had prompted Richardson at the sixth session to threaten United States withdrawal from the conference.

In the three years that followed, Richardson combined the lessons learned from that session with the sum of his experience and skill in public policy to advance the negotiations while tending to his domestic flank, including skeptical members of Congress and the mining industry. He was, he wrote, engaged in a “venture unprecedented in its potential for demonstrating that multilateral diplomacy can produce

⁴ “Richardson for Vice President,” editorial, *Spokesman Review* 9 Aug. 1974, “Vice-presidential selection—1974,” Box 266, ELR Papers.

⁵ Ann Hollick, *U.S. Foreign Policy and the Law of the Sea* (Princeton, NJ: Princeton University Press, 1981), 326.

⁶ Renee Beaulieu, “200-Mile Limit Said Damaging at Sea Parley,” *The Day* (New London, Conn.), 20 Apr. 1977, “Clippings (general),” Box 364, ELR Papers.

⁷ John R. Stevenson, “Lawmaking for the Seas,” *ABA Journal* (Feb. 1975), “Law of the Sea,” Box 258, ELR Papers.

solutions to global problems acceptable to the United States.”⁸ When he left his position as chair of the American delegation to the conference in 1980 and returned to private life, he did so with a sense of accomplishment, having brought the United States “closer than ever to completing the negotiation on a treaty that adequately protects our interests in the broadest sense.”⁹ The final negotiating session was completed in 1981, and the Law of the Sea Convention opened for signature in 1982. Richardson’s prediction of success, however, proved premature. Opposition, from the mining industry and from an ascendant conservatism, scuttled American participation in the treaty. The search for order, for an agreement that would not only improve use of the oceans but be a model of the effective international cooperation required in a new era, would have to wait.

The sense that nations should act on the oceans in accordance with internationally accepted rules of understanding was not new. More than three hundred years had passed since the Dutch philosopher Hugo Grotius proposed the principle of the freedom of the seas. The prelude to American involvement in international negotiation on the seas was the Truman Proclamation. Issued in 1945, the Proclamation extended the oceanic resource claims of the United States. President Harry Truman declared that the United States government “regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.”¹⁰ Truman did affirm the importance of international cooperation on navigational rights related to the

⁸ Letter, Elliot L. Richardson to John P. Humes, 16 May 1980, “‘H’ miscellaneous—1979-1980,” Box 378, ELR Papers.

⁹ Letter, Elliot L. Richardson to Deane Hinton, 8 Apr. 1980, “‘H’ miscellaneous—1979-1980,” Box 378, ELR Papers.

¹⁰ “Proclamation 2667: Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf,” *Public Papers of President Harry S Truman* 28 Sep. 1945.

oceans. A White House press release emphasized that the Proclamation “in no way abridges the right of free and unimpeded navigation of waters of the character of high seas above the shelf, nor does it extend the present limits of the Territorial waters of the United States.”¹¹ It claimed only the resources, not the territory, of the continental shelf.

Innovation in mineral extraction and mining technology, however, offered the potential of more efficient recovery of those resources. It was this possibility that prompted Truman to extend the resource jurisdiction of the United States by 750,000 square miles.¹² The Secretary of the Interior, Harold Ickes, emphasized that the United States must take advantage of the opportunity to “avail ourselves fully of the riches in this submerged land and in the waters over them.”¹³ The United States soon found, however, that it was not alone in extending its claims. By 1950, more than thirty other nations had taken similar action, with some extending this resource jurisdiction up to 200 miles from the coast.¹⁴ Several nations went further and extended not only their resource jurisdiction but their territorial claims. So began a process of creeping jurisdiction that threatened, in the words of one commentator, to “carve up the oceans the way the imperial nations carved up Africa in the eighteenth and nineteenth centuries.”¹⁵ It was an issue that called for an international solution.

In the two decades that followed Truman’s Proclamation, the United Nations twice held conferences to negotiate understandings on the sea. The first conference, held

¹¹ “White House Press Release: Proclamation 2667,” *Public Papers of President Harry S Truman* 28 Sep. 1945.

¹² “Proclamation 2667: Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf.”

¹³ Marjorie M. Whiteman, ed., “Chapter 11: Continental Shelf—Emerging Legal Status,” *Digest of International Law*, vol. 4 (1965).

¹⁴ James B. Morell, *The Law of the Sea: The 1982 Treaty and Its Rejection by the United States* (Jefferson, North Carolina: McFarland & Company, 1992), 4.

¹⁵ Leonard Cohen, “Third World Compromise is Must for Law of the Sea Accord,” *Providence Journal* 16 Jun. 1977, “Clippings (general),” Box 364, ELR Papers.

from 1956 to 1958 in Geneva, Switzerland, resulted in agreements on territorial claims, international waters, and conservation.¹⁶ It did not, however, resolve most resource and navigation issues. As nations continued to expand their territorial claims, concern extended from resource jurisdiction to freedom of navigation in narrow straits that, under the expanded claims of the adjoining nations, were no longer international waters allowing for unimpeded passage. Military as well as economic considerations were at stake: The United States depended on navigation and overflight rights to preserve its ability to project force, including its nuclear deterrent capability. Whether the United Nations could effectively address the need for cooperation, however, was an open question. A “model of evasion couched in high-sounding language” is how one longtime observer of the Law of the Sea negotiations referred to the agreements from the 1958 conference.¹⁷ If the first conference had only limited success, the second had even less. It lasted for six weeks in 1960 and did not reach any agreement.

These efforts set the background for the third conference beginning in 1973, a conference that soon became, as one study noted, the “most complex, ambitious multilateral treaty negotiation ever attempted.”¹⁸ The conference mandate was to arrive at an agreement “dealing with all matters relating to the law of the sea...bearing in mind that the problems of ocean space are closely related and need to be considered as a whole.”¹⁹ Furthermore, the conference president, H. S. Amerasinghe of Sri Lanka, emphasized that nations must “reach agreement on substantive matters by way of

¹⁶ Charles Fincham and William van Rensburg, *Bread Upon the Waters: The Developing Law of the Sea* (London: Turtledove Publishing, 1980), 2.

¹⁷ William Wertenbaker, “Mining the Wealth of the Ocean Deep,” *New York Times* 17 Jul. 1977.

¹⁸ Hollick, *U.S. Foreign Policy and the Law of the Sea*, 14.

¹⁹ *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index* (New York: St. Martin’s Press, 1983), Introduction, xix.

consensus...there should be no voting on such matters until all efforts at consensus have been exhausted.”²⁰ With an unlimited agenda, a consensus-based negotiating procedure, and, most important, the mandate that all issues must be considered together in a single treaty, progress stalled. “The most important thing so far agreed,” the *Economist* wrote of the conference, “is that none of the things already agreed can be finally agreed until everything has been agreed. It’s all or nothing; and, so far, nothing.”²¹ The imposition of an unwieldy, all-or-nothing structure seemed to minimize the possibility of agreement.

There was, however, good reason, for the United States as well as other nations, to insist that all issues related to the ocean be considered together, and this was because a single, vital issue—deep seabed mining—overshadowed all other issues. The deep seabed refers to the ocean floor beyond the jurisdiction of any nation. Because of the depth of this area and the limits of technology, harvesting minerals from the deep seabed had not been considered in the first or second Law of the Sea conferences. The pace of innovation, however, continued to accelerate. In 1965, John Mero, a California engineer, published *The Mineral Resources of the Sea*, in which he predicted that within three decades more than half of the global output of metals such as nickel and copper would come from the seabed.²² His claims “caused a stir in oceanographic and mining circles,” one account noted, and they were presented at the same time that scientists had developed

²⁰ Letter, H. S. Amerasinghe to Jonathan Bingham, 12 Nov. 1979, “Amerasinghe, Hamilton Shirley,” Box 353, ELR Papers. Rule 37 of the Rules of Procedure for the conference committed delegates to searching for consensus. See “Rules of Procedure,” Third United Nations Conference on the Law of the Sea, 22 Jun. 1974.

²¹ “The Sea Lawyers,” *Economist* 15 Apr. 1978, “United States Interests and the Law of the Sea,” Box 357, ELR Papers.

²² John E. Frohnmayer, “The Nixon Proposal for an International Seabed Authority,” *Oregon Law Review*, vol. 50 (1970-1971), 601.

the technology to drill the ocean floor at depths exceeding three miles.²³ Recovery of seabed minerals appeared not far off.

Those minerals were no small matter. There were, according to several reports, more than a trillion tons of manganese nodules on the seabed of the Pacific Ocean that, if economically efficient technology were developed, could be recovered by use of a vacuum method.²⁴ The nodules, which developed through a “natural chemical process in which ions of the metals attach themselves to tiny bits of stone, shells, shark’s teeth, or other solid objects,”²⁵ consisted of nickel, iron, copper, cobalt, and manganese. These were vital metals: manganese, nickel, and cobalt, for example, are used in the manufacture of steel.²⁶ The usefulness of the seabed minerals, when combined with the quantity—according to one study of the subject, “enough copper to last the entire world for 6,000 years, compared with 40 years’ reserves on land; enough nickel to last 150,000 years, versus 100; aluminum for 20,000 years, versus 100”²⁷—led several sources to estimate the full value of the minerals at \$3 trillion.²⁸ For those nations possessing the technology, deep seabed mining would be a boon.

For nations that did not possess the technology, however, the possibility of deep seabed mining symbolized yet another instance of developed nations enriching themselves at the expense of the rest of the world. In an influential address at the United

²³ William Wertenbaker, “The Law of the Sea—I,” *New Yorker* 1 Aug. 1983, 48.

²⁴ Tracy Early, “Law of the Sea Conference Tests World’s Ability to Live Together,” *Oklahoma City Times* 31 May 1977, “Clippings (general),” Box 364, ELR Papers.

²⁵ Richard L. Worsnop, “Urgency Building at Sea Conference,” *Journal—Knoxville, Tenn.* 19 May 1977, “Clippings (general),” Box 364, ELR Papers.

²⁶ “Sea Law Session Will Try Again,” *Sun-Herald—Biloxi-Gulfport, Miss.* 22 May 1977, “Clippings (general),” Box 364, ELR Papers.

²⁷ Wertenbaker, “Mining the Wealth of the Ocean Deep.”

²⁸ See “Sea Meeting Tries to Stop ‘Anarchy,’” *UPI Wire* 23 May 1977; R. M. Sorge, “Conference Reconvenes: Wealth From the Seas Ready for Harvest; But First Must Come ‘Law of the Sea,’” *UPI Wire* 24 May 1977; and Mary Russell, “House Approves Authority to Regulate Ocean Mining,” *Washington Post* 27 Jul. 1978, located in “Clippings (general),” Box 364, ELR Papers.

Nations in 1967, Arvid Pardo of Malta argued that the resources of the deep seabed must be considered the “common heritage of mankind” rather than the province of any state.²⁹ In 1970, the United Nations adopted a formal resolution supporting the concept of the common heritage, with the United States voting in favor.³⁰ What the common heritage principle meant in practice, however, was not clear. Developing nations now possessed a U.N.-supported claim to a share of the resources of the deep seabed. But the force of that claim had not been resolved. Developing nations worried that while they awaited the creation of guidelines for implementing the common heritage principle, developed nations and multinational corporations would begin to mine the deep seabed and appropriate the benefits for themselves.

That worry led developing nations to insist on an all-encompassing single negotiation format for the conference. For developed nations, the importance of a Law of the Sea treaty rested not in the deep seabed but, rather, in the freedom of navigation for military and commercial vessels, as well as agreed-upon rules on coastal jurisdiction.³¹ The military justification for such a treaty led the Department of Defense to support negotiating efforts at the Law of the Sea conference throughout the Nixon, Ford, and Carter administrations. The Law of the Sea “must, above all, ensure a stable legal regime for the oceans and protect our vital national security interests in preserving the mobility and flexibility of our naval and air forces,” Admiral T. B. Hayward, the Chief of Naval

²⁹ See William Wertenbaker, “Seabed and Ocean Floor,” *New Yorker* 1 Jun. 1968, 24-26. Wertenbaker interviewed Pardo after the speech.

³⁰ Resolution 2749, United Nations General Assembly, 17 Dec. 1970.

³¹ “We, as well as the Soviet Union, have adhered unequivocally to the position that our commercial and military vessels and aircraft have the right to traverse on, over and under international straits and the waters beyond the territorial sea,” Richardson said in 1979. “Formal affirmation of this right [has been a] priority second to none.” James C. F. Wang, *Handbook on Ocean Politics & Law* (Westport, CT: Greenwood Press, 1992), 466.

Operations, wrote to Richardson.³² Agreements on the extent of territory and the exclusive economic zone for each nation would, in turn, work to prevent an unproductive economic arms race among nations vying to increase their access to resources.

With the advent of deep seabed mining as a real possibility, however, developing nations, for whom the common heritage concept had become a “rallying cry,” would not agree to the provisions that developed nations hoped for in the Law of the Sea unless those provisions were accompanied by provisions on the regulation of deep seabed mining.³³ While United Nations Resolution 2749 had committed that body to the common heritage concept, the developing nations pushed for a formal international mechanism to ensure that any minerals exploited from the deep seabed benefited them in practice. Because developed and developing nations prioritized different issues, and because concessions on one issue influenced the negotiations on another, the conference required a broad mandate in order to succeed. “Let us not forget,” Richardson once wrote in response to a memo from the Department of Commerce that suggested that the United States consider dispensing with deep seabed negotiations, “that we have always seen in UNCLOS III [the Third United Nations Conference on the Law of the Sea] a package deal among navigational and resource interests. And the former, I trust, are still a Commerce concern.”³⁴ For the United States, the challenge of the negotiations was to achieve its goals on other issues while reaching an acceptable settlement with developing nations on regulation of the deep seabed.

³² Letter, T. B. Hayward to Elliot L. Richardson, 24 Jul. 1980, “Law of the Sea Conference,” Box 356, ELR Papers.

³³ Wertenbaker, “The Law of the Sea—I,” 48. See also Richard J. Payne, “Mining the Deep Seabed: The Political, Economic, and Legal Struggle,” *Journal of Politics*, vol. 40, no. 4 (Nov., 1978): 933-955.

³⁴ Letter, Elliot L. Richardson to William C. Brewer, Jr., 26 Feb. 1979, Box 359, ELR Papers. On the subject of the tradeoff between navigational and resource interests, see Finn Laursen, “Security Versus Access to Resources: Explaining a Decade of U.S. Ocean Policy,” *World Politics*, vol. 34, no. 2 (Jan., 1982): 197-229.

The line that separated developed and developing nations on the seabed issue by no means explained all of the disagreement at the conference. “One of the reassuring, and even pleasurable, aspects of the Third Conference,” noted an essay on the conference published later in *The New Yorker*, “was the regularity with which ideological postures and alliances foundered on geographic realities.”³⁵ As Tommy Koh, the Ambassador from Singapore who later served as president of the conference, told *Newsweek*, “You will find countries allied here [at the Law of the Sea conference] that you will not find working together in any other international forum, such as Mongolia and Swaziland, or Jamaica and Iraq.”³⁶ Alan Berlind, who directed the Law of the Sea Office at the State Department, remembered that the United States and the Soviet Union, adversaries in the Cold War, “consulted frequently both before UNCLOS began and throughout the negotiations” because of their shared interest in maintaining the freedom of navigation.³⁷ States that perceived that their interests would suffer from the efforts of coastal nations banded together under the banner of LL/GDS—land-locked or otherwise geographically-disadvantaged states. The unusual alliances extended to seabed issues. Developing nations that exported the same minerals that would be harvested from the seabed felt threatened by the possibility of a mining regime even if designed according to the common heritage principle. “Indonesia would be hard-hit were seabed nickel to enter the market, Gabon’s cobalt production would be dwarfed by a single seabed mining site, and Chile’s copper would be challenged,” recalled Berlind.³⁸ Canada, a developed nation, faced a similar problem given its production of nickel, and pushed for production limits

³⁵ Wertenbaker, “The Law of the Sea—I,” 49.

³⁶ “‘Common Heritage of Mankind’—Interview: Tommy Koh,” *Newsweek* 25 Sep. 1978, 64, “Clippings (general),” Box 364, ELR Papers.

³⁷ Alan D. Berlind, e-mail interview, 22 Feb. 2009.

³⁸ Berlind, interview.

on seabed mining even as Canadian business interests prepared to participate in mining consortia.³⁹ But discord on the seabed issue tended to cleave along North-South lines and, more than any other issue and especially by the time Richardson arrived, threatened the viability of the conference.

Richardson had, in fact, been involved with formulating a Nixon administration proposal on the deep seabed seven years before assuming his position heading the American delegation to the Law of the Sea conference. That proposal called for a limited jurisdiction zone, an intermediate zone in which the adjoining nation would act as a trustee for the international community, and the creation of an international seabed authority to issue licenses for deep seabed mining. Under the proposal, this international authority would collect significant revenues from resources in the intermediate and, especially, the deep seabed areas, and much of this revenue would go to developing nations.⁴⁰ This was, Richardson remembered much later, an “extraordinarily generous proposal,” but for reasons that remain unclear, it was not adopted by the United Nations Seabed Committee that preceded the formal opening in 1973 of the Law of the Sea conference.⁴¹ Because several nations further extended their ocean claims, the proposal that Richardson had helped author soon became infeasible, and deep seabed mining continued to unsettle the negotiations at the time Richardson arrived at the conference.⁴²

³⁹ See Elizabeth Riddell-Dixon, *Canada and the International Seabed: Domestic Determinants and External Constraints* (Montreal: McGill-Queen's University Press, 1989).

⁴⁰ Ann Hollick, “Seabeds Make Strange Politics,” *Foreign Policy*, no. 9 (Winter 1972-1973), 149.

⁴¹ Elliot L. Richardson, “Historical Evolution of the United Nations Convention on the Law of the Sea,” *Georgetown International Environmental Law Review*, vol. 639 (1994-1995), 641. Richardson said that the developing nations “themselves kicked over [his 1970 proposal] early on in the Law of the Sea negotiations,” but he did not explain why. According to an account in the *New Yorker*, developing nations may have rejected this proposal, which was “far more generous” than future draft texts, “partly because its use of the term ‘trusteeship’ evoked the wounds of the colonial period, and partly out of general distrust.” See Wertenbaker, “The Law of the Sea—I,” 49.

⁴² Richardson, “Historical Evolution,” 641.

While Richardson believed that the United States must be firm in the negotiations on deep seabed mining, he also sensed in those negotiations a unique opportunity. If military and commercial considerations constituted the “paramount interest that had brought about U.S. participation,” the seabed negotiations offered an interest of a different sort.⁴³ Richardson was, by the time he assumed his position at the Law of the Sea conference, a committed internationalist. A longtime member of the United Nations Association, he believed in its work and later served as its chair.⁴⁴ “The ups and downs of the struggle to make this a more civilized world,” Richardson remembered, “have held my interest ever since, as a teenager, I rooted for the League of Nations in its hapless attempt to stop Italy’s brutal conquest of Ethiopia.”⁴⁵ That spirit was reinforced in his course in international law with Professor Louis Sohn at Harvard Law School, and it animated his work in foreign relations throughout his career, even as elements of the Republican Party began to move in a different direction. While Ronald Reagan had denounced the treaty that returned control of the Panama Canal to Panama—“We bought it, we paid for it, it’s ours, and we’re going to keep it”⁴⁶—Richardson supported it.⁴⁷ He continued to affirm that in a world “coming to grips with its own inseparability...the necessary responses have to be cooperative rather than unilateral, practical rather than ideological.”⁴⁸ He considered the Law of the Sea the “greatest challenge in modern

⁴³ Richardson, “Historical Evolution,” 643.

⁴⁴ Letter, Lincoln P. Bloomfield to Elliot L. Richardson, 7 May 1980, NSA-Global Issues, “Law of the Sea: 4-5/80,” Box 39, Jimmy Carter Library (henceforth JCL). “My spies tell me that you have assumed the mantle from Bill Scranton as President of UNA-USA,” Bloomfield wrote. “Congratulations to UNA-USA.”

⁴⁵ Richardson, *Reflections*, 214.

⁴⁶ Lou Cannon, *President Reagan: The Role of a Lifetime* (New York: Public Affairs, 2000), 296.

⁴⁷ George Koppe, “Security Demands Pact on Canal, Lawyers Told,” (newspaper and date not listed), “‘B’ miscellaneous—1977,” Box 358, ELR Papers.

⁴⁸ Richardson, *Reflections*, 214.

diplomacy” not only because of its difficulty but because of the need to set an example for the cooperation essential in the modern era.⁴⁹

That example offered “by far the best, and perhaps the last, opportunity to establish a universally agreed and conflict-free regime governing all uses of the world’s oceans and their resources,” Richardson believed.⁵⁰ He viewed his seabed proposal in 1970 as a method of exercising an enlightened conception of the national interest that considered the views and dignity, and not simply the geopolitical power, of others. “This position will have broad appeal among Americans and the world at large as a gesture from the most powerful, technologically advanced nation to the less developed countries,” he wrote of the proposal. “It is one of the few areas where we have the opportunity to exercise imaginative leadership in the U.N. planning of the next development decade.”⁵¹ At one point, he chastised a Department of Commerce representative for giving developing nations “too much credit for their ‘astute political maneuvers’ in putting over the concept of the ‘common heritage,’” pointing out that “as far back as LBJ, and even before Arvid Pardo, we contributed to the idea.”⁵² In accepting the assignment at the Law of the Sea conference, Richardson sought through negotiations on the deep seabed to reach an agreement that was “best for the United States *and* best for the world,” longtime Richardson aide Jonathan Moore remembered in an interview.⁵³

⁴⁹ Letter, Elliot L. Richardson to John P. Humes, 16 May 1980, “‘H’ miscellaneous—1979-1980,” Box 378, ELR Papers.

⁵⁰ “Statement by the Chairman of the U.S. Delegation, Ambassador Elliot L. Richardson, Regarding Navigation and Overflight Policy,” 23 Aug. 1979, “Amerasinghe, Hamilton Shirley,” Box 353, ELR Papers.

⁵¹ Letter, Elliot L. Richardson to Ruth Lapidoth, 18 Mar. 1974, “Law of the Sea,” Box 258, ELR Papers.

⁵² Letter, Elliot L. Richardson to William C. Brewer, Jr. The reference to President Lyndon B. Johnson is supported by the declaration Johnson made in 1966 that the “deep seas and the ocean bottoms are, and remain, the legacy of all human beings.” See “Remarks at the Commissioning of the Research Ship—Oceanographer,” *Public Papers of President Lyndon B. Johnson* 13 Jul. 1966.

⁵³ Jonathan Moore, personal interview, Cambridge, MA, 18 Nov. 2008.

He believed that such an agreement could serve as a momentum-building model of effective international action.

The recent history of the conference cast doubt, however, on the chance of coming to such an agreement. Developed nations wanted ocean mining interests possessing the requisite technology to be allowed access to the deep seabed, with a small royalty fee to be passed on to developing nations through an International Seabed Authority with minimal regulation and a favorable decision-making structure. The developing nations, influenced by a philosophy known as the New International Economic Order, wanted the Authority to control the deep seabed.⁵⁴ Under their proposed system, an Authority-run corporation known as the Enterprise would conduct all mining and would develop the capacity to do so with financing and technology

⁵⁴ The New International Economic Order is a phrase that originated with a resolution, entitled “Declaration for the Establishment of a New Economic Order,” adopted by the United Nations General Assembly in 1974. The resolution called for proposals to “correct inequalities and redress existing injustices” in the global economy that separated developed from developing nations, an injunction with clear implications for the seabed. “The quest for a new international economic order is one of the most controversial and important developments in international relations,” noted a 1982 study of the relationship between the NIEO and the Law of the Sea. See Richard J. Payne and Jamal R. Nassar, “The New International Economic Order at Sea,” *The Journal of Developing Areas*, vol. 17, no. 1 (Oct., 1982): 44. Secretary of State Cyrus Vance invoked the NIEO in his public statements. “Our progress in North-South negotiations,” he said, “our progress towards a more equitable and healthy new international economic order, will turn on our common ability to avoid endless debates on sterile texts, and to focus instead on concrete development problems which we can tackle together.” See Cyrus Vance, “Vance on North-South Relations: America’s Commitment to Third World Development,” 30 Mar. 1977, “Speeches—by others,” Box 392, ELR Papers. Carter administration documents show that the administration monitored the effect of the Law of the Sea on the broader subject of North-South relations. “The success or failure of the LOS [Law of the Sea] conference,” Alan Berlind wrote in a 1979 memo to Zbigniew Brzezinski, “could have an impact on the direction and outcome of the overall North/South dialogue and possibly on some specific negotiations, depending upon both the timing of LOS events and the way in which they take place.” See Alan D. Berlind, “Law of the Sea: Its Relation to Other North/South Issues,” 11 Jan. 1979, NSA-Global Issues, “LOS, 10/78-1/79,” Box 38, JCL. The election of Ronald Reagan sharpened the attitude of the American government toward North-South issues, with the White House referring to the NIEO as a “scheme for restructuring the international economy along the socialist lines of the world’s centrally-managed economies and for redistributing the world’s wealth.” The NIEO became a catchphrase for conservatives opposed to a Law of the Sea treaty that, in their view, ceded sovereign power to an international authority and betrayed free market principles. See John Rees, “Conservative Congressman Jack Fields: Interview with the Leading GOP Opponent of the Law of the Sea Treaty Exposes the Radical Push for a New International Order,” *The Review of the News*, vol. 19, 18 May 1983, 41, Box 416, “Law of the Sea conference—articles,” ELR Papers.

transferred from developed nations. The Authority, with a decision-making structure weighted toward developing nations, would distribute revenue as it saw fit. “By 1977,” Ann Hollick wrote in her study, “it was widely perceived that negotiations on the deep seabed constituted the principal obstacle to a Law of the Sea treaty.”⁵⁵ It would not be an easy obstacle to surmount. “One thing seems clear,” wrote John Temple Swing, a member of the American delegation, in 1976: “Neither the Group of 77 [of developing nations] nor the United States and the other developed countries are likely to go along with a treaty that gives the other grouping de facto control of the International Seabed Authority.”⁵⁶ Richardson may have believed that other issues were paramount, but the seabed issue would absorb his effort.

His predecessors had demonstrated similar effort with limited success. In 1976, Secretary of State Henry Kissinger, in what the lead U.S. negotiator on seabed mining issues at the time, Leigh Ratiner, labeled as an act of impulse, announced substantive concessions to developing nations on the seabed issue.⁵⁷ In a move that Richardson later recalled looking at with “astonishment,”⁵⁸ Kissinger had proposed a parallel system under which private mining concerns and the Enterprise would operate side-by-side at selected sites and had promised that developed nations would help with financing and technology transfer.⁵⁹ His proposals “have an aura of authoritativeness about them that may betoken a more positive U.S. stance,” one account noted at the time. “Kissinger has

⁵⁵ Hollick, *U.S. Foreign Policy and the Law of the Sea*, 324.

⁵⁶ John Temple Swing, “Who Will Own the Oceans?” *Foreign Affairs*, vol. 54, no. 3 (Apr. 1976).

⁵⁷ Leigh S. Ratiner, telephone interview, 9 Jan. 2009.

⁵⁸ Richardson, “Historical Evolution,” 642.

⁵⁹ Steven R. David and Peter Digeser, *The United States and the Law of the Sea Treaty* (Washington, D.C.: Johns Hopkins Foreign Policy Institute, 1990), 29.

articulated a position based on goals rather than constraints.”⁶⁰ Kissinger’s concessions nonetheless did not satisfy developing nations who continued to argue that seabed should only be mined by the Enterprise. United States officials, in turn, believed that too much was being asked of them on financing and technology. They were especially wary of the proposed voting structure of an Authority that, under the current draft text, would wield excessive power. “The single text provisions on the deep seabed,” wrote Brent Scowcroft, Gerald Ford’s national security adviser, in 1976, “are unsatisfactory and a major breakthrough on this subject is needed if the conference is to succeed.”⁶¹ Developed and developing nations looked toward the sixth session as a key moment. Many agreed with the sentiment expressed in an essay in the spring of 1977 in *Foreign Affairs*: “If the disagreements persist, the conference is likely to break down.”⁶² Richardson stepped into the breach.

Having held no fewer than eight government positions in the previous decade, Richardson was adept at quickly mastering a new set of challenges. He immediately persuaded Richard Darman and J. T. Smith, two of his most trusted aides, to join the American delegation with responsibility for negotiations on the seabed.⁶³ In advance of

⁶⁰ Jeremiah J. Sullivan, *Pacific Basin Enterprise and the Changing Law of the Sea* (Lexington, MA: Lexington Books, 1977), 37. “We are at one of those rare moments,” Kissinger said in 1975, “when mankind has come together to devise means of preventing future conflict and shaping its destiny rather than to solve a crisis that has occurred or to deal with the aftermath of war.” James K. Sebenius, *Negotiating the Law of the Sea* (Cambridge, MA: Harvard University Press, 1984), 80.

⁶¹ Memorandum, Brent Scowcroft to Gerald R. Ford, “Report on the New York Session of the Third United Nations Conference on the Law of the Sea,” 14 Jun. 1976, Presidential Handwriting File-International Organizations—UNESCO, “International Organizations: U.N. Conference on the Law of the Sea,” Box 26, Gerald R. Ford Library.

⁶² Jonathan Charney, “Law of the Sea: Breaking the Deadlock,” *Foreign Affairs* vol. 55, no. 3 (Apr. 1977).

⁶³ Darman, Richardson wrote later, was “extraordinarily gifted in the power of clear analysis...His mind works quickly and powerfully.” In recommending Darman’s appointment to the Harvard Kennedy School, Richardson noted, “I have never written a letter of recommendation with greater enthusiasm or conviction.” See Letter, Elliot L. Richardson to Graham Allison, 4 Nov. 1977, “Darman, Richard G.,” Box 366, ELR Papers. Richardson praised Smith as a “lawyer of great integrity, resourcefulness, and skill...I have the

the sixth session, Richardson immersed himself in Law of the Sea issues, Smith recalled, “spending long periods of time with [international law professors] Bernie Oxman and Louis Sohn...hours and hours of briefings and discussions.”⁶⁴ Ratiner, who left the delegation after President Carter took office, also recalled briefing Richardson extensively.⁶⁵ The work was, Richardson told Senator Edward Kennedy in a handwritten note, “at least as challenging as any of my previous assignments—and that’s as I would prefer it.”⁶⁶ In addition to careful study, Richardson traveled in February to Geneva for informal negotiations where he received a “firsthand flavor for the personalities with whom he would be dealing” at the sixth session.⁶⁷ Because seabed mining was understood to be the critical issue at the forthcoming session, it was discussed at length in the informal negotiations, with delegations coalescing around a compromise put forward by Jens Evensen of Norway. Eighty-five nations participated in the informal meetings, and the Associated Press reported that the discussions had inspired “talk of a breakthrough” at the sixth session.⁶⁸ Richardson, it appeared, had arrived at just the right time.

He was, moreover, making a significant impact. At the meeting in Geneva, he had promised, to great fanfare, that the United States would fund one-fifth of the Enterprise’s operating costs for the first mining site if the conference reached agreement on seabed

utmost respect for his soundness of judgment.” See Letter, Elliot L. Richardson to H. E. Jose Luis Villar Palasi, 2 Jan. 1979, “Smith, John T., II,” Box 392, ELR Papers.

⁶⁴ John Thomas Smith II, telephone interview, 9 Jan. 2009.

⁶⁵ Ratiner, interview.

⁶⁶ Letter, Elliot L. Richardson to Edward M. Kennedy, 1 Mar. 1977, “‘K’ miscellaneous—1977-1979,” Box 379, ELR Papers.

⁶⁷ Smith, interview.

⁶⁸ “Nations Work on Sea Law,” *AP Wire* 23 May 1977, “Clippings (general),” Box 364, ELR Papers.

mining, a value of more than \$100 million.⁶⁹ In addition, foreign delegations enjoyed working with and looked up to him. Ratiner stated plainly that Richardson was “adored” by the other negotiators.⁷⁰ Former congressman James Leach also remembered “how well regarded he was by foreign diplomats. He was the type of American leader that the rest of the world was crying out for.”⁷¹ Richardson, too, enjoyed his fellow negotiators, describing them as “an inspiring group of colleagues to work with, regardless of points of agreement or difference.”⁷² This good feeling carried over from the informal negotiations to the sixth session, and Richardson believed that concerted effort could, finally, make a difference. “The new Evensen texts generally proceed from an assumption, which I believe is correct, that a parallel system is likely to command the general support of the Conference,” he wrote. The compromise texts were not perfect, he noted. “I must state that we still have serious problems with some aspects of them.”⁷³ But they offered, he believed, the chance to move forward and reach accord on the seabed issue.

It was this sense of qualified optimism that Richardson exuded during the sixth session, which lasted from May 23 to July 15. Often the pace of the negotiations frustrated him. “We are just into the third week of negotiations and it’s still anyone’s guess as to how it will turn out,” he wrote in early June. “I’m highly encouraged one day, but not so encouraged the next. It’s a continual seesaw.”⁷⁴ At one point in late June, he

⁶⁹ Kathleen Teltsch, “U.N. Conference Will Attempt to Break Deadlock on Seabed Mining,” *New York Times* 23 May 1977.

⁷⁰ Ratiner, interview.

⁷¹ James A. Leach, telephone interview, 7 Jan. 2009.

⁷² Letter, Elliot L. Richardson to Robbins Barstow, 5 Jul. 1977, “‘B’ miscellaneous—1977,” Box 358, ELR Papers.

⁷³ Letter, Elliot L. Richardson to Elisabeth Mann Borgese, 23 Jun. 1977, “‘B’ miscellaneous—1977,” Box 358, ELR Papers.

⁷⁴ Letter, Elliot L. Richardson to Gayle Jackson, 6 Jun. 1977, “‘J’ miscellaneous,” Box 379, ELR Papers; Letter, Elliot L. Richardson to Donald M. D. Thurber, 2 Jun. 1977, “Thurber, Donald M. D.,” Box 394, ELR Papers.

declared that if the conference did not make further progress “we would be in deep trouble.”⁷⁵ But the negotiations moved forward, with Darman and Smith representing the United States on Committee I, which addressed seabed mining, while other negotiators pursued negotiations that addressed all other issues, from the extent of the economic zone to conservation to scientific research, in the other two committees.⁷⁶ Revised compromise texts on exploitation of seabed minerals and governance of the Authority were “widely regarded among developing and industrialized states as a sound basis for negotiation if not compromise,” the American delegation report noted.⁷⁷ There was, Smith recalled, a “sense that we were making real progress.”⁷⁸ The *New York Post* proclaimed that once more Richardson had demonstrated his ability in a high-level government post: “Just three months after taking over one of the most complex negotiations of all time, Richardson has mastered both the subject matter and the psychological mood of the conference.”⁷⁹ As the session ended, the delegations awaited the text that would form the basis of future discussion. “The forthcoming new negotiating text is predicted by some to be better than previous ones because so much informal give-and-take has already gone into it,” the *Christian Science Monitor* wrote soon after the session ended.⁸⁰ Richardson believed that the foundation for an agreement was now in place.

⁷⁵ “Amerasinghe Press Conference: Highlights,” 1977 (date not listed), “Amerasinghe, Hamilton Shirley,” Box 353, ELR Papers.

⁷⁶ Martin Ira Glassner, “Law of the Sea Conference,” *New Haven Register* 24 May 1977, “Clippings (general),” Box 364, ELR Papers.

⁷⁷ “Delegation Report—Sixth Session of the Third United Nations Conference on the Law of the Sea, May 23 – July 15, 1977,” 1977 (date of issue not listed), NSA-Global Issues, “Law of the Sea (LOS), 2-6/77,” Box 37, JCL.

⁷⁸ Smith, interview.

⁷⁹ Michael J. Berlin, “It’s Smooth Sailing So Far in Sea Talks with the Third World,” *New York Post* 7 Jun. 1977, “Clippings (general),” Box 364, ELR Papers.

⁸⁰ “Sharing the Sea,” editorial, *Christian Science Monitor* 19 Jul. 1977, Box 358, ELR Papers.

In what proved to be a crucible for Richardson's involvement in the conference, that foundation was instead shattered in the last days of the session. The chair of Committee I, Paul Engo of Cameroon, revised in secret the provisions of the new Informal Composite Negotiating Text on the seabed issue in a manner favorable to the developing nations. It was, Smith remembered, "a surprise, almost a shock."⁸¹ In Richardson's view, this decision counteracted all of the effort that delegates had made in Geneva and New York that year to reach an agreement on deep seabed mining. The resulting text was "fundamentally unacceptable,"⁸² Richardson declared, for it made a "mockery of the concept of a parallel system...with no assured access under reasonable conditions for states and private firms sponsored by states."⁸³ In a letter to Amerasinghe, the conference president, he wrote that the changes were "disturbing as a substantive matter" and "even more disturbing as a procedural matter. For it raises the question whether formally established and open processes are to be taken seriously by this Conference."⁸⁴ The end of the session was, for Richardson, a bitter disappointment.

It was also a moment of embarrassment. Richardson, who had before the sixth session visited with the editorial board of the *Wall Street Journal* in one of many meetings to assure conservatives that he would protect American interests at the Law of the Sea conference, believed that his reputation for holding to his commitments was now on the line.⁸⁵ For months he had studied the details of the Law of the Sea, reveling in the

⁸¹ Smith, interview.

⁸² "New Sea-Law Text Set by U.N. Unit," *Baltimore Sun* 21 Jul. 1977, "Clippings (general)," Box 364, ELR Papers.

⁸³ Letter, Elliot L. Richardson to Larry I. Booda, 8 Dec. 1977, "'B' miscellaneous—1977," Box 358, ELR Papers. The quotation is from an essay entitled "Law of the Sea: Past, Present, Future," that Richardson wrote for publication in *Sea Technology*. He attached the essay to his letter.

⁸⁴ Letter, Elliot L. Richardson to H. S. Amerasinghe, 15 Jul. 1977, "Amerasinghe, Hamilton Shirley," Box 353, ELR Papers.

⁸⁵ Berlin, "It's Smooth Sailing So Far in Sea Talks with the Third World."

complexity of it all and insisting that a rational approach that accounted for the interests of others would promote consensus. “The Law of the Sea is fascinating [emphasis his],” he had written that spring. “In some ways, this is the best job I have ever had.”⁸⁶ Now, as he confronted a new negotiating text at odds with American interests on seabed mining, he made clear his intention to adjust the negotiating posture of his delegation. “In view of these developments,” he wrote to Amerasinghe after the sixth session, he would recommend to President Carter that the United States “must review not only the balance among our substantive interests, but also the extent to which our objectives, and the world’s objectives, can be served by participation in negotiations which fail adequately to attend to the important additional interest in due process.”⁸⁷ Richardson, who had so fervently hoped for the success of the conference, now contemplated its demise.

Why the conference reached this state of near-collapse is a subject of debate. In her study of the Law of the Sea negotiations, Ann Hollick suggests that it was the Kissinger concessions under the Ford administration that had led developing nations to believe that the United States was willing to give up more than it actually was. It fell to Richardson, Hollick wrote, to “reduce the range of further U.S. compromise... Many delegations were slow to recognize the change in approach and kept expecting further compromises throughout the 1977 session.”⁸⁸ Richardson would not have disagreed with her assessment of developing nations, noting in the midst of the sixth session that Third World nations attempted to “extract more and more and more” from the United States.⁸⁹ The impasse at the end of the sixth session, Hollick wrote, resulted from misperceptions

⁸⁶ Letter, Elliot L. Richardson to William R. Herman, 23 Mar. 1977, “‘H’ Miscellaneous—1977-1978,” Box 377, ELR Papers.

⁸⁷ Letter, Elliot L. Richardson to H. S. Amerasinghe, 15 Jul. 1977.

⁸⁸ Hollick, *U.S. Foreign Policy and the Law of the Sea*, 361.

⁸⁹ Cohen, “Third World Compromise is Must for Law of the Sea Accord.”

based on the approach of Richardson's predecessors. Though his own involvement in the impasse was unfortunate, he was not responsible.

But other observers contended that Richardson had made errors that contributed to the outcome. In an interview, Ratiner, who had represented the United States at the conference on seabed issues before Richardson arrived, dismissed the suggestion that Ford administration concessions had led to the unsatisfactory compromise text at the sixth session. Instead, recalling the address [quoted in the first paragraph of this chapter] in which Richardson styled himself as a "contributor to rational accommodations among valid competing interests," Ratiner argued that Richardson "made us sound flexible when we could not afford to be flexible" and signaled to developing nations at the outset of his tenure that the United States could be pushed. It was "the worst mistake Richardson had made in his [public] life," Ratiner believed. "He spent the entire four years [after that] trying to work that treaty backward" to where it had been on the seabed issue.⁹⁰ In this view, Richardson's own missteps had played an important role in the issuance of an unsatisfactory compromise text.

One wonders whether the address that Richardson gave could have had the impact that Ratiner has attributed to it. Whatever the explanation for why the sixth session ended as it did, however, Richardson concluded that he had been outmaneuvered. Even for a man of his experience, the initial excitement of participating in so important an international negotiation may have clouded his judgment. "In all of my government career, I have never met with so able a group of men," Richardson had written that June. "The stakes of the conference are so enormous that every nation sends its most talented

⁹⁰ Ratiner, interview.

advocate.”⁹¹ As he took stock of his performance that fall, his enthusiasm for the conference having been pricked by the reality of the compromise text, he considered how he would have to adapt. Richardson “has the reputation of being a skilled negotiator,” the *Christian Science Monitor* had written when he accepted his assignment.⁹² But the Law of the Sea assignment proved to be a task altogether different. The negotiations were “like a combination of no-limit poker and three-dimensional chess,” he recalled later. “And I realized that despite having held four Cabinet jobs by then, I really did not know what negotiation was.”⁹³ As he prepared to participate in the review that he had asked the Carter administration to initiate on the Law of the Sea conference, he pondered whether it was worth his effort to apply the lessons that he had learned.

He had the opportunity that fall to direct that effort away from the Law of the Sea conference and toward the renewal of his political career. Richardson “long has yearned to be governor of Massachusetts,” reported the *Boston Globe*,⁹⁴ adding that he proved “quick to stress his fondness for his native state and not at all reluctant to encourage speculation that he might come back to run for governor in 1978.”⁹⁵ Whenever his supporters wrote him letters that appealed to him to launch a campaign, he responded by writing, “If the opportunity to serve my home state becomes an advisable route in the future, I would certainly value the continued support and counsel of friends like you.”⁹⁶

⁹¹ “But Who Will Benefit? Reaping Riches from Sea,” *St. Paul Plant Press* 30 Jun. 1977, “Clippings (general),” Box 364, ELR Papers.

⁹² David Anable, “Law of Sea Outlook is Brighter: Sea Mining Trade-Off May Result in Accord,” *Christian Science Monitor* 23 May 1977, “Clippings (general),” Box 364, ELR Papers.

⁹³ Richardson, “Historical Evolution,” 641.

⁹⁴ William J. Lewis, “Demoralized GOP Now Eyes 1978 ‘Dream Ticket,’” *Boston Sunday Herald* 8 Nov. 1976, “1976—22 Oct.-13 Dec.,” Box 352, ELR Papers.

⁹⁵ Martin F. Nolan, “A 90% Uncertain Future in Politics,” *Boston Globe* 1977 (date not listed), “Clippings (Richardson),” Box 364, ELR Papers.

⁹⁶ Letter, Elliot L. Richardson to Edward P. Kirby, 17 Mar. 1977, “‘K’ miscellaneous,” Box 379, ELR Papers.

While Richardson had served for a decade in Washington, D.C. in a series of Cabinet-level appointed positions, he “enjoyed rather than disdained the hurly-burly of politics,” former congressman James Leach remembered.⁹⁷ Near the end of his life, Richardson affirmed that he viewed himself not as a dispassionate public servant but as a political figure. “I was always somewhat amused but also struck by the fact that the White House staff, in the administrations in which I served, never thought of me as a politician,” he said. “I had in fact had more time, more full time, in politics than almost anybody on any one of those staffs.”⁹⁸ Having run three statewide campaigns in Massachusetts, he did not doubt his ability to win the election that fall.

Two considerations shaded his thinking, however. The first was whether he could run consistent with his responsibilities to the Law of the Sea conference; the second was whether he wanted to be governor.⁹⁹ With regard to the second consideration, he looked with delight on the possibility of returning to electoral politics as the chief executive of his native state, though the implications of a successful campaign for his career were also on his mind. He noted later that he would have been “taking myself out of consideration for the 1980 [presidential] election if I were sworn in as governor of Massachusetts in January 1979.”¹⁰⁰ In addition, the path to the gubernatorial nomination may have factored into his decision. “Conservative Republicanism is holding sway in Massachusetts,” wrote William Lewis, the political editor of the *Boston Herald*, as he meditated on a possible Richardson campaign. “If Richardson is to gain the gubernatorial nomination in ’78

⁹⁷ James A. Leach, “Standing Up for Republicanism,” *New York Times* 15 Jan. 2000.

⁹⁸ Richard L. Holzhausen, “Oral History Interview with Elliot Richardson,” 25 Apr. 1997, Gerald R. Ford Library.

⁹⁹ Nolan, “A 90% Uncertain Future in Politics.”

¹⁰⁰ “Richardson: Presidential Fever Kept Me Out of Governor’s Race,” *Boston Herald American* 25 Oct. 1978, “Political—Clippings,” Box 389, ELR Papers.

without causing an ugly rift in Republican ranks, he must lend his support to some strongly conservative candidate for lieutenant governor.”¹⁰¹ Richardson, as Alvin Felzenberg, a historian of the presidency, noted in an interview, “represented a wing of the Republican Party that went into eclipse with the coming of Reagan.”¹⁰² As Richardson ruminated that fall on whether to enter the race, the shift in the political winds weighed on him. It would not be the last time.

But it was his immediate responsibility to the Law of the Sea that governed his decision. Though Richardson did not want to foreclose the possibility of a presidential candidacy, he would not, consistent with the lesson he had learned from Justice Frankfurter, allow such thoughts to dictate his decision.¹⁰³ Nor would he be dissuaded from seeking a position that he wanted because the path to the nomination would be unpleasant. Rather, he did not want to leave the Law of the Sea conference with his work unfinished. When asked near the end of the sixth session whether he would declare his candidacy at the end, he responded that the answer “is easy. It depends on the outcome of this session in the next three weeks. If it’s a failure or a success, then that disposes of the matter.”¹⁰⁴ The session certainly was not a success, but despite the setback, Richardson believed that substantive progress still was possible and that he could contribute. “It is certainly not easy to stay away from the excitement of Massachusetts politics,” he wrote to one supporter, “but to leave the Conference at this stage would be extremely difficult

¹⁰¹ Lewis, “Demoralized GOP Now Eyes 1978 ‘Dream Ticket.’”

¹⁰² Alvin S. Felzenberg, telephone interview, 14 Nov. 2008.

¹⁰³ See Introduction, footnote 22.

¹⁰⁴ Martin F. Nolan, “A 90% Uncertain Future in Politics.”

and would most probably disrupt necessary continuity in the negotiating process.”¹⁰⁵ He resolved to continue in his position.

One columnist, Robert Healy of the *Boston Globe*, claimed that Richardson “really only toyed with the idea” of running for governor. Richardson’s interests, Healy wrote, “are in Washington. He has the notion that he could be the new John McCloy of this Washington era, serving either Republican or Democratic presidents. And maybe, just maybe, there could be a chance at the Republican nomination for president.”¹⁰⁶ It is true that Richardson enjoyed the role of a statesman and would have enjoyed the comparison to McCloy, a man who, like Richardson, possessed a reputation as a man of principle who approached the task of public service with vigor.¹⁰⁷ But in addition to Richardson’s own tendency to view himself as a politician as well as a statesman, evidence suggests that Richardson considered the possibility of running for governor very seriously. “My present position [at the Law of the Sea conference] is nonpartisan, of course, but I think a two-party system is vital,” Richardson noted in an interview during the summer of 1977. “If I could make a positive contribution [as Governor of Massachusetts], it would have a strong appeal to me.”¹⁰⁸ After deciding not to enter the race, he wrote, “I can honestly say that it was an extremely difficult decision.”¹⁰⁹ Several polls, including one released on the day that he announced his withdrawal, had him running well ahead of then-Governor Michael Dukakis, who faced an uphill re-election

¹⁰⁵ Letter, Elliot L. Richardson to Bertha Farnsworth, 4 Oct. 1978, “Political—correspondence and miscellany,” Box 389, ELR Papers.

¹⁰⁶ Robert L. Healy, “Exit Lines on the State Level,” *Boston Globe* 5 Oct. 1977, “Political—clippings,” Box 389, ELR Papers.

¹⁰⁷ See Kai Bird, *The Chairman: John J. McCloy and the Making of the American Establishment* (New York: Simon & Schuster, 1992); and Walter Isaacson and Evan Thomas, *The Wise Men: Six Friends and the World They Made* (New York: Simon & Schuster, 1986).

¹⁰⁸ Francis W. Sargent, “Richardson Expected to Stay in U.S. Job,” *Boston Globe* 22 Jul. 1977, “Clippings (Richardson),” Box 364, ELR Papers.

¹⁰⁹ Letter, Elliot L. Richardson to Harry Kozol, 12 Jan. 1978, “‘K’ miscellaneous,” Box 379, ELR Papers.

effort and eventually would suffer defeat in the Democratic Party primary the next year.¹¹⁰ Thomas Oliphant, a longtime political columnist for the *Boston Globe*, recalled that despite having been away from Massachusetts for a decade, Richardson's stature in the state at this time was "gigantic."¹¹¹ While a victory in 1978 would have made for a problematic turnaround had Richardson wanted to mount a presidential campaign in 1980, it also "would have made him electorally current," said Donald Carr. "This was really the crossroads for him."¹¹²

His political ambition had not receded, but in choosing to remain at the Law of the Sea conference, Richardson had responded to an ambition of another sort. "I never could figure out whether Tip O'Neill was being funny or foolish when he complained about the President's naming me to this job," Richardson reflected, referring to the then-Speaker of the House's belief that the Law of the Sea assignment would improve Richardson's standing in advance of a putative gubernatorial candidacy.¹¹³ "He should have known that if I took it, there was a better than fifty percent chance that I would not run for governor."¹¹⁴ Richardson could be lighthearted about the political oblivion into which his negotiating responsibilities had cast him. "Welcome to town," he wrote to a

¹¹⁰ A poll released on the day that Richardson withdrew from the campaign signaled that he would defeat Dukakis 48 percent to 38 percent in a head-to-head race. Robert L. Turner, "Mass. Republicans Left Richardsonless," *Boston Globe* 5 Oct. 1977, "Political—clippings," Box 389, ELR Papers. Even in the spring of 1977, Richardson's electoral strength was apparent. See also Robert Healy, "Richardson Could Beat Dukakis," *Boston Globe* 19 May 1977, "Clippings (general)," Box 364, ELR Papers.

¹¹¹ Thomas Oliphant, telephone interview, 3 Mar. 2009.

¹¹² Donald Carr, telephone interview, 13 Jan. 2009.

¹¹³ The *New York Times Magazine* had reported earlier in the year that if Richardson ran for governor, "his likely opponent is Thomas P. O'Neill III, the Lieutenant Governor and Tip O'Neill's eldest son. The public exposure for Richardson [created by Carter's appointment] was not appreciated by the Speaker." See Martin Tolchin, "An Old Pol Takes On the New President," *New York Times Magazine* 24 Jul. 1977.

¹¹⁴ Ymelda Dixon, "Columbus Day, but the Parties Keep Rolling," *Washington Star* 11 Oct. 1977, "Clippings (Richardson)," Box 364, ELR Papers. Richardson elaborated in his correspondence that he had little time for political activity. "When I'm not attending the Conference or an intersessional meeting," he wrote, "I seem to be either traveling around the world expounding United States views on Law of the Sea, or appearing on the Hill before some Congressional committee or another." Letter, Elliot L. Richardson to Karen Kelly, 16 Sep. 1977, "'K' miscellaneous—1977-1979," Box 379, ELR Papers.

recently-hired reporter at the *Washington Star*. “In case some day you’re looking for something sexy to write about, call me and I’ll tell you more than you want to know about the exciting vistas being opened up by the Law of the Sea conference.”¹¹⁵ At other points he was wistful, admitting in 1978 to Bill Clements, who had just been elected governor of Texas, that it “has been frustrating, I must say, to have been barred by my present job from personal participation in the 1978 campaign...I didn’t foresee that this job would take so long.” But he had no regrets. “I’m so deeply immersed in it now,” he wrote of the Law of the Sea conference, “that no ordinary opportunity would justify my leaving it.”¹¹⁶

Richardson’s decision not to run was an acknowledgement that, however dissatisfied he was with the outcome of the sixth session, he remained committed to the negotiation. “There are no yardsticks,” he said, “by which to compare the usefulness of public service in such widely different arenas as the Commonwealth of Massachusetts and the Law of the Sea conference. I simply am not free to run.”¹¹⁷ Having dispensed with politics for the time being, he turned his attention to salvaging American participation in a conference for which he had once held such high hopes. “Every government job I’ve taken, I thought would be more or less permanent and all turned out to be temporary,” Richardson reflected. “I took on the Law of the Sea job because I thought it would be temporary, but it may well turn out to be permanent.”¹¹⁸

¹¹⁵ Letter, Elliot L. Richardson to George Higgins, 23 Feb. 1977, “Political—correspondence and miscellany,” Box 389, ELR Papers.

¹¹⁶ Letter, Elliot L. Richardson to William P. Clements, Jr., 29 Nov. 1978, “‘C’ miscellaneous,” Box 365, ELR Papers.

¹¹⁷ “Statement by Ambassador at Large Elliot L. Richardson—Boston, Massachusetts,” 4 Oct. 1977, “Press conferences,” Box 389, ELR Papers.

¹¹⁸ “But Who Will Benefit? Reaping Riches from Sea.”

“On the Point of Resolution”

Richardson’s decision to continue his work at the Law of the Sea conference pleased the conference president, H. S. Amerasinghe. “The sacrifice you have made has my highest admiration,” Amerasinghe wrote to Richardson. “I can only hope that the final result, namely, the conclusion of a generally acceptable Treaty of the Law of the Sea, would prove it to have been fully justified.”¹ Richardson certainly hoped so. But as he prepared to return to the conference, he tempered his sense of its possibilities and assessed the prospects for success with a skeptical eye. Of the forthcoming seventh session, he noted, “It’s possible we might resolve most of the remaining issues at the next session, but I don’t say it’s probable.”² Having witnessed firsthand the importance of diplomatic leverage the previous summer, he now approached the negotiations with a tough-minded, no-nonsense attitude. He resolved to meet with President Carter in January of 1978 before returning to intersessional negotiations. Such a meeting would convey to other delegates that the White House stood behind his negotiating position.

Having had difficulty with developing nations at the conference, however, Richardson now ran into some difficulty within the White House. The Law of the Sea “didn’t have many enthusiasts” in the Carter administration, remembered Lincoln Bloomfield, Director of Global Issues on the National Security Council. He added that he attempted to “help Elliot steer this shaky vessel through hostile political and bureaucratic

¹ Letter, H. S. Amerasinghe to Elliot L. Richardson, 20 Oct. 1977, “Amerasinghe, Hamilton Shirley,” Box 353, Elliot Lee Richardson Papers (henceforth ELR Papers), Manuscript Division, Library of Congress, Washington, D.C.

² Lynn Cheatum, “Sea-Bed Mining Unsettled: Richardson Says Mineral Control Tough to Resolve,” *Kansas City Times* 13 Jan. 1978, “Clippings (general),” Box 364, ELR Papers.

shoal waters... [We] managed to keep it afloat, but only by a whisker.”³ Richardson may not have anticipated this trouble. Carter had labeled the Law of the Sea conference a “very high priority” and added that “my nomination of Elliot Richardson, with his extensive experience and abilities, testifies to the importance I personally attach to achieving success in these negotiations.”⁴ But Caitlyn Lance Antrim, who has published several articles on the Law of the Sea and represented the Secretary of Commerce on the delegation when Richardson was at the helm, called Carter the “least involved of any of the presidents” who held office during the Law of the Sea conference.⁵ Indeed, two members of the National Security Council staff voiced caution on the idea of Carter even meeting with Richardson given the state of the negotiations. “Given the clear possibility that the conference may fail and the United States will inevitably be blamed, the President may not wish, at this time, to associate himself with the LOS issue,” they wrote.⁶ Though they recommended a meeting, as did Secretary of State Cyrus Vance, who noted in a memorandum to Carter that the “mere fact of such a meeting will significantly strengthen Elliot’s hand in the bargaining,”⁷ no meeting was listed on

³ Lincoln P. Bloomfield, *Accidental Encounters with History* (Cohasset, MA: Hot House Press, 2005), 47-48.

⁴ “Richardson is Batting .600,” *Boston Herald American* 27 Jan. 1977, “Clippings (general),” Box 364, ELR Papers.

⁵ Caitlyn Lance Antrim, telephone interview, 20 Feb. 2009.

⁶ Memorandum, Jessica Tuchman and Les Denend to Zbigniew Brzezinski, “Elliot Richardson’s Request to Meet with the President,” 30 Jan. 1978, NSA-Brzezinski Files, “Law of the Sea, 1/78-9/80,” Box 31, Jimmy Carter Library (henceforth JCL).

⁷ Memorandum, Cyrus Vance to Jimmy Carter, “Appointment Request for Ambassador Elliot L. Richardson,” 24 Jan. 1978, NSA-Brzezinski Files, “Law of the Sea, 1/78-9/80,” Box 31, JCL. Zbigniew Brzezinski, the national security adviser, also sent a handwritten note to Carter’s scheduler asking for an appointment for Richardson, emphasizing, “This [request] should be judged on its political merits.”

Carter's daily schedule.⁸ None of the sources consulted for this thesis indicate that the meeting took place.

One explanation for the non-meeting is that missteps in the process of requesting an appointment prevented Richardson from securing a position on Carter's calendar. "To receive this [appointment request]...in the middle of the week in which the appointment is being requested," the White House scheduling office wrote to Vance and Zbigniew Brzezinski, the national security adviser, "makes it virtually impossible to schedule."⁹ But according to Alan Berlind, the White House may have invoked logistics to avoid a meeting. "Whatever the bureaucratic obstacles or plain evasiveness [as in the aforementioned scheduling memo]," he said, "I believe instinctively that Carter simply did not want to engage personally."¹⁰ Antrim also suggested that "logistics were an excuse for avoiding a meeting that the staff wanted to avoid...I'm sure that if the president had found 15 minutes on his schedule, Elliot would have been there."¹¹ Not only is there no record of a meeting in January or February of 1978, at a time at which Richardson, as Vance had pointed out, would have most benefited from such a meeting, but there is no indication in the sources that Carter met with Richardson even once in the four years that Richardson represented the administration at the Law of the Sea conference. "We all took note that in four years President Carter never spoke with Elliot,"

⁸ "Digest of Other White House Announcements Week Ending Friday, February 3, 1978" and "Digest of Other White House Announcements Week Ending Friday, February 10, 1978," *Public Papers of President Jimmy Carter*.

⁹ Memorandum, Tim Kraft to Cyrus Vance, Zbigniew Brzezinski, and Rick Hutcheson, 31 Jan. 1978, NSA-Brzezinski Files, "Law of the Sea, 1/78-9/80," Box 31, JCL.

¹⁰ Alan D. Berlind, e-mail interview, 22 Feb. 2009.

¹¹ Antrim, interview.

Antrim said. Richardson's appointment secretary throughout his tenure, Marguerite Randolph, also noted, "I don't ever recall [Richardson] meeting with the president."¹²

As a longtime member of the Cabinet, Richardson had been accustomed to access to the president, and his inability to meet with Carter may have reflected the distance of their relationship.¹³ More relevant, however, is that it symbolized the number of issues that ranked ahead of the Law of the Sea conference on the foreign affairs agenda for the White House. While several members of the Carter administration were suspicious of Richardson, others, in addition to Cyrus Vance, trusted him. "Elliot Richardson was a personal friend and I had full confidence in him," remembered Thomas Thornton, who served on the staff of the National Security Council. "So I saw my role, and told him as much, as one of helping ensure that no problems got in his way at the White House. I wisely left the substance to him."¹⁴ When a letter that criticized Richardson arrived in the White House in the midst of the seventh session, Landon Butler, a deputy assistant to Carter, stood up for Richardson. "We believe that Ambassador Richardson is doing an excellent job," Butler wrote.¹⁵

¹² Marguerite Z. Randolph, telephone interview, 16 Mar. 2009.

¹³ Carter and Richardson had not had the opportunity to become personally close, given that Carter had served in Georgia while Richardson was in Washington, D.C. In addition, during the 1976 presidential campaign, Richardson had criticized Carter's "vagueness, his frequent shift of position on the issues, his efforts to be all things to all people. Jimmy Carter has turned the campaign flip flop into an Olympic event." He also suggested that Carter "evidences too much compulsion for the job of the presidency." "Speech prepared for delivery by Secretary of Commerce Elliot L. Richardson to a combined luncheon of the Chairman's Club, Republican Executive Committee on Monroe County, and elected officials—Rochester, N.Y.," 26 Oct. 1976, "1976—22 Oct.-13 Dec.," Box 352, ELR Papers; "Carter 'Too Compulsive,'" *UPI* 1976 (date not listed), "1976—22 Oct.-13 Dec.," Box 352, ELR Papers. In his final book, Richardson tweaked Carter in both of the instances in which he mentions him. He wrote that Carter "had immersed himself so deeply in the details of a host of worthy causes that he found it impossible to establish clear priorities among them," and that a "lack of historic sense was a factor in the drifting we saw when Jimmy Carter, trained as an engineer, was in the White House. Indeed, we may have recognized a clue to this deficiency in the regularity with which he hailed every new departure as a 'historic first.'" Elliot L. Richardson, *Reflections of a Radical Moderate* (New York: Pantheon Press, 1996), 76 and 124.

¹⁴ Thomas Thornton, e-mail interview, 17 Feb. 2009.

¹⁵ Letter, Landon Butler to Todd J. Kaufman, 17 Apr. 1978, Name Files, "Elliot L. Richardson," JCL.

But while some members of the Carter administration may have trusted Richardson, they did not pay him much attention. When asked about the Law of the Sea conference, David Aaron, who served as the deputy national security adviser, said, “I don’t recall doing anything, frankly.” He added that the negotiations were “basically a State Department show.”¹⁶ Thornton also said that Law of the Sea issues were “very much a sideshow for me then...As I recall, no problems ever did arise that required my action and I didn’t do much more than forward the occasional report to Brzezinski and onward to Carter.”¹⁷ “Every plug helps!” Richardson had observed after Carter cited the Law of the Sea in a speech in June of 1977.¹⁸ But few plugs were forthcoming in the ensuing years. It was “never clear to me,” recalled Janet Brown, who served on Richardson’s staff in 1977, “that if the [seabed] issues were resolved, the Carter administration would have put its shoulders behind” the resulting treaty.¹⁹ For Richardson, indifference in the White House frustrated his efforts as he sought to strengthen his hand at the conference.

More than presidential indifference, however, it was domestic pressure that complicated Richardson’s task. In addition to the difficulty of negotiating with the developing nations and securing White House support, he had to overcome opposition among the interested public, industry groups, and members of Congress as he sought to build support for his position. Some of the opposition reflected the suspicion of international institutions that was a foundation of the conservatism taking hold in Washington, D.C. Patrick Buchanan and William Safire, for example, voiced their

¹⁶ David L. Aaron, telephone interview, 20 Feb. 2009.

¹⁷ Thornton, interview.

¹⁸ Letter, Elliot L. Richardson to Morton I. Abramowitz, 6 Jun. 1977, “‘A’ miscellaneous,” Box 357, ELR Papers.

¹⁹ Janet H. Brown, telephone interview, 12 Jan. 2009.

disapproval of the treaty in their commentary, believing that it infringed on American sovereignty. The minerals on the ocean floor “belong to the nations with the ingenuity to recover them,” Buchanan wrote. “No international authority is going to dictate to the United States what it may and may not do on the world’s oceans.” The Law of the Sea conference, to Buchanan, represented little more than a negotiation with “Third World thugs who do not disguise their contempt for us, our system, our success, [and] our values.”²⁰ Safire was no more charitable, with his criticism of a “State Department that quivers deliciously at the anticipation of giving in”²¹ at the United Nations-sponsored conference and his description of the common heritage principle for minerals on the ocean floor as “history’s greatest attempted rip-off.”²² Such commentary influenced the climate surrounding the Law of the Sea conference, as opposition to a treaty became a symbol of alignment with the conservative movement.

Such rhetoric, however, was not only the province of the political right. The view that the current treaty text not only sacrificed American interests but betrayed American principles was voiced by Democrats as well as Republicans. “We will not abandon the economic and political principles that have created our society in order to provide ideological sanction for the dictatorships of the Group of 77,” declared Senator Daniel Patrick Moynihan, Democrat of New York. He added that he “wholly supports the efforts of Senator Lee Metcalf [from Montana, also a Democrat] to make it possible for firms to get on with the job [of mining the ocean floor] pretty soon now, treaty or no treaty.”²³

²⁰ Patrick J. Buchanan, “Third World Thugs Want the Whole Hog,” 1977 (syndicated column—date not listed), “United States Interests and the Law of the Sea,” Box 357, ELR Papers.

²¹ William Safire, “Strange Seabedfellows,” *New York Times* 27 Jan. 1977.

²² William Safire, “Very Deep Thoughts,” *New York Times* 4 Jul. 1977.

²³ “Address by Senator Daniel Patrick Moynihan (D-New York)—Launching of the Nuclear Powered Attack Submarine *New York City* (SSN696), Groton, Connecticut,” 18 Jun. 1977, “‘M’ miscellaneous—1977-1978,” Box 386, ELR Papers.

Congressman John Murphy, a Democrat who chaired the House Merchant Marine Committee, also referred to the draft treaty text in 1977 as a “dangerous departure” from American principles.²⁴ Richardson claimed that a treaty would be consistent with the American commitment to the rule of law. The purpose of the conference, he often said, was to “extend the rule of law to more than two-thirds of the earth’s surface.”²⁵ But members of Congress who were philosophically opposed to the concept of an international arrangement to govern high seas activity were not persuaded.

The more immediate pressure from Congress arose not from philosophical opposition but, rather, from resource and mining industry concerns. Senator Ted Stevens, Republican of Alaska, questioned whether it was “desirable for the United States to become party to a treaty which gives the Third World supremacy over resources which could make an important contribution to U.S. needs and forces the U.S. to pay for that supremacy.”²⁶ It was a view that many of his colleagues shared as they studied the treaty texts arriving from New York and Geneva and concluded that a Law of the Sea treaty could inhibit, rather than advance, American economic interests. As deep seabed mining became feasible, several members of Congress, such as Senator Metcalf, pushed for legislation that would license American corporations to engage in mining even in the absence of a Law of the Sea treaty. Supporters of the legislation argued that the heavy initial investment required for developing the technology to mine the deep seabed, an investment that Richardson estimated at \$500 to \$750 million with no expected return for

²⁴ Peter J. Bernstein, “Sinking Hopes at Sea Conference,” *Detroit Free Press* 20 Jun. 1977, “Clippings (general),” Box 364, ELR Papers.

²⁵ Letter, Elliot L. Richardson to H. S. Amerasinghe, 30 Jul. 1980, “Amerasinghe, Hamilton Shirley,” Box 353, ELR Papers.

²⁶ Gamble Miles, *Law of the Sea: Conference Outcomes and Problems of Implementation* (Cambridge, MA: Ballinger Publishing, 1977), 382.

a decade, would not take place unless Congress guaranteed the right of corporations to mine the seabed.²⁷ “Without domestic legislation,” the Lockheed Corporation wrote in a telegram the White House, “we will be forced to significantly reduce our efforts to retain the American leadership in developing the ocean minerals that are deeply needed by our industrial economy and the national interests.”²⁸ For the mining industry and its supporters in Congress, deep seabed mining legislation would improve the leverage of the American delegation at the conference, provide a head start on technology development if the conference did not reach an agreement and, most important, safeguard the interests of industry if those interests happened to be sacrificed by negotiators who were eager to conclude a treaty with developing nations.

Among the sponsors of deep seabed mining legislation who supported immediate passage, none was as prominent on the issue as Congressman John Breaux of Louisiana. “They all took a lead from John Breaux,” Ratiner remembered of others pressing for seabed mining legislation.²⁹ Carr also noted that “Breaux was big.”³⁰ Breaux, a Democrat who chaired the House Subcommittee on Oceanography, closely followed the progress of the Law of the Sea conference while Richardson headed the American delegation. While he did not oppose the negotiations, his skepticism that the delegation would protect American economic interests was palpable, and his support for domestic seabed mining legislation never wavered. The right of access to the seabed was “being negotiated away at the Law of the Sea conference,” he wrote in the *Washington Post* during the sixth

²⁷ “Comments on Financing by Ambassador Elliot L. Richardson,” 10 Mar. 1977, NSA-Global Issues, “Law of the Sea (LOS), 2-6/77,” Box 37, JCL.

²⁸ Telegram, Roy A. Anderson (Chairman of the Board, Lockheed Corporation) to White House, 10 Nov. 1979, NSA-Brzezinski Files, “Law of the Sea, 1/78-9/80,” Box 31, JCL.

²⁹ Leigh S. Ratiner, telephone interview, 9 Jan. 2009.

³⁰ Donald Carr, telephone interview, 13 Jan. 2009.

session. “Domestic legislation is necessary to properly balance our national interest with the international demands of the Third World.”³¹ The issue of domestic legislation proved the key pivot as Richardson calibrated and recalibrated his strategy in the years to come.

In advance of the sixth session, Carter had, at Richardson’s recommendation, signed a presidential directive that instructed members of the administration to “not support enactment of deep seabed legislation prior to the end of the next session.”³² A copy of a speech text in Richardson’s files from April of 1977 by J. Alan Beesley, the Canadian representative to the Law of the Sea conference, has the following sentence underlined by Richardson: “It is unnecessary and, indeed, counter-productive, at this stage, either to consider contingency plans should the Conference fail, or to consider non-ratification should the Conference agree upon a treaty containing provisions which are not acceptable.”³³ With the support of the Carter administration, Richardson communicated a similar view, with a milder tone, in testimony before Congress.³⁴ But the stage had shifted since the spring, and now Richardson emphasized that “it is incumbent upon the U.S. government and, indeed, any government, to examine the available alternatives for protecting the many interests involved in the Law of the Sea

³¹ John Breaux, “High Noon on the High Seas,” letter to the editor, *Washington Post* 2 Jun. 1977.

³² Jimmy Carter, “Presidential Directive/NSC-4,” 8 Mar. 1977, NSA-Global Issues, “LOS, 8/77-4/78,” Box 38, JCL.

³³ “Address by J. Alan Beesley, Q.C., Assistant Under-Secretary of State for External Affairs and Legal Adviser, Ottawa,” Annual Meeting of the American Society of International Law, 21-23 Apr. 1977, “Beesley, J. Alan,” Box 358, ELR Papers.

³⁴ Letter, Elliot L. Richardson to Zbigniew Brzezinski, 27 Apr. 1977, Name Files, “Elliot L. Richardson,” JCL. In a letter accompanying an account of his testimony, Richardson wrote: “It was important from the point of view of Congressional relations, as well as impact on the Law of the Sea Conference, to be able to testify on the substance of seabed legislation today.”

negotiations.”³⁵ In the fall and winter of 1977, Richardson and his colleagues in government took up that task.

The deliberation that resulted was pivotal, for it shaped the strategy of the American delegation for the next two years. It was a government-wide deliberation: The National Security Council Interagency Group on the Law of the Sea included the Departments of State, Defense, Treasury, Justice, Commerce, Transportation, and the Interior, as well as the Environmental Protection Agency, the Council on Environmental Quality, and the Domestic Policy Staff. In a memorandum for Carter that September, Richardson noted that there were three outstanding issues that the Interagency Group needed to address: the issue of continued participation in the Law of the Sea negotiations; the possibility of exploring alternatives to a treaty with other nations on a bilateral basis; and the question of whether to support domestic seabed mining legislation. Richardson recommended that the United States remain open to the possibility of completing a treaty and set aside for further review the possibility of bilateral alternatives. But in a critical shift, he now advocated that the administration seek passage of the seabed legislation. This combination “should provide the right mixture of positive and negative signals most likely to stimulate movement towards us in the Conference,” Richardson wrote.³⁶ The recommendation was supported by all of the offices involved in the interagency process and approved promptly by Carter.³⁷ Legislation would provide leverage for the American

³⁵ Letter, Elliot L. Richardson to Larry I. Booda, 8 Dec. 1977. The quotation is from an essay that Richardson attached to the letter.

³⁶ Memorandum, Elliot L. Richardson to Jimmy Carter, “NSC Interagency Group for the Law of the Sea,” 7 Sep. 1977, “Law of the Sea, Interagency Group for, 1/77-3/79,” CF, O/A #743, Box 1 of 3, JCL.

³⁷ Memorandum, Jessica Tuchman and Les Denend to David Aaron, “LOS Post-Sixth Session Review,” 26 Sep. 1977, NSA-Global Issues, “LOS, 8/77-4/78,” Box 38, JCL.

delegation to conclude a treaty that was acceptable and serve as a “safety net,” Richardson believed, to allow for seabed mining if the delegation did not.³⁸

Richardson returned to the Law of the Sea conference having replaced an accommodative stance with one of firmness, yet he retained his optimism. Never has an international negotiation “accomplished so much so fast,” Richardson noted of the sixth session, and added that despite the setback on seabed mining, the delegations now agreed on 85 percent of the issues.³⁹ In a press conference after the sixth session, he answered affirmatively when a reporter asked him whether “your criticism is directed primarily and solely at the parts of the text which deal with Committee I [seabed] work, not the rest.”⁴⁰ As the Carter administration completed its review, he dove into preparations for the seventh session. “My Law of the Sea duties have been keeping me extremely busy, and I have been traveling extensively,” Richardson wrote to Secretary of Defense Harold Brown early in 1978.⁴¹ He continued to believe that an agreement in the interest of the United States was possible.

His two closest advisers on the delegation, however, were no longer so sure. In an influential essay in *Foreign Affairs* entitled “Law of the Sea: Rethinking U.S. Interests,” Richard Darman suggested that the government revisit its assumption that all issues related to the ocean, from navigation and overflight to seabed mining, must be addressed in a single negotiation. The United States “should exhibit a clear-eyed willingness to

³⁸ Letter, Elliot L. Richardson to Akram Daoud al-Witri, 22 Jul. 1980, “‘A’ miscellaneous,” Box 357, ELR Papers.

³⁹ “Sea Law: Don’t Stop Now,” editorial, *Christian Science Monitor* 1977 (date not listed), “Clippings (general),” Box 364, ELR Papers.

⁴⁰ “Statement by Ambassador Elliot L. Richardson, Special Representative of the President to the Law of the Sea Conference, at the United Nations,” Press Release USUN-57 (77), United States Mission to the United Nations, 20 July 1977, NSA-Global Issues, “Law of the Sea (LOS), 2-6/77,” Box 37, JCL.

⁴¹ Letter, Elliot L. Richardson to Harold Brown, 1 Mar. 1978, “‘B’ miscellaneous—1978-1979,” Box 359, ELR Papers.

accept Conference failure as a non-disastrous, indeed thoroughly tolerable, outcome,” Darman wrote, and “should proceed with the development of a ‘mini-treaty’ [on seabed mining] outside the Conference framework.”⁴² He no longer believed that the delegation needed to compromise on the seabed issue in order to achieve its goals on other issues. J. T. Smith also published an essay that suggested that the United States separate seabed issues from the territory and navigation issues it considered more important.⁴³ Darman and Smith, each of whom had served Richardson for years in previous assignments, left the delegation after the sixth session. Their departure in the fall of 1977 symbolized the dismal view that many participants had of the prospects for success at the conference.

Richardson, too, at times appeared at wit’s end. One of his letters from this time cited “this godforsaken (I sometimes think) Law of the Sea conference” as a reason that he could not meet a visitor.⁴⁴ The conference was certainly capable of fostering such an attitude, given what one observer referred to as its “seemingly endless discussion, often marked by chauvinistic bickering and short-term national selfishness.”⁴⁵ But Richardson pressed on, insisting that the “ingredients of a fair and reasonable compromise are still within the grasp of the conference.”⁴⁶ Darman, Richardson wrote, underestimated not

⁴² Richard G. Darman, “Law of the Sea: Rethinking U.S. Interests,” *Foreign Affairs*, vol. 56, no. 2 (Jan. 1978): 394. An article in the *Washington Post* noted that Darman’s piece was “widely regarded as reflecting—intentionally or not—Richardson’s views,” given the closeness of their relationship. But Richardson challenged that interpretation, emphasizing that Darman’s opinion of the conference “departs in significant respects” from his own. William Claiborne, “U.S. Seeks Seabed Mining Showdown,” *Washington Post* 13 Feb. 1978, “Clippings (general),” Box 364, ELR Papers; Letter, Elliot L. Richardson to Igor K. Kolosovsky, 5 Dec. 1977, “‘K’ miscellaneous—1977-1979,” Box 379, ELR Papers.

⁴³ John Thomas Smith II, “The Seabed Negotiation and the Law of the Sea Conference—Ready for a Divorce?” *Virginia Journal of International Law*, vol. 18 (1977-1978): 43.

⁴⁴ Letter, Elliot L. Richardson to Winston S. Churchill [grandson of former Prime Minister Winston Churchill], 19 Apr. 1978, “‘C’ miscellaneous—1977-1978,” Box 365, ELR Papers.

⁴⁵ Elisabeth Mann Borgese, *The Future of the Oceans: A Report to the Club of Rome* (Montreal: Harvest House, 1986), xiii.

⁴⁶ “Address of Ambassador at Large Elliot L. Richardson, Special Representative of the President for the Law of the Sea Conference, before the Seapower Symposium of the Cincinnati Council of the Navy League

only the “seriousness of the consequences for freedom of navigation and overflight that would result from the failure to achieve a comprehensive treaty” but the “value of a comprehensive treaty as an instrument for preventing conflicts.”⁴⁷ Smith recalled, “I don’t think Richardson ever lost faith.”⁴⁸ Richardson’s attitude was a reflection of his abiding belief that, with the proper frame of mind, most problems could be solved. “The key to dealing with most hard problems,” Richardson later wrote, “is to stick with the merits and persist in seeking the best and most workable approach.”⁴⁹ His persistence sustained him as the conference inched forward during the next two years.

Negotiations at the start of the seventh session in 1978 were especially frustrating. “The Law of the Sea Conference has just concluded a whole week spent arguing over whether or not we do or do not already have a President, as if we didn’t have enough troubles,” Richardson ruminated that April.⁵⁰ At a meeting of the 120-member Law of the Sea Public Advisory Committee that May, he noted only that “when the Committee meets again I hope I will be able to report that this time we have really made headway.”⁵¹ In the meantime, he continued to push back against the governance structure proposed by developing nations on the International Seabed Authority. Such a proposal “would be founded on what is at best an anomalous principle—one-nation one-vote—which bears no rational relationship either to the principles of democracy or to the distribution of power, values and interests,” he wrote. “To allow resources constituting the common heritage of mankind to be disposed of by a nose-count of nations would be a bad

of the United States,” Bulletin Reprint, Bureau of Public Affairs, Department of State, 18 Jan. 1978, “Law of the Sea Conference,” Box 356, ELR Papers.

⁴⁷ Letter, Elliot L. Richardson to Igor K. Kolosovsky, 5 Dec. 1977.

⁴⁸ John Thomas Smith II, telephone interview, 9 Jan. 2009.

⁴⁹ Richardson, *Reflections*, 205.

⁵⁰ Letter, Elliot L. Richardson to Peter Jay, 3 Apr. 1978, “‘J’ miscellaneous,” Box 379, ELR Papers.

⁵¹ Letter, Elliot L. Richardson to Gordon L. Becker, 8 May 1978, “‘B’ miscellaneous—1977,” Box 358, ELR Papers.

precedent for the international institution building of the future.” He added that such a proposal would, in the paraphrasing of the newspaper that reported his remarks, be “run out of town on a rail” by the U.S. Senate.⁵² That spring, he put the odds of a successful treaty at four-to-one against.⁵³ Negotiations appeared to have reached a stalemate.

Adding to the sense of a prolonged impasse at the seventh session was the pressure that Richardson received from developing nations on one side and domestic interests on the other. Developing nations deplored the effort to pass domestic seabed legislation. While Richardson had said that the United States would not employ such legislation “as a club to beat down opposition in Geneva,” several delegates believed that the United States planned to do just that.⁵⁴ Ambassador Satya Nandan of Fiji, speaking for developing nations, criticized “selfish and shortsighted unilateral actions which would threaten to jeopardize the pursuit of the negotiations,” a not-so-oblique reference to United States legislation on seabed mining. Such legislation, he emphasized, “has no validity in international law” and would result in “irreparable consequences” at the conference if enacted by Congress.⁵⁵ Amerasinghe had added that developing nations “regard such legislation as an attempt to secure their consent through coercion and duress. Any agreement reached under these conditions would not be genuine.”⁵⁶

The American delegation considered these arguments in the midst of the seventh session but concluded that the events of the year before had forced its hand. “We cannot

⁵² “Final Hand at Geneva?” editorial, *Washington Star* 22 Mar. 1978, “Clippings (general),” Box 364, ELR Papers.

⁵³ James Grant, “Shark and Prey: The Latest United Nations Extravaganza Will End Badly,” letter to the editor, *Barron's* 4 Sept. 1978, “Clippings (general),” Box 364, ELR Papers.

⁵⁴ Elliot L. Richardson, “Oceans: Law of the Sea Conference,” *Department of State Bulletin* (Washington, D.C.: June 1978), 47, “Clippings (general),” Box 364, ELR Papers.

⁵⁵ “U.N.’s Dead Sea Conference,” *St. Louis Globe-Democrat Publishing Co.* 25 Sep. 1978, “Clippings (general),” Box 364, ELR Papers.

⁵⁶ Letter, H. S. Amerasinghe to Jonathan Bingham, 12 Nov. 1979, “Amerasinghe, Hamilton Shirley,” Box 353, ELR Papers.

hope to get an acceptable treaty until the most important developing countries are persuaded that mining will inevitably occur in the not-too-distant future and, therefore, that they need the treaty at least as much as we do,” wrote Richardson’s deputy, George Aldrich, that July. “Only if we settle down for a long effort can we hope to have a reasonably early conclusion for a treaty.”⁵⁷ Richardson was similarly adamant, as he told Congress, that developing nations understand that the United States “has the means at our disposal to protect our ocean interests...And we shall protect those interests if a comprehensive treaty eludes us.” (*Forbes* added an editorial comment: “There was no mistaking Richardson’s meaning: The U.S. has a Navy; the U.N. General Assembly does not.”)⁵⁸ He sought to reassure developing nations that he had not given up his idealism. “I hope that nobody has misunderstood recent declarations of United States policy to mean that we do not believe that developing nations should receive their ‘fair share’ of the common heritage,” he wrote. But he emphasized that any agreement on seabed mining must assure access for the recovery of minerals by developed nations as well as the proposed International Seabed Authority’s mining arm, the Enterprise. “The negotiating text before the conference does not accomplish these balanced aims,” Richardson wrote, “and we intend to seek the necessary changes.”⁵⁹ Though the seabed mining legislation that he and the White House now supported did not come up for a vote in the Senate, it passed the House by a vote of 312-80 that summer.

⁵⁷ Letter, George H. Aldrich to Henry J. Richardson, 12 Jul. 1978, NSA-Global Issues, “LOS, 7-9/78,” Box 38, JCL. [Henry J. Richardson, who served on the staff of the National Security Council, is not related to Elliot Richardson and should not be confused with Elliot Richardson’s son, also named Henry.]

⁵⁸ “U.S. To U.N.: Stop Pushing Us Around,” *Forbes* 18 Sep. 1978, “Clippings (general),” Box 364, ELR Papers.

⁵⁹ Letter, Elliot L. Richardson to R. Bye, 3 Feb. 1978, “‘B’ miscellaneous,” Box 359, ELR Papers. Richardson elaborated in another letter that without such changes, the Carter administration “could not seriously contemplate presenting the treaty to the Senate for ratification.” Letter, Elliot L. Richardson to Eugene R. Black, Jr., 4 Jan. 1978, “‘B’ miscellaneous,” Box 359, ELR Papers.

Domestic interests skeptical of the Law of the Sea conference welcomed the change in attitude toward the legislation by the administration, but that change did not render their criticisms any less forceful than they were the summer before when Northcutt Ely of U.S. Steel had told Richardson, “I hope you fail.”⁶⁰ “We have made one concession after another without receiving anything in return,” Breaux wrote in the summer of 1978.⁶¹ Senators Henry M. “Scoop” Jackson and Clifford Hansen urged Richardson to pay closer attention to “whether or not the United States Senate is prepared to ratify a Law of the Sea treaty...which would inhibit and prevent deep seabed development by U.S. firms. We are inclined to believe the Senate would not.”⁶² Richardson, as he sought to advance the negotiations, needed to be mindful of the pressure building against ratification at home. His support for seabed legislation was important not only because of the leverage that such legislation would provide at the conference but because doing so would allow him to shape that legislation in a manner concordant with an eventual treaty.⁶³ He had to ensure that the legislation did not put him in a box. Otherwise he could find himself, as one National Security Council staff member wrote that summer, “negotiating with industry to strengthen legislation which promises to be helpful as leverage towards a Law of the Sea treaty, but which simultaneously [because of its strength] provides a rationale for the same industry to oppose ratification

⁶⁰ Scott Kaufman, *Plans Unraveled: The Foreign Policy of the Carter Administration* (DeKalb, IL: Northern Illinois University Press, 2008), 115.

⁶¹ John Breaux, “Rough Days on the High Seas,” *Washington Star* 24 Jun. 1978, “Clippings (general),” Box 364, ELR Papers.

⁶² Letter, Henry M. Jackson and Clifford P. Hansen to Elliot L. Richardson, 2 Aug. 1978, “‘J’ miscellaneous,” Box 379, ELR Papers.

⁶³ Stuart Eizenstat, who chaired Carter’s Domestic Policy Council, echoed the importance that Richardson placed on shaping the legislation. “If we do not move quickly,” Eizenstat wrote, “we will lose opportunities to influence this legislation.” Memorandum, Stuart Eizenstat to Zbigniew Brzezinski, 23 Sep. 1977, “Law of the Sea, Interagency Group for, 1/77-3/79,” CF, O/A #743, Box 1 of 3, JCL.

of that treaty.”⁶⁴ Richardson responded to the domestic pressure by holding to a middle course throughout the year. He used the prospect of domestic legislation to soothe mining industry concerns but nonetheless advanced the concept of a comprehensive treaty. On the subject of a bilateral approach to deep seabed regulation outside of the Law of the Sea conference, for example, he called the idea one that “deserves to be kept in readiness should the conference fail” but pointed out that the conference was “still making measurable progress.”⁶⁵

His persistence began to show results. That spring, the American delegation could report after the first round of the seventh session, “All of the texts dealing with the seabed represent improvement over the ICNT [compromise text from the sixth session].”⁶⁶ The representatives at the conference made more progress at the resumed seventh session that summer, and Richardson reported “solid accomplishment” to Louis Sohn, his former international law professor at Harvard Law School.⁶⁷ According to one account written after the seventh session, several delegates expressed the sense that the “tougher key issues are beginning to be tackled.”⁶⁸ But Richardson took care not to overstate the importance of the session. The American delegation reported that September that there were still “outstanding deep seabed issues for which no solution emerged and for which no generally acceptable solutions seem to be emerging yet.”⁶⁹ There was “just enough

⁶⁴ Letter, Henry J. Richardson to George H. Aldrich, 16 Jun. 1978, “LOS, 5-6/78,” Box 38, JCL.

⁶⁵ Letter, Elliot L. Richardson to Harlan Cleveland, 7 Jun. 1978, “‘C’ miscellaneous—1977-1978,” Box 365, ELR Papers.

⁶⁶ “Statement by Elliot L. Richardson, Ambassador at Large, Special Representative of the President for the Law of the Sea Conference,” 22 May 1978, NSA-Global Issues, “LOS, 7-9/78,” Box 38, JCL.

⁶⁷ Letter, Elliot L. Richardson to Louis Sohn, 9 Jun. 1978, “‘S’ miscellaneous—1977-1978,” Box 393, ELR Papers.

⁶⁸ Marion David Tunstall, *The Third United Nations Conference on the Law of the Sea* (Charlottesville, VA: Michie, 1979), 58.

⁶⁹ “U.S. Delegation Report: Resumed Seventh Session of the Third United Nations Conference on the Law of the Sea, New York, August 21-September 15, 1978,” (date of issue not listed), NSA-Global Issues,

progress to justify another round next year,” the *Wall Street Journal* concluded, noting that delegates made “significant” progress on the subject of how to share seabed mining revenue but “almost totally avoided the issue of voting procedures” for the governing council of the proposed International Seabed Authority, for which industrialized nations, who would be a minority on the council, demanded veto power.⁷⁰ The post-sixth session strategy that Richardson had fashioned made some difference, but it did not appear to be leading to the sort of breakthrough needed for a successful resolution of the conference.

Yet a breakthrough seemed to occur the very next year. If the effort to maintain the flow of negotiations characterized the seventh session in 1978, the palpable sense that, for the first time, consensus was within reach characterized the eighth session in 1979. That session, with its seven negotiating groups, allowed for a concerted search among the delegations for a compromise on seabed mining.⁷¹ Richardson announced “solid, encouraging progress,” when the session recessed that April, even as he acknowledged that, from the perspective of the United States, the guidelines on financing remained “regrettable” and the technology transfer provisions of the text required modification. If the negotiations “disappointed our highest hopes,” Richardson said, they “certainly met our most realistic expectations. Our chances of going all the way to a

“LOS, 7-9/78,” Box 38, JCL. If Richardson needed reminding, he received a letter from Conrad Welling of the Ocean Minerals Company to “reaffirm [his company’s] belief that the ICNT, including the UNCLOS seventh session additions, is not susceptible to a patchwork of quick fixes. Its ocean mining provisions will require major structural overhaul before we could feel confident investing under it.” Letter, Conrad G. Welling to Elliot L. Richardson, 27 Mar. 1979, “‘W’ miscellaneous—1979-1980,” Box 401, ELR Papers.

⁷⁰ “Conference on Sea Law Makes Some Progress: Success is in Doubt,” *Wall Street Journal* 14 Sep. 1978, “Clippings (general),” Box 364, ELR Papers.

⁷¹ For a brief overview of the function of each the negotiating groups at the eighth session, see “Preparation for the Eighth Session of the Third United Nations Conference on the Law of the Sea, March 19 – April 27, 1979,” (date of issue not listed), NSA-Brzezinski Files, “Law of the Sea, 1/78-9/80,” Box 31, JCL.

treaty look better than ever before.”⁷² When the session resumed that summer, the progress accelerated. By August, Richardson could proclaim with pride that “many of the issues that have plagued the conference for years are almost on the point of resolution.”⁷³

Members of the American delegation, mindful of the tactics that had disrupted the sixth session, understood that the gains were fragile. “We must all be increasingly sensitive to the dangers of reopening compromises already reached, of losing sufficient will to resolve the remaining issues, and of adopting procedures that could result in the unraveling of the intricate and delicate package during the formal stages,” Richardson wrote to Evensen in September of 1979.⁷⁴ They understood, furthermore, that they had not resolved the issue of governance of the International Seabed Authority, the most intractable subject of the conference. But success, in the form of a comprehensive Law of the Sea treaty that commanded broad support, now appeared within reach.

How did Richardson manage such sustained progress? Given the intricacy of international negotiation, especially one involving more than 150 nations, there is no simple explanation. There are, however, two general possibilities. The first is that Richardson’s threat after the sixth session to withdraw from the conference, and the subsequent support of the administration for domestic seabed mining legislation, were sources of leverage with developing nations that added a sense of urgency to the negotiations. In 1978 Richardson was “in the position of having to check when it is his time to bet,” the *Washington Star* wrote in an editorial, “hoping the opponents will realize

⁷² “Press Statement of Ambassador Richardson,” U.S. Mission—Geneva, 27 Apr. 1979, NSA-Global Issues, “LOS, 4-5/79,” Box 38, JCL. See also “U.S. Delegate Reports Progress at Sea-Law Session,” *New York Times* 29 Apr. 1979.

⁷³ Letter, Elliot L. Richardson to Aaron J. Danzig, 20 Aug. 1979, “‘D’ miscellaneous—1979-1980,” Box 367, ELR Papers.

⁷⁴ Letter, Elliot L. Richardson to Jens Evensen, 7 Sep. 1979, “Evensen, Jens,” Box 367, ELR Papers.

if they keep raising, the U.S. will not be around when a treaty vote is taken at the conference—and the Third World will have raked in an illusory pot.”⁷⁵ Opponents may have come to this realization in 1979 and, for that reason, made a greater number of concessions to the United States. Several of those who worked with Richardson point to the importance of the legislation in the negotiations. Bernard Oxman, a law professor who served as vice-chair of the American delegation during Richardson’s tenure, noted that the legislation allowed Richardson to “accelerate and decelerate” the pace of the conference as he saw fit.⁷⁶ Alan Berlind also remembered that the seabed legislation kept the conference “on its toes” and added that it was a “useful, necessary, and justifiable antidote to the [Paul] Engo text.”⁷⁷ Under this first possibility, the prospect of enactment of the legislation was essential to progress at the conference.

This view is far from universal, however. The push for seabed legislation created “ill will” at the conference, said Tommy Koh of Singapore, who worked closely with Richardson at the conference and later assumed its presidency. “It did not help but [rather] hindered Richardson’s diplomacy.”⁷⁸ Nor is the view that the legislation was ineffective as a source of leverage confined to representatives of developing nations. J. T. Smith recalled in an interview that the strategy of using the legislation as a bargaining tool met with little success.⁷⁹ Leigh Ratiner, who during Richardson’s tenure worked as a lobbyist for Kennecott Copper and pushed for passage of the legislation, allowed only that it may have had a “marginal influence.”⁸⁰ “On balance, it had a positive impact,”

⁷⁵ “Final Hand at Geneva?” editorial, *Washington Star* 22 Mar. 1978.

⁷⁶ Bernard H. Oxman, telephone interview, 24 Feb. 2009.

⁷⁷ Berlind, interview.

⁷⁸ Tommy T. B. Koh, e-mail interview, 19 Feb. 2009.

⁷⁹ Smith, interview.

⁸⁰ Ratiner, interview.

John Norton Moore said of the legislation, but he added, “By itself it was not enough.”⁸¹ Much of the reason was that however important a source of leverage the legislation may have been, Richardson was wary of using it. “We were always careful [to] frame these things that were happening domestically in a way that encourages compromise without being a direct threat,” Caitlyn Lance Antrim said, recalling Richardson’s belief that a “heavy hand is harmful.”⁸² The legislation certainly made some difference, if only because developing nations could not ignore Richardson’s dictum that “deep seabed mining can and must go forward within one legal framework or another.”⁸³ But Koh’s view of the legislation three decades afterward is a testament to the backlash that could have resulted had Richardson attempted to use it to greater effect.

The second and more persuasive possibility is that the broader qualities of ingenuity and persistence that Richardson exhibited after the sixth session, rather than the specific threat of withdrawal and of domestic mining legislation, made the difference. Richardson and George Aldrich were “regarded as among the most creative negotiators in the conference,” noted the *New Yorker*, “who would not cling to old positions but had the courage to propose and explore alternatives.”⁸⁴ Oxman and Berlind, who had pointed to the importance of the seabed legislation at the conference, also emphasized these more intangible qualities. “His integrity made a difference,” Oxman remembered of Richardson, “because people trusted him.”⁸⁵ Berlind noted that the core skill in a negotiation as fraught with complexity as the Law of the Sea conference is to focus “on

⁸¹ John Norton Moore, telephone interview, 25 Feb. 2009.

⁸² Antrim, interview.

⁸³ “Free-for-All Over Riches of Seas? Interview with Elliot L. Richardson, Chief U.S. Negotiator, Law of the Sea Conference,” *U.S. News & World Report* 28 Aug. 1978, 59-60, “Clippings (general),” Box 364, ELR Papers.

⁸⁴ William Wertenbaker, “The Law of the Sea—II,” *New Yorker* 8 Aug. 1983, 64-65.

⁸⁵ Oxman, interview.

interests rather than on policies or ideologies, for the former can often be accommodated while the latter cannot. Without being disloyal in the least to policy, men such as Elliot, [Satya] Nandan, and [Tommy] Koh could seek answers that served them and their constituencies, leaving posturing aside for the speech-makers.”⁸⁶ Here is a clue to why Richardson would, though the conference was, as he wrote, “under serious strain,” insist that “despite the frustrations the job is fascinating.”⁸⁷ Even as he made the necessary adjustments after the sixth session to firm up his negotiating position, he had the opportunity to do what he loved most about public service, building relationships with his fellow negotiators and working to solve interrelated issues on the merits.

It helped that Koh, the most prominent of those negotiators, possessed a caliber of mind that, in Richardson’s view, matched his own. Because of the impasse at the end of the sixth session, representatives at the seventh and eighth sessions had cast about for new methods of addressing the most irresolvable issues of the conference. In an effort such as the Law of the Sea conference, wrote R. P. Barston in *Modern Diplomacy*, “decision-making is exhaustive and exhausting, as attempts are made to achieve compromise texts.” As a result, effective working group leaders are needed to play a key role in the “development of innovative negotiating techniques to overcome deadlock and maintain momentum.”⁸⁸ At the Law of the Sea conference, such innovation, spearheaded in large measure by Koh, led to the creation of the seven separate negotiating groups at the seventh session, including three that addressed seabed mining issues, and a Working

⁸⁶ Berlind, interview.

⁸⁷ Letter, Elliot L. Richardson to Leverett Saltonstall, 2 Mar. 1978, “Saltonstall, Leverett,” Box 392, ELR Papers.

⁸⁸ R. P. Barston, *Modern Diplomacy* (London: Longman, 1988), 118-119.

Group of 21 on the seabed at the eighth session.⁸⁹ Koh was “considered by many to be the ablest person at the conference,” according to an account in the *New Yorker*, “and his emergence in the seabed negotiation was a source of considerable hope to many delegates... Where Engo would exhort, Koh would analyze, and where Engo had at times been swayed by one side or the other, Koh would pursue a problem to the end impartially.”⁹⁰ Lincoln Bloomfield, when asked what had changed at the Law of the Sea conference between 1977 and 1979, noted first that Richardson was a “very effective negotiator,” “very adroit,” and “very patient, unlike some.” But Bloomfield emphasized the chairmanship of Koh on seabed negotiations and later, after Amerasinghe had passed away in 1980, Koh’s leadership as president of the conference in its last years.⁹¹

Richardson had understood the importance of Koh to the conference as early as 1977, when he had requested that the Singaporean representative and his wife be invited to visit with Carter in the White House.⁹² In later years, when asked about the Law of the Sea negotiations, he would refer to Koh as the anchor of the conference. Richardson’s own role, however, should not be overlooked. Even his passivity had purpose. “In cases of which we know,” wrote Richard Neustadt and Ernest May in *Thinking in Time*, “debate in serious decision situations starts at least nine times out of ten with the

⁸⁹ Richardson underscored the importance of the new approaches to negotiation at the conference. “The ability of the conference to revise the ICNT by April 27,” he wrote three weeks beforehand, “will rest on the ability of the group [Working Group of 21] to come up with generally acceptable formulations” for deep seabed mining. Letter, Elliot L. Richardson to Conrad G. Welling, 6 Apr. 1979, “W” miscellaneous—1979-1980,” Box 401, ELR Papers.

⁹⁰ Wertenbaker, “The Law of the Sea—II,” 62. William C. Brewer, Jr., a Commerce Department representative at the Law of the Sea conference, used similar language in a summary that he wrote of the intersessional conference that preceded the ninth session, labeling Koh the “ablest chairman of the three negotiating groups under Committee One [seabed issues].” Memorandum, William C. Brewer, Jr. to Delegation, 14 Feb. 1979, “B” miscellaneous—1978-1979,” Box 359, ELR Papers.

⁹¹ Lincoln P. Bloomfield, telephone interview, 20 Feb. 2009.

⁹² Letter, Elliot L. Richardson to Gretchen Poston, 3 Sep. 1977, Name Files, “Elliot L. Richardson,” JCL. No invitation was forthcoming. Koh, interview.

question: What do we *do*?”⁹³ Yet Richardson ceded ground to delegates whom he respected, even if the geopolitical power of the nations that they represented did not approach that of the United States. “I have learned over the years,” he had told the Senate Committee on Foreign Relations in 1969 as he awaited confirmation as Under Secretary of State, “to recognize that no one is so well-informed or so intelligent that he can afford to deal with difficult questions of judgment without the benefit of the input of the ideas of others.”⁹⁴ Richardson was fortunate to have, in Koh and Evensen and others, a “cast of negotiators [that]...was an extraordinary one in terms of intellectual capacity, experience, skill, and temperament,” wrote James Sebenius in his assessment of the conference, *Negotiating the Law of the Sea*.⁹⁵ But he was also perceptive enough to recognize that talent and to encourage those who possessed it to make full use of it.

The comfort that Richardson displayed in working with delegates from developing nations and entrusting them with the search for compromise on disputed issues proved vital in bridging the gap between North and South. It not only led to creative solutions but fostered trust, a valuable commodity in a negotiation as layered and lengthy as the Law of the Sea conference. As Jonathan Moore noted in an interview, a useful method for illuminating Richardson’s negotiating style is to contrast Richardson’s style with that of James A. Baker, Richardson’s onetime deputy at the Department of Commerce and fellow Republican with a reputation for pragmatism. Richardson, Moore noted, would not have been as effective as Baker was in representing then-Governor

⁹³ Richard E. Neustadt and Ernest R. May, *Thinking in Time: The Uses of History for Decision Makers* (New York: The Free Press, 1986), 4.

⁹⁴ Hearing Before the Senate Committee on Foreign Relations on the Nomination of Elliot L. Richardson to be Under Secretary of State, 15 Jan. 1969, Washington, D.C., U.S. Government Printing Office, 5.

⁹⁵ James K. Sebenius, *Negotiating the Law of the Sea* (Cambridge, MA: Harvard University Press, 1984), 49.

George W. Bush in the 2000 Florida recount, which Baker, if the docudrama version of events is to be believed, likened to a “street fight.”⁹⁶ Yet Moore pointed out that Baker’s hardheaded style would not have fit the multilateral, multifaceted, and almost hopelessly prolonged Law of the Sea negotiations.⁹⁷ It was, rather, the combination of abilities that Richardson brought to his position—his willingness to work through complexity, his belief that delegates from developing as well as developed nations should be heard, and his dedication to working with others to address knotty transnational problems on the merits—that gave him the confidence, and the patience, to allow delegates such as Koh and Nandan to drive the process when doing so would contribute to the success of the conference. “Satya, Elliot, and I worked very closely together and were mutual admirers,” Koh remembered.⁹⁸ In his own efforts as well as his stance toward the efforts of others, Richardson made an impact.

None of this is to suggest that the qualities evidenced by the first possibility, those of firmness and resolve and willingness to push seabed legislation, were not important in spurring the conference forward. Richardson had said how he had not truly understood negotiation until the sixth session, and the manner in which he oriented himself toward subsequent sessions of the conference demonstrated a heightened sensitivity to American interests that served him well. “The conference is increasingly aware,” noted an internal administration document in advance of the eighth session, “that seabed mining will occur in due course with or without a treaty and that an acceptable seabed mining regime must

⁹⁶ *Recount*, directed by Jay Roach, HBO, 2008. Baker told *Newsweek* that he was not “as Machiavellian as the movie made me out to be,” but he confirmed that he viewed the recount procedure as a “political contest, not just a legal contest.” “A Look Back at the Battle of 2000,” *Newsweek* 26 May 2008.

⁹⁷ Jonathan Moore, personal interview, Cambridge, MA, 18 Nov. 2008.

⁹⁸ Koh, interview.

provide a secure framework for investment.”⁹⁹ The stance that Richardson had adopted after the sixth session contributed to that awareness. Indeed, as he pushed for a treaty that the White House would approve and that the Senate would ratify, Richardson would have benefited from taking a firmer negotiating position than he did and further reducing expectations, an issue that the following chapter will explore. But the best evidence that Richardson’s unique approach to the negotiation made the difference, rather than his reliance on seabed legislation, is what happened next.

As prospects for a treaty brightened, Richardson decided that, no matter the strategy that had taken him to this point, one more adjustment was required. He decided that the administration, after two years of seeking passage of domestic seabed mining legislation, should now ask for “pause” until the end of the ninth session in 1980. It was a bold move. Just the previous year, Richardson had reiterated to Carter his belief that “deep seabed mining legislation should go forward on its own merits independent of considerations imposed by the international negotiations.” This view, he wrote, not only made sense as a contingency measure for the mining industry but was “essential to our negotiating position—to convey our determination to embark upon deep seabed mining whether or not the conference succeeds.”¹⁰⁰ In January of 1979, Richardson had written to Breaux that “I am pleased that you will again be introducing a deep seabed mining bill early in the 96th Congress...such legislation [should] be enacted as soon as possible, and

⁹⁹ “Informal Consultations on the Law of the Sea: Geneva, January 23-February 7, 1979,” NSA-Global Issues, “LOS, 10/78-1/79,” Box 38, JCL.

¹⁰⁰ Memorandum, Elliot L. Richardson to Jimmy Carter, “Law of the Sea,” 30 Jun. 1978, NSA-Global Issues, “LOS, 7-9/78,” Box 38, JCL.

we will do everything in our power to assist you toward this end.”¹⁰¹ Now, in the fall of 1979, Richardson, sensing an opportunity, sought another halt.

In doing so, he set off the most pronounced interagency squabbling of his tenure. One memorandum noted “profound discontent on the part of Commerce and certain members of the Congress and the mining industry with Elliot’s suggestion of a pause.”¹⁰² Richardson had emphasized that the pause was, as the word suggested, temporary, with the purpose of reducing the possibility of an “irrational and forceful reaction from the Group of 77” just when consensus appeared within reach. Enactment of legislation that fall, Richardson said, “could seriously risk getting the compromises we still need” at the conference.¹⁰³ Yet several other executive branch departments and offices believed that whatever progress had been made in 1979 did not warrant a change in strategy. They were further piqued that Richardson had asked members of Congress to delay legislation before he had consulted with the executive branch.¹⁰⁴ While the State, Defense, and Transportation Departments supported Richardson’s position, the Treasury, Commerce, and Interior Departments, as well as the Office of Management and Budget and the Domestic Policy Council, did not. Breaux and his colleague John M. Murphy, the chair of the Committee on Merchant Marine and Fisheries, also voiced their displeasure.

¹⁰¹ Letter, Elliot L. Richardson to John Breaux, 3 Jan. 1979, “‘B’ miscellaneous—1978-1979,” Box 359, ELR Papers. Richardson emphasized his support for the legislation in his testimony before Congress. See Hearing Before the Subcommittee on Arms Control, Oceans, and International Environment on S. 2053, Senate Committee on Foreign Relations, 17 Aug. 1978, Washington, D.C., U.S. Government Printing Office; Hearings Before the Subcommittee on Oceanography on Law of the Sea Conference Oversight, House Committee on Merchant Marine and Fisheries, 27 Feb. 1979, Washington, D.C., U.S. Government Printing Office, 1979.

¹⁰² Memorandum, Lincoln P. Bloomfield to Zbigniew Brzezinski and Henry Owen, “State of Play on U.S. LOS Politics,” 26 Oct. 1979, NSA-Brzezinski Files, “Law of the Sea, 1/78-9/80,” Box 31, JCL.

¹⁰³ Laura B. Weiss, “Carter Seeks House Delay on Seabed Mining Bill to Avert Harm to Treaty,” *Congressional Quarterly* 19 Jan. 1980, 7, “Clippings (Richardson),” Box 364, ELR Papers.

¹⁰⁴ Memorandum, James T. McIntyre, Jr., to Jimmy Carter, “Administration Position re: Deep Seabed Mining,” (date not listed), NSA-Global Issues, “LOS: Seabed Legislation, 9-11/79,” Box 40, JCL. The memorandum noted, “Neither OMB, nor DPC, nor other executive agencies’ concurrence was sought.”

“Apprehensions expressed in the last few days concerning the effect of enactment on the Law of the Sea Conference,” they wrote, “are impossible to accept in light of these repeated unequivocal, authoritative statements providing a contrary view.”¹⁰⁵ The mining industry, not least, was apoplectic. “Should the administration decide to abandon its prior policy,” the United States Steel Corporation wrote in a representative letter, “we must immediately reevaluate our investment decisions.”¹⁰⁶ The reaction underscored the difficulty of Richardson’s assignment. As in other instances in his tenure, a decision to seize an opportunity, whether with developing nations or with interests at home, provoked a backlash among that constituency not favored.

Richardson had now served as Ambassador at Large for the Law of the Sea for nearly three years, and he saw no reason to be patient with the objections to his latest proposal. “My clear judgment of the possible consequences of enactment is being challenged by government departments and White House agencies that have had scant opportunity to assess independently either the dynamics of the conference or the attitudes of the senior delegates of the participating nations,” he wrote in a letter to Carter that November. “If I am successfully to negotiate the remaining issues next year, I will require a conference atmosphere free of recrimination.”¹⁰⁷ He brushed aside suggestions that he meet those who objected halfway. “I have no new compromises to suggest and that enactment of legislation in any form seems to me undesirable,” he responded tersely

¹⁰⁵ Letter, John M. Murphy and John Breaux to Jimmy Carter, 24 Oct. 1979, NSA-Global Issues, “LOS: Seabed Legislation, 9-11/79,” Box 40, JCL.

¹⁰⁶ Letter, D. M. Roderick to Luther H. Hodges, Jr. [Acting Secretary of Commerce], 2 Nov. 1979, NSA-Brzezinski Files, “Law of the Sea, 1/78-9/80,” Box 31, JCL.

¹⁰⁷ Letter, Elliot L. Richardson to Jimmy Carter, 16 Nov. 1979, NSA-Brzezinski Files, “Law of the Sea, 1/78-9/80,” Box 31, JCL.

when asked by Bloomfield for suggestions for compromise.¹⁰⁸ He even threatened a presidential veto of legislation in meetings with members of Congress, which “absolutely shocked the White House,” Bloomfield remembered.¹⁰⁹ Bloomfield managed, with the help of a member of the National Security Staff, Madeleine Albright, to arrange for the Senate to pass seabed legislation while postponing a vote in the House. “This meets both the domestic and foreign policy concerns,” Bloomfield emphasized in a handwritten note to Brzezinski.¹¹⁰ Richardson now looked on with anticipation toward the forthcoming ninth session. “Two years ago, only a cockeyed optimist would have ventured to predict success” for the Law of the Sea conference, he wrote in January of 1980, on the eve of the session. “What has happened since then powerfully demonstrates how imagination and political will can overcome the folly of despair and turn the tables on sure defeat.”¹¹¹ He hoped to secure that victory in the next year.

To Richardson’s delight, the negotiations in 1980 proceeded as he had hoped. Progress was at first haphazard, which Richardson had anticipated as his elation with the results of the eighth session the previous year wore off. “I have become somewhat less optimistic as I have become more aware of the complexities of the issues still to be resolved,” he said in February.¹¹² Bloomfield, who visited the conference in April, noted that “certain matters of crucial importance to the United States such as decision making

¹⁰⁸ Note for Lincoln P. Bloomfield, Henry Owen, and Tom Thornton—Telephone Message, 15 Nov. 1979, NSA-Global Issues, “LOS: Seabed Legislation, 9-11/79,” Box 40, JCL.

¹⁰⁹ Bloomfield, interview. Bloomfield recalled that he was ordered to deliver a sharp message to Richardson that he may not threaten a White House veto of seabed legislation.

¹¹⁰ Handwritten note, Lincoln P. Bloomfield to Zbigniew Brzezinski, 1979 (date not listed), NSA-Global Issues, “LOS: Seabed Legislation, 9-11/79,” Box 40, JCL.

¹¹¹ Elliot L. Richardson, “Law of the Sea Treaty Can and Must be Concluded,” Review & Forecast, *Sea Technology* (January 1980), “‘G’ miscellaneous,” Box 369, ELR Papers.

¹¹² “Statement by Ambassador at Large Elliot L. Richardson, Special Representative of the President for the Law of the Sea,” New York, NY, 29 Feb. 1980, “Trips and meetings—1 Feb.-1 Oct. 1980,” Box 399, ELR Papers.

in the Seabed Council are deferred” to the resumed session that summer.¹¹³ But even the spring session constituted a “major step forward,” Richardson reported in April, adding that it was “distinctly possible” that the outstanding issues, most notably governance of the Authority, would be resolved in the summer.¹¹⁴ “For quite some time, UNCLOS III delegates have been predicting completion of their work ‘next year’ and ‘next year’ and ‘next year,’” wrote Jan Schneider, an observer with the United Nations Environmental Programme, after the spring session. “At long last, it does look like the conference is coming precipitously near fulfilling this prophecy.”¹¹⁵

Prophecy may have been on Richardson’s mind at the resumed ninth session that August, as he carried in his wallet a fortune-cookie aphorism: “This is the month when ingenuity stands at the top of the list.”¹¹⁶ Once more, Richardson depended on Tommy Koh, who led a negotiating group to search for agreement on voting arrangements for the governing council of the International Seabed Authority. With painstaking effort, the group reached an amenable solution, which mandated a consensus for deciding the key issues, a three-fourths majority for deciding secondary-level issues, and a two-thirds majority for all other issues.¹¹⁷ Some members of the delegation were concerned about

¹¹³ Memorandum from Lincoln P. Bloomfield, “Briefing by Ambassador at Large Elliot L. Richardson,” 2 Apr. 1980, NSA-Global Issues, “LOS: Seabed Legislation, 9-11/79,” Box 40, JCL. Richardson, in a letter to Marne Dubs of Kennecott Copper that April, wrote that the “issue of decision-making remains the single most difficult in the negotiations.” Letter, Elliot L. Richardson to Marne Dubs, 29 Apr. 1980, “D’ miscellaneous—1979-1980,” Box 367, ELR Papers.

¹¹⁴ “Statement by Ambassador at Large Elliot L. Richardson, Special Representative of the President for the Law of the Sea,” New York, NY, 3 Apr. 1980, “Trips and meetings—1 Feb.-1 Oct. 1980,” Box 399, ELR Papers.

¹¹⁵ Jan Schneider, “Summary Report to the United Nations Environment Programme, Ninth Session: 27 Feb.-4 Apr. 1980,” (date of issue not listed), “Trips and meetings—1 Feb.-1 Oct. 1980,” Box 399, ELR Papers.

¹¹⁶ Elliot L. Richardson, “The United States and the Current Status of Deep Seabed Mining at the Third United Nations Conference on the Law of the Sea,” *Environmental Law*, vol. 11, no. 2: 193.

¹¹⁷ The text defined consensus in Article 161, Subsection C, as the “absence of any formal objection.” *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index* (New York: St. Martin’s Press, 1983), 56.

how the consensus requirement for the most important issues would operate in practice, Richardson remembered. “We were aware, however,” he wrote, “that most international organizations were somehow able to operate by consensus most of the time.” In explaining why they were able to do so, Richardson invoked what he called the “‘horse’s ass principle’: it is better to go along in the end than to be so regarded.”¹¹⁸ The United States would have veto power but would exercise that power through a mechanism that put it on equal footing with other nations, which also possessed veto power under the consensus principle. The delegations agreed to the elaborate compromise on voting, and by the end of the summer they had also resolved major disputes on profit-sharing, financing, and technology transfer for the Enterprise.¹¹⁹ The resolution of the seabed issue was the “decisive breakthrough” that the conference needed, reported the American delegation at the end of the ninth session, and Richardson said that he was “all but certain” that the text of the treaty would be ready for signature by March of 1981.¹²⁰ “Needless to say,” he wrote to a member of the Law of the Sea Public Advisory Committee, “I’m very pleased with the outcome.”¹²¹

There was one last hiccup that summer, as Congress enacted and Carter signed the Deep Seabed and Hard Mineral Resources Act of 1980. Richardson had, in fact, switched

¹¹⁸ Richardson, *Reflections*, 227. See also Michael R. Kingsley-Nyinah, *Developing Countries in Multilateral Negotiations: Towards a Prescriptive Theory* (LL.M. thesis, Harvard University, 1990), 33. The “formality and finality attendant to registering a vote,” according to Kingsley-Nyinah, “is a powerful influence for entrenchment and ‘dug-in’ attitudes... [that can] freeze the parties into irreconcilable postures which have little to do with critical underlying concerns.”

¹¹⁹ “Fingers Crossed for the Law of the Sea,” *New York Times* 31 Aug. 1980, “Clippings (Richardson),” Box 364, ELR Papers.

¹²⁰ “United States Delegation Report: Resumed Ninth Session of the Third United Nations Conference on the Law of the Sea, July 28-August 29, 1980,” (date of issue not listed), NSA-Global Issues, “LOS: Delegation, 7/79-9/80,” Box 40, JCL; “Fingers Crossed for the Law of the Sea.”

¹²¹ Letter, Elliot L. Richardson to Margaret L. Dickey, 19 Sep. 1980, “‘D’ miscellaneous—1979-1980,” Box 367, ELR Papers.

his position once more, now supporting passage in testimony to Congress in April.¹²² But he sought to persuade developing nations that the legislation was an “interim measure” and that the administration had influenced the legislation such that it would have no impact on, and would be superseded by, the treaty text.¹²³ Representatives of developing nations were not pleased. “It might have been understandable if we were still deadlocked,” Koh said, “but it’s most unhelpful now.”¹²⁴ But while passage of legislation upset developing nations, it did not destabilize the negotiations as it may have if the legislation had been enacted the previous winter. Richardson possessed, after three years, a firm grasp of the rhythms of the conference, and his timing regarding the legislation reflected that understanding.

At the end of the summer, Richardson was ebullient. Historians, he proclaimed in August, would consider the ninth session as the “most significant single event in the history of peaceful cooperation and the development of the rule of law since the founding of the United Nations itself.”¹²⁵ It was an event, he believed, to which he had made a singular contribution. Others felt the same way, and the accolades came in. “Admiring staff members,” the *Boston Globe* reported that September, “credit Richardson and what one called his ‘brilliant analytic ability’ with a major role in forging agreements on

¹²² “Testimony of Elliot L. Richardson, Ambassador at Large and Special Representative of the President for the Law of the Sea Conference, Before the House Committee on Foreign Affairs,” 17 Apr. 1980, “Chronological file—Nov. 1979-Oct. 1980,” Box 363, ELR Papers. The pause, Richardson explained, was no longer necessary as a means to prevent disruption of the negotiations.

¹²³ “Seabed-Mining Measure is Sent to the President: Senate Passes Bill That Some Fear Will Ruin U.N. Talks on Law of the Sea Treaty,” *Wall Street Journal* 27 Jun. 1980, “Clippings (general),” Box 364, ELR Papers. Richardson emphasized that the legislation “places an absolute moratorium on commercial recovery of deep seabed hard mineral resources by U.S. companies until January 1, 1988,” by which time the treaty would presumably be in effect. Letter, Elliot L. Richardson to Hasjim Djalal [Minister, Embassy of Indonesia], 1 Jul. 1980, “‘D’ miscellaneous—1979-1980,” Box 367, ELR Papers.

¹²⁴ Iain Guest, “Law of Sea Treaty Seen Bobbing in Conflict of Ocean, Uncertainty,” *International Herald Tribune* 4 Sep. 1980, “Berlind, Alan,” Box 358, ELR Papers.

¹²⁵ “Statement by Ambassador at Large Elliot L. Richardson, Special Representative of the President for the Law of the Sea Conference, Geneva, Switzerland,” 29 Aug. 1980, NSA-Global Issues, “LOS: Delegation, 7/79-9/80,” Box 40, JCL.

complex and contentious issues.”¹²⁶ A columnist for the *Boston Herald* applauded his “outstanding resilience, resolution, and intelligence. In a period of whining fretfulness, he has shown an admirable ability to bide his time.”¹²⁷ Recognition came not only from the newspapers but from his colleagues in government. Secretary of Defense Harold Brown commended him for achieving a “result many thought impossible when this pioneering conference first met.”¹²⁸ Henry Kissinger added that Richardson had “done an inhumanly difficult job uncommonly well.”¹²⁹ “You made it look easy,” William C. Brewer, who represented the Commerce Department on the delegation, wrote to Richardson, “but I know from experience that it is not.”¹³⁰

As others heaped praise on him, Richardson praised the accomplishments of the conference, returning to the theme that had animated his participation from the start. “This is not a victory for any one country or any one ideology or any one point of view,” he said. “It is a victory for the principles of peaceful cooperation and the rule of law.”¹³¹ That September, Richardson submitted his resignation to Carter. Cyrus Vance, who had brought Richardson into the State Department, had left the administration in April, and Richardson, after years of earning a government salary, wanted to return to law practice. “The prospect of reentering the ‘practice’ is certainly one that has lately had increasing attraction to me,” he had responded that spring to a firm that had expressed interest in

¹²⁶ W. Joseph Campbell, “Conference on Law of the Sea Appears to be Near an Accord,” *Boston Globe* 8 Sep. 1980, “Clippings (Richardson),” Box 364, ELR Papers.

¹²⁷ Richard Spong, “Klondike of the Deep Soon Ripe for Plucking,” *Boston Herald* 1980 (date not listed), “Clippings (Richardson),” Box 364, ELR Papers.

¹²⁸ Letter, Harold Brown to Elliot L. Richardson, 19 Sep. 1980, “‘B’ miscellaneous—1980,” Box 360, ELR Papers.

¹²⁹ Letter, Henry A. Kissinger to Elliot L. Richardson, 2 Jun. 1980, “‘K’ miscellaneous—1980,” Box 380, ELR Papers.

¹³⁰ Letter, William C. Brewer to Elliot L. Richardson, 7 Oct. 1980, “‘B’ miscellaneous—1980,” Box 360, ELR Papers.

¹³¹ “Statement by Ambassador at Large Elliot L. Richardson, Special Representative of the President for the Law of the Sea Conference, Geneva, Switzerland,” 29 Aug. 1980.

hiring him.¹³² He felt that he satisfied his commitment to the Law of the Sea conference. “The goal of a mutually acceptable Convention on the Law of the Sea is now close to fulfillment,” he wrote in his resignation letter. “I feel able in good conscience to let personal considerations bring about my long-deferred return to private life.”¹³³ He planned to attend the tenth session the following spring as the delegations prepared the treaty for signature, and he promised that he would assist with the ratification effort. But he believed that his work was complete.

He would soon discover that it was not. As he had at the sixth session, he had allowed his optimism to get the better of him. His public remarks overlooked two important considerations. First was that formidable issues awaited resolution, not only in the tenth session but in the Preparatory Commission that would precede the establishment of the proposed International Seabed Authority. Richardson had deferred consideration of several important matters related to seabed mining to this Commission to preserve momentum in favor of a treaty, but his decision to do so would complicate his effort to build domestic support. Second was that he did not know whether the White House would support the treaty that he had negotiated. This second consideration merited special attention that fall. The White House was about to change hands.

¹³² Letter, Elliot L. Richardson to Mac Asbill, 5 Mar. 1980, “‘A’ miscellaneous,” Box 357, ELR Papers.

¹³³ Letter, Elliot L. Richardson to Jimmy Carter, NSA-Global Issues, “LOS, 7-8/80,” Box 39, JCL.

“‘Fortress America’ Is Out of Date”

Several years before Ronald Reagan moved into the White House, Richardson was asked whether he considered himself qualified to be president of the United States. “Better than anyone I can think of,” he replied.¹ He regarded the office with a sense of awe, referring to the presidency as “a task staggering in its difficulty, momentous in its impact on the world, and without parallel in its potential for the accomplishment of good or evil.” It was, he said, “probably the most difficult job that man has yet invented.”² His confidence in his ability to serve as president stemmed from his sense that the preparation that would mark the ideal Oval Office aspirant mirrored his own experiences. A would-be president must be well-versed in the “intricacies and complexities of national government” and possess a “detailed understanding of the issues with which it deals,” Richardson said. Yet the electorate had sent Jimmy Carter to the White House, a candidate who in Richardson’s view was woefully unprepared.³ Richardson, as Donald Carr noted, no doubt wondered: “If Carter can do it, why can’t I?”⁴ During his tenure at the Law of the Sea conference, the possibility of running for the White House was never far from his mind. But as the next election approached, he proved unable to position himself to mount a successful campaign. It was a development that, in the nature of the

¹ James Bennet, “The Lives They Lived: Elliot Richardson, b. 1920; The Longest Day,” *New York Times Magazine* 7 Jan. 2001.

² “Speech prepared for delivery by Secretary of Commerce Elliot L. Richardson to a combined luncheon of the Chairman’s Club, Republican Executive Committee on Monroe County, and elected officials—Rochester, N.Y.,” 26 Oct. 1976, “1976—22 Oct.-13 Dec.,” Box 352, ELR Papers.

³ *Ibid.* Richardson declared that Carter “lacked even some minimal amount of preparation... As one who has struggled with the problems of managing the Departments of H.E.W. and Defense, I feel confident in asserting that running the United States government is a bit larger task than running a peanut warehouse.”

⁴ Donald Carr, telephone interview, 13 Jan. 2009.

obstacles that he encountered, foreshadowed his unsuccessful effort to persuade his government to adopt the treaty to which he had devoted four years.

Even after Richardson accepted his assignment at the Law of the Sea conference, the letters would arrive in his office day after day. “We need devoted leaders at this vital time in the U.S.A.,” one wrote in urging him to run for the presidency in 1980. “You are one of those and in my remaining years I would put my shoulder to the wheel to help the campaign.”⁵ Another supporter expressed enthusiasm for a Richardson candidacy and added, “There are many, many other persons who believe as I do.”⁶ Richardson had been on the national political stage for some time. In addition to his record of government service and the rise in his reputation that followed the Saturday Night Massacre, political observers had long viewed him as a possibility for national office. In 1974, as Gerald Ford considered whom he would appoint as vice president, the post that Ford had left vacant when he assumed the presidency, newspapers discussed Richardson’s name in the same breath as four of the other contenders: Howard Baker, who later became Senate Majority Leader and White House Chief of Staff; Donald Rumsfeld, who later served two tours as secretary of Defense; George H. W. Bush, who later was elected vice president and then president of the United States; and Nelson Rockefeller, the former governor of New York whom Ford eventually selected for the post.⁷ An editorial that endorsed Richardson for the vice presidency pointed to his “commanding qualifications,” his reputation as a “distinguished lawyer and a brilliant intellect,” and his “wide and

⁵ Letter, Plinn D. Dempsey to Elliot L. Richardson, 19 Jan. 1978, “‘D’ miscellaneous—1977-1978,” Box 366, Elliot Lee Richardson Papers (henceforth ELR Papers).

⁶ Letter, Carleton S. Finkbeiner to Elliot L. Richardson, 28 Feb. 1978, “‘F’ miscellaneous,” Box 369, ELR Papers.

⁷ Richard A. Ryan, “5 Top Contenders for Vice-President,” *Detroit News* 13 Aug. 1974, “Vice-presidential selection, 1974,” Box 266, ELR Papers.

uniformly successful experience in government.”⁸ “In many ways,” according to *New York Times* columnist James Reston, Richardson “is the most interesting figure on the American political scene today.”⁹ Others saw in him the strengths that he saw in himself.

Richardson often made light of the political chatter in Washington, D.C., which he referred to collectively as The Great Mentioner.¹⁰ “I’m going fishing,” he responded to one inquiry about his political ambitions. “Maybe I’ll give it [a presidential candidacy] some thought and maybe I won’t.”¹¹ In response to another inquiry, he gabbed, “My wife asked if there’s a tennis court at the White House.”¹² But he understood that he was, “in his heart of hearts, an aspiring politician,” J. T. Smith remembered.¹³ He loved to tell the story of how, when he first went to work for Senator Leverett Saltonstall in 1953, he asked Saltonstall if he could work on policy rather than politics. “It’s all politics,” Saltonstall responded with a chuckle.¹⁴ In an oral history interview with the Gerald Ford Presidential Library in 1978, Richardson had faulted the Ford administration for paying insufficient attention to political considerations in its decision making.¹⁵ That the presidency, in addition to offering the opportunity to solve complex public problems, was a political office only added to its attractiveness for him. When Ford ran for re-election in

⁸ “Richardson for Vice President,” editorial, *Spokesman Review* 9 Aug. 1974, “Vice-presidential selection—1974,” Box 266, ELR Papers.

⁹ Geoffrey Stevens, “‘The Most Interesting Figure on the U.S. Political Scene,’” *Toronto Globe & Mail* 19 Feb. 1977, “‘M’ miscellaneous—1980,” Box 386, ELR Papers.

¹⁰ John Thomas Smith II, telephone interview, 9 Jan. 2009.

¹¹ Robert L. Turner, “Fishing Season Nearing End for Richardson,” *Boston Globe* 1979 (date not listed), “Political (clippings),” Box 389, ELR Papers. Richardson’s response led Turner to commend him for having “reinforced his reputation as the least quotable man in all of officialdom.”

¹² “The Eye,” *Boston Herald American* 21 Jul. 1979, “Clippings (Richardson),” Box 364, ELR Papers.

¹³ Smith, interview.

¹⁴ Richard L. Holzhausen, “Oral History Interview with Elliot Richardson,” 25 Apr. 1997, Gerald R. Ford Library.

¹⁵ A. James Reichley, “Interview with Elliot Richardson,” 9 Jan. 1978, A. James Reichley Research Interviews, Gerald R. Ford Library. Richardson, according to the interview summary [not a direct quotation of Richardson], explained that “effective government is a matter of creating coalitions, and to do this one must identify interests, but the Ford administration was very reluctant to be candid about this kind of consideration...[It was] an overreaction to Watergate.”

1976, Richardson hit the campaign trail without hesitation, appearing in California, Oregon, Minnesota, Kansas, Michigan, Illinois, New York, Florida, Delaware, and Maine on Ford's behalf.¹⁶ Even during his tenure at the Law of the Sea conference, he kept up as best as he could with the latest developments in American politics. "I have not lost interest in the national scene," he assured one supporter in the midst of the eighth session, "and will certainly want to look around whenever I get the chance to come up for air."¹⁷

Richardson's desire to re-enter the political sphere in his own right had weighed on him when he had considered running for governor of Massachusetts. In the spring and summer of 1979, as he pondered the presidency, he ruminated on that desire once more. "Every time a session ends, I ask myself whether I should stay on," he said of the Law of the Sea conference. "It's not that it's not a fascinating and demanding job. In many ways it's the most fascinating job I have had. I certainly haven't been bored or underemployed. But it has meant that I was confined in the sense of being inhibited from playing any part in politics."¹⁸ While he had refused several opportunities during the previous two-and-a-half years to leave his post on the American delegation and emphasized in 1979 that the Law of the Sea conference was at a key stage, he signaled that the prospect of winning the Republican nomination for the presidency would be enough to pull him away.¹⁹ He explained that he would not leave the Law of the Sea conference to build a campaign organization on his own. But with what one newspaper described as a "broad smile," he

¹⁶ Glenn A. Briere, "President's Chances Outlined by Richardson," 1976 (newspaper and date not listed), "1976—22 Oct.-13 Dec.," Box 352, ELR Papers.

¹⁷ Letter, Elliot L. Richardson to Carleton S. Finkbeiner, 5 Mar. 1979, "'F' miscellaneous," Box 369, ELR Papers.

¹⁸ S. L. Gaines, "Follow-up," 1979 (newspaper and date not listed), "Clippings (Richardson)," Box 364, ELR Papers.

¹⁹ "I simply cannot justify abandoning the Law of the Sea at this crucial stage," Richardson wrote to Anne Armstrong, except for "entering the presidential sweepstakes myself." Letter, Elliot L. Richardson to Anne Armstrong, 5 Nov. 1979, "'A' miscellaneous," Box 357, ELR Papers.

added, “I would have to give it serious consideration if there should be organized a well-financed, massive draft movement on my behalf.”²⁰

The possibility of running must have appealed to him not only because he believed himself prepared for the presidency but because there appeared to be a path to the Republican nomination. “The field was wide open in 1978 and 1979,” remembered Thomas Oliphant, a political columnist for the *Boston Globe*. “It was by no means guaranteed for Reagan. Given a splintered vote, you could see a way for a statesman-moderate type figure to emerge.”²¹ A Gallup poll in January of 1979 showed Reagan with an early lead but also placed Richardson’s name recognition at 47 percent, a figure exceeding that of George H. W. Bush.²² Richardson also did not have any qualms about running against Carter even though he represented him at the Law of the Sea conference. The *Baltimore Sun*, reporting on Richardson’s appointment in 1977, identified him within the same article as a “potential Republican election opponent” for Carter.²³ “I have long been an active Republican,” Richardson told Secretary of State Cyrus Vance in 1980 in advance of his decision to discuss the presidential race in public. “I had never expected to stay on in my present job as long into the election year as I now am.”²⁴ He had not renounced his political ambitions in accepting the assignment and was prepared to act on them.

²⁰ Harry Whitten, “Richardson Still has Foot in the Political Door,” *Honolulu Star-Bulletin* 12 Dec. 1978, “Political (clippings),” Box 389, ELR Papers.

²¹ Thomas Oliphant, telephone interview, 3 Mar. 2009.

²² George Gallup, “Reagan Leading Ford in Sample of GOP Voters,” *Washington Post* 11 Jan. 1979, “Political (clippings),” Box 389, ELR Papers.

²³ “Still No Law of the Sea,” editorial, *Baltimore Sun* 30 May 1977, “Clippings (general),” Box 364, ELR Papers.

²⁴ Memorandum of Phone Conversation, Elliot L. Richardson and Cyrus R. Vance, 1 Feb. 1980, “Political (correspondence and miscellany),” Box 389, ELR Papers.

Finally, the needs of the moment seemed to fit Richardson well. “Things are pretty much of a mess here in Washington,” Richardson wrote to Senator George Aiken of Vermont at the end of the first year of the Carter administration. “One’s anxiety as a citizen cannot be compensated for by one’s glee as a Republican.”²⁵ Popular views of Carter’s performance declined further in the next two years. As the election approached, Americans questioned whether they wanted to continue to entrust Carter with addressing the raft of problems that he faced. “Frustration with the President is moving toward personal hostility as opposed to indifference or disappointment,” concluded Carter’s pollster, Patrick Caddell. “You run the risk,” Caddell warned Carter, “of being identified as the President who presided over the dissolution of American political society.”²⁶ The situation called for a combination of competence and a capacity for reform. Richardson had demonstrated his competence in running four executive branch departments. But he also had an aptitude for reform. As Lieutenant Governor in Massachusetts, remembered then-state representative John Sears, Richardson had done a “masterful job reorganizing the delivery of welfare services in the Commonwealth, against heavy odds and entrenched interests.”²⁷ At the national level, his success in reforming the Department of Health, Education, and Welfare had led Nixon to appoint him as Secretary of Defense, though he served for only a few months before being named Attorney General.²⁸ The publication of *The Creative Balance* in 1976 confirmed his reputation for thinking

²⁵ Letter, Elliot L. Richardson to George Aiken, 23 Dec. 1977. “‘A’ miscellaneous,” Box 357, ELR Papers.

²⁶ Memorandum, Patrick H. Caddell to Jimmy Carter, 17 Jan. 1979, CF, O/A #743, Box 1 of 3, Jimmy Carter Library (henceforth JCL).

²⁷ John Sears, “Elliot Lee Richardson: Yankee Doodler, 1920-1999,” 2000 Annual Report, Massachusetts Historical Society, 60.

²⁸ Richardson wished that he could have had the time to enact reforms at the Defense Department. “I’m reminded again,” Richardson wrote after reading a report by the Center for Strategic and International Studies on reorganizing NATO conventional forces in Europe, “how much I would like to have had a full four years at DoD.” Letter, Elliot L. Richardson to David M. Abshire, 25 Sep. 1979, “‘A’ miscellaneous,” Box 357, ELR Papers.

inventively about government. The *New York Times* review of the book concluded that it “shows that, whatever his personal goals may be, Richardson has given more serious thought to the processes of governance and knows more about its purposes, functions, and operations than anyone now seeking support for national office.”²⁹ Richardson believed that he could restore confidence in government, thereby reversing what he called the “failure of the Republican Party to respond to the psychological needs of the American people.”³⁰

But while Richardson felt that he would be highly effective as president and thought that a moderate Republican could secure the GOP presidential nomination in 1980, three considerations forestalled a Richardson candidacy. The first was that Richardson possessed, as Oliphant recalled, a “wry understanding of his own lack of mass public appeal.”³¹ Carr also noted that Richardson “had a realistic picture of himself as a television personality” and pointed to his tendency to speak in paragraphs.³² While Reagan had made his mark as a speaker in 1964 by calling Americans to a “rendezvous with destiny,” Richardson, one columnist wrote, was “quiet, painstakingly cautious in selecting his words, and seems concerned lest anything he say be deemed worth quoting, or remembering.”³³ His manner of speech confirmed perceptions of him made on the basis of his background. One newspaper article referred to him as “urbane and civilized

²⁹ Stephen Hess, “Of Politicians and Bureaucrats, Newshounds and Boondoggles,” Review of *The Creative Balance: Government, Politics, and the Individual in America’s Third Century*, by Elliot L. Richardson, *New York Times* 29 Aug. 1976.

³⁰ Letter, Elliot L. Richardson to Julian C. Hartzell, 16 Mar. 1977, “‘H’ miscellaneous—1977-1978,” Box 377, ELR Papers.

³¹ Oliphant, interview.

³² Carr, interview.

³³ Geoffrey Stevens, “‘The Most Interesting Figure on the U.S. Political Scene,’” *Toronto Globe & Mail* 19 Feb. 1977, “‘M’ miscellaneous—1980,” Box 386, ELR Papers.

and impeccably bred.”³⁴ Another quoted sources that labeled him as “too much Eastern establishment” and cited his “proper Bostonian manner and lack of public warmth” as burdens in any bid for national office.³⁵ Richardson resisted being typified as a Boston Brahmin.³⁶ Yet his comments often reinforced the perception. (Few Americans, when asked about their dream job, respond by saying that they would have loved to be a thirteenth-century medieval French bishop.)³⁷ As for his physical appearance, one newspaper likened it to a “banker contemplating a loan.”³⁸

That perceived detachment was belied by the strong relationships that Richardson had with colleagues in government. Bernard Oxman, Richardson’s vice-chair on the American delegation to the Law of the Sea conference, said that he has “long believed that, if we used a parliamentary rather than a presidential [popular election] system in America, Richardson would probably have been prime minister.”³⁹ Richardson himself recognized that he would thrive in such a system, and he even suggested to *Washington Post* columnist David Broder that Republican National Convention delegates “be free to exercise their best judgments. No delegate would be bound to any candidate.”⁴⁰ Under his proposed selection method, relying as it did on the refined judgments of longtime party leaders rather than primary-election voters, a candidate with Richardson’s experience could do very well. But in a system that prized the ability to excite a broad base of voters, Richardson was at a disadvantage.

³⁴ “Being Civilized Ought to Count Also,” *Washington Star* 7 Nov. 1978, “Media,” Box 381, ELR Papers.

³⁵ Ryan, “5 Top Contenders for Vice-President.”

³⁶ Bennet, “The Lives They Lived: Elliot Richardson. According to Bennet, “He hated the term.”

³⁷ “Being Civilized Ought to Count Also.”

³⁸ Caroline Rand Herron and R. V. Denenberg, “Once Again, Elliot Richardson,” *New York Times* 30 Jan. 1977, “Clippings (Richardson),” Box 364, ELR Papers.

³⁹ Bernard H. Oxman, telephone interview, 24 Feb. 2009.

⁴⁰ Letter, Elliot L. Richardson to David Broder, 5 Dec. 1979, “‘B’ miscellaneous—1978-1979,” Box 359, ELR Papers.

Just as voters did not naturally embrace Richardson, Richardson did not possess the disposition to organize a winning presidential campaign. This was the second consideration that worked against a Richardson candidacy. Several observers noted that Richardson had not run for public office in more than a decade. Just the year before, he had bowed out of a gubernatorial election in which he was, Carr recalled, the “prohibitive favorite.”⁴¹ “Richardson has shown himself to be something of a risk-taker often in his career—willing to take on a difficult challenge,” wrote Robert Turner, a political columnist for the *Boston Globe*, as Richardson pondered a candidacy. “But in recent years he has also shown a reluctance to commit himself to the hard, sweaty grind of a long political campaign.”⁴² That reluctance, however, does not explain why Richardson would sidestep the presidential race. He had, after all, run statewide in Massachusetts on three occasions, and while he did not run for governor in 1978, his papers demonstrate that he recognized a possible electoral future for himself. Rather, he understood that running for the presidency is different from campaigning for any other office, not only in its duration and difficulty but in the attitude that it demanded. “Within the bounds of the law, a strong sense of principle, and good sense, every possible step will be taken to win,” according to a twenty-nine page document, drafted in the winter of 1976 by two of Richardson’s political aides, outlining the steps Richardson would have to take to be elected president in 1980. “No candidate is likely to survive the process and overcome the obstacles unless he wants to win very badly.”⁴³ Richardson wanted to be president

⁴¹ Carr, interview.

⁴² Turner, “Fishing Season Nearing End for Richardson.”

⁴³ Memorandum, Richard Mastrangelo and Christopher Perry to J. T. Smith and Richard G. Darman, 3 Dec. 1976, “Political (campaign material),” Box 389, ELR Papers. “We have been asked to draft a list or mini-plan of political steps which might reasonably be taken to secure the Republican nomination for ELR in 1980 and to advance toward victory in the general election,” the authors wrote. They did not specify who asked them to write the document, however, and Smith has no recollection of reading it. Smith, interview.

and was willing to work hard to win the office, but he never displayed the single-mindedness needed to mount a modern presidential campaign. Richardson “never had the appetite and the discipline to be ruthless, or tenacious, or voracious,” Jonathan Moore remembered.⁴⁴

A useful illustration of how Richardson’s temperament and personal manner did not comport with a presidential candidacy is to compare Richardson with a contemporary of his, George H. W. Bush. In the public view, the two were similar. “We’re both Ivy League types who have to remember not to wear a buttoned-down collar,” Richardson joked.⁴⁵ In addition, they had both distinguished themselves in appointed rather than elected positions: Richardson in the Cabinet, and Bush at the United Nations, the Republican National Committee, and the CIA. Both held deserved reputations for moderation and prudence, in politics as well as in personal style. Yet the similarities ended there. Well in advance of 1980, Bush had directed all of his energy to winning the presidency. “I am in the presidential race up to my eyeballs,” he wrote to Richardson in February of 1979.⁴⁶ Susan Baker, wife of James Baker, wrote to Richardson that spring that she and her husband “will be in Washington soon on Bush business.”⁴⁷ Richardson, however, did not reduce his commitment to the Law of the Sea conference even as his would-be rivals planned their campaigns. (“I have been trying like mad to call you,” Bush wrote to Richardson, “but when I do, I find you are off in Mexico or, most recently, in

⁴⁴ Jonathan Moore, personal interview, Cambridge, MA, 18 Nov. 2008.

⁴⁵ Peter Lucas, “The Old Boy Network is Alive and Well in the GOP,” *Boston Herald American* 6 Feb. 1980, “Political (clippings),” Box 389, ELR Papers.

⁴⁶ Letter, George H. W. Bush to Elliot L. Richardson, 7 Feb. 1979, “‘B’ miscellaneous—1978-1979,” Box 359, ELR Papers.

⁴⁷ Letter, Susan Baker to Elliot L. Richardson, 1979 (date not listed), “‘B’ miscellaneous—1978-1979,” Box 359, ELR Papers.

Geneva.”)⁴⁸ Richardson had signaled his openness to pursuing the presidency, but unlike Bush he resisted taking the steps to make a full-fledged campaign a reality.

In part it was because the effort to reach an accord at the Law of the Sea conference absorbed Richardson’s energy. But Richardson also understood that his unwillingness to do as Bush had done was a matter of his own makeup. “I don’t think I was ever as ambitious as Bush, at least not actively so,” he said many years later. “I think I would have liked all the jobs to which he aspired but I wouldn’t have been prepared to do as much to get them as he was.”⁴⁹ As a result, while Bush actively built a campaign organization, Richardson awaited an effort to draft him. “I keep putting my ear to the ground but I haven’t heard the rumbling of a gathering grass roots movement,” he said in September of 1979.⁵⁰ This passivity, as much as any other quality, explains why he once remarked that he “never felt that I was in a position where I could take the prospect [of running for President] very seriously.”⁵¹ “Richardson Called Set for a Run,” one newspaper reported in June.⁵² But time soon passed him by. “I have not had the opportunity to muster the broad organizational and financial base needed to carry on a viable political race,” he said in announcing his decision not to run for the presidency in October. “In my judgment, it is too late for me to begin that kind of activity now.”⁵³ At the same time, he had indicated his willingness to be considered for the vice presidency,

⁴⁸ Letter, George H. W. Bush to Elliot L. Richardson, 7 Feb. 1979.

⁴⁹ Holzhausen, “Oral History Interview with Elliot Richardson.”

⁵⁰ M. Charles Bakst, “Richardson Says There is ‘Good Chance’ that Ford Will Seek GOP Nomination,” *Evening Bulletin* 17 Sep. 1979, “Political (clippings),” Box 389, ELR Papers.

⁵¹ Kenneth Reich, “Not Running for President, Elliot Richardson Claims,” *Los Angeles Times* 1979 (date not listed), “‘H’ miscellaneous—1979-1980,” Box 378, ELR Papers.

⁵² Russell B. Eames, “Richardson Called Set for a Run,” *Telegram* 6 Jun. 1979, “Political (clippings),” Box 389, ELR Papers.

⁵³ “Statement by Ambassador at Large Elliot L. Richardson—Boston, Massachusetts, 16 Oct. 1979, “Press conferences,” Box 390, ELR Papers.

saying that he would regard it as a “position of significant service.”⁵⁴ But the nod would instead go to Bush, who could point not only to his qualifications but to the political base that he had carefully assembled in favor of his selection.

The shift in the political base of the Republican Party was, in turn, the third consideration that drove Richardson from the presidential race. Richardson was an avowed moderate, a politician “in the tradition of Nelson Rockefeller, Jacob Javits and Christian A. Herter... [of] unabashed internationalism,” former congressman Robert Drinan later wrote.⁵⁵ But a different tradition was now ascendant. “Opinion in U.S. Swinging to Right, Pollsters and Politicians Believe,” the *New York Times* had noted in a front-page story in the winter of 1977.⁵⁶ Ronald Reagan had mounted a conservative challenge to Ford in the Republican presidential primary the preceding year and had nearly succeeded.⁵⁷ Richardson’s public statements suggested that he did not consider Reagan prepared for the presidency, an unsurprising appraisal from a career public servant surveying an actor-turned-politician.⁵⁸ But it was Reagan’s conservatism, rather than his inexperience, that made Richardson uncomfortable. Richardson was “becoming increasingly alienated from the right wing of his party,” Jonathan Moore remembered.⁵⁹ Richardson had not been shy in his criticism of Carter in advance of the 1976 election,

⁵⁴ Sydney Kossen, “Reagan vs. Richardson, or a Team?” *San Francisco Examiner* 22 Sep. 1979, “Political (clippings),” Box 389, ELR Papers.

⁵⁵ Robert F. Drinan, “Politics 1996: Been There,” Review of *Reflections of a Radical Moderate*, by Elliot L. Richardson, *New York Times* 28 Jul. 1996.

⁵⁶ Terence Smith, “Opinion in U.S. Swinging to Right, Pollsters and Politicians Believe,” *New York Times* 4 Dec. 1977.

⁵⁷ See Craig Shirley, *The Reagan Revolution: The Untold Story of the Campaign That Started It All* (Nashville, TN: Thomas Nelson, 2005).

⁵⁸ “Sea-Conference Post Richardson’s Longshot,” 1980 (newspaper and date not listed), “Clippings (general),” Box 364, ELR Papers. According to the article, Richardson “took a swipe” at Reagan. “I’d find it easier tomorrow morning to take over as Secretary of Agriculture,” Richardson said. “At least I’d know what parity is.” The paper noted that Richardson’s remarks were in reference to Reagan’s inability last March to define parity, a formula that pegs the price of some agricultural products to the purchasing power of farm dollars in 1914.”

⁵⁹ Jonathan Moore, interview.

but he would never declare, as Reagan had, that a Carter victory would be “the worst thing that can happen to the United States outside of an invasion by a foreign enemy.”⁶⁰ From 1977 onward, Reagan waged an effective campaign to marshal support for his candidacy, and as the 1980 election approached Richardson realized that the Republican base had indeed shifted. “There wasn’t really any room for Richardson in a party of Reaganites,” historian Alvin Felzenberg remembered. “His constituency fell apart.”⁶¹ In addition, running for the presidency would mean having to explain himself to the Republican rank-and-file in a manner that even Bush, his fellow moderate, would not. Bush had not contributed to the sequence of events that led to the resignation of a Republican president, nor had he worked in the Carter administration. “Qualifications or not,” Richardson wrote after withdrawing from the race, “I still come back to the discouraged conclusion that a Republican convention simply would not choose me.”⁶²

As he prepared for the ninth session of the Law of the Sea conference in 1980, Richardson kept an eye on the Republican presidential race and considered how to ward off the prospect of a conservative nominee. Such thoughts may have figured in his decision not to enter the race even before he concluded that he could not win. “One factor militating against a Richardson candidacy here [in the Massachusetts primary] is that it would almost certainly hurt one of the more moderate candidates, particularly Bush,” one newspaper account noted. “Whether Richardson would want to help deliver the nomination to a Reagan, [Congressman Phil] Crane or [former Texas Governor John]

⁶⁰ Briere, “President’s Chances Outlined by Richardson.”

⁶¹ Alvin S. Felzenberg, telephone interview, 14 Nov. 2008. In response to one letter asking him why he did not run for the presidency in 1980, Richardson wrote, “It just didn’t seem likely that I would be the second choice of many of the people now supporting Reagan.” Letter, Elliot L. Richardson to Jackie Dashiell, 8 Nov. 1979, “Political (correspondence and miscellany),” Box 389, ELR Papers.

⁶² Letter, Elliot L. Richardson to Harry L. Kozol, 3 Jan. 1980, “‘K’ miscellaneous,” Box 379, ELR Papers.

Connally is something he has to consider.”⁶³ After exiting the race, he decided to act on his preference for a nominee other than Reagan. In advance of the Massachusetts primary, Richardson endorsed George H. W. Bush, and explained his reasoning to Cyrus Vance: “I stated that I would like to do something to head off Governor Reagan in Massachusetts and to let my friends know where I stand. In order to be effective, this must be done before the upcoming primary.”⁶⁴ His endorsement, the *Herald American* reported, was “seen by party activists as a signal that the forces of former President Ford are convinced the best way to stop Ronald Reagan is to help Bush.”⁶⁵ But Reagan won the nomination and went on to a decisive victory in the general election in November, just after Richardson returned from the resumed ninth session that had lifted his spirits. Richardson, having just resigned his post, declared that Reagan “is not likely to need me” in his administration.⁶⁶ He would soon discover that Reagan also had little need for the seabed mining agreement that he had negotiated at the Law of the Sea conference.

Much of the difficulty that Richardson encountered in his effort to organize support for the treaty as Reagan prepared to take office stemmed from the nature of that agreement, which in turn reflected Richardson’s negotiating strategy. Richardson and his deputy, George Aldrich, recognized shortly after arriving at the conference that they would be unable to balance the demands of the mining industry with those of developing nations. “Following the first session of the conference in which I participated,” Aldrich remembered, “it became clear to me that the desires of the U.S. seabed mining industry

⁶³ Glenn A. Briere, “GOP Candidates Quietly Lining Up Support,” (newspaper not listed) 17 Jun. 1979, “Political (clippings),” Box 389, ELR Papers.

⁶⁴ Memorandum of Phone Conversation, Elliot L. Richardson and Cyrus R. Vance, 1 Feb. 1980.

⁶⁵ Peggy Simpson, “Richardson Hops Aboard the Bush Bandwagon,” *Boston Herald American* 6 Feb. 1980, “Political (clippings),” Box 389, ELR Papers.

⁶⁶ Chris Black, “Reagan is ‘Not Likely to Need Me’ in Administration, Richardson Says,” *Boston Globe* 4 Dec. 1980.

were, to a considerable extent, non-negotiable in that conference.” Yet the American delegation, Aldrich emphasized, could not fulfill those desires at the “highly politicized” negotiation.⁶⁷ Developing nations were, as one scholar wrote in 1978, “no longer imitating the pattern set by the advanced countries but are instead acting with their own objectives and determination.”⁶⁸ Richardson also noted that “one of the realities of the negotiation was the new, vocal, coordinated voice of the developing countries, well over a hundred in number.”⁶⁹ They would not yield to developed nations and accept the conditions that the mining industry wanted. Richardson and Aldrich pondered how they might address the irreconcilability of interests at the conference.

They settled on a strategy of “trying to obtain agreement on general principles [on seabed mining] while deferring to subsequent negotiations in a less political preparatory committee of technical experts the necessary technical and financial provisions,” Aldrich recalled. “Only in long, technical, and detailed negotiations on complex issues—that is, the kind of negotiations U.N. ambassadors would flee from—would it be possible to even hope to be able to obtain agreement to acceptable mining terms.”⁷⁰ The advantage of this approach is illustrated in the success with which it was used in the Camp David Accords. Leon Charney, an adviser to Carter, described the communications that bridged the divide between Israel and Egypt as an exercise in what he called selective gradualism. “Through this approach,” Charney wrote, “one carefully establishes the attitude that problems can be resolved. This is done by dealing in the beginning with those aspects and issues which

⁶⁷ George H. Aldrich, E-mail interview, 2 Mar. 2009.

⁶⁸ Shigeru Oda, “The Ocean: Law and Politics,” *Netherlands International Law Review* vol. 25 (1978), reprinted in Shigeru Oda, *Fifty Years of the Law of the Sea* (New York: Kluwer Law International, 2003), 493. See also S. P. Jagota, “Developments in the U.N. Conference on the Law of the Sea: A Third World Review,” *Third World Quarterly*, vol. 3, no. 2 (Apr., 1981).

⁶⁹ Letter, Elliot L. Richardson to Burdick H. Brittin, 30 Apr. 1980, “‘B’ miscellaneous—1980,” Box 360, ELR Papers.

⁷⁰ Aldrich, interview.

have an available solution, and leaving the most difficult problems for the end. It is a confidence-winning and face-saving method.”⁷¹ At the Law of the Sea conference, the decision to defer key concerns to the Preparatory Commission “reduced considerably the number of draft provisions we considered essential for the Convention itself,” Aldrich said, a development that contributed to the momentum in support of an agreement.⁷²

But the deferral, while it contributed to agreement at the conference, complicated the effort to build domestic support. The issues that conference delegates had deferred to the Preparatory Commission were significant. The Preparatory Commission’s task, Richardson noted, “will be to write the detailed provisional rules, regulations, and procedures of the seabed authority.”⁷³ Given that the debate concerning the procedures of the International Seabed Authority had inhibited progress at the conference for years, the Preparatory Commission mattered far more than its innocuous name suggested. While Richardson wrote to the Secretary of Commerce after the ninth session in 1980 that the “major outstanding issues relating to the regime for mining the deep seabed have been resolved,”⁷⁴ other observers pointed out that mining interests could not determine whether they were satisfied with the outcome of the Law of the Sea conference before the Preparatory Commission completed its work.

Richardson depended on the Preparatory Commission in his effort to persuade government and industry representatives to support the compromises that he had obtained at the Law of the Sea conference because many observers believed that, in the absence of

⁷¹ Leon H. Charney, *Special Counsel* (New York: Philosophical Library, 1984), 339.

⁷² Aldrich, interview.

⁷³ Elliot L. Richardson, “Concluding the Law of the Sea Conference: Critical Remaining Steps,” *Columbia Journal of International Business* vol. 15, no. 4 (Winter 1980), 43.

⁷⁴ Letter, Elliot L. Richardson to Philip Klutznick, 29 Aug. 1980, “‘K’ miscellaneous—1980,” Box 380, ELR Papers.

such a Commission, the compromises were inadequate. Seabed issues were “still a major problem” from the standpoint of American interests even at the end of Richardson’s tenure, remembered John Norton Moore. Moore added that, far from the breakthrough that Richardson had hailed, there had actually been “very little done fundamentally” on the issue. “No Senate would have approved the [Law of the Sea] Convention” without further changes, he said.⁷⁵ Bernard Oxman had a more positive view of Richardson’s contribution toward an acceptable accord on seabed mining, but his conclusion was the same. “There was no expectation,” he emphasized, “that the Senate would vote on the treaty prior to the completion of the deep seabed mining regulations” in the Preparatory Commission. The Law of the Sea treaty text would have “great difficulty” being ratified by the Senate in its current form, Senator Larry Pressler of South Dakota said in the spring of 1981.⁷⁶

The intent behind the Preparatory Commission, in Richardson’s view, was that the treaty, when it did come before the Senate, would not be in its current form. He would ask the president to sign the treaty but would also have members of the delegation ensure that its defects with regard to seabed mining were corrected in the Commission before the president submitted the treaty to the Senate for formal ratification. Oxman remembered that the plan was to “use the fact that we were not going to become a party to the treaty until the regulations [on seabed mining] were changed” to pressure the Commission to make the needed changes.⁷⁷ The problem of this strategy, however, was that support for the treaty could collapse in the meantime, even before the president had signed. It is “exceedingly difficult,” Oxman noted, to build support among members of Congress

⁷⁵ John Norton Moore, telephone interview, 25 Feb. 2009.

⁷⁶ “A Treaty in Trouble,” *Time* 23 Mar. 1981.

⁷⁷ Oxman, interview.

prior to the completion of a treaty.⁷⁸ John Breaux wrote to Richardson with the “serious concerns which I have regarding the signature of a treaty based on reliance upon an interim rule-making process.” Richardson responded that signing the treaty “only serves as a preliminary indication of intent to become a party” to the treaty and did not impose substantive obligations.⁷⁹ The United States, if it became dissatisfied with the work of the Preparatory Commission, would not be bounded by its stipulations, Richardson wrote, because it had only signed, and not ratified, the treaty. But Breaux emphasized that he opposed signature of the treaty even though signature did not commit the Senate to ratification. “I strongly believe that signature of the treaty would have a profound effect on international law and politics such that our ability to refuse to ratify, should the interim procedure fail to produce positive results, would be prejudiced,” he wrote. “The pressure to ratify a bad treaty might become overwhelming.”⁸⁰ Richardson admitted that the Preparatory Commission “may not succeed in devising a system that completely eliminates the possibility that people entrusted with the operation of the system will act irresponsibly.”⁸¹ His optimism that he could defer important seabed mining regulations to the Commission without domestic consequence proved to be unwarranted.

More than the Preparatory Commission, the ascendant conservatism that had factored into Richardson’s decision not to run for the presidency obstructed his efforts to persuade the United States to adopt the treaty. In September of 1980, Richardson expressed to then-Governor Reagan his concern that the treatment of the Law of the Sea

⁷⁸ Oxman, interview.

⁷⁹ Letter, Elliot L. Richardson to John Breaux, 20 Aug. 1979, “‘S’ miscellaneous—1979,” Box 393, ELR Papers. Richardson wrote that signing the treaty “imposes no obligation other than refraining from acts which would defeat the object and purpose of the treaty.”

⁸⁰ Letter, John Breaux to Elliot L. Richardson, 14 Aug. 1979, “‘B’ miscellaneous—1978-1979,” Box 359, ELR Papers.

⁸¹ Richardson, “Concluding the Law of the Sea Conference,” 44.

conference in the platform adopted at the Republican National Convention “has a very narrow focus.”⁸² Richardson had often reminded the citizens who wrote to him during his tenure that the conference was not simply a forum to discuss seabed mining but, rather, addressed issues ranging from “boundaries, navigation, and seabed mining to fisheries, protection of the marine environment, and land-locked state access to the sea.”⁸³ “Several of those interests,” he emphasized to Reagan, “are by any standard at least as important to our national security objectives as deep seabed mining.”⁸⁴ He understood that it would be a formidable task to persuade Democrats as well as Republicans in government that the substantial benefits that the United States would receive from the other provisions of the treaty justified the concessions that the United States had made on seabed mining, and he did not know in the fall of 1980 how a prospective Reagan administration would respond. “I have not followed the law of the sea proceedings as closely as I should have,” Bush wrote in a noncommittal reply to Richardson. “Your letter and attached memo to Governor Reagan was helpful.”⁸⁵ Yet Richardson remained hopeful. “Under the able direction of Ambassador Aldrich,” he wrote, the United States “will, I am sure, do its full part to bring these negotiations to a satisfactory conclusion in 1981.”⁸⁶

⁸² Letter, Elliot L. Richardson to Ronald Reagan, 4 Sep. 1980, “Nov. 1979-Oct. 1980,” Box 363, ELR Papers. The platform at the Republican National Convention read: “Multilateral negotiations have thus far insufficiently focused attention on United States long-term security requirements. A pertinent example of this phenomenon is the Law of the Sea conference where negotiations have served to inhibit United States exploitation of the seabed for its abundant mineral resources. Too much concern has been lavished on nations unable to carry out seabed mining with insufficient attention paid to gaining early American access to it.” Edward L. Miles, *Global Ocean Politics: The Decision Process at the Third United Nations Conference on the Law of the Sea, 1973-1982* (The Hague: Martinus Nijhoff Publishers, 1998), 348.

⁸³ Letter, Elliot L. Richardson to Elizabeth Boltres, 3 Oct. 1980, “‘B’ miscellaneous—1980,” Box 360, ELR Papers.

⁸⁴ Letter, Elliot L. Richardson to Ronald Reagan, 4 Sep. 1980.

⁸⁵ Letter, George H. W. Bush to Elliot L. Richardson, 12 Sep. 1980, “‘B’ miscellaneous—1980,” Box 360, ELR Papers.

⁸⁶ Letter, Elliot L. Richardson to Zbigniew Brzezinski, (undated), NSA-Global Issues, “LOS, 7-8/80,” Box 39, JCL.

That hopefulness did not last for long after Reagan took office. In March of 1981, in what Richardson termed a “second Saturday Night Massacre,” Deputy Secretary of State William Clark dismissed Aldrich, who had succeeded Richardson at the conference, as well as six other members of the delegation.⁸⁷ The State Department announced at the same time that, because of the “serious problems raised by the Draft Convention,” the Secretary of State had “instructed our representative to the United Nations Law of the Sea conference to seek to ensure that the negotiations do not end at the present session of the conference, pending a policy review by the United States.”⁸⁸ The announcement of the review dismayed delegates at the conference, who had hoped, following the momentum created by the ninth session, to complete the treaty at the tenth session beginning that month. Senator Edward Kennedy called the decision “one of the most shortsighted actions by the Reagan administration” in its first months in office. “After years of painstaking efforts by Republicans and Democrats, involving the most delicate national and international compromises,” Kennedy declared on the Senate floor, “the new team bowed to the pressures of a few special interests and completely upset the applecart by declaring that it had to review all the work achieved to date.”⁸⁹ Others, however, praised the decision and agreed that the United States needed to rethink its stance at the conference. “I find it truly remarkable,” Breaux said, “that the previous administration allowed the United States to be led submissively down so perilous a path.”⁹⁰

⁸⁷ Markus G. Schmidt, *Common Heritage or Common Burden? The United States Position on the Development of a Regime for Deep Seabed Mining in the Law of the Sea Convention* (Oxford: Clarendon Press, 1989), 225.

⁸⁸ Miles, *Global Ocean Politics*, 349.

⁸⁹ Edward M. Kennedy, “The Law of the Sea,” Address to the U.S. Senate, 16 Jun. 1981, *Congressional Record*, S 6311, “Law of the Sea Conference,” Box 415, ELR Papers.

⁹⁰ Peter Grier, “Staking Claim to the Ocean’s Bed,” *Christian Science Monitor* 9 Apr. 1981. See also John Breaux, “The Diminishing Prospects for an Acceptable Law of the Sea Treaty,” *Virginia Journal of International Law* vol. 19, no. 2 (Winter 1979).

The decision of the newly-appointed chair of the American delegation, James L. Malone, to appoint Leigh Ratiner as his deputy only exacerbated the sense that the administration planned to discard many of the seabed mining agreements made at prior sessions of the conference and start anew. Ratiner had served on the delegation during the Ford administration with responsibility for seabed mining issues. During Richardson's tenure, however, Ratiner had worked as a lobbyist for the mining corporation Kennecott Copper and had, the *New Yorker* noted, "been called the most effective single influence in organizing opposition to the treaty in Congress."⁹¹ Delegates from other nations wondered whether they could reach an agreement with the Reagan administration given both the composition of the new delegation and the litany of objections that the administration had voiced during its policy review. The administration would only support a Law of the Sea treaty, Malone said, that "avoids monopolization by the Enterprise, establishes a system of political governance commensurate with our perception of America's role in international affairs, avoids unjustifiable regulatory interference in mineral development, allows free market principles to operate, and is incapable of being amended without U.S. consent."⁹² When the administration completed its review in January of 1982, Reagan announced that the United States would not sign the treaty without substantial modification of the text. "Major elements of the deep seabed mining regime," he said, "are not acceptable."⁹³ Unless the matter that had defied

⁹¹ Wertenbaker, "Law of the Sea—II," *New Yorker* 8 Aug. 1983, 69. See also William Claiborne, "Lobbyist is Everywhere: High-Stakes Seabed Fight," *Washington Post* 14 Aug. 1977; and "Ocean Mining: Former Negotiator Now Lobbies for Kennecott," *Science* vol. 196, no. 1, 27 May 1977: 964-965, "Clippings (general)," Box 364, ELR Papers.

⁹² Jon L. Jacobson, "Sea Changes," *Yale Law Journal* vol. 91, no. 4 (Mar., 1982): 843.

⁹³ "Statement on United States Participation in the Third United Nations Conference on the Law of the Sea," *Public Papers of President Ronald Reagan*, 29 Jan. 1982.

solution at the conference for so many years was renegotiated to the satisfaction of the new administration, there would be no generally accepted Law of the Sea treaty.

Supporters of the treaty acknowledged its shortcomings. “There are reasonable doubts as to whether the cumbersome [parallel mining] system would work, and whether private investors would find the return on capital sufficient to make the investment,” noted the *New York Times* editorial page, which added that the production limits on seabed mining were “distasteful.”⁹⁴ The review clause allowing for revision of the treaty by vote after twenty years was, a Carter administration State Department official admitted, “plainly unacceptable.”⁹⁵ Richardson also recognized that the agreement was not perfect from the perspective of American interests, but he believed that concessions were inescapable. “It must be recognized that any treaty that has any prospect of widespread acceptance will have costs as well as benefits,” Richardson had stated in testimony before the Senate. “Its measure is not whether it is better than the law as we would write it if we could. The measure is whether it is better than the situations most likely to evolve without it.”⁹⁶ He expanded on this view in an article that he published in *Foreign Affairs* entitled, “Power, Mobility, and the Law of the Sea,” in which he outlined how the treaty benefited the United States.⁹⁷ Because the United States, in Richardson’s view, had arrived at the conference “with a broader array of interests, perhaps, than any other single country,” Richardson believed that its rejection of the treaty would not only

⁹⁴ “Taming the Oceans With Law,” editorial, 6 Sep. 1980; “Sea Change in World Law,” *New York Times* 7 Apr. 1980.

⁹⁵ “Progress Reported in Sea Talks,” *The Independent* (June 1979), “Clippings (general),” Box 364, ELR Papers.

⁹⁶ “Testimony of Elliot L. Richardson Before the House Foreign Affairs Committee, Subcommittee on International Organizations, and Subcommittee on International Economic Policy and Trade,” 11 Dec. 1979, NSA-Global Issues, “LOS: Richardson (Elliot) Testimony, 11-12/79,” Box 40, JCL.

⁹⁷ Elliot L. Richardson, “Power, Mobility, and the Law of the Sea,” *Foreign Affairs* vol. 58, no. 4 (Spring 1980): 902-919.

be ill-advised but would be incomprehensible to other nations. Delegates at the conference, he said, were “stunned by the announcement of the United States government” at the conclusion of its review in 1982.⁹⁸

The Reagan administration agreed that the Law of the Sea treaty contained important provisions that, Reagan said, “confirm existing maritime law and practice” on navigation and overflight rights and “fairly balance the interests of all states” on a range of issues.⁹⁹ Officials acknowledged these benefits at the outset of the administration, claiming only that the United States “will not sacrifice an acceptable seabed regime that provides guaranteed access for U.S. miners” to those provisions.¹⁰⁰ But the core of the Reagan administration’s position was not that the administration did not want to sacrifice access to the seabed but, rather, that it did not have to do so. Reagan, one scholar noted, “was guided not merely by ideological considerations in shaping his policy but also by the belief that compromise was not necessary to achieve U.S. ocean policy objectives.”¹⁰¹ He believed that the provisions in the treaty favorable to the United States would be followed whether or not the United States actually signed the Law of the Sea treaty. The national interest, in Reagan’s view, did not justify meeting the other nations in the negotiation halfway on the seabed issue.

Richardson was familiar with this argument: He had heard it from Richard Darman and J. T. Smith. But he remained adamant that it was misguided. If the United

⁹⁸George V. Galdorisi and Kevin R. Vienna, *Beyond the Law of the Sea: New Directions for U.S. Oceans Policy* (Westport, CT: Praeger Publishers, 1997), 6.

⁹⁹“Statement on United States Oceans Policy,” *Public Papers of President Ronald Reagan*, 10 Mar. 1983.

¹⁰⁰“U.S. Wants Sea Treaty to Give Access to Minerals,” *New York Times* 6 Mar. 1981. The quotation is from George Taft, who was Deputy Director of the Law of the Sea Office at the State Department.

¹⁰¹Charles L. O. Buderer, “Controversy and Compromise: Prelude to the Impasse in the Law of the Sea Negotiations,” in *Perspectives on U.S. Policy Toward the Law of the Sea: Prelude to the Final Session of the Third U.N. Conference on the Law of the Sea*, Charles L. O. Buderer and David D. Caron, eds. (Honolulu: Law of the Sea Institute, 1985), 3-4.

States government invoked the benefits of a Law of the Sea treaty while ignoring its limitations, the United States risked being subject to the “retaliatory measures that would surely be provoked by what would be seen as a barefaced attempt to have it both ways,” he wrote.¹⁰² Even if the United States possessed the military strength to repel such measures, Richardson believed, its well-being would suffer from conflict on the high seas. “We really have no course,” he said, “if we seek to maintain a peaceful world, but to expand the role of law as the means both of invoking established precedents for the resolution of old conflicts and developing new principles for the resolution of new conflicts.”¹⁰³ He emphasized that on the oceans as well as on all other issues of international concern, “There are no solutions except multilateral ones.”¹⁰⁴ “‘Fortress America,’” he had declared in the *Wall Street Journal* in the summer of 1980, “is out of date.”¹⁰⁵ It was the theme that had animated his work at the conference.

Richardson also insisted that a Law of the Sea treaty, whatever its imperfections, was not only in the national interest but in the interest of the mining industry. If the United States did not participate in a Law of the Sea treaty, he declared in an address that he delivered in the American Mining Congress in 1980 just before leaving his position, the growth of the industry would suffer under the “uncertain legal and political climate that would probably prevail in an ex-treaty situation.”¹⁰⁶ By 1982, his message was blunt: There “will be no U.S. undersea mining outside the treaty, except under a foreign flag,”

¹⁰² Richardson, “Power, Mobility, and the Law of the Sea,” 918.

¹⁰³ Elliot L. Richardson, “Lawyers, Law, and Civilization,” *University of Dayton Law Review*, vol. 5, no. 1 (Winter 1980).

¹⁰⁴ Black, “Reagan is ‘Not Likely to Need Me’ in Administration, Richardson Says.”

¹⁰⁵ Elliot L. Richardson, “‘Fortress America’ Is Out of Date,” *Wall Street Journal* 10 Jul. 1980.

¹⁰⁶ Letter, Elliot L. Richardson to Zbigniew Brzezinski, (undated), NSA-Global Issues, “LOS, 7-8/80,” Box 39, JCL.

he told the *Washington Post*.¹⁰⁷ In a surprising turn, Ratiner, the former Kennecott lobbyist who had rejoined the delegation, had come to the same conclusions, believing that the United States was “fantasizing” that other developed nations would oppose the treaty and referring to the assumption that the mining industry had an alternative to a comprehensive treaty as the “Achilles heel” of American strategy.¹⁰⁸ He began to advocate this position within the delegation.

But by the time that Reagan announced his reservations with regard to the Law of the Sea text, he had a strong base of support. The economic and philosophical objections had coalesced in opposition to the treaty to the point that they often were indistinguishable. “As the LOS seabed regime took on more of an NIEO [New International Economic Order]-like character,” wrote James Sebenius, “industry opposition grew. The most effective vehicle the industry found to oppose the treaty was less to plead economic self-interest than to attack the ideological cast of the emerging regime.”¹⁰⁹ Members of Congress opposed to the seabed mining regulations tended to frame their objections in such terms. Senator Henry M. “Scoop” Jackson stated that the Law of the Sea conference symbolized the effort of developing nations to force a “fundamental redistribution of global wealth and power from the nations of the

¹⁰⁷ Mary McGrory, “Sailing the Sea Treaty Shoals Without the Lighthouse of Fact,” *Washington Post* 22 Jul. 1982.

¹⁰⁸ Leigh S. Ratiner, “The Costs of American Rigidity,” in *Law of the Sea: U.S. Policy Dilemma*, Bernard H. Oxman, David D. Caron, and Charles L. O. Buder, eds. (San Francisco, CA: ICS Press, 1983), 32. See also Leigh S. Ratiner, *The Law of the Sea: A Crossroads for American Foreign Policy* vol. 60, no. 5 (Summer 1982), 1021. “When the United States does eventually join” a seabed mining regime, Ratiner warned, “the rules of the game will already be set.”

¹⁰⁹ James K. Sebenius, “Designing Negotiations Toward a New Regime: The Case of Global Warming,” *International Security* vol. 15, no. 4 (Spring 1991): 128. For background on the New International Economic Order, see Chapter 1, footnote 54.

industrialized North to the countries of the less developed South.”¹¹⁰ John Breaux declared: “We will not meekly submit to the New International Economic Order; we will not mildly consent to the ruin of our system of values as a free enterprise society.”¹¹¹ The White House, too, invoked principle as well as interests in justifying its opposition. In a statement before the conference during the summer of 1981, Malone explained that “widely-shared American attitudes toward the creation of global regulatory institutions” informed Reagan’s stance. “The people of the United States, through their electoral process have expressed their preference for a variety of policies that affect the work of this conference,” Malone said. “My country’s political leaders cannot and should not ignore that mandate.”¹¹² That mandate guided American strategy in the eleventh and final session of the Law of the Sea conference.

When the United States returned to the Law of the Sea conference negotiations in 1982, Tommy Koh and Paul Engo were prepared with a proposal that relaxed production limits on seabed mining, a proposal that Malone called “a step forward.”¹¹³ Richardson appealed to the administration to play its hand carefully. “If our negotiating objectives are realistic we have every prospect of attaining them,” he wrote. “If they are not realistic—if we overreach and demand too much—we shall not only reduce our chances of improving the deep seabed mining regime but also jeopardize the Draft Convention’s undisputed benefits to other United States interests.”¹¹⁴ Yet Richardson believed, as he wrote

¹¹⁰ Nicholas Burnett, “The Ex-Kennecott Lobbyist and the Scuttled Sea Law,” *Washington Post* 22 Mar. 1981.

¹¹¹ Finn Laursen, *Superpower at Sea: U.S. Ocean Policy* (New York: Praeger Publishers, 1983), 138.

¹¹² Statement by Ambassador James L. Malone, “Special Representative of the President of the United States for the Third United Nations Conference on the Law of the Sea Plenary,” 5 Aug. 1981, “Law of the Sea Conference: Advisory Committee Meeting,” Box 415, ELR Papers.

¹¹³ “Sea-Law Compromise is Welcomed by U.S.,” *New York Times* 2 Apr. 1982.

¹¹⁴ Elliot L. Richardson, “Law in the Making: A Universal Regime for Deep Seabed Mining?” *Journal of Legislation* vol. 8, no. 2 (Summer 1981): 218-219.

afterward, that overreaching is exactly what the United States chose to do, issuing a series of demands and preparing to conduct negotiations for a mini-treaty on seabed mining outside of the conference. The positions that the American delegation put forward in the spring of 1982 “were so radical,” he wrote, “that they discouraged even those delegates receptive to reasonable improvements from seeking negotiating instructions that would have enabled them to pursue such improvements in the remaining few weeks.”¹¹⁵ Malone disputed Richardson’s charges as “misleading and inaccurate,” arguing that the United States pushed only for “responsible changes” and that the Group of 77 was “determined to reject substantive change in the seabed mining regime that would moderate in any meaningful way the existing structure built into it.”¹¹⁶ Neither side budged. On April 30, the United States voted to reject the Law of the Sea Convention. It was one of just four nations to do so.

For the rest of his life, Richardson was critical of ideologues who, in his view, exhibited “astonishing imperviousness to rational persuasion. You can demonstrate to an ideologue that one of his arguments is just plain wrong, even factually wrong, but he will invariably repeat the same argument the next day in exactly the same words.”¹¹⁷ To the extent that the Reagan administration voiced legitimate objections to the treaty, Richardson believed, it had only itself to blame. “Had our delegation concentrated on obtaining the best possible Convention [at the tenth session in 1981] and not been diverted by ideological pressures,” he later wrote, “it could have won significant

¹¹⁵ James L. Malone and Elliot L. Richardson, letters to the editor, *Foreign Policy*, no. 55 (Summer 1984), 179.

¹¹⁶ James L. Malone, “Who Needs the Sea Treaty?” no. 54 (Spring 1984), 51.

¹¹⁷ Richardson, *Reflections*, 18.

additional concessions.”¹¹⁸ He believed that reflexive opposition had once more scuttled an effort at integration.

But while it may have been Richardson’s misfortune to complete the treaty just as Reagan assumed office, ratification would have been a struggle even if Carter had won re-election. “This is not good treaty weather,” one international law professor reminded Richardson in 1980.¹¹⁹ The Senate had just recently agreed, with considerable difficulty, to the Panama Canal Treaties, which were in Richardson’s estimation “dinky little documents” compared with the Law of the Sea.¹²⁰ “If the Law of the Sea ever gets to the Senate,” Richardson told Vice President Walter Mondale afterward, “it will make the Panama Canal Treaty seem easy.”¹²¹ He also observed to Senator Ernest Hollings of South Carolina in mid-1979 that “with so much attention now being focused on SALT, this doesn’t seem to be the most opportune moment to bother members of the Senate with another set of tough treaty-ratification questions.”¹²² Other members of the Carter administration also sensed that the treaty would create problems on Capitol Hill. “It’s going to be a struggle no matter how you slice it,” Madeleine Albright wrote of ratification.¹²³ Brzezinski once wrote, with only a hint of humor, that the treaty had

¹¹⁸ Elliot L. Richardson, “The United States Posture Toward the Law of the Sea Convention: Awkward but not Irreparable,” Vol. 20, No. 3, *San Diego Law Review* (April 1983), 506.

¹¹⁹ Letter, John E. Flipse to John Norton Moore, 8 Feb. 1980, “‘F’ miscellaneous,” Box 369, ELR Papers.

¹²⁰ “Being Civilized Ought to Count Also,” *Rochester Democrat & Chronicle* 7 Nov. 1978, “‘L’ miscellaneous,” Box 380, ELR Papers.

¹²¹ Jenn M. White, “‘Fantasticks’ Evening,” *Washington Post* 6 Jul. 1978, “Clippings (general),” Box 364, ELR Papers.

¹²² Letter, Elliot L. Richardson to Ernest F. Hollings, 20 Jul. 1979, “‘H’ miscellaneous—1979-1980,” Box 378, ELR Papers.

¹²³ Note (handwritten), Madeleine Albright to Zbigniew Brzezinski, (summer of 1979—date not listed), NSA-Global Issues, “LOS, 6-10/79,” Box 38, JCL.

“albatrosses draped about its neck.”¹²⁴ “I believe there was no chance for Senate consent,” Alan Berlind said, “given the hostility of the business and ideology lobbies.”¹²⁵

In addition to the political climate that he faced, Richardson made missteps of his own. While he kept in close touch with Congress, he often did not negotiate at the conference with the prospects for ratification foremost in his mind. “Richardson’s reply is typical,” Thomas Thornton noted of a response he had received from Richardson after passing along an objection on the proposed composition of the International Seabed Authority. “In effect he is saying, ‘I am in the midst of a negotiation and you have to let me decide what is feasible and in the U.S. national interest.’ That is not an unreasonable position. But Washington is not without people who don’t agree with Elliot and they are going to make themselves heard.”¹²⁶ Had he had a better sense of what Congress would accept, he may have resisted identifying so closely with the outcome of the conference and could have put himself in position to reach a more favorable agreement.

Richardson also demonstrated a level of impatience with opponents of the treaty that made persuading others difficult. In praising a “lucid” *Washington Star* editorial on the Law of the Sea, he wrote, “If our critics would only take the pains you have gone to in order to understand and assess what has been accomplished so far at the Conference, we would have a far more reasoned debate on the resulting treaty.”¹²⁷ He referred in 1980 to the “process of public education that will be necessary if the treaty is eventually to win a two-thirds majority in the Senate,” but he would have benefited from beginning that

¹²⁴ Memorandum, Zbigniew Brzezinski to Warren Christopher, “Arthur Goldberg’s Concerns about the Law of the Sea Negotiations,” 2 Jul. 1979, NSA-Brzezinski Files, “Law of the Sea, 1/78-9/80,” Box 31, JCL.

¹²⁵ Berlind, interview.

¹²⁶ Memorandum, Thomas Thornton to Zbigniew Brzezinski, 11 Jun. 1979, NSA-Brzezinski Files, “Law of the Sea, 1/78-9/80,” Box 31, JCL.

¹²⁷ Letter, Elliot L. Richardson to Edwin M. Yoder, Jr. 14 Jul. 1980, “‘X-Y’ miscellaneous,” Box 401, ELR Papers.

process well beforehand.¹²⁸ After he left the delegation, he chaired the Council on Ocean Law, an organization that, then-executive director Lee Kimball noted, was meant to be a “broad-based group to advocate ratification” of the Law of the Sea treaty, akin to Americans for SALT.¹²⁹ But by that point, opinion in Congress against the seabed mining provisions of the treaty had solidified.

Richardson could point to considerable accomplishment at the conference. Jonathan Moore, Richardson’s longtime aide, noted that many of the provisions that Richardson negotiated are now regarded as customary international law. “What was once a failure in many ways” for Richardson, Moore said, “is now regarded as a success.”¹³⁰ “With the exception of the part relating to deep seabed mining,” wrote international law professors Louis Sohn and Kristen Gustafson in 1984, “the provisions of the Convention have become the best evidence of the emerging new international law of the sea, and have become the law of the United States on the subjects covered by them.”¹³¹ Richardson himself was proud of what he had done, calling the conference “an enormous success...It is hard indeed to imagine how 160 countries meeting over 12 years could have come to agree on such a vast array of subjects.”¹³²

Yet the disappointment lingered. “Saying you are ninety percent of the way toward a global convention,” Richardson once said, “is about the same as boasting that

¹²⁸ Letter, Elliot L. Richardson to Russell Peterson, 10 Sep. 1980, “‘P’ miscellaneous—1979-1980,” Box 390, ELR Papers.

¹²⁹ Lee Kimball, telephone interview, 12 Mar. 2009.

¹³⁰ Jonathan Moore, interview.

¹³¹ Louis B. Sohn and Kristen Gustafson, *The Law of the Sea in a Nutshell* (St. Paul, MN: West Publishing Co., 1984), xx. See also Kamel Filali, *The Contribution of the Third United Nations Conference on the Law of the Sea to the Development of International Law and its Codification* (Ph.D. dissertation: University of Miami, 1984).

¹³² Elliot L. Richardson, “Law of the Sea,” *Proceedings of the Annual Meeting, American Society of International Law* (1983): 151.

you are ninety percent of the way to the top of Mount Everest.”¹³³ Richardson continued to be involved with Law of the Sea matters. J. T. Smith recalled that Richardson played a vital role in securing the 1994 amendments to the text that addressed the provisions on seabed mining to which the United States had objected.¹³⁴ But Richardson understood that the moment at which the conclusion of a treaty would be heralded as a watershed in the history of international cooperation, and an inspiration for future efforts, had passed.

¹³³ Thomas J. Vance, *Elliot Richardson and the Virtue of Politics: A Brief Biography* (Washington, D.C.: Council for Excellence in Government, 2000), <<http://www.excelgov.org/files/FileDownloads/-richardsonbio.pdf>> [accessed 18 Jan. 2009].

¹³⁴ Smith, interview.

Conclusion

“To Adapt and Endure”

If Richardson had entered public life only to burnish his reputation, he would have had no need to accept his position at the Law of the Sea conference. In the Saturday Night Massacre, he had already “played the equivalent of the ninth inning of the seventh game of the World Series and won,” recalled Thomas Oliphant.¹ His resignation from the Nixon administration, remembered Richard Darman, “provided a symbol of public virtue for a society on the edge of cynicism.”² His reputation would forever be secure. Yet Richardson resisted identification with that chapter of his life. “I know almost nothing about Watergate,” he said in 1997, adding that he had not read one book on the subject.³ He was known for his exit from government service, but it was the service itself that he relished. “Richardson is my image of a committed public official—a survivor,” wrote former Senator James Abourezk of South Dakota, “bored with private life to the point that he cares about little else but public service.”⁴ Richardson admitted as much. “In talking with students, I always tell them that what government people at any given level do matters more and has more social impact than what business people at a comparable level do,” he later wrote. “A public servant’s day-to-day role can affect the well-being,

¹ Thomas Oliphant, telephone interview, 3 Mar. 2009.

² Spencer S. Hsu, “Washington Honors Elliot Richardson: Admirers Commemorate ‘A Great Public Servant,’” *Washington Post* 16 Jan. 2000.

³ Richard L. Holzhausen, “Oral History Interview with Elliot Richardson,” 25 Apr. 1997, Gerald R. Ford Library.

⁴ James Abourezk, “Oh Congress, My Congress,” Review of *On and Off the Floor: My Years as a Correspondent on Capitol Hill*, by Samuel Shaffer, *Washington Post*, 16 Jun. 1980, “‘A’ miscellaneous,” Box 357, ELR Papers.

the survival even, of millions of people.”⁵ It was this attitude that had led him to spend four years at a conference that, the *New York Times* noted, had “elicited only yawns from the media and glazed eyes from the public.”⁶ In one instance, a reporter asked Richardson whether the Law of the Sea conference had put him into political oblivion. “If that was the idea,” he responded, “it succeeded very well.”⁷

When he resigned his post in the fall of 1980, he did so with the intent of doing well for himself. “Salaries of presidential appointees have in no way kept up with inflation,” Richardson once noted while serving at the Law of the Sea conference. “That’s a real problem. If you find I have been drawn off into private [law] practice somewhere along the line, you can be sure that [the increased income] will have been a significant attraction.”⁸ He settled into a comfortable partnership role at the Milbank, Tweed, Hadley & McCloy law firm and opened its Washington, D.C., office. He loved the law and viewed law practice as a profession rather than a business. (“Heavens, I’m not going to answer that,” he responded when Elisabeth Bumiller of the *Washington Post* asked him his new salary.)⁹ In a country in which lawyers were reviled, he did not doubt their importance. He once reflected on the aphorism that the history of civilization is the

⁵ Elliot L. Richardson, *Reflections of a Radical Moderate* (New York: Pantheon, 1996), 87. Richardson did not consider himself alone in this regard. “I have many friends who once held responsible but not necessarily prominent roles in government and who now occupy prestigious and well-paid positions in the private sector,” he wrote, “some of them very prestigious and very well paid. Not one finds his present occupation as rewarding as his government service.” Richardson, *Reflections*, 102.

⁶ “Sea Change in World Law,” *New York Times* 7 Apr. 1980.

⁷ Peter Lucas, “Ambassador’s Job has Made Richardson a Non-Candidate,” *Boston Herald American* 17 Oct. 1979, “‘L’ miscellaneous,” Box 380, ELR Papers.

⁸ S. L. Gaines, “Follow-up,” 1979 (newspaper and date not listed), “Clippings (Richardson),” Box 364, ELR Papers.

⁹ Elisabeth Bumiller, “Getting a Firm Hold,” *Washington Post* 20 Nov. 1980.

history of millions of solved conflicts. “This is another way of saying,” Richardson observed, “that the history of civilization is the history of thousands of smart lawyers.”¹⁰

Yet Richardson soon grew restless with law practice. A recommendation for law school that he had composed while at the Law of the Sea conference offers a window into why he may have wanted to move on. “Tom is motivated to become a lawyer not merely or even primarily because this is a comfortable and interesting way to make a living, but because it is a way of helping people,” Richardson wrote, adding that the young man he was recommending would “pull his weight as a citizen.”¹¹ Richardson had pulled his weight as a citizen for the better part of his life, and he remained active on a number of issues, including the Law of the Sea, while practicing law. But he believed, given his experience, that he should return in the public sector, where he could make the greatest contribution. He had turned sixty in 1980, but his physician had reported to him that he was in “very excellent physical condition.”¹²

Some believed that his time had passed. “If you decide against running” for the presidency, former Massachusetts governor Francis Sargent had written in an open letter to Richardson in 1979, “I believe you [will] have passed up what may be your last chance to play an elective role on the national political scene.”¹³ When Richardson withdrew from the presidential race, however, he did not rule out a political future for himself. “I have never tried to see four months, much less four years ahead,” he said at the time. “I

¹⁰ Elliot L. Richardson, “Lawyers, Law, and Civilization,” *University of Dayton Law Review*, vol. 5, no. 1 (Winter 1980).

¹¹ Letter, Elliot L. Richardson to the University of Pennsylvania Law School,” 3 Jan. 1980, “‘C’ miscellaneous,” Box 366, ELR Papers.

¹² Letter, Theodore J. Abernathy to Elliot L. Richardson, 20 Mar. 1978, “‘A’ miscellaneous,” Box 357, ELR Papers.

¹³ Frank Sargent, “Open Letter to Elliot Richardson,” *Boston Globe* 15 Aug. 1979, “‘S’ miscellaneous—1979,” Box 393, ELR Papers.

make decisions when I have to.”¹⁴ Anticipating that he would be asked, at the press conference announcing his decision not to run for president, if he would consider running for the U.S. Senate from Massachusetts, he added a handwritten note to his speech: “I might very well want to do that.”¹⁵ After three years of law practice, he returned to Massachusetts in 1984 and announced his candidacy.

It was an “ill-starred” effort, Richardson later wrote.¹⁶ His campaign ended not in the general election, in which he would have faced Democratic nominee John Kerry, but in the Republican primary, in which he succumbed to a more conservative challenger. His weaknesses in electoral politics bedeviled his candidacy. According to his *New York Times* obituary, Richardson, understanding his difficulty in persuading voters that they could relate to him, “asked to be known as Muggsy in what turned out to be an ineffectual effort to appear more of a casual figure.”¹⁷ That difficulty troubled Richardson because he genuinely enjoyed meeting with voters. “In the course of [my first] campaign I made an amazing discovery,” he later wrote. “Even after I had met thousands and thousands of people, the next new face did not merge into an indistinguishable blur. On the contrary, the more hands I shook and the more faces I looked into, the more strongly I felt the uniqueness of each new person.”¹⁸ But his well-intentioned efforts did not reshape perceptions of him. Oliphant recalled a bumper sticker

¹⁴ Gaines, “Follow-up.”

¹⁵ “Statement by Ambassador at Large Elliot L. Richardson—Boston, Massachusetts, 16 Oct. 1979, “Press conferences,” Box 390, ELR Papers.

¹⁶ Richardson, *Reflections*, 244.

¹⁷ Neil A. Lewis, “Elliot Richardson Dies at 79: Stood Up to Nixon and Resigned in ‘Saturday Night Massacre,’” *New York Times* 1 Jan. 2000.

¹⁸ Richardson, *Reflections*, 29.

from the election that, in its attempt at humor, captured Richardson's predicament: "Vote for Elliot Richardson: He's Better than You."¹⁹

In addition to his own shortcomings as a candidate on the stump, Richardson also came face-to-face with the conservatism that had overtaken the Republican Party. If his unsuccessful effort to persuade the White House to sign the Law of the Sea treaty were not enough, Richardson's 1984 campaign "really brought home for him what the Reagan shift was all about," his son, Henry Richardson, recalled. It was a "different breed of Republicanism than what he had grown up with."²⁰ He believed that he had always been popular in Massachusetts, but even in Massachusetts the composition of the Republican Party had changed. "The reality for the political situation for Richardson," columnist Peter Lucas had written when Richardson had considered entering the Massachusetts presidential primary, "is that he has been gone from Massachusetts a long time, almost nine years, and his base of political support has eroded."²¹ When Richardson campaigned across the state in 1984, he found that his support had further declined.

Beyond his inability to connect with voters and his moderate political philosophy, Richardson discovered late in life that, while he viewed himself as a politician, he was in fact unwilling to act in the ways that successful politicians acted to win office. He "hated going on the campaign trail and making speeches about things he didn't believe in," said Donald Carr.²² A candidate may benefit from making vague promises. Richardson's career in government, however, had underscored the need to choose among competing priorities. A valuable illustration of how uncomfortable Richardson was with what passed

¹⁹ Oliphant, interview.

²⁰ Henry Richardson, telephone interview, 16 Feb. 2009.

²¹ Lucas, "Ambassador's Job has Made Richardson a Non-Candidate."

²² Donald Carr, telephone interview, 13 Jan. 2009.

for campaign rhetoric comes from his own papers, in which, at George H. W. Bush's request, Richardson reviewed the text of a foreign policy speech that Bush was slated to give during the 1980 presidential campaign. Where Bush had referred to an "international community that is reeling out of control," Richardson wrote in the margin, "How was it controlled?" Where Bush had attacked Carter for not forcing the release of American hostages in Iran, Richardson wrote, "What would you do to get them out?" Where Bush had criticized Carter for not repelling the Soviet invasion of Afghanistan, Richardson implored: "How would you do it, George?" In one section of the speech, Richardson simply wrote "weak" in the margin; he labeled another section "banal."²³ He demonstrated impatience with electoral tactics for their own sake.

Richardson was not above such tactics himself. In the closing days of his race for Attorney General of Massachusetts in 1966, he charged his opponent with engaging in corrupt behavior, an accusation that was "widely denounced as reckless and unfair," according to his obituary in the *Boston Globe*.²⁴ "The fact that he knew he was doing wrong," Oliphant wrote in a column, "only made it less acceptable."²⁵ He could also recite gimmicky prose in his speeches. Noting Carter's shifts of position during the 1976 presidential election, Richardson declared that Carter "should be aware that the American electorate has become more sophisticated than he seems to appreciate, and that the candidate who flips during the campaign is likely to flap in the election [emphasis his]."²⁶ But as a longtime policymaker who had once faulted the public debate on

²³ Letter, Stef Halper to Elliot L. Richardson, 6 Feb. 1980, "Political (Bush, George)," Box 389, ELR Papers.

²⁴ Mark Feeney, "Elliot Richardson, Versatile Man, is Dead," *Boston Globe* 1 Jan. 2000.

²⁵ Thomas Oliphant, "Richardson's Specialness," *Boston Globe* 4 Jan. 2000.

²⁶ "Speech prepared for delivery by Secretary of Commerce Elliot L. Richardson to a combined luncheon of the Chairman's Club, Republican Executive Committee on Monroe County, and elected officials—Rochester, N.Y.," 26 Oct. 1976, "1976—22 Oct.-13 Dec.," Box 352, ELR Papers.

government regulation for being “excessively emotional, self-righteous, simplistic, and ideological, shedding more heat than light on the subject,” he never enjoyed stirring up passion for its own sake.²⁷ Citing the one time that he used such rhetoric in the Senate race, he recalled that “my supporters, swallowing my parody whole, cheered my oratory for the first and only time in the whole campaign.”²⁸ By that summer, he had apparently had enough. At the Republican National Convention, he decided that, rather than tailor his speech to the audience, he would criticize the platform the delegates had adopted. His remarks upset conservative voters in Massachusetts, Donald Carr noted, and “invited his own exile.”²⁹ He lost the primary election by a double-digit margin. “The 1984 loss was very traumatic” for Richardson, one supporter said afterward. “It really did change his life.”³⁰

Richardson hoped that, having been frustrated in his attempt to win office, he could return to government service in an appointed position. Throughout his career, he had been summoned to serve in key posts in American government. He later recalled that, beyond doing his best in whatever position he held at the time, he had never worked to attain those posts. “Every job I have ever been offered,” he said, “came out of the blue.”³¹ But given the number of jobs that he had been offered in his career, he always imagined another interesting one awaiting him. “This is my last press conference as a member of the Cabinet—maybe,” he wrote to himself as he prepared to leave the

²⁷ “Lame Ducks Disagree on Environmental Issue,” *C & EN* 31 Jan. 1977, “Clippings (general),” Box 364, ELR Papers.

²⁸ Richardson, *Reflections*, 244.

²⁹ Carr, interview.

³⁰ Geoffrey Kabaservice, *The Guardians: Kingman Brewster, His Circle, and the Rise of the Liberal Establishment* (New York: Henry Holt, 2004), 460.

³¹ Holzhausen, “Oral History Interview with Elliot Richardson.”

Commerce Department in 1977.³² When he painted his self-portrait to be displayed in the Commerce Department building—the Carter administration, citing budget concerns, had cut funding for a commissioned portrait—he added a note to the portrait: “I expect to refloat.”³³ He had, to his own surprise, refloated at the Law of the Sea conference. But in the twelve years that followed the Law of the Sea conference, years in which Richardson’s party controlled the White House, the call to return to full-time public service never came.

There are a number of possible explanations for why neither Ronald Reagan nor George H. W. Bush appointed Richardson to a full-time post: his age, his moderate brand of Republicanism, his rumored drinking problem.³⁴ Whatever the explanation, it pained Richardson. “I don’t even want to know what you’re doing in that job,” Richardson once told Jonathan Moore, whom Reagan had appointed in his second term as Ambassador at Large for Refugee Affairs. “I just want to know how you got it.”³⁵ Richardson had imagined, as he prepared to leave the Commerce Department after the 1976 presidential election (and before learning of his appointment to the Law of the Sea conference), that he would feel a “sense of deprivation from not being a part of things I’ll be reading about in the paper.”³⁶ Now he felt that sense of deprivation firsthand. Later in the decade, he monitored United Nations-sponsored elections in Namibia and Nicaragua and served as

³² Handwritten note (undated), “1977—13-17 Jan.,” Box 353, ELR Papers.

³³ Marjorie Hunter, “Carter Economies Turn Elliot Richardson to Art,” *New York Times* 9 Mar. 1978.

³⁴ Edward W. Brooke, *Bridging the Divide: My Life* (New Brunswick, NJ: Rutgers University Press, 2007), 85. Three individuals interviewed for this thesis suggested Richardson’s drinking as a reason why he may not have been hired in the 1980s, but none wished to be identified. Richardson had pled guilty to driving under the influence while in college, and the matter arose during his confirmation hearing when he was nominated as Under Secretary of State. Hearing Before the Senate Committee on Foreign Relations on the Nomination of Elliot L. Richardson to be Under Secretary of State, 15 Jan. 1969, Washington, D.C., U.S. Government Printing Office, 8.

³⁵ Jonathan Moore, personal interview, Cambridge, MA, 18 Nov. 2008.

³⁶ Saul Pett, “Painful Transition for the Lame Ducks,” *Chicago Tribune* 9 Jan. 1977, “1977—13-17 Jan.,” Box 353, ELR Papers.

Bush's representative for the Multilateral Assistance Initiative to the Philippines. But he remained at Milbank, Tweed, Hadley & McCloy, on the outside of government looking in, for the rest of his life, a sad coda to his distinguished career.

But he did not dwell on his unfulfilled desire to rejoin government, recognizing that he had long ago settled on a career that by its nature was uncertain. "Uncertainties are part of the endless fascination of politics," he had written in 1966 in the twenty-fifth anniversary volume of his Harvard graduating class, "and the satisfactions heavily outweigh the frustrations."³⁷ In the fifteen years that followed, he not only helped shape foreign and domestic policy but influenced a number of men and women in government who were inspired by his example. "Working for and with you was a high point that I fear will make the remainder of my career pale albeit richer for the experience," Alan Berlind wrote to Richardson after Richardson resigned his post at the Law of the Sea conference.³⁸ "No public servant," Bill Clinton said in 1998 as he awarded the Presidential Medal of Freedom to Richardson, "is more beloved by those who have served him."³⁹ A few months before he passed away in 1999, Richardson was asked whether he wished he had done anything differently in his career. "No, not one thing," he replied.⁴⁰ He drew satisfaction from what he knew to be a remarkable career.

He relished the opportunity to serve in government, at the Law of the Sea conference as well in the other posts that he held, because of his deeply-held conviction that thoughtful, well-executed government policy could make a difference. "His native

³⁷ 25th Anniversary Volume, Harvard College Class of 1941, Harvard University.

³⁸ Letter, Alan D. Berlind to Elliot L. Richardson, 4 Sep. 1980, "Berlind, Alan," Box 358, ELR Papers.

³⁹ "Remarks on Presenting the Presidential Medal of Freedom," *Public Papers of President William J. Clinton* 15 Jan. 1998.

⁴⁰ Milo Mason, "Interview: Elliot Richardson," *Natural Resources & Environment*, vol. 13, no. 4 (Spring 1999), 559.

outlook was that if we apply enough time, energy, effort, and good will, we can solve problems,” remembered Roger Porter, who worked with Richardson on the Economic Policy Board in the Ford administration. “He saw government as having a positive role to play in improving the lives of people.”⁴¹ He believed that public management was, as he once wrote, an “important discipline separate and distinct from political science.”⁴² As chair of the Board of Visitors at the Kennedy School of Government at Harvard, he was “very interested in the emergence of the school,” recalled Graham Allison, who served as its dean at the time.⁴³ In the last years of his life, he devoted a significant amount of time to promoting excellence in the civil service, which he believed essential for innovative policymaking and responsive government.⁴⁴ His belief in government as an instrument of social policy and his support of international institution-building led some of his fellow Republicans to consider him a liberal.

Yet he resisted being labeled as anything other than a moderate. As Secretary of Health, Education, and Welfare, Richardson would often say that there was “no major issue involving [the department] pending before the Congress in which the common distinctions of liberal-vs.-conservative were even relevant.”⁴⁵ Richardson “never thought of leaving the Republican Party,” Jonathan Moore said.⁴⁶ He would not have felt at ease in the Democratic Party of his era. The increase in the size of government troubled him. “We cannot indulge in the childish belief,” he once lectured an audience at Middlebury

⁴¹ Roger B. Porter, personal interview, Cambridge, MA, 15 Dec. 2008.

⁴² Letter, Elliot L. Richardson to Brian Rapp, 18 May 1977, “‘R’ miscellaneous,” Box 392, ELR Papers.

⁴³ Graham T. Allison, personal interview, Cambridge, MA, 26 Feb. 2009.

⁴⁴ See Elliot L. Richardson, “Civil Servants: Why Not the Best?” *Wall Street Journal* 20 Nov. 1987.

⁴⁵ Raymond Price, *With Nixon* (New York: Viking Press, 1977), 205.

⁴⁶ Jonathan Moore, interview.

College, “that we can have everything at once.”⁴⁷ From his own experience as a Cabinet secretary and statewide elected official, he understood that government programs could be not only ineffective but harmful if improperly designed and administered. In *The Creative Balance*, for example, he lamented a West Boston community redevelopment project in which the “best of intentions had produced the worst of results.”⁴⁸ He also believed in federalism. “We must remember that the federal government does not itself render any services to people in need,” he once said. “The federal government’s role is to provide support for the providers of services,” such as governors, mayors, and county executives.⁴⁹ His prudence and manner of restraint had led him to the Republican Party.

He never possessed the instinctive skepticism of human nature, however, that led conservatives in the 1980s and 1990s to distrust government. “Though I may be aware of petty motives in myself or others,” he once wrote, “I do not accept their primacy.”⁵⁰ He could not identify with the Republicans who had issued the Contract with America in 1994 and won control of Congress. “Since when has it been conservative,” he asked, “for Americans to turn their backs on the poor?”⁵¹ By this time, the influence of his conception of government within his party had dwindled. Having held his last high-level post under Carter, he received the Presidential Medal of Freedom from Clinton, whom Richardson had publicly defended against impeachment. It was a testament to the shifts that had reshaped American politics. Richardson “leaves behind a different GOP,” the

⁴⁷ Sabin Russell, “An Insider’s View of Big & Complex Government,” *Valley Voice* 14 Mar. 1979, “M’ miscellaneous—1979,” Box 387, ELR Papers.

⁴⁸ Elliot L. Richardson, *The Creative Balance: Government, Politics, and the Individual in America’s Third Century* (London: Hamish Hamilton, 1976), 287.

⁴⁹ “A Timely Debate: Is Congress Killing the American Federal System?” Woodrow Wilson International Center for Scholars (date not listed), “Clippings (Richardson),” Box 364, ELR Papers.

⁵⁰ Phillip L. Berman, ed., *The Courage of Conviction* (New York: Dodd, Mead, and Co., 1985), 165.

⁵¹ Richardson, *Reflections*, 244.

Washington Post noted after Richardson passed away.⁵² J. T. Smith labeled himself a “Richardson Republican” and said that he had, in the years since working for Richardson, “stopped being a Republican.”⁵³ William Ruckelshaus, who followed Richardson’s lead and resigned from the Justice Department during the Saturday Night Massacre, endorsed Barack Obama in the 2008 presidential election, as did former Republican congressman James Leach. “To the extent there was a liberal Republican policy shop,” Alvin Felzenberg recalled, “they all worked for Elliot.”⁵⁴ As his profile faded, Richardson held to his view of government as a constructive force.

That optimism, recalled Philip Heymann, who met Richardson while serving as a Watergate prosecutor and became deputy attorney general in the Clinton administration, was founded on Richardson’s “belief that if people would just listen to each other, we could work out almost any problem.”⁵⁵ Even when he was away from Washington, D.C., serving as Ambassador to the Court of St. James’s in the United Kingdom, Richardson “saw himself as a convener of men and ideas,” the *New York Times* wrote.⁵⁶ His conviction that nations could address transnational problems despite clashing interests and often fierce rhetoric animated his participation at the Law of the Sea conference. While Richardson wished that the United States had ratified the treaty he had negotiated, he continued to believe, he wrote, in the “capacity of human beings to adapt and endure.”⁵⁷ He passed away on December 31, 1999, the last day of the twentieth century, with an abiding faith in the ability of humankind to devise solutions for the twenty-first.

⁵² “Elliot Richardson,” editorial, *Washington Post* 8 Jan. 2000.

⁵³ John Thomas Smith II, telephone interview, 9 Jan. 2009.

⁵⁴ Alvin S. Felzenberg, telephone interview, 14 Nov. 2008.

⁵⁵ Philip B. Heymann, personal interview, Cambridge, MA, 4 Mar. 2009.

⁵⁶ Robert B. Semple, Jr., “Richardson, Leaving London Post, Sees Upturn for Britain,” *New York Times* 22 Dec. 1975.

⁵⁷ Richardson, *Reflections*, 269.

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