TO THE EDITOR IN CHIEF:

June 5, 1987

I was startled to read in the April issue of the *Journal* (81 AJIL 438 (1987)) that the Panel on the Law of Ocean Uses had recommended U.S. utilization of the dispute-settlement procedures of the 1982 UN Convention on the Law of the Sea for the resolution of customary international law issues arising between the United States or its nationals and states parties to the 1982 Convention or their nationals with respect to matters as to which the provisions of the 1982 Convention are regarded as reflecting emerging norms of customary international law.

In my view, a nation should think long and hard before subjecting itself to the jurisdiction of a tribunal established under a convention to which it is not a party, and this is especially so as regards the 1982 UN Convention on the Law of the Sea. Because of their heavy preponderance of numbers, the developing countries can be expected to have a large majority of the judges on the International Tribunal on the Law of the Sea established under that Convention, and it would be unreasonable to expect that the President of the Tribunal, with power to select the "neutral" arbitrators in arbitral proceedings, will be anyone other than a developing-country national. The politicization of the International Court of Justice that led to the U.S. rejection of its jurisdiction in the *Nicaragua-U.S.* dispute could prove trivial by comparison with what may come to pass under the 1982 Convention.

While the Panel stated rather blithely that use of the International Tribunal on the Law of the Sea is an option open even to nonparties to the Convention, that is true under Annex VI, Article 20(2) of the Convention only with the consent of all parties to the dispute. A cautious analyst must anticipate that in the majority of cases, such consent will be forthcoming only when our adversaries deem it to their advantage to utilize the dispute settlement procedures of the 1982 Convention.

In my view, the United States should await the entry into force of the 1982 Convention and observe the composition of the International Tribunal on the Law of the Sea and its performance in conflicts between developed and developing nations before making any blanket commitment to submit itself and its nationals to the jurisdiction of this Tribunal. In arriving at a final conclusion, the possibility of an even greater bias against the United States by reason of its refusal to adhere to the Convention cannot be ignored. I am wholeheartedly in favor of the peaceful settlement of disputes but feel that, in the meantime, means must be found outside the 1982 Convention for the accomplishment of that objective.

LUKE W. FINLAY

TO THE EDITOR IN CHIEF:

June 10, 1987

Your April 1987 issue (at p. 405) carried an item in Contemporary Practice of the United States concerning the Trust Territory of the Pacific Islands. It referred to a proclamation of November 3, 1986 by President Reagan purporting to terminate the United Nations Trusteeship in respect of three of the four present entities of the trust, the Northern Marianas, the