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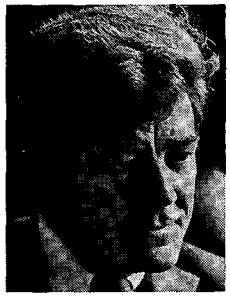

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Ronald K. Losch**

The eighth session of the United Nations Law of the Sea Conference convened recently in Geneva, Switzerland. A major unresolved issue at the Conference was the question of international regulation of deep seabed mining. In this article, Representative McCloskey and Attorney Losch discuss U.S. interests in achieving a comprehensive Law of the Sea Treaty, the sometimes conflicting objectives of other nations, and the effect that unilateral action by the U.S. Congress to legislate deep seabed mining could have on the successful completion of a treaty.

It has been said that observing the Law of the Sea Conference is like monitoring the progress of a glacier. However, in the last four years, during only forty-one weeks of formal negotiations, substantial progress has been made toward a general agreement on the great majority of traditional Law of the Sea (LOS) issues.[1] The deep seabed

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[1] For a complete presentation of the issues under discussion at the Law of the Sea Confer-

mining issue represents a glaring exception which could cause the long and tedious negotiating process to end in impasse. Philosophic differences, economic uncertainties, and a lack of trust, combined with the existence of several interest alliances between the participants, have prevented agreement on an international regime for exploitation of the resources of the deep seabed.[2] After successive unproductive negotiating sessions on this portion of the treaty, agreement on language acceptable to the U.S. Senate is now regarded as unlikely by most members of the Congress who have followed the negotiations.[3] Moreover, unilateral legislative action that will permit U.S. corporations to proceed with deep seabed mining seems to be almost certain during 1979 or early 1980 in view of lobbying efforts by the mining industry.[4] This legislation will have a significant international impact similar to the effect of the unilateral action of the United States in establishing a 200-mile zone for fishing conservation.[5] Passage of such legislation may destroy the substantial progress that the Law of the Sea Conference has made to date.

UNITED STATES INTERESTS IN ACHIEVING A COMPREHENSIVE LAW OF THE SEA TREATY

United States diplomats have traditionally believed that a successful Law of the Sea treaty would provide for the following American interests:[6]

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ence, see Swing, *Who Will Own the Oceans*, 54 FOREIGN AFF. 527 (1976). For the latest comprehensive analysis of the articles which command a consensus, see Oxman, *The Third United Nations Conference on the Law of the Sea: The 1977 New York Session*, 72 AM. J. INT'L L. 57 (1978).

[2] For a discussion of these factors, see 123 CONG. REC. E5301 (daily ed. Aug. 5, 1977) (report on U.N. Law of the Sea Conference by Rep. McCloskey); 122 CONG. REC. E5753 (daily ed. Oct. 26, 1976) (report on Law of the Sea Conference by Reps. McCloskey and Gilman, submitted by Rep. Ruppe).

[3] Because the terms of the Treaty are still the subject of negotiations and can change, members of Congress are reluctant to go on the record regarding ratifiability of a treaty.

[4] During hearings on deep seabed mining legislation, the representatives of the mining industry testified that they need legislation to provide a stable investment climate. *See, e.g.*, DEEP SEABED MINING: HEARING ON H.R. 3350, 3652, 4582, 4922, 5624, 6784, AND 6846 BEFORE THE SUBCOMM. ON OCEANOGRAPHY AND HOUSE COMM. ON MERCHANT MARINE AND FISHERIES, 95th Cong., 1st Sess. 346-47 (1977). Such a climate would allow them to continue the large investments necessary to develop deep seabed mining technology. *Id.* (statement of Milton Stern, Senior Vice President, Kennecott Copper Corp.).

[5] Shortly after the passage of the Fisheries Conservation and Management Act of 1976, Pub. L. No. 94-265, 90 Stat. 331 (codified in scattered section of 5, 16, & 22 U.S.C.), 86 countries used this precedent to make various assertions of jurisdiction over the waters off their coasts.

[6] National Security Council Interagency Group for Law of the Sea, Review of United States Interest in Law of the Sea (unpublished memorandum Mar. 16, 1978).

(a) achievement of a dispute settlement mechanism under international legal principles,
(b) protection of free navigation through straits and on the high seas for commercial and military vessels,
(c) exploitation of non-living resources of the continental shelf and the continental margin,
(d) access to the resources of the deep seabed,
(e) protection of the marine environment,
(f) management of the ocean's fisheries, and
(g) conduct of marine scientific research.

These interests, especially the achievement of a dispute settlement mechanism, are of great importance to the United States. Their codification in an LOS treaty would be consistent with traditional U.S. adherence to a world order governed by international legal principles. In contrast, unilateral U.S. legislation permitting deep seabed mining would merely promote short-term profits in the nickel and cobalt markets for U.S. mining firms. To fully appreciate the U.S. interests which might be affected by an LOS treaty, a brief discussion is useful.

First, a dispute-settlement mechanism under international legal principles is a key goal of U.S. foreign policy. The establishment of such a mechanism would foster a stable and predictable international environment which would stimulate, reward, and protect capital investment.

Second, an LOS treaty would protect free navigation for commercial and military vessels.[7] In fact, the current text protects traditional high seas navigational freedoms.[8] On the other hand, recent developments, such as the unilateral assertions by individual nations concerning control of passage through straits[9] or within offshore boundaries,[10] pose various threats to historic practices of freedom on the seas. Specifically, these threats include: the assertion of territorial sea boundaries beyond the U.S.-recognized three-mile limit, which could

[7] For a comprehensive analysis of the Informal Composite Negotiating Text [hereinafter cited as ICNT] articles relating to freedom of navigation, see Shelton and Rose, *Freedom of Navigation: The Emerging International Regime*, 17 SANTA CLARA L. REV. 523 (1977).

[8] Since the protection of freedom of navigation is one of the primary goals of the Conference, provisions relating to that objective are contained in many of the articles under discussion. The current basis of discussion is the Informal Composite Negotiating Text, Fourth United Nations Conference on the Law of the Sea, U.N. Doc. A/CONF. 62/W.P.10 (1977), as supplemented by informal reports to the Conference from the leaders of the negotiating sessions. Provisions relating to freedom of navigation include ICNT arts. 17-59, 86-96 and 193-234.

[9] Singapore, Spain, Turkey, and other states bordering straits have suggested that the quality of their environment must be protected and restrictions on the passage of vessels through straits off their coasts may be required.

[10] Costs Rica, Chile, Equador, and Peru have seized fishing vessels operating within 200 miles of their coasts. Vessels which have been underway and not fishing have been seized.

close more than 120 "international straits" formerly classified as high seas under a three-mile territorial sea limit; the assertion of a 200-mile jurisdictional limit over living resources, including the authority to restrict vessel operations to protect these resources; and, the assertion of jurisdiction by "archipelagic" states over waters bounded by their outermost islands allowing them to impose conditions on passage through areas which have traditionally been considered part of the high seas.[11]

The failure to include basic high seas navigational freedoms in an LOS treaty would adversely affect U.S. economic interests. Foreign trade may now be as important to our national security as naval strength. The waterborne foreign commerce of the U.S. consists of $240 billion worth of cargo per year.[12] Onerous or discriminatory trade regulations imposed by foreign nations would greatly increase the cost of moving goods. The resulting increase would impair our ability to market goods in foreign markets, increase the trade deficit, and raise domestic consumer prices.

With respect to military security, our strategy of forward-based deployment of forces is predicated on unimpeded passage by military and commercial vessels and aircraft under and over the oceans. Such unimpeded passage can be assured only through a uniform comprehensive international treaty, or, in the alternative, through the exercise of military force.

Third, while U.S. interests in non-living resources of the continental shelf are protected under existing international law,[13] lack of agreement in the current internationally-recognized delineation of the limits of the continental shelf presents a serious issue. Past efforts to define the limits of the shelf have resulted in ambiguity. For example, Article 1 of the 1958 Convention on the Continental Shelf[14] defines the shelf as:

> [the] seabed and subsoil of the submarine area adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superadjacent waters admits of the exploitation of the natural resources of the said area.

This definition has become increasingly unclear in view of advanced

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11 The Cook Islands provide an example of the additional jurisdiction an archipelagic island nation may claim as a result of these new concepts. While the fifteen islands in the group have only a land area of 149 square miles, they encompass 1.2 million square miles of ocean.

12 Projection for 1978, Maritime Administration, U.S. Dep't of Commerce (1978).

13 Under present international law, as set out in the Convention on the Continental Shelf, *entered in force* June 10, 1964, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311, a coastal state has sovereign rights over the resources of the shelf. For a definition of the Continental Shelf, see note 10 and accompanying text *infra*.

14 Convention on the Continental Shelf, *supra* note 9.

deep sea drilling technology.[15] In order for U.S. mining corporations to justify the significant capital investment necessary to explore the continental shelf, a new internationally-recognized definition of the shelf must be developed. The oil industry, for example, is greatly concerned with the resolution of this issue because of the significant amounts of oil beyond the generally recognized limits of the U.S. continental shelf. Although the present version of the treaty does not include a precise definition of the outer limit of the continental margin, it is likely that an agreement can be reached which would protect U.S. interests.

Fourth, the establishment of an international regime for access to the resources of the deep seabed is important to the U.S. for two reasons. First, mining the seabed under international auspices avoids the problems of parochial opposition faced by certain industries and activities.[16] For example, leaders of several developing nations have stated that U.S. unilateral deep seabed mining operations would be in violation of international law.[17] In the absence of a treaty, our companies or consortia cannot be certain that mining operations will be free from disruption that could destroy their profitability.[18] Second, such an international deep seabed regime could well serve as a specific model for other forms of North-South economic institutions,[19] thus having a positive impact on our continuing efforts to achieve stable relationships with the developing world.

Fifth, protection of the marine environment is becoming an accepted national priority. For example, last year's breakthrough in international tanker safety standards set by the Intergovernmental Maritime Consultative Organization in London was ultimately re-

[15] Only economics constrains deep sea drilling at this time. A National Science Foundation study concluded that the Glomar Explorer, a research vessel built by the CIA for deep sea intelligence operations, could drill a production well and install blowout preventers in waters up to 10,000 feet deep. Joint Oceanographic Institutions for Deep Earth Sampling, The Future of Scientific Ocean Drilling (1977), *reprinted in* 200 SCIENCE 1254 (1978).

[16] For two examples of such parochial opposition, one need only look to the opposition to the whaling industry vis-a-vis Green Peace or recall the local opposition in Japan and New Zealand to calls by nuclear warships.

[17] For a summary of the developing world's reaction to proposed unilateral action by U.S. licensing of U.S. citizens to exploit the resources of the deep seabed, as well as the U.S. response, see General Committee, Provisional Summary record of the 41st Meeting (closed), U.N. Doc. A/CONF. 62/BUR/SR.41 (1978).

[18] SCIENCE POLICY, RESEARCH, FOREIGN AFFAIRS AND NATIONAL DEFENSE, AND ECONOMICS DIVISIONS, LIBRARY OF CONG., DEEP SEABED MINERALS: RESOURCES, DIPLOMACY, AND STRATEGIC INTERESTS, 102-06 (1978) [hereinafter cited as LIBRARY OF CONGRESS REPORT].

[19] Darman, *Law of the Sea: Rethinking U.S. Interests*, 56 FOREIGN AFF. 373, 373-95 (1978).

flected in U.S. legislation.[20] By committing all countries to international standards, an LOS treaty would maximize the chance that U.S. waters will not be polluted by the ships and offshore activities of other nations.

A sixth important U.S. interest that would be furthered by an LOS treaty is the protection of living resources within the waters of the world. The United States actively protects coastal fisheries within its 200-mile zone under the authority of the Fisheries Conservation and Management Act of 1976.[21] Equally essential to U.S. fisheries, however, is effective management and protection *outside* our 200-mile zone and within the 200-mile zone of other nations.[22] Specifically, salmon, tuna, and shrimp, as well as whales and other marine mammals, can *only* be protected if fishery protection extends beyond our 200-mile limit. The U.S. interest in tuna provides a concrete example of the need for such protection. Tuna range across most of the Pacific, and are often most easily caught within the 200-mile limits of other countries. The U.S. distant water tuna fleet is the largest and most sophisticated fleet in the world, and U.S. citizens consume about fifty percent of the total world catch.[23] A treaty based on the current text would help protect our interests in tuna since it would establish principles of regional management as well as equitable allocation of surplus stocks to all fishing nations. These provisions are particularly important to the U.S. because virtually all of the countries which followed our lead in establishing 200-mile fishing zones declined to incorporate our exemption for highly migratory species, and currently insist on control over all vessels fishing for tuna within their 200-mile zones.[24]

A final U.S. interest that would be advanced by an LOS treaty is marine scientific research. Such research in the oceans within 200 miles of other nations' shores is as important as any research we can hope to conduct in our own waters. Even if a treaty were more restric-

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20 *See, e.g.*, Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, 92 Stat. 1471 (amending the Ports and Waterways Safety Act of 1972, 33 U.S.C. § 1221 (1976)).

21 Note 4 *supra.*

22 Species in this category include tuna, salmon, and shrimp, which comprise 9, 15, and 22%, respectively, of the total value of fisheries landed in the United States. NATIONAL MARINE FISHERIES SERVICE, FISHERIES OF THE UNITED STATES (1977).

23 *Id.*

24 Absurdly enough, U.S. fishermen are statutorily encouraged to trespass within the 200-mile zone of other nations by government guarantees of compensation to boat owners whose ships and catch are confiscated within those zones. Fishermen's Protective Act of 1967, 22 U.S.C. §§ 1971-1979 (1976) (originally enacted as Act of Aug. 27, 1953, ch. 1018, §§ 1-9, 68 Stat. 883). The State Department resisted repeal of this act in 1978, although freely admitting its inconsistency with our new 200-mile laws.

tive than past custom, it would still be preferable to the complete denial of research within 200 miles of a nation's shores. Several developing nations see this denial as one means of retaliation against a rich nation which has chosen access to nickel and cobalt over an international treaty.[25] Although there seems no way to return to the scientific research freedoms of former years, if treaty negotiations fall through, marine scientific research may be even more restricted than if the current draft language were accepted.

EARLY HISTORY OF THE CONFERENCE

The roots of the current discussions can be traced back twenty years to the first United Nations Conference on the Law of the Sea which met in Geneva, Switzerland, in February 1958.[26] Concluding seven years of preparatory work by the U.N. International Law Commission, that Conference produced four conventions concerning the uses of the oceans and their resources. These treaties, the Convention of the Territorial Sea and the Contiguous Zone,[27] the Convention on the High Seas,[28] the Convention on Fishing and Conservation of the Living Resources of the High Seas,[29] and the Convention on the Continental Shelf,[30] form the basis for current international oceans law. However, the Conference failed to reach agreement on two key issues—the breadth of a country's territorial sea and the breadth of its fishing zone.

The third Conference, which is still in progress, was convened in New York in December, 1973[31] after six years of preparatory work by

25 The coastal states which claim a 200-mile territorial sea (Chile, Equador, Peru, and others) would certainly insist on an absolute right to control scientific research off their shores in the absence of a treaty. If the negotiations fail because of U.S. unilateral action, those countries would point to that fact in their denial of permission to U.S. scientists.

26 The second Conference was convened in Geneva in March 1960, in order to settle the remaining unresolved issues. [1960] U.N.Y.B. 542-44. It ended in failure after a compromise proposal for a six-mile territorial sea, with an additional six-mile fishing zone, fell one vote short of the two-thirds majority required for adoption. *Id.*

27 *Entered in force* Sept. 10, 1964, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.

28 *Entered in force* Sept. 30, 1962, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 11.

29 *Entered in force* March 20, 1966, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.

30 *Entered in force* June 10, 1964, 15 U.S.T. 471, T.I.A.S. No. 5578, 449 U.N.T.S. 311.

31 General Assembly Resolution 2750, G.A. Res. 2750, 25 U.N. GAOR, Supp. (No. 28) 25, U.N. Doc. A/8097 (1970), provided that a third Conference on the Law of the Sea would be convened in 1973 and instructed the Committee to undertake the preparatory work of the Conference. The Resolution directed the Committee to:

> deal with the establishment of an equitable international regime—including an international machinery—for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues including those concerning the regimes of the high seas, the continen-

the Ad Hoc Committee to Study the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction.[32] The Ad Hoc Committee was elevated to standing committee[33] status in 1968, and it met six times in 1969 and 1970. As a result of the Standing Committee's reports, the General Assembly unanimously voted to accept the "common heritage of mankind" concept.[34] General Assembly Resolution 2749 (XXV) stated that the "seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction . . . as well as the resources of the area, are the common heritage of mankind."[35] The declaration also provides that every state, "shall have the responsibility to ensure that activities in the area . . . shall be carried out in conformity with the international regime to be established."[36]

In 1973, after six meetings, the Standing Committee submitted its report to the General Assembly.[37] Contrary to normal practice, however, the report did not include a proposed treaty text to serve as the basis for a final negotiation. Instead, the report contained collections of draft articles setting forth alternative texts and a comparative table of proposals, a declaration, and working papers.[38] As a result of the report, the U.N. adopted General Assembly Resolution 3067 (XXVIII)[39] setting the dates, functions, and locations for initial sessions of the third

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tal shelf, the territorial sea [including the question of its breadth and the question of international straits] and contiguous zone, fishing and conservation of the living resources of the high seas [including the question of preferential rights of coastal states], the preservation of the marine environment [including, *inter alia*, the prevention of pollution] and scientific research. *Id.* at 26.

32 This Ad Hoc Committee, chaired by Ambassador H. Shirley Amerasinghe of Sri Lanka, was formed in 1967, G.A. Res. 2340, 22 U.N. GAOR, Supp. (No. 16) 14, U.N. Doc. A/6716 (1967), after the U.N. Representative from Malta, Ambassador Pardo, called for the preparation of a treaty that would reserve the seabed and ocean floor as the common heritage of mankind. 22 U.N. GAOR, C.1 (1515th mtg.) 1, U.N. Doc. A/C.1/PV (1967). Pardo believed that current and future technological advances would "lead to a competitive scramble for sovereign rights over the land underlying the world's seas and oceans, surpassing in magnitude and in its implications last century's colonial scramble for territory in Asia and Africa." *Id.* at 12. He also believed that this international struggle would: (1) result in inequitable allocation of food, fuel, and mineral resources; (2) have a negative impact on land-based mineral resource producers; (3) increase the use of the seabed and ocean floor for military purposes and intensify the arms race in the deep ocean area; and (4) result in increased pollution, including radioactive pollution, of the marine environment. *Id.* at 2-14.

33 In 1971, the Standing Committee reorganized itself into three subcommittees, the first of which was directed to address the seabed mining issue. For a description of the jurisdiction of all three subcommittees, see LIBRARY OF CONGRESS REPORT, *supra* note 18.

34 G.A. Res. 2749, 25 U.N. GAOR, Supp. (No. 28) 24, U.N. Doc. A/8097 (1970).

35 *Id.*

36 *Id.* at 25.

37 LIBRARY OF CONGRESS REPORT, *supra* note 18.

38 *Id.* at 23.

39 G.A. Res. 3067, 28 U.N. GAOR, Supp. (No. 30) 13, U.N. Doc. A/9278 (1973).

Conference[40] in 1973, 1974, and 1975.

RECENT EFFORTS OF THE THIRD LOS CONFERENCE: THE GENTLEMEN'S AGREEMENT

There have been seven sessions of the Third LOS Conference[41] to

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[40] The mandate of the Conference was to:

> adopt a convention dealing with all matters relating to the law of the sea, taking into account the subject-matter listed in paragraph 2 of General Assembly Resolution 2750 C (XXV) and the list of subjects and issues relating to the law of the sea formally approved on 18 August 1972 by the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole.

G.A. Res. 3067, *supra* note 39, at 14.

[41] At the outset of the first session, Ambassador Amerasinghe of Sri Lanka, Chairman of the Seabed Committee, was elected President of the Conference by acclamation. U.N. Doc. A/Conf. 62/SR.1-13 (1973); [1973] U.N.Y.B. 44-46. It was also decided that the work of the Conference would be patterned after the Seabed Committee organization:

Committee I —International regime for the seabed and ocean floor beyond national jurisdiction.

Committee II —Territorial sea, contiguous zone, straits used for international navigation, continental shelf, exclusive economic zone, coastal state preferential rights to resources beyond the territorial sea, high seas, land-locked countries, rights of shelf-locked states or states with narrow shelves or short coastlines, rights of states with broad shelves, archipelagos enclosed or semi-enclosed seas, artifical islands and installations, regime of islands.

Committee III—Preservation of the marine environment, scientific research, development and transfer of technology. *Id.*

Also during this session, the Conference leadership positions were filled. *Id.* The United States was elected to fill one of the thirty Vice-Presidencies and was appointed a member of the Drafting Committee. *Id.* The final agenda item for the first session was the adoption of the rules and procedures for the Conference. *Id.* Discussions of this topic were not completed by the end of the session. *Id.* The second session, held in Caracas from June 20 to August 29, 1974, completed the adoption of the rules of procedure. U.N. Doc. A/CONF.62/30/Rev.1/Add.1 (1974); [1974] U.N.Y.B. 71-84. The third session, held in Geneva, Switzerland, from March 17 to May 9, 1975, marked the commencement of substantive negotiations. U.N. Doc. A/CONF.62/WP.9; [1975] U.N.Y.B. 116-32. During the session, the President of the Conference asked the Chairman of each Committee to prepare an Informal Single Negotiating Text (SNT) covering the subjects entrusted to his Committee. *Id.* The President stressed that the SNT should take into account all of the formal and informal discussions held, should be informal in character, should not prejudice the position of any delegation, the status of proposals already made, or the right to submit amendments or new proposals, and should serve as a procedural device and provide a basis for further negotiation. *Id.*

The First Committee portion of the document generally favored the position of the developing countries, and was criticized by the United States and other industralized countries. *Id.* at 120-22. The Second and Third Committee texts, while incomplete, were generally acceptable to most delegations. *Id.* at 122-24.

The fourth session of the Conference was held in New York from March 15 to May 7, 1976; its purpose was to revise the SNT in an attempt to move closer to a package commanding consensus. The resulting Revised Single Negotiating Text (RSNT)—U.N. Doc. A/CONF.62/WP.8/Rev. 1 and A/CONF.62/WP.9/Rev. 1—drafted by the Committee Chairmen, was issued on the last day of the session. In this revision, the Commitee I text favored the position of the industralized countries. Because of its last minute issuance, however, no criticisms of the text were heard. The sections concerning Committee II and III were further refined.

date, and each had an impact on the progress of the Conference. How-

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The fifth session of the Conference was held in New York from August 2 to September 17, 1976. The bulk of the session, especially in Committee I, was devoted to charges by the developing countries that the industralized countries had resorted to secret procedures, outside the rules of the Conference, in order to influence the details of the Committee I RSNT. A stalemate resulted, and no new texts were drafted during the session.

The sixth session of the Conference was held in New York from May 23 to July 15, 1977. In an effort both to break the deadlock which had developed during the fifth session and to produce a series of new proposals on the major seabed issues, a preparatory meeting was held in Geneva from February 28 to March 11, 1977. That meeting, under the Chairmanship of Minister Jens Evensen of Norway, produced several unofficial proposals. These proposals were the focus of discussion in Committee I during the session, the first three weeks of which were devoted exclusively to the discussion of Committee I issues. After the first three weeks, all three Committees continued negotiations on the unresolved issues.

The product of the session was the Informal Composite Negotiating Text (ICNT), A/CONF.62/WP.10 and Add. 1. Each section was written by the appropriate Committee Chairman and was based on his assessment of what might improve the possibility of consensus. However, the Committee I text did not reflect the negotiations conducted under the Chairmanship of Minister Evensen and included unnegotiated provisions which favored the views of the developing countries. This unexpected outcome caused considerable concern among the Conference delegates, especially those from the industrial countries. After the close of the session, Ambassador Richardson issued a press release, 77 DEP'T STATE BULL. 389 (1977), characterizing the text as "fundamentally unacceptable" and suggesting that the United States "undertake a most serious and searching review of both the substance and procedures of the conference."

The ICNT provisions concerning Committee II and III issues were refined to the point where the majority of the provisions represented consensus positions. For the first time, the text included compromise language which offered a formula for the width of the territorial sea (12 miles) and the width of a fisheries zone (188 miles beyond the territorial sea) while protecting traditional navigational freedoms. Although Ambassador Richardson criticized the Committee I portion of the ICNT, his press statemented noted the "real progress of vital issues relating to international security and freedom of navigation." 77 DEP'T STATE BULL. 389 (1977).

During the seventh session, the Conference held two meetings. The first convened in Geneva and met from March 28 to May 19, 1978. The second meeting was held in New York from August 21 to September 15, 1978. Much of the time at the spring session was spent discussing the Conference procedure which has allowed a Committee Chairman to make changes in the text which did not accurately reflect the trend of the negotiations. This discussion was prompted by Chairman Engo's changes in the RSNT which did not incorporate Minister Evensen's work into the ICNT. Many delegates believed Chairman Engo changed the text for political purposes and acted in bad faith. It was ultimately agreed, however, that Committee Chairmen should retain a broad degree of discretion over textual changes. The debate reflected both the frustration of the industralized countries with the production of the ICNT and the skepticism of the developing countries who believed they had been ignored when the RSNT was issued.

Following lengthy debates, seven informal "Negotiating Groups" were formed to deal with specific "hard core" issues. Three dealt with seabed issues, two with the question of rights of landlocked and other states to fish in the economic zone of a coastal state, one with the issue of boundary delimitation between states, and the last with the question of a coastal state's rights and duties with respect to continental shelf resources. The composition and jurisdiction of these groups is spelled out in U.N. Doc. A/CONF.62/62. The Geneva meeting ended without the issuance of any revised texts, but the Chairman of each Negotiating Group did issue an informal report.

The work undertaken during the spring meeting was resumed at the summer meeting, with special emphasis on the seabed issues. Although no revisions of the text resulted from the second meeting, informal papers were again issued by the Negotiating Group Chairmen. At the close of

ever, the single most important event occurred during the second session when the rules of procedure were adopted.[42] This event was the adoption of the so-called "Gentlemen's Agreement."[43] This rule, originally formulated by the General Assembly specifically for the Conference, is the principle under which all the negotiations are conducted. The rule provides as follows:

> Recognizing that the Conference at its inaugural session will adopt its procedures, including its rules regarding methods of voting and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole and the desirability of adopting a Convention on the Law of the Sea which will secure the widest possible acceptance.
>
> The General Assembly expresses the view that the Conference should make every effort to reach agreement on substantive matters by way of consensus; that there should be no voting on such matters until all efforts at consensus have been exhausted; and further expresses the view that the Conference at its inaugural session will consider devising appropriate means to that end.[44]

This procedural rule, stressing the need for a comprehensive treaty, requires that negotiations continue until a complete treaty, acceptable to all parties, is concluded. Since no issue is laid to rest until all articles are acceptable, the rule results in protracted negotiations. The rule does ensure flexibility, however, because the parties are not required to go on record on each issue. This procedure allows the parties to reach compromises in some areas while protecting more important national interests in other areas without having specific concessions highlighted by a substantive vote. The United States and U.S. corporations interested in deep seabed mining must keep in mind that lengthy, and often frustrating, negotiations are a result of the "Gentlemen's Agreement." Although it may appear that unilateral U.S. legislation will resolve certain issues, it may destroy much of the progress reached so far and undermine U.S. credibility as a nation concerned with interests other than its own.

Regional and Interest Group Alliances at the Conference

One of the developments in the Conference has been the organiza-

this meeting, the Conference agreed to reconvene in Geneva on March 19, 1979, to sit for eight weeks, the first three of which would be devoted exclusively to seabed issues. Delegates agreed to consider a second meeting later in the year in the event that a proposed final treaty text could be formalized at that time. The objectives and procedures for the eighth session are contained in U.N. Doc. A/CONF.62/69.

42 28 U.N. GAOR, Annexes (Agenda Item 40) 1, 4, U.N. Doc. A/9278 (1973).

43 *Id.*

44 *Id.*

tion of groups of countries along regional or special interest lines. A major consequence of this development has been the increased fragmentation of nations into voting blocs. This fragmentation, in light of the "Gentlemen's Agreement," increases the likelihood of protracted negotiations. The regional groups, the Latin American Group, the Asian Group, the African Group, the Western-European and Others Group, and the Eastern-Europe Group, exert their greatest influence over procedural issues. Regional groups do not exert a strong influence over substantive issues since most of those issues are based on interests which cross regional lines. The exceptions to this rule are those issues which require regional cooperation, such as management of migratory fish or marine environmental protection regimes. Alliances based on common interests, either economic, philosophic, or political, are the most effective alliances at the Conference. Such alliances include the Group of 77, the industralized countries, the landlocked and the geographically disadvantaged states, the straits states, the broad margin group, the archipelagic states, the land-based producers, and the coastal states.

The Group of 77 (G-77) is a coalition of over 115 "third world" developing countries.[45] It is the largest, best organized, and most cohesive of the interest groups in the Conference. The group caucuses before and during Conference sessions, and uses a consensus procedure to develop positions on the major issues under discussion. The G-77 includes resource and capital rich countries, such as Saudi Arabia, as well as countries with vast untapped resources and limited capital such as Brazil and Zaire. It includes some of the world's poorest countries with no resources, no capital, and widespread social, economic, and political problems, such as Bangladesh and Upper Volta. In addition, conflicting interests within the group based on geographical location, *e.g.*, landlocked versus coastal states, or political philosophies, result in group positions which often focus on general political goals rather than specific LOS issues. These goals are often tied to other international goals, such as the establishment of a New International Economic Order (NIEO) which advocates the transfer of wealth and technology from the developed countries of the "North" to the developing countries of the "South." This has been, and continues to be, a major goal of the G-77 during the negotiations.

[45] Ambassador Satya Nandan of Fiji, a moderate, is the current chairman of the group. Nandan and other moderates, including delegates from Kenya, Brazil, Peru, Mexico, and Indonesia, have recently taken an active role in the group's deliberations and, as a result, the positions taken by the group have become less strident and politicized.

The G-77 is a significant force which demands recognition because it represents a two-thirds numerical majority. If the "Gentlemen's Agreement" procedure breaks down and individual issues are put to a vote, the G-77 would be able to rewrite the treaty, unravel the compromises, and politicize the provisions, thus destroying all progress.

The industralized nations form a second interest alliance. The developed countries in this group possess the technology required to mine the deep seabed and have a major interest in the maintenance of free navigation on the high seas for military and commercial purposes. The group is not well organized. While the members do communicate their concerns to one another, they do not meet as a body and do not develop consensus positions for presentation by a spokesman. This disorganization is a result of the social, legal, and political differences among group members. Key members of this group include: the United States, the Soviet Union, France, the Federal Republic of Germany, the United Kingdom, Japan, Belgium, and Canada.

A third interest alliance is made up of the landlocked and the geographically disadvantaged states (LL/GDS). This group includes those countries which do not have direct access to the high seas or whose economic zone is severely restricted in size because of neighboring economic zones. The group, claiming a membership of over fifty—a "blocking third"—was organized at the instigation of several developed countries. They hoped that the LL/GDS group, cutting across developed/developing country lines, would counter-balance the countries in the G-77—primarily the Latins—who were seeking sovereign rights in a 200-mile zone off their coasts. The group has been successful in negotiating a regime which will give its members access to surplus fisheries in the region's economic zones and provide for a dispute settlement procedure if they are denied such access.[46] While these provisions are not a part of the Informal Composite Negotiating Text, they will probably be included when it is revised. The landlocked countries in the group have also been successful in negotiating a regime for access to the oceans.[47]

The group has been effective because its members have a strong common goal of access to the oceans and their resources. In addition, the rest of the Conference recognizes that this group could block a treaty if its interests are not accommodated.[48] Members of the

[46] Informal Negotiating Group Document NG4/9/Rev. 2, ICNT, *supra* note 8, arts. 62, 69, 70.

[47] ICNT, *supra* note 8, arts. 124-132.

[48] Conference procedures, including the "Gentlemen's Agreement," make it quite simple for a

LL/GDS group include Austria, Nepal, Singapore, Paraguay, and Cuba.

The straits states constitute a fourth alliance. This group includes those countries that border straits which are open under existing three-mile territorial sea limits, but which may be closed, thereby becoming part of the territorial sea of the bordering state, under the proposed twelve-mile territorial sea limit. Countries in this group include Spain, Morocco, Singapore, Indonesia, and Yemen.

While passage through straits is a critical issue to the major maritime countries, a regime satisfying their interests has been negotiated and seems to have general support.[49] However, the straits states are a small minority and have not been able to develop support for a renegotiation of the regime.

Another alliance is the broad margin group. This group includes those countries with continental shelves that extend beyond their coasts by at least 200 miles. Key participants in this group include Australia, New Zealand, India, Ireland, and the United States. The group is interested in maximizing its jurisdiction over the non-living resources of the shelf. The key problem with this issue is the establishment of clear criteria for shelf limits which provide certainty and have geomorphological justification. Although the alliance has agreed on a formula which would solve its political requirements, countries which do not have broad margins or which do not want to give broad resource rights to others have blocked adoption of the formula. The Soviet Union and the Arab group have offered counterproposals to the group's formula,[50] thereby compounding the problem of achieving consensus.

The archipelagic states alliance includes countries which are composed of chains or groups of islands such as Indonesia, the Philippines, the Bahamas, Fiji, and Papua-New Guinea. They are keenly interested in adopting provisions which would give them the right to establish

large group (at least 30-50) of determined countries to block a treaty. This could be accomplished by: objecting to the formulation of articles on the ground that no consensus has been reached, offering a series of amendments during finalization of the text, calling for votes on individual matters and amendments, long statements on the floor, or voting against finalization of the text. The effectiveness of any of these procedural tactics would depend on the cohesiveness of the group, and whether the Conference leadership believed there was sufficient support to override their objections and still have the necessary two-thirds for final approval.

49 ICNT, *supra* note 8, arts. 34-44.

50 These proposals were floated during the seventh session. The Soviets proposed that any shelf which extended beyond 200 miles be cut off at its limit (undefined) or at 300 miles, whichever was shorter. The Arab group, perhaps to keep as much offshore oil in international hands as possible, rather than in the hands of their competition, proposed to limit all coastal state jurisdiction to 200 miles.

jurisdiction over all activities which occur within the area bounded by their outermost islands. With the help of the major maritime countries, this group has been successful in establishing a regime which satisfies its resource interests but does not infringe on traditional high seas freedoms within its economic zones.[51]

The land-based producers' alliance includes those countries which are current or potential producers of the minerals that will be extracted from the deep seabed. The group consists of developed as well as developing countries, and includes the Soviet Union, Chile, Zaire, Cuba, Canada, and Papua-New Guinea. These countries want to ensure that deep seabed mining does not adversely affect the profitability of their current or future land-based mining. The group has been successful in having a deep seabed mining production control mechanism inserted in the ICNT to protect its interests.[52]

A final interest alliance is that of the coastal states. This group includes those nations which seek sovereign rights in the 200-mile zone off their coasts. It is composed primarily of those Latin American countries which have made 200-mile territorial sea claims. Key members of this group include Mexico, Peru, Ecuador, and Chile. During the sixth session, these countries, after extensive negotiations with the LL/GDS group regarding rights in the 200-mile economic zone, reached an agreement on this issue.

Factors Affecting the Conference

Conference procedures have had a significant impact on the progress of the negotiations. The procedure outlined in the "Gentlemen's Agreement" has allowed the Conference leadership to avoid putting issues to a vote, thereby reducing the risk of a "tyranny of the majority." In the course of exploring all possible methods of achieving consensus, parties have ample time and flexibility to seek compromises, make trade-offs, and achieve the "package" of agreed proposals. This process, while time-consuming, offers a better chance of achieving a generally acceptable, comprehensive treaty than would a procedure which required votes on each issue. Other significant procedures include the use of negotiating texts as the basis for discussion and the committee chairman's authority to make textual revisions that reflect his personal assessment of the emerging consensus.

In 1975, frustration over the slow pace of the U.N. proceedings led

51 ICNT, *supra* note 8, arts. 46-54.
52 *Id.* art. 150.

the United States to consider unilateral declaration of a 200-mile fisheries zone.[53] After initial resistance, the Administration gave in to public and congressional impatience and indicated that it would accept a properly-drafted bill.[54] At the time, a number of observers, including the authors, warned that U.S. unilateral action could undermine the LOS negotiations. The same series of events took place in 1978, when the Carter Administration took parallel action in the wake of inadequate conference progress.[55]

The enactment in 1975 of the Fisheries Conservation and Management Act[56] established a 200-mile fisheries zone. Within two years, eighty-six other countries had made varying claims with respect to fisheries off their coasts. Action by the United States and these eighty-six states had the effect of limiting their options at the Conference because each was bound by the expression of its national policy as manifested in its unilateral actions. Shortly after the action by the United States, the fisheries management regime under negotiation at the Conference commanded a consensus, and no further negotiations concerning those provisions were scheduled. Specifically, the regime established in the ICNT differs from the regime established by U.S. legislation in that the United States did not assert jurisdiction over highly migratory fish, such as tuna, which are within 200 miles of our shores, while the regimes established in the ICNT and eighty-three of the eighty-six other countries do assert such jurisdiction. United States policy is that highly migratory fish—those that may pass through the fishing zones of many countries during their life spans—can be managed effectively only by a regional organization. Since few tuna ever come within 200 miles of the United States, the U.S. policy appears to be self-serving, and its position on tuna is not likely to be adopted.

Unilateral action by the United States had several unintended and adverse impacts. First, it preempted debate over what kind of fisheries regime should be established. Second, it foreclosed the possibility of a

53 Fisheries Conservation and Management Act of 1976, Pub. L. No. 94-256, 90 Stat. 331 (codified in scattered sections of 5, 16, & 22 U.S.C.).

54 This position was never formally presented to Congress; however, the lack of a strong lobbying effort by the Administration against the bill, the failure of the President to exercise his veto power, and the "Statement by the President upon signing H.R. 200 into Law" dated April 19, 1975, indicated the Administration's acceptance of the measure.

55 The Administration's opposition to a bill was dropped in October 1977, after the sixth session of the Conference resulted in deep seabed mining provisions which were "not openly arrived at" and "fundamentally unacceptable" to the United States. Statement by Ambassador Elliot L. Richardson, Special Representative of the President to the Law of the Sea Conference at the United Nations, 77 DEP'T STATE BULL. 389 (1977).

56 Note 49 *supra.*

regime which would have given the United States a voice in the regional management of tuna and a role in the allocation process. Finally, the U.S.'s special exemption for tuna has been interpreted as an act of bad faith with consequent damage to its international credibility.[57]

Another U.S. activity conducted outside the Conference has had an unfortunate impact on the negotiations. Use of the Glomar Explorer to engage in covert military activities for the CIA, and the official explanation that the Glomar was engaged in private scientific experiments, was used as a justification for treaty language permitting a coastal state to grant or withhold its consent to any scientific research conducted off its coasts. The stated purpose for the measure was to permit the nation to protect its internal security or to prevent foreign commercial interests from secretly obtaining information regarding the potential of its economic zone resources. Distrust and suspicion surrounding CIA ocean activity were complementary to the distrust engendered by apparent U.S. manipulations of the deep seabed treaty language.

Even though the United States' enactment of the 200-mile fishery zone law did not end LOS negotiations, it seems likely that unilateral deep seabed action could. Although such legislation has been introduced in each session of Congress since 1972, it was only after the Carter Administration dropped its opposition in mid-1978 that a deep seabed mining bill finally reached the floors of the House and Senate. On July 26, 1978, before the second meeting of the seventh session, the House of Representatives passed a deep seabed mining bill[58] by an overwhelming margin after learning of White House support for the measure.

The response of the negotiating nations to passage of the bill was prompt. Speaking for the G-77, Ambassador Satya Nandan of Fiji condemned the proposed U.S. action, stating that it would "prejudice negotiations and would have a negative impact on them."[59] The G-77 argued that such unilateral legislation would be "an exercise of sover-

[57] *Fisheries Disputes Threaten U.S. Relations in South Pacific*, Baltimore Sun, Oct. 25, 1978, at A-5. *See also Tiny Pacific Islands Assert Their Claim to Much of Ocean*, Wall St. J., Nov. 29, 1978, at 1, col. 1. In a recent interview regarding the establishment of a regional management authority by the group of South Pacific Island nations, the Fijian prime minister, Sir Kamisese Mara, said that because the U.S. did not recognize the sovereignty of coastal states over highly migratory species like tuna, America was not welcome to participate in the negotiations. He concluded by saying that the U.S. attitude "stuck in my throat."

[58] H.R. 3350, 95th Cong., 2d Sess., 124 CONG. REC. 7341 (1978).

[59] 109th Plenary Meeting of the United Nations Third Conference of the Law of the Sea, U.N. Doc. A/CONF.62/SR.105 (1978) (Provisional).

eignty," and "incompatible" with the Conference's Declaration of Principles and "wholly illegal."[60]

Although the United States was committed to the conclusion of a broadly acceptable treaty at the earliest possible date, it also had an obligation to encourage the development of deep seabed mining technology even while an international regulatory regime was being negotiated. Ambassador Elliot Richardson explained that the Carter Administration's position was prompted by the need for interim legislation to allow technological development to go forward.[61] He noted that the slow pace of the Conference was jeopardizing technological development that would benefit all nations, not just the United States.[62] Ambassador Richardson was more restrained than he might have been. He, and undoubtedly the Administration as well, had reluctantly reached the conclusion that the only deep seabed provisions acceptable to the G-77 would not be ratified by the U.S. Senate in treaty form.

Congress recessed on October 15, 1978, without House and Senate agreement, but discussion of the House's action continued in the U.N. General Assembly after the LOS Conference session concluded.[63] During the general debates, forty-four delegations, including one developed country, Norway, deplored the United States' position.[64] Only one nation, the Federal Republic of Germany, spoke in support.[65]

CURRENT STATUS

As previously noted, the majority of the issues under discussion at the Conference have the consensus support described by the "Gentlemen's Agreement." In most cases, language reflecting this consensus has been incorporated into the ICNT, although several compromise packages which were negotiated during the most recent session have only been spelled out in informal documents drafted by Committee or Negotiating Group Chairmen. These documents, however, have been presented to the Conference as reports, and can be expected to be in-

60 *Id.* For a summary of the reactions to G-77, as well as other countries, see U.N. Doc. A/CONF.62/BUR/SR.41 (1978).

61 Statement by Ambassador Elliot L. Richardson, Special Representative of the President for the Law of the Sea Conference, to the Plenary Meeting (Sept. 15, 1978).

62 *Id.*

63 U.N. Secretariat unofficial summary of the main points pertaining to Law of the Sea in the General Debate, 8th Plenary Meeting of the 36th General Assembly (Sept. 26, 1978) (unpublished).

64 *Id.*

65 *Id.*

corporated into the revised ICNT during the eighth session, which commenced in March, 1979.

If no unforeseen event upsets these compromises, the following issues can be resolved: the limits of the territorial sea,[66] the limits and the rights and duties of all states in an "economic zone" for living resources,[67] an international regime for marine environmental protection,[68] the rights and duties of all states and of their commercial and military vessels and aircraft in and over all ocean zones,[69] the rights of landlocked and "geographically disadvantaged"[70] states to the living resources within their region,[71] and the settlement of disputes regarding the living resources within a country's economic zone.[72]

In addition to the major problems of deep seabed mining, a few other unresolved issues remain: the limits of a coastal state's jurisdiction over continental shelf resources and the establishment of a system of revenue sharing for exploitation of the continental margin where it extends beyond the economic zone,[73] the rules concerning the conduct of marine scientific research within a country's economic zone or on its continental shelf,[74] and dispute settlement regarding boundaries between opposite and adjacent states.[75] With respect to the first two of these issues, outlines for the final compromises are on the table. Resolution will depend on agreement by a few key states to final compromise formulas.[76] Although it is not likely that the boundary issue can be fully resolved, given the bipolar nature of boundary disputes,[77] a scheme to *approach* the resolution of boundary disputes will likely be

66 ICNT, *supra* note 8, arts. 3-16, 47, 48.

67 *Id.* arts. 47, 48, 55-75.

68 *Id.* arts. 193-238.

69 *Id.* arts. 2, 17-45, 49-54, 86-132.

70 The precise definition of which states should be considered geographically disadvantaged has not been finalized.

71 ICNT, *supra* note 8, arts. 62, 69, 70.

72 *Id.* arts. 296-97.

73 *Id.* arts. 76-85.

74 *Id.* arts. 239-66.

75 *Id.* arts. 74, 83.

76 At the seventh session, the Soviet Union offered a new formula for the limits of jurisdiction over the continental shelf which was inconsistent with that supported by a majority of the interested states. The Soviets will have to withdraw their proposal or convince the other interested states of the merits of their proposal before an agreement can be reached. Regarding scientific research, the United States is virtually alone opposing the regime established in the ICNT. United States objectives will have to be satisfied or dropped before this issue can be considered resolved.

77 There are two primary rules for delimiting boundaries between opposite or adjacent countries. One calls for the application of "equitable principles"; the other uses an "equidistance" or "median line" standard. The key issue in most boundary disputes is which rule should be applied.

agreed upon and incorporated into the revised ICNT.[78]

While the foregoing analysis permits restrained optimism for a successful conference, a brief review of the unresolved deep seabed mining problems[79] reverses the picture. The following issues are outstanding: terms for the transfer of technology and expertise to the international community (transfer is bitterly opposed by U.S. companies), limitations on mineral production from the seabed to avoid market dislocations or an adverse impact on existing operations, the composition of and the relationships among the international organizations which will adminster the exploitation of the seabed, limitations on the number of mine sites which can be granted to any person or country in order to avoid a monopoly, a mechanism for review of the deep seabed mining regime to ensure that its objectives are achieved, compensation for developing countries suffering economic setbacks as a result of deep seabed mining, and the qualification requirements and selection procedures for applicants to mine the seabed.

Resolution of these issues is difficult for several reasons. The developing countries believe that the "common heritage of mankind" concept means that mining privileges should be granted only if the established relationship between the "International Seabed Authority" and the miner will further the goals of the New International Economic Order. Technology transfer to this Authority is a key factor in the G-77 position. The industralized countries, however, recognizing that seabed mining technology has been developed and is owned by private industry, support the industry's position that any technology transfer should take place only through free market commercial negotiations.

The industralized countries further contend that under existing law deep seabed mining is a *right*, not a privilege. Their arguments that international regulation could effectively deny *all* mining reaches a receptive audience in a Congress which increasingly reflects an anti-regulatory bias.[80]

Because commercial seabed mining is largely untested, most of the protective provisions are phrased in highly technical language to guard against possible contingencies. For example, a complex formula for production controls to protect land-based mining operations has been under discussion for two years even though there is no firm evidence

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78 The outline of this approach is contained in Informal Negotiating Group Document N67/20 (May 15, 1978).

79 ICNT, *supra* note 8, arts. 133-92.

80 The recent Administration efforts to deregulate airlines and the trucking industry has not been opposed by Congress. The growth of regulations and government was a major campaign issue during the 1978 elections.

that seabed mining will be practicable or profitable, or that it will have a significant impact on land-based mining operations.

Another category of difficult issues involves the administrative branches of the International Seabed Authority: the Executive Council, the General Assembly, the Technical, Economic and Planning Commission, the Rules and Regulations Commission, the Seabed Dispute Tribunal, and the Secretariat. Since the structure and power of these bodies will control the operations of all other provisions, it is likely that final negotiations regarding the composition relationships of these bodies will be resolved near the conclusion of the negotiations. The sheer size of the bureaucracy necessary to allay the fears of the 156 participating nations could prevent ratification by the U.S. Senate, in view of recent criticism of our domestic bureaucracies.[81]

Finally, there is reluctance to finalize several key issues until the entire package is near completion. An example of such hesitancy centers on the quota or anti-monopoly provisions sought by the Soviet Union. The Soviet Union, a producer of those minerals which will be exploited from the seabed, does not want any one country dominating the world mineral markets or holding rights to all the prime seabed mining sites. The Soviets would like an anti-monopoly formula included in the criteria for the issuance of licenses to mine the seabed, but they have been reluctant to present specific proposals. Their reluctance is due in part to the fact that as long as final agreement is delayed, the issue can be used to gain leverage on other issues.

It is difficult to be optimistic about the chances for agreement on the seabed issues. Few compromises sought in the past four meetings have even approached the necessary consensus. One compromise approach currently discussed in intersessional meetings is the simplification of the text, adopting only general concepts, and allowing technical provisions to be drafted by the Authority or a special rules commission when seabed mining is closer to commencement.

Conclusion

When the eighth session of the LOS conferences convened in March 1979, House action had already begun. Senate action can be expected to follow in fairly rapid order if the eighth session is inconclusive. In its deliberations the Congress will be working from the following premises which now appear to be accepted by a majority of the

[81] Although the size of government is a traditional issue, presidential campaign promises to reduce the size of government in 1976 and similar promises during the 1978 elections drew strong voter support.

members of both Houses of Congress as well as by the Administration.

1. While the Conference has made remarkable progess in the last four years, the current language in the ICNT relating to seabed mining is unacceptable to the necssary two-thirds majority in the U.S. Senate. No treaty is therefore possible unless this language is changed.

2. United States interests are better served by a comprehensive LOS treaty than by early development of deep seabed minerals. However, if no treaty compromise is made by the G-77 nations, and thus no U.S. ratification is possible, the United States might as well proceed with unilateral action.

3. The Administration has signalled its support for a bill which contains language preserving the so-called "common heritage of mankind" concept.

4. While unilateral action may effectively end further negotiations and make a treaty impossible, there is at least a chance that the present stalemate in Committee I could be broken if the G-77 realize that the patience of the United States and other industralized countries is at an end.

5. A majority of the members of the House and Senate believe that unilateral legislation must be enacted. Years of hostile third world rhetoric at the United Nations have caused a backlash against G-77 "demands."

As in other cases in recent history, the majority may well be wrong. Without substantial change in position by the G-77, it seems a certainty that the U.S. Congress will unilaterally enact a law licensing U.S. citizens and their associates to mine the deep seabed. Only time will tell what effect this legislation will have on the future of international relations.

Addendum

As this article was going to press, the eighth session of the United Nations Law of the Sea Conference was adjourned without reaching an agreement on a comprehensive treaty or resolving the deep seabed mining issue.

The Editors