

Synopsis

RECENT DEVELOPMENTS IN THE LAW OF THE SEA 1976-1977

INTRODUCTION

This eighth annual synopsis of the law of the sea (LOS) discusses the major developments occurring between January 1, 1976, and March 1, 1977, in this increasingly important area of law.¹ The synopsis concentrates on the two sessions of the United Nations Conference on Law of the Sea (UNCLOS) and on miscellaneous significant events. The primary sources of information consulted in compiling the synopsis are *International Legal Materials*, *United Nations Monthly Chronicle*, *Congressional Record*, *United States Department of State Bulletin*, *United States Code Congressional and Administrative News*, *United States Law Week*, *Weekly Law Digest*, *Environment Reporter*, *American Journal of International Law*, *New York Times*, *Wall Street Journal*, *Washington Post*, *Los Angeles Times*, and *San Diego Union* and *San Diego Evening Tribune*.

1. A recent general bibliography on the subject is DAG HAMMARSKJOLD LIBRARY, *THE SEA: A SELECT BIBLIOGRAPHY ON THE LEGAL, POLITICAL, ECONOMIC AND TECHNOLOGICAL ASPECTS, 1975-1976*, BIBLIOGRAPHICAL SERIES No. 21, U.N. Doc. ST/LIB/SER.B/21 (1976).

UNITED NATIONS CONFERENCE ON LAW OF THE SEA

Background

In an effort to reach agreement on a comprehensive international treaty to govern the use of the world's oceans, the Third UNCLOS held two substantive sessions during 1976.² The sessions followed closely the eight-week session convened in Geneva, Switzerland, in 1975 and the ten-week session convened in Caracas, Venezuela, in 1974.³ This year's unprecedented two sessions evidence an attempt to resolve urgent problems posed by unilateral extensions of sovereignty over coastal waters⁴ and by impending national appropriations of seabed resources.⁵ The section that follows summarizes the

2. Swing, *Progress in Law of the Seas*, OCEANS, July-Aug., 1976, at 8.

3. The Third UNCLOS held its initial meeting at the United Nations headquarters in December 1973. This meeting was devoted to matters of procedure. The second session, which began discussion of substantive issues, opened on June 20, 1974, in Caracas. Geneva hosted the third session, which convened from March 17, to May 9, 1975. N.Y. Times, May 8, 1976, § 1, at 2, col. 4.

4. For a discussion of States which have unilaterally declared varying degrees of dominion over their coastal waters beyond the territorial sea, see text accompanying notes 26-72 *infra*.

5. Several private consortia are preparing to exploit the mineral resources of the deep seabed, even though international agreement over the issue is deadlocked. For example, Deepsea Ventures, a concern owned primarily by United Steel, Tenneco Corporation, and a Belgium enterprise, has made claim to an area in the eastern Pacific Ocean rich in manganese nodules. The nodules contain nickel, cobalt, copper, and manganese. The Oceans Systems division of Lockheed Missiles and Space Company has also developed deep-seabed mining techniques but is delaying extensive financial investment until the profitability of such an undertaking is assured by international treaty protection. A major concern among private companies is that a Seabed Authority, which may be established by a sea law treaty, would assume control of all mining operations and extract high royalty payments from the private companies who want to participate in seabed mining operations. N.Y. Times, Aug. 30, 1976, § 1, at 8, col. 1. To allay this concern a number of bills have been proposed in the United States Congress to allow seabed mining by United States companies without an international agreement on the topic. On February 11, 1976, a bill was introduced in the United States House of Representatives to promote the orderly development of hard mineral exploitation of the deep seabed pending adoption of an international regime that would deal with that area. The proposal would establish a licensing program of independent contractors, headed by a Secretary of Commerce. The Secretary and the Administrator of the National Oceanic and Atmospheric Administration are to establish objective environmental criteria to which licensed contractors must adhere. H.R. 11879, 94th Cong., 2d Sess. (1976). The Senate had introduced a similar measure on February 18, 1975. S. 713, 94th Cong., 1st Sess. (1975).

See Murphy, *Deep Ocean Mining: Beginning of a New Era*, 8 CASE W.

major issues discussed and the progress made during the two 1976 sessions.

Fourth Session of the Third UNCLOS

The fourth session of the Third UNCLOS was held in New York from March 15, to May 7, 1976. Discussion was based on the informal Single Negotiating Text (SNT), the draft treaty articles drawn by the chairmen of the three Conference committees at the Geneva session in 1975 to be used as a basis for further negotiations.⁶ Representatives of 147 nations attempted to resolve issues raised at the third session.⁷

The First Committee addressed issues dealing with the exploration and exploitation of deep-seabed resources that lie beyond national jurisdiction. Dispute over access rights to the metal-rich manganese nodules, which are strewn across the ocean floor and whose value is estimated at trillions of dollars, created an impasse in negotiation. At the outset of the fourth session, the negotiating texts contained a proposal which placed exclusive control over deep-seabed mining in an International Sea-bed Authority (ISA).⁸ The proposal was advanced by the Group of 77, which consists of ap-

RES. J. INT'L L. 46 (1976). This article assesses the technology and law associated with deep-sea mining and observes that though United States companies possess the knowledge and a willingness to proceed in this endeavor, they are reluctant to do so because of the current political and legal climate. The author, Chairperson of the United States Congress' Oceanography Subcommittee, concludes that deep-seabed mining is not prohibited by the present status of international law and that domestic legislation is important to preserve for the United States the maximum use of hard mineral resources in the oceans.

6. See *Recent Developments in the Law of the Sea: A Synopsis*, 13 SAN DIEGO L. REV. 628, 629 (1976).

7. N.Y. Times, May 8, 1976, § 1, at 2, col. 4. In order to conduct negotiations efficiently in light of the large number of nations participating, a small number of representatives are selected on a regional basis to participate in each of the three committees established by the UNCLOS. The committees are headed by a chairman. Within the committees issues are defined and solutions are proposed and discussed. The proposed solutions are then considered by the UNCLOS as a whole for debate, ratification, or rejection. 122 CONG. REC. E 5753 (daily ed. Oct. 26, 1976). The draft treaty articles, such as those contained in the SNT, are then drafted by the committee chairmen based on their perception of the emerging consensus on the proposals before the UNCLOS. The draft treaty articles are not binding but rather are to be used merely as a basis for further negotiation. See *Recent Developments*, *supra* note 6, at 632. The Revised Single Negotiating Text (RSNT), U.N. Doc. A/Conf. 62/WP. 8/Rev. 1/pts. 1-3, which resulted from the fourth session, is reproduced in *Hearing on Status Report on Law of the Sea Conference Before the Subcomm. on Minerals, Materials and Fuels of the Senate Comm. on Interior and Insular Affairs*, 94th Cong., 2d Sess. 1671 (1976).

8. L.A. Times, May 8, 1976, pt. I, at 2, col. 3.

proximately 115 developing States.⁹ The United States opposed the provision, fearing that the developing States would have used their voting power within the ISA to impede access to mining sites.¹⁰

A compromise position was announced in a speech delivered by former Secretary of State Henry Kissinger on April 8, 1976. Kissinger suggested establishing a dual access system, under which each prospective seabed mining contractor would propose two mining sites for every new tract it sought to develop. The ISA would then select one site to be mined by the Enterprise, the proposed seabed mining arm of the ISA. The remaining site would be developed by the contractor. Kissinger's proposal also included a revenue sharing plan. Under the proposed plan royalties would be collected from those engaged in deep-seabed mining and distributed to various developing States. In addition, United States mining technology would be made available to developing nations interested in engaging in seabed exploitation. As a concession to land-based mineral producers, Kissinger indicated that the United States would agree to a limitation on the ocean mining of seabed resources commensurate with the projected world growth rate for the production of nickel. Such a limitation would incidentally limit the production of other seabed minerals contained in the rich manganese nodules.¹¹ The Revised Single Negotiating Text (RSNT) ultimately issued by Committee I Chairman, Paul B. Engo of Cameroon, at the end of the fourth session contained, for the most part, proposals by the United States.¹²

Committee II, which dealt with the issues associated with the breadth and nature of economic zones and the territorial sea, made no substantive changes in the SNT at the fourth session. A twelve-mile territorial sea and transit passage rights through the straits continued to receive broad support from the delegates at the UNCLOS. Committee II failed to resolve issues of the status of the high seas within 200-mile economic zones, access of geographi-

9. 122 CONG. REC. E 5753 (daily ed. Oct. 26, 1976).

10. For background on the conflicts associated with the exploitation of the seabed, see R. ANAND, *LEGAL REGIME OF THE SEA-BED AND THE DEVELOPING COUNTRIES* 233-63 (1975); P. RAO, *THE PUBLIC ORDER OF OCEAN RESOURCES: A CRITIQUE OF THE CONTEMPORARY LAW OF THE SEA* (1975).

11. McDowell, *Contemporary Practice of the United States Relating to International Law*, 70 AM. J. INT'L L. 562, 563 (1976).

12. L.A. Times, May 8, 1976, pt. I, at 2, col. 3.

cally disadvantaged States to the sea, and access to the living resources in the economic zones of neighboring coastal States.¹³

Issues of pollution and scientific research were considered by Committee III. The RSNT incorporated changes that provide specific sanctions which States may impose against violators of international discharge regulations regardless of where the infraction occurs. Additionally, coastal States are granted specific enforcement rights for discharge infractions within the economic zone which violate international standards.¹⁴ The RSNT incorporates a major change in the area of marine research. The change demands that consent be obtained from a coastal State prior to the commencement of research activities within the State's economic zone. However, a State may not withhold its consent unless the proposed activity involves exploring for or exploiting of resources, interferes substantially with the coastal State's economy, or includes drilling, using explosives, or erecting and operating structures in areas subject to the State's jurisdiction.¹⁵

Fifth Session of the Third UNCLOS

As a result of the optimism that significant progress had been achieved at the fourth session toward agreement on articles to be included in the draft treaty, the UNCLOS convened in New York for a fifth session. The session ran from August 2, through September 17, 1976.

The stalemate in Committee I on the issue of access to deep-seabed resources continued and cast a shadow over negotiations. Developing States from the Group of 77 rejected the United States' dual access proposal and united to reinstate the Geneva text, which would grant the ISA exclusive control over the designation of seabed mining sites.¹⁶ The developing States feared that without an organization with broad powers to control access to seabed mining sites, industrialized States, capable of exploiting the resources, would usurp that which the United Nations has declared to be "the common heritage of mankind."¹⁷ However, the industrialized States continued to seek guaranteed access provisions within the RSNT. The outstanding issues from the fourth session—structuring voting in the ISA, establishing a specific revenue

13. *Hearing, supra* note 7, at 31.

14. *Id.* at 32.

15. *Id.*

16. *Wall St. J.*, Sept. 20, 1976, at 9, col. 1.

17. 122 CONG. REC. E 5753 (daily ed. Oct. 26, 1976).

sharing plan for deep-seabed mining, and discussing draft proposals dealing with compensation to land-based mining States whose economies may be adversely affected by seabed exploitation—were not considered. However, Secretary Kissinger announced that the United States would guarantee the financing of the Enterprise to enable it to begin commercial mining operations contemporaneously with State or private companies.¹⁸

Committee II established five negotiating groups¹⁹ to concentrate on a number of unresolved issues raised at the fourth session. However, none of the groups produced significant results, and the issues remained unresolved. An impasse developed with respect to the nature of the exclusive economic zones (EEZ). Large maritime powers contended that the EEZ's should be classified as high seas, with specific rights of coastal States enumerated in the treaty and residual rights vested in the international community. The maritime powers feared that if coastal States were given these residual rights, as they demanded, the EEZ would become a territorial sea.²⁰ Apparent consensus emerged with respect to the rights of coastal States to the continental shelves which extend beyond the proposed 200-mile EEZ. General agreement was reached that although coastal States will have rights to resources within such areas, from one to six percent of profits derived from their exploitation would be shared with the international community.²¹ No progress was made on the issue of the rights of geographically disadvantaged States to access to the sea and living resources of the EEZ.²²

18. *Id.* at E 5754. Three proposals with different systems for exploiting seabed resources were presented to a Workshop established by the First Committee. The Workshop met from August 9, to September 8, 1976. The proposals were submitted by developing States, the U.S.S.R., and the United States. The United States proposal was a counterproposal to the developing States' plan. The U.S.S.R. delegation to the Workshop presented their plan as a compromise. 13 U.N. MONTHLY CHRON. Oct, 1976, at 37.

19. 13 U.N. MONTHLY CHRON. Oct. 1976, at 22. The first group debated the legal status of the EEZ and the rights of the coastal State and other States in the zone. The second group discussed the rights of landlocked States to access to and from the sea. The third group discussed payments respecting exploitation of the continental shelf beyond 200 miles and the definition of the continental margin. The fourth group considered the use of straits for international agreement. The fifth group attempted to establish a procedure for delimiting the economic zone and continental shelf between adjacent or opposite States. *Id.*

20. 122 CONG. REC. E 5753-54 (daily ed. Oct. 26, 1976).

21. *Id.*

22. *Id.*

According to some UNCLOS delegates, the only significant progress was apparent agreement reached in Committee III regarding a compromise pollution proposal. Under the proposal, supported by the United States, a State would be authorized to initiate criminal proceedings against foreign vessels temporarily ported within the State for pollution violations occurring beyond the State's territorial sea. A flagstate preemption clause was included in the proposal. The clause provides that a State may not take action against a foreign vessel charged with international pollution infractions if the flagstate—the State with which the vessel is registered—initiates criminal proceedings against the vessel within six months of the violation.²³ Committee III renewed discussion on marine scientific research. The RSNT, which issued from the fourth session, contains a varied body of rules that demand the coastal State's consent prior to research involving the exploitation of resources, the use of explosives, or the construction of artificial structures within the EEZ. The rules provide that consent for other types of research shall not be withheld. During the fifth session the Committee chairman, Alexander Yankov of Bulgaria, introduced a proposal which would require a foreign State to obtain the coastal State's consent to do research in all cases. However, the RSNT was not changed to reflect this proposal.²⁴

A sixth session of the Third UNCLOS is scheduled to convene in New York from May 28, to July 8, 1977. However, the deadlock over the basic issue of access to seabed resources has greatly reduced the chances of obtaining a sea law treaty in the near future. According to UNCLOS President H. Shirley Amerasinge, "Everyone was flexible as steel and as rigid as rubber" at the fifth session.²⁵

DEVELOPMENTS BEYOND THE CONFERENCE

Unilateral Extensions of Sovereignty Over Coastal Waters Declared by Several States

In the absence of an international agreement to allocate the oceans' resources,²⁶ the major development in LOS during 1976 has

23. *Current Developments*, 7 ENVIR. REP. (BNA) 771 (1976).

24. 122 CONG. REC. E 5755 (daily ed. Oct. 26, 1976).

25. Quoted in Wall St. J., Sept. 20, 1976, at 9, col. 1. See H. Knight, CONSEQUENCES OF NON-AGREEMENT AT THE THIRD U.N. LAW OF THE SEA CONFERENCE (American Society of International Law No. 11, 1976), for a detailed look at the possible effects of a continued impasse.

26. For a review of the history and problems associated with the acqui-

been the unilateral declarations of States asserting their exclusive dominion over resources located in specified zones. The boundaries of such zones are generally 200-nautical miles from the State's coast.²⁷ The declarations are of two basic types: fishing zones and economic zones.²⁸ States that have declared fishing zones assert dominion only over fishery resources within the zone.²⁹ States that have created economic zones assert dominion over all mineral and marine resources within the zone.³⁰ During 1976, Canada, Guatemala, India, Mexico, Sri Lanka, the United States, the European Economic Community countries, and the U.S.S.R. enacted laws that extended sovereignty over their respective coastal waters.³¹

sition and exercise of property rights in the oceans, see Christy, *Property Rights in the World Ocean*, 15 NAT. RESOURCES J. 695 (1975). This article directs particular attention to problems associated with the transactional costs of acquiring and enforcing satisfactory property rights.

27. The setting of international boundaries at 200-nautical miles has been criticized for having no logical or natural basis. Two hundred-mile limits have the virtue of simplicity but little else to recommend them. A geomorphic boundary based on the continental margin has been proposed as an alternative. It would be best applied to the division of mineral resources beneath the oceans. Hedberg, *Ocean Boundaries and Petroleum Resources*, 191 SCIENCE 1009 (1976).

28. L.A. Times, March 15, 1976, pt. I, at 15, col. 1.

29. See, e.g., the United States Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801-82 (1976). The Act declares that the United States will have exclusive fishery management authority within the zone. *Id.* § 1812.

30. L.A. Times, Aug. 1, 1976, pt. I, at 12, col. 3. See Rehkopf, *The Law of the Sea: An Analysis of the Scientific Justifications for Boundary Extensions in South America*, 18 A.F. L. REV., summer 1976, at 35. The author defends Chile, Ecuador, and Peru in their extension 30 years ago of a 200-mile territorial sea. The author contends that the limit has a sound scientific basis and should be emulated by other nations. For an opposing view, see Moisey, *Some Biological Background for International Legal Acts on Rational Utilization of the Living Resources of the World Ocean*, 6 GA. J. INT'L & COMP. L. 143 (1976). The author contends that the unilateral declarations of fishing zones and economic zones may have a disruptive and detrimental effect upon fish stocks instead of a beneficial and conservative effect. The article concludes that before fishing practices are altered by acts which may radically upset the delicate biological balance of the ocean, all nations affected should be consulted and that, therefore, only a comprehensive international agreement should change fishing rights and practices. A survey of the trend to unilaterally expand coastal jurisdiction is found in Marteris, *Evolution of Coastal State Jurisdiction: A Conflict Between Developed and Developing Nations*, 5 ECOLOGY L.Q. 531 (1976).

31. E.g., the United States Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801-82 (1976).

On June 4, 1976, Canada declared a 200-mile fishery conservation zone

On January 1, 1977, Norway established a 200-mile economic zone

which took effect on January 1, 1977. The measure was initiated to protect and develop dwindling fish stocks off Canada's coast. The substance of the measure is similar to the United States' Fishery Conservation and Management Act. *Washington Post*, July 5, 1976, pt. I, at 10, col. 1. Canada has signed bilateral agreements with France, Norway, Poland, Portugal, Spain, and the U.S.S.R. that establish fishing quotas within Canada's fishery conservation zone. *N.Y. Times*, June 5, 1976, § A, at 5, col. 5. The agreements provide that Canada establish a total allowable catch. Canadian vessels are allowed to harvest as much as they can up to the limit. Then the surplus, the difference between total allowable catch and Canada's harvest, is allocated among the foreign fishing operations. *San Diego Evening Tribune*, June 30, 1976, § A, at 2, col. 1.

On February 14, 1976, Mexico declared its exclusive control of all mineral and marine resources in a 200-mile area off its coast. The economic zone does not interfere with navigation or overflight. The economic zone differs from fishing zones in that Mexico has assumed exclusive management authority over mining as well as fishing operations off its coasts. Mexico stated that its ultimate goal is the total exclusion of foreign fishing rights. However, Mexico indicated that until its technology is capable of fully harvesting the fishery resources in its economic zone, international fishing agreements would be negotiated. *Wall St. J.*, June 7, 1976, at 7, col. 4. To enforce its economic zone, Mexico will employ a permit program similar to that which the United States uses to enforce the Fishery Conservation and Management Act. Mexican fishermen will be given preemptive rights to catch their capacity. Then foreign vessels will be allocated a quota by the Mexican government. Priority will be given to small foreign fishing operations which have complied with Mexico's regulations in the past. *San Diego Evening Tribune*, May 7, 1976, § A, at 1, col. 1.

In July 1976, Mexico and Cuba signed a pact entitling Cuban fishermen to operate within Mexico's 200-mile economic zone. The Cuban fishermen must observe quotas to be established by the Mexican government on catches of shrimp, snapper, and sea bass. *San Diego Union*, July 30, 1976, § A, at 8, col. 1.

On December 10, 1976, the Soviet newspaper *Izvestia* published a decree signed by President Nikolai V. Podgorny establishing a 200-mile fishing zone around the coast of the U.S.S.R. The decree stated that the zone was a temporary measure pending an outcome on the issue of the validity of such zones by the UNCLOS. Within the zone the Soviet Union is to hold sovereign rights over the fishery and other living resources. *L.A. Times*, Dec. 11, 1976, pt. I, at 16, col. 1.

Guatemala, India, and Sri Lanka have joined the ranks of States declaring economic zones. On March 27, 1976, India and Sri Lanka signed an agreement establishing their maritime boundaries and distributing the resources in their overlapping economic zones. By doing so they became the first States to enter an international agreement based on the concept of a 200-mile economic zone. *N.Y. Times*, March 29, 1976, at 24, col. 1 (city ed.). In June 1976, Guatemala declared its exclusive dominion over all resources in a 200-mile zone off its coast. *L.A. Times*, June 13, 1976, pt. I, at 12, col. 3.

A 200-mile fishing zone went into force off the coasts of all the European Economic Community countries on January 1, 1977. Under the "common fisheries policy" agreement all nine of the European Economic Community countries imposed the new fishing zone. Great Britain assumed a leading role in patrolling the zone because 60% of the protected waters under the joint agreement are British. *L.A. Times*, Jan. 1, 1977, pt. I, at 22, col. 1.

off its coast.³²

Representative of these extended jurisdictional claims is the Fishery Conservation and Management Act of 1976 (Act).³³ Signed by the President of the United States on April 13, 1976, the Act took effect March 1, 1977. The Act proclaims the exclusive management authority of the United States over fishery resources within a 200-mile conservation zone and beyond the zone authority over anadromous species³⁴ and continental shelf fishery resources.³⁵

32. Telephone conversation with Mr. Robert Blumberg, Law of the Sea Office, U.S. Department of State (Mar. 16, 1977).

The Norwegian government introduced a bill in its Storting (Parliament) to establish a 200-mile economic zone around Norway's coast beginning January 1, 1977. Norway was the first European country to consider such an extension of its sovereignty. *L.A. Times*, Oct. 17, 1976, pt. IV, at 1, col. 1.

Under the new law, foreign fishermen will be prohibited from fishing within the zone unless reciprocal fishing privileges are granted to Norwegian fishermen by the foreign State. It is believed that States such as East Germany, France, Poland, and West Germany will suffer under the law because they have only limited fishing areas which they can offer Norway in exchange. *Id.* Oct. 5, 1976, pt. I, at 2, col. 6.

A ten-year agreement has been signed by Norway and Russia which allows Russian trawlers to continue to fish within Norway's 200-mile fishing zone. The agreement is expected to take effect early in 1977. According to Norwegian Sea Law Minister, Newns Evensen, the agreement resolved jurisdictional questions concerning a contested 60,000-square-mile region in the Barents Sea through the acceptance of a neutral zone, over which neither State is to exercise sovereignty. *Id.* Oct. 16, 1976, pt. I, at 3, col. 1.

In response to Norway's establishing an economic zone, the nine Common Market States—Britain, Ireland, France, Italy, West Germany, Denmark, and the three Benelux Countries—are considering enacting similar measures. However, two obstacles must be overcome. First, the tentative economic zones would result in numerous areas of overlapping sovereignty. For example, problems would exist in the North Sea, the Barents Sea, the Arctic Sea, the Bay of Biscay, the Azores, and the Canary Islands. *Id.* Oct. 17, 1976, pt. IV, at 1, col. 1. Second, Britain and Ireland demand exclusive control of their fisheries to 50 miles offshore, after the economic zones are declared. Other Common Market States are willing to concede to Britain and Ireland exclusive rights to within 12 miles off their coasts and to establish a quota system for the remaining 188 miles. However, Britain and Ireland have rejected such proposals. *Id.*

33. 16 U.S.C. §§ 1801-82 (1976).

34. Anadromous species are fish which spawn in fresh or estuarine waters of the United States and then migrate to the oceans. *Id.* § 1802(1).

35. Continental shelf fishery resources are Colenterata (Coral), Crustacea (Crab), and Mollusks (Abalone, Conch, Clam, and Quahog). *Id.* § 1802(4).

The United States, however, asserts no management authority over highly migratory species.³⁶

The Act prohibits foreign fishing after February 28, 1977, within the fishery conservation zone or for anadromous species or continental shelf fishery resources beyond the zone, unless authorized by an international bilateral fishing agreement.³⁷ Authorized foreign fishermen will be allocated a portion of the sustainable yield³⁸ of a fishery which will not be harvested by United States fishermen.³⁹ United States fishermen are given preemptive rights to catch their capacity. The residue, below the sustainable yield, will be allocated by the Secretary of State to foreign State fishing fleets that have complied with the requirements of the Act.⁴⁰ The

36. *Highly migratory species* refers primarily to tuna. *Id.* § 1813.

37. *Id.* § 1821 (a). There are three prerequisites for an international fishing agreement pursuant to the Act: The agreement must acknowledge the exclusive management authority of the United States; foreign fishermen must agree to comply with all regulations promulgated by the Secretary of Commerce pursuant to the Act; foreign fishing will not be authorized unless the foreign State extends reciprocal fishing privileges to United States fishermen. *Id.* § 1822.

On August 2, 1976, the first international fishing agreement pursuant to the Act was entered into by the United States and the Polish Peoples' Republic. Under the agreement the United States is to determine the total allowable catch for specific species within the fishery conservation zone. United States fishermen will then have priority to catch up to that limit. Should United States vessels not be capable of harvesting the total allowable catch, the surplus will be allocated to foreign vessels. The agreement results in a 39% reduction in the number of days Polish vessels may conduct fishing operations in the zone. Other measures contained in the agreement include a voluntary inspection plan and conciliation procedures for claims of vessel damage and loss of equipment. McDowell, *Contemporary Practice of the United States Relating to International Law*, 70 AM. J. INT'L L. 340, 347 (1976). The United States has entered similar agreements with the Republic of China, Mexico, the German Democratic Republic and the U.S.S.R. 75 DEP'T STATE BULL. 494, 565, 667, 743, 758 (1976).

Japanese Foreign Minister, Shinichiro Asao, asserted that Japan will refuse to recognize the United States 200-mile fishery conservation zone. The assertion was made at the joint United States-Japan fishery negotiations, which began on November 2, 1976, in Tokyo. Japan opposes the declaration of 200-mile fishing and economic zones until sanctioned by international law. A proposal by Japan that it be allowed to continue its traditional fishing operations within the United States zone was rejected by the United States representatives. Negotiations ended on November 12, 1976, with both parties adhering to their initial positions. N.Y. Times, Nov. 14, 1976, § 1, at 14, col. 1 (city ed.).

38. The concept of sustainable yield creates a ceiling on the total allowable catch for a particular species of fish for each year. The limit is to ensure that the stocks of fish can be maintained and developed. 9 OCEANS, Sept.-Oct. 1976, at 60.

39. 16 U.S.C. § 1821 (d) (1976).

40. *Id.* § 1821 (e). A new United States corporation, U.S.-U.S.S.R. Marine

Act will be enforced through the use of a permit system administered by the Secretary of Commerce.⁴¹ The Act also authorizes the use of import prohibitions of fish and fish products against a foreign State to enforce the provisions of the Act.⁴²

The Act creates a National Fishery Management Program.⁴³ Eight Regional Fishery Management Councils⁴⁴ are established, each of which is responsible for a fisheries management program for their respective areas. Each council is to prepare and submit a management program for its area to the Secretary of Commerce, who is to coordinate and implement the plans.⁴⁵

If the United States ratifies a comprehensive treaty which includes provisions with respect to fishery conservation and management jurisdiction and which results from any UNCLOS, the Secretary of Commerce is authorized to promulgate amendments to the regulations under the Act necessary and appropriate to conform the Act and regulations to such treaty.⁴⁶

*Britain and Iceland Halt the Cod War*⁴⁷

On June 1, 1976, the governments of Britain and Iceland concluded a bilateral agreement that established procedures under

Resources, Inc., has been formed. Bellingham Cold Storage, a United States processing company, and Sovrybflot, a Soviet governmental agency, are equal owners of the new corporation. The Russians may gain access to the waters they had traditionally harvested within the zone by employing United States fishermen. The catch is to be processed by the United States partner and then exported to Russia. San Diego Union, Aug. 6, 1976, § A, at 12, col. 3.

41. 16 U.S.C. § 1824 (1976).

42. The import prohibition is appropriate in four situations: first, when the foreign State refuses to negotiate in good faith with the United States; second, when the foreign State prohibits United States vessels from fishing for highly migratory species (tuna); third, when the State violates an existing international fishing agreement; fourth, when the State seizes United States vessels in waters the United States does not recognize as that State's territorial sea. *Id.* § 1825.

43. *Id.* § 1851.

44. The eight councils are for the New England, Mid-Atlantic, Southern Atlantic, Caribbean, Gulf, Pacific, Northern Pacific, and Western Pacific areas. *Id.* § 1855.

45. *Id.* §§ 1853-55.

46. *Id.* § 1881.

47. The Cod War is an example of the opposition that some States have met as a result of their unilateral extensions of sovereignty over coastal

which Britain was allowed to fish in Iceland's 200-mile fishing zone. The agreement was similar to earlier bilateral pacts Iceland signed with Belgium,⁴⁸ West Germany,⁴⁹ and Norway.⁵⁰ The agreement prohibited British trawlers from fishing within thirty miles of Iceland's coast and reduced the number of British trawlers allowed in the zone from an average of forty to twenty-four.⁵¹ In order to protect spawning fish, the pact also prohibited fishing certain areas at specified times. British vessels had to register with Icelandic authorities and report the location of their fishing operations in the zone.⁵² However, the agreement expired on January 1, 1977, and British fishing operations withdrew from Iceland's 200-mile fishing zone and headed for the less predictable waters of the Barents Sea. Thus 800 years of fishing these areas by the British ended. The future of British fishing in Icelandic waters will be determined by negotiations between Iceland and the European Economic Community countries.⁵³

Panama Canal Talks Continue

In 1976, progress was made in negotiations between the Panama government and the United States on the issue of national control

waters. The "war" was a long-standing dispute between Iceland and Britain, dating from 1958. Iceland initially declared control of fisheries 12 miles, then 50 miles, and in 1975, 200 miles off its coast. Britain refused to recognize Iceland's claim and "war" broke out. As a result, a series of skirmishes and confrontations occurred between Icelandic gunboats and British trawlers. *Council Considers United Kingdom, Iceland Naval Incident; Informed of Fisheries Dispute*, 13 U.N. MONTHLY CHRON., Jan. 1976, at 24.

48. On November 28, 1975, an agreement was reached between Belgium and Iceland regarding fishing arrangements between the two States, in light of the extension of Iceland's fishery limit to 200 miles on October 15, 1975. The agreement provides for the renewal of fishing licenses every six months, a 6,500 metric ton annual limit of fish of which no more than 1,500 metric tons may be cod, a minimum-size limitation on the fish which may be caught, and daily vessel-locating requirements. A cancellation provision allows either party to terminate the agreement upon six months notice. 15 INT'L LEGAL MATERIALS 1 (1976).

49. The Federal Republic of Germany and Iceland signed an agreement pursuant to Iceland's 200-mile fishing zone declaration on November 28, 1975. The agreement limits the Federal Republic of Germany to an annual catch of 60,000 metric tons, places an annual 5,000 metric ton limit on cod, establishes daily vessel-location reporting requirements, and places restriction on fishing in spawning waters. *Id.* at 43.

50. In March 1976, Norway agreed to comply with Iceland's 200-mile fishing zone. Norway agreed to communicate to Icelandic authorities the number, size, name, and registration of all vessels fishing within the zone. Semi-annual reports are to be made by Norwegian authorities giving details of the catches taken pursuant to the agreement. *Id.* at 875.

51. Washington Post, July 5, 1976, § A, at 13, col. 1.

52. 15 INT'L LEGAL MATERIALS 878 (1976).

53. L.A. Times, Dec. 2, 1976, pt. I, at 4, col. 1.

over the Panama Canal Zone. The conflict in Panama is caused by a 1903 treaty, which granted the United States perpetual sovereignty over the 550-square mile Panama Canal Zone. The treaty has become the main target of Panamanian nationals who seek to gain control over the area.⁵⁴ A spokesperson for the Panama government announced that progress had been made toward agreement on a new treaty. According to an official announcement released in Panama City, a consensus had been reached on the issue of the amount of territory the United States will control under the new treaty—particularly with regard to its military uses. Ellsworth Bunker, head United States representative to the negotiations, conceded that the United States had modified its earlier stance on the territorial issue; however, no details were released.⁵⁵ Another major issue at the negotiations, the duration of the new treaty, remains unresolved.⁵⁶

*Greece and Turkey Hold Negotiations on Aegean Sea Dispute*⁵⁷

On August 25, 1976, the United Nations Security Council adopted a resolution encouraging Greece and Turkey to negotiate their conflicting claims to mineral resources on the Aegean Sea's continental shelf. The resolution recommended that, if necessary, the two States resort to the International Court of Justice to resolve the dispute.⁵⁸ On November 12, 1976, Greece and Turkey announced

54. Address by William D. Rogers, Assistant Secretary of State for Inter-American Affairs, *Three Aspects of U.S. Relations with Latin America*, reprinted in 74 DEP'T STATE BULL. 14 (1976).

55. L.A. Times, Oct. 27, 1976, pt. I, at 2, col. 1.

56. *Id.* Oct. 22, 1976, pt. I, at 2, col. 1.

57. The dispute arose when the Turkish government through a unilateral declaration published in the official *Turkish Gazette* of November 1, 1973, granted to the Turkish Petroleum Company permits for the exploration and exploitation of the continental shelf of the Aegean including the continental shelf of seven Greek islands. Between May 29, and June 1, 1974, Turkey sent into the area a hydrographic vessel under the escort of a fleet of 32 warships and under the cover of the Turkish Air Force to conduct magnetometric exploration of the continental shelf. 13 U.N. MONTHLY CHRON., Aug.-Sept. 1976, at 22.

58. U.N. Doc. S/RES/395 (1976), adopted by consensus on August 25. On September 11, 1976, the International Court of Justice, acting on the dispute, ruled that it did not find in the alleged breach of Greece's rights such a risk of irreparable prejudice to merit interim protective measures. However, the court also refused Turkey's request to have the case removed from its list. Although the court did not grant Turkey's motion to remove the

that they had signed a document establishing negotiation procedures to deal with this conflict.⁵⁹

Japan Seeks to Claim New Islands

Amid mounting territorial interest and concern over the possible emergence of new islands in the Pacific Ocean, Japan has initiated a patrol to check underwater volcanos. The patrol area is situated between Iwo Jima, at the southern end of the Volcano Island chain, and Uracas Island in the Mariana group, a United States trust territory. The reported discovery of two new underwater volcanos in the last few years⁶⁰ has inspired competition between Japan and the United States over which nation will first find and claim the emerging islands.

The determination of ownership may have important consequences for Japan. If a new island becomes a United States territory, Japanese fishing fleets could be banned from an area within a radius of 200-nautical miles.⁶¹ This situation may also affect the future use of mineral resources in that area.⁶² As a result, the Japanese Prime Minister's Office established a special council to deal with the situation. Some officials state that under international custom the first country to claim and occupy the island after its discovery possesses territorial rights. However, no precedent exists concerning a newly created island.⁶³

Landlocked Bolivia Offered Path to the Sea

On November 20, 1976, Peru proposed to Chile that the two nations give a strip of land to neighboring Bolivia to provide that landlocked State with an outlet to the Pacific Ocean.⁶⁴ The proposal would establish a jointly controlled strip of land north of the

case, it indicated that it would address the question of its jurisdiction with respect to the case, which was initiated by Greece on August 10, 1976. 13 U.N. MONTHLY CHRON., Oct. 1976, at 35.

59. N.Y. Times, Nov. 14, 1976, § 1, at 34, col. 1 (city ed.).

60. The first underwater volcano report occurred in March 1974. *Id.* Nov. 21, 1976, § 1, at 6, col. 1 (city ed.).

61. If the new island becomes a United States territory, the Fishery Management and Conservation Act of 1976 would apply to the waters around the island.

62. Conceivably, control of mineral resources may be asserted by the United States if the proposed deep-sea mining legislation is enacted. H.R. 11879, 94th Cong., 2d Sess. (1976); S. 713, 94th Cong., 1st Sess. (1975).

63. N.Y. Times, Nov. 21, 1976, § 1, at 6, col. 1 (city ed.).

64. Bolivia lost its path to the Pacific in the War of the Pacific (1879-1884), in which Chile defeated a Peruvian-Bolivian alliance and seized the corridor to the ocean. *Id.* at 14, col. 3.

Chilean city of Arica. Additionally, Peru would cede to Bolivia an eight-mile wide corridor from the Pacific Ocean to Bolivia's border. There is no estimate of the total territory involved or any indication that Peru and Chile would demand land in exchange from Bolivia.⁶⁵

United Nations Concerned with Port Congestion

On April 30, 1976, the United Nations Conference on Trade and Development urged emergency task forces to aid in the international "decongestion" of ports. The conference reported that shipping jams caused by strains on port handling and storage facilities will result in \$5 billion in increased shipping costs. The developing States are most affected and frequently experience delays in cargo handling in excess of 200 days.⁶⁶

United States and the Union of Soviet Socialist Republics Open Ports

The United States and the U.S.S.R. signed a treaty in December 1975, that provides for open access to designated ports by the other party upon four days notice. The treaty, which went into effect January 1, 1976, deals with tonnage duties, port access, and cargo carriage by sea. Each party agreed to carry equal and substantial shares of the trade between the two countries. The treaty will be in force through December 31, 1981.⁶⁷

Campaign Waged Against Pollution in the Mediterranean Sea

Representatives from fifteen Mediterranean coastal States signed the Final Act of the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea⁶⁸ on February 16, 1976, in Barcelona, Spain, at a meeting held under the auspices of the U.N. Environment Programme. The Act included the establishment of a regional oil-

65. *Id.*

66. *Id.* May 1, 1976, § 1, at 38, col. 3.

67. Agreement on Maritime Matters, Dec. 29, 1975, United States-Union of Soviet Socialist Republics, 26 U.S.T. — T.I.A.S. No. 8195.

68. The 15 Mediterranean coastal States who signed the Final Act are Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Lybia, Malta, Monaco, Morocco, Spain, Tunisia, Turkey, and Yugoslavia. 15 INT'L LEGAL MATERIALS 285 (1976).

combatting center for the Mediterranean located in Malta and the adoption of the Convention for the Protection of the Mediterranean Sea Against Pollution. This Convention provides control measures for pollution caused by ships, aircraft, and land-based sources. Two pollution control protocols were also adopted at the Conference, which, along with the Convention, were placed on deposit in Spain and remained open for signature by the Mediterranean coastal States and the European Economic Community until February 16, 1977.⁶⁹ Secretary-General of the United Nations, Kurt Waldheim, lauded the agreement, particularly praising the cooperation between Israel and the Arab States of Egypt, Morocco, and Tunisia.⁷⁰

EPA Administrator Train Criticizes Immunity of World Navies to Environmental Regulation

Speaking before the Fourth International Seapower Symposium in Newport, Rhode Island, on July 8, 1976, Environmental Protection Agency Administrator Russell E. Train stated that the navies of the world are at present virtually immune from environmental regulations.⁷¹ Train said that while free world navies must continue to maintain their operational readiness, they also have a moral responsibility to use the oceans in a rational manner. Train expressed optimism that the Third UNCLoS would incorporate into the proposed sea law treaty provisions implementing the concept of "universal port state enforcement." Such a provision would allow a State to initiate criminal proceedings against vessels tempo-

69. The texts of the Convention and the Protocols are reproduced at *id.*

70. 13 U.N. MONTHLY CHRON., March 1976, at 27.

71. See Wood, *Requiring Polluters to Pay for Aquatic Natural Resources Destroyed by Oil Pollution*, 8 NAT. RESOURCES LAW. 545 (1975), for a description of the problem of oil polluting marine resources and of existing systems to deal with the problem. The article advocates the implementation of both an international and a domestic system of civil liability for oil pollution. Mensah, *International Environment Law: International Conventions Concerning Oil Pollution at Sea*, 8 CASE W. RES. J. INT'L L. 110 (1976), concentrates on the danger of marine pollution from shipborne oils and describes the major international conventions that deal with the danger. See also Greenberg, *IMCO: An Environmentalist's Perspective*, *id.* at 131. This article assesses IMCO, the specialized agency of the United Nations charged with responsibility in the area of international maritime affairs, and concludes that it is an inadequate mechanism for combating marine pollution. To be more effective, the author states that the agency needs structural reform and a shift in political consciousness. However, the agency can be no more effective than the member nations permit it to be, and commercial maritime interests will probably dictate the course it will pursue.

rarily located within the port State's jurisdiction that had violated international pollution regulations anywhere in the world. For enforcement of this new jurisdiction concept, Train suggested the use of satellite surveillance and creation of an International Sea Guard.

Also, Train criticized the failure of maritime States to ratify the 1973 International Convention for the Prevention of Pollution by Ships. The Convention establishes standards for reducing oil and dangerous liquid pollution stemming from tank washing, bilge pumping, and deballasting operations. To date, only Jordan, Kenya, and Tunisia have ratified the pact.⁷²

CONCLUSION

At the close of the fifth session of the UNCLOS, United Nations Secretary-General Kurt Waldheim addressed the Conference and expressed his concern at the limited progress made, particularly in light of unilateral actions by States. Waldheim appealed to all States to refrain from taking any actions which would be detrimental to the resolution of the impasse within the UNCLOS and the achievement of a general agreement on a new regime for the seas.⁷³ However, it is likely that the number of unilateral actions will increase as the competition for fishery and mineral resources increases. Secretary-General Waldheim warned that if States failed to make an ideological commitment to establishing an orderly regime for the oceans and to making the concept of the common heritage of mankind a reality, these goals may be beyond reach.⁷⁴

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72. *Current Developments*, ENVIR. REP. (BNA) 475 (1976).

73. 13 U.N. MONTHLY CHRON., Oct. 1976, at 22.

74. *Id.*