

# The Group of 77 at the United Nations: An Emergent Force in the Law of the Sea\*

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*Authors Friedman and Williams trace briefly the diplomatic history of the Group of 77 in United Nations fora, then detail the role the G-77 plays within the Law of the Sea Conference. By providing illustrations of the G-77 bloc-policy process, the authors construct a model to explain G-77 behavior. They conclude that G-77 unity is now less certain than before because of the many cross-cutting interests at stake in the UNCLOS III milieu. They also cite Western intransigence as a unifying force for the G-77 under the "common enemy" principle.*

## INTRODUCTION

This is a study of the politics of a bloc of nations known as the Group of 77. The countries that comprise this bloc are referred to variously as "less-developed countries," "Third World countries," "developing countries," or "underdeveloped countries."<sup>1</sup> In a rela-

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\* The views in this article are strictly those of the authors and do not represent the position of the United States government.

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1. These terms generally refer to the approximately 110 "poor" countries of the world, located primarily in Africa, Asia, and Latin America.

tively short period of time they have banded together in a loose coalition and have become an effective force in international relations. The principal forum for the exercise of this bloc power has been the United Nations system and, in particular, the Third United Nations Conference on the Law of the Sea (UNCLOS III).

In the following pages we shall analyze the internal politics of the Group of 77 (G-77). This article is not intended to be a polemic, but rather an observational analysis of international group dynamics in a lawmaking context. The positions and the model posited in this study are flexible. We offer them in the hope that they will improve and clarify the analysis of the G-77 phenomenon at UNCLOS III.<sup>2</sup>

The aim of this article is to explore the internal processes of the G-77. We are seeking to describe the G-77 politics in a lawmaking conference. The politics depend heavily on what is often called "log-rolling." Log-rolling is the series of trade-offs and deals across national and regional political boundaries that leads to compromise in a multilateral negotiation. There is no dearth of log-rolling in the G-77.

### *A Few Remarks About Methodology*

In this inquiry we are limited by a lack of published material about the inner workings of the G-77. We are also constrained by the fact that although there is much information about the Law of the Sea, such information rapidly becomes dated.

General works on the United Nations constitute a framework for our analysis.<sup>3</sup> Historical works on the Group of 77 in recent years have also been useful.<sup>4</sup> However, it has been necessary for the authors to rely fairly extensively on a system of personal per-

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2. For a good introduction to G-77 positions on seabed issues at UNCLOS III, see D. LEIPZIGER & J. MUDGE, *SEABED MINERAL RESOURCES AND THE ECONOMIC INTERESTS OF DEVELOPING COUNTRIES* (1976).

3. ATLANTIC COUNCIL WORKING GROUP ON THE UNITED NATIONS, *THE FUTURE OF THE U.N.* (1977); S. BAILEY, *THE PROCEDURE OF THE U.N. SECURITY COUNCIL* (1975); D. COYLE, *THE UNITED NATIONS AND HOW IT WORKS* (1966); E. GROSS, *THE UNITED NATIONS: STRUCTURE FOR PEACE* (1962); H. HAN, *INTERNATIONAL LEGISLATION BY THE UNITED NATIONS* (1971); H. KELSEN, *THE LAW OF THE UNITED NATIONS* (1950); P. MARIN, *L'ORGANISATION DES NATIONS UNIES ET LE MAINTIEN DE LA PAIX* (1971); H. SCHLUETER, *DIPLOMATIE DER VERSÖHNUNG* (1966); L. SOHN, *CASES ON UNITED NATIONS LAW* (1956); *THE UNITED NATIONS POLITICAL SYSTEM* (D. Kay ed. 1967); Q. WRIGHT, *INTERNATIONAL LAW AND THE UNITED NATIONS* (1960); Di Qual, *Les Effets des Résolutions des Nations Unies*, 37 *BIBLIOTHEQUE DE DROIT INTERNATIONALE* (1967).

4. M. AFIFI, *THE ARABS AND THE UNITED NATIONS* (1964); B. GOSOVIC, *UNCTAD: CONFLICT AND COMPROMISE* (1972); K. HAGRAS, *UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT* (1965); D. KAY, *THE NEW NATIONS IN THE UNITED NATIONS, 1960-1967* (1970); D. SHARMA, *AFRO-ASIAN GROUP IN THE U.N.* (1969). This list is not intended to be comprehensive but rather to be a sampling.

spectives on the Law of the Sea and the G-77 countries. It is hoped that this reliance on primary sources will not "cheapen" the analysis, but rather will enhance its originality and topical relevance.

The next part of this article will be a brief history of the Group of 77. The third portion will examine the G-77 at UNCLOS III. That part will also discuss G-77 perceptions, both internal and external. The fourth section of this article will illustrate who gets what, where, when, how, and why in the G-77. We shall see how the bloc phenomenon is played out in these international negotiations. The final section will be a series of concluding remarks and some tentative generalizations.

#### THE GROUP OF 77: A HISTORY

The formation of the G-77 has been described by some as the "revolution of the Colonized."<sup>5</sup> The countries of which we are writing all share, in varying degrees, the characteristics of being non-European, non-white, and anti-colonial.<sup>6</sup>

Whether the racial or the colonial experiences are more important is not at issue. The point is that the post-war world in the third quarter of the twentieth century was a time of revolution and liberation. The number of nation-States suddenly rose to over 150. Many in the Western World called these nations "irresponsible" because of the intensity of their ideological fervor. Policy-makers of many industrial States feared the wrath of the African, Asian, and Latin American raw-material producers who were no longer content with extant market-pricing policies. The dramatic steps taken by the Organization of Petroleum Exporting Countries (OPEC) in 1973 terrified the formerly complacent developed States.<sup>7</sup> This assertion of Third World power vis-à-vis former colonial powers of the North portended a new order.

The Group of 77 was established in 1963, a decade before the 1973 oil embargo and subsequent price escalation. A group of some seventy-five nations introduced the "Joint Declaration of

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5. Bloomfield, *The New Diplomacy in the United Nations*, in *THE UNITED STATES AND THE UNITED NATIONS* 49, 63 (1961).

6. *Id.* at 63.

7. The oil embargo of 1973-1974 was the first major producer action by developing countries to have a profound impact upon the richer nations. It changed the perceptions of the United States, Western Europe, Japan, and others in a basic way. The Third World had "roared," and the West was forced to listen.

the Developing Countries" into the United Nations General Assembly.<sup>8</sup> The seventy-five nations were composed of African, Asian, and Latin American States. Although their joint statement itself was of no great significance, that they were able to sit down and produce a joint statement was in itself a major accomplishment. Branislav Gosovic has described how these less-developed countries (LDC's) originally came together. He has also described his version of their commonality of interest as follows:

Developing countries have many economic characteristics in common. *Inter alia*, their per capita incomes are below a certain cut-off point, their rate of income growth per capita is relatively low for other reasons because of high population growth; only a small percentage of their labor force is engaged in agriculture and there is a shortage of technical and managerial skills. Their per capita investment in public works and services is also low. Under these conditions capital goods, skilled labor, and a modern technology are necessary requirements for economic growth.<sup>9</sup>

There are indeed economic, cultural, experiential, and political links among the G-77 countries. However, the Group was not really born at the 1963 General Assembly session. It was not until the 1964 United Nations Conference on Trade and Development (UNCTAD) in Geneva that the Group began to act as a unit on substantive issues.

The Fourth Committee of UNCTAD was considering institutional problems at the time. Gosovic tells us that the developing countries had a vested interest in the establishment of a suitable institutional machinery.<sup>10</sup> They used this machinery issue to act together. As a result, the United States and other Western States began to develop a somewhat negative attitude. In the sense that this negative attitude galvanized the solidarity of the LDC's, the West was at least partially responsible for the birth of the Group of 77. The LDC's came to the realization that to remain divided would be to remain a "bunch of beggars" and the "clientele of the rich." Only united would the LDC's be a "political force."<sup>11</sup>

It is interesting to note that despite serious G-77 radical-wing dissatisfaction with the emergent text on the institutional machinery question, *all the developing countries stood behind the draft* once it was made public.<sup>12</sup>

No one had missed the point. The group of developing countries emerged from UNCTAD united. A new collective diplomacy had come into being along with the creation of the Group of 77.

The Joint Declaration of the Seventy-Seven Developing Coun-

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8. G.A. Res. 1897, 18 U.N. GAOR, Supp. (No. 15) 24 app., U.N. Doc. A/5587 (1963).

9. B. GOSOVIC, UNCTAD: CONFLICT AND COMPROMISE 6 (1972).

10. *Id.* at 35.

11. *Id.* at 49.

12. *Id.* at 50.

tries, which was issued at the end of the 1964 UNCTAD Conference in Geneva, read as follows:

The unity . . . has sprung out of the fact that facing the basic problems of development they have a common interest in a new policy for international trade and development. . . . The developing countries have a strong conviction that there is a vital need to maintain, and further strengthen, this unity in the years ahead. It is an indispensable instrument for securing the adoption of new attitudes and new approaches in the international economic field.<sup>13</sup>

The Group of 77 is comprised of three regional groups and several lesser ones. The main groups are the Latin American group, the African group, and the Asian group.<sup>14</sup> The Latins have the longest history of regional organization and are unified by common language as well as by historical and cultural ties. The Organization of African Unity (OAU) is a regional group that forms the basis of African solidarity, but a great deal of mistrust exists between the Anglophone and Francophone countries. The Asians are the least homogeneous politically and culturally. They have no real organizational focus. The Asian group, after all, contains countries as dissimilar as India and Thailand.

Before concluding our general discussion of the Group of 77, we should take note of one last Gosovic observation. There *are* cleavages within the G-77. Three main types can be outlined:

1. Those which are political and ideological in nature.
2. Those somewhere between the more and less advanced countries in the G-77.
3. Those which result from the links of certain developing countries with certain developed ones.<sup>15</sup>

We shall return with an analysis of these cleavages as they relate to the Law of the Sea Conference later in this study.

#### UNCLOS III AND THE G-77

United Nations discussion about a Law of the Sea Conference first began around the time of the 1967 Algiers Group of 77 ministerial meeting. The Maltese Ambassador to the United Nations, Dr. Arvid Pardo, introduced a draft agenda item dealing with the

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13. *Id.* at 271.

14. These are not the only regional sub-groupings, but they do constitute the most active ones.

15. B. GOSOVIC, UNCTAD: CONFLICT AND COMPROMISE 279 (1972).

area of the deep seabed and its resources.<sup>16</sup> Pardo said that the area should be declared the common heritage of mankind and that there should be an international conference to update the Law of the Sea.<sup>17</sup> New technological developments had given rise to concern about capital-intensive deep seabed mining potential in the West. The Group of 77 had little information about seabed matters but wanted to ensure that they were not excluded from any benefits of the enterprise.

UNCLOS III convened in New York at United Nations headquarters in 1973 for a procedural meeting. The Group of 77 was not very active at this stage of the negotiations but did set up an overall UNCLOS caucus as well as individual committee coordinating groups. For example, the Peruvian delegate to the Seabed Committee became the G-77 coordinator for that committee.<sup>18</sup>

The leadership of the conference was as follows:

- The President of the Conference was an Asian.
- The Chairman of the First Committee (seabed issues) was an African.
- The Chairman of the Second Committee (general LOS) was a Latin American.
- The Chairman of the Third Committee (environment and marine science) was an Eastern European (socialist bloc).

This left the Western European and Other (WEO) group without representation in the Conference leadership. The G-77 had succeeded in achieving a geographic system that gave all three major positions to LDC's (President and First and Second Committee Chairmen).

The President of the Conference (H.S. Amerasinghe of Sri Lanka) was a neutralist who was more interested in orderly negotiations than in substance. The Seabed Chairman (Paul Bamela Engo of Cameroon) was an activist whose behavior at the Conference was sometimes unpredictable. The Committee II Chairman (Andres Aguilar of Venezuela) was an articulate advocate of the Latin perspective on the territorialization of the seas, although he displayed neutrality as Chairman. The Committee III Chairman (Alexander Yankov of Bulgaria) was a neutralist in general.

UNCLOS III has debated and is still debating more than 400 treaty articles on issues ranging from seabed mining to hydrocarbon exploitation to fishery matters. Issues include archipelagic

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16. Maltese Request, 22 U.N. GAOR, 2 Annexes (Agenda Item 92) 1, U.N. Doc. A/6695 (1967).

17. *Id.*

18. Señor Alvaro de Soto.

States, the rights of landlocked and geographically disadvantaged States (LL/GDS), environmental preservation, marine mammal and fishery conservation, dispute settlement, International Seabed Authority institutions and financial arrangements, and a host of other matters. The issues demand both codification of extant law and progressive development of new law to meet changing circumstances.<sup>19</sup>

The number of cross-cutting interests among G-77 nations is astounding. It is in the context of UNCLOS III that they can best be illustrated.

Cross-cutting rifts and internal group rifts began to appear as early as the 1974 Summer Session of UNCLOS III, which was held at Caracas. For the first time since the 1958 and 1960 Geneva Conferences, all the nations of the world came together to discuss the world's oceans.

The Latins had previously been united on the policy of *patrimonio*, their version of a territorial sea extending to a distance of 200 miles from shore. The patrimonial sea was a concept which caused concern in several world capitals.<sup>20</sup> In essence it was a territorial sea as agreed to in a joint declaration of Chile, Ecuador, and Peru just after World War II. This instance of creeping jurisdiction was perceived as a threat to international security because it posed challenges to the traditional high seas freedoms of naval vessels. Even more alarming was the possibility it might result in many of the world's major straits being closed off as territorial seas.

The Latins had asserted their claims long ago. In the 1970 Declaration of Montevideo, the countries of Argentina, Brazil, Costa Rica, Ecuador, El Salvador, Nicaragua, Panama, Peru, and Uruguay acted together to restate their claim for a 200-mile territorial sea.<sup>21</sup> The major naval powers' concern increased.

Meanwhile, the G-77 delegates began to speak about revenue-sharing and the common heritage of mankind. Sharp ideological differences emerged in public statements.<sup>22</sup> The United States,

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19. For example, the development of seabed mining technology has caused a need for the progressive development of new law. This is law creation, not codification.

20. Many naval powers disliked the idea of extended seas that would encroach upon the traditional freedom of the seas concept.

21. I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 219 (2d ed. 1973).

22. See, e.g., U.N. Doc. A/Conf. 62/C.1/L.7 (1974) (G-77 statement).

Western Europe, and Japan were known to have companies working on perfecting seabed mining technology. As there were very little hard data to go by, rumors multiplied. Examples include: "The seabed has an endless supply of wealth." "The United States is conspiring to keep everything secret." "The Third World will be cheated."

Fierce North-South rhetorical conflict developed over the true value of seabed minerals. Some American negotiators for seabed issues were mistrusted and judged abrasive by foreign delegates.<sup>23</sup> Once again, Western intransigence contributed to a ground-swell of G-77 solidarity. The seabed issue became a rallying point for the G-77 as the concept of *res communis*<sup>24</sup> was reiterated. Demands for exclusive control of the seabed came from extreme G-77 members like Algeria and Tanzania. The Western reaction was to demand an open and guaranteed access to seabed resources.<sup>25</sup>

At the same time a controversy developed over the issue of marine scientific research. Some coastal developing States cited the Pueblo incident as evidence of United States intent to spy. The concept of a "consent regime" developed in the Conference. Poor countries were afraid that under the guise of "pure" science the wealthy States would send ships to engage in "applied" science.<sup>26</sup> Armed with knowledge of the continental shelf's hydrocarbon resources, the rich countries could then negotiate concessions from the LDC's.

In the United States, meanwhile, marine scientists at major institutions insisted on retaining the freedom to conduct pure oceanographic studies without being hindered. Simultaneously, the disenfranchised countries of the world (*i.e.*, those without coastlines) banded together to form a group of landlocked States. They were small in number until other States that felt geographi-

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23. See Miles, *The Structure and Effects of the Decision Process in the Seabed Committee and the Third United Nations Conference on the Law of the Sea*, 31 INT'L ORG. 159 (1977).

24. This concept refers to the open and common nature of the seas and is in contradistinction to *res nullius*, which refers to the seas as a no-man's land rather than a shared commonality. I. BROWNIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 165 (1966).

25. In fact, one company involved in seabed mining went so far as to file a Notice of Discovery and Claim of Exclusive Mining Rights, and Request for Diplomatic Protection and Protection of Investment in November, 1974, reprinted in 14 INT'L LEGAL MATERIALS 51 (1975). This filing was not recognized by the State Department but certainly widened the North-South chasm by going against the developing international legal consensus that there could be no exclusive claims.

26. Swing, *Who Will Own the Ocean?*, 54 FOREIGN AFF. 527, 541-42 (1976).



cally disadvantaged<sup>27</sup> joined. The LL/GDS<sup>28</sup> bloc grew to include Northern and Southern nations alike.

Nations as dissimilar as Austria and Chad joined. The LL/GDS constituted a "blocking third" of UNCLOS III.<sup>29</sup> They threatened to stop progress unless they were granted access to living and non-living resources as well as to shares of revenue from the international seabed area.

The seabed issue was becoming more and more complicated. No longer was it simply a question of sharing the profits of future seabed commercial recovery. Now a new group of States known as the land-based producers (they are not formally organized per se) united. These States demanded compensation guarantees in the treaty to protect them from shortfalls in their foreign exchange earnings. They feared such shortfalls would result from a drop in the prices of the four main seabed minerals—manganese, copper, cobalt, and nickel—when ocean mining of the minerals commenced. They also demanded production limitations, commodity agreements, and other financial compensation. Nations such as Brazil, Chile, Gabon, Peru, Zaire, and Zambia lobbied heavily within the G-77 for these goals and made many statements in general plenary meetings of the Conference.

These were some of the highly controversial issues that developed in that first Summer Session in Caracas. For the purpose of this article we shall now summarize these issues and describe them in further detail in the section which follows. To recap the above issues in our study, they are:

- The deep seabed.
- Transit through straits and coastal waters.
- Marine scientific research.
- Landlocked and geographically disadvantaged State rights.

These are the issues. They cut squarely across ideologies and geographic boundaries. They concern political and economic mat-

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27. A country could "feel" geographically disadvantaged if it had a short coastline, a small continental shelf, or any number of so-called disadvantages.

28. LL/GDS is the abbreviation for landlocked and geographically disadvantaged States.

29. This means that because there are about 150 nations participating in UNCLOS III and because the LL/GDS group comprises more than 50, it could theoretically hold up progress on a treaty if a vote required a two-thirds majority. The likelihood of this happening appears small.

ters of great sensitivity. They divided the Group of 77 participants as well as Western nations.

In the following sections of this article, we will examine each of the above issues. The positions of the parties interested in the particular issue will be discussed. This discussion will serve as a foundation for our subsequent construction of a model. The model clarifies the cross-cutting interests and contradictions within the G-77 at UNCLOS III.

### *The Deep Seabed*

In this section the process by which G-77 delegates "hammer-out" positions will be described. In the next section a model of cross-cutting interests will be developed to aid our understanding of the process.

#### The G-77 Position

The original G-77 position stipulated a strong seabed Authority with the right to exploit the area itself. The Authority could have not only a monopoly over exploitation but effective control of marketing and production as well. Thus prices and markets in land-based producers among the G-77 would not be affected adversely by ocean mining.

In designing this early set of demands, the G-77 engaged in a considerable amount of internal debate. Severe conflict was witnessed during some of its caucus meetings on seabed matters.<sup>30</sup> For example, at a typical G-77 meeting on seabeds, it might be necessary to formulate G-77 policy on the type of seabed access system. The following is a hypothetical reconstruction of such a G-77 caucus meeting.

The meeting is chaired by Peru, the G-77 seabed coordinator. Peru says that a common position must be reached in two hours for a general meeting.

Algeria says that the seabed system must provide complete control for the Authority which will be the sole operator. Private entities should be banned from the Area.

In rapid succession, Tanzania, Libya, and Tunisia voice support for the Algerian view. They make long interventions, harangue their colleagues, and demand nothing less than complete control. They charge the moderates<sup>31</sup> in the G-77 (*e.g.*, Singapore and Chile) with selling out to United States demands.

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30. This observation is based on reports from caucus-meeting participants to academic observers.

31. A "moderate" in the G-77 simply refers to G-77 nations that are willing to

Now only an hour is left to resolve the matter.

Singapore takes the floor and says that there is no sell-out. It is simply more practical to agree on a two-track access system that gives control not only to the Authority but to private groups as well.<sup>32</sup> Otherwise, says Singapore, there will be no seabed mining at all.

Algeria replies that if that is the position then it may be better to abandon the Conference.

Neutral Senegal intervenes and agrees that complete control can be achieved eventually but sides with Singapore in urging a compromise. The coordinator (Peru) announces a fifteen-minute recess in the meeting. There are only forty minutes left for a decision.

During the recess some of the moderates (Brazil, Cameroon, Chile, Indonesia, Mexico, Singapore and twenty other leaders among the LDC's) circulate in the conference room. They lobby "undecideds" such as Chad and Madagascar. The Algerians also lobby. But there are more moderate leaders (20-30) than radical leaders (6-10) in the G-77 (which has 114 members). The undecideds defer to the greater prestige and status of the moderates, to their greater expertise and less militant personalities.

The coordinator bangs his gavel after what has turned into a thirty-five minute recess. Only five minutes remain before Plenary.<sup>33</sup>

The coordinator announces a compromise that calls for a dual system of access (Authority and private corporations). He also makes a plea for a future Authority system that will be more similar to the Algerian model but stresses the need for a compromise now. A vote by hand is taken. The proposal wins with near unanimity. Only a few countries actually cared either way. The rest deferred to moderate leaders.

Veteran UNCLOS III observer Edward Miles has written about the same process of seabed negotiation.<sup>34</sup> His perspective is a

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negotiate, discuss, and compromise at UNCLOS III rather than to engage in ideological posturing and polemics.

32. This is similar to the United States proposal for a seabed regime.

33. A Plenary is the formal meeting of all delegations, with Heads of Delegation in their respective chairs.

34. Miles, *The Structure and Effects of the Decision Process in the Seabed Committee and the Third United Nations Conference on the Law of the Sea*, 31 INT'L ORG. 159, 207-08 (1977).

useful aid in our analysis. Here is what Miles says about the 1975 Geneva Session of the Conference:

As the Geneva session wore on, it became clear to the author that delegate behavior in the Working Group of Committee I was a function of three kinds of dynamics, no one set of which was necessarily closely related to the others. For instance, the "game" played at level I involved all those participants with substantive interests in the negotiation. These were primarily advanced countries with existing or potential capabilities to exploit the seabed beyond national jurisdiction and developing country land-based producers of certain minerals, the representatives of which feared that they would be adversely affected by the production of minerals from seabed sources.

The "game" at level II involved Algeria as prime mover, but, since Caracas, aided significantly by Tanzania and Mauretania and supported occasionally by China. The point of this "game" was to link the seabed issue tightly with demands for a New Economic Order. Most people in Geneva, and this means most people in the Group of 77, began in fact to play this game and this accounts for the enormous increase in representation in the Group of 77 Contact Group as well as in the Working Group of Committee I. It affected the entire proceedings and threatened the compromises arrived at because *for most countries this issue involves no serious substantive interests*. Not even the generation of revenues arouses much concern since the assumption is that almost nothing will be left after these revenues are applied to the Authority's overhead expenses and after adversely-affected developing country land-based producers are compensated.

For most people in Committee I, therefore, the seabed was an expendable issue in substantive terms and many delegations who attended the Working Group did not have formal instructions from their governments. As the ideological ingredient increased after week five, the leadership of the Group of 77 began to split, with the initiative passing to the "radicals" (i.e., Algeria, Tanzania, and China). The moderates tended to remain silent, not wishing to leave themselves open to charges of being "tools of Western imperialism." The development put the position of the Chairman in jeopardy since, as Chairman, it was his responsibility to do everything in his power to see that agreement was reached. But for the "radicals," playing the increasingly global game of the New Economic Order, sometimes to audiences not directly involved in the Conference, it does not matter very much whether there is no agreement and the advanced countries unilaterally exploit the seabed beyond national jurisdiction. In fact, this would be more grist for the ideological mill.

The "game" at level III involves the conflict of personalities, only two aspects of which have an impact on negotiation outcomes. The first concerns the personality conflict between the US representative and a number of his antagonists in the Group of 77. This is used, sometimes deliberately, as an aid to the Algerian approach by several delegations. There is always a different, less overtly antagonistic response to other delegations whose approaches are similar to the US. The stridency which often enters into the debate when the US is a participant is ascribed by several delegates to personal dislike of the US representative. By feeding the ideological fires, this conflict makes compromise sometimes more difficult.<sup>35</sup>

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35. *Id.* (emphasis original).

### Other Seabed Positions

The United States delegation will have a set of rather explicit negotiating instructions from Washington. These guidelines are developed in an inter-agency United States policy process that involves several government departments.<sup>36</sup> The delegation will include officials from the Departments of Commerce, Defense, Interior, State, Treasury, and others, as well as congressional visitors. During the UNCLOS III sessions, the United States "team" will coordinate policy and plan negotiating strategy and tactics.

Belgium, the Federal Republic of Germany, France, Great Britain, and other Common Market countries may constitute a loose coalition at the negotiating table. These countries either have or soon will have seabed mining technology. They prefer a carefully circumscribed seabed Authority. They also prefer protections for seabed miners such as guaranteed access to the Area, security of tenures, sanctity of contract, and other explicit provisions. Their claim is that these detailed provisions are needed to obtain capital for massive seabed investments.

### *Transit Through Straits and Coastal Waters—The G-77 Position*

The issue of passage through straits was settled early in the Conference. There are about 116 internationally utilized straits in the world. With the advent of a new twelve-mile territorial sea, many could have been "closed off" by strait-State prerogative. But there has been general agreement on the notion of "transit passage" through straits. Put simply, most countries agree that passage through straits is to be free and unimpeded regardless of the breadth of territorial waters.<sup>37</sup>

The issue of other coastal waters is less clear. Latin American States have claimed extended territorial seas for some time.<sup>38</sup> The concept of a 200-mile exclusive economic zone (EEZ) has now gained worldwide acceptance. The EEZ provides resource jurisdiction (*e.g.*, oil and fishery) but not territorial rights. Some militant territorialists in the G-77 seek to convert the EEZ into a

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36. For a detailed study of the United States policy process in Washington and on the delegation, see Friedman, *U.S. Law of the Sea Policy: A Bureaucratic Politics Analysis*, 2 MAR. POL'Y 304 (1978).

37. The new treaty would establish a 12-mile territorial sea.

38. For a discussion of the patrimonial sea, see text accompanying note 20 *supra*.

territorial sea. Moderate G-77 members agree that the EEZ is sui generis, with high seas rights for matters of passage.

### The Naval Power Position

Naval powers have an interest in free and unimpeded passage through straits for surface ships and submarines. They also have an interest in free overflight of straits. This is a constant interest. The economic zone issue is another matter of concern. Most naval powers want to ensure that there will be no encroachment of the freedom of the seas. Here a shared perception exists on the part of naval powers and of G-77 moderates that the EEZ must be considered sui generis for international legal purposes.

### *Marine Scientific Research (MSR)*

Within the G-77 exists the conviction that marine scientific research cannot be allowed without coastal State consent. The majority of G-77 countries are poor and unsophisticated. They fear Western science as potentially deleterious to their interests. Nevertheless, MSR is a relatively easy issue, and the G-77 unity is helpful.

For example, the G-77 meeting on MSR policy might last a very short time. The 100 or so G-77 delegates gather. The Chairman of the G-77 announces that they must oppose free MSR and demand a consent regime. He asks for objections. There are none. The consent regime is so decided upon.

### The United States Position

The United States is motivated by a desire to protect freedom of scientific research for its major oceanographic institutions. It is, however, a losing battle. The consent regime is a clear-cut victory for the G-77. The Soviet Union, too, favors a consent regime as it is cautious about foreign activities near its shores. The United States is isolated on this issue.

### LL/GDS Interests Within the G-77

A significant number of landlocked and geographically disadvantaged States have pressed to have their interests accommodated. Only some of these States are G-77 members. A split exists within the G-77 on LL/GDS rights. Some coastal States are reluctant to grant access to neighboring LL/GDS. For example, Venezuela has refused to grant surplus fishing rights to the neighboring Caribbean islands. Despite G-77 rhetoric, many coastal

States want their resources and are not necessarily generous to other G-77 LL/GDS.

### The United States Position

The United States has attempted to stay out of the debate, but some LL/GDS members see an advantage in drawing the United States into it. Some moderate G-77 LL/GDS States may view United States intervention at UNCLOS III as a quid pro quo for support on United States seabed goals.

The United States position, however, remains one of exceedingly tacit support for the following three goals:

1. Access to the sea and transit rights for LL/GDS.
2. Revenue sharing from continental margin resources beyond 200 miles.
3. Access to some portion of the living resources in the zones of neighboring States in the region.<sup>39</sup>

### *A Word on Perceptions*

It should be clear at this point that the United Nations milieu is more than the sum of the G-77 and the other States. The milieu consists of the G-77, the United States, the Soviet Union, the European Economic Community, the LL/GDS, the land-based producers, the regional groups of Africa, Asia, Latin America, the Middle East, the coastal States, the ideological extremists, the neutrals, and others. What all have in common is a desire to obtain their individual objectives. This is often accomplished through compromise with one another. Cross-cutting interests within and without the G-77 make for the kind of "log-rolling" spoken of in the Introduction above.

Nevertheless, the G-77 is often regarded as a monolithic entity by UNCLOS III participants. This has been less true as the negotiations have continued. Fissures in G-77 solidarity have become more visible. The important point is that the notion of a solely determinative "North-South" conflict is increasingly fallacious in the Law of the Sea Conference. The rich and poor nations *do* conflict, but not as exclusively as used to be the case.

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39. DEPARTMENT OF STATE, UNCLASSIFIED DELEGATION REPORT ON THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, AUGUST 2 - SEPTEMBER 17, at 11 (1976).

## WHO GETS WHAT, WHERE, WHEN, HOW, AND WHY

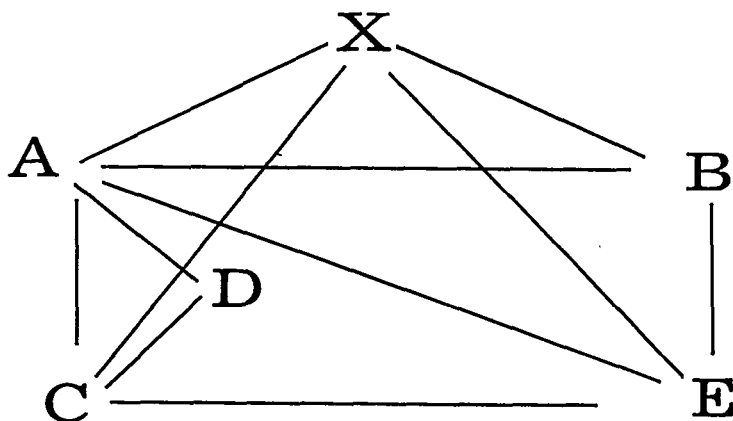
As a generalization derived from the above and a prelude to the organization of our model, we can observe that the G-77 frequently appears united but is troubled by internal divisions. On matters of parochial interest, the cross-cutting views of the UNCLOS delegates have divided the G-77. Collusion may exist between the G-77 and non-G-77 States. Behind a common front of G-77 unity there is at times a labyrinth of fratricide and disunity.

In this section we shall construct a model illustrating cross-cutting interests within the G-77. It is hoped that this model will synthesize what has been described up to this point. It will become immediately clear to the reader from this model that although UNCLOS III is a lawmaking exercise, it is profoundly political in nature.

### *The Model*

“Log-rolling” or “back-scratching” is an important concept in G-77 behavior. It is often determinative of policy. The series of trade-offs that occurs will be illustrated through the construction of our G-77 model below.

Figure 1



In a two-country model we start with country *A* and country *B*. Country *A* is a land-based producer of seabed minerals and wants compensation against losses in export earnings which would be incurred by land-based producers as a direct result of seabed mining. Country *B* is a coastal State that wants a 200-mile territo-



rial sea. Both are moderate leaders that are respected and influential within the G-77.

They make a deal ("deals," or trade-offs, are suggested by lines between the letters in Figure 1). Country *A* will support a G-77 position on 200-mile territorial seas if country *B* supports a G-77 position on compensation for land-based producers. In the G-77 meetings they help each other by lobbying these causes.

Enter country *C*, a large, technologically advanced seabed miner with several security interests as a naval power. Country *C* opposes compensation for land-based producers and opposes a 200-mile territorial sea. Nevertheless, country *C*'s security interests are more important than its view on land-based producer compensation. Country *C* approaches country *A* and strikes up a secret deal.

Country *A* agrees to reduce its support for a 200-mile territorial sea despite its pledge to country *B*. In return, country *C*, a large and powerful naval State, will publicly support compensation for land-based producers. This support will have significant impact on the entire negotiating process.

Enter country *D*, a G-77 member and a member of the LL/GDS group. Country *D* and countries *C* and *A* agree to strike separate deals.

Country *D* will support land-based producer compensation in return for country *A*'s supporting neighbor-State access rights for landlocked States.

Country *D* will oppose 200-mile territorial seas and speak instead of economic zones in return for country *C*'s subtle and behind-the-scenes support for the rights of LL/GDS.

Enter country *E*, an archipelagic State. Country *E* wants control of its archipelagic waters as a territorial sea area.

Country *E* makes deals with countries *A*, *B*, and *C*. Country *A* will support the archipelagic position if country *E* will support compensation for land-based producers. Country *B* will support the archipelagic position if country *E* will support a 200-mile territorial sea. Country *C* will support the archipelagic position with some modification. Country *C* requires freedom of transit for its military ships. Country *C* therefore supports country *E*, if country *E* will agree to allow free and unimpeded transit for military ships through archipelagic waters and straits.

It should be clear by now that we could go on building many

more models. Let us add just one more country. Enter country *X*. Country *X* is a territorialist *and* a land-based producer!

Country *X* makes deals with countries *A*, *B*, *C*, and *E*. Country *A* agrees to support *X* as a fellow land-based producer to strengthen its own hand. Country *B* supports country *X* as a fellow territorialist, which strengthens that interest bloc. Country *C* agrees to support compensation in return for some modification on the 200-mile territorial sea (*i.e.*, some transit). Country *E* supports both compensation and a 200-mile territorial sea in return for Country *X*'s support of archipelagic matters.

### Why Does It Happen?

The behavior outlined above is witnessed a hundred times over at UNCLOS III. Why?

The above model shows only the more obvious cross-cutting interests. However, these types of alliances will also be affected by which countries speak the same languages, by regional politics around the world, by which delegates are friendly to one another, by personality, by seniority at the Conference, by the standing of the various countries, by prestige, by power, and by other intangibles.

### *The Presidential Crisis and the G-77*

At the start of the Geneva Spring 1978 Session, a major procedural crisis occurred. It is highly illustrative of G-77 politics.

The President of the Conference, a Sri Lankan, lost his country's accreditation because of domestic Sri Lankan politics. Without any accreditation, he was vulnerable to a challenge.

The Latin American group challenged his tenure as President for several reasons. First, there was an attempt on the part of the Latin American group to gain more power for its own leader, who served as Second Committee Chairman. Second, some Latin American coastal States were afraid that the President favored LL/GDS interests. Third, several countries were concerned with the establishment of a legal precedent in regard to the chairing of UNCLOS III by an unaccredited citizen.

Within the G-77 the UNCLOS III President had the backing of the African, Arab, and Asian groups. Nonetheless, the Latins mounted a serious challenge strengthened by their coordination and timing.

In the end, a vote was taken by the Conference. The African-Arab-Asian bloc prevailed over the Latins. *For the first time in the history of the Group of 77, a split was evidenced in a public UN-*

*CLOS III forum!* Africans and Asians complained about Latin attempts at domination. They were disturbed by Latin pressure. This was an unprecedented public split.

#### CONCLUSION

If the power of the extremists is to be reduced, it must be done by the Group of 77 itself. This requires that the Group come to perceive the extremists' veto as an abuse of power—an abuse which is contrary to the interests of the majority of the Group of 77.<sup>40</sup>

These are the words of a former United States negotiator in the Seabed Committee. They are, at least in part, the thesis and message of this study. Minor interests in the G-77 have distorted and altered the shape of what could have been far more rational negotiations. Sometimes the ideological extremists have twisted the shape of the G-77. Sometimes the G-77 special interests, like those of the land-based producing States, have succeeded in significantly influencing negotiating positions, although they themselves constitute a minority within the G-77.

Richard Darman, the former United States Deputy Head of Delegation at UNCLOS III, has also written the following:

It requires a more sophisticated appreciation of where real interests lie than is possibly connoted by North-South bloc posturing. Here the United States could help by refusing to accept the absurdly simplistic North-South mindset. Indeed, the specific interests and cultures within the South are so varied that were it not for a posture of unity reactively assumed by the North, it is difficult to imagine what abstraction could serve to hold the G-77 together.<sup>41</sup>

This is precisely what Gosovic was indicating when he illustrated how United States and Western intransigence helped to coalesce the fledgling G-77 at the first Geneva Session of UNCTAD. Indeed, nothing is as powerful an instrument of group formation, a tool of solidarity creation, or a unifying catalyst of disparate elements as a common enemy.

If this is the case then why is the G-77 currently so divided and many-headed in its actions? The answer lies in the contradictory and complex internal politics of the G-77. Cross-cutting interests and alliances between G-77 and non-G-77 countries are frequently the source of friction. In concluding, then, we must note the following:

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40. Darman, *The Law of the Sea: Rethinking U.S. Interests*, 57 FOREIGN AFF. 592 (1978).

41. *Id.*

1. Whereas the G-77 has previously been able to resolve internal differences without any public exposure, this situation is now changing.

2. Whereas the West has contributed to the solidification of the G-77 (under the "common enemy" principle), the G-77 is steadily losing its unity. There are repeated instances of richer G-77 nations prospering in United Nations fora at the expense of their poorer fellow G-77 members.

3. Intangibles like personality, prestige, and standing are factors that affect the scope and direction of substantive policy.

There are no immediate solutions to remedy this phase of G-77 malaise. The behavior of the G-77 can be modified no more easily than can that of the West.

It is true that the rise of the G-77 has changed the shape of international organizational politics. Group of 77 activities at multi-lateral conferences have a variety of side effects. The militant nature of the G-77 has placed the West on the defensive, just as the reactive behavior of the West has helped solidify the G-77. It is also important to note that the number of countries that comprise the G-77 has increased to include more than 110 nations. The G-77 has contributed somewhat to the curious quasi-parliamentary nature of lawmaking exercises such as UNCLOS III.

The influence of the G-77 will continue to be felt, but its solidarity is being tested. The multipolar nature of our changing world is having an unsettling effect on this bloc of nations because many issues and interests affect the G-77. The role of the G-77 probably will continue to change. This seems to be a natural process. Regardless of what view one espouses, the impact of the Group of 77 cannot be denied: A revolution in modern diplomacy has occurred.