Post World War II Multilateral Treaty-Making: The Task of the Third United Nations Law of the Sea Conference in Perspective*

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Much attention has been focused on the Third United Nations Conference of the Law of the Sea and the remaining obstacles that must be overcome before that Conference can vote to accept a treaty text. However, even if the Conference proceeds quickly to approve a text, the treaty may never enter into force. More than thirty years of behavior clearly indicate that it will be very difficult and time-consuming for the new treaty to be accepted by a majority of the States in the world. Problems likely to be encountered include signatures not followed by required ratifications, crippling reservations, and States' reluctance to be party to treaties containing dispute settlement clauses. Given the patterns of the past thirty years, it is likely that a new treaty will never *enter into force.*

INTRODUCTION

Since Ambassador Pardo's pivotal 1967 speech to the United Nations General Assembly,[1] academics and practitioners interested in the law of the sea have focused much of their attention on the Third United Nations Conference on the Law of the Sea

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1. U.N. Doc. A/6695 (1967).

(UNCLOS III) and the emerging draft treaty. The various versions of draft treaties, the most recent of which is the Informal Composite Negotiating Text, Revision 1 (ICNT/R)[2], have attracted an enormous amount of attention considering they are only drafts and in no way carry the weight of law. Unfortunately, the anticipation generated by UNCLOS III may have obscured some of the difficulties remaining before a new treaty can enter into force.

It should be acknowledged that the approach adopted here largely ignores the problems remaining before UNCLOS III adopts a final treaty text. These difficulties should not be minimized. Nevertheless, it is instructive to inquire about prospects for broad acceptance and expeditious entry into force of a treaty once approved by the Conference. It is necessary to view UNCLOS III for what it is—an exercise in multilateral treaty creation, albeit on an unprecedentedly ambitious level. Clear patterns are present in post-World War II treaty-making. There is no reason to believe that many of the same patterns and problems existing in the past will not recur once a treaty is adopted. In fact, it can be argued that this comparative approach is conservative—UNCLOS III's complexity suggests that it will encounter *more* problems in the post-signature phase than is usually the case with major post-World War II multilateral treaties.

In this context, four interrelated issues will be examined. First, if things proceed smoothly, how many States might be expected to sign the new law of the sea treaty? Second, what pattern might be expected in such things as ratifications, accessions, and acceptances of the treaty; ultimately, when might the treaty be expected to enter into force? Third, how many reservations are likely to develop in response to the treaty? Fourth, how will the complex subject of dispute settlement affect prospects for the treaty? Each of these questions can be addressed by comparing the work of UNCLOS III with other multilateral treaties which may be similar in scope and/or subject matter.

The focus here will be on the precursors to the UNCLOS III treaty rather than on the terms of the ICNT/R. It is felt that the draft has been analyzed in such detail that it may be profitable to adopt a broader perspective. Thus, it is assumed that the diplomats working in New York and Geneva will overcome the remaining difficulties so that a final text can be agreed upon. The point is that even if this optimistic scenario is fulfilled, it becomes very important to ask what post-signature barriers might exist to the prompt entry into force of a global law of the sea treaty.

2. U.N. Doc. A/CONF.62/WP.10/Rev. 1 (1979) [hereinafter cited as ICNT/R].

THE ICNT/R IN THE CONTEXT OF GENERAL MULTILATERAL TREATIES

No one doubts that the task of UNCLOS III is enormous. The very length of the negotiations relects the magnitude of the difficulties encountered. The length of the ICNT/R is astounding: 304 articles and seven annexes. Therefore, extreme care must be taken in selecting a comparison group with which meaningful parallels to the ICNT/R might be drawn. At the most obvious level, the ICNT/R must be compared with multilateral treaties. But most multilateral treaties are what have been termed plurilateral treaties, that is, restricted by subject matter or geography to a certain group of States.[3] This is not the case with the treaty being produced by UNCLOS III—quite the contrary, it is a general multilateral treaty to which any State in the world may become a party.[4] Thus, the broadest possible comparison group is the other general multilateral treaties entering into force in recent years. Of course, many types of distinctions within the category of general multilateral treaty are possible. Kelsen elucidated some of the possibilities and difficulties:

> Hence a logically correct classification of treaties from the point of view of international law must differentiate between different law-making treaties, and must not differentiate between treaties for law-making and treaties for other purposes. There is indeed a remarkable difference between treaties concluded by many states—multilateral treaties—by which general norms are created regulating the mutual behavior of the contracting states, as the Covenant of the League of Nations or the Charter of the United Nations, and treaties concluded by only two states—bilateral treaties—by which an individual norm is created, establishing only one obligation of one state and one right of the other state, as for instance, a treaty of cession. The so-called law-making treaties are treaties creating general norms, whereas the others are law-making treaties creating individual norms. There are, however, many intermediate stages between the two types of law-making treaties, the term "law-making" being a pleonasm.[5]

It is of paramount importance that the treaty produced by UNCLOS III be accepted by a large number of States. The principal arguments for a conventional, as opposed to a customary, process for creating a new law of the sea hinge on the uniformity possible through the conventional route. If the adopted treaty fails to gain acceptance by a sizeable portion of states, then UNCLOS III will

3. J. TRISKA & R. SLUSSER, THE THEORY, LAW AND POLICY OF SOVIET TREATIES 4, 415 (1962).
4. *Id.*
5. H. KELSEN, PRINCIPLES OF INTERNATIONAL LAW 457 (2d ed. R. Tucker ed. 1966).

have lost its main *raison d'être*. It is possible to take two approaches to the issue of which States must be party if UNCLOS III is to be judged a success. A qualitative approach would identify the major users of hydrospace and assume that no treaty will be successful without these States as parties to the Convention. Conversely, one could assume that some fairly substantial number of States must be party, thus giving the treaty credibility and presumably encouraging nearly universal acceptance. The exact number chosen would be arbitrary. But it seems that if half the States in the world accept the terms of the treaty, success is possible. Thus, for the comparison that follows, eighty parties has been selected as the minimum requirement for success. Nevertheless, eighty parties will be no mean feat. If general multilateral treaties are grouped according to their dates of entry into force, the results are striking:

Date of Entry into Force	Average Number of Parties
1947-51	48.8
1952-56	41.2
1957-61	30.1
1962-66	45.1
1967-71	35.1

Although more current data are unavailable because of the time involved in ratifications, accessions, and acceptances after signature, the point is clear: it is unusual for multilateral treaties, even general multilateral treaties, to have the number of parties required for UNCLOS III to be successful according to the standard established here.

Table I lists all general multilateral treaties entering into force after 1945 that have eighty or more parties.[6] In addition to the paucity of treaties so contained, considering it is the result of over thirty years of treaty activity, two things are notable. First, most of the treaties are of a relatively minor and/or technical nature. None is close to the level of importance or the comprehensiveness of the UNCLOS III document. Second, only three from a total of thirty-four have marine or maritime matter as a principal focus, and all of these deal with shipping or navigation matters. On the basis of this information, no precedent exists for the majority of States of the international community becoming party to an important, comprehensive treaty. In fact, the most important treaties negotiated in recent years tend to be plurilateral (as opposed to general) treaties. Thus, UNCLOS III is attempting the unprecedented and, by implication, the very difficult.

6. Protocols to previous treaties and amendments have been omitted.

TABLE 1

GENERAL MULTILATERAL TREATIES ENTERING INTO FORCE SINCE 1945 WITH MORE THAN EIGHTY PARTIES

Treaty Name	Year of Force
Constitution of the World Health Organization[7]	1946
Convention of the World Meteorological Organization[8]	1947
Convention on the Intergovernmental Maritime Consultative Organization[9]	1948
Convention on the Prevention and Punishment of the Crime of Genocide[10]	1948
Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character[11]	1949
Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field[12]	1949
Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea[13]	1949
Convention Relative to the Protection of Civilian Persons in Time of War[14]	1949
Convention on Road Traffic[15]	1949
Geneva Convention Relative to the Treatment of Prisoners of War[16]	1949

7. Constitution of the World Health Organization, *opened for signature* July 22, 1946, 62 Stat. 2679, T.I.A.S. No. 1808, 14 U.N.T.S. 185.

8. Convention of the World Meteorological Organization, *signed* Oct. 11, 1947, 1 U.S.T. 281, T.I.A.S. No. 2052, 77 U.N.T.S. 143.

9. Convention on the Intergovernmental Maritime Consultative Organization, *signed* Mar. 6, 1948, 9 U.S.T. 621, T.I.A.S. No. 4044, 289 U.N.T.S. 48.

10. Convention on the Prevention and Punishment of the Crime of Genocide, *signed* Dec. 9, 1948, 78 U.N.T.S. 277.

11. Agreement on the International Circulation of Auditory and Visual Aids, *done* July 15, 1949, 17 U.S.T. 1578, T.I.A.S. No. 6116, 197 U.N.T.S. 3.

12. Convention on the Treatment of Wounded and Sick in Armed Forces in the Field, *done* Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31.

13. Convention on the Treatment of Wounded and Sick in Armed Forces at Sea, *done* Aug. 12, 1949, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85.

14. Convention on Protection of Civilians During War, *done* Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

15. Convention on Road Traffic, *done* Sept. 19, 1949, 3 U.S.T. 3008, T.I.A.S. No. 2487, 125 U.N.T.S. 22.

16. Geneva Convention Relative to the Treatment of Prisoners of War, *done* Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135.

Universal Copyright Convention[17]	1952
Convention on the Political Rights of Women[18]	1953
Convention Concerning Customs Facilities for Touring[19]	1954
Customs Convention on the Temporary Importation of Private Road Vehicles[20]	1954
Articles of Agreement of the International Finance Corporation[21]	1955
Statute of the International Atomic Energy Agency[22]	1956
International Convention for the Safety of Life at Sea[23]	1960
Single Convention on Narcotic Drugs[24]	1961
Vienna Convention on Diplomatic Relations[25]	1961
Convention on Offences and Certain Other Acts Committed on Board Aircraft[26]	1963
Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water[27]	1963
Vienna Convention on Consular Relations[28]	1963
International Convention on the Elimination of All Forms of Racial Discrimination[29]	1966
International Convention on Loadlines[30]	1966
Convention Establishing the World Intellectual Property Organization[31]	1967

17. Universal Copyright Convention, *done* Sept. 6, 1952, 6 U.S.T. 2731, T.I.A.S. No. 3324, 216 U.N.T.S. 132.

18. Convention on the Political Rights of Women, *signed* Mar. 31, 1953, 193 U.N.T.S. 136.

19. Convention Concerning Customs Facilities for Touring, *done* June 4, 1954, 8 U.S.T. 1293, T.I.A.S. No. 3879, 276 U.N.T.S. 230.

20. Customs Convention on the Temporary Importation of Private Road Vehicles, *done* June 4, 1954, 8 U.S.T. 2097, T.I.A.S. No. 3943, 282 U.N.T.S. 249.

21. Articles of Agreement of the International Finance Corporation, *done* May 25, 1955, 7 U.S.T. 2197, T.I.A.S. No. 3620, 264 U.N.T.S. 117.

22. Statute of the International Atomic Energy Agency, 8 U.S.T. 1093, T.I.A.S. No. 3873, 276 U.N.T.S. 3.

23. International Convention for Safety of Life at Sea, *done* June 17, 1960, 16 U.S.T. 185, T.I.A.S. No. 5780, 536 U.N.T.S. 27.

24. Single Convention on Narcotic Drugs, *done* Mar. 30, 1961, 18 U.S.T. 1407, T.I.A.S. No. 6298, 520 U.N.T.S. 204.

25. Vienna Convention on Diplomatic Relations, *signed* Apr. 18, 1961, 500 U.N.T.S. 95.

26. Convention on Offenses and Certain Other Acts Committed on Board Aircraft, *done* Sept. 14, 1963, 20 U.S.T. 2941, T.I.A.S. No. 6768, 704 U.N.T.S. 219.

27. Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water, *done* Aug. 5, 1963, 14 U.S.T. 1313, T.I.A.S. No. 5433, 480 U.N.T.S. 43.

28. Vienna Convention on Consular Relations, *done* Apr. 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820, 596 U.N.T.S. 261.

29. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195.

30. International Convention on Loadlines, 18 U.S.T. 1857, T.I.A.S. No. 6631, 640 U.N.T.S. 133.

31. Convention Establishing the World Intellectual Property Organization, *done* July 14, 1967, 21 U.S.T. 1749, T.I.A.S. No. 6932.

Treaty on Non-Proliferation of Nuclear Weapons[32]	1968
Convention for the Suppression of Unlawful Seizure of Aircraft[33]	1970
Statute of the World Tourism Organization[34]	1970
Agreement Relating to the International Telecommunications Satellite Organization[35]	1971
Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation[36]	1971
Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological and Toxic Weapons and on Their Destruction[37]	1972
International Telecommunications Convention[38]	1973
Money Orders and Postal Travellers' Checks Agreement[39]	1974
Agreement Establishing the International Fund for Agricultural Development[40]	1976

It is possible to draw many parallels between other recent treaty-creating conferences and UNCLOS III. One possible comparison is the 1968-1969 Vienna Conference which produced the Vienna Convention on the Law of Treaties.[41] A number of excellent studies deal with the intricacies of the latter law-making endeavor, so the present discussion need only be general.[42] The task of the Vienna Conference was easier than UNCLOS III; nevertheless, it was a significant international conference attended by 110 States.[43] The work of that conference has been described in this way: "The Convention on the Law of Treaties sets forth the code of rules that will govern the indispensable element in

32. Treaty on Non-Proliferation of Nuclear Weapons, *done* July 1, 1968, 21 U.S.T. 483, T.I.A.S. No. 6839, 729 U.N.T.S. 161.

33. Convention for the Suppression of Unlawful Seizure of Aircraft, *signed* Dec. 16, 1970, 22 U.S.T. 1643, T.I.A.S. No. 7192.

34. Statute of the World Tourism Organization, *done* Sept. 27, 1970, 27 U.S.T. 2211, T.I.A.S. No. 8307.

35. Agreement Relating to the International Telecommunications Satellite Organization, *done* Aug. 20, 1971, 23 U.S.T. 3813, T.I.A.S. No. 7532.

36. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, *done* Sept. 23, 1971, 24 U.S.T. 565, T.I.A.S. No. 7570.

37. Convention on Bacteriological and Biological Weapons, *done* Apr. 10, 1972, 26 U.S.T. 583, T.I.A.S. No. 8062.

38. International Telecommunications Convention, *done* Oct. 25, 1973, 28 U.S.T. 2495, T.I.A.S. No. 8572.

39. Money Orders and Postal Travellers' Checks Agreement, *done* July 5, 1974, 27 U.S.T. 795, T.I.A.S. No. 8232.

40. Agreement Establishing the International Fund for Agricultural Developement, *done* June 13, 1976, 28 U.S.T. 8435, T.I.A.S. No. 8765.

41. U.N. Doc. A/CONF.39/15.

42. Among the excellent studies not cited elsewhere in this paper is T. ELIAS, THE MODERN LAW OF TREATIES (1974).

43. S. ROSENNE, THE LAW OF TREATIES: A GUIDE TO THE DIPLOMATIC HISTORY OF THE VIENNA CONVENTION 72 (1970).

the conduct of foreign affairs, the mechanism without which international intercourse could not exist, much less function."[44] This is true, if somewhat overstated, since the law of treaties is in no way dependent for its existence on the Vienna Convention.

Ambassador Rosenne's excellent work puts the task of the Vienna Convention into perspective:

> The law of treaties, the law of contracts to use the common law term, the law of obligations to use the civil law term, constitutes the very heart of any coherent legal system. All codification of the different branches of international law which has been undertaken hitherto such as the law of the sea and the law of diplomatic and consular relations, has related to peripheral, though not by any means unimportant, aspects of the law.[45]

In terms of achieving broadly based acceptance, the Vienna Conference seems to have had a far easier time than has been the case with UNCLOS III. There were two Conference sessions; the final text of the Convention was accepted by a vote of seventy-nine for, one against, and nineteen abstentions.[46] There seem to have been few really heated issues at the Conference—one gets the feeling that most of the issues were technical matters, the resolution of which required diligence, but not great sacrifice of national interest on the part of States. Most of the problems and difficulties[47] seemed to hinge on two articles:[48]

> Article 52
>
> *Coercion of a state by the threat or use of force*
>
> A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.
>
> Article 53
>
> *Treaties conflicting with a peremptory norm of general international law (jus cogens)*
>
> A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a preemptory norm of general international law is a norm accepted and recognized by the international community of states as a whole norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Although these are, indeed, substantive issues, one cannot help

44. Kearney & Dalton, *The Treaty on Treaties*, 64 AM. J. INT'L L. 495 (1970).

45. S. ROSENNE, THE LAW OF TREATIES: A GUIDE TO THE DIPLOMATIC HISTORY OF THE VIENNA CONVENTION 46 (1970).

46. J. SZTUCKI, JUS COGENS AND THE VIENNA CONVENTION ON THE LAW OF TREATIES 3 (1974).

47. S. ROSENNE, THE LAW OF TREATIES: A GUIDE TO THE DIPLOMATIC HISTORY OF THE VIENNA CONVENTION 81 (1970).

48. U.N. Doc. A/CONF. 39/27, *reprinted in* 63 AM. J. INT'L L. 875-903 (1969). Articles 52 and 53 are not yet in force.

but think the delegates at UNCLOS III would find them infinitely less difficult than the issues they have been confronting!

Because the Vienna Conference was a significant treaty-creating exercise, it is instructive to look at the progress of that treaty in entering into force. The record is not good. Although seventy-nine states voted in favor of the treaty, only forty-seven signed it.[49] Ten years after signature, the Convention still is not in force. Only thirty-three states have ratified or acceded to the treaty; thirty-five parties are needed for force.[50] It is disturbing that after a decade a treaty that achieved wide ranging support (consensus?) during the drafting phase has not been able to sustain enough interest and support for expeditious entry into force. Even if the treaty does obtain the needed two additional parties in the immediate future (as seems likely), many of the most prolific treaty-making States in the world are not party to the treaty, including the United States, the Soviet Union, Japan, China, France, and the Federal Republic of Germany.

Whatever comparison exists between the Vienna Conference and UNCLOS III casts doubt on the success of the latter. The Vienna Convention is largely a technical document, and not a particularly controversial one at that. It has been slow to enter into force despite strong support evidenced by most participants at the Conference. This causes one to wonder whether it is significant that a large number of the delegates at UNCLOS III are upbeat and optimistic about a successful Conference. The lesson of Vienna would seem to suggest that such optimism is not a sufficient condition for success. Another gnawing problem concerns the nature of the States that become party to treaties, for if indeed many prolific treaty-makers avoided the Vienna Convention and the parallel situation occurs with UNCLOS III, the new law of the sea treaty will have serious, potentially fatal problems in accomplishing its espoused goals.

The ICNT/R in the Context of the General Multilateral Treaty Law of the Sea

The most obvious direct comparison is between the ICNT/R

49. J. SZTUCKI, JUS COGENS AND THE VIENNA CONVENTION ON THE LAW OF TREATIES 3 (1974).

50. As of August, 1979, the Convention required two more parties to enter into force. *See* Briggs, *United States Ratification of the Vienna Treaty Convention*, 73 AM. J. INT'L L. 470-73 (1979).

and the four 1958 Geneva Conventions plus the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes.[51] These will be treated separately. But first, Table II presents all general multilateral treaties dealing with ocean matters coming into force after January 1, 1946, and still in force as of January 1, 1979. Protocols and amendments to other treaties have been omitted from the table.

The most conspicuous thing about the table is the small number of treaties—only fifteen. It is clear that the use of general multilateral treaties for the regulation of hydrospace has been a steady, consistent process since World War II. It is also clear that most of these treaties are narrowly focused and relatively unimportant. Most deal with navigation. In proportion to the degree to which these treaties are more broadly focused and/or deal with controversial issues, they have either fewer parties or more reservations. This is especially evident in the case of the IMCO Convention and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties. Lastly, only three treaties achieved more than eighty parties, the arbitrary limit established here for success of the UNCLOS III treaty.

51. All five treaties were signed April 29, 1958. See Table III for more complete data.

TABLE II

GENERAL MULTILATERAL TREATIES RELATING TO THE OCEANS*
(Exclusive of 1958 Geneva Conventions)

NAME (signature date)	Force Date	Total No. of Parties	States with Reservations	Specific State Parties				
				U.S.A.	USSR	Japan	U.K.	France
Convention for a Uniform System of Tonnage Measurement for Ships[52] (10 June 1947)	1954	15	—	No	No	No	No	Yes
Convention on the Intergovernmental Maritime Consultative Organization[53] (6 March 1948)	1958	107	Bahrain, Cuba, Cambodia, Denmark, Ecuador, Finland, Greece, Iceland, India, Indonesia, Iraq, Malaysia, Mexico, Morocco, Norway, Poland, Spain, Sri Lanka, Sweden, Switzerland, Turkey, U.S.A., Yugoslavia	Yes	Yes	Yes	Yes	Yes
International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision[54] (10 May 1952)	1955	15	Cambodia, Costa Rica	No	No	No	Yes	Yes
International Convention Relating to the Arrest of Seagoing Ships[55] (10 May 1952)	1956	11	Cambodia, Costa Rica, Egypt, U.K.	No	No	No	Yes	Yes
International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or Other Accidents of Navigation[56] (10 May 1952)	1955	17	Cambodia, Costa Rica, France, Portugal, Spain, Egypt, U.K., Vatican City, Vietnam, Yugoslavia	No	No	No	Yes	Yes

NAME (signature date)	Force Date	Total No. of Parties	States with Reservations	Specific State Parties				
				U.S.A.	USSR	Japan	U.K.	France
International Convention for the Prevention of Pollution of the Sea by Oil[57] (12 May 1954)	1958	58	Argentina, Bahamas, Bulgaria, Chile, Italy, Liberia, Saudi Arabia, Tunisia, Fiji, Portugal, USSR, U.S.A.	Yes	Yes	Yes	Yes	Yes
International Convention for the Safety of Life at Sea[58] (17 June 1960)	1965	99	Bahamas, Egypt, German D.R., Hungary, Kuwait, Pakistan, Papua, New Guinea, Romania, U.K.	Yes	Yes	Yes	Yes	Yes
Convention on Facilitation of International Maritime Traffic[59] (9 April 1965)	1967	46	Czechoslovakia, Greece, Hungary, Ireland, Malagasy Rep., USSR	Yes	Yes	No	Yes	Yes
Convention on Transit Trade of Landlocked States[60] (8 July 1965)	1967	29	Belgium, Chile, Czechoslovakia, Hungary, Mongolia, USSR	Yes	Yes	No	No	No
International Convention on Loadlines[61] (5 April 1966)	1968	92	China, German D.R., USSR	Yes	Yes	Yes	Yes	Yes
Convention on the International Hydrographic Organization[62] (3 May 1967)	1970	46	F.R. Germany, USSR	Yes	Yes	Yes	Yes	Yes
International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties[63] (29 November 1969)	1975	32	Cuba, USSR	Yes	Yes	Yes	Yes	Yes
Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof[64] (11 February 1971)	1972	62	.Canada, Italy, India, Iraq	Yes	Yes	Yes	Yes	No

NAME (signature date)	Force Date	Total No. of Parties	States with Reservations	Specific State Parties				
				U.S.A.	USSR	Japan	U.K.	France
Convention on the International Regulations for Prevention Collisions at Sea[65] (20 October 1972)	1977	57	Canada, Czechoslovakia, F.R. Germany, German D.R., Hungary, Portugal, Romania, USSR	Yes	Yes	Yes	Yes	Yes
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter[66] (29 December 1972)	1975	37	France	Yes	Yes	No	Yes	Yes

* All treaties coming into force since January 1, 1946 and still in force as of January 1, 1979 are included.
Plurilateral/regional treaties and amendments and protocols to other treaties, e.g., the numerous amendments to the 1948 IMCO Convention, are excluded.
Treaties concerned with inland navigation are also excluded.

It is unclear how many parties will be required for the UNCLOS III treaty to enter into force; however, it will probably be in the range of thirty-six to fifty parties, that is, one quarter to one third of the states attending the Conference.[67] This means that if the patterns evidenced here continue, it will be *years* before UNCLOS III accumulates enough ratifications to enter into force. In general, the most significant and important treaties among this group required more time to garner the requisite ratifications. Note that the IMCO Convention required a decade from the time of signature until entry into force. Thus, even though some hope remains in the corridors of UNCLOS III for expeditious entry into force of the treaty adopted, such a result seems unlikely. Further, many of these treaties failed to obtain the support of the major ocean users here represented by the United States, the Soviet Union, the United Kingdom, France, and Japan. Only half of these treaties have all five major users as parties. This suggests that existing ocean treaties may well be stretching the legal system close to its limits. Treaties lacking the participation of the

52. Convention for a Uniform System of Tonnage Measurement for Ships, *done* June 10, 1947, 208 U.N.T.S. 3.

53. Convention on the Intergovernmental Maritime Consultative Organization, *signed* Mar. 6, 1948, 9 U.S.T. 621, T.I.A.S. No. 4044, 289 U.N.T.S. 3.

54. International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision, *done* May 10, 1952, 439 U.N.T.S. 217.

55. International Convention Relating to the Arrest of Seagoing Ships, *done* May 10, 1952, 439 U.N.T.S. 193.

56. International Convention for the Unification of Rules on Penal Jurisdiction in Collisions and Other Accidents of Navigation, *done* May 10, 1952, 439 U.N.T.S. 233.

57. International Convention for the Prevention of Pollution of the Sea by Oil, *done* May 12, 1954, 12 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3.

58. International Convention for the Safety of Life at Sea, *done* June 17, 1960, 16 U.S.T. 185, T.I.A.S. No. 5780, 536 U.N.T.S. 27.

59. Convention on Facilitation of International Maritime Traffic, *done* Apr. 9, 1965, 18 U.S.T. 411, T.I.A.S. No. 6251, 591 U.N.T.S. 265.

60. Convention on Transit Trade of Landlocked States, *done* July 8, 1965, 19 U.S.T. 7383, T.I.A.S. No. 6592, 597 U.N.T.S. 3.

61. International Convention on Loadlines, *done* Apr. 5, 1966, 18 U.S.T. 1857, T.I.A.S. No. 6331, 640 U.N.T.S. 133.

62. Convention on the International Hydrographic Organization, *done* May 3, 1967, 21 U.S.T. 1857, T.I.A.S. No. 6933, 751 U.N.T.S. 41.

63. International Convention Relating to Invervention on the High Seas in Cases of Oil Pollution Casualties, *done* Nov. 29, 1969, 26 U.S.T. 765, T.I.A.S. No. 8068.

64. Treaty on Seabed Arms Control, *done* Feb. 11, 1971, 23 U.S.T. 701, T.I.A.S. No. 7337.

65. Convention on the International Regulations for Prevention of Collisions at Sea, *done* Oct. 20, 1972, 28 U.S.T. 3459, T.I.A.S. No. 8587.

66. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, *done* Dec. 29, 1972, 26 U.S.T. 2403, T.I.A.S. No. 8165.

67. If the model of the Vienna Convention is followed, entry into force will require about one-third of those attending the Conference to become party to the treaty.

major groups of States whose activities they purport to regulate cannot operate effectively.

Perhaps the most meaningful comparison is between the ICNT/R and the four 1958 Geneva Conventions along with the Optional Protocol. Unfortunately, the similarities between these two endeavors tend to be overshadowed by the difficulties encountered at UNCLOS III. Even though a decade of work by the International Law Commission produced draft documents which facilitated the 1958 Geneva Conference,[68] the longer time spanned by the work of the UNCLOS III negotiations, that is, time for the development of positions and the drafting of texts, played a similar maturation function. The range of subjects covered is not identical, but the 1958 Conventions were almost as comprehensive relative to 1958 as the ICNT/R is for the 1980's. Further, the eighty-eight States that participated in 1958 represent about the same percentage of independent States in the world as do the 155 participants today. The point is not that the 1958 Conventions are identical to UNCLOS III, only that structurally and "issue-wise" it is not unreasonable to parallel the 1958 Conventions with the situation at UNCLOS III.

There is, of course, a vitally important qualification that will affect the way in which the parallel is drawn. The 1958 Conference was content to separate the issues and produce four separate conventions plus the dispute settlement protocol. Although the matter has been discussed in the political context of the 1970's, UNCLOS III cannot separate the issues by producing separate treaties. This is unfortunate because much of the progress in regulating international phenomena through the processes of multilateral treaty-making has been possible because of this separability. Nevertheless, UNCLOS III shows no sign of breaking up the package. This means that the most meaningful single comparison is between the ICNT/R on the one hand and the four 1958 Conventions plus the Optional Protocol as a whole on the other.

Table III shows all States that have relationships with any of the 1958 treaties. The signature date of each instrument as well as the ratification or accession date is shown for each State. Because the most meaningful perspective comes from comparing all

68. For a good discussion of the role of the International Law Commission *see* B. BUZAN, SEABED POLITICS (1976).

five treaties with the ICNT/R, it is very important to ask how many States have ratified all five instruments. It is surprising and perhaps disturbing that there are only fourteen such States: Australia, Denmark, the Dominican Republic, Finland, Haiti, Malawi, Mauritius, the Netherlands, Portugal, Sierra Leone, Switzerland, Uganda, the United Kingdom, and Yugoslavia (these fourteen are underscored in Table III). The importance of this finding should not be underestimated. Given the premise that these five treaties *in toto* are comparable to the ICNT/R and that the ICNT/R will require thirty-six to fifty parties to enter into force, then it probably will never enter into force.

TABLE III

STATE NAME	TERRITORIAL SEA AND THE CONTIGUOUS ZONE[69]		HIGH SEAS[70]		FISHERIES & CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS[71]		CONTINENTAL SHELF[72]		OPTIONAL PROTOCOL CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES[73]	
	Signed	4-29-58	Signed	4-29-58	Signed	4-29-58	Signed	4-29-58	Signed	4-29-58
	Force	9-10-64	Force	1-03-63	Force	3-20-58	Force	6-10-64	Force	9-30-62
Afghanistan	1958	—	1958	1959	1958	—	1958	—	—	—
Albania	—	—	—	1964	—	—	—	1964	—	—
Argentina	1958	—	1958	—	1958	—	1958	—	—	—
AUSTRALIA	1958	1963	1958	1963	1958	1963	1958	1963	—	1963
Austria	1958	—	1958	1974	—	—	—	—	1958	—
Belgium	—	1972	—	1972	—	1972	—	—	—	1972
Bolivia	1958	—	1958	—	1958	—	1958	—	—	1958
Bulgaria	1958	1962	1958	1962	—	—	—	1962	—	—
Byelorussian SSR	1958	1961	1958	1961	—	—	1958	1961	—	—
Canada	1958	—	1958	—	1958	—	1958	1970	1958	—
Central African Empire	—	1962	—	—	—	—	—	—	—	—
Chile	—	—	—	—	—	—	1958	—	—	—
Colombia	1958	—	1958	—	1958	1963	1958	1962	—	1958
Costa Rica	1958	—	1958	1972	1958	—	1958	1972	—	1958
Cuba	1958	—	1958	—	1958	—	1958	—	—	1958

69. Convention on Territorial Sea and the Contiguous Zone, *done* Apr. 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.
70. Convention on the High Seas, *done* Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 11.
71. Convention on Fishing and Conservation of Living Resources of the High Seas, *done* Apr. 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.
72. Convention on the Continental Shelf, *done* Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311.
73. Optical Protocol Concerning the Compulsory Settlement of Disputes, *done* Apr. 29, 1958, 450 U.N.T.S. 170.

STATE NAME	TERRITORIAL SEA AND THE CONTIGUOUS ZONE[69]		HIGH SEAS[70]		FISHERIES & CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS[71]		CONTINENTAL SHELF[72]		OPTIONAL PROTOCOL CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES[73]	
	Signed	4-29-58	Signed	4-29-58	Signed	4-29-58	Signed	4-29-58	Signed	4-29-58
	Force	9-10-64	Force	1-03-63	Force	3-20-58	Force	6-10-64	Force	9-30-62
Cyprus	—	—	—	—	—	—	—	1974	—	—
Czechoslovakia	1958	1961	1958	1961	—	—	1958	1961	—	—
Democratic Kampuchea	—	1960	—	1960	—	1960	—	1960	1970	—
DENMARK	1958	1968	1958	1968	1958	1968	1958	1963	1958	1968
DOMINICAN REPUBLIC	1958	1964	1958	1964	1958	1964	1958	1964	—	1958
Ecuador	—	—	—	—	—	—	1958	—	—	—
Fiji	—	1971	—	1971	—	1971	—	1971	—	—
FINLAND	1958	1965	1958	1965	1958	1965	1958	1965	—	1965
France	—	—	1958	—	1958	1970	—	1965	—	1958
German Democratic Republic	—	1973	—	1973	—	—	—	1973	—	—
Germany, Federal Republic of	—	—	1958	1973	—	—	1958	—	—	1973
Ghana	1958	—	1958	—	1958	—	1958	—	—	1958
Greece	—	—	—	—	—	—	—	1972	—	—
Guatemala	1958	—	1958	1961	—	—	1958	1961	—	—
HAITI	1958	1960	1958	1960	1958	1960	1958	1960	—	1958
Holy See	1958	—	1958	—	—	—	—	—	—	1958
Hungary	1958	1961	1958	1961	—	—	—	—	—	—
Iceland	1958	—	1958	—	1958	—	1958	—	—	—
Indonesia	—	—	1958	1961	1958	—	1958	—	1958	—
Iran	1958	—	1958	—	1958	—	1958	—	—	—

Ireland	1958	—	1958	—	1958	—	1958	—	—	—
Israel	1958	1961	1958	1961	1958	—	1958	1961	1958	—
Italy	—	1964	—	1964	—	—	—	—	—	—
Jamaica	—	1965	—	1965	—	1964	—	1965	—	—
Japan	—	1968	—	1968	—	—	—	—	—	—
Kenya	—	1969	—	1969	—	1969	—	1969	—	—
Lebanon	—	—	1958	—	1958	—	1958	—	—	—
Lesotho	—	1973	—	1973	—	1973	—	1973	—	—
Liberia	1958	—	1958	—	1958	—	1958	—	—	1958
Madagascar	—	1962	—	1962	—	1962	—	1962	—	1962
MALAWI	—	1965	—	1965	—	1965	—	1965	—	1965
Malaysia	—	1960	—	1960	—	1960	—	1960	—	1961
Malta	—	1966	—	—	—	—	—	1966	—	1966
MAURITIUS	—	1970	—	1970	—	1970	—	1970	—	1970
Mexico	—	1966	—	1966	—	1966	—	1966	—	—
Mongolia	—	1976	—	—	—	—	—	—	—	—
Nepal	1958	—	1958	1962	1958	—	1958	—	—	1958
NETHERLANDS	1958	1966	1958	1966	1958	1966	1958	1966	1958	1966
New Zealand	1958	—	1958	—	1958	—	1958	1965	—	1958
Nigeria	—	1961	—	1961	—	1961	—	1971	—	—
Norway	—	—	—	—	—	—	—	1971	—	—
Pakistan	1958	—	1958	—	1958	—	1958	—	—	1958
Panama	1958	—	1958	—	1958	—	1958	—	—	1958
Peru	—	—	—	—	—	—	1958	—	—	—
Poland	—	—	1958	1962	—	—	1958	1962	—	—
PORTUGAL	1958	1963	1958	1963	1958	1963	1958	1963	1958	1963
Romania	1958	1961	1958	1961	—	—	—	1961	—	—
Senegal	—	1961	—	1961	—	1961	—	1961	—	—
SIERRA LEONE	—	1962	—	1962	—	1962	—	1966	—	1963

STATE NAME	TERRITORIAL SEA AND THE CONTIGUOUS ZONE[69] Signed	4-29-58 Force	9-10-64	HIGH SEAS[70] Signed	4-29-58 Force	1-03-63	FISHERIES & CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS[71] Signed	4-29-58 Force	3-20-58	CONTINENTAL SHELF[72] Signed	4-29-58 Force	6-10-64	OPTIONAL PROTOCOL CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES[73] Signed	4-29-58 Force	9-30-62	
South Africa	—			1963	—		1963	—		1963	—		1963	—		—
Spain	—			1971	—		1971	—		1971	—		1971	—		—
Sri Lanka	1958			—	1958		—	1958		—	1958		—	—		1958
Swaziland	—			1970	—		1970	—		—	—		1970	—		—
Sweden	—			—	—		—	—		—	—		1966	—		1966
SWITZERLAND	1958			1966	1958		1966	1958		1966	1958		1966	1958		1966
Thailand	1958			1968	1958		1968	1958		1968	1958		1968	—		—
Tonga	—			1971	—		1971	—		1971	—		1971	—		—
Trinidad & Tobago	—			1966	—		1966	—		1966	—		1968	—		—
Tunisia	1958			—	1958		—	1958		—	1958		—	—		—
UGANDA	—			1964	—		1964	—		1964	—		1964	—		1964
Ukrainian SSR	1958			1961	1958		1961	—		—	1958		1961	—		—
USSR	1958			1960	1958		1960	—		—	1958		1960	—		—
UNITED KINGDOM	1958			1960	1958		1960	1958		1960	1958		1964	—		1958
USA	1958			1961	1958		1961	1958		1961	1958		1961	1958		—
Upper Volta	—			—	—		1965	—		1965	—		—	—		—
Uruguay	1958			—	1958		—	1958		—	1958		—	—		1958
Venezuela	1958			1961	1958		1961	1958		1961	1958		1961	—		—
YUGOSLAVIA	1958			1966	1958		1966	1958		1966	1958		1966	1958		1966

Even when considered individually, the four 1958 Conventions took an average of more than six years to enter into force. This excludes the Optional Protocol on Dispute Settlement since its entry into force is tied to the Convention on the High Seas.[74] The Territorial Sea Convention was signed by only forty-three States, less than half those attending the Conference. Furthermore, almost half of the signing States have failed to ratify the treaty during the twenty year period following signature. Of course, many States that did not attend the 1958 Conference subsequently ratified the Convention, but 50% of the States that signed the agreement failed to follow through with the required ratification. One would expect the situation with the Convention on the High Seas to be somewhat different since it is the only one of the four conventions casting its mission in this way: "The States Parties to this Convention, desire to codify the rules of international law relating to the high seas."[75] In spite of the broader acceptance anticipated by this statement, the High Seas Convention received only forty-eight signatures followed by fifty-four ratifications and accessions. This, the least controversial of the four conventions, has barely the minimum number of parties the UNCLOS III Convention may require to enter into force; it took thirteen years for the Convention to achieve fifty parties.

Difficulties with the Convention on Fisheries and Conservation of the Living Resources of the High Seas were perhaps not unexpected. Among other things, it is the only one of the four 1958 Conventions with dispute settlement articles which cause States to approach it with trepidation.[76] The Fisheries Convention received only thirty-six signatures, twenty-one of which were never followed by the requisite ratifications. It took the longest of any of the conventions (almost eight years) to enter into force. The Convention on the Continental Shelf received forty-three signatures, only twenty-four of which have been followed by ratifications. The latter Convention has a total of fifty-three parties. The issue of dispute settlement is important enough that it will be dealt with separately. At this point, it suffices to note that thirty-four states accepted the Optional Protocol.

74. *Id.*
75. Convention on the High Seas, *done* Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 11.
76. Convention on the Continental Shelf, arts. 8, 9, & 10, *done* Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311.

The results presented in Table III do not reflect the problems produced by States that have reservations to the terms of the treaties. In effect, these compound the difficulty because the nature of the obligations of States is modified by reservations. To a degree, States with severe reservations are party to a different kind of treaty than States that accepted the treaties without reservations. According to the Vienna Convention on the Law of Treaties, a reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."[77] Unfortunately, it can be difficult to determine whether a specific statement made by a State is a reservation or not. Terminology is not uniform. Statements and declarations may or may not be reservations according to the definition of the Vienna Convention. It should be emphasized that reservations are necessary. They are a form of diplomatic lubricant without which general multilateral treaty-making would be much more difficult. Knight expressed the trade-offs well: "The issue then is to strike a balance between the desirable effects of reservations (ensuring wider acceptance) and the undesirable effects (reducing uniformity)."[78]

Looking first at the four 1958 Conventions, one sees that the Convention on the Territorial Sea and the Contiguous Zone and the Convention on the High Seas are mute on the subject of reservations. The Convention on Fishing and Conservation of Living Resources of the High Seas contains the following statement:

> Article 19
>
> 1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 6, 7, 9, 10, 11 and 12.
> 2. Any contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.[79]

This is clearly an attempt to exclude the most significant articles from the scope of State authority to make reservations. Interestingly, the dispute settlement clause, article 9, is one to which reservations are *not* permitted. The Convention on the Continental Shelf takes a definitive position:

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77. U.N. Doc. A/CONF.39/27, *reprinted in* 63 AM. J. INT'L L. 876 (1969).

78. Knight, *Reservations*, in POLICY ISSUES IN OCEAN LAW 7 (1975).

79. Convention on Fishing and Conservation of Living Resources of the High Seas, art. 19, *done* Apr. 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.

Article 12

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.
2. Any contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.[80]

Perhaps surprisingly, the ICNT/R contains no provision about reservations, although this may be added later when final provisions are discussed. If the final Convention remains silent, it leaves States considerable latitude to decide what kind of reservations they wish to offer, hence encouraging wider acceptance of the treaty. But, at the same time, it may set the stage for the longest, most complicated set of reservations, objections to reservations, and so forth ever seen in the history of multilateral treaty-making. A discussion of the reservations clause may rekindle debate about the substance of many articles. In any event, one can expect more reservations to the UNCLOS III document than to the Geneva Conventions.

Most of the reservations to the Convention on the Territorial Sea and the Contiguous Zone were offered by the Soviet Union and East European States. Reservations were expressed by Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Romania, and the Soviet Union.[81] Most of the reservations center around two issues, the type of immunity to be afforded government vessels and the rights enjoyed by warships within territorial seas. The reservations expressed by Bulgaria are typical:

Article 20

The Government of the People's Republic of Bulgaria considers that government ships in the territorial sea of another State have immunity and that the measures set forth in this article may therefore apply to such ships only with the consent of the flag State. . . .

Article 23

D. Rules applicable to warships
The Government of the People's Republic of Bulgaria considers that the coastal State has the right to establish procedures for the authorization of the passage of foreign warships through its territorial sea.[82]

80. Convention on the Continental Shelf, art. 12, *done* Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 599 U.N.T.S. 311.

81. UNITED NATIONS, MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY-GENERAL PERFORMS DEPOSITORY FUNCTIONS 551-52 (1979).

82. *Id.* at 551.

The severity of these reservations is open to argument. It is significant that many objections to these reservations were offered including those by Australia, Denmark, Japan, the Netherlands, the United Kingdom, and the United States.[83] On balance, it seems that this kind of reservation seriously limits the operation of the treaty, but probably does not cripple it.

With regard to the Convention on the High Seas, again the Soviet and East European States offered many reservations.[84] In this instance the pivotal issues seemed to be the definition of government vessels and flag State jurisdiction over them and the definition of piracy. The reservations expressed by the Soviet Union typify those of the East European States:

> Article 9
>
> The Government of the Union of Soviet Socialist Republics considers that the principle of international law according to which a ship on the high seas is not subject to any jurisdiction except that of the flag State applies without restriction to all government ships.
>
> Declaration: The Government of the Union of Soviet Socialist Republics considers that the definition of piracy given in the Convention does not cover certain acts which under contemporary international law should be considered as acts of piracy and does not serve to ensure freedom of navigation on international sea routes.[85]

It should be noted that the definition of government vessels was not the concern exclusively of East European States; Mexico made a comparable reservation.[86] As with the Territorial Sea Convention, these matters cannot be considered minor, but neither are they debilitating.

The Convention on Fishing and Conservation of Living Resources of the High Seas has relatively few reservations. Only four States expressed reservations—Denmark, Spain, the United Kingdom, and the United States.[87] Generally, the reservations are minor in nature. Spain, as is her custom, expressed concern about any restrictions placed on Gibraltar except those referred to in Article 10 of the Treaty of Utrecht of 13 July 1713.[88] Denmark does not consider itself bound by the last sentence of Article 2 of the Convention: "Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption."[89] The probable reason for the paucity of reservations is that most of the States with reservations to the

83. *Id.* at 552-55.
84. *Id.* at 558-60.
85. *Id.* at 560.
86. *Id.* at 559.
87. *Id.* at 565.
88. *Id.*
89. Convention on Fishing and Conservation of Living Resources of the High Seas, art. 2, *done* Apr. 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.

other conventions are not party to this Convention. Thus, one should not assume that the lack of reservations indicates broader based acceptance.

The Convention on the Continental Shelf does not possess the usual array of reservations from the Soviet Union and East European States, perhaps because the subject matter does not relate directly to warships in the territorial sea or to the status of government vessels. Reservations were made by Canada, Greece, Iran, Spain, the Republic of China, Venezuela, and Yugoslavia.[90] Many of these reservations are narrowly focused. For example, Canada expressed concern with the definition of the continental shelf and to what degree special circumstances can be applied.[91] But the overall intent of the Convention is not altered significantly. The exceptions to this statement are the reservations by France and Iran. The Iranian government reserved its right to allow or not to allow the laying or maintenance of submarine cables or pipelines on its continental shelf.[92] This clearly violates the intent of the Convention. The French government also expressed a series of reservations, some of which are of major import.[93] But, on balance, the Convention seems to have come through relatively unscathed.

It is more difficult to predict what lies in store for the document produced by UNCLOS III. The extreme length and controversial nature of the new treaty along with its "all or nothing" character increases the likelihood of reservations. The many reservations offered to the 1958 Conventions portend a reservations-plagued future for the version of the ICNT/R that is finally approved.

Regarding dispute settlement mechanisms in the UNCLOS III treaty, Sohn stated: "It is important to achieve a large measure of uniformity in the interpretation and application of the new Convention. Otherwise, the compromise arrived at with such great difficulty will quickly disintegrate, and the efforts of many years of negotiation would come to naught."[94] However, I have argued that dispute settlement can discourage rather than encourage

90. UNITED NATIONS, MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY-GENERAL PERFORMS DEPOSITORY FUNCTIONS 567-69 (1979).
91. *Id.* at 567.
92. *Id.* at 568.
93. *Id.*
94. Sohn, *Settlement of Disputes Arising Under the Law of the Sea Convention*, 12 SAN DIEGO L. REV. 516 (1975).

wider acceptance of the treaty.[95] In essence, the issue becomes how much uniformity one is willing to sacrifice to obtain wider acceptance and to what degree acceptable treaty compliance can be assured without the lever arm of compulsory dispute settlement. It is not appropriate here to discuss at length other attempts at dispute settlement. It suffices to note that States are extremely reluctant to commit themselves to compulsory dispute settlement.[96]

As stated earlier, the approach taken by the 1958 Conference was to draft a separate Optional Protocol of Signature Governing the Compulsory Settlement of Disputes.[97] Thirty-four States have accepted the Protocol although in at least nine instances this means nothing since those States accepted none of the four conventions.[98] For these nine, this represents a singularly vacuous gesture in the realm of dispute settlement. Only the Convention on Fishing and Conservation of Living Resources of the High Seas contained a specific article dealing with dispute settlement.[99]

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95. Gamble, *The Law of the Sea Conference: Dispute Settlement in Perspective*, 9 VAND. J. TRANSNAT'L L. 340 (1976).

96. J. GAMBLE & D. FISCHER, THE INTERNATIONAL COURT OF JUSTICE: AN ANALYSIS OF A FAILURE 82 (1976). For example, only eight states have accepted the Optional Clause of the Statute of the International Court of Justice without reservations; another sixteen have accepted it with only minor reservations. Thus, most states have been unwilling to grant any general before-the-fact jurisdiction to the International Court of Justice.

97. *See* note 73 *supra.*

> Expressing their wish to resort, in all matters concerning them in respect of any dispute arising out of the interpretation or application of any article of any Convention on the Law of the Sea of 29 April 1958, to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement is provided in the Convention or has been agreed upon by the Parties within a reasonable period,
>
> Have agreed as follows:
>
> Disputes arising out of the interpretation or application of any Court on the Law of the Sea shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to this Protocol.
>
> The Parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either Party to this Protocol may bring the dispute before the Court by an application.
>
> Within the same period of two months, the Parties to this Protocol may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

Id.

98. The nine states are Bolivia, Cuba, Ghana, Holy See, Liberia, Pakistan, Panama, Sri Lanka, and Uruguay.

99. 1. Any dispute which may arise between States under Articles 4, 5, 6, 7 and 8 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful set-

Since the latter Convention received significantly fewer ratifications than any of the other Conventions, it is tempting to attribute this to the dispute settlement articles, although this cannot be proven. It is irrefutable that these provisions have been seldom used.

It must be difficult for anyone accustomed to the usual dispute settlement procedures in multilateral treaties to comprehend the complexity of the provisions in the ICNT/R. In terms of sheer volume, the dispute settlement clauses in the ICNT/R and its annexes are longer than any of the 1958 Conventions. The situation is further complicated by the inclusion of both a separate section on the "Settlement of Disputes" (Part XV) as well as further elaboration on dispute settlement in the section dealing with "the Area" (Part XI). Additionally, Annex 5 contains the "Statute of the Law of the Sea Tribunal."

Part XV provides the most broadly focused treatment of the subject of dispute settlement. It contains among other things fairly standard dispute settlement provisions.[100] States party to

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tlement, as provided for in Article 33 of the Charter of the United Nations.

2. The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-months period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

. . . .

5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time limit for a period not exceeding three months.
6. The special commission shall, in reaching its decision, adhere to these articles and to any special agreements between the disputing parties regarding settlement of the dispute.
7. Decisions of the commission shall be by majority vote.

Convention on Fishing and Conservation of Living Resources of the High Seas, arts. 9, 10, 11 & 12, *done* Apr. 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.

100. *Procedure when dispute is not settled by means chosen by the parties*

1. If States Parties which are parties to a dispute relating to the interpre-

the Convention are afforded the option of selecting among four dispute settlement fora.[101] Additionally, Article 298 permits States to opt-out of certain procedures in specified categories of disputes.[102]

Other provisions in Part XV are much more likely to meet with suspicion among those States that tend to disfavor the idea of compulsory dispute settlement. A good example is Article 290 which deals with provisional measures.[103] There can be little

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tation or application of this Convention have agreed to seek a settlement of such dispute by a peaceful means of their own choice, the procedure specified in this Part shall apply only where no settlement has been reached, and the agreement between the parties does not preclude any further procedure.

2. If the parties have also agreed on a time limit for such a procedure, the provisions of paragraph 1 shall apply only upon the expiration of that time limit.

ICNT/R, *supra* note 2, art. 283.

101. *Choice of Procedure*

1. A State Party, when signing, ratifying or otherwise expressing its consent to be bound by this Convention, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes relating to the interpretation or application of this Convention:
   (a) The Law of the Sea Tribunal constituted in accordance with annex V;
   (b) The International Court of Justice;
   (c) An arbitral tribunal constituted in accordance with annex VI;
   (d) A special arbitral tribunal constituted in accordance with annex VII for one or more of the categories of disputes specified therein.

Id., art. 287.

102. (a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles, provided that the State making such a declaration shall, when such dispute arises, indicate, and shall for the settlement of such disputes accept a regional or other third party procedure entailing a binding decision, to which all parties to the dispute have access; and provided further that such procedure or decision shall exclude the determination of any claim to sovereignty or other rights with respect to continental or insular land territory;
(b) Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service and, subject to the exceptions referred to in article 296, law enforcement activities in the exercise of sovereign rights or jurisdiction provided for in this Convention;
(c) Disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention.

Id., art. 298.

103. *Provisional measure*

1. If a dispute has been duly submitted to any court of [sic] tribunal which considers prima facie that it has jurisdiction under this Part, or section 6 or Part XI, such court or tribunal shall have the power to prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending final adjudication.

doubt that many States will regard the provisional measures described here as an invitation for courts to intrude on sovereign rights. One might argue that the requirement that the dispute be "duly submitted" might provide some assurance against an overzealous tribunal. But the broad and nebulous nature of the phrases "to prescribe any provisional measures" and "to prevent serious harm to the marine environment" will cause concern on the part of many governments. A number of States are uncomfortable with such powers resting with a supernational tribunal. It is entirely possible that the threat of provisional measures may, in itself, cause certain States to avoid the treaty entirely.

Annex V spells out the composition of the Law of the Sea Tribunal.[104] What will motivate States to accept such a mechanism for dispute settlement? While the intentions are no doubt laudable, the Tribunal bears many structural similarities to the International Court of Justice which has been singularly unsuccessful in attaining widespread usage.[105]

The unavoidable conclusion is that these dispute settlement procedures may well erode support for a document already plagued with difficulty, doubts, suspicion, and political obstacles. The articles on dispute settlement are so comprehensive they will worry many States. It may be that these articles have created the worst possible situation—they may have enough loopholes to discourage States genuinely interested in compulsory dispute settlement, while States leary of any form of third party dispute settlement will find the treaty too confining. In spite of the fact that the ICNT/R tries to establish separate procedures for disputes related to the Area, States might fear that these two sets of dispute settlement provisions will infringe upon the domain of each other.

SUMMARY AND CONCLUSIONS

The purpose of this piece is not to detract from the extraordi-

Id., art. 290.

104. *Composition of Tribunal*

1. Tribunal shall be composed of a body of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in matters relating to the law of the sea.
2. In the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution shall be assured.

Id., Annex V, art. 2.

105. *See* J. GAMBLE & D. FISCHER, *supra* note 97, at 119-27.

nary efforts put forth by thousands of individuals representing 155 governments at the Third United Nations Conference on the Law of the Sea. In fact, it is the length and difficulty of these negotiations that make it all the more necessary to raise the questions that have been addressed here. Human nature being what it is, those who have devoted a substantial part of their goodwill, energies, and diplomatic savvy to these negotiations have a vested interest in success. This must not obscure the fact that once the delegates agree on a text, the battle is not over.

Optimism still abounds in many quarters. The letter of transmittal for the ICNT/R expressed the opinion that this document will "offer an improved prospect of final agreement."[106] One of the moving forces behind the Conference, Ambassador Evensen of Norway noted:

> I have frequently been asked the question whether I believe that the Conference will be a success. My answer has always been in the affirmative. We have a good chance of success for many reasons. One reason is that there is an increasing understanding among all countries and delegates that it is essential that we succeed. The new problems which we face are of such magnitude that unless we are to find solutions to them we might enter into an era of unrest and severe international tension. Secondly, the United Nations, as such, has invested so much in terms of economic efforts, expertise and prestige in this Conference that it would be a severe blow to the United Nations, as *the* world organization, if the Conference were a failure.[107]

But the success of UNCLOS III can be measured against many standards, the most important of which is the entry into force of the treaty. The evidence is overwhelming that this will be difficult. It may be impossible. The premiere cause of the difficulty is the fact that a single treaty rather than several more narrowly focused treaties is being produced. Difficulties are compounded by the fact that dispute settlement clauses in treaties tend to be viewed with suspicion by many States. Additionally, the facts of international legal life ensure that many States will sign the treaty and fail to ratify it. Others will take years to follow through with ratification and/or attach debilitating reservations. These factors, acting in combination, suggest that the odds are there will *never* be a new, broadly accepted, comprehensive law of the sea treaty. Many of the substantive problems arising at UNCLOS III have already been resolved. But the task is incredibly ambitious and will be even more arduous as the focus moves from the sheltered idealism of conference diplomacy into the real world of national and international politics.

106. ICNT/R, *supra* note 2, at 20. (Explanatory Memorandum by the President of the Conference).

107. Evensen, *Banquet Address*, in LAW OF THE SEA: NEGLECTED ISSUES 526, 535 (1979).