

Synopsis

RECENT DEVELOPMENTS IN THE LAW OF THE SEA 1978-1979

This Synopsis highlights major events occurring in the law of the sea between December 1978 and December 1979. It discusses the eighth session of the Third United Nations Conference on the Law of the Sea (UNCLOS III). It also discusses significant events that occurred outside the UNCLOS III.¹

THE EIGHTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

The seventh session of UNCLOS III ended in 1978 with improved prospects for consensus.² It left unresolved, however, important issues with respect to seabed mining, the decision-making process in the International Seabed Authority,³ finance and technology transfer, maritime boundary delimitation, and dispute set-

1. The primary sources used to compile this Synopsis include: United Nations documents, United Nations press releases, the *United Nations Chronicle*, *International Legal Materials*, the *United States Department of State Bulletin*, Department of State internal documents, *United States Code*, *Congressional and Administrative News*, the *Journal of Maritime Law and Commerce*, the *New York Times*, the *Wall Street Journal*, the *Washington Post*, the *Los Angeles Times*, the *United States Joint Publications Research Service—Translations on Law of the Sea*, and, in lieu of the *London Times* (suspended because of a strike), the *Daily Telegraph*.

2. For a detailed discussion of the seventh session of UNCLOS III, see Oxman, *The Third United Nations Conference on the Law of the Sea: The Seventh Session*, 73 AM. J. INT'L L. 1 (1979).

3. The Authority is the international body which will supervise the conduct of deep seabed mining.

tlement.⁴

Prior to the eighth session, an informal intersessional meeting was held to enable delegations to consult and exchange views.⁵ At the meeting, representatives discussed financial arrangements for deep seabed mining,⁶ continental shelf research,⁷ and general rules for delimiting continental shelves and establishing maritime boundaries.⁸

Two multilateral conferences on the law of the sea also preceded the eighth session. Socialist nations met in Sofia, Bulgaria, from February 27 to March 1, 1979, and generally discussed issues to be covered at the eighth session.⁹ Twenty-three Islamic nations met in Istanbul, Turkey, from March 6 to March 9, 1979.¹⁰ They discussed seabed mining, rules for continental shelf delimitation, and territorial limits.¹¹ Their recommendations were subsequently presented to the Tenth Islamic Conference of Foreign Ministers on Law of the Sea held in Fez, Morocco, from May 8 to

4. For a more detailed summary of the significant issues left unresolved at the end of the seventh session, see Richardson, *Introduction*, 16 SAN DIEGO L. REV. 451, 451-459 (1979).

5. Many delegations had requested that informal intersessional negotiations be conducted between the seventh and eighth sessions of UNCLOS III. Letter from President H. Shirley Amerasinghe to the Heads of Delegations Participating in the Third United Nations Conference on the Law of the Sea (Jan. 13, 1979). Some developing countries objected to the intersessional meeting because they feared they would be prejudiced by their unavoidable absence. U.S. Dep't of State, U.S. Delegation Report, Informal Consultations on the Law of the Sea, Geneva, January 23-February 7, 1979, (Feb. 26, 1979) (unpublished memorandum).

6. Financial arrangements for deep seabed exploitation were discussed at length. Prospective seabed mining countries stressed that the proposed high payments were likely to discourage investment in such a high-risk venture. The United States strongly opposed the "Brazil Clause" which obligates contractors to conduct technology transfer negotiations with the Enterprise and developing countries. *Id.*

7. The United States Delegation emphasized that access to the Continental Shelf beyond demarcation for the purpose of scientific research was very important and did not derogate from fundamental coastal State interests. However, other coastal States emphasized that resource-oriented research should be subject to a consent regime. *Id.*

8. Discussions centered on a modification of the "Irish Formula," which allows states to exploit the continental shelf to a distance determined by the formula without restraint; profits derived from exploitation of the continental shelf beyond that point would be subject to some form of sharing with the international community. *Id.* addendum at 5.

9. Representatives from the Soviet Union, Poland, Czechoslovakia, Romania, Yugoslavia, Hungary, Bulgaria, Albania, East Germany, Cuba, Mongolia, and Viet Nam attended. Sofia radio BTA (Bulgaria), broadcast at 1845 GMT, Mar. 1, 1979, translated and reprinted in 93 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 17 (1979).

10. Ankara Domestic Service (Turkey), broadcast at 1600 GMT, Mar. 9, 1979, translated and reprinted in 94 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 7 (1979).

11. *Id.*

May 12, 1979.¹² Documents from that conference circulated as official UNCLOS documents at the second meeting of the eighth session.¹³

The eighth session retained the structure of the seventh session.¹⁴ It consisted of two meetings. Negotiations during the first meeting centered on replacing the Informal Composite Negotiating Text (ICNT)¹⁵ with a revised edition (ICNT/R).¹⁶ Negotia-

12. The Islamic nations opposed unilateral legislation that would permit deep seabed mining. They recommended the use of equitable principles to delimit maritime boundaries. They also supported the Arab formula which limits the natural prolongation of the continental shelf to 200 miles. U.N. Doc. A/Conf.62/86 (1979).

13. *Id.*

14. It consisted of three committees, each covering one broad topic area. The first two committees were further broken down into seven negotiating groups. Each negotiating group was assigned one significant, unresolved issue within its committee's particular topic area.

Committee I develops policy for management and control of deep seabed resources in areas beyond national jurisdiction. Synopsis, *Recent Developments in the Law of the Sea*, 16 SAN DIEGO L. REV. 707 (1979). Committee II's topic area is jurisdiction within the 200-mile exclusive economic zone, the continental shelf, and jurisdiction on the high seas. *Id.* at 711. Committee III deals with marine pollution and scientific research issues. *Id.* at 712.

The chairman of each committee works closely with the president of UNCLOS III. The president may offer his own ideas on the provisions being negotiated; however, each chairman is free to determine the "precise formulation" of provisions to be incorporated into a new text. United Nations Third Conference on the Law of the Sea: Explanatory Memorandum on the Informal Composite Negotiating Text, U.N. Doc. A/Conf.62/WP.10/Add. 1, reprinted in 16 INT'L LEGAL MATERIALS 1099, 1100 (1977).

Committee I consists of negotiating groups one through three. Committee II consists of negotiating groups four through seven. Committee III was not divided into negotiating groups because when the groups were established, Committee III had no unresolved hard-core issues similar to those discussed below.

The seven negotiating groups were assigned the following respective issues:

1. The system of exploitation and exploration of the deep seabed and resource policy.
2. Financial arrangements.
3. Organs of the Authority, their composition, powers, and functions.
4. Right of access of land-locked States and certain developing coastal States in a subregion or region to the living resources of the exclusive economic zone.
5. The question of the settlement of disputes relating to the exercise of the sovereign rights of coastal States in the exclusive economic zone.
6. Definition of the outer limits of the Continental Shelf and the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles.
7. Delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon.

15. The ICNT was released after the sixth session of UNCLOS III. It contains over 300 clauses which represent the official UNCLOS position on the issues to be covered by the treaty. 8 UNCLOS III OR 1, U.N. Doc. A/Conf.62/WP.10 (1977), reprinted in 16 INT'L LEGAL MATERIALS 1108 (1977) [hereinafter cited as ICNT].

16. U.N. Doc. A/Conf.62/WP.10/Rev. 1 (1979), reprinted in 18 INT'L LEGAL

tions at the second meeting focused on final changes to the ICNT/R with the goal of producing a final Law of the Sea Convention by the end of next year's session.

The Geneva Meeting, March 19-April 27, 1979

Committee I

Negotiating Group One produced ICNT revisions which would permit the Authority to conduct deep seabed marine scientific research and to enter contracts for that purpose.¹⁷ States Parties would have an express right to conduct similar research.¹⁸ Annex I of the ICNT was changed to require a contractor to transfer technology to the Enterprise¹⁹ only when similar technology was not available on the open market.²⁰ The group revised Annex II to grant prospectors the right to remove a reasonable amount of samples from the deep seabed.²¹ Annex II was also changed to establish more objective criteria for the selection of contract applicants. The new criteria are the applicant's financial and technical competence and past performance history.²²

Negotiating Group Two produced new texts which would require a seabed mining state to provide half of the Enterprise's capital in any joint venture.²³ However, the group reached an impasse on an important issue—the financing systems available to prospective contractors.²⁴ The United States and other developed countries stressed that existing fixed-fee systems would discour-

MATERIALS 686 (1979) [hereinafter cited as ICNT/R].

17. *Id.*, art. 143, para. 2. *Compare id. with ICNT, supra* note 15, art. 143.

18. ICNT/R, *supra* note 16, art. 143, para. 3. *Compare id. with ICNT, supra* note 15, art. 143. The ICNT stated only that States Parties should promote or cooperate in the conduct of marine scientific research. The revision makes it clear that States Parties have a right to conduct such research.

19. The Enterprise is the organ of the Authority that will conduct deep seabed mining.

20. ICNT/R, *supra* note 16, Annex II, art. 5, para. 1(6). *Compare id. with ICNT, supra* note 15, Annex II, para. 8.

One ingredient essential to making the Enterprise a viable entity is its access to the equipment and know-how needed for seabed mining. The ICNT/R meets this need by requiring a contract applicant to transfer the requisite technology to the Enterprise.

21. ICNT/R, *supra* note 16, Annex II, art. 2, para. 2. *Compare id. with ICNT, supra* note 15, Annex II, para. 2(6).

22. ICNT/R, *supra* note 16, Annex II, art. 7, para. 2(a).

23. The previous capitalization was one-third cash (paid by the applicant) and two-thirds debt (loans from States Parties). Developing countries felt that this was insufficient start-up capital for a new mining project. The major developed countries argued that one-third cash funding was normal commercial practice. U.N. Dep't of Pub. Information, Press Release SEA/360, at 7 (Apr. 30, 1979) [hereinafter cited as SEA/360].

24. The ICNT set out a complex fixed-fee system of charges that the Authority

age investors; they urged a financial system that tied contractors' charges to the profitability of their operations.²⁵ The Group of 77 (G-77)²⁶ nations opposed changing the basic concept behind the fixed-fee systems; they feared that absent a fixed fee system, the Enterprise would never become a viable entity because of thin capitalization and inadequate financing.²⁷ The G-77 nations did

could levy on a contractor. This portion of the ICNT was a preliminary draft. ICNT, *supra* note 15, Annex II, para. 7.

The chairman of Negotiating Group Two proposed two alternate systems for contractors to choose from in paying their charges to the Authority. The two finance systems are a mixed system of royalty plus profit-sharing, and a royalty-only system. The mixed system consists of:

- (1) a \$500,000 application fee, with portions not used by the Authority refundable to the applicant;
- (2) an annual fixed fee of \$1 million to be credited against royalty payments once production begins;
- (3) a production charge (royalty) on the gross proceeds of the integrated project of 2% for the first 6 years, 4% for years 7-12, and 6% for years 13-20;
- (4) a share of the net proceeds attributable to the mining sector;
- (5) attributable net proceeds (ANP) at 40% of the total net proceeds of the integrated project; and
- (6) a safeguard clause which would hold a contractor at the first level of profit-sharing until he recoups his initial investment costs and at the second level until he recoups double his investment costs.

The royalty-only system also contains a \$500,000 application fee and an annual fixed fee of \$1 million. The royalty on gross proceeds is 7.5% for years 1-6, 10% for years 7-12, and 14% for years 13-20. U.S. Delegation Report, Eighth Session of the Third United Nations Conference on the Law of the Sea, Geneva, March 19-April 27, 1979, at 17-18 (unpublished report) (on file with the *San Diego Law Review*) [hereinafter cited as U.S. Delegation Report, Geneva].

25. The United States representatives stated that the chairman's proposal was unrealistic, placed a heavy burden on seabed miners, and that any charges should be tied to the profitability of the operations. The United States, supported by other developed nations, proposed a change in the mixed financial system. The proposal decreased by half the charges levied on the contractors by the Authority. *Id.*

26. The Group of 77 is a bloc of nations composed of approximately 110 underdeveloped countries. Their concerns within UNCLOS III usually run counter to the views of the highly industrialized nations. For a discussion of the Group's role in UNCLOS III, see Friedman and Williams, *The Group of 77 at the United Nations: An Emergent Force in the Law of the Sea*, 16 SAN DIEGO L. REV. 584 (1979). For additional background discussion of the politics of the developing nations, concerning distribution of seabed wealth, see Borgese, *The New Economic Order and the Law of the Seas*, 14 SAN DIEGO L. REV. 584 (1977), and Borgese, *A Constitution for the Oceans: Comments and Suggestions Regarding Part XI of the Informal Composite Negotiating Text*, 15 SAN DIEGO L. REV. 371 (1978).

27. The G-77 did not believe the proposed systems, *supra* note 24, would provide the Authority with sufficient revenue. The group initially proposed that contractors pay the Authority \$60 million for each mine site. Additionally, the group later proposed a supertax on contractors who earned high profits. SEA/360, *supra* note 23, at 7.

make concessions to the developed countries by decreasing contractor payments in the existing finance systems.²⁸

Negotiating Group Three failed to resolve the dispute over the voting mechanism in the Council.²⁹ The developed countries, which represent a minority on the Council, wanted sufficient voting power to protect their potentially large investments in seabed mining.³⁰ The group did change the eligibility criteria for selection of seabed miner and consumer/importer members to the Council.³¹ The change insured that members from the two categories would be selected from the States having the most significant interests in those categories.³² Article 169 of the ICNT was

28. The G-77 nations changed the royalty rates in the mixed system, *supra* note 24, to 2% in years 1-10, and 5% in years 11-20. To keep the rates in the royalty-only system equivalent, G-77 nations adjusted the rates to 8.5% in years 1-10, and 13.5% in years 11-20. U.S. Delegation Report, Geneva, *supra* note 24, at 19.

There were other changes in the financial arrangements. The Authority was allowed to offer incentives to contractors to train the Authority's personnel. Once commercial production commences, miners must pay the greater of the annual fixed fee or the production charge. The Authority may revoke the contractor's choice under the mixed system of financial arrangements. *Id.* at 20.

29. The Council is the executive organ of the Authority. A detailed listing of its powers and functions can be found at ICNT/R, *supra* note 16, art. 162.

30. Developing nations expressed their unwillingness to allow nations with special interests veto power or voting power that could not be overridden by the majority. United States Ambassador Richardson made an intervention on January 31, 1979, stating United States insistence that a numerical majority not be empowered to override the legitimate economic interests of major producers and consumers of metals mined from the seabed, as follows:

The seabed mining companies cannot reasonably be asked to repose blind trust in a majority whose interest—whose responsibilities, indeed—are not the same as their own . . . [P]roducers and consumers are not seeking to be granted power proportionate to their economic interests but only to be protected against the possibility that a majority might override those interests.

Statement by Ambassador Elliot L. Richardson during Discussion of a Matter Within the Competence of Negotiating Group 3, Geneva, (Jan. 31, 1979) *reprinted* in U.S. Dep't State, U.S. Delegation Report, UNCLOS Intersessional Meeting, Geneva, January 23-February 7, 1979 (attachment to memorandum).

Under both the ICNT and the ICNT/R, each Council member has one vote. Decisions on questions of substance require a three-fourths majority of members present and voting. ICNT, *supra* note 15, art. 159, paras. 6-7; ICNT/R, *supra* note 16, art. 161, paras. 6-7.

31. The Council consists of 36 members selected from four categories of States Parties: four from States having large investments in seabed mining; four from mineral consuming/importing States; four from States with significant land-based mineral production; and six from developing countries. The remaining eighteen are selected to ensure equitable geographic distribution. ICNT/R, *supra* note 16, art. 161, para. 1.

32. *Id.* para. 1(a)-1(b). Compare *id.* with ICNT, *supra* note 15, art. 159, para. 1(a)-1(b).

The new definitions set a limit on the number of States from which the representatives in each category will be selected. The new definitions also assure that those States which in fact have the most significant interests in the two categories will comprise the group from which the representatives will be selected. Election to category (a), seabed miners, will be from among the eight States that have the

changed to permit the Enterprise to transport, process and market seabed nodules.³³ The group also made changes that gave the Council more power to control mining operations that threaten environmental harm.³⁴

The Group of Legal Experts on Seabed Disputes³⁵ revised the ICNT to require the Authority to take action against Authority staff members who have a wrongful financial interest in seabed mining or who wrongfully disclose proprietary information.³⁶ Article 187 was changed to focus the jurisdiction of the Seabed Disputes Chamber on subject matter rather than parties.³⁷ The group also changed ICNT article 188 to permit States Parties to submit seabed disputes to an ad hoc chamber of the Seabed Disputes Chamber.³⁸

The Working Group of Twenty-one discussed all of the issues within Committee I's purview.³⁹ Many of its suggestions with re-

largest investments in seabed mining. Election to category (b), consumers/importers, will be from among the ten or eleven states that are the largest consumers or net importers of the categories of minerals from the area.

33. ICNT/R, *supra* note 16, art. 170, para. 1. *Compare id. with* ICNT, *supra* note 15, art. 169, para. 1.

The change was made to reflect the generally accepted view that the Enterprise be permitted to engage in transportation, processing, and marketing of nodules as well as their recovery. U.S. Delegation Report, Geneva, *supra* note 24, at 24.

34. The amendments permitted the Council to require "adjustments" in mining operations to prevent serious harm to the environment. The Council can also disapprove areas for exploitation in order to prevent "serious harm to the marine environment." The previous phrasing allowed Council disapproval only to prevent "irreparable harm to a unique environment." U.S. Delegation Report, Geneva, *supra* note 24, at 25. *But see* ICNT/R, *supra* note 16, art. 162, para. 2.

35. At the first meeting, Committee I's chairman supplemented his three negotiating groups with a group of legal experts and a group of technical experts. The group of legal experts discussed commercial arbitration and other methods of resolving possible deep seabed disputes. The group of technical experts discussed deep seabed production limitations. U.S. Delegation Report, Geneva, *supra* note 24, at 7.

36. ICNT/R, *supra* note 16, art. 168, para. 3. *Compare id. with* ICNT, *supra* note 15, art. 167.

37. ICNT/R, *supra* note 16, art. 187. *Compare id. with* ICNT, *supra* note 15, art. 187.

The Chamber's jurisdiction extends to matters relating to activities in the deep seabed, including States' disputes over interpretation and application of the Convention. The chamber can also entertain contractual disputes, including a refusal by the Authority to grant a contract. U.S. Delegation Report, Geneva, *supra* note 24, at 26.

38. ICNT/R, *supra* note 16, art. 188, para. 1. The ICNT required the dispute to be submitted to arbitration. ICNT, *supra* note 15, art. 188.

39. At the start of the first meeting, the committee chairman created a new negotiating group, the Working Group of Twenty-one. The group was formed at the

gard to financial arrangements were incorporated into the new texts produced by Negotiating Group Two.⁴⁰ The group changed the Authority's role from coordinating research to coordinating the dissemination of its results.⁴¹

Committee II

Negotiating Group Four discussed access of landlocked and geographically disadvantaged States (LL/GDS) to coastal State fisheries.⁴² Coastal States objected to LL/GDS fishery access being termed a right.⁴³ The LL/GDS countries objected to their fishery access rights being limited to fish that were surplus to a coastal State's catch capacity.⁴⁴ The group agreed to incorporate into the ICNT/R the text produced at the seventh session.⁴⁵ That text requires a coastal State that is capable of harvesting all of its allowable catch to make equitable arrangements with LL/GDS countries to allow their continued fishing.⁴⁶

Negotiating Group Five met only once during the first meeting, decided not to reopen negotiations, and incorporated its seventh session revisions into the ICNT/R.⁴⁷ Those revisions excepted from binding arbitration or adjudication disputes over a coastal State's sovereign right to control fishing in its exclusive economic

request of G-77 nations. It permitted Committee I issues to be discussed in a smaller forum. U.S. Delegation Report, Geneva, *supra* note 24, at 7.

40. See note 24 *supra*.

41. ICNT/R, *supra* note 16, art. 143.

42. U.S. Delegation Report, Geneva, *supra* note 24, at 29. For a background discussion on the politics of the LL/GDS, concerning distribution of Seabed wealth, see Borgese, *The New Economic Order and the Law of the Sea*, 14 SAN DIEGO L. REV. 584 (1977).

For an analysis of the impact of the UNCLOS on Coastal States as opposed to LL/GDS, see D. JOHNSTON, *MARINE POLICY AND THE COASTAL COMMUNITY* (1976).

43. D. JOHNSTON, *supra* note 42. The ICNT gave the LL/GDS the right to equitable participation in the exploitation of living resources in adjoining States' exclusive economic zones. ICNT, *supra* note 15, art. 69, para. 1; SEA/360, *supra* note 23, at 11.

44. U.S. Delegation Report, Geneva, *supra* note 23, at 29. The ICNT allowed a coastal State to determine the allowable catch of the living resources in its exclusive economic zone. ICNT, *supra* note 15, art. 61, para. 1.

The coastal State was also allowed to determine its capacity to harvest the resources. Where the allowable catch exceeded the coastal State's catch capacity, the coastal State was required to give other States access to surplus. *Id.*, art. 62, para. 1.

One possible problem with the ICNT provision is that coastal States could legally deny access by either inflating their catch capacity or deflating their catch quotas so as to eliminate any surplus.

45. U.S. Delegation Report, Geneva, *supra* note 24, at 29.

46. *Id.* The ICNT/R retains the ICNT clauses in note 44 *supra*. However, a new clause gives the LL/GDS a right to fisheries access even if the coastal State is capable of harvesting its entire allowable catch. ICNT/R, *supra* note 16, art. 69, para. 3. Compare *id.* with ICNT, *supra* note 15, art. 69.

47. U.S. Delegation Report, Geneva, *supra* note 24, at 30.

zone.⁴⁸

Negotiating Group Six modified the definition of the continental shelf.⁴⁹ The ICNT had defined the continental shelf as extending 200 miles from baselines used to measure the territorial sea;

48. ICNT/R, *supra* note 16, art. 296, para. 3(a).

49. The group discussed three proposed definitions of the outer limit of the continental shelf. The first proposal, the "Irish Formula," fixed the limit either by using a sediment-thickness test, or by measuring a fixed distance from the foot of the continental shelf. The second proposal fixed the continental shelf limit at the limit of the 200-mile exclusive economic zone. The third proposal, offered by the Soviet Union, was a variation of the Irish formula and placed a fixed limit on the extent of continental shelf a state could claim. U.S. Delegation Report, Geneva, *supra* note 24, at 31.

Briefly, the arguments made by proponents of the Soviet formula (and against the Irish formula) are that it is easier to apply, provides more certainty as to the ultimate result, reduces the possibility of dispute, obviates the need for an international commission to review the claims of coastal States, and involves less encroachment on the international area. These arguments appear to be directed to the proposal for a maximum distance limit and not to the problem of ascertaining the limit of the continental margin within that maximum limit.

The arguments made against the Soviet proposal (and in favor of the Irish formula) are that it ignores the geological basis of the continental shelf doctrine, eliminates existing rights of the coastal State over the entire "natural prolongation" of its land territory under the sea, fails to take into account the economic and environmental interests of the coastal State in hydrocarbon production off its coast, and might unnecessarily complicate the division of common fluid resource deposits. In addition, one might note that this proposal could further complicate the deep seabed negotiations by extending their scope beyond manganese nodules to hydrocarbon deposits; it might encroach upon more of the "common heritage"* than the Irish formula unless something like the Irish formula is itself used to define the continental margin within the 350-mile limit; and it might stimulate demands for a universal 350-mile zone, irrespective of geology, on the seabeds or in the water column as well, resulting in vast new encroachments on the international area and the high seas and the possible elimination of revenue sharing from any expanded universal zone measured by distance. Oxman, *The Third Conference on Law of the Seas: The Seventh Session (1978)*, 73 AM. J. INT'L L. 1, 21 (1979). (350-mile substituted for 300-mile to avoid confusion.)

* Dr. Arvid Pardo, Ambassador to the United Nations from Malta, in his address delivered before the United Nations General Assembly on August 17, 1967, brought the "common heritage" concept to the forefront of international politics. At this time Dr. Pardo expressed great concern over the possibility of "a competitive scramble for sovereign rights over the land underlying the world's seas and oceans." Dr. Pardo feared that this "scramble" for national appropriation of the international seabed would:

- (1) result in an inequitable allocation of food, fuel and mineral resources;
- (2) have a negative impact on land-based mineral resources;
- (3) include the increased use of the seabed and ocean floor for military purposes; and
- (4) result in increased pollution of the marine environment.

During this same speech, Dr. Pardo called for United Nations preparation of a declaration and treaty that would:

where the continental margin extended beyond 200 miles, a State could extend its continental shelf to the edge of the margin.⁵⁰ The modification contains three formulae which a State must use to limit the extent of continental shelf it claims beyond 200 miles.⁵¹ Another revision by the group increased the developing countries' share of coastal States' shelf production beyond 200 miles.⁵²

Negotiating Group Seven met several times to discuss rules and criteria for delimiting maritime boundaries.⁵³ A deadlock arose between those favoring equitable rules for delimitation and those favoring a median-line rule.⁵⁴ As a result, the ICNT articles on maritime boundary delimitation remained unchanged.⁵⁵ The group rejected a moratorium proposal that would have enjoined any State from taking action that would aggravate or affect a boundary dispute.⁵⁶

Committee III

As a result of negotiations during the seventh session and the first meeting of the eighth session, two of the three issues within the mandate of Committee III are now closed. The closed issues are protection of the marine environment⁵⁷ and transfer of marine

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- (1) reserve the seabed and ocean floor as the common heritage of mankind;
 - (2) establish a system in which all countries would benefit from those resources on and under the ocean floor; and
 - (3) arrange for the control and administration of exploration and exploitation of deep seabed minerals by an international agency.

50. ICNT, *supra* note 15, art. 76.

51. U.S. Delegation Report, Geneva, *supra* note 24, at 23. The three formulae are at ICNT/R, *supra* note 16, art. 76, para. 4.

For a discussion of different ways to measure continental margins, see Hedberg, *Relations of Political Boundaries on the Ocean Floor to the Continental Margin*, 17 VA. J. INT'L L. 57 (1976).

52. U.S. Delegation Report, Geneva, *supra* note 24, at 31. The ICNT set the contribution at a rate of one percent beginning six years after the treaty. The contribution to developing countries would be increased by one percent each year until five percent was reached. ICNT, *supra* note 15, art. 82.

The revision increased the maximum contribution to seven percent. ICNT/R, *supra* note 16, art. 82.

53. U.S. Delegation Report, Geneva, *supra* note 24, at 33.

54. *Id.*; SEA/360, *supra* note 23, at 16.

The ICNT stated that delimitation "shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median and equidistance line, and taking account of all the relevant circumstances." ICNT, *supra* note 15, art. 83, para. 1, & art. 74, para. 1.

For an explanation and a practical application of equitable and geological factors in delimitation of the continental shelf, see Brown, *The Anglo-French Continental Shelf Case*, 16 SAN DIEGO L. REV. 461 (1979).

55. U.S. Delegation Report, Geneva, *supra* note 24, at 34.

56. *Id.*

57. ICNT/R, *supra* note 16, arts. 192-237.

technology.⁵⁸ The issue of marine scientific research still requires negotiation.

The Committee's discussions on marine scientific research were not very productive.⁵⁹ The United States contended that existing ICNT provisions unnecessarily restricted freedom to conduct research on the continental shelf and proposed three amendments that would lessen research restrictions.⁶⁰ States having broad margins opposed the amendments.⁶¹ The Soviet Union proposed that researchers conducting research related to continental shelf exploitation must obtain permission from the coastal State.⁶² The United States opposed the proposal as being too burdensome.⁶³ Some broad-margin States also opposed the proposal, claiming it provided insufficient protection to the coastal States.⁶⁴ The Committee did amend ICNT article 276 to promote the creation of national marine scientific and technological research centers in developing coastal States.⁶⁵

The New York Meeting, July 19-August 24, 1979

At the New York meeting, the Conference set a deadline of August 1980 for adopting a Law of the Sea Convention.⁶⁶ It also produced a detailed plan to meet the deadline.⁶⁷ The plan permits

58. *Id.* arts. 266-78.

59. U.S. Delegation Report, Geneva, *supra* note 24, at 38. The chairman of Committee III reported that his committee had devoted a substantial part of its time to research issues, but that the discussions "could not be considered as conclusive." SEA/360, *supra* note 25, at 19.

60. The United States proposed three amendments which would provide more freedom to conduct research. "The [amendments] were not made public; however, the proposals which the United States made on this topic last year were aimed at facilitating the conduct of research by foreign ships in the economic zones and on the continental shelves of coastal states." SEA/360, *supra* note 23, at 19.

For a detailed discussion of the proposed United States position on each ICNT/R article covering research, see Memorandum from Norman Wulf, United States Representative, Committee III, to the Members of the Marine Science Subcommittee of the Law of the Sea Advisory Committee (June 29, 1979).

61. U.S. Delegation Report, Geneva, *supra* note 24, at 38.

62. *Id.* at 39.

63. *Id.*

64. *Id.*

65. ICNT/R, *supra* note 16, art. 276. Compare *id.* with ICNT, *supra* note 15, art. 276.

66. U.N. Dep't of Pub. Information, Press Release SEA/375, at 2 (Aug. 24, 1979) [hereinafter cited as SEA/375].

67. Report of the General Committee, U.N. Doc. A/Conf. 62/88 (1979); Note By the President For the Meeting of the General Committee Fixed for Wednesday, 22

the Convention to be completed after ten weeks of meetings in 1980.⁶⁸ During the first three weeks, the negotiating groups in each committee will search for compromise on outstanding issues. A week of plenary meetings will follow. During the plenary meetings, delegations will record their positions on the negotiating text and any proposed revisions to it. Next, the revised text will be changed to a draft convention, which will be submitted to appropriate committees for possible amendment. The session will then recess to enable governments to study the final draft convention.

When the session resumes work, each committee will pursue general agreement on any issues remaining. Any new amendments will have to be submitted on the first day of the resumed session. The Conference will also consider any additional procedures necessary to produce a Convention by the fifth week of the resumed session.⁶⁹

August 1979, U.N. Doc. A/Conf.62/BUR/12 (1979). See also SEA/375, *supra* note 66, at 1.

68. U.N. Doc. A/Conf.BUR/12 at 3 (1979); U.N. Doc. A/Conf.62/88 at 3 (1979).

69. The summary of the timetable was condensed from the following:

First stage

During the first three weeks of the ninth session the work on the Final Clauses should be completed in the Informal Plenary with the assistance of the Group of Legal Experts on the Final Clauses. This is imperative if the final draft of the Convention is to be ready at the appropriate time.

During the same period of three weeks, the Chairmen of the three Main Committees, assisted by the Chairmen of the established Negotiating Groups and the Group of Legal Experts on Part XI Dispute Settlement, should conduct the necessary consultations within their respective spheres of competence in order, to the extent possible, to reach compromise solutions on outstanding issues. If these consultations are to be genuinely productive they must involve all delegations.

The Drafting Committee should, during the same period, meet informally to complete its work on informal recommendations that would have to be taken into account in the preparation of the final version of the ICNT.

Should an informal intersessional meeting of the Drafting Committee between the eighth and ninth sessions be considered necessary to expedite the preparation of the final version of the ICNT, arrangements and facilities for this purpose would have to be considered.

Second stage

At the beginning of the fourth week, there should be a formal discussion in Plenary. Such a formal discussion would be necessary to meet the wishes of a very large number of delegations that consider an opportunity should be given to them before the preparation and the adoption of the revised ICNT as a final draft convention, to place on record their position, both in regard to proposed revisions and on the entire package. It is implicit in paragraphs 10 and 11 of A/CONF/62/62 that the Plenary should have an opportunity of discussing the proposed changes in the ICNT before revision is effected, to enable the collegium as required by A/CONF/62/62 to prepare the revisions. This is of special importance on the occasion of the second revision as it is to serve, with such changes as are negotiated, as a final draft convention through a decision of the Conference. Every delegation must be entitled to participate in the formal debate but, if the debate is to be concluded within a reasonable period of

Committee I

The Working Group of Twenty-one discussed unresolved deep

time and thus allow for the conclusion of the work of the Conference by the end of the ninth session, the Conference would be well advised to set a time-limit, of perhaps 15 minutes for every speaker, on the understanding that delegations would, if they so wish, be permitted to present written statements whose contents will appear as part of the official records of the Conference, without forfeiting the right to make oral statements as well and which will form part of the summary records.

It is estimated that should 130 delegations participate in this debate, and given the acceptance of the proposed time-limit for each speaker, about 12 Plenary meetings of three hours each, with night meetings, would be necessary and the debate could be concluded in one week.

At the end of this period, the President and the Chairmen of the Main Committees, with whom the Chairman of the Drafting Committee and the Rapporteur-General will be associated, will revise the ICNT, in accordance with the procedure prescribed in paragraphs 10 and 11 of A/CONF/62/62.

Third stage

In the middle of the fifth week, the Plenary should meet to decide on altering the status of the revised ICNT to that of a final Conference document that would serve as a draft convention. It is recommended that in making this decision the Conference also decide that all formal proposals which have previously been presented be treated as having lapsed, without prejudice to the right of any State participant to move a fresh amendment similar to or different in substance from the one that has lapsed, when the draft text has been given the status of a formal draft convention. Such a procedure would be perfectly logical, as the entire procedure of preparation of the ICNT and of the second revision was designed to consider and dispose of the substance of such earlier proposals.

After the decision is taken to give the revised ICNT the status of a formal conference document, the Conference will have to decide the question of referring it for examination to the three Main Committees and the Plenary, operating as a Main Committee, in the following manner:

Part XI and annexes II and III to the First Committee;

Parts I and X and annex I, as well as any additional annex that is found necessary, to the Second Committee;

Parts XII, XIII and XIV to the Third Committee;

Parts XV and XVI and annexes IV, V, VI and VII to the Plenary, operating as a Main Committee.

Any delegation that wishes to submit formal amendments should endeavor to do so before the suspension of the session.

At this point, the session should be suspended to enable Governments to study the final draft convention and any amendments submitted.

Final stage

During the first 10 calendar days of the resumed session the Main Committees should examine the draft convention. Any amendments not previously submitted would have to be submitted formally on the first day of this period. During that period of 10 calendar days the Chairmen, with the assistance as appropriate of the officers of their Committees, would have to pursue their efforts to facilitate the attainment of general agreement, having regard to the progress made on all matters of substance which are closely related to one another.

By the end of this period a decision on all pending amendments will be taken by the Committees.

The subsequent steps which would be taken during the resumed ses-

seabed issues.⁷⁰ Although the group did not revise the ICNT/R, it did produce new texts which offer an improved basis for future negotiations.⁷¹ The texts contain numerous proposed changes to ICNT/R, Annex II.

The group made it clear that title to minerals passes upon their recovery in accordance with the terms of the Convention.⁷² In another text, the group removed the Authority's power to close areas of the seabed to prospectors⁷³ and deleted the prospectors' obligation to train Authority personnel.⁷⁴ A proposed change to Annex II, article 4, requires contract applicants to be sponsored by a State. The sponsoring State must ensure that its contractor meets its obligations to the Authority.⁷⁵ The group limited the

sion could be determined by the Conference on the recommendations of the General Committee on the first day of the resumed session, so that the Convention can be adopted before the end of the fifth week of the resumed session having due regard to the rules of procedure and to the Gentleman's Agreement appearing as an appendix to the rules of procedure.*

Report of the General Committee, U.N. Doc. A/Conf.62/88 at 3 (1979). For a prior formulation, see U.N. Doc. A/Conf.62/BUR/12 at 3 (1979). See SEA/375, *supra* note 66, at 2.

* The Gentleman's Agreement, approved by the U.N. General Assembly when it convened the Conference, and endorsed by the Conference when it adopted the Rules of Procedure, provides that the "Conference should make every effort to reach agreement on substantive matters until all efforts at consensus have been exhausted." Third U.N. Conference on the Law of the Sea, Rules of Procedure, Appendix, U.N. Doc. A/Conf. 62/30/Rev. 2 (1976).

70. Negotiating groups one, two and three did not meet during the second meeting. U.S. Delegation Report, Resumed Eighth Session of the Third United Nations Conference on the Law of the Sea, New York, July 16-August 24, 1979, at 9 (unpublished report) (on file with the *San Diego Law Review*) [hereinafter cited as U.S. Delegation Report, New York].

71. *Id.*

72. *Id.* Compare *id.* with ICNT/R, *supra* note 16, Annex II, art. 1. The ICNT/R states that "title to the minerals shall be passed upon recovery of the minerals pursuant to a contract of exploration and exploitation." *Id.* (emphasis added). The new revision does not differentiate between contractors and other entities which will recover minerals but not pursuant to a contract (i.e., prospectors and the Enterprise).

73. U.S. Delegation Report, New York, *supra* note 70, at 11. The ICNT/R had given the Authority the power to close an area to prospecting when there was a "risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the [deep seabed]." ICNT/R, *supra* note 16, Annex II, art. 2, para. 1(d).

74. U.S. Delegation Report, New York, *supra* note 70, at 11. The ICNT/R had required States Parties to develop programs to train the Authority's personnel in the techniques and applications of research. ICNT/R, *supra* note 16, art. 143, para. 3(b)(ii).

75. U.S. Delegation Report, New York, *supra* note 70, at 11. The amendment also provided that sponsorship by the State of which the applicant was a national would be sufficient. However, if an applicant possessed more than one nationality, or was effectively controlled by another State or its nationals, then the other States would also have to become sponsors. The need for this amendment was

mining site data that a contract applicant must supply the Authority.⁷⁶ The applicant must give the Authority all of the data it possesses; however, the Authority can no longer require the applicant to supply more data. Instead, the Authority must obtain any additional data that it needs from an independent expert.⁷⁷ Annex II, article 13, was amended to prohibit the Authority and the Enterprise from disclosing proprietary data to each other or to third parties.⁷⁸

Two new texts covered financing systems. One text proposes financing the Enterprise with loans, half interest-free and half interest-bearing.⁷⁹ The scale used for current United Nations contributions would determine the loan amount required from each

questioned. SEA/375, *supra* note 66, at 7. Compare *id.* with ICNT/R, Annex II, art. 4.

76. Under the existing parallel system of exploitation, a prospective miner would explore likely sites, and select an area large enough for two mining operations having estimated equal commercial value. He would provide all the data he possessed on the area to the Authority. The Authority would use the data to select one site for itself and leave the other to the applicant. SEA/375, *supra* note 66, at 7. See ICNT/R, *supra* note 16, Annex II, art. 8.

77. The new provision also gives the Authority power to defer action on a contract application for forty-five days while an independent expert assesses the data given the Authority. The expert will determine whether the data is sufficient to make a decision and whether the applicant is withholding data. U.S. Delegation Report, New York, *supra* note 70, at 12. Compare *id.* with ICNT/R, *supra* note 16, Annex II, art. 8.

78. U.S. Delegation Report, New York, *supra* note 70, at 13. Compare *id.* with ICNT/R, *supra* note 16, Annex II, art. 13.

79. U.S. Delegation Report, New York, *supra* note 70, at 22. The Chairman of Negotiating Group Two set out the following salient features of his proposal:

(1) The Enterprise would be assured, of the funds needed to carry out a fully integrated mining project, from exploration through marketing of minerals. The proposal does not specify the amount of funds required, because the developing countries objected to including a figure in the convention on the ground that cost estimates vary greatly—from \$560 million to \$1,000 million or more. The amount would be left for decision by the Assembly of the Authority, on the recommendation of the Council and the advice of the Enterprise's Governing Board.

(2) The initial project would be financed by loans, half interest-free and half interest-bearing. This is the ratio preferred by the developing countries, whereas the industrialized countries wanted one-third to be interest-free and two-thirds interest-bearing. As the Enterprise would be "a new institution with no track record," the Chairman thought a 1:1 ratio justifiable.

(3) The scale used for contributions to the United Nations regular budget would be the basis for determining how much each State Party to the convention would lend to the Enterprise. The report says that several representatives from developing countries pointed out that no State Party should be exempted from contributing to the Enterprise, that contribu-

country.⁸⁰ An alternative proposal ties loan amounts to the amount of benefits a nation receives from marine mining.⁸¹

The second text modified the mixed system⁸² on contractor charges by: (1) lowering production charges;⁸³ (2) adding a safeguard feature that reduces a contractor's production charge when his return on investment drops below fifteen percent per year;⁸⁴ and (3) establishing a flexible tax system which permits the Authority to derive its greatest revenue when the contractor's return is high.⁸⁵ The group also produced a new text which would give a minority on the Council the voting power to block decisions on certain sensitive issues.⁸⁶

The Group of Legal Experts developed a consensus text which permits the Law of the Sea Tribunal to select from its member-

tions should reflect the varying capacities of States and that the United Nations scale was the most widely acceptable one for this purpose.

(4) Repayment of interest-bearing loans should have priority over repayment of interest-free loans.

SEA/375, *supra* note 66, at 8.

80. *Id.* The G-77, supported by China and the Eastern European countries, argued that "seabed mining countries should bear the entire burden of financing the Enterprise, rather than basing assessments on the U.N. scale, since the seabed mining countries would, in their view, receive the bulk of the benefits from mining." U.S. Delegation Report, New York, *supra* note 70, at 23.

81. *Id.*

82. The "mixed system" is discussed at note 24 *supra*.

83. Higher production charges were proposed in previous schemes. The proposed new rates are two to four percent of the value of minerals produced instead of the earlier range of two to five percent. SEA/375, *supra* note 66, at 9.

84. A safeguard for the contractor would lower the four percent charge to two percent when his return on investment was less than fifteen percent a year. *Id.* at 9.

85. The tax rate would vary in three increments, rising from 35-40 percent of net proceeds to 50-70 percent. This and other provisions are calculated to avoid making seabed mining an artificially attractive investment, thereby prejudicing land-based mining. *Id.* at 10.

86. The revised text provided a voting formula that would allow a minority of members to block decisions on "particularly sensitive" issues. Substantive questions involving nonsensitive issues would require a two-thirds vote. The sensitive issues would require a two-thirds vote, "provided that — [a number has not been agreed upon] members have not cast negative votes." Proposals on the number of members required for blocking ranged from five to ten. *Id.*

The developing countries made their approval of the blocking formula contingent upon a change to ICNT/R, article 162. That article gives automatic Council approval to applicant work plans sixty days after their submission to the Technical Commission, if the Council has not disapproved the plan.* The proposed change requires the Council to act upon an application within sixty days of its submission. U.S. Delegation Report, New York, *supra* note 70, at 26. See also ICNT/R, *supra* note 16, art. 162, para. 2(j).

* The Legal and Technical Commission is the organ of the Council that reviews an applicant's work plans and makes recommendations to the Council. ICNT/R, *supra* note 16, art. 165, para. 2.

ship the members of the Seabed Disputes Chamber.⁸⁷ The group eliminated mandatory intervention in a dispute by a State Party when one of its nationals brings action against another State Party and the respondent requests such intervention.⁸⁸ The group also agreed to review a number of unresolved issues at the next session. The issues involve resolution of disputes between the Authority and the Enterprise and disputes between two separate contractors.⁸⁹

Committee II

Committee II met only informally during the second meeting.⁹⁰ Negotiating Group Seven met, but made little progress in establishing rules for delimiting maritime boundaries.⁹¹ The group failed to break the deadlock between those favoring the use of equitable principles to establish maritime boundaries and those favoring a median-line rule.⁹² The Group of Thirty-eight discussed limitations on a State's extension of its continental shelf along oceanic ridges.⁹³ The group failed to reach agreement; how-

87. SEA/375, *supra* note 66, at 11. Compare *id. with* ICNT/R, *supra* note 16, Annex V, art. 36, para. 1. The ICNT/R gives the Assembly the power to select the members of the Seabed Disputes Chamber.

The change was a compromise between the developing countries, who wanted selection by the Assembly, and developed countries, who wanted selection by the Council. U.S. Delegation Report, New York, *supra* note 70, at 27.

88. U.S. Delegation Report, New York, *supra* note 70, at 29. Compare *id. with* ICNT/R, *supra* note 16, art. 191.

89. U.S. Delegation Report, New York, *supra* note 70, at 30.

90. Negotiating groups four and five did not meet. Negotiating Group Six met in a smaller forum, called the Group of Thirty-eight, and discussed continental shelf issues. SEA/375, *supra* note 66, at 4. At the beginning of the second meeting, the Group of Thirty-eight was established to permit continental shelf issues to be discussed in a smaller forum. *Id.* at 12.

91. U.S. Delegation Report, New York, *supra* note 70, at 37.

92. SEA/375, *supra* note 66, at 13. See also U.S. Delegation Report, New York, *supra* note 70, at 35.

For an in-depth discussion of the application of both approaches to a particular dispute, see Brown, *The Anglo-French Continental Shelf Case*, 16 SAN DIEGO L. REV. 461 (1979).

93. The proposals on delimitation of Submarine Oceanic Ridges were summarized by the United Nations Department of Public Information as follows:

The Chairman's formula would give States two criteria to choose from in defining the outer limit of their shelf—one based on a distance (350 nautical miles from the coastal baselines) and the other on a combination of distance and depth (no more than 100 nautical miles from the 2,500 metre isobath).

Several proposals were put forward to limit the extension of the continental shelf in areas where there are submarine oceanic ridges. The Soviet Union proposed that only the 350-mile criterion should apply in such

ever, a Japanese proposal to limit such extensions to 200 miles received broad support and may serve as the basis for future consensus.⁹⁴

Committee III

Although Committee III did not change the ICNT/R, it did produce new negotiating texts which incorporated proposed amendments to the ICNT/R. The amendments were made to rules governing marine scientific research within the 200-mile exclusive economic zone and on the continental shelf.⁹⁵ Current rules require persons conducting research within a coastal State's jurisdiction to obtain that State's consent.⁹⁶ Coastal State consent is mandated if the research is conducted for peaceful purposes and fulfills certain other criteria.⁹⁷ A United States' sponsored amendment gives implied consent to research conducted at specified distances from the shore.⁹⁸ Another amendment states that the absence of diplomatic relations is insufficient grounds for

areas. A proposal by Argentina, Australia, Canada, India, Ireland, New Zealand, Norway, the United Kingdom, the United States and Uruguay would define submarine oceanic ridges as long, narrow submarine elevations formed by oceanic crust, and establish that in areas of such ridges, the outer limit of the continental shelf would not exceed a distance of 350 miles. Bulgaria proposed that the extension of the continental shelf on the basis of depth and distance would be subject to the shelf not being extended to submarine oceanic ridges. Japan suggested that ridges formed of oceanic crust should be excluded from the definition of the continental margin as well as the ocean floor and the subsoil thereof.

Singapore proposed the deletion of the combined depth-distance criteria, so that only the 350-mile outer limit would apply.

SEA/375, *supra* note 66, at 12.

The ICNT/R contains a technical formula which limits a state's extension of its continental shelf along a submarine ridge. However, a state could easily misapply the formula to obtain jurisdiction over large areas of mid-oceanic ridges. These ridges are considered part of the deep seabed. U.S. Delegation Report, New York, *supra* note 70, at 32. *See also* ICNT/R, *supra* note 16, art. 76.

94. U.S. Delegation Report, New York, *supra* note 70, at 33. *See also* SEA/375, *supra* note 66, at 13.

95. U.S. Delegation Report, New York, *supra* note 70, at 39.

96. ICNT/R, *supra* note 16, arts. 245-246, para. 2.

97. The other criteria are vague. The ICNT/R states that coastal States must, "in normal circumstances," consent to research conducted "exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind." ICNT/R, *supra* note 16, art. 246, para. 3.

Due to the undeniable importance and peaceful nature of climatic research, activities of the World Meteorological Organization have been considered peaceful research for the benefit of all mankind. U.N. Doc. A/Conf.62/80 (1979). Resolution 16 (Cg-VIII), adopted by the World Meteorological Organization at its eighth congress held in Geneva in April/May, 1979. For a discussion of arguments favoring exemption of climatic research from international restrictions on scientific research, see Nierenberg, *Don't Let Politics Prescribe Climatic Research*, CERES Nov.-Dec. 1978, at 23.

98. The proposed new article gives implied consent to research conducted on the continental shelf beyond 200 miles from shore. However, "implied consent"

withholding consent.⁹⁹ Other amendments limit the right of a coastal State to censor publication of research results¹⁰⁰ and weaken the obligation of coastal States to provide harbor access to research ships.¹⁰¹

The Group of Legal Experts on Final Clauses produced texts on signature, ratification, and accession to the Convention.¹⁰² The Group agreed to permit reservations to the Convention, but did not agree on the extent to which they would be allowed.¹⁰³ Proposals on the number of States Parties required for the Convention's entry into force ranged from thirty-six to seventy.¹⁰⁴ The group did agree that the Convention should enter into force as a whole and not piecemeal.¹⁰⁵ No agreement emerged as to what relation the Convention would have to existing conventions.¹⁰⁶ The group also decided to establish a Preparatory Commission

would not apply to the specific situations in which a coastal State has discretionary power to withhold consent. SEA/375, *supra* note 66, at 17.

The ICNT/R grants coastal States discretion to withhold consent when the research directly relates to exploitation of natural resources, involves drilling into the continental shelf or using explosives, or entails building or using artificial islands or structures. ICNT/R, *supra* note 16, art. 246, para. 4.

99. The ICNT/R states that a state shall grant consent "in normal circumstances." *See* note 100 *infra*.

The change states that the absence of diplomatic relations between a coastal State and a researching State is not a *prima facie* showing that normal circumstances do not exist. SEA/375, *supra* note 66, at 17. *See also* U.S. Delegation Report, New York, *supra* note 70, at 40.

100. The ICNT/R permits the coastal States to censor research results. ICNT/R, *supra* note 16, art. 249, para. 1(e).

The change permits censorship only when the research is of direct significance to the exploitation of the coastal State's continental shelf. U.S. Delegation Report, New York, *supra* note 70, at 41.

101. *Id.* at 41.

102. The group was established during the session to begin drafting the "final clauses" of the Convention. Final clauses are "a set of provisions found in most multilateral treaties that deal with various questions concerning the status of the instrument." SEA/375, *supra* note 66, at 19.

The group divided the final clauses into two groups—controversial and noncontroversial. The controversial clauses relate to: (1) amendment or revision, (2) reservations, (3) relation to other conventions, (4) entry into force, (5) transitional provisions, (6) denunciation, and (7) participation in the convention. The noncontroversial clauses are: (1) signature, (2) ratification, (3) status of annexes, (4) authentic texts, (5) depository, and (6) the testimonium clause. U.S. Delegation Report, New York, *supra* note 70, at 46.

103. *Id.* at 47. For a discussion of the policies for and against permitting reservations to a convention, and other "final clauses" issues, see F. KIRGIS, INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING 76-110 (1977).

104. U.S. Delegation Report, New York, *supra* note 70, at 48.

105. *Id.*

106. The specific issues discussed were:

that would draft proposed rules and regulations for the future Authority.¹⁰⁷

DEVELOPMENTS BEYOND THE CONFERENCE

Unilateral Deep Seabed Mining Legislation

At least two western industrialized nations are considering seabed mining legislation: the United States and the Federal Republic of Germany. The Federal Republic of Germany (FRG) is considering legislation designed to give domestic investors security in making the huge investments necessary to begin deep seabed exploitation.¹⁰⁸ However, the FRG legislation has been opposed by several factions within the country that believe such legislation is either improper or impractical.¹⁰⁹

In the United States, unilateral deep seabed mining legislation has been introduced in every congressional session since 1972.¹¹⁰ Comprehensive legislation sanctioning exploitation of the deep seabed by United States citizens was again introduced in the 96th session of the United States Congress.¹¹¹ The Carter administration now supports such legislation, partially because of the belief that it enhances the United States bargaining position at UNCLOS III and places pressure on the Conference to reach an early conclusion.¹¹² Three versions of the legislation are before Con-

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- (1) The extent to which the 1958 Law of the Sea Conventions will be superseded by the new treaty;
 - (2) the effect of the new treaty on other U.N. sponsored treaties dealing with related subjects; and
 - (3) the effect of the treaty upon bilateral agreements on related subjects.

No agreement was reached. *Id.*

107. *Id.*

108. Duesseldorf Wirtschaftswoche (German), March 19, 1979, at 18-20, *translated and reprinted in* 98 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 61 (1979).

109. Some Socialists in Germany have opposed the legislation for the reasons that are often voiced by the G-77. *Id.* Some FRG officials and experts feel unilateral legislation may be a bad investment because ocean mineral reserves may not be as bountiful as some estimates indicate. *Id.* (statement of Ranz F. Diederich and statement of Ederhard Mueller, managing director of "Syndicate for Raw Materials Exploitable by Sea Technology").

110. Kitos, *A Report on Legislation: The Deep Seabed Hard Mineral Resources Act*, 10 LAW. AMERICAS 963 (1978).

111. In the Senate, S-493 was introduced early in the 96th session. S. 493, 96th Cong., 1st Sess. (1979) (hereinafter referred to as S. 493). In the House of Representatives, two bills were introduced, H.R. 2759, by Mr. Murphy (of New York) and Mr. Breaux, and H.R. 3268, by Mr. Wilson (of California). H.R. 2759 and H.R. 3268, 96th Cong., 1st Sess. (1979) (hereinafter referred to as H.R. 2759 and H.R. 3268).

112. Both the Nixon and Ford administrations opposed the enactment of seabed mining legislation on the premise that such action would have a negative impact on the United Nations Law of the Sea Conference.

President Carter appointed Elliott L. Richardson as the United States Ambassador to UNCLOS III and, during the first several months of the new administration,

gress. They are substantially the same and each represents a complete piece of legislation.¹¹³ Controversy over a few specific provisions and the slow pace with which the legislation moved through committees¹¹⁴ made it impossible for the bills to be finally acted upon before the end of the 96th session.¹¹⁵

The bill that made the most progress in the House of Representatives during the 96th Congress, H.R. 2759, is termed the Deep Seabed Hard Minerals Resources Act.¹¹⁶ The Senate Bill, S. 493,

a review of the United States position on the international negotiations and domestic legislation was undertaken.

Pending that review and an assessment of the work of the impending sixth session of UNCLOS III, Ambassador Richardson testified before numerous congressional committees in the spring of 1977 that the administration did not support legislation at that time. Prompted, in part, by serious violations of procedural due process at the sixth session, the Ambassador announced later that fall that the administration now advocated congressional mining legislation. Testifying before joint hearings held by the Senate Committee on Commerce, Science and Transportation and the Committee on Energy and Natural Resources, Richardson noted that legislation would be needed whether there was a treaty or not.

113. See S. 493, H.R. 2759, and H.R. 3268, *supra* note 111.

114. S. 493 was referred to the Committee on Energy and Natural Resources, the Committee on Commerce, Science and Transportation, and the Committee on Foreign Relations. Both H.R. 2759 and H.R. 3268 were referred to the Committee on Foreign Affairs, the Committee on Interior and Insular Affairs, the Committee on Merchant Marine and Fisheries, and the Ways and Means Committee.

115. The House of Representatives Committee on Foreign Affairs did not report on H.R. 2759 and H.R. 3268 during 1979. Therefore, it never reached the floor for a vote. S. 493 was amended and passed by voice vote on the Senate floor December 15, 1979.

116. H.R. 2759 was introduced on March 8, 1979, by Mr. Murphy (of New York), Mr. Breaux, Mr. Udall, Mr. Santini, Mr. Zablocki, Mr. Bingham, Mr. Bonker, Mr. Ullman, Mr. Pritchard, Mr. Young (of Alaska), Mr. DerWinski, and Ms. Conable. The bill was referred to the Committee on Merchant Marine and Fisheries, the Committee on Foreign Affairs, the Committee on Interior and Insular Affairs, and the Ways and Means Committee. Additional members joined as co-sponsors subsequent to the bill's original introduction.

The bill was referred on March 14, 1979, to the Committee on Merchant Marine and Fisheries' Subcommittee on Oceanography, which held hearings on May 22, May 23, and June 7, 1979. Testimony was received from members of Congress, officials of the executive branch, representatives of the mining industry, environmental groups, church groups, academia, a maritime organization, and other interested citizens.

H.R. 2759 as introduced was identical to the language of H.R. 3350 as it passed the House during the 95th Congress, except for deletion of the definition of the term "secretary." Many amendments were subsequently made in committee. *Deep Seabed Hard Mineral Resources Act: Hearings and Markup on H.R. 2759 Before the Committee on Merchant Marine and Fisheries, 96th Cong., 1st Sess. 411 (1979)* [hereinafter cited as *Hearings on H.R. 2759 on August 17, 1979*].

In the 95th Congress, the Committee on Interior and Insular Affairs ordered H.R. 3350, as amended, reported to the House of Representatives on October 26, 1977.

however, is currently more consistent with the Carter administration's views with respect to the legislation.¹¹⁷ This legislation would establish a comprehensive interim program to encourage and regulate development of deep seabed hard mineral resources until implementation of a superseding international agreement.¹¹⁸ Opponents of the legislation argue that unilateral action in the deep seabed would violate international law.¹¹⁹

On July 26, 1978, the House passed H.R. 3350, as amended, by a vote of 312 yeas, 80 nays. The Senate did not act on the legislation.

The Subcommittee on Mines and Mining in this Congress held two days of hearings, on May 1 and 2, 1979. The Subcommittee ordered H.R. 2759, as amended, reported to the Full Committee on June 21, 1979. On July 18, 1979, the Committee on Interior and Insular Affairs, by voice vote, ordered the bill, as amended, reported to the House of Representatives with a recommendation that it be approved.

On August 2, 1979, the Committee on Interior and Insular Affairs made similar recommendations.

The Committee on Merchant Marine and Fisheries, after hearings on August 17, 1979, also ordered H.R. 2759, as amended, reported to the House of Representatives with a recommendation that it be approved.

The Subcommittee on International Organizations and the Subcommittee on International Economic Policy and Trade of the House Committee on International Relations held hearings on H.R. 2759 in November.

117. Although H.R. 2759 has been through extensive refinement and revision in the House hearing process, the Carter administration has had a much greater opportunity to work with the Senate seabed mining bill S. 493. The bill introduced in the Senate reflects many changes requested by the administration. Letter from Juanita M. Kreps, Secretary of Commerce, and Cecil D. Andrus, Secretary of the Interior, to the Chairman, Committee on Merchant Marine and Fisheries, (June 5, 1979), *reprinted in Hearings on H.R. 2759 on August 17, 1979, supra* note 116, at 69. S. 493 was amended December 15, 1979, just prior to passing the Senate.

118. H.R. 2759, 96th Cong., 1st Sess. §§ 2 (purposes and findings), 3 (international objectives) (1979).

Section 2(b) states the purposes of the act as follows:

(b) Purposes.—The Congress declares that the purposes of this Act are—

(1) to encourage the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) pending the entering into force of such a Treaty, to provide for the establishment of an international revenue sharing fund, the proceeds of which shall be used for sharing with the international community pursuant to such Treaty;

(3) to establish, pending the ratification by, and entering into force with respect to, the United States of such a Treaty, an interim program to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(4) to accelerate the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assure that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea; and

(5) to encourage the continued development of technology necessary to recover the hard mineral resources of the deep seabed.

119. Developing countries have argued that United Nations General Assembly

The Carter administration maintains that United Nations resolutions involving the "Common Heritage" concept have never become binding international law.¹²⁰ Rather, as a system which allocates access among United States citizens and reciprocating States, the legislation is consistent with the 1958 Convention On The High Seas as an exercise of the freedom of the high seas that does not unreasonably interfere with other internationally recognized freedoms of the high seas.¹²¹ The bill sets up a revenue-sharing fund for developing nations that would be taken over by the International Seabed Authority if a Law of the Sea Convention is adopted.¹²²

The legislation has created controversy over international and domestic matters. International concerns include the status of the United States sanctioned miners under a Law of the Sea Con-

Resolution 2749 (XXV), which espouses the doctrine that the ocean resources beyond the jurisdiction of any nation belong to the "common heritage of mankind," binds the United States or any other advanced industrial country against proceeding with deep ocean mining on a unilateral basis. See note 48 *supra* for further discussion of the "common heritage" concept.

120. It has been Ambassador Richardson's position at UNCLOS III that Resolution 2749 (XXV) is not binding on any nation at the present time in the absence of a treaty giving legal definition to the "common heritage" concept.

In 1969, a General Assembly resolution calling for a moratorium on deep seabed exploitation was adopted. The United States opposed this moratorium and made it clear that such resolutions are only recommendations and are not legally binding.

In 1967 Ambassador Arvid Pardo, representing the permanent mission of Malta to the United Nations, submitted a proposal urging that resources on the ocean floor be regarded as the "common heritage of mankind" and be used for the benefit of mankind, particularly developing nations. The United States supported the General Assembly resolution to this effect, although "common heritage" was left undefined. See note 48 *supra* for a further discussion.

A result of the Malta proposal was the adoption, in 1970, of a resolution by the United Nations to create the Ad Hoc Committee to Study the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction (also known as the Seabeds Committee). *Hearings on H.R. 2759 on August 17, 1979, supra* note 118, at 43.

121. *Id.*

122. Under Title IV of H.R. 2759, a tax would be imposed on removal of a hard mineral resource from the deep seabed. The amount of the tax would be 3.75 percent of the imputed value of the removed resource. For purposes of this title, imputed value means twenty percent of the fair market value of the commercially recoverable metals and minerals. The tax revenue would be placed in a "Deep Seabed Revenue Sharing Trust Fund" to be shared among nations if an international seabed treaty is in effect with respect to the United States. If such a treaty were not in effect, the revenue would be available for such purposes as Congress provides. *Deep Seabed Hard Minerals Resources Act: Hearings on H.R. 2759 Before the Committee on Interior and Insular Affairs, 96th Cong., 1st Sess. 411 (1979) [hereinafter cited as Hearings on H.R. 2759 on August 2, 1979].*

vention,¹²³ and whether all vessels involved in mining under the statute will be required to be documented in the United States.¹²⁴ Domestic concerns include: 1) how the Seabed Mining Agency will interact with other agencies in terms of environmental protection and enforcement of the regulations; 2) what administrative and review procedures will be adopted; and 3) what role the public should have in setting marine mining policy.¹²⁵

The unilateral legislation being considered by western industrialized nations has been characterized by many nations as illegal, immoral, and threatening to the UNCLOS III negotiations.¹²⁶ The United States Congress is aware of the effect its legislation may have on UNCLOS III.¹²⁷ Because of the current plan to conclude UNCLOS III in 1980, unilateral legislation has been criticized as

123. Title II of H.R. 2759 contains two sections providing for transition to an international agreement. The administration supports language which would emphasize that companies should be allowed to continue their operations under a Law of the Sea Treaty, while recognizing that the treaty may impose different obligations than those imposed by United States domestic legislation. The Administration strongly believes that such language must not imply an obligation by the United States government to compensate mining firms. Therefore, a third section, titled Disclaimer of Obligation to Pay Compensation, is proposed. *Hearings on H.R. 2759 on August 17, 1979, supra* note 118, at 90. See also *id.* at 70-104 (Carter administration's views on proposed amendments). The lack of a "guarantee clause" may deter investment, making the legislation ineffective.

124. *Hearings on H.R. 2759 on August 17, 1979, supra* note 118, at 71. For more detailed discussion exclusively on this issue, see the Testimony of Ambassador Richardson before the International Organizations and the International Economic Policy and Trade Subcommittees of the House International Relations Committee (Nov. 1, 1979).

125. *Id.* at 72-74.

126. The following statement of the Group of 77 typifies this view:

The Group of 77 cannot accept that any rights may be acquired by any State, person or entity by virtue of such unilateral measures. Those who through their own actions would create a situation which impels them to seek recognition of such rights at this Conference must clearly know from now that they will be creating an additional obstacle to the conclusion of a treaty. The Group cannot be expected to alter its long-standing and well-stated position rejecting the recognition of acquired rights. We cannot be expected to give a cloak of legality to what is illegal *ab initio*.

Oxman, *The Third United Nations Conference on the Law of the Sea, The Seventh Session*, 73 AM. SOC'Y INT'L L. 1, 20 (1979).

In direct response to similar charges, Elliot Richardson, the United States representative, stated:

Far from jeopardizing the Conference, seabed mining legislation should facilitate the early conclusion of a generally acceptable Law of the Sea Treaty by dispelling any impression that the governments of the countries preparing to engage in such mining can be induced to acquiesce in an otherwise unacceptable treaty because that is the only way to obtain the minerals.

127. Since January 1, 1979, S. 493 has required the Secretary of State to make reports to Congress as to UNCLOS III progress, and asks that he recommend any amendments that might assist in concluding the negotiations. S. 493, 96th Cong., 1st Sess. at 9 (1979).

pointless, costly, and risky.¹²⁸ However, the criticism has prompted neither premature passage nor abandonment of the legislation. The Carter administration asserts that many of the reasons for the legislation are valid even in light of the recent UNCLOS III announcement of the Conference's 1980 conclusion.¹²⁹ Therefore, although it is unlikely that marine mining leg-

128. In dissent, Congressman Paul N. McCloskey, Jr., stated:

I dissent from passage of this bill at this time, believing that such action may inhibit the successful conclusion of the Law of the Sea negotiations, expected to result in finalization of treaty language in 1980.

This bill would mark the first time a nation has sought to unilaterally control operations on the high seas to mine the resources of the deep seabed to the exclusion of other nations. For nine years we have urged the other nations of the world to forego precisely the action this bill authorizes pending conclusion of a Law of the Sea treaty. If such a treaty were not now possible, it would be understandable, if, in frustration and impatience, we enacted legislation claiming that we were thereby reducing the Common Heritage of Mankind into an asset usable by mankind.

With the successful progress of the negotiations at the present time, it seems highly likely we will have a treaty within a year. If not, a year's delay to find out can scarcely hurt the future efforts of U.S. and foreign mining companies. If, however, the price and anger of the other parties in the Law of the Sea negotiations is such that the negotiations themselves break down, our legislation will certainly be blamed as the reason.

Hearings on H.R. 2759 on August 17, 1979, supra note 118, at 105.

129. Ambassador Richardson has voiced the administration's view as follows:

Mr. Chairman, I have testified many times and would like to reiterate that the United States would prefer deep seabed mining to take place under a negotiated multilateral regime. However, despite the progress we have made at the Law of the Sea Conference toward such a regime, it is clear that we cannot yet be certain that a generally acceptable convention will result. In any event, an acceptable treaty governing seabed mining could not enter into force for some years. Therefore, the Administration still believes that the early enactment of well thought out domestic legislation establishing an interim statutory framework within which the orderly development of seabed resources can proceed, is in the interest both of the United States and of the world community. We take this position mindful of the important role played in our economic well-being and our national defense by adequate supplies of cobalt, manganese, nickel, and copper. We believe that deep seabed mining of these minerals will reduce United States vulnerability to dangerous and costly interruptions of supply of these four metals.

Elliot L. Richardson, testimony before the Subcommittee on Oceanography, Committee on Merchant Marine and Fisheries, U.S. House of Representatives (May 22, 1979).

Further, there are a number of reasons why an international Law of the Sea Convention may not become binding on the United States. The Law of the Sea delegates could determine that successful negotiations are not possible at this time and the Conference might disband. It is also possible that a "successfully negotiated" treaty may enter into force with respect to many nations, but not the United States, because we choose not to ratify it.

If this situation obtains, it is imperative that a seabed mining regime be established by domestic legislation. First, for the reasons noted above with respect to a

islation will be passed this year, efforts to pass such legislation will continue in the 97th Congress.

Disputes and Agreements Concerning the Continental Shelf and Maritime Boundaries

During the past year, a number of countries reached agreement or attempted agreement on continental shelf and maritime boundary disputes. On December 1, 1978, Tunisia and Libya informed the International Court of Justice of their desire for the Court's assistance in delimiting their continental shelf.¹³⁰ Australia and Papua New Guinea signed a treaty on sovereignty and maritime boundaries on December 18, 1978.¹³¹ Australia and Indonesia held talks in February 1979 in an attempt to agree on boundaries east and west of East Timor.¹³² On March 3, 1979, Thailand, India, and Indonesia agreed on delineation of their boundaries in the Andaman Sea.¹³³ These three countries determined a tri-junction point and delimited their continental shelves.¹³⁴ Argentina and Chile agreed to accept papal mediation in their dispute involving the Beagle Channel region.¹³⁵ Japan and South Korea

security of supply of ocean minerals and the need for further technological development, a domestic program to authorize the commercial recovery of manganese nodules and to protect the marine environment must be established. *Hearings on H.R. 2759 on August 17, 1979, supra* note 118, at 41.

For an in-depth analysis of the economic ramifications of deep seabed mining on the United States, including projections for the four seabed minerals, see UNITED STATES DEP'T OF COMMERCE, OFFICE OF OCEAN, RESOURCE AND POLICY COORDINATION, COBALT, COPPER, NICKEL, AND MANGANESE: FUTURE SUPPLY AND DEMAND IMPLICATIONS FOR DEEP SEABED MINING (1979).

130. Tunisia and Libya asked the Court to provide them with current rules and principles of international law applicable to delimitation, and a practical way to apply them in their particular situation. 18 INT'L LEGAL MATERIALS 49 (1979).

131. Among the issues resolved were: (1) the establishment of sea boundaries between the islands of Dauan, Kaumag, Siabai, and Papua New Guinea; (2) recognition of each other's sovereignty over numerous other islands; (3) the establishment of a "protected zone" in the Torres Strait; and (4) other provisions related to exploitation and protection of seabed resources and fishing. 18 INT'L LEGAL MATERIALS 291 (1979). The agreement also banned mining and oil drilling for ten years. *Pacific Islands Monthly*, Feb., 1979, at 13.

132. The talks were nonproductive. The existing boundaries between Indonesia and Australia, east and west of East Timor, were agreed to during bargaining sessions in 1971-1972. Indonesia's Foreign Minister, Dr. Mochta, claims that Australia "took Indonesia to the cleaners in that agreement." There are very rich oil and gas deposits at stake in the disputed area. *The Sydney Morning Herald*, Dec. 22, 1978, at 7, reprinted in 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 39 (1979).

133. Beijing Radio, XINHUA, broadcast at 1237 GMT, Mar. 3, 1979, translated and reprinted in 98 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 29 (1979).

134. *Id.*

135. 18 INT'L LEGAL MATERIALS 1 (1979). The dispute over three small islands in the Beagle Channel is over 100 years old. The two countries submitted the dispute to an international arbitration panel in 1971. In 1977, Great Britain announced the

moved closer toward implementing their 1974 binational continental shelf agreement. The 1974 agreement provides for the joint development of the continental shelf lying between the two countries.¹³⁶ The United States and Canada agreed to submit delimitation of their maritime boundary in the Gulf of Maine to the International Court of Justice.¹³⁷ United States President Carter transmitted three treaties to the United States Senate for ratification on January 23, 1979.¹³⁸ The treaties establish maritime

panel's decision that the islands belonged to Chile. Argentina rejected the decision. See Synopsis, *Recent Developments in the Law of the Sea 1977-1978*, 16 SAN DIEGO L. REV. 705, 732 (1978).

As part of the mediation agreement, Chile and Argentina also agreed not to resort to the use of military force, to reduce military forces in the area to pre-1977 levels, and to avoid adopting measures that might increase tension in the area. 18 INT'L LEGAL MATERIALS 1 (1979).

Papal mediation may not resolve the dispute. Chile claims it will not be bound by any decisions because the Holy See is a mediator, not an arbitrator. Chile reserves the right to enforce the prior arbitration decision through the International Court at the Hague. Paris radio, AFP, broadcast at 1503 GMT, Jan. 9, 1979, *translated and reprinted in* 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 64 (1979).

The Argentine Foreign Ministry submitted a document to the Holy See which stated that "Argentina would recognize Chile's sovereignty over the three disputed islands—Lennox, Picton, and Nueva—and twelve miles of territorial waters in exchange for a shared exploitation of the disputed waters." O Globo (Rio de Janeiro), Dec. 27, 1978, at 14, *translated and reprinted in* 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 60 (1979).

For a detailed history of the Beagle Channel dispute, see Comment, *The Beagle Channel Affair*, 71 AM. J. INT'L L. 733, 733-740 (1977).

136. The disputed region of the continental shelf is suspected to have rich deposits of oil. The Korea Times, Jan. 10, 1979, at 3, *translated and reprinted in* 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 31 (1979).

On March 7, 1979, the two countries agreed on a method of selecting concessionaires. The concessionaires will in turn select the operators who will do the drilling for oil. Seoul radio, HAPTONG, broadcast at 0819 GMT, Mar. 8, 1979, *translated and reprinted in* 93 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 37 (1979).

137. President Carter transmitted the "Maritime Boundary Settlement Treaty With Canada" to the Senate on May 3, 1979, for ratification. The boundary dispute arose in 1977 after both countries had extended their respective fisheries jurisdictions to 200 nautical miles. President's Message to Congress Transmitting the Maritime Boundary Settlement Treaty With Canada and the Agreement on East Coast Fishery Resources With Canada, 15 WEEKLY COMP. OF PRES. DOC. 776 (May 3, 1979).

For a detailed discussion of the boundary dispute in the Gulf of Maine, see Comment, *Boundary Delimitation in the Economic Zone*, 30 MAINE L. REV. 207, 207-245 (1979).

138. President's Message to Congress Transmitting Three Treaties Establishing Maritime Boundaries Between the United States and Mexico, Venezuela, and Cuba, 15 WEEKLY COMP. OF PRES. DOC. 86 (Jan. 23, 1979).

boundaries between the United States and Mexico, Venezuela, and Cuba.¹³⁹

Extensions of Sovereignty Over Fishing and Territorial Waters

States have continued to declare sovereignty over waters extending 200 miles from their shores.¹⁴⁰ Kenya extended its economic zone 200 miles seaward¹⁴¹ and reserved the right to license and control fishing and mineral exploitation in the zone.¹⁴² Indonesia's Secretary of the Directorate General of Fisheries announced on April 4, 1979, that Indonesia would proclaim an exclusive economic zone extending as much as 200 miles from its existing territorial water zone.¹⁴³ Korea may establish a 200-mile zone,¹⁴⁴ and Australia was expected to announce a 200-mile zone sometime during 1979.¹⁴⁵ Norway postponed plans to announce a 200-mile zone around Jan Mayen.¹⁴⁶ Yugoslavia announced the extension of its territorial waters from ten miles to twelve

139. The treaties were prompted by each country's previous establishment of 200-mile zones. Each treaty states that its sole purpose is to establish maritime boundaries in areas where the 200-mile zones overlap. Each treaty also specifically disclaims any effect on any country's claims as to the breadth of its territorial waters, or the nature of its jurisdiction in the 200-mile zone. *Id.*

140. So far, over 76 countries have declared 200-mile fishing zones. The extensions have had considerable impact on the world fishing industry, since only about one percent of the total world catch of fish occurs beyond 200 miles from shore. For a detailed discussion of the impact on developing countries and major fishing countries see Gulland, *Developing Countries and the New Law of the Sea*, OCEANUS, Spring, 1979, at 36.

141. The Nairobi Daily Nation, Mar. 6, 1979, at 6, *translated and reprinted in* 97 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 38 (1979).

142. *Id.*

143. Kommas (Jakarta), Apr. 6, 1979, at 2, *translated and reprinted in* 97 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 21 (1979).

144. South Korea stated that it would consider establishing a 200-mile zone in the event that Japan declared a similar zone. Seoul radio, HAPTONG, Broadcast at 0055 GMT, Mar. 27, 1979, *translated and reprinted in* 95 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 17 (1979).

145. Australia has continued to delay formal announcement of a 200-mile fishing zone because of the numerous problems associated with it. Among the problems are: the lack of a regional policy on migratory tuna, the overlapping of the zone with those of neighboring countries, the unresolved question of sea boundaries with respect to Australia's Antarctic Territory, and questions on how the zone will be policed. The Sydney Morning Herald, Mar. 19, 1979, at 6, *reprinted in* 96 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 28 (1979).

146. Arbeiderbladet (Oslo), Dec. 14, 1978, at 6, *translated and reprinted in* 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 100. Norway has decided to cooperate with Iceland in studying the fishing resources around Jan Mayen. Iceland may have rights to ocean bed resources depending upon final decisions reached at the UNCLOS. Morgenbladet (Reykjavik), Dec. 23, 1978, at 25, *translated and reprinted in* 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 90 (1979).

miles,¹⁴⁷ and the Netherlands continued to delay a decision to extend its territorial waters to twelve miles.¹⁴⁸

Fisheries Disputes

Canada,¹⁴⁹ Costa Rica,¹⁵⁰ Mexico,¹⁵¹ and Peru¹⁵² seized United States tuna boats in 1979. The boats were seized while fishing in each country's 200-mile zone. While the United States has also

147. Belgrade radio, TANJUG, broadcast at 1736 GMT, Mar. 14, 1979, *translated and reprinted in* 94 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 21 (1979).

148. The Netherlands Ministry of Foreign Affairs does not want to declare a twelve-mile territorial sea. The Ministry is reluctant because it feels that any decision would be premature until the International Conference on Maritime Law is concluded. However, the Netherlands has adopted a 200-mile exclusive economic zone. NRC Handelsblad (Rotterdam), Feb. 14, 1979, at 7, *translated and reprinted in* 94 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 53 (1979).

149. Canada seized nineteen United States tuna boats in late August, 1979. Canada claimed the boats were fishing inside Canada's 200-mile zone. The tuna boat captains were released after the United States government paid their bail. They will face trial in Canadian Court in November, 1979. Negotiations between the United States and Canada broke off on September 12, 1979. No agreement was reached. Talks will resume in early 1980. L.A. Times, Sept. 23, 1979, pt. III, at 4, col. 1.

The United States does not recognize Canada's 200-mile limit as applying to migratory fish such as tuna. See note 23 *infra*. Because of this, the United States government provides tuna boat owners with seizure insurance. This practice has led one British Columbia official to demand jail sentences for the arrested captains. MACLEANS, Sept. 10, 1979, at 26.

There is no sense of urgency on the part of the United States to resolve the dispute. The tuna have fled Canadian waters for warmer parts. Additionally, the tuna rarely stray into cold Canadian waters. Therefore it is unlikely that there will be any further boat seizures in the near future. The Canadians have indicated that they may be willing to trade the United States tuna fishing rights in return for United States abandonment of plans for a large herring industry on the west coast. Canadian fishermen enjoy a lucrative herring trade with Japan. N.Y. Times, Sept. 16, 1979, § A, at 12, col. 1.

150. Costa Rica seized three United States tuna boats on January 18, 1979. Costa Rica claimed the boats were fishing 140 miles off Punta Leona, in Costa Rica's 200-mile zone. The United States government paid the fines and the boats were released. San Jose radio, RELOJ, broadcast at 1730 GMT, Jan. 18, 1979, *translated and reprinted in* 93 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 10 (1979).

151. Mexico seized two United States tuna boats on April 7, 1979, off La Paz. Madrid radio, EFE, broadcast at 0033 GMT, Apr. 8, 1979, *translated and reprinted in* 96 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 22 (1979).

152. Paris Radio, AFP, broadcast at 1323 GMT, May 7, 1979, *translated and reprinted in* 98 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 3 (1979).

declared a 200-mile zone, it refuses to recognize the right to control tuna fishing within such zones.¹⁵³ The United States responded to the seizures by placing embargos on tuna and tuna products from Costa Rica,¹⁵⁴ Peru,¹⁵⁵ and Canada.¹⁵⁶

There are three possible solutions to the tuna dispute. One is to establish a new commission to replace the foundering Inter-American Tropical Tuna Commission (IATTC).¹⁵⁷ Another solution would be for United States companies to purchase licenses from each country along the tuna migration route. This would probably be impractical and prohibitively expensive. A third solution, proposed by the United States, is the issuance of an annual international tuna fishing license, with a fee based on a ship's net tonnage.¹⁵⁸ Costa Rica¹⁵⁹ and Canada¹⁶⁰ have rejected the international license proposal.

On February 14, 1979, the United States and Canada announced partial settlement of a fishing dispute which had led each country to ban the other's fishermen from its waters in 1978.¹⁶¹ The dispute arose after both countries extended their fishing limits to 200 miles from 12 miles in 1977.¹⁶² The settlement established a management program for twenty-eight fish stocks in the Georges Banks region.¹⁶³ Each country will receive a share of each of the

153. Under United States law, the 200-mile zone does not apply to highly migratory fish such as tuna. 16 U.S.C.A. § 1825(d)(s) (West Supp. 1979). The United States rationale is that a country should not be allowed to control migratory fish just because they happen to swim within 200 miles of its coast. Japan seems to be the only other country that shares this view. *L.A. Times*, Sept. 23, 1979, pt. III, at 4, col. 1. As a result, Japan has also shared the seizures. Costa Rica seized at least one Japanese tuna boat this year. *L.A. Times*, Feb. 25, 1979, pt. I, at 1, col. 2.

154. The Fishery Conservation and Management Act of 1976 permits the Secretary of State to direct the Secretary of the Treasury to prohibit the importation of fish and fish products from any country which seizes United States fishing boats under a claim of jurisdiction that is not recognized by the United States. 16 U.S.C.A. § 1825(a)(4) (West Supp. 1979).

On February 16, 1979, the United States placed an embargo on all tuna and tuna products imports from Costa Rica. The embargo was imposed after Costa Rica seized the United States fishing boats *Uncle Louis* and *Seafox*, on January 18, 1979. 44 Fed. Reg. 1071 (1979).

155. *Id.* at 2554.

156. *Id.* at 53118.

157. The Mexican and Costa Rican seizures are probably a result of their withdrawal from the IATTC. The IATTC establishes tuna quotas for each member country, in lieu of member country licensing. Dissatisfaction with their quota allotment led Costa Rica and Mexico to withdraw from the IATTC. *L.A. Times*, Feb. 1, 1979, pt. I, at 1, col. 1.

158. *Id.*

159. *Id.*

160. *N.Y. Times*, Sept. 16, 1979, § A, at 12, col. 1.

161. *N.Y. Times*, Feb. 15, 1979, § A, at 25, col. 1.

162. *Wall St. J.*, Feb. 15, 1979, at 16, col. 4.

163. *Id.*

twenty-eight stocks.¹⁶⁴ The shares will be reviewed every ten years.¹⁶⁵

The United Nations Conference on Trade and Development

The United Nations Conference on Trade and Development (UNCTAD) held its fifth meeting in Manila from May 7 through June 3, 1979.¹⁶⁶ At the meeting, UNCTAD adopted a resolution, submitted by the G-77, that called for equitable participation in bulk shipping by the developing countries.¹⁶⁷ The resolution also called for UNCTAD to conduct a program to study ways to help developing countries enlarge their shipping capacities.¹⁶⁸ UNCTAD also adopted a resolution that requested all states to re-

164. *Id.* Some representative stocks are: Scallops—Canada 73.35%, U.S. 26.65%; Cod—Canada 17%, U.S. 83%; Haddock—Canada 21%, U.S. 79%.

165. *Id.*

166. U.N. CHRONICLE, July, 1979, at 44.

167. *Id.*

168. The Conference also urged states to adhere to the 1974 Convention on a Code of Conduct for Liner Conferences. The 1974 convention was instigated by UNCTAD's secretariat. It established shipping quotas for goods carried on ships between two trading partners. Forty percent of each nation's shipments were to be carried on flag vessels of that nation. The remaining twenty percent could be carried by third parties. The United States and Great Britain were among the countries that voted against the Convention. So far, the nations that have ratified the Convention represent only six percent of world merchant tonnage, and some of those have attached restrictions. Wall St. J., Apr. 13, 1979, at 6, col. 1.

European Economic Community nations were urged by France, West Germany, and Belgium to ratify the 1974 Convention; however, Great Britain insisted that trade between major industrial nations be exempt from the quotas. Two-fifths of Britain's shipping business is as a carrier between two other trading nations. The Daily Telegraph (London), Feb. 21, 1979, at 21, col. 5.

The major western shipping nations are apprehensive about the possibility of widespread acceptance of the Convention with respect to bulk carriers. Greece might lose from 95% to 97% of its bulk carrier tonnage. Norway could lose 87% of its bulk carrier tonnage. L.A. Times, May 7, 1979, pt. I, at 12, col. 5.

Current South American practices illustrate problems that extension of the Convention to bulk shipping might cause. For example, Columbia has an ordinance that requires 50% of its exports and imports to be carried on Columbian flagships. The ordinance was passed in 1969, but it had little effect until recently, due to Columbia's limitations in the area of bulk shipping. In April, 1977, a Columbian and a Panamanian shipping firm entered an agreement. The agreement gave Columbian flag carriers a sizeable, chemical bulk shipping capacity. Major United States chemical producers complained about Columbia's practice to the United States Federal Marine Commission (FMC). The chemical producers allege that Columbia's shipping ordinance results in ballooning shipping rates, schedules that prevent the companies from providing their customers with adequate service, and a refusal by the major carrier to honor claims for losses. The FMC held a prehearing conference on February 6, 1979, to decide what action to take. The FMC chairman, Richard Daschbach, reportedly stated that he wanted to strike back at

frain from enacting unilateral legislation permitting the mining of the deep seabed until UNCLOS III had established an international regime for the area.¹⁶⁹

Actions Taken by the International Whaling Commission

The International Whaling Commission (IWC) held its 1979 quota meeting in Tokyo in December 19, 1978.¹⁷⁰ The Commission announced the 1979 sperm whale quotas¹⁷¹ and banned the catching of sperm whales in Australian waters.¹⁷² The IWC held its annual Conference on July 9, 1979, in London.¹⁷³ At the Conference, the Commission voted to ban all whale hunting for ten years on the Indian Ocean, the Arabian Sea, the Red Sea, and the Gulf of

countries engaging in shipping practices detrimental to United States commerce. *BUS. WEEK*, Feb. 19, 1979, at 34.

169. The resolution was submitted by Cuba on behalf of the Group of 77. It was adopted by a roll-call vote of 107-9, with 13 abstentions. The nine countries opposing the resolution were Belgium, France, Germany, Italy, Japan, Luxembourg, Netherlands, United Kingdom, and United States. *U.N. CHRONICLE*, July, 1979, at 44, 52.

170. Tokyo radio, KYDO, broadcast at 0055 GMT, Dec. 19, 1978, *translated and reprinted in* 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 1 (1979).

171. The IWC announced a total 1979 sperm whale quota of 9521. In 1978, 10,046 sperm whales were killed. The IWC also banned the catching of female sperm whales, and set a quota of 3800 male sperm whales in the North Pacific. The IWC has previously banned the fishing of blue, humpback, and right whales. *The Daily Telegraph* (London), Jan. 2, 1979, at 6, col. 7.

172. Australia initiated the IWC action by banning all whaling in its 200-mile zone. Australia also prohibited the importation of whale products. Australia's actions were viewed as a significant step toward whale preservation. Australian government representatives chair the commission and its scientific committee. Japan and Russia had previously depended on Australia's support in keeping the whaling industry alive. Australia's Prime Minister announced that the "Government has switched from a policy of 'conservation utilisation to a vigorous and active policy of protection.'" Australia is now expected to join the United States and other nonwhaling nations in opposing the whaling nations at future IWC meetings. *The Sydney Morning Herald*, Apr. 6, 1979, at 6, *translated and reprinted in* 98 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 20 (1979).

173. The twenty-three member IWC met for five days. *The Christian Sci. Monitor*, July 10, 1979, at 10, col. 1 (western ed.). Four countries introduced whaling moratorium proposals at the Conference. Seychelles, a new IWC member, asked for a whale sanctuary in the Indian Ocean, and a three-year world ban on killing sperm whales. *Nation* (Victoria), Apr. 24, 1979, at 2, *reprinted in* 98 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 2 (1979). The Indian Ocean is a major whale breeding ground. Seychelles is reportedly developing whale watching as a tourist industry. *Wash. Post*, July 14, 1979, § A, at 10, col. 1. Australia proposed an indefinite ban on all whaling. The United States introduced a similar motion; however, the United States proposal allowed Eskimos to hunt the bowhead whale under a strict quota system. *TIME*, July 9, 1979, at 45. Britain called for a worldwide ban on whaling and urged members of the European Economic Community to embargo the importation of all whale products. *The Christian Sci. Monitor*, July 10, 1979, at 10, col. 1 (western ed.).

Oman.¹⁷⁴ The Commission also outlawed the use of giant floating factory ships to catch and process whales.¹⁷⁵

Argentina Moves to Strengthen Its Antarctic Claims

Argentina took a number of steps during the past year to strengthen its claims to sovereignty in Antarctica. Argentina's "1978-1979 Antarctica Campaign" began on November 21, 1978.¹⁷⁶

174. The Seychelles moratorium proposal was the only one adopted by the IWC. Wash. Post, July 14, 1979, § A, at 10, col. 1.

175. The Conference members voted 18-2 to outlaw offshore whale hunting by factory ships. From now on, IWC members can only pursue whales in boats that put out from shore when whales are spotted. The ban allowed Japan an exemption to hunt the Minke whale in a narrow strip of water off Antarctica. The IWC expects this prohibition to save 8000 whales or 28% of those being caught annually. NEWSWEEK, July 23, 1979, at 64.

The IWC resolutions will have no effect on pirate whalers. The pirates register their boats in non-IWC countries (typically Cyprus, Portugal, and Somalia), and ignore IWC rules. Japan, an IWC member, has bought whale meat from the pirates in the past. Between 1974 and 1978, Japan's whale kill decreased from 126,835 tons to 42,102 tons. During the same period, Japan's imports of whale meat increased from 28,822 tons to 34,006 tons. NEWSWEEK, July 23, 1979, at 64. Japan has announced that it will discontinue buying whale meat from non-IWC members when its current contracts expire. Wash. Post, July 14, 1979, § A, at 10, col. 1. The problem is the IWC's inability to enforce its rules against nonmembers. One solution may be a bill currently being sponsored by United States Senators Warren Magnuson and Bob Packwood. The bill would deny fishing rights within the United States 200-mile fishing zone to any countries ignoring IWC rulings. Two major whaling countries, Japan and Russia, do extensive fishing in United States waters. TIME, July 9, 1979, at 45.

For an excellent discussion of most aspects of the whaling issue, see Scarff, *The International Management of Whales, Dolphins and Porpoises: An Interdisciplinary Assessment*, 6 ECOLOGY L.Q. 326 (1977).

176. As part of the Antarctic Campaign, the icebreaker, *General San Martin*, and the transport, *Bahia Aguirre*, traveled to Vice Commodore Marambio Antarctic Base. Marambio is an Argentine logistical and scientific base which is the communications center for all other Argentine Antarctic bases. Lo Opinion (Buenos Aires), Dec. 4, 1978, at 8, translated and reprinted in 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 73 (1979). The *General San Martin* also stopped to resupply General Belgrano Army Base Number One on the Filchner Barrier in the Weddell Sea. La Prensa (Buenos Aires), Jan. 30, 1979, at 4, translated and reprinted in 93 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 23 (1979).

Argentina also began building General Belgrano Army Base Number Two to replace Belgrano base number one. The original base was built on an ice shelf which has become unsafe due to numerous crevices. Both bases conduct scientific research. La Nacion (Buenos Aires), Feb. 17, 1979, at 6, translated and reprinted in 94 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 23 (1979).

In addition, Argentina sent three families, including young children, to live on Esperanza Base in Antarctica for one year. The stated purpose was "making effective the Argentine sovereignty in deed and not only in words." Esperanza Base

Coincident with the beginning of the campaign, the National Directorate for the Antarctic, an agency of the Argentine Defense Ministry, published an "Encyclopedia Atlas for the Argentine Antarctic."¹⁷⁷ Argentina also announced plans for a new meteorological station at Vice Commodore Marambia Antarctic Base¹⁷⁸ and directed the First Commission of Research and Geological Mining to carry out geological mining research in the Tabarin Peninsula, located in the northeastern zone of the Argentine Antarctic.¹⁷⁹

SUMMARY

A successful conclusion of a Law of the Sea Convention is in sight. The eighth session of UNCLOS III brought developing and developed countries closer to agreement on a parallel system of deep seabed mining. Charges on miners have been lowered, making mining ventures more attractive to investors, while allowing the Enterprise to compete on an equal basis. The Conference reached significant compromise in differences over marine scientific research and powers and functions of the Council. Voting procedures in the Council, production limitations, and seabed dispute settlement are the most important unresolved issues.

There have also been significant developments outside of UNCLOS III. The United States failed to reach a regional agreement that would establish a regime for tuna fishing in the Western Hemisphere, and the IWC took actions that may finally end the killing of whales.

HENRY HEATER AND JAMES MCMULLEN

has a school, nursery and a movie theatre. *La Prensa* (Buenos Aires), Nov. 17, 1978, at 6, *translated and reprinted in* 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 65 (1979).

177. The atlas is printed on high quality paper and has 129 pages. In its introduction, the atlas describes the sources of Argentine rights in the Antarctic. The atlas describes in detail all Argentine establishments, their history, location and contributions to science. *La Nacion* (Buenos Aires), Nov. 10, 1978, at 11, *translated and reprinted in* 90 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 68 (1979).

178. There are also future plans for a seismological station and a solar radiation observatory. *Clarín* (Buenos Aires), Dec. 4, 1978, at 8, *translated and reprinted in* 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 73 (1979).

179. *La Opinion* (Buenos Aires), Dec. 6, 1978, at 7, *translated and reprinted in* 91 U.S. JOINT PUBLICATIONS RESEARCH SERVICE—TRANSLATIONS ON LAW OF THE SEA 73 (1979).