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Book Reviews

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BOOK REVIEWS

HUMAN RIGHTS: INTERNATIONAL PETITION SYSTEM, Binders 1 and 2. Maxine E. Tardu. Dobbs Ferry: Oceania Publications, Inc., 1979 and 1980. $75.00 per Binder. *Reviewed by Howard D. Coleman.**

The international protection of human rights has long been a field of practice and study. From the biblical restrictions on the protection of prisoners of war, through the Jesuit writings on the treatment of Indians in newly-found lands to today's protection of individuals by international organizations, the field of international protection of human rights has had a distinguished history. This activity has been mirrored in numerous law review articles and books on the subject. Only recently, however, has there been an attempt to place the precedent and the legal instruments covering human rights on the multinational level into any form of methodology. Perhaps the most important of these works has been the textbooks which were written for use in the international legal protection of human rights courses offered at various law schools. It was therefore with great expectation and hope that one awaited the publication of the proposed three-volume work by Professor Tardu providing for a unified and systematic study of one of the more important branches of the legal framework for the international protection of human rights, the procedures to be used by individuals and nongovernmental groups in bringing alleged violations of human rights to international bodies for review. This branch is not at all new as evidenced by the minority treaty procedures utilized within the League of Nations, which was one of the more successful achievements of the League.

Professor Tardu is presently the Chief of the Research and Studies Unit of the United Nations Division of Human Rights. Since this position affords the opportunity to obtain, first hand,

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both insightful and practical information, it appeared as if the task of drafting an extensive study covering the international petition system was in very good hands. Though Professor Tardu has produced in the first two volumes of a projected three-volume set an essential reference in the field, it is deficient in organization and methodology.

Binder 1 contains an overview of international procedures with respect to the petition system covering the various United Nations and International Labour Organization procedures, together with regional procedures such as the European Convention on Human Rights. These summaries are excellent in context, but one wonders whether they are not preempted by the detailed treatment which such procedures are subject to in the second binder, and presumably the third binder, of Professor Tardu's work. It would have been more helpful for the overview section to have summarized the various procedures through a comparative study. In this way, the practitioner would be able to more readily identify the vehicle necessary to meet his client's needs.

The remainder of Binder 1 contains several law review-type articles covering the practical operational aspects of the petition process and the historical development of the petition procedures. The historical development article is helpful in understanding the context of the petition procedures which are presently in force. The remainder of the articles are insightful but are not necessarily related, except for their common topic of human rights.

Perhaps the most interesting and useful observations derived from these articles are due to Professor Tardu's actual experiences in the workings of the various mechanisms discussed in the three-volume work. Much of this practical approach focuses on the impact of political factors on the implementation of human rights policies.

In the article entitled "Compliance Issues, Revisited," Professor Tardu spells out that the effectiveness of international complaint procedures may be viewed in simple terms of risk assessment: "States inherently opposed to outside interference will abide by international decisions only if compliance appears to them clearly less hazardous or more fruitful than rebellion." For Tardu, public opinion plays an important role in implementing decisions of organizations which lack an army to enforce them. In this respect, Tardu notes that in order for public opinion to be formulated, the procedures must be viewed as being implemented by an independent international body conducting a competent,

thorough, and impartial investigation. The discussion in this article covering sanctions, monitoring of decisions, and other devices employed in the implementation of the decisions of the international and regional bodies provides an excellent review of the capabilities and limitations of the procedures which are reviewed.

The articles discussing the potential and actual conflict among various procedures, inappropriately labeled "Co-Existence: A Hidden Blessing?," provide the practitioner with specific methods of assessing the impact of competing systems. The articles offer a much needed foundation for the study of conflicts of law in this area.

The first binder provides its readers with much practical information on the processes involved in the actual implementation of human rights procedures. The drawbacks to the first binder appear to result more from the editorial style than from substance. A repertoire of practice should be well organized with materials easily retrievable. Unfortunately, this is not the case with Binder 1 since each article or section is separately numbered commencing with page 1, thereby making it difficult for the reader to find anything using the Table of Contents.

The annexes to the first volume containing the various documents relating to the petition procedures are not complete. Some of the more important documents, such as the International Convention on the Elimination of Racial Discrimination and the European Convention on Human Rights, are only extracts. Since this three-volume work is deemed to be a comprehensive body of knowledge dealing with the petition procedures, it must be self-supporting in order for it to be used as such. The fact that certain basic documents are incomplete, precludes this work from becoming the comprehensive and complete source book it purports to be.

Another editorial drawback is the organization of the law review-type articles appearing in Binder 1. Many of the articles are brilliant in their analyses and relate valuable expertise; however, the articles are not integrated with each other nor with the studies of each procedure. For example, certain themes are repeated throughout the various articles, such as the problem of confidentiality under the Resolution 1503 procedure of the Economic and Social Council of the United Nations.

Though Binder 1 contains a wealth of information dealing with the petition system, both objective and subjective, the lack of organization prohibits its use as a manual for practitioners. Fortu-

nately, the value of the second binder warrants procurement of the entire set. Unlike the first binder, the second is tightly organized and serves as a useful manual for the practitioner.

The second binder focuses in detail on the various systems under the United Nations covering the procedures under the Optional Protocol to the Covenant on Civil and Political Rights: procedures for handling complaints for gross violations of human rights under Resolution 1503 of the Economic and Social Council; the decolonization machinery such as the procedures with regard to the Trusteeship System and the United Nations Council for Namibia; procedures under the International Convention on the Elimination of Forms of Racial Discrimination; communication procedures of the Commission on the Status of Women and certain ad hoc investigation procedures such as the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories.

It is interesting to note that the documentation which is included in the annex section of the second binder contains some of the materials contained in the first binder but in complete form, such as the International Convention on the Elimination of All Forms of Racial Discrimination. More importantly, the annexes cover some of the more obscure United Nations documents such as the Rules and Procedures of the Committee on the Elimination of Racial Discrimination and the Rules and Procedures of the Human Rights Commission on Human Rights.

The second binder is organized into sections based on each procedure, with each section discussing the structure and the method of utilizing such procedure. For instance, the section on Resolution 1503 complaints focuses on the purpose of the section 1503 procedure and its jurisprudence, together with the actual workings of the procedure. This section discusses what is to be required in a petition, how the petition is considered, the various levels of review from the Subcommission on Prevention of Discrimination and Protection of Minorities through the Commission of Human Rights to the Economic and Social Council and the General Assembly, and the monitoring of decisions and possible sanctions.

The value of this second binder is reflected in the detail of practice-related discussions. For instance, Professor Tardu, in discussing the form of section 1503 complaints, notes that the complaints may take many forms such as individual letters, elaborate files, reports, or telegrams. Professor Tardu does not ex-

press a preferential form of complaint but does suggest that lengthy complaints be accompanied by a short summary. Furthermore, in discussing the language of the petitions, which Professor Tardu notes are nearly limitless, he points out that the working languages of the Commission on Human Rights and the Subcommission are English, French, Russian, and Spanish and that submission of a communication, where possible, in one of these languages would prove helpful in terms of timely consideration of the complaint.

These insights into the workings of the procedures render the book invaluable since it is this type of information, not normally available in published form, which enables the practitioner to follow the proper procedures in submitting a petition, thereby insuring its successful resolution. It is hoped that upon completion of the third binder, Professor Tardu will turn his attention to the revision of the first binder in order to correct its editorial and organizational deficiencies, thereby rendering it comparable, in terms of value and use, to the second binder.

THE INTERNATIONAL LAW AND POLICY OF HUMAN WELFARE. Edited by R. St. John Macdonald, D.M. Johnston and L. Morris. The Netherlands: Sijthoff and Noordhoff, 1978. Pp. xviii, 690. $95. *Reviewed by Clark C. Siewert.**

Since the renewal of international concern about human rights issues in the mid-1970s attempts have been made to broaden the idea of human rights to include basic human psychic and physical needs as well as civil and political rights and freedoms. Most of the contributors to *The International Law and Policy of Human Welfare* are Canadians or academics working in Canadian universities. This fact is not insignificant because Canada's problems mirror those faced by the international community and many of its member states. Some Canadians jokingly refer to their nation as "the world's richest third world country" because it exports a large percentage of raw natural resource materials to its larger industrial neighbor and much of its manufacturing sector is owned and controlled by United States citizens. There has been a revival of Canadian nationalism and self-assertion against the United States. As a result, Canada has frequently taken sympathetic stands in the North-South conflict and empathized with the developing world. Canada itself is torn by internal conflicts found in both North and South: demands for regional and ethnic autonomy and the desire of affluent sections to protect their wealth from the welfare needs of poorer areas. Canadians are well situated to understand the context in which controversies about human rights and human welfare take place.

The editors and authors of this book have been very successful in setting out a conspectus on the overlapping areas of human rights, national development, social welfare, and human needs that concern international lawyers and administrators. There is a current need to understand these issues as part of a broad interrelated context of international problems. By bringing together essays from various disciplines under one cover some of the hazards of compartmentalization that afflict academia and government departments are diminished. Knowledge not only be-

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comes more accessible but the likelihood of true discussion is increased.

It is also important that most of the included essays relate sufficiently to a strong central theme or focus; otherwise, all that is achieved is a collection of disparate voices on various related topics. In Part One, "Structure, Value and Process," the editors set out their philosophy of broadening the concept of human rights and suggest a future means of implementing this philosophy through international law and policy. Unfortunately, authors of the twenty-four remaining essays found in Part One and the following three parts ("Human Dignity," "Economic Development," and "Physical Welfare") do not sufficiently relate their analytic and informational content to the philosophy expressed by the editors in Part One.

Part of the difficulty lies in the nebulousness of the concept of "human welfare" itself. The process of defining human welfare as a universal concept proves to be as difficult as recent attempts to find a universal concensus in defining human civil and political rights. Although the editors admit this difficulty and draw a vague concept of human welfare based upon values derived from Western philosophy and the development of national welfare states, they believe that many of these values can now be universalized because similar welfare values have been expressed throughout the world and many values derived from Western thought have had a universal impact. A universal background provides the basis for the beginnings of a new international law and policy of human welfare, in which concern can correctly be placed on individual man's development as a total human being rather than his economic and quantitative existence. The authors set forth several examples of national welfare states as models from which experience can be derived in setting up international structures to minister to the welfare needs of mankind.

Although the universality of certain concepts of human rights and human welfare is undeniable, it is a long leap from similarity in thought to international action that transcends the fundamental unit in both international law and policy, the nation state. It is difficult for a value to be translated into enforceable international law or policy unless there are structures that are capable of securing the cooperation of nation states. The most successful doctrines of public international law have been those directed at the behavior of nation states. International law has had less success in dealing with the individual as a fundamental unit of con-

cern, because states are reluctant to give up their sovereignty and subject their citizens to an international legal process. Despite a few notable exceptions such as the European Court at Strasbourg, most relationships between international organizations and individual human beings have been confined to the level of abstract policy and discussion.

The editors admit that the current structure of international organizations and the nation state system serve as effective barriers to the development of an international law and policy of human welfare. The problem lies in transcending these barriers, thus they propose the establishment of a new independent international research organization to analyze trends, make recommendations, and promote its ideas. Description of this organization is, however, vague and confined to one and a half pages. The editors state, "This is not the place to consider the operational details of the proposed agency." Perhaps not, but it is disappointing in a book of 690 pages to be given no more exciting or detailed vision of the law of human welfare than a brief proposal of a new think tank that will, doubtless, create more work for academics along with yet another internatonal bureaucracy.

More essentially, it is questionable whether the editors' central aim of broadening human rights ideals to the larger concept of human welfare is desirable at this time. National political and ideological interpretations of human rights treaties and documents have often made a mockery of the ideals expressed in them. Only in recent years has international human rights law begun to enjoy considerable international attention and a degree of concensus. Defining human rights under the broader category of human welfare might encourage more vague understandings and excuses for nonobservance of gains already made in areas of civil and political freedoms. The authors admit that international discussion has become overpoliticized: it is possible that the idea of human welfare will lead to greater politicization.

Although the editors' central theme may be vague and possibly premature, *The International Law and Policy of Human Welfare* is still a useful contribution to the literature of international law. As stated earlier, the essays dealing with specific areas of international human rights provide excellent reference materials and, together, they give a good overview of the problems in the human rights/human welfare area. Along with jurisprudential articles, there are essays on the United Nations and human rights, education, women's rights, migrant workers, the "New International

Economic Order," demography, public health, energy, responses to disasters and other related topics. It may be appropriate at this point to make a small protest at the price of this book and the rising prices of similar new books. In the preface, the editors state that their book is aimed at international lawyers, but at the price, $95.00, it seems to be aimed at international libraries. This price does not seem as outrageous when compared with similar new books, but it deters many (such as myself) who might be tempted to buy the book for its reference materials. A comment also should be made about the editors' decision to publish three of the book's twenty-five essays in French. While this arrangement may be an appropriate gesture to Canadian bilingualism, it simply detracts from this book's quality and usefulness as a research tool in an international market. Although French is still a language of international law, many who are fluent in other languages will find the three untranslated essays to be a petty annoyance in an otherwise English language book.

The editors' concern that "human welfare" rather than "human rights" should be the focus of international attention must not be denigrated simply because of their premature timing and their method of presentation. It is an idea whose time will come, but first we must better understand what we mean by "welfare." We are no longer sure that certain economic and political institutions provide the conditions needed for human satisfaction and happiness. Since the late 1960's, the emergence of third world assertiveness on one front and the technology movement on another has challenged orthodox ideas about economic development. The industrial welfare state has been far from an unqualified success. Governments have found that they cannot afford many expensive social programs and that many of these programs did not alleviate the problems that they were designed to solve. The idea that the "quality of life" should take precedence over quantitive indicators has gained considerable ground. In short we are engaged in a difficult "rethink" of the whole concept of human welfare. Until this process is complete and a larger concensus is evident, an international law of human welfare and policy of human welfare will be a dream. The editors of *The International Law and Policy of Human Welfare* have, however, pointed us in the right direction.

DEEPSEA MINING. Judith T. Kildow, Editor. Cambridge, Massachusetts and London, England: MIT Press. 1980. Pp. 251. *Reviewed by John T. Smith II.**

Deepsea Mining is a compilation of papers delivered at a seminar conducted at the Massachusetts Institute of Technology in December 1978 and January 1979. The authors include some of the leading analysts of and participants in the more than decade-old effort to establish an acceptable legal regime to govern exploitation of the mineral resources of the deep-seabed. Accordingly, *Deepsea Mining* contains numerous interesting insights regarding an important subject. Regrettably, Judith Kildow, a Massachusetts Institute of Technology Professor of Ocean Engineering has not distilled from them any meaningful conclusion to serve as guideposts in the continuing national and international debate regarding exploitation of seabed minerals. Ms. Kildow reaches only two conclusions. First, she states that the issue of seabed mining is "uncommonly intricate and tangled, mixing problems of resource supplies and security, economic and political policy, in ways that will not be easily or quickly sorted out."[1] This is a conclusion with which no student of the subject can quarrel. Second, Ms. Kildow concludes that "no matter how uncertain or hostile the international legal system may currently appear, the [privately controlled deep seabed mining industry] will, sooner or later, launch production."[2]

The second conclusion begs a very important question that lies at the core of the seabed mining issue. That is whether, absent a widely accepted international agreement, there can exist sufficient legal stability to justify and underpin the very large investment necessary for capture and beneficiation of the manganese, nickel, copper, and cobalt resources found in metallic nodules on the ocean floor.[3] This issue, which should be of abiding interest not

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1. J. KILDOW, DEEPSEA MINING (J. Kildow ed. 1980) [hereinafter cited as Kildow].

2. *Id.*

3. Although these "manganese nodules" have been the focus of debate, the international seabed contains other valuable mineral resources that have already

just to legal scholars but to all who are interested in the deepsea mining issue, is not adequately addressed by any of the essays contained in this volume. In fairness to Ms. Kildow, the avowed purpose of the seminar from which the book resulted was to determine "a net strategic and economic value" of seabed minerals to the United States.[4] Accordingly, economists, geologists, and policy analysts predominated in the preparation of these papers,[5] and they could not have been expected to engage in searching analysis of legal issues. Nevertheless, the fundamental legal issue cannot be ignored in such a strategic and economic evaluation, and, in fact, two of the papers presented do at least allude to the core legal question. They do not, however, accord it the full and close consideration that it deserves. Ms. Kildow and Vinod Dar, in a generally provocative opening essay entitled "Introduction to an Unusual Resource Management Problem," mention legal uncertainty, together with scientific, technological, and economic uncertainties, in assessing the complexity of the operating environment faced by would-be private industry seabed miners.[6] Richard G. Darman of Harvard's Kennedy School of Government, a former Deputy United States Representative for the Law of the Sea negotiations, correctly remarks that the United States legal position is that an international legal framework is not necessary for private industry to exploit the international seabed because such exploitation is within the ambit of traditional freedoms on the high seas.[7] Mr. Darman recognizes that some national legal measures may be necessary to assure miners and investors security of tenure in light of possible competing claims to a particular

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been identified, and may contain resources yet to be discovered. For a thorough and up-to-date review of the state of knowledge regarding deep ocean resources, see McKelvey, *Seabed Minerals and the Law of the Sea,* 209 SCIENCE 464-72 (1980).

4. KILDOW, *supra* note 1, at 247.

5. The one paper by a lawyer does not discuss the fundamental legal issue of the lawfulness of seabed mining in the absence of an international agreement. Rather it addresses developing country perspectives regarding alternative treaty schemes for regulation of seabed mining. Adede, *Developing Countries; Expectations From and Responses to the Seabed Mining Regimes Proposed by the Law of the Sea Conference,* KILDOW, *supra* note 1, at 193.

6. KILDOW, *supra* note 1, at 22-23.

7. KILDOW, *supra* note 1, at 162. For a searching and thoughtful analysis of the legality of seabed mining in the absence of a multi-national convention, see Burton, *Freedom of the Seas: International Law Applicable to Deep Seabed Mining Claims,* 29 STAN. L.J. 1135 (1977).

seabed mine site and in light of two resolutions of the United Nations General Assembly. These resolutions declare seabed minerals the common heritage of mankind and impose a moratorium on exploitation of the deep seabed pending adoption of an international agreement to govern such activities.[8] To provide such legal and practical security, he supports adoption of national laws and regulations to govern activities of each country's seabed miners and reciprocal treaties between like-minded developed nations that have adopted comparable legislation.[9]

Mr. Darman notes that there is a "significant undercurrent of opinion that the United States might be at risk legally if, absent a [comprehensive] treaty, it exercises its high seas freedom to mine the seabed within a framework of domestic legislation and reciprocal agreement."[10] It is not clear, however, what legal risks, as opposed to political obloquy, would accrue to the United States, which, after all, would not be exercising its high-seas rights should seabed mining be conducted by its nationals absent a comprehensive international agrement. The more pertinent inquiry considers the legal risks faced by the seabed-mining enterprises themselves. For instance, could a United States mining consortium authorized by the United States government to mine the seabed do so absent an international agreement free of risk of economic or other forms of retaliation by developing countries that believe seabed minerals, as the common heritage of mankind, cannot be exploited except as authorized by the world community? Such retaliation could range from relatively moderate action, such as attachment of mining consortium members' assets in Third World nations, to more aggressive steps such as military or paramilitary harassment of mining vessels on the high seas or elsewhere. Harassment could be carried out by a single radical nation or by an alliance of like-minded states. This question tantalizes those who have followed these negotiations and the evolving international legal and political context in which they have

8. KILDOW, *supra* note 1, at 162. These two resolutions are G.A. RES. 2749 (XXV), The Declaration of Principles, 25 U.N. GAOR, Supp. (No. 28) 24, U.N. Doc. A/8028 (1970) and G.A. RES. 2574 D (XXIV), The Moratorium Resolution, 24 U.N. GAOR, Supp. (No. 30) 11, U.N. Doc. A/7630 (1969). The United States voted for the Declaration of Principles but opposed the Moratorium Resolution.

9. KILDOW, *supra* note 1, at 162. These ideas, sometimes referred to as the "mini-treaty approach," were first propounded by Mr. Darman in *The Law of the Sea: Rethinking U.S. Interests*, 56 FOREIGN AFFAIRS 373 (1978).

10. KILDOW, *supra* note 1, at 174.

been conducted.

Before exploring this fundamental issue further, it is necessary to summarize the legal developments of the two years that have elapsed since the essays under review were initially prepared. During the past year, the United States has enacted seabed-mining legislation. In addition, propects for agreement upon a comprehensive international law of the sea treaty creating an international legal regime for exclusive governance of seabed mining have improved dramatically.

On June 28, 1980, President Carter signed into law the Deep Seabed Hard Mineral Resources Act.[11] Two months later, on August 28, 1980, the approximately 155 nations participating in the Third United Nations Conference on Law of the Sea concluded the ninth session of that Conference.[12] Conference participants now believe that the ninth session removed the most serious obstacles to successful completion of a comprehensive law of the sea convention. Such a convention would revise and codify international law pertaining to a wide spectrum of traditional ocean uses, and in addition, create a constitution for the governance of commercial exploitation of the mineral resources of the international seabed. Ambassador Elliot L. Richardson, the President's Special Representative for Law of the Sea, stated at the session's conclusion that "[i]t is now all but certain that the text of a convention on the Law of the Sea will be ready for signature in 1981."[13] It is generally believed that the emerging convention is, and must remain, a package deal. As part of the package, the developed nations have been called upon to accept international control of access to seabed minerals as the common heritage of mankind in return for wide agreement upon sound principles to govern passage of international straits and to limit coastal state extensions

11. 30 U.S.C. 1404 *et seq.* (1980).

12. The Conference to prepare a convention governing all ocean uses, was convened pursuant to G.A. RES. 2750, 25 U.N. GAOR, Supp. (No. 28) 25, U.N. Doc. A/8028 (1971), following nearly six years of preliminary discussions by U.N. committees primarily directed to the issue of access to and use of seabed resources beyond the limits of national jurisdiction. Agreement upon a seabed-mining regime has been made contingent, therefore, upon achievement of consensus on many other oceans issues regarding such vital subjects as limits to coastal states' seaward claims to sovereignty and legal norms for transit of international straits.

13. Statement of Elliot L. Richardson, Ambassador at Large, Geneva, Switzerland (August 29, 1980).

of sovereignty seaward over ocean areas and activities traditionally viewed as high seas or high seas freedoms.

The Deep Seabed Hard Minerals Resources Act, like the Law of the Sea Treaty, is itself the product of long and repetitive deliberations. Seabed-mining legislation was first introduced in the United States Congress in 1971,[14] and a successor bill barely failed passage in the closing days of the 94th Congress in 1978.

Thus, the United States has been considering preserving or securing its access to seabed minerals by two potentially divergent approaches for nearly a decade. The first, as embodied in domestic legislation, is to license private concerns to exploit seabed minerals unilaterally under the theory that such seabed mining is a high seas freedom available to any who choose, or can afford, to take advantage of it—subject only to an obligation to have due regard not to interfere with the exercise of high seas freedoms by others. The second, potentially competing approach, is to seek international consensus on a new, international legal regime to govern exploitation of the seabed.

This history of parallel national and international approaches and the fact that the United States would enact unilateral legislation at a time when a thirteen-year international negotiation regarding a multilateral regime for seabed mining was about to produce a draft treaty,[15] underscore an enduring tension in United States policy between national and international means for problem solving. Moreover, it presages a vigorous debate in the Congress whether signature and ratification of the resulting United Nations treaty will serve the national interest. Legitimate doubt may persist whether United States domestic legislation, coupled with reciprocating legislation and treaties of like-minded developed countries, can alone create sufficient legal stability to justify the massive investments needed for seabed mining.

Such doubts may be inferred from an authoritative statement made by Ambassador Richardson to a meeting of the American Mining Congress shortly after the close of the ninth session. Mr. Richardson surmised that only six or eight nations would be

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14. For a useful summary of earlier legislation, see generally SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, DEEP SEABED HARD MINERAL ACT (S. 173), S. REP. No. 94-754, 94th Cong., 2nd Sess. (1976).

15. The Act, as did its predecessors, purports to serve basically an interim role, providing legal stability for United States miners until an acceptable international regime is negotiated and the resulting convention comes into effect.

likely to enact reciprocal licensing legislation in the foreseeable future and that these nations might not collectively provide adequate legal and political security for seabed-mining investment.[16] With all states enjoying a right of access to seabed minerals, resting on global commons and absent a widely accepted international convention to govern seabed exploitation, miners of any single nation or small group of nations may not be able to enjoy adequate security of tenure in face of claims to access to a particular site by miners of nonreciprocating nations. A central mechanism would not exist to sort out such claims to access.

The Carter Administration probably supported passage of the Deep Seabed Hard Minerals Resources Act not out of a conviction that the Act, in and of itself, would enable seabed mining by United States firms, but rather as a way of convincing intransigent Third World negotiators that the United States was prepared to proceed to seabed mining without an international agreement. Such a show of determination was designed to break a negotiating deadlock regarding fundamental characteristics of the proposed international seabed regime. This exercise of political will seems to have had its intended effect on the conference.

At the same time, however, some proponents of national legislation have probably become persuaded that a reciprocal licensing scheme based upon national legislation of like-minded nations is the method of preference to enable seabed mining by United States nationals. They are highly critical of features of the emerging international regime that may allow economic and political dominance of seabed mining by the Third World majority in the International Seabed Authority. These critics fear that access to seabed minerals may effectively be denied to developed country miners. Moreover, it is argued, the regime is a deplorable precedent for design of future international resource management schemes. It endorses central economic planning in preference to market economic principles, and, within this central regulatory scheme, the interests of the world's principal producers and consumers of seabed minerals may be subordinated to an unjust political principle—one nation, one vote. In fact, the ranks of these past proponents of the national approach, augmented by newly-elected conservative senators, pose the most serious obstacle to

16. Statement by Ambassador at Large Elliot L. Richardson before the American Mining Congress, San Francisco, California (September 24, 1980), *reprinted in* 80 DEP'T STATE BULL. No. 2045, 60, 61 (1980).

ratification of any law of the sea convention that is likely to command consensus at the current United Nations conference.

United States firms that aspire to mine manganese nodules from the ocean floor may encounter an ironic legal impasse. Existing domestic legislation, together with reciprocal arrangements with other developed nations, may not furnish adequate legal and political security to support investment in seabed mining. The international agreement that might bring about the requisite legal and financial stability may not be ratified by the United States. Without United States participation, the treaty regime may be stillborn or may be ratified only by an undesirable combination of Soviet block and nonaligned Third World Nations. In either event, the seabed mineral portion of the common heritage of mankind would then remain safe in briney depths for an indeterminate time. In the meantime opportunities for conflict regarding other ocean uses significantly affecting the nation's security and economic interest could increase significantly.

This potential impasse is not simply the result of historic United States ambivalence toward international institution building. It results also from the fact that international law and international law-making appear to be in a state of significant transition. A few wealthy maritime powers can no longer prescribe widely accepted legal norms for international use of the sea and its resources. The Third World bloc is playing an important role in the structuring of the regime for seabed mining. It has mustered the political and economic will, resources, and bloc discipline to obtain a large voice in the proceedings. Through the efforts of these developing nations, many of them former colonial possessions of the maritime powers that used to dominate international law-making, the processes and institutions of international legal endeavor are being transformed.[17]

Although these Third World nations find it politically expedient to espouse a theory of one nation, one vote, recognition exists that this principle is an imperfect one for ordering international institutions composed of nations of widely disparate size and power. The great power veto allowed by the Security Council mechanism in the United Nations Charter is, however, unattainable in any new international institutions. Accordingly, reconciliation of the legitimate interests of wealthy nations with those of

17. *See generally* L. HENKIN, HOW NATIONS BEHAVE (2d ed. 1979).

the poor nation majority is accomplished by the painstaking process of consensus. Thus, at the Third United Nations Law of the Sea Conference, the participants have determined to reach agreement on substantive matters by way of consensus to the maximum extent possible and only to have formal voting on any matter if and when all efforts at consensus have been exhausted. No substantive vote has yet been necessary.[18]

The consensus principle will be put in a true and continuing test by virtue of the fact that decision-making by the proposed Council of the International Seabed Authority regarding all important issues on the governance of seabed mining must be taken by consensus. In this manner one of the most intractable negotiating issues—whether and how to accord special weight to the interests of developed countries in the deliberations of the International Seabed Authority—appears to have been resolved. Whether the thirty-six member Council contemplated by the convention draft will be able to operate by consensus or will be paralyzed by the need to achieve common consent among disparate interests will be a fascinating experiment in governance if indeed the treaty comes into force.

Deepsea Mining makes a meaningful contribution to an important subject, but it is noteworthy as much for what it does not accomplish as for what it does. Not only does it slight the fundamental legal issues touched upon in this review, but its various essays demonstrate how little agreement exists among some of the most knowledgeable persons in the country regarding such subjects as basic as how big and how important the seabed mining resource is. With the advent of a new administration, it is likely that the United States interest in achieving a comprehensive law of the sea convention along the lines of the one almost completed in the summer of 1980 will be given a new look. The examination should be a thorough one. In the process *Deepsea Mining* may be of real use. If the national interest is really to be determined, however, the examination must be more probing than Ms.

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18. For an illuminating discussion of the consensus mechanism in international lawmaking, see Suy, *International Law-Making in the United Nations: A Look at the Future*, 1975-76 PROCEEDINGS OF THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION, 23 (1977). Professor Suy points out that although "consensus" is a term newly in vogue, lawmaking by consent or common consent has been recognized since at least Roman times. Building consensus in the context of multilateral diplomacy, however, raises new challenges for an old principle.

Kildow's volume. Most importantly, it must address the fundamental legal questions posed in this review, as well as the United States overall interest in the nonseabed mining portions of the convention.