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The Deep Seabed Portion Of The Law  
Of The Sea Treaty: A Case  
Study Of Global Problem Solving

by

Mary V. Renick

THE DEEP SEABED PORTION OF THE LAW OF THE SEA TREATY:  
A CASE STUDY OF GLOBAL PROBLEM SOLVING

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The recently concluded United Nations Conference on the Law of the Sea (UNCLOS III) presents an opportunity to study the complex dynamics of international bargaining involved in global regime formation. UNCLOS III was, in particular, an attempt to redefine the ocean regime to more accurately reflect the political and technological changes which had occurred since the previous conference in 1960. If implemented, this convention would permeate all facets of marine usage. This study examines one portion of the Law of the Sea Treaty that emerged from the Conference in 1982, namely the provisions pertaining to deep seabed mining. It will analyze the deep seabed debate as a case study of global problem solving, examining the actors and forces that shape outcomes in the international arena.

The Law of The Sea (LOS) debate and most particularly the seabed mining portion, reflect changes in the international agenda. Seabed mining is part of the broader dialogue concerned with the less developed countries' (LDCs) demand for a change in the structure of the international economic system, termed the New International Economic Order (NIEO). In addition, the seabed mining portion of the Treaty is unique in two aspects. It is an attempt to create an original legal framework for a resource regime. Mining has not begun, and the legal status of the endeavor is at best unclear. In contrast, other ocean issues dealt with in the Conference have been negotiated in an effort to resolve conflicts resulting from differing interpretations of national jurisdiction over the last twenty-five years. Secondly, if exploitation were to occur under the auspices of the International Authority, it would represent the first time that the international community had jurisdiction over a considerable area of the earth's resources. Furthermore, these resources would generate revenues independently of national governments.

If the mining agreement were to be implemented by the international

community, it would be an example of the world's ability to successfully cooperate in order to resolve problems peacefully. If an agreement is not adopted, the potential for conflict is increased. The exploitation of seabed minerals without a regime to define legal rights is inherently unstable.

This study should provide insights regarding problems and prospects surrounding similar issues being debated in multilateral settings. Other "collective goods" and "commons" area questions such as environmental and resource disputes, will probably be resolved in a parallel manner. The most often discussed analogy to the seabed regime is the Moon Treaty. It is concerned with the exploitation of natural resources in the "commons" area of outer space. The LOS negotiations have been cited as a model for a future convention on an international lunar administration. The success or failure of the LOS negotiations may also determine future utilization of the United Nations as a forum for economic problem solving. Because the seabed portion of the Treaty is an attempt to formulate an original regime, it provides an occasion to study the behavior of states and ascertain if their actions deviate from those taken in the reformulation of regime such as occurred in Committees II and III. Insight may be gained into the determinants of coalition building under these circumstances.

Part I will present the background leading up to UNCLOS III, as well as the outcome of the Conference. Part II examines the role of the negotiating setting in helping to shape the outcome. Part III examines states as actors and the impact of their coalitions. Part IV will be concerned with non-state actors; for example bureaucratic interest groups, the hard minerals industry, and intergovernmental organizations (IGOs). The conclusion will be an assessment of the various actors and their influence on the final outcome, with a discussion of the implications of UNCLOS III for the future problem

solving prospects of the international community.

#### PART I: BACKGROUND ON THE LAW OF THE SEA

Contemporary law of the sea has its basis in the 16th century writings of Hugo Grotius. Grotius articulated the principle of "res nullius", which claims the sea belongs to no nation, in fact, it is inherently free from appropriation. In the 18th century pressure for enclosure culminated in the formulation and acceptance of the principle of the territorial sea. This was an area of three miles (the distance a cannon could fire) in which the coastal state exercised complete sovereignty. However, Grotius was not abandoned. The concept of "res nullius" was embodied in the Treaty of Paris in 1856 and remained unchallenged for many years. In the early 20th century tension began to build between those nations advocating increased enclosure and those desiring increased maritime freedom. In 1930, under the auspices of the League of Nations, representatives met at the Hague to reach new accords on the use of ocean space. Freedom of the seas as a principle was upheld along with support for the principle of a narrow territorial sea. The Hague Convention remained intact until 1945, when the Truman Proclamation declared that the United States had exclusive rights to the mineral resources contained on its continental shelf. (The continental shelf is a geological term defined as the extension of the land mass to a usual depth of 200 meters.) The Truman declaration sought to control only the resources of the shelf while the waters above were to remain the high seas. This opened the door for other nations to make claims on the adjacent waters and extend coastal control. During this period many new concepts were advanced to exert control over the oceans. A contiguous zone, beyond the territorial sea, in which the coastal state would have jurisdiction over fiscal, sanitation, and customs enforcement was embraced by many nations. This would create an area of 200 miles in which the

coastal state would exercise sovereign rights over resources and other activities. In 1958 and 1960, the U.N. Conferences on the Law of the Sea I and II took place. The issues did not differ essentially from those in 1930. However, the forces for enclosure prevailed with the recognition of claims to the continental shelf. The conferences lacked agreement on the width of the territorial sea and the concept of the contiguous zone and ultimately left many problems unresolved.

In the ensuing years, three factors were at work that would require a change in the prevailing regime. The first was intensified use of the oceans, they were becoming "crowded". The number of commercial tankers increased along with expanded usage by the dominant military powers. New transit laws were required. Secondly, due to advancements in technology, exploitation of the living and non-living resources of the ocean expanded. New methods of fishing dramatically increased the world catch. Progress in technology enabled fishing fleets to pursue and process the catch wherever it traveled. Technology for the undersea drilling of oil at great depths became operational. The ability of industry to extract minerals from the deep ocean floor was becoming economically feasible.<sup>1</sup> The third force necessitating a regime change was the political factor. Most of the nations of the third world felt that they had not had the opportunity to participate in the making of the prevailing norms of ocean usage. Their former status as colonies precluded their inclusion in the international law-making process. They desired to reopen discussions on the use of the sea in hopes of interjecting their interests into the deliberations.

In 1967, on the floor of the United Nations General Assembly, Ambassador Arvid Pardo of Malta articulated a new principle of governance for the seas--the "common heritage". The Pardo proposal was considered to be the main

impetus for convening a third conference on the law of the sea. Pardo challenged the world to expand the idea of "res nullius" to "res communis" e.g. the oceans and their riches belonged to all mankind. Pardo cited the abundance of resources that were available on the deep seabed and the increasing probability that these would be exploited by the developed countries. He sought to alert the world community to this fact and to stave the drive towards enclosure and unilateral exploitation with the benefits accruing to only the few. He desired to see these resources claimed as a "common heritage" and used for the benefit of nations who were most in need. The memorandum suggested that an international agency be established to oversee this activity. The Malta proposal was favorably received by the members of the Assembly. The Assembly voted to establish a thirty-five nation "Ad Hoc Committee to Study the Peaceful Uses of the Sea-Beds and Ocean Floor Beyond the Limits of National Jurisdiction." This committee was charged with preparing a study of "practical means to promote international cooperation in the exploration, conservation and use of the seabed and the ocean floor and the subsoil thereof...and of their resources."<sup>2</sup>

Actions taken during this time by the U.S. and the U.S.S.R. also helped to lay the groundwork for UNCLOS III. In August 1970, in response to the Pardo proposal, the U.S. submitted a draft treaty for a deep seabed mining regime. This signalled serious U.S. interest in negotiating a treaty on the deep seabed. The U.S. and the U.S.S.R., sharing similar navigational concerns, had entered into bilateral discussions concerning the territorial sea, fisheries, and transit through international straits. The U.S. announced its position on these issues in 1970 and called for an international negotiation.<sup>3</sup> The prevailing sentiment among third world countries within the Seabed Committee was to negotiate all law of the sea questions multilaterally,



including the deep seabed. Despite objections by the U.S. and U.S.S.R., the U.N. General Assembly voted in favor of convening a comprehensive conference. The U.N. Seabed Committee was designated the official preparatory committee for the conference.

The Conference was convened in 1973 and was composed of three committees. Committee I was concerned with developing the regime for deep seabed mining. Committee II items consisted of the more traditional ocean issues such as offshore jurisdiction, transit, economic zones and fishing rights. Committee III dealt with the marine environment and scientific research.

The Conference ultimately produced a document containing 17 parts and 320 articles, including provisions covering virtually all law of the sea questions that had plagued the international community since 1960. It codified an expanded territorial sea, the EEZ, the continental shelf and many transit and marine research questions. It was an all-encompassing document covering all uses of the oceans. Initially it was believed the Conference would be concluded by 1974 or 1975. Instead, the Conference consumed eight years of negotiations. The hope had been that the Treaty would be adopted by consensus prior to being submitted to the states for ratification. However, not surprisingly, on Friday April 30, 1982 adoption was taken by a recorded vote. 130 countries voted in favor, 4 against, 17 abstained and 4 did not participate. The U.S., Venezuela, Israel, and Turkey voted against adoption. Those abstaining were mainly the EEC countries (minus France and Ireland) and Eastern Bloc nations.<sup>4</sup> In the final analysis it appears that objections centered around the articles pertaining to the seabed portion of the Treaty.<sup>5</sup> Ironically, the idea which provided the impetus for the Conference proved to be the one factor prohibiting full agreement!

The seabed portion of the Treaty is concerned with the future regime for

exploring and exploiting the deep ocean seabed in areas beyond national jurisdiction. The main economic interest at present relates to the polymetallic nodules lying on or just below the seabed. These nodules are composed of approximately 30% manganese, 1/4% cobalt, 1% copper, and 1% nickel, plus traces of other minerals. However, the Convention extends to all resources of the area, known or unknown. The nodules are believed to be scattered over the entire ocean floor but are known to be highly concentrated in the Pacific Quadrangle, an area southwest of Baja California and southeast of Hawaii. Estimates of total resources are claimed to be as high as 1.7 trillion tons, with 10 billion to 500 billion tons recoverable at a profit.<sup>6</sup> Market value is estimated to be several trillion dollars.<sup>7</sup> The most important of these minerals is generally agreed to be manganese. Manganese is a key ingredient in the production of steel. Cobalt is used chiefly as a vital hardener of steel critical to the production of high performance jet aircraft. Copper and nickel are metals with diversified uses. The most common industrial usage for copper is as a conductor of electricity. Nickel is used in jet engine components and in automobile manufacturing. Industrial interests from the U.S., Japan, France, West Germany, and the U.S.S.R. have been exploring the Pacific Quadrangle. The technology necessary to extract these minerals is available but the cost is excessive. Over 100 million dollars in initial exploration costs have already been incurred by major mining interests.<sup>8</sup> With such heavy financial investments being necessary, mining consortia require a stable orderly environment in which to operate. Industry spokesmen have insisted that the restrictions to mining are not technical or financial but legal. Under present law anyone can take the nodules. But title to the resources and exploration sites could be in jeopardy.

Industrialized states looked to ocean mining as another source of strategic metals. LDCs perceived an opportunity to share in the structuring of a new international regime through the concept of the "common heritage". The debate centered on the international machinery to regulate deep seabed mining. The negotiations revolved around two issues; who might exploit the area; and the role and composition of the international authority. During the initial period, opinion on the solution to these questions was sharply divided. The industrialized powers (including the U.S.S.R.) favored a system whereby the authority would play only an administrative role. Under this system, a state or firm acting under the aegis of a state, would apply for an exclusive license to explore and exploit the area. A share of the profits would be returned to the authority to be utilized for the benefit of LDCs. The authority would have few discretionary powers and would act mainly in the capacity of a revenue collector and international registry for claims. An opposing point of view was advocated by the LDCs led by the Group of 77. (This organized group of developing countries is so named because it was initially composed of 77 states. Now over a hundred states belong). They contended that the area and its resources constituted the "common heritage" of mankind, and therefore the system should reflect that principle.<sup>9</sup> They envisioned a strong authority with power to act on behalf of all nations. The Group proposed that the authority hold the area in trust and develop it only as a common resource. Specifically, this meant that the authority would be the only exploiter of the area. It would conduct all operations and manage resources in such a way as to develop the area without harming producer countries (most of whom are members of the Group) and distribute profits to the least developed nations. By the 1975 Geneva session a compromise had been reached on the question of who could exploit the area. A parallel system was

proposed which allowed for private mining in conjunction with that of international exploitation. With this settlement, conflict then focused on the composition of the International Seabed Authority (ISA) to oversee production. Each side desired to protect its advantage. The developed countries (DCs) demanded representation according to interest and investment, while LDCs preferred a numerical representative system. This was ultimately compromised to allow for a mixed system of representation in the two governing bodies of the Authority.

#### PROVISIONS OF THE TREATY

The convention establishes a parallel system for exploring and exploiting the deep seabed. All activities in this area would be under the control of the ISA. The main organs of the ISA would consist of the Enterprise (an organ authorized to conduct its own mining operations), the Assembly (the authority's supreme body), the Council (the working arm of the Assembly), and the Sea-Bed Disputes Chamber (which would handle conflict between parties).

The Convention requires that all seabed activity be carried out either by the Enterprise or by private or state entities in association with the Authority. All aspects of the system's operation are to be governed by rules and procedures adopted by the Assembly on the recommendation of the Council. As stated in the Convention, the objectives of seabed policy are the development of the resources of the area and the promotion of just and stable prices for producers and consumers of minerals produced from the area and other sources. A production control policy would be enacted whose aim would be to minimize harm to land based producers. It would allow seabed mining to account for a percentage of the projected increase in world consumption of the minerals. In the event land based producers suffered economic harm, a compensation schedule would be established to provide recompense. The

financial and other economic benefits obtained by the Authority would be distributed on a non-discriminatory basis.

An annex to the Convention specifies in general terms the standards of qualification required for applicants of seabed contracts. They must be either a state party to the Convention or an entity sponsored by such a state. They would be required to meet technical and financial standards defined in advance by the Council, and agree to acceptance of the Authority's control over the area. They must agree to comply with the technology transfer requirements contained in the text.

### The Enterprise

The mining arm of the Authority is to be a commercial venture under the control of the Assembly and the Council. It would have its own statutes and governing board to direct its operations. Funding for its initial operations, perhaps one billion or more, would have to be borrowed. Half is to be in the form of interest free loans provided by the member states. The balance would be borrowed in financial markets, with loans guaranteed by the same states. The scale of assessments for the U.N.'s regular budget would be used to allocate the amount each state would lend and guarantee. The Enterprise, or developing countries, would be the sole exploiter of the reserved areas. In order to enable the Enterprise to be functional the Convention requires contractors to make available to the Enterprise, on commercial terms, the technology utilized in mining ventures. If the technology is not available on the open market, the Enterprise will have the option of acquiring it from the contractor. If the technology is owned by a third party, the contractor is obligated to secure the right of transfer. This option also applies to any developing country authorized by the Authority to exploit a reserved area. These obligations would be in effect for ten years following the commencement

of production by the Enterprise.

#### The Assembly

The Assembly consists of delegates from all parties to the Convention. General policies of the Authority are to be determined in this body with a system of one state-one vote. Questions of substance require a two-thirds majority. The Assembly also retains the right of final approval of the Council's provisional

#### The Council

The Council would consist of 36 members elected by the Assembly. Half are to be elected from four major interest groups and the remainder are to be chosen on the basis of equitable geographical representation. The major interest groups are: the largest investors in seabed mining (4 states); major land based exporters of seabed minerals (4 states); the major importers of minerals on the seabed (4 states); and "special interests" from developing countries (6 states). The "special interests" category includes states with large populations, the geographically disadvantaged, major mineral importers, potential producers, and least developed states. No overall geographic distribution is specified, but at least one state from each region would be chosen.<sup>10</sup> Consensus is to be the mode of operation for approving the most important decisions. Other matters are to be decided by two-thirds or three-fourths majorities depending on the issue. The Council's function is to deal with specific policies, adopt and apply rules and regulations, approve contracts to mine and make financial decisions, all with approval by the Assembly.

#### The Economic and Planning Commission - The Legal and Technical Commission

The Council is assisted in its work by the Economic and Planning Commission and the Legal and Technical Commission. Each organ will consist of

15 members elected by the Council with due regard for geographic balance. The Economic and Planning Commission is to make recommendations to the Council on possible adverse effects on land based producers resulting from seabed mining and to propose a compensation plan. Two of the Commissions' 15 members are to be chosen from developing countries that rely on exports of the minerals. The Legal and Technical Commission makes recommendations to the Council on contracts, environmental measures, computes production ceilings for over-all seabed mining, and recommends production authorizations for operators.

#### Seabed Disputes Chamber

The Seabed Disputes Chamber would handle problems arising between state parties on the interpretation or application of seabed clauses and would adjudicate disputes involving the Authority and operators.

#### Review Conference

The developing countries were able to have included in the text, a procedure for a fundamental review of the system 15 years after the start of production. If agreement on changes is not reached within five years, the Conference is empowered to approve amendments binding on all states' parties, after ratification by three-fourths of the states.

#### Pioneer Investors

A mechanism to protect investment by states and private consortia, prior to enactment of the Convention, was proposed by the U.S. and several western countries involved in deep sea exploration. Resolution II, adopted along with the Convention, provides for these states and private investors to qualify for registration as Pioneer Investors. This entitles them to explore, not exploit, a selected area of the seabed until the Convention comes into force. They are to be guaranteed priority over others, except the Enterprise, once production begins.

### Procedure

In order to begin exploitation a producer would submit to the Authority a site it regarded as having commercial possibilities. The Authority would allot half of this area to the producer and reserve the remainder for use by the Enterprise or by developing countries. The operator must then apply for a plan of work authorizing development of the mine site. This would be obtained from the Council. If the operator is adjudged to be financially and technically qualified, and is endorsed by the Council's Legal and Technical Commission, approval would be almost automatic. To reject the Commission's approval would require consensus by the Council. The miner must also obtain a production authorization from the Legal and Technical Commission, which would allow him to produce up to a specified amount from that site each year. The Convention also contains an "anti-monopoly" clause, limiting the number of sites any one nation or its nationals may hold.

In summary, changes of a political and technical nature occurred in the last twenty years that necessitated a revised international legal environment for ocean use. The ability to extract minerals from the deep seabed provided an opportunity to devise a new international mechanism to oversee resource exploitation. This fact also supplied the occasion for third world countries to impact in a significant manner on the formulation of a new international economic decision making process, as it pertains to resources. Disagreement on the form for the international machinery was finally compromised, resulting in the parallel system. The three arms of the Authority are organized so as to give representation on an interest and a geographic basis.

With the background thus established, the author will attempt to examine the process whereby this outcome occurred, delineating the key factors involved. The general issues have been discussed, therefore it is now



necessary to analyze the dynamics of UNCLOS III.

## PART II: THE CONFERENCE SETTING

The setting of a negotiating process can greatly affect the outcome. The number of participants and issues may influence the proceedings. Obviously, the potential for complexity increases with the numbers involved. Negotiations that are conducted in an atmosphere of crisis will differ from those which have no sense of urgency. Negotiations that are open to public scrutiny may contain levels of rhetoric designed for domestic consumption rather than for diplomatic persuasion.<sup>11</sup>

The number of participants involved in the U.N. Law of the Sea Conferences in 1958 and 1960 was just under ninety states. By the time of UNCLOS III that number had increased to 158. Therefore, more interests had to be accommodated than was necessary in previous global conferences. Because the number of participants was unwieldy, the delegates broke into smaller working groups. However, ultimate drafting power over the text resided in the committee chairman. In many instances this fact hindered compromise with the chairman overriding a settlement to often insert biased views.<sup>12</sup> Conflict rather than efficiency resulted.

UNCLOS I and II had operated with limited agendas and extensive preparation by the International Law Commission.<sup>13</sup> In contrast, UNCLOS III was hampered by an agenda containing 25 items and over 100 subitems resulting in a "complex bargaining matrix".<sup>14</sup> The preparatory work for UNCLOS III was centered in the U.N. Seabed Committee. The negotiating text that was completed by this Committee was uneven and in need of a great deal of revision.<sup>15</sup>

UNCLOS III evolved into the longest conference ever attempted by the U.N. The time factor enabled all manner of issues to permeate the deliberations.

Changes in governments and in the international environment required alterations in priorities, thus increasing negotiating difficulties. The importance of the issues varied by nation and over time. This resulted in a lack of sustained involvement by heads of state.<sup>16</sup> Because of this factor the negotiations became the province of middle-level bureaucrats, in many instances, who frequently found it difficult to transcend narrow interests.<sup>17</sup>

These factors were also influential on the deliberations in Committee I. Because the Working Group of the Whole included more than 100 delegates, a system of smaller informal working groups was instituted. The drafting rights of the chairman caused friction within Committee I as early as 1975. A tentative agreement on the international machinery for the seabed had been worked out within the steering group which was substantially altered by the chairman. This especially angered the Soviets and continued to hamper negotiations throughout the Conference.<sup>18</sup>

The multiplicity of issues greatly affected the seabed debate. The salience of the seabed to all states varied considerably. Some delegates reported they had no instructions from their governments regarding seabed issues and were in attendance only for the sake of appearances.<sup>19</sup> The jurisdictional issues were perceived by some delegates to be a trade-off for the transit issues important to the maritime powers.<sup>20</sup> Furthermore, the seabed negotiations were dependent on the resolution of the jurisdictional and territorial issues. These issues had to be resolved before delegates could define the area under discussion. For example, with the exclusion of the continental shelf from the seabed, oil revenues were effectively removed from the international area, thereby eliminating large financial considerations and thus lessening the economic importance of the area. The preparatory work done in the Seabed Committee ostensibly appeared to have clarified the issues on

seabed mining. However, the Declaration of Principles, which culminated the work of the Committee, left many of the most important issues unresolved. It neglected to define the "common heritage" and the structure and function of the international machinery and regime.<sup>21</sup> Many representatives were dissatisfied with the statement and none of the major powers sponsored it.

The inordinate length of the negotiations permitted outside elements to infiltrate the proceedings. The economic impact of nodule mining was unknown. Data were based on suppositions about costs, yields, and patterns of usage. As the talks progressed, this fact allowed the politicization of information by the advanced technology states and the mineral exporting states to contribute to conflict. The length of the sessions allowed U.S. Congressional forces, after many years of threatening, finally to pass legislation in June 1980 to facilitate unilateral exploitation of the seabed. Most importantly, as time wore on the momentum for the idea of a "common heritage" was slowed. The Pardo proposal was eroded by the intervention of unilateral action and coastal state policies designed to diminish the area under consideration.

In the seabed mining debate therefore, the pace was inordinately slow, the actors numerous, and the issues complex. Consequently, the setting for the seabed agreement was not conducive to hard swift bargaining. The large number of participants and issues contributed to a tedious and protracted negotiation. Because of the time frame, changes in the international environment were reflected in the process making progress more difficult to achieve. The following section will examine the behavior of states as they interacted in this conference environment.

### PART III: NATION-STATE ACTORS

States brought varying capabilities and interests to the negotiations at UNCLOS III, based on geophysical differences. The cleavages that were evident

at UNCLOS III and those that greatly influenced conference diplomacy were (1) the geographic split between the littoral states and the landlocked and geographically disadvantaged states (those which had a short coastline or narrow continental shelf) and (2) the ideological rift along North/South lines. The geographic split was most evident in the proceedings in Committee II. The coalitions which were activated within Committee I were formed in the North/South context. The major negotiating coalitions that resulted within the Seabed Committee were the Group of 77 and the developed countries (DC). This section will examine these two major negotiating groups, the rationale underlying their formation, and the strengths and weaknesses of each.

In identifying the developed countries as a coalition the term must be used loosely. Policies were harmonized by a perception of common interests rather than a planned bargaining position. The DCs, or Northern coalition, consisted of four subgroups; the Big Six (potential exploiters- the U.S., the U.S.S.R., France, West Germany, Japan, and the United Kingdom.); Eastern European nations; the EEC nations; and the non-EEC western nations. The Big Six generally perceived a common interest on the negotiations. They consistently lobbied for weak international machinery and representation based on interest. The U.S.S.R. found itself in a peculiar position. As a major maritime power Soviet interests overall coincided with those of the U.S., especially on the territorial issues in Committee II. However, the Soviet Union is not only a potential exploiter but also a mineral producer. The Soviets attempted to reconcile this conflict by siding rhetorically with the LDCs in Committee I, while basic policies were in accordance with DC positions. Soviet negotiators strongly supported the formation of a weak international authority (this position was consistent with their traditional hostility toward strong international organizations). In this instance they

feared a strong authority might attempt to exercise control over the seas and air space, thereby setting precedent. They did endeavor to exclude private corporations from exploitation, but when this failed, were assured of equal access for state enterprises. They were active in the movement to limit the number of sites allotted to any state or its nationals. This was attributed to fear of a probable U.S. monopoly.<sup>22</sup> The other Big Six members consistently followed similar policies. They supported a weak international authority. As with the U.S.S.R., the U.K., Japan, West Germany, and France, lobbied for a national quota system on the number of sites. Once again, this was a response to a U.S. lead in seabed mining technology by states who anticipated possessing the capability to begin operations in the near future.<sup>23</sup>

Deviation within the Eastern European group, especially from the Soviet position, was virtually nonexistent. They did embrace the mixed system prior to the U.S.S.R.'s acceptance, but this was not construed as a fissure in the alliance.<sup>24</sup>

The EEC nations concurred in the policies of the Big Six, with the exception of Ireland. They generally were in agreement on this issue.

The category of non-EEC Western contains the remaining industrialized nations of the North.<sup>25</sup> Within this category was found the greatest incidence of deviation from the DC position.<sup>26</sup> Canada and Australia are land based producers of seabed minerals, and as such were vitally interested in production controls. Norway, Sweden, and Finland were generally closer to the Southern position.<sup>27</sup> Many of these states had strong coastal interests and therefore tended to side with LDCs on Committee II issues. On the seabed questions however, these states did not share the interest of the major powers to free access to seabed minerals, as they lacked mining technology. Conversely, they had little to gain from LDC monopoly over the seabed. This

appeared to have situated them in a compromise position, which was evident during the early debates on the ISA.<sup>28</sup>

The Group of 77, or Southern group, actually contained 100 states with varying economic levels of development, resource bases, and cultures. It contained mineral producers and mineral consumers. Despite this fact, the Group, termed the "supercoalition" of the Conference, exhibited unusual solidarity within Committee I. Subgroups within the coalition were based primarily on regional affiliations. The Latin American coastal states were the acknowledged leaders. They had been active for many years in the move to expand coastal state jurisdiction over the oceans. They were also active in formulating policy for the Group. Delegates from Peru, Brazil, and Trinidad-Tobago developed the concept of the Enterprise, while Peru and Chile designed the production control plan. In Committee I they were able to link revenue sharing and production controls to support for the 200 mile economic zone in Committee II.<sup>29</sup>

The main splinter group was that of the landlocked and geographically disadvantage states (LL/GDS). The majority of these states are on the African continent and are among the least developed countries in the world. (Others are on the European continent, but are not underdeveloped nor in the majority.) Their interests were not protected by their regional leaders. Algeria and Tanzania were influential in the early years of the Conference. However, they chose to define the seabed in terms of the NIEO, as opposed to a revenue generating regime for LDCs.<sup>30</sup>

The only LDCs with a substantive interest in the negotiations were the producer countries and LL/GDS. The producer states desired controls to protect their mining interests and foreign exchange earnings. It was in the interest of the LL/GDS for seabed mining to be encouraged as they were to

share in the profits. This inherent conflict was eventually neutralized in Committee I by the Group of 77. The LL/GDS were coerced with the threatened loss of access to the sea if they deviated from group policy.<sup>31</sup> Eventually the revenues to be derived from seabed mining were seen to be diminished by the cost of operating the Enterprise and compensating the producers. Therefore, the seabed became an expendable issue in substantive terms for many of these delegations, thus facilitating its capture by the more radical members. <sup>32</sup>

The fundamental element required of any problem solving activity is a mutual definition of the problem by the involved parties. The lack of a shared conceptual framework seriously hampered the negotiating process in Committee I. Zartman (1974) suggests two necessary stages in political bargaining: the search for mutually agreeable referents and incremental bargaining. By mutually agreeable referents he refers to agenda formation in the broadest sense. Only if the parties are defining the issue in the same terms is it possible to proceed to the stage of incremental bargaining.<sup>33</sup> In the seabed bargaining process the DCs and the LDCs did not share this necessary component. The South worked from a referent based on radical economic theory while the North generally viewed the negotiations from the referent of a classical economic system concerned with resource scarcity.

The impetus for UNCLOS III was the idea of the "common heritage". Pardo placed his concept in the context of emerging third world concerns. With formulation of the NIEO in 1974, the agenda was set for a North/South dialogue. By prevailing for a comprehensive conference, third world states were able to link the transit and research concerns of the major powers to the economic concerns of the LDCs. This hostage strategy resulted in Committee I becoming the focal point for North/South ideological confrontation and

provided, in Committee I, the best example of Southern cohesiveness at the Conference.

The two previous conferences on ocean use dealt mainly with jurisdictional or fisheries questions. They were doctrinal and legalistic in nature, the structure and the legitimacy of the international system was not in question.<sup>34</sup> In contrast, at UNCLOS III the question of system legitimacy was raised. In Committee I the drive was the attempt to create a structurally new regime for the ocean and deep seabed. This can be explained in terms of radical economic theory and the proclaimed intention of the Southern coalition to redistribute world ocean resources and therefore income.<sup>35</sup> "In the ocean debate, as on land, the South was challenging the basic tenets of the economic system."<sup>36</sup> There was no comparable challenge of the existing military/security order within the oceans. According to Krasner (1981) LDCs are engaging in "meta-power" behavior when they use international organizations to confront the DCs on such issues. Meta-power behavior refers to the capacity to structure the environment within which decisions are made. The South is hoping to exert some control over the international environment through international institutions and norms. These demands reflect their international weaknesses. They are not able to gain the resource capabilities needed to assert effective control within the international system.

This basic conflict influenced the proceedings in Committee I as reflected in the initial polarization over the question of who might exploit. The DCs insistence on a freely competitive regime with the international machinery being only administrative in nature, reflected their economic worldview. The Group of 77, in contrast, advocated an international body to exploit the seabed, reflecting their embrace of the "common heritage" principle and recognition of their international economic impotence. They



fully realized that they were incapable of exploiting the ocean. The compromise of a mixed or parallel system that was reached did not totally resolve the issue. The Review Conference provision of the Treaty was an attempt by the LDCs to regain this initiative if possible in the future. The ISA raised other issues for the South in the NIEO context. Their insistence on production controls reflected not only the input of the land based producers but also that part of radical economic theory calling for commodity price stabilization. The LDCs were able to prevail on a preventative approach as opposed to the DCs compensation approach on production controls.

The ISA represented an opportunity for LDCs to exert some control over multinational corporations (MNCs). MNCs would be required to apply for licenses and most importantly to transfer technology to LDCs through the Enterprise. ISA also offered the LDCs an opportunity for representation within a major decision making body that would control a portion of the world resource economy. Therefore, the ISA appeared to contain many of the elements the LDCs demanded in the NIEO. It implied an equitable distribution of resource income, some control over MNCs, price stabilization, and LDC input into the international economic environment, albeit small. Freidheim and Durch (1977) claim that ISA had become essentially a North/South issue. In fact, according to some observers, as the ISA goes, so goes the NIEO.<sup>37</sup>

The developed countries approached the negotiating process from the perspective of resource protection and the value of a competitive market place. If one accepts Krasner's (1978) theory of statism, policy objectives in the area of raw materials are designed to increase competition and insure security of supply. The goals pursued by the DCs in Committee I are consistent with these objectives. The industrialized nations are those with the technological and financial resources to exploit the deep seabed. They

are also those most dependent on the importation of these minerals. For example, the U.S. imports 100% of its manganese and cobalt. Japan imports 90% of its copper and 100% of its nickel. Western Europe imports 93% of its copper and 89% of its nickel.<sup>38</sup> Furthermore, with the exception of nickel from Canada, the major exporters of these minerals are located in regions considered to be politically unstable. South Africa alone contains 48% of the world's manganese. (Curiously the author found no comment by African nations on this fact. Presumably, if an alternative source for even one of South Africa's strategic minerals could be found it might lessen U.S. support for the racist regime.) Zambia and Zaire are the source for cobalt.

The emphasis on resource protection is apparent in the United States' reasoning following the review procedure announced by the Reagan administration in 1981. Commenting on the proposed treaty, the administration singled out the deep seabed mining portion as being unacceptable. Two themes appeared to underly the objections; the question of resource availability and DC power in international organizations. The resource question involved ISA and the possibility that it would discourage development in order to protect land based producers, with the result of restrictions on U.S. companies in assured access to the minerals. Objections were made to the voting arrangement within the Authority, which could make U.S. access dependent on competitors. Secondly, the possibility of a change in the status-quo on North/South questions was raised. The mandatory technology transfer clause was demonstrated to be a serious stumbling block to ratification.<sup>39</sup> Furthermore, if negotiated, the administration emphasized that the Treaty was not to set "undesirable precedents for other international organizations."<sup>40</sup>

The questions of technology transfer and majority rule, i.e. LDC influence in international organizations are at the very heart of radical

economics. There was no objection to revenue sharing with LDCs. Rather, objections centered on a change in the decision making process within the international economic structure. The U.S. as a principal importer and exploiter apparently felt its needs would not be met. The third world nations remained solidly behind the NIEO and were thus more unified in this Committee than in any of the others, where cross cutting cleavages influenced national positions. The U.S. and the other industrialized nations, over time, found their position strengthened as security concerns in other ocean areas became less important. Ultimately, the idea of a market economy reflecting the existing economic strength of the DCs clashed with the idea of a more "just and equitable" distribution of world income advocated by the LDCs.

The strength of the DC coalition lay basically in its technological and economic abilities. The Big Six are capable of unilaterally mining the seabed with or without the approval of the remaining states, and proclaimed as much with passage of the U.S. Hard Minerals Act of 1980. In fact an agreement would be meaningless without their acquiescence. The fact that this group was not a caucusing formal group, as was the Group of 77, was a major weakness. Policy had to rely on the uncertainties of a common perception of interests to be effective. The U.S.S.R. scarcely wished to be seen as a partner with the west in opposition to LDC issues. Many of the others were in a competitive position with one another or had no vital abiding interest in the issue.

The strength of the Group of 77 coalition was the fact that it was an established caucusing entity, not only within UNCLOS III, but without as well.<sup>41</sup> Its procedures were established and the seabed clearly fit with its overall objectives. It commanded a formidable block of votes on economic issues. It was dealing with its traditional opponents which further strengthened solidarity. Neither the Group as a whole, nor many individual

members, had much to lose if they weren't successful. Very few had a stake in the existing regime. The ideological argument was used as a psychological club to keep members in line if they contemplated straying. This contributed to the cohesiveness of the coalition. The moderates acquiesced rather than risk the charge of being "tools of western imperialism".<sup>42</sup> In fact, Freidheim and Durch (1977) found a low level of deviation within the South on Committee I issues, as contrasted to Committee II issues on the jurisdictional and territorial questions. Group cohesiveness became symbolic for its members. The Group of 77 had a strong commitment to international negotiations on economic issues.<sup>43</sup> They also had a strong commitment to strengthening their position within international organizations in order to change the political and economic balance.

The negotiating ability of the Group of 77 was hampered by the fact that Group cohesiveness was based on adherence to radical economic theory. The theory as presented allowed little negotiating room. It became an effective tool for the few utilizing rhetoric to block compromise. Because the Group contained a large number of states, it was difficult to achieve consensus. Therefore, once a position was formulated it became arduous and time consuming to deviate from concurred policy. Because the Group was composed of regional groups, these affiliations represented alternative rallying points if consensus was not fruitful. The Group as a whole was incapable of undertaking deep seabed mining. None were in a position of being a large naval power, therefore, they could not militarily challenge the DCs on the ocean. The alignment of DC and LDC within the seabed committee basically became one of technological strength versus voting power.

#### PART IV: NON-STATE ACTORS.

The LOS debate is often examined in "state-centric" terms, e.g. DC versus

LDC, as was done in the previous section. However, in actuality another dimension must be included, that of the non-state actor. From a pluralistic perspective, a state's national policy position is derived from the bargaining process between relevant interest groups both governmental and non-governmental. In the debate on seabed mining, these policy influencers were active in formulating national positions. This section will examine the effect on policy created by two categories of non-state actors; the subnational i.e. governmental or bureaucratic; and the transnational, such as multinational corporations and intergovernmental organizations. This study will focus mainly on the U.S. policy process as it pertained to seabed mining, examining the role of bureaucratic and MNC actors. It will investigate intergovernmental organizational (LGO) influence in relation to the Southern delegation.

The industrialized nations with open democratic systems share comparable political traits. The existence of domestic pressure groups is common to all. Their ability to influence policy varies across nations. However, this difference is one of degrees, not of kind. The Soviet Union must also contend with internal constituencies. These competing interests had differing preferences in the ocean negotiations. A harmonization of policy between advocates was necessary.<sup>44</sup> Within third world nations this analogy is not as clear. However, even in nations where organized pressure groups are not in evidence, it is assumed that a calculus of the effect of policy options is made.

The most relevant actors in the U.S. policy process were the Departments of Defense, Interior, State, Treasury, and the hard minerals industry. These organizations had a major impact on the outcome. Interest peaked and waned over the years as priorities responded to a changing environment. Defense

interests were paramount in the early years, while mineral access gained primacy in the latter years. The minerals industry, which was ignored initially, found allies within Congress and later within the Reagan administration.

Subnational Actors: Bureaucratic Interests

The Defense Department's policy on the Law of the Sea negotiations evolved from maritime interests derived in the 1960s. If one looks to budget allocations, the Defense Department was the most powerful federal agency interested in ocean affairs, while the Navy was the most influential branch within the Defense Department.<sup>45</sup> During this time, defense policy was predicated on the East/West confrontation. A viable Navy was based upon freedom of the seas.<sup>46</sup> At that time the Navy was concerned with the multiplicity of ocean uses, especially between commercial and military users. Their most important concern however, was creeping national jurisdiction. They were prepared to do battle for narrow territorial boundaries. During this period the U.S. Navy had increased its global ocean predominance. The Department of Defense sought to protect this advantage.<sup>47</sup> In the late sixties, two other factors contributed to the prominence of naval interests, the Henkin Report and the Stratton Report. Henkin looked at the legal problems that would be encountered in the exploitation of seabed minerals. He concluded that the principal interest of the U.S. was national security. This was best served by advocacy of a narrow shelf boundary and a narrow territorial sea. In regard to ocean mining, Henkin concluded that if necessary, an international authority to control mining would be less troublesome than would the seabed as an area of national sovereignty.<sup>48</sup> The Stratton Report reached similar conclusions and warned specifically of the dangers of expanding national jurisdiction. The Stratton Report also defined

the national interest in terms of narrow jurisdictional boundaries. This emphasis on narrow jurisdictional limits led to the Defense Department's advocacy in the '70s of a strong international regime for the seabed in exchange for boundary concessions. By subordinating mineral interests to transit issues they were being consistent with past policy.

In the late sixties and seventies the Department of the Interior in which resides authority for overseeing mining interests, formulated a policy in direct conflict with that of the Defense Department. This is not attributed to mineral interests, but rather to oil interests. The oil lobby was extremely influential within the Department. In fact, the National Petroleum Council, which is an industry advisory and study body to the Interior Department, included many members who were executives of the American Petroleum Institute (a trade association).<sup>49</sup> The Interior Department had responsibility for granting leases for offshore drilling. By the mid-sixties, technological advancements had made deeper drilling a reality. Geologists had discovered the presence of oil on the continental margin. This led the petroleum industry to push for the extension of national jurisdiction over the resources on the continental shelf.<sup>50</sup> This view was consistent with the international trend of creeping jurisdiction. Interior's position was beginning to coincide with that of petroleum. Within Interior, support for a broad continental shelf increased as revenues increased from leases at greater depths. Interior was also interested in extending its bureaucratic reach over expanding operations. Under the influence of oil interests, Interior was agitating for increased jurisdiction over ocean areas. Actually, Interior and Defense came into direct conflict in the sixties over the use of the shelf off the California coast.<sup>51</sup> The minerals industry had to compete with oil for the attention of Interior. They were not as influential.

The State Department's activity in the ocean area gradually increased in the sixties and seventies. The department is largely responsible for diplomatic concerns. The structural setup is on a country or regional basis and this predominates over functionally specific concerns. During the sixties, State's main interest in the oceans was in the area of fisheries disputes. With the Malta proposal in the U.N. State began to take a new interest in ocean policy. With the failure in 1967 of the Ad Hoc Interagency Ocean Committee to reach a consensus on ocean policy proposals, State assumed a free hand to formulate policy for The U.S. in the U.N.<sup>52</sup> State became the lead agency to coordinate oceans policy. In effect, State became the mediator between Defense and Interior. With Kissinger as its head, State was able to maintain control of policy and resist pressure from other agencies. Kissinger personally intervened in the ocean policy process in 1976, interjecting into U.S. policy, concessions on the ISA in return for access. He endorsed the parallel system and the technology transfer in order to compromise with the Group of 77 and play a larger role in the North/South dialogue.<sup>53</sup> This policy was superimposed on the agency, and contributed to a considerable amount of confusion over options for a time.

In the mid-seventies, an additional governmental actor became a participant in the policy process, the Treasury Department. Under the direction of George Schultz and his deputy William Simon, Treasury along with the Council of Economic Advisors and the Office of Management and Budget, brought an economic perspective to the process. They examined seabed mining from the aspect of resource access. Treasury feared that a strong international regime would limit production. Furthermore, a bureaucratic structure would be inefficient, limit development and reduce revenues to LDCs. This was a departure from the policy that looked at the seabed mining regime



in terms of a trade-off for less coastal state jurisdiction.

Transnational Actors: International Mining Consortia

In the early sixties, the U.S. minerals industry was interested in the continental shelf boundary issue in so far as it had a positive effect on the area of the seabed. Initial support for a broad shelf evolved into acquiescence for a moving shelf boundary, to a position of total disregard for boundary issues. A break with petroleum interests over boundary issues occurred in 1969. They anticipated that they would be compelled to operate beyond national jurisdiction regardless of boundary locations. Therefore, their concern then turned to the nature of the regime that would govern the deep seabed. The preoccupation of the Interior Department with petroleum left mineral interests isolated from the inter-agency struggles. Finding scant support in "their" agency or the executive branch, they turned to Congress. Congress was vastly more sympathetic and responsive to their needs. Their opposition to the 1970 U.S. Draft Treaty on the Seabed was shared by many members of Congress. In 1971, at the request of Senator Metcalf (D. Mont.), the American Mining Congress drafted legislation designed to protect their interests. The bill was ultimately passed in 1980 as the Deep Seas Hard Minerals Resources Act. Basically, this bill sought to protect the industry during the period preceding treaty ratification or in the event it was never brought to fruition.

Initially, many firms, both U.S. and foreign, were interested in deep sea mining.<sup>54</sup> Over time, reflecting increased costs, many of these firms merged to form international consortia<sup>55</sup> These consortia have invested heavily, about 300 million in preparatory investment. Their preferred position has been one advocating a weak international authority. However, according to industry spokesmen, their most important requirement is a stable regime, one that will

guarantee relative certainty about the conditions under which they will operate.<sup>56</sup>

In 1981, the Reagan administration chose to conduct a review of the proposed Treaty and subsequently chose not to sign it. During this review period the Senate Foreign Relations Subcommittee on Arms Control, Oceans, International Operations and Environment held hearings on the proposed Treaty. In testimony before the Committee, two apparent factors emerged as industry perceived obstacles to ratification of the Treaty. These were the transfer of technology clause (the Brazil clause) and the resource access issue. Industry representatives iterated these concerns continually. The Brazil clause raised questions not only of a financial nature but also that of a legal character. The problems of property rights and the concept of the patent system would be in jeopardy, according to the testimony of industry spokesmen and their ancillary groups. The American Mining Congress cited the need for access to these minerals in terms of national security. The aerospace industry is dependent on large amounts of cobalt at affordable prices, and preferably a source that is stable. At the present time, this source (Zaire and Zambia) is considered potentially unstable. If the proposed Treaty was not altered to encourage investment, according to Northcutt Ely, Counsel for Ocean Mining Associates, American companies would invest capital elsewhere and therefore deprive the U.S. of vital minerals.<sup>57</sup>

One can see an evolution of U.S. policy concerning seabed mining. In the early years the seabed was perceived as relatively unimportant vis-à-vis the other issues dealt with in ocean policy. National security interests were articulated by the Defense Department in terms of naval military concerns i.e., unimpeded transit. Defense was willing to trade third world interests in the seabed in return for jurisdictional concessions. In the aftermath of

the OPEC embargo, national security was expanded to include the issue of resource scarcity and access. This change of reference from military concerns to resources enabled other actors, such as the minerals industry and the Congress, to enter the process with more credibility. Congress has always been supportive of mining interests due to the nature of electoral politics. The views of the Reagan administration appeared to coincide with those of the mining industry. With Congressional and administration support, the mining industry evolved from having scant input into the process into a major influence on U.S. policy.

In the final draft of the Treaty, interim mining was protected under the guise of Pioneer Investors. However, the technology transfer clause and access to the minerals remained essentially unchanged. Opposition within Congress and the administration prevailed, the Treaty was deemed unacceptable.

#### Intergovernmental Organizations: The United Nations

The most obvious intergovernmental organization to exert influence on the seabed debate was the U.N. itself. Not only did it provide the forum for the Conference, but in doing so became an actor in the process. This was apparent in three areas; agenda formation, the structure and norms of the Conference, and bureaucratic interests.

The U.N. is generally conceded to play a role in agenda setting for the international community. As its membership expanded to include the new nations of the third world, the issues it confronted changed to reflect their interests. Third world predominance is evident in U.S. politics especially in regard to the seabed. The Pardo proposal placed seabed resources on the international agenda and defined the issue in terms of the LDC's economic concerns. This effectively structured the debate within the parameters of the "common heritage" principle and gave a negotiating advantage to the LDCs.

The structure and norms of the U.N. played an important part in the negotiating process. The voting system of the General Assembly was utilized in the Conference process. As was previously discussed in the section on state factors, this fact emphasized the value of coalition building and maintenance. As a result, group solidarity became an important negotiating element. A procedure of weighted voting, whatever the criteria, would have produced a difference in the negotiating process and in the final treaty. The voting procedure, reinforced by the "common hearings" principle perpetuated the Assembly norm of state equality.

The bureaucratic interests of the U.N. were most evident in the actions taken by the Secretariat of the United Nations Conference on Trade and Development (UNCTAD). UNCTAD had close ties to the Group of 77, in fact the Group grew out of UNCTAD in the sixties. UNCTAD provided not only a source of technical information, but was also influential in policy formation for the Group of 77. The goals of UNCTAD were compatible with those of the LDCs. Both sought to improve the economic condition of the third world nations. The UNCTAD staff was dominated by a few key members and the leadership of the Group of 77.<sup>58</sup> The numerical dominance of members from western industrial nations was attributed to historical (LDCs were latecomers) and geographic (Europeans desired to locate in Geneva) factors. This did not reflect an ideological split however, as most of the western staff shared the prevailing ideology and chose to join the organization for that reason.<sup>59</sup> The staff worked very closely with the Group on many common interest issue areas, in an effort to harmonize policy. UNCTAD took an early interest in the deep seabed proceedings. During the preparatory period, UNCTAD passed a moratorium resolution prohibiting exploitation of the deep seabed until an international regime had been established. This proposal was subsequently introduced into

the Seabed Committee by Kuwait. The use of the UNCTAD staff as an information source was critical for the Group of 77. They did not possess the technical expertise of the DCs and therefore relied heavily on UNCTAD reports. UNCTAD's interest in commodity price protection, known as the Integrated Program for Commodities, coincided with the concerns of seabed mineral producer states. Representatives of UNCTAD were in attendance during the seabed proceedings and made recommendations to the Group on production and price controls.<sup>60</sup> Most importantly, they were instrumental in linking seabed issues to the broader issue of global economic policy.<sup>61</sup> UNCTAD had been primarily an arena of debate, a "forum" organization. But at the Nairobi Conference in 1976, UNCTAD appeared to desire a more active role in the international economic system. UNCTAD sought a major role in elaborating and implementing fundamental reforms of the World economy. It sought authority to offer recommendations on any issue affecting LDCs, even if the legitimate arena of settlement were elsewhere.<sup>62</sup> It based its justification for this role expansion on the universality of its membership and the broad mandate it had received from the General Assembly. UNCTAD, like so many bureaucratic agencies sought to enhance its own power and influence. The seabed mining debate provided another forum in which to seek its goals.

In summary, the influence of the U.N. on the Conference was apparent in its ability to structure the seabed debate within the confines of the "common heritage" and the economic concerns of the LDCs. By superimposing the voting procedure and the norms of the General Assembly on the Conference, power was conferred on states who otherwise wielded little in the international system. The bureaucratic interests of the U.N. were furthered by the actions of UNCTAD, which was influential in the formulation of LDC policy.

## CONCLUSION

At this time the prospects for the LOS Treaty do not appear encouraging. The U.S. has refused to sign, citing objections to the deep sea mining portion. The outlook for signature by the other major powers does not look promising. In actuality, for the Treaty to become effective law it must be supported by the major maritime powers. Without a treaty the potential for conflict on the oceans is increased. In regard to the seabed area, the most probable outcome is that those states capable of exploitation will do so. This action will be justified on the grounds of "freedom of the sea", subject to reasonable regard for the rights of others. Bilateral treaties between exploiter states will codify site protection and other pertinent activities. It is probable that a system of "profit sharing" could be instituted with the proceeds directed towards international development. The developing countries would no doubt oppose this development. They would most likely base their argument on the legal grounds already advanced in the Seabed Committee. Since international law makes no provision for exploitation beyond national jurisdiction, the General Assembly was entitled to declare the nature of the area to be the "common heritage". This idea having been unanimously accepted by the General Assembly, it provides the "best available evidence" on the law to govern the area.<sup>63</sup> Unilateral action would thus provoke, at the least, strong political rhetoric. LDCs might adopt the Treaty and two legal norms could exist. Open violence might erupt over the mining sites. In a world full of conflict, the lack of an ocean treaty will only exacerbate current problems.

The goal of this study is to identify the most important forces involved in the Seabed Treaty process, and hopefully, to establish which factors were most influential. These factors should provide explanatory tools useful in

determining the dynamics of the political bargaining process in the Seabed Committee. Increasing understanding of the process should add to the explanative and predictive ability for similar issues. Three factors emerged as being influential on the seabed debate: the structure and norms of the U.N.; coalition power; and the importance of setting. The first, U.N. structures and norms, is by far the most influential. It provided the framework for the development of the other two. The structure of the voting process, one nation-one vote majoritarian rule, favored group or coalition politics. It gave influence to states who normally would have little on ocean issues. It increased the "power" of the LDCs at the expense of the maritime nations. The norms of state sovereignty and equality favored the LDCs on seabed issues. The acceptance of the "common heritage" principle within the Assembly by all parties was used to legitimize demands on the ISA. Because of the voting structure, LDCs were able to employ the linkage strategy to manipulate the needs of the major maritime powers on transit issues for LDC gains on economic issues. Thus, it gave them relative power within the forum.

Why did the major powers allow this situation to occur? A traditional theory of international relations would suggest that the great military powers would predominate in the overall system, and therefore have more influence on the process in the seabed than they actually had. An Issue Structure Model would predict that the naval powers would control outcomes in the ocean area. Neither of these theories explains the reality of the seabed negotiations. The major powers were on the defensive in ocean politics, especially in the seabed debate. They were originally against encroachment of the high seas and were opposed to a comprehensive conference. Their desires did not prevail. Why did the major powers appear to be ineffective in the negotiations? Keohane and Nye (1977) have constructed a model, the International

Organization Model (IO), which offers insight into seabed politics. If one accepts their complex interdependence characteristics as valid, then the IO model is very useful. Ocean issues readily conformed to the model. Briefly, the characteristics describe an ocean regime which has witnessed the decline of a hegemonic power unwilling to use force on the seas, whose values have changed from security interests to economic, and is influenced by a variety of domestic and international pressure groups on ocean policy. The IO model describes the process that operates in this environment. It assumes the existence of international relationships consisting of networks, norms and institutions. Governments are linked not only by formal relationships but also by intergovernmental and transgovernmental ties on many levels. These ties are reinforced by norms prescribing behavior in situations and institutions. These networks, norms and institutions are described as organizationally dependent capabilities. The model assumes these norms and networks will be difficult to eradicate or drastically rearrange. Powerful governments in issue areas will find it hard to predominate if their preferences conflict with established patterns. Therefore, regimes will not become congruent with capabilities, international organizations will stand in the way. Power over outcomes will be conferred by organizationally dependent capabilities. The IO model offers an explanation of the ocean regime breakdown after 1967. The norms and processes of the U.N. conferred power on a majority LDC coalition. In UNCLOS III they were able to translate norms in other areas, such as U.N. programs and the NIEO, to the seabed debate. This linkage strategy assured that issues were determined as much or more by egalitarian organizational procedures and the North/South confrontation as by naval or economic power. Keohane and Nye have offered a compelling explanation for the relative impotence of the major powers in the ocean



debate. Their model offers a sufficient explanation for the negotiating process at UNCLOS III. In the absence of a treaty, the compromise that resulted on jurisdictional issues will probably become customary law. However, the model does not offer an explanation for the probable outcome for the seabed if the Treaty is not implemented. Those states with the technical capability to exploit will formulate the regime. Therefore, as regards the seabed outcome, a model based on Issue Structure explanations appears more appropriate. Models help to organize facts and extract explanations. The IO model is an adequate explanation of the importance of U.N. structure and norms on the seabed debate process, however, it does falter with the absence of a treaty for the seabed.

The second factor of importance in the seabed debate was coalition power. This was derived directly from the structure of the U.N. itself, which was biased toward coalition power. The strongest coalition would be expected to exert the most influence on the proceedings. In the case of the seabed debate the Group of 77 was the strongest coalition involved in the Conference. The Group was repeatedly demonstrated to have achieved a high degree of cohesiveness on this issue. This cohesiveness is directly attributable to the Group's adherence to radical economic theory. In the case of the seabed, the Group had nothing to lose if their objectives were not met. If they were successful, they had furthered their economic goals. Initially, they were instrumental in convening a comprehensive conference over the objections of the industrialized nations. The more radical members were successful in placing the seabed debate within the confines of the NIEO. By using radical economic rhetoric as a tactical weapon they were able to coerce recalcitrant members of the coalition to adhere to policy. The ideological factor made changes in policy to accommodate compromise difficult and time consuming. The

power of the Group of 77 as a coalition was not paralleled in the other two committees. They were vastly more unified on the seabed than on jurisdictional questions. An explanation for this phenomenon is the fact that the seabed did not involve the transfer of present tangible assets. The motivating force for the Group was a change in the international economic decision making process. This was a Group goal advocated in other forums and involved long term interests. The cohesiveness of the Group disintegrated in the other committees where present substantive issues were involved. Friedheim and Durch (1977) found the within-group deviations were high on questions of delimitation and jurisdiction of the economic zone. Only the landlocked remained united on these issues. Southern solidarity was not maintained in the face of member's divergent national interests in regard to economic zone resources. Short term national interest, however defined, was a more important factor in the issues of coastal state jurisdiction and the economic zone. If the seabed is an indicator, it appears that coalitions are more easily maintained when the issues involve future gains or benefits and are based on notions of ideology rather than on present economic interests. The third factor affecting the seabed debate was the importance of setting. The power of the LDCs to employ the linkage strategy resulted in an unmanageable agenda and thus a lengthy conference. The fact that this conference lasted almost ten years became a factor in the proceedings. It allowed shifts in national priorities to occur which altered the shape of negotiations. The primacy of interest groups fluctuated over time. Initially, the U.S. defined its priorities in terms of national security, with naval issues predominating. Over time this was replaced by resource concerns. Bureaucratic interests were displaced by corporate mining interests. It is plausible that a different outcome would have occurred if negotiations had

been concluded earlier. Previous U.S. administrations had been receptive to signing the Treaty. Perhaps with administration and Defense support the Senate would have ratified it. With U.S. backing, other western nations who are now wavering, might have chosen to fully support the Treaty.

In summary, the most influential forces involved in the seabed debate were those derived from an IGO, namely the U.N. At UNCLOS III the intrinsic power capabilities of states were not congruent with Conference outcomes. The structure and norms of the U.N. General Assembly were responsible for defining the issue and constructing the framework for the bargaining process to favor third world nations. This was possible because a pattern of complex interdependence had emerged in the world order which favored an IO model of collective decision making. What does this finding portend for future problem solving by the international community? Analysts have predicted that an occurrence such as UNCLOS III will never happen again. On jurisdictional issues it has managed to reformulate the regime, probably through customary law. However, the seabed was an attempt to devise an original regime, an attempt to anticipate future events and plan accordingly. This has apparently failed. The regime that results will depend on a few to define its rules, regulations, and responsibilities - inner circle decision making. Many analysts contend that this is the most efficient manner of problem solving, those with the interest and capability should prevail. Others claim that it is unstable in the long run as those on the outer ring may question the legitimacy of the arrangement. Because of the experiences at UNCLOS III, states may choose to bypass any future efforts at similar international decision making. The prospects for the "global" in global problem solving have probably been diminished in the foreseeable future.

FOOTNOTES

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32. Miles, p. 207.
33. Freidheim, p. 378.
34. Miles, p. 153.
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50. Hollick, p. 182.
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52. Hollick, p. 200.
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54. Sullivan, p. 53 - Kennecott, Tenneco, Deepsea Ventures, Essex Iron (U.S. Steel Subs.), Union Mines, International Nickel, Summa Corp. (Hughes Corp.).
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