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THE THIRD WORLD AND THE LAW OF THE SEA:

The Attitude of the Group of 77

Toward the Continental Shelf

In August of this year, representatives from 163 nations will, it is hoped, meet in Geneva for the resumed Ninth Session of the Third United Nations Conference on the Law of the Sea (UNCLOS 111) to complete work on a comprehensive international convention on the law of the sea. All governments attending will have an opportunity to put their views on the record. Proposals which lead to consensus will be incorporated into a text that will be revised and prepared for a final meeting in Caracas, where the substantive work of the conference began in 1974.¹ At the Caracas meeting, the "final act" including the results of the seven years of conference negotiations will be signed and a new Law of the Sea Treaty will take effect² after ratification by the requisite number of states as provided in the final clauses of the convention.

No one knows with any certainty whether or not UNCLOS 111 will end with the current Ninth Session. What is certain is that the Third World, acting as a unit through the Group of 77 (G-77),³ has made a significant impact on the treaty-making processes of the conference. In consequence, it is certain that

some of the major provisions of the convention will reflect the articulated "position" of the Third World countries that the resources of the ocean space should be shared equitably, with preference being given to the needs of the developing countries.

Several aspects of the work of the Group of 77 are addressed in this article. Part I will sketch the historical emergence of the Group of 77 and discuss how the group's unity has been sustained. Part II will focus on G-77 activities within the context of UNCLOS 111 and examine such concepts as "the common heritage of mankind" and the "New International Economic Order" as they have been treated in law of the sea discussions. Part III will discuss the Continental Shelf and the lack of a G-77 "position" on shelf matters. And Part IV will present suggestions for a compromise position the Continental Shelf.

On the question of the author's methodology, it must be pointed out that many of UNCLOS 111 negotiating sessions are "informal" and, in consequence, there is little that approximates an official record of how decisions are reached within the Group of 77. In preparing this article, the author spoke on the record with members of the Jamaica delegation to UNCLOS 111, consulted with other UNCLOS 111 conferees, and used a variety of UN materials, e.g., provisional conference reports, and press releases.

PART 1: THE GROUP OF 77--ITS RAISON D'ÊTRE

From the beginning, unity of action was viewed as a *sine qua non* by the 77 nation states which came together in Geneva in

1974 as the Group of 77 (G-77) and sought to challenge the Old Economic Order that had left the developing nations impoverished, and to create a New International Economic Order that would give the world's poor nations the means to survive and flourish. Countless commentators have written about the complex legal, economic and political structures that have kept the developing nations, with 70 per cent of the world's population, poor, and have increased the fortunes of the rich nations. A few of these considerations may be outlined as follows: 1) There is a tremendous imbalance in the distribution of the world's money reserves; the poor nations receive less than four per cent of international money reserves, while the rich nations, through the expansion of their national reserve currencies and their control over the International Monetary Fund, control money reserves globally. 2) Contracts, leases, terms of trade and concessions negotiated in the past between multinational corporations and developing countries reflect an inequitable sharing of benefits. In many cases, the host country receives a mere fraction of the benefits from exploitation of its own resources by the multinational corporations. 3) Poor nations have only a pro forma participation in the economic decision-making in the world. Their advice is seldom solicited when the decisions on the future of the world economy are being made; further, their numerical majority in the United Nations General Assembly has only marginally affected international economic decisions.

It is against this background that an analysis of the role

of G-77 must be made. Except for Yugoslavia, (one of the original G-77 members) Malta and Rumania, all the members of the group are from Africa, Asia and Latin America.⁷ Factors which tend to link Group members and indeed all the nations of the Third World include: 1) a history of poverty; 2) a history of colonialism; 3) illiteracy; 4) a history of racial discrimination linked to the colonial past and 5) a history of dependency.⁸ Accession to independent nationhood left many Third World nations with all the features of a colonial past intact and with very few of the means by which a nation brings meaning to the concept of nationhood. Moreover, prior to their gaining independence, there had been no real attempt for these nations to get together to discuss common problems, and common goals. It was clear to the new nations that corrective action was needed and it was equally clear that the United Nations,⁹ which the new nations now dominated numerically, would become the most powerful forum for exerting pressure and achieving the goal of a New International Economic Order (NIEO). Thus, the Group made a major declaration at the United Nations Conference on Trade and Development (UNCTAD) Conference in Geneva: The Joint Declaration of the Seventy-Seven Developing Countries.¹⁰ The Group's unity was described as follows:

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

adoption of new attitudes and new approaches in the international economic field.¹¹

Regional meetings were held; these were followed by sub-regional meetings among heads of governments. For purposes of organizational convenience, the Group was divided into a Latin American group, the African group and the Asian group. The insistent theme was cooperation as a means of securing collective self-reliance for the new nations.¹² The resolution of the Sixth Special Session of the United Nations General Assembly in 1974 was a statement of advocacy, favoring the establishment of the NIEO.¹³ Nation states, the resolution said, had "full sovereignty" over their national resources, and all economic activities, including the right to nationalize or transfer ownership to its nationals.¹⁴ Thus, at G-77 conferences from Nairobi to Mexico, the same theme was noted repeatedly: "self determination of the developing countries to develop their economies in accordance with their own needs and problems and on the basis of their national aspirations and experiences."¹⁵ Inevitably, the aims of the Group of 77 as outlined in its call for the new economic order, were viewed as a potential threat to the developed nations of the world. The law of the negotiations offered an auspicious setting for observing how this threatened dichotomy resolved itself.

PART 11: G-77 AND THE LAW OF THE SEA CONFERENCE

A discussion of how the Law of the Sea Conference is organized would, perhaps, be a suitable starting point for

analysis. The conference, the first session of which was convened in New York in December 1973,¹⁶ was organized to attempt to prepare a single, comprehensive convention to guide nation states in the uses of the seas. For centuries, ever since the days of ancient Greece and Rome, the accepted international regime governing the ocean space was "freedom of the seas".¹⁷ In other words, the seas beyond a very narrow area of national jurisdiction were open for use by all nations for navigation, trade, fishing, exploration and research.¹⁸ Another freedom, to construct artificial islands and platforms, has been recognized in recent years. But there were those nation states that favored closed seas to which they would have exclusive jurisdiction. In time it came to be generally accepted that a nation could claim control over certain of its coastal waters and a belt of the territorial sea. It was not long before nation states began to make claims for exclusive control of areas of the seabed and the mineral and energy resources that the seabed contains.¹⁹

In 1945, President Truman, in two proclamations, made certain claims to jurisdiction over continental shelf resources and over coastal fisheries.²⁰ The Truman proclamations granted to each coastal state "the exclusive right to explore and exploit the resources of the seabed and the subsoil of the adjacent continental shelf beyond the territorial sea. . ."²¹ Inevitably, the Truman proclamation on behalf of the United States was followed by similar proclamations by the leaders of other nation states.²² Accordingly, the International Law Commission in 1949 began the

necessary process of attempting to draft articles for a regime that would guide nations in their use of the high seas.²³ The Commission's drafts were used as a basis for the first United Nations Conference on the Law of the Sea, held in Geneva in 1958.²⁴ Four conventions were adopted at that conference: they related to the territorial sea; the high seas; fishing and conservation of living marine resources; and the continental shelf.²⁵

At the time the first conference on the law of the sea was convened, there were 86 nation states participating.²⁶ The present Third conference was convened in 1973

(H)aving regard to the fact that many of the present states, members of the U.N. did not take part in previous UN Conferences on the Law of the Sea. . . (The U.N.) decided to convene. . . a conference on the Law of the Sea which would deal with an equitable international regime. . . .²⁷

By this declaration, the United Nations recognized that for a law of the sea convention to be equitable and binding, new, mostly Third World nations which had only recently been admitted to UN membership, would have to participate in its drafting.

In structure, the conference is modeled after its predecessor,²⁸ The United Nations Seabed Committee. Three committees, each with large portfolios, handle the business of the conference. The First Committee deals with the international regime and machinery for the seabed beyond the limits of national jurisdiction. The Second Committee deals with the territorial seas; straits; the economic zone; access to the sea; and the continental shelf. The Third Committee treats such subjects as pollution and marine technology. In addition, there are seven

negotiating groups, each of which is charged with the duty of discussing "hard core" issues. The groups and their specialties are:

Negotiating Group 1 ---the system of exploration and exploitation of the international seabed area;

Negotiating Group 2 ---the financial arrangements for seabed mining;

Negotiating Group 3 ---the organs of the proposed International Seabed Authority;

Negotiating Group 4 ---the right of access of landlocked states to the living resources of the seas;

Negotiating Group 5 ---dispute settlement;

Negotiating Group 6 ---definition of the continental shelf;

Negotiating Group 7 ---delimitation of the maritime boundaries between geographically adjacent and opposite states. ²⁹

Finally, there are several working groups---the Working Group of 21 on First Committee Matters; the Group of 38 which deals with the continental shelf; the Group of Legal Experts on the Settlement of Disputes relating to the international seabed area; the Group of Legal Experts on Final Clauses--and three Committees--a general committee made up of countries whose representatives are office holders in one of the main committees; a drafting committee and a credentials committee. ³⁰

Examination of Third World participation in the leadership of the conference committees and groups reveals the following:

the president of the plenary or main committee of the conference is a Third World (TW) representative; so too are the chairmen of the First and Second Committees. Negotiating Groups 1, 2, 3, 4 and 6 are chaired by TW representatives. The Working Group of 21, the Group of 38 and the General Committee also are chaired by TW representatives.³¹

These leadership positions have, in practice, provided G-77 with vital contact points for discussion and negotiation both within the context of the Group and within the larger context of the Conference. As the leader of the Jamaica delegation noted: "After such meetings in which a matter is distilled within the various groups (of G-77), the G-77 takes a position which promotes the interest of the developing countries. Each G-77 country knows the importance of having mass support, so no one runs the risk of alienating the others."³² But while the assertion of G-77 positions takes place by way of a process of trade-offs within the Group's plenary, it is the ability of the Group to make these positions take hold within the conference as a whole that really counts. Moreover, procedural rules adopted by the conference at large, require the affirmation of a Gentleman's Agreement³³ which provides that the "Conference should make every effort to reach agreement on substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted."³⁴ Thus, the test of the effectiveness of G-77 within UNCLOS 111 is the extent to which the Group has been able to make acceptable to the

conference as a whole its position on two fundamental concepts: the "Common Heritage of Mankind" and the New International Economic Order.

The Common Heritage Principle

In a universally praised speech before the United Nations General Assembly in 1967, Maltese Ambassador Arvid Prado told the world of the vast resource potential that lay beneath the oceans beyond the limits of national jurisdiction, and warned that its existence created a "basic political problem" that could no longer be avoided.³⁵ The problem was the recognition that those resources constituted a common heritage of mankind in which all States were entitled to share. Particularly to be avoided, in Prado's view, was the possibility that technological capacity would determine which countries acquired the sea's wealth. Under such a formulation, it was said, the rich nations would get richer and the poor nations would become relatively poorer.³⁶ Prado proposed the establishment of an international regime: "Our long term objective is the creation of a special agency with adequate powers to administer, in the interests of mankind, the oceans and the ocean floor beyond national jurisdiction."³⁷

The United Nations set up an Ad Hoc Committee³⁸ to study the question and later, a Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction.³⁹ (The Sea-Bed Committee) was established. The

committee's duty was to study the various functions and powers of an international machinery that would be able to regulate, coordinate, supervise and control "all activities relating to the exploration and exploitation of the seabed resources for the benefit of mankind as a whole."⁴⁰

The developed nations greeted Prado's speech with skepticism,⁴¹ much of which still remains despite the passage of time, and with the adoption, by way of solemn declarations, of the common heritage principle⁴² in (a) The Declaration of Principles Governing the Seabed and Ocean Floor and the Subsoil Thereof Beyond the Limits of National Jurisdiction;⁴³ (b) Article 136 of the Informal Composite Negotiating Text/Rev. 1 (ICNT), of UNCLOS⁴⁴ 111; and (c) the Moratorium Resolution.⁴⁵ At the time of Prado's speech, the cautionary stance of the developed nations was reflected by the Soviet view: "Regarding the preparation of international legal principles, we should particularly like to stress the inadmissibility of any undue haste."⁴⁶ France sought to maintain the principle of freedom of the seas; and the United States proposed a "committee on the deep ocean" but wanted the seas to remain open to all States "without discrimination."⁴⁷

In summary form, the common heritage principle incorporates these ideas: (1) the seabed area (referred to generally as the Area) shall not be subject to appropriation by any means by states or persons, natural or juridical; (2) the area shall be reserved exclusively for peaceful purposes; and (3) the exploration of the area and the exploitation of its resources shall be carried

out for the benefit of mankind as a whole.⁴⁸ What the principle implies, then, is that the common heritage cannot be appropriated; it is *res communis*, and belongs to everyone. The principle also implies that among the benefits to be shared are the technologies to be used to exploit and explore the common heritage.⁴⁹

The developed countries, and in particular the multinational corporations in these countries, believe the common heritage principle acts as a barrier to the exploration and exploitation of the seabed area.⁵⁰ The developing countries, on the other hand, view the principle as a principal means for the attainment of a New International Economic Order.⁵¹ Accordingly, the Group of 77, following Prado's lead, have called for the establishment of an International Seabed Authority with the power to 1) regulate and control exploration and exploitation of the seabed; 2) limit production and set prices; and 3) contract and manage the exploitation of the resources. The operating arm of the Seabed Authority that would carry out this function in the wider context of the law of the sea, is the Enterprise. The Enterprise would cooperate with other entities which already have seabed mining technology.⁵² The developed countries have tended to doubt whether the Enterprise would exercise the business judgment necessary to enable it to carry out its mandate as set out in Article 170 of the ICNT.⁵³ While agreeing with the need for the seabed authority, the developed nations would like to ensure that developing countries do not use the power of the Authority and its several organs--the Council and the Assembly--against the interests of the developed nations.⁵⁴

At present, there are four United States companies, members of international consortia, with the proven capability of mining the wealth of the oceans.⁵⁵ It is estimated that the cost of each fullscale mining operation, including recovery, transportation and processing, may vary from \$300 to \$600 million. In a fundamental sense, the developed nations see themselves as being under pressure from private industry to gain access to the seabed resources and to do so now.⁵⁶

In the United States Congress, the Deep Seabed Hard Mineral Resources Bill was passed by the House of Representatives and introduced into the 96th Congress.⁵⁷ Its passage would empower United States citizens to mine hard minerals, during the interim period, "pending the entering into force with respect to the United States" of an international regime, i.e. a Law of the Sea Convention.⁵⁸

In response to this development, and in response to the promise of similar trends within the developed world, the Ministers of Foreign Affairs of the Member States of the Group of 77 passed a resolution declaring that "any unilateral measures, legislation, or agreement restricted to a limited number of States on seabed mining, are unlawful and violate well-established and imperative rules of international law."⁵⁹ The reason for impatience in the developed nations was stated by Senator Daniel Patrick Moynihan, former U.S. Ambassador to the United Nations:

. . . do the developing nations understand that by entering into the (Law of the Sea) negotiations, and remaining faithful with them, the United States

and the western nations generally have agreed to negotiate for, and in the bargaining sense, to pay for rights which exist in the absence of a treaty? . . . We did not have to do this. We have under existing international law . . . the perfect right to extract mineral resources from the deep ocean beyond the Continental Shelf. Moreover, we have the technology to do so. 60

PART 111: THE CONCEPT OF THE CONTINENTAL SHELF

Introduction

The object of the tense debate between the developed and developing nations in the UNCLOS 111 context is, of course, access to resources--manganese, copper, cobalt, nickel, zinc, chromium, and especially oil.⁶¹ The developed world needs these resources to fuel their economies, and the Third World nations need these resources to pay their oil debts and to get their beaten economies going. The non-oil producing Third World countries especially, depend as a group on balance-of-payments support from the private banking system; credits from commercial banks to these countries doubled from \$10 billion to about \$23 billion in two years.⁶² And there are signs that the non-oil producing Third World economies are threatening to collapse under the strain of debt.⁶³ A central factor in the New International Order equation is the Continental Shelf and the resources that lay beneath it. These resources, G-77 countries hope, will mean economic recovery.

The Continental Shelf: A Definition

The continental shelf has been described as

(t)he seaward portion of the extension of the continental land mass which begins with the upland coastal plain and extends seaward until a marked increase in slope occurs. Although the continental shelf actually consists of the entire continental structure beginning at approximately the 600-foot contour above sea level, only the submerged portion is of interest to those concerned with marine resources, and the term has come generally to refer only to that submerged portion. ⁶⁴

As a consequence of massive movements of landmass more than two hundred million years ago, an area, known as a continental margin ⁶⁵ has been created around each continent below sea level. This margin contains three major elements: the continental shelf, the continental slope and the continental rise. In global terms, the shelf and slope represent about 15 per cent of the total seabed area, with the rise representing about five per cent. Within the margin, it is believed that about 98 per cent of the petroleum resources of the seabed lie; about 75 per cent of those resources are believed to lie under the continental shelf and the continental slope. ⁶⁶ As noted before, the Truman Proclamation stated that the United States had jurisdiction over its continental shelf and was therefore free to pursue mineral exploitation of the shelf since the shelf was "an extension of the land mass of the coastal nation and thus naturally appurtenant to it. . ." ⁶⁷

But it was not the recognition of the continental shelf as a geographical or geological phenomenon that riveted interest on the potential of the shelf; the focus of the world attention has been

on the continental shelf as a legal entity, the shelf defined in a way that would clearly recite the specific boundary limitations and the specific legal rights of states within those boundaries.⁶⁸ The clearest attempt at a legal definition is contained in the 1958 U.N. Convention on the Continental Shelf.⁶⁹ By its terms, the convention in Article 1 states that the term continental shelf refers to

(a) . . . the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands. 70

Article 2 provides the coastal states with sovereign rights over the continental shelf; the states can explore and exploit the natural resources therein, i.e., "the mineral and other non-living organisms belonging to sedentary species."⁷¹

The 1958 U.N. Convention on the Continental Shelf has been criticized as inadequate and therefore unsatisfactory, by both G-77 and developed countries.⁷² In general the criticism turns on the Convention's failure to state what the outer limits of the shelf really are. An approximate G-77 view of the convention is that

. . . it defines the shelf in terms of a 200-metre depth or beyond that depth to where the superjacent waters admit of exploitability. Now the 200-metre test is a firm and definitive test, but the exploitability test is open-ended and operates to the disadvantage principally of the developing countries, because the exploitability test means that if you have the potential, the know-how to exploit then you have the potential to claim vast expanses of seabed.⁷³

Another study of the "exploitability" criterion suggests that if the sole barrier to national jurisdiction expansion is that of "exploitability", then the Convention "may inadvertently have sanctioned exclusive national jurisdiction over natural resources beyond the flat shelf, past the slope and rise into the very deep seabed itself."⁷⁴ The study further suggests that by virtue of the exploitability criterion, the whole seabed of the world "has been inchoately apportioned among coastal states, to the median line between the continents."⁷⁵ It also has been pointed out that although the Convention states that the shelf refers to "where the depth of the superjacent waters admits of. . . exploitation", there may be difficulties in the exploitation of the area stemming from causes not related simply to depth, i.e., even where depth is not an obstacle, exploitation may be impossible.⁷⁶

The question of limits was considered by the International Court of Justice (ICJ) in the North Sea Case.⁷⁷ A dispute arose between the Federal Republic of Germany on the one hand and Denmark and the Netherlands on the other, concerning a definition of the boundaries separating the adjacent states. What the North Sea Case contributed to the developing doctrine on the continental shelf was a clearer legal definition of the shelf. The ICJ said that a definition of the shelf should be based on the relationship between the mainland of the state and the resources of the submerged areas which can be regarded as the natural prolongation of the mainland: "The rights of the coastal state in respect of

the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist ipso facto and ab initio by virtue of its sovereignty over the land, as an extension of it in an exercise of sovereign rights⁷⁸ for exploration and exploitation of the natural resources. The right, the court stated, is an "inherent" right.⁷⁹ What this means is that until some new international rule is promulgated, the coastal states have exclusive jurisdiction over the exploitation of the non-living resources within their continental margins.

Article 76 of the ICNT/Rev. 1, attempts a different definition of the Continental Shelf.⁸⁰ It is said to combine a geomorphological definition of the shelf--related to the foot of the continental slope--with a limiting clause based on distance or a combination of distance and depth. Thus the attempt is to combine the positions of countries which stress the character of the shelf as a natural prolongation of the state's land territory, with the attitude of other states that feel there must be a limit to the extent of national jurisdiction of states with broad shelves.⁸¹

Article 76 provides that information on the limits of the continental shelf when it extends beyond the 200-mile exclusive economic zone, could be submitted by the coastal state to a Commission on the Limits of the Continental Shelf, established on the basis of equitable geographic representation.⁸² The commission could make recommendations to coastal States on matters related to the establishment of the outer limits of the shelf; the limits

established by the coastal States, taking into account those recommendations, "shall be final and binding." Article 77 of the ICNT is the same as Article 2 of the 1958 U.N. shelf convention, while Article 78, new to the text, provides that the coastal state's exercise of its rights over the shelf, "must not infringe, or result in any unjustifiable interference with, navigation and other rights and freedoms of other States."

Changes that have occurred or that have been proposed with respect to the continental shelf may be summarized thus: 1) The exploitability test is no longer a valid way of determining how the shelf is defined; technology has advanced rapidly since the convention came into force, thus the ability to exploit is no longer a valid or acceptable measure. 2) The North Sea case and other cases tried by the ICJ have established the nature of the jurisdiction which states have over their shelf areas--sovereign rights for the purpose of exploitation and exploration. 3) The right of the coastal state "to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources", does not include a right by the coastal state to construct installations for defense purposes. (Arguably, a state is not prohibited from constructing such installations, since the convention does not make any explicit statements about such installations, but it would appear that the "common heritage principle", if it could be made to extend in a limited way to the continental shelf area within a state's jurisdiction, would certainly erect a

barrier against a state's creating such installations.)⁸⁸ 4) The definition of the shelf in the ICNT, states that the shelf comprises the sea-bed . . . and areas that extend "beyond its territorial sea . . . or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. . ."⁸⁹ This criterion, a distance-bounded criterion, as one authority notes, "has nothing to do with the traditional and geophysical concept of the continental shelf," but is, instead, a reflection of "the fact that the coastal state would in any event be entitled to exercise sovereign rights over the bed and subsoil of its 200 miles exclusive economic zone."⁹⁰

But what of the continental shelf area that extends beyond 200 miles? Does a nation limit its jurisdiction to 200 miles of its own prolongation and yield the distance of its shelf beyond 200 miles for the use of other nations? These are some of the unsettled questions for Negotiating Group 6 as it enters the final phases of UNCLOS 111.⁹¹ The problem is especially momentous for the landlocked and geographically disadvantaged countries which have no shelf or have very little shelf area.⁹²

G-77 and the Continental Shelf

As has been discussed above, G-77 states have viewed unity of action as a firm principle and in a variety of fora, they have held to that principle. With respect to the continental shelf, however, interests among G-77 states have tended to diverge and the

question has been whether a compromise is practicable or reachable.⁹³

With respect to the matters addressed by The First Committee, G-77 states have been in general unified.⁹⁴ G-77 countries wish to see established a strong International Seabed Authority, with centralized power to regulate the exploration and exploitation of the common heritage area. G-77 countries want to ensure that if the mining of the seabed becomes economically viable, revenues accrued from such mining is distributed by the Authority, under a formula that favors developing countries.⁹⁵

With respect to the continental shelf, there has been no G-77 position, however. The issue is critical since for G-77, the continental shelf figures as a central factor in the New International Economic Order equation. Discussions with Dr. Kenneth Rattray,⁹⁶ Rapporteur General of the Ninth Session of the Conference, and Mr. Patrick Robinson,⁹⁷ a member, with Dr. Rattray, of the Jamaican delegation to UNCLOS III, reveal the following:

1. The amount of shelf area a state claims is determined by how much shelf area the state has. Hence, a country with a wide expanse of ocean, such as Chile, Argentina, Canada and New Zealand, would be interested in a 200-mile economic zone, while a country that is landlocked or geographically disadvantaged, would have no such interest since very little would be gained from such a zone. The countries with a broad coastline would be in favor of an extended shelf area; the countries with no coastline would be for a restricted shelf area. There are G-77 countries in both

categories.

2. The G-77 states that are either landlocked or geographically disadvantaged take the position that if a state already has 200 miles of seabed, it does not need to have jurisdiction over any wider seabed area and the continental shelf area would be subsumed within the 200-mile exclusive economic zone, at the 200-mile point.

3. The G-77 states referred to as landlocked and geographically disadvantaged take the view that a cutoff point--200 miles--should be declared and the matter should end there; such an approach places a premium on certainty: all nations would know precisely where national jurisdiction begins and where it ends and, ipso facto, where international jurisdiction takes over.

PART IV: THE MOVEMENT TOWARD COMPROMISE ON THE
CONTINENTAL SHELF ISSUE

If the continental shelf is defined as a geographical entity, then it must be viewed as an entity which has a starting point and an end point related not to a legal concept but to a concept rooted in physical geography and geology. On those terms, a 200-mile cutoff may be viewed as arbitrary and even unfair. The opposite view is that there is virtue in establishing a cutoff point: it is certain and simple; one knows where to start and one knows where to stop.

Ireland in 1978 suggested a "compromise" formula:

"For the purpose of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(a) A line delineated . . . by reference to the outermost fixed points at which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(b) A line delineated . . . by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.⁹⁸

⁹⁹

G-77 members interviewed by this author believe that a compromise will have to be along these lines:

It will be a consensus that will accord to the coastal state jurisdiction over the shelf within a certain defined area beyond 200 miles, but in which area the coastal state will be obliged to contribute a part of its earnings from the exploitation of minerals of that area to the international community.¹⁰⁰

Interviewed several months later at the start of the Ninth Session of the Conference, the interviewees said:

What will emerge as the most-favored position among the Group of 77 countries is something approximating the Soviet proposal which would extend the continental shelf beyond 200 miles to an ultimate cutoff point of probably another 100 miles, making it 300 miles in all. Among the broad shelf countries that proposal has gained wide support.¹⁰¹

Where the coastal state explores and exploits beyond the cutoff point, it has to funnel funds earned through that exploitation through the International Seabed Authority, which would then distribute the funds in accordance with a revenue sharing formula.¹⁰² Article 82 of the ICNT, concerning payments and contributions with respect to the exploitation of the continental shelf beyond

200 miles, states conditions under which the revenues thus earned would be shared.¹⁰³

Item 2 of the Article states:

The payments and contributions shall be made annually with respect to all production at a site after the first five years of production at the site. For the sixth year, the rate of payment or contribution shall be one per cent of the value or volume of production at the site . . .¹⁰⁴

Item 3 favors developing countries:

A developing country which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource.¹⁰⁵

The aim of Article 82 is to ensure that revenues earned benefit all nations, "particularly the least developed and landlocked among them."¹⁰⁶ Under such a principle, G-77 countries such as Argentina, India, and Chile as well as developed countries such as Canada, the United States and New Zealand, would make payments to such poor landlocked countries as Nepal, Afghanistan and Botswana, and also to such developed landlocked countries as Switzerland and Austria. The interests of G-77 members and the interests of the developed countries criss-cross at several points; under this principle of revenue sharing, geography is of much greater importance than legal, political and economic ideology. The continental shelf is where the oil is, but legal, political, and economic determinations are not enough to alter facts of geography and massive earth movements over time; hence the need for compromise contained in the revenue sharing plan.

CONCLUSION

This article has attempted to examine several aspects of the work of the Group of 77 in the context of UNCLOS 111. The Group, the article has stated, views unity as a guiding principle, and has used that unity to press a clearly articulated need for a New International Economic Order on the consciences of the entire world as, as importantly, to ensure that the need is outlined and put into operational terms in such documents as the ICNT. The article also has shown where the Third World G-77 influence has been clearly felt in UNCLOS 111; many of the important committees at the conference were headed by G-77 representatives. The article has urged that the G-77 unity has remained intact, and that when, as in the case of the discussion on a G-77 attitude on the continental shelf, there has been evidence of a "breakdown" in that unity, G-77 membership has attempted to find a "compromise" agreement.

The extent to which G-77 has made a difference in the UNCLOS 111 deliberations will be shown when the final draft of the convention is signed later this year. Perhaps because the law of the sea is changing rapidly and fundamentally, it can be expected that the convention will be a dynamic entity: that it will be subject to change and reinterpretation as new circumstances arise. It seems fairly certain that as these changes occur, G-77, as a group, will continue to meet the challenge of change and to continue to work vigorously on behalf of the

developing nations of the world.

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NOTES

1. The organizational meeting of the Third United Nations Conference on the Law of the Sea (UNCLOS 111) was held at UN Headquarters in New York December 3-15, 1973, and the first substantive session was held in Caracas June 20 to August 29, 1974. Stevenson and Oxman, The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session, 69 ADIL 1 (1975) at 1 (Hereinafter cited as Stevenson and Oxman.)
The Conference hopes to complete the international convention on the law of the sea by the end of the second session of a two-part Ninth Session; the first part of the Ninth Session ended Friday, April 11, 1980.
2. See UN SEA/376 (27 February 1980) at 1
3. The term, Group of 77 (G-77) describes the original 77 Third World and developing countries which got together in an effort to foster their own interests through a variety of fora. The name G-77 has been retained although the Group now includes 119 countries including Yugoslavia, Malta and Rumania. See A.O. Adede, The Group of 77 and the Establishment of the International Sea-Bed Authority, 7 Ocean Development and Int. Law J. (The Jou. of Marine Affairs) 31 (1979).
The term Third World is, for many commentators, a contentious term. See, e.g. P. Jalee, The Pillage of the Third World (1965), at 2, where he says in part: "Some readers may be surprised to find me using, even in the title, the expression "Third World" of which I have been severely critical. This expression . . . implies that the countries covered by it depend neither on the capitalist nor socialist system, that they belong to neither of the other two "worlds", which is obviously wrong. . ." An attempt at a definition appears in this Journal: See Greene, Toward A Definition of The Third World.
4. Interviews were conducted with two members of the Jamaica delegation to UNCLOS 111. Mr. Patrick L. Robinson, Senior Assistant Attorney General, a senior member of the delegation, and a representative on the UN Sixth Committee, a body of legal representatives of member states, was interviewed twice: once in New York City (December, 1979) and once by phone (March 1980). Also interviewed (and on the record) was Dr. Kenneth Rattray, leader of the Jamaica Delegation, and Rapporteur General at the Ninth Session of the Conference. He was interviewed by phone in March, 1980. Informal discussions were held with other delegates and

a former UNCLOS representative, Elijah Legwaila, now an LLM student at Harvard Law School. It is worthy to note that the Jamaican delegates have been very active in discussions in UNCLOS III. See, for example, Adede, The System for Exploitation of the "Common Heritage of Mankind" at the Caracas Conference, 69 AJIL 31, 38 (1975).

5. See, e.g., W.A. Lewis, The Evolution of the International Economic Order (1977); J. Galtung, Toward Self-Reliance and Global Interdependence; Joint Project in Environment and Development 3, (1978); M. ul Haq, Reactivating The North-South Dialogue (1978)
6. M. ul Haq, Reactivating the North-South Dialogue, 1-3 (1978).
7. See generally, A.O. Adede, The Group of 77 and The Establishment of the International Sea-Bed Authority, 7 Ocean Development and International Law (The Journal of Marine Affairs) 31 (1979).
8. See Friedman & Williams, The Group of 77 at the United Nations: An Emergent Group in the Law of the Sea, 16 San Diego L.R. 555, 557 (1979). (Hereinafter cited as Friedman); See generally, P. Worsley, The Third World (1977); See also, Beloff, The Third World and the Conflict of Ideologies, in THE THIRD WORLD: PREMISES OF U.S. POLICY (W. Scott Thompson ed. 1978).
9. See P. Worsley, The Third World, 255-256 (1977), wherein is quoted the words of Haile Selassie, former president of Ethiopia, who expressed the faith of the developing nations in the United Nations, thus: "For us, the small, the weak, the under-developed, there is nowhere else to go. If we turn to one or the other of the major power groups, we risk engorgement, that gradual process of assimilation which destroys identity and personality. We must, from force of circumstances, look to the United Nations, however imperfect, however deficient . . ."
10. See Friedman, note 8 supra, at 558-559.
11. Id., at 559.
12. See Report of the Conference on Economic Cooperation Among Developing Countries, Held at the Conference Centre, Ministry of Foreign Affairs, Mexico City, 13-22 September, 1976. (Hereinafter cited as Report).
13. The statement advocating the establishment of the New International Economic Order is contained in the Declaration on the Establishment of a New International

Economic Order, G.A. Res. 3201, 29 U.N. GAOR (6th Spec. Sess.), Supp. (No. 1), U.N. Doc. A/9555 (1974). See also, Permanent Sovereignty over Natural Resources, G.A. Res. 3171, 28 U.N. GAOR, Supp. (No. 30), U.N. Doc. A/9030 (1974).

14. See G.A. Res. 3201, 29 U.N. GAOR (6th Spec. Sess.), Supp. (No. 1), U.N. Doc. A/9555 (1974).
15. See Report, note 12 supra.
16. See note 1 supra.
17. See L.B. Sohn, International Law: Law of the Sea, (1979) (unpublished book, at Harvard International Legal Studies Library), at GI-1, for good, brief, discussion of the freedom of the sea. (Hereinafter cited as Sohn). See, also, A.O. Adede, Law of the Sea--Developing Countries' Contribution to the Developments of the Institutional Arrangements for the International Sea-Bed Authority, 4 Brooklyn J. Int'l L. 1 (1977) at 2. (Hereinafter cited as Adede/LOS).
18. Adede/LOS, note 17 supra, at 2-3.
19. Id. at 3.
20. 14 Int. Legal Materials 93, 108 (1975).
21. Id.
22. Franck, Kennedy, Trinko, An Equitable Regime for Seabed and Ocean Subsoil Resources, 4 Denver J. Int'l. L. and Policy 161, 162 (1974). (Hereinafter cited as Franck). See also Sohn, note 17 supra, at GI-2.
23. See Adede/LOS, note 17 supra, at 3.
24. See Sohn, note 17 supra, at GI-2.
25. Id.
26. See UN SEA/376 (1980), at 28.
27. See R.P. Anand, Legal Regime of the Sea-bed and the Developing Countries (1975) at 189.
28. See Stevenson and Oxman, note 1 supra, at 3 for an excellent discussion of the organization of the Law of the Sea Conference. See also, Oxman, The Third United Nations Conference on the Law of the Sea (1978), 73 ADIL 1 (1979) at 3-24.
29. See generally, Stevenson and Oxman, note 1 supra, at 6.

30. See UN SEA/376 (1980), at 25-27.
31. Id. See also Stevenson and Oxman, note 1 supra.
32. From interview with Rapporteur General, Dr. Kenneth Rattray, a member of the Jamaica Delegation to the Conference on the Law of the Sea.
33. See Stevenson and Oxman, note 1 supra, at 4, for a useful discussion of the "gentleman's agreement".
34. Id.
35. 17 Int. and Comp. L. Q., 527 (1968).
36. Id.
37. Id. See also Charney, United States Interests in a Convention on the Law of the Sea: The Case for Continued Efforts, 11 Vand. J. Transnat'l L. 39, 55 (1977).
38. See Adede/LOS, note 17 supra, at 5-9. See also T. Beuttler, The Composite Text and Nodule Mining--Over-regulation as a Threat to the Common Heritage of Mankind, 1 Hastings Int'l. and Comp. LR 167, 168 (1977). (Herein-after cited as Beuttler).
39. See Adede/LOS, note 17 supra, at 6.
40. Id.
41. See note 36 supra.
42. G.A. Res. 2749, 25 U.N. GAOR, Supp. (No. 28) 24, U.N. Doc A/8028 (1970), declared, the seabed the common heritage of mankind and asking for an international regime which should ensure the "equitable sharing by States in the benefits derived therefrom."
43. Id.
44. Article 136 of the Informal Composite Negotiation Text, which has undergone revision at the Ninth Session of UNCLOS 111, Part 1, and will again be revised in Geneva later this summer, states: "The Area and its resources . . . are the common heritage of mankind." Articles 136-142 discuss the principles governing The Area.
45. G.A. Res. 2574(d), 24 U.N. GAOR, Supp. (No. 30) 11, U.N. Doc. A/7630 (1969) states that: "Pending the establishment of the . . . international regime: (a) States and persons . . . are bound to refrain from all activities of exploitation of the resources of

the area of the sea-bed and ocean floor . . . beyond the limits of national jurisdiction. (b) No claim to any part of the area or its resources shall be recognized." The vote was 69 for, 28 against and 28 abstentions. "Against it voted, among others, the bulk of the industrialized Western states and the USSR." Noted in Hauser, An International Fiscal Regime for Deep Seabed Mining: Comparisons to Land-Based Mining, 19 Harvard Int'l LJ 759, 762 n. 16 (1978).

46. See note 36 supra, at 527.
47. Id.
48. See Adede, The System for Exploitation of the "Common Heritage of Mankind", at the Caracas Conference, 69 AJIL 1, 31 n. 1 (1975).
49. See J. Tinbergen, Reshaping the International Order, 305-317 (1976).
50. See Proceedings of the 3d International Ocean Symposium, (1978) Tokyo, Japan, The Deep Seabed and Its Mineral Resources, at 6-12. (Hereinafter cited as Proceedings 78).
51. Id.
52. Id. at 25-33.
53. See Adede, Sea-Bed Mining: Developing Countries' Expectations from and Responses to the Regimes Proposed by the Law of the Sea Conference, (paper presented at the Massachusetts Institute of Technology Seminar on Sea-bed Mining, January 12, 1979) (Hereinafter cited as Adede/Mining).
54. Id. at 7-8.
55. Proceedings 78, note 52 supra, at 28. See also Beuttler, note 39 supra, at 171.
56. Id.
57. Id. at 192. See also 95th Cong. 2nd Sess. H.R. 3350, 28 July 1978.
58. Id.
59. The resolution signed by Ambassador Mario Carias of Honduras, Chairman of G-77, was titled: The question of unilateral legislation on sea-bed mining. UN A/CONF. 62/94 (19 October 1979).
See also a discussion of a similar statement issued by

- G-77 in Oxman, The Third United Nations Conference on the Law of the Sea: The Seventh Session (1978), 73AJIL 1, 32 (1979).
60. See Beuttler, note 39 supra, at 193. Senator Moynihan gave the speech at the launching of the U.S.S. nuclear submarine New York City, in Groton, Conn. (June 18, 1977).
61. See Beuttler, note 38, supra, at 168. Also see Adede/Mining, note 53 supra, at 1.
62. See P. Hartland-Thunberg, Oil, Petrodollars and the LDC's Financial Analysts Journal, (July-August 1977) at 55.
63. Id. at 55-58.
64. See H.G. Knight, The Law of the Sea: Cases, Documents, and Readings, 451 (1978).
65. See Proceedings and Papers, 5th Commonwealth Law Conference Edinburgh, 421-433 (1977) (Hereinafter cited as Commonwealth).
66. Id.
67. Presidential Proclamation No. 2667, 28 Sep. 1945, 59 Stat. 884 (1945); 10 Fed. Reg. 12303; (1943-48) 3 CFR 67; 13 DSB 485 (1945).
68. See R.P. Anand, Legal Regime of the Sea-bed and the Developing Countries (1975) at 31 et seq. (Hereinafter cited as Anand).
69. 49 UNTS, 311, 15UST 471, TIAS No. 5578, in force June 10, 1964, and, as of January 1, 1976, signed by 54 member states.
70. Id.
71. Id.
72. Whiteman, Conference on the Law of the Sea: Convention on the Continental Shelf, 52 AJIL, 629, 636-640 (1958). See also Commonwealth, note 65 supra, at 428.
73. From an interview with Patrick L. Robinson, see note 4 supra. (Hereinafter cited as Robinson).
74. See Franck, note 22 supra, at 167.

75. Id.
76. See note 64 supra at 479.
77. See Commonwealth note 65 supra, at 429.
78. Id.
79. Id.
80. UN A/CONF. 62/WP. 10 Rev. 1 (1979), at 53.
81. See UN SEA/360 (1979) at 14.
82. Id.
83. Id.
84. See UN SEA/360 (1979), at 14.
85. See Sohn, note 17 supra, at VI-34.
86. See Commonwealth, note 65 supra, at 429-430.
87. See Knight, note 64 supra, at 503.
88. See Commonwealth, note 65 supra, at 449.
89. Id. at 453.
90. Id.
91. Negotiating Group 6 works on the definitional problems of the outer limits of the continental shelf and revenue sharing in the area beyond 200 miles.
92. For a discussion of the problems of the landlocked and geographically disadvantaged states, see Stevenson and Oxman, note 1 supra, at 19.
93. From interview with Dr. Kenneth Rattray. (Hereinafter cited as Rattray). See note 4 supra.
94. See Friedman, note 8 supra, at 564-569. See also Hauser, An International Fiscal Regime for Deep Seabed Mining: Comparisons to Land-Based Mining 19 Harvard Int'l LJ 759, 763 (1978).
95. See Adede/Mining, note 55 supra. Also see text of ICNT, Article 82, No. 3.
96. Rattray, see note 4 supra.
97. Robinson, see note 4 supra.

98. See Sohn, note 17 supra, at VI-34.
99. See note 4 supra.
100. Id.
101. Id.
102. See text of ICNT, Article 82.
103. Id.
104. Id.
105. Id.
106. Id.
107. See Sohn, note 17 supra, at GI-6.