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REPORT BY THE

# Comptroller General

*9397*

OF THE UNITED STATES

## The Law Of The Sea Conference-- Status Of The Issues, 1978

Since 1958 the United Nations has convened three Law of the Sea conferences in an attempt to codify state practices regarding the oceans and to create an international oceans regime compatible with a changing international order. Seven sessions of the third Law of the Sea conference have been held between 1973 and 1978.

This report discusses the issues as they stood at the end of the 1978 New York conference session. It was requested by the House Committee on Merchant Marine and Fisheries.

*HSE 02702*



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*Report*

ID-79-6  
MARCH 9, 1979





COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-145099

The Honorable John M. Murphy, Chairman  
Committee on Merchant Marine and Fisheries *HSE 02700*  
House of Representatives

Dear Mr. Chairman:

This is our report in response to your November 17, 1977, request that we update our report on U.S. participation in the Law of the Sea conference and the status of the issues as they were at the beginning of the 1977 New York conference session. Subsequently, we agreed with your office to report on U.S. participation in the conference and to cover the issues as they stood at the end of the 1978 New York conference session.

As arranged with your office this report will be distributed to other Committees and Members of Congress and to other interested requesters. Copies are being sent to the Director, Office of Management and Budget; the Secretary of State; and the Chairman, National Security Council Inter-agency Group for Law of the Sea.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James B. Stacks".

Comptroller General  
of the United States



COMPTROLLER GENERAL'S  
REPORT TO THE  
COMMITTEE ON MERCHANT  
MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES

THE LAW OF THE SEA  
CONFERENCE--STATUS OF  
THE ISSUES, 1978

D I G E S T

Of the 156 national entities in attendance at the Law of the Sea conference, 119 are developing nations. ~~Both developed and developing nations in general~~ subscribe to the principle that the oceans beyond national jurisdiction are the common heritage of mankind, a principle supported by the United States. However, the interpretation each group has of this principle differs. (See pp. 5 and 6.)

OBJECTIVE

The objective of the U.S. delegation is to achieve a comprehensive treaty that protects essential U.S. interests, including assured access to seabed minerals; maintenance of high seas freedoms of navigation and overflight and related rights; transit through, over, and under straits used for international navigation; broad acceptance of international standards for conservation and optimum use of marine living resources; coastal state jurisdiction over continental margin resources beyond 200 miles; research on a free and broad basis; and protection of the oceans from all forms of pollution.

The following principal issues were discussed at the 1977 and 1978 conference sessions.

ASSURED ACCESS TO MINERALS

Assured access to mineral resources of the deep seabed for private contractors or states parties under reasonable terms and conditions is central to the success of a future treaty. This concept includes a system of financial arrangements which does not create burdens for prospective ocean miners. Unless this condition is met, the treaty discussions stand little chance of success.

ID-79-6

## The mechanism

An International Seabed Authority would be established under the treaty to administer the common heritage concept in the best interest of mankind. The Authority would include a supreme body known as the Assembly, an executive arm known as the Council, and an operating arm known as the Enterprise.

The one-nation, one-vote concept in the Assembly would place control of the Assembly in the hands of a two-thirds majority of nations. This could be inimical to U.S. interests if the Assembly is given power to override guidelines set forth in the treaty. Within the structure of the Assembly as it has evolved in negotiations to date, it would be difficult for developed countries to mobilize effective support on key issues. (See p. 7.)

Developing and developed nations hold divergent views on the purpose of the Council. Developing nations regard the Council as an executive committee of the Assembly with representation from both regional groups and special interest groups like miners or land-based mineral producers. Developed countries, on the other hand, look to the Council to counterbalance the Assembly by protecting the special interest groups. (See pp. 7 and 8.)

The Enterprise would undertake commercial exploitation of seabed resources in a manner similar to that of private corporations or states parties. (See pp. 8 and 9.)

## Sources of funds

The International Seabed Authority will have numerous sources of funds, such as various types of payments made by contractors or others exploring or exploiting the seabed mineral resource, voluntary contributions, excess revenues generated by operations of the Enterprise, and loans from commercial sources or international financial institutions. (See pp. 20 to 22.)

## Obligations of contractors

The obligations of private and/or state contractors to the Authority can be characterized as monetary payments, technology transfers, and production restraint. At the end of the 1978 New York conference session, a negotiating group committee chairman proposed a schedule of mandatory fees for commercial production. (See app. V.) There is no consensus on these fees. One difficulty with the technology transfer provisions is that not all contractors may be in a position to sell all technology used in their operations because they simply may not own the technology. Another problem is how to resolve disputes about whether the contractor has met this obligation. (See pp. 12 to 20.)

Production restraint provisions--limiting the amount of minerals that can be mined--are being negotiated to protect and preserve the investments of land-based producers. Recognized problems in drafting such provisions include the possibility of a scarcity of minesites available for distribution, applicability of production controls to the Enterprise, and whether some form of quota system would be considered in awarding contracts. (See pp. 18 to 20.)

## DISPUTE SETTLEMENT

The treaty text currently proposes four methods of dispute settlement--the International Court of Justice, the Law of the Sea Tribunal and its Seabed Disputes Chamber, arbitration procedures, and a special arbitral tribunal made up of experts. The parties are obligated to seek some peaceful means of settlement but the method selected depends on both the type of judicial issue and the preference of the parties.

The review powers of the Seabed Disputes Chamber may be limited because of a treaty provision which states that the Chamber cannot challenge the Authority's "legislative" or discretionary acts or determine whether other Assembly acts conform to treaty provisions.

However, this Chamber could review cases alleging that the Authority misused or abused its powers.

Still to be resolved are several major issues-- (1) the extent to which the Seabed Chamber or an arbitral tribunal would be entitled to review any abuse of regulatory or discretionary powers exercised by the Authority, (2) whether commercial arbitration would be available as an alternative method for handling disputes currently considered under the jurisdiction of the Seabed Disputes Chamber, and (3) how that Chamber would be constituted. (See pp. 9 to 11.)

#### OUTER LIMIT OF CONTINENTAL SHELF

There is a widespread agreement on a 200-mile economic zone where coastal states would have certain exclusive rights, but opinions differ as to what the boundaries of the outer limit of the continental shelf beyond 200 miles should be. The so-called Irish formula had broad support (including U.S.), but a distance formula proposed by the Russian delegation and supported by the East Europeans and Cuba during the 1978 Geneva conference session made it impossible to reach agreement on this issue during the 1978 sessions. (See pp. 24 to 27.)

#### MARINE ENVIRONMENT

The major marine environment concern is accommodation of navigation and environmental interests. During the 1978 sessions, as a result of efforts by the United States, France, and Canada, revised texts were proposed which would (1) provide protection to endangered species and fragile ecosystems from vessel source pollution, (2) clarify the obligation to establish ship routing systems which would protect the environment, (3) require prompt notice to a coastal state of events that could result in pollution off its coasts, and (4) remove certain restraints on the powers of a coastal state to enforce antipollution measures in its territorial sea and economic zone.



The U.S. delegation indicated its willingness to conclude negotiations on pollution if essential amendments reported to a conference committee chairman during the 1978 session were retained. (See pp. 33 and 34.)

#### SCIENTIFIC RESEARCH

The marine scientific research text provides for coastal state consent for marine scientific research in the economic zone--a consent regime. During the 1978 New York session, the United States introduced a proposal which included changes to 14 articles, changes characterized by the U.S. delegation as being editorial or clarifying in nature. However, several delegations believed that certain of the proposed changes altered the fundamental character of the composite text. (See pp. 34 to 37.)

#### OTHER ISSUES

Other issues which were discussed at the 1978 conference sessions were

- a revised text was agreed upon to ensure conservation of anadromous stocks (see pp. 29);
- progress was made with respect to the right of access to the living resources of the economic zone by landlocked and geographically disadvantaged states (see p. 32);
- progress was made in gathering support for clarifying the article on marine mammals (see p. 29);
- deadlock continued on the question of delimitation of the exclusive economic zone and the continental shelf between adjacent and opposite states (see p. 30); and
- conciliation was generally agreed upon as a method to aid in resolving fisheries disputes (see p. 30).

## DOMESTIC IMPLICATIONS

Increased foreign fishing off the U.S. coast and the slow progress of the Law of the Sea conference caused the Congress to take action to enact the Fishery Conservation and Management Act of 1976 to conserve and manage fish stocks within 200 miles of the United States. (See p. 29.)

Extension of the territorial sea from 3 to 12 miles pursuant to a Law of the Sea treaty may create disputes between U.S. Federal and State jurisdictions. (See pp. 31 and 32.)

## AGENCY COMMENTS

Representatives of the Office of the Law of the Sea Negotiations, Department of State, reviewed a draft of GAO's report. Their comments were considered in the preparation of the report.

## C o n t e n t s

|          | <u>Page</u>   |    |
|----------|---|----|
| DIGEST   | i   |    |
| CHAPTER  |   |    |
| 1        | INTRODUCTION  | 1  |
|          | 1977 New York session   | 2  |
|          | 1978 Geneva and New York session  | 3  |
|          | U.S. interests  | 3  |
|          | Scope of review   | 4  |
| 2        | DEEP SEABED ISSUES--COMMITTEE I   | 5  |
|          | International Seabed Authority  | 6  |
|          | Dispute settlement  | 9  |
|          | Obligations of private/state<br>contractors to the Authority                                  | 12 |
|          | Financial structure of the<br>Authority/ Enterprise system                                    | 20 |
|          | Domestic legislation  | 22 |
| 3        | GENERAL ISSUES--COMMITTEE II  | 24 |
|          | Economic zone   | 24 |
|          | Fisheries   | 27 |
|          | Dispute settlement  | 30 |
|          | Territorial sea and straits   | 31 |
|          | Landlocked and geographically disad-<br>vantaged states                                       | 32 |
| 4        | MARINE ENVIRONMENT AND SCIENTIFIC RESEARCH<br>ISSUES--COMMITTEE III                           | 33 |
|          | Marine environment  | 33 |
|          | Marine scientific research  | 34 |
| APPENDIX |   |    |
| I        | Letter dated November 17, 1977, from House<br>Committee on Merchant Marine and Fisher-<br>ies | 38 |
| II       | Related GAO reports   | 39 |
| III      | Powers and functions of the Assembly  | 41 |
| IV       | Composition and voting of the Council   | 43 |
| V        | Status of proposed contractor fees  | 45 |

ABBREVIATIONS

|      |                                     |
|------|-------------------------------------|
| GAO  | General Accounting Office           |
| G-77 | Group of 77                         |
| ICNT | Informal Composite Negotiating Text |

## CHAPTER 1

### INTRODUCTION

Since 1958 the United Nations has convened three Law of the Sea conferences in an attempt to codify national practices regarding the oceans and to establish an international oceans regime compatible with a changing international political order.

In 1958 the first U.N. Conference on the Law of the Sea, participated in by 86 nations, adopted a series of four conventions: the (1) Convention on the Territorial Sea and the Contiguous Zone, (2) Convention on the High Seas, (3) Convention of Fishing and Conservation of the Living Resources of the High Seas, and (4) Convention on the Continental Shelf. All except the fishing convention have achieved a recognized status in contemporary international law and have contributed to the current Law of the Sea negotiations. The 1958 Law of the Sea conference failed to reach agreement on the maximum breadth of the territorial sea, the contiguous fishing zone, and the seaward boundary of the continental shelf. This gap in conventional law, as well as the development of new technology and mining expectations, has accelerated unilateral claims over offshore resources.

The second conference, held in 1960, again failed to reach agreement on the major issues--breadth of the territorial sea and establishment of an adjacent fishing zone.

Since the 1960 conference, technology for mining the deep seabed has been developed and the need for greater protection of the marine environment has become apparent. In 1968 the United Nations established a permanent committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction (Seabed Committee), and in 1970 the Seabed Committee was given responsibility for organizing a third Law of the Sea conference. The third conference was expected to produce a comprehensive treaty covering among other things the territorial sea and straits, high seas, living resources, mineral resources of the continental shelf and the deep seabed, protection of the marine environment, marine scientific research, and dispute settlement.

The first session of the third Law of the Sea conference was an organizational meeting held in New York City in December 1973.

The second session was held in Caracas, Venezuela, from June 20 to August 29, 1974, and was attended by delegates from about 150 countries. Conference issues were allocated to three committees.

- Committee I, the legal regime to be established for mining the deep seabed.
- Committee II, the territorial sea, exclusive economic zone, straits, continental margin, archipelagos, problems of landlocked states, and other issues.
- Committee III, marine scientific research and environmental protection.

An informal group discussed dispute settlement. Although conference participants failed to agree on a negotiating text, they identified the major issues that were to form the basis of future discussions toward a comprehensive treaty.

On March 6, 1975, we issued a report to the Congress on this session, entitled "Information on United States Ocean Interests Together with Positions and Results of the Law of the Sea Conference at Caracas" (ID-75-46).

At the end of the third session held in Geneva from March 17 to May 10, 1975, the conference President issued the Single Negotiating Text. The fourth session held in New York from March 15 to May 7, 1976, resulted in revision of this text. A fifth session was held from August 2 to September 17, 1976, but little progress was made. Our report to the Congress, entitled "Results of the Third Law of the Sea Conference 1974 to 1976" (ID-77-37, June 3, 1977), discussed the outcome of negotiations as of September 17, 1976. (See app. II for a list of all related GAO reports.)

#### 1977 NEW YORK SESSION

A sixth session was held from May 23 to July 15, 1977. This session produced the Informal Composite Negotiating Text (ICNT). While some substantive work was accomplished, the session ended with strong concerns that the United States and other developed nations were denied due process in the final wording of the Committee I negotiating text. The conference agreed to reconvene in Geneva from March 28 to May 12, 1978.

## 1978 GENEVA AND NEW YORK SESSION

At the outset of discussions at the seventh session, the conference was deadlocked by a 2-week-long procedural battle over whether the President of the conference would be retained since he was no longer a member of a country delegation. The issue was resolved with the President being retained. The balance of the session was predominately spent in negotiations by seven small groups organized to deal with issues identified as "hard core."

Three groups focused on deep seabed mining--the first on exploration and exploitation policy and technology transfer issues, the second on financial arrangements of the proposed seabed regime, and the third on the composition, powers, and functions of the proposed International Seabed Authority. Two groups dealt with issues related to the exclusive economic zone--one discussed the access rights to living resources of landlocked and geographically disadvantaged states in the exclusive economic zone, and the other discussed dispute settlement procedures in the zone. A sixth group attempted to define the outer limits of the continental shelf and the question of payments and contributions, and a seventh group worked on texts dealing with delimitation of maritime boundaries between adjacent and opposite states.

The 1978 session was held in Geneva for 8 weeks and then continued in New York for an additional 4 weeks. This session resulted in the creation of numerous proposals but no formal revision of the ICNT. The conference decided to reconvene for an eighth session in Geneva in March 1979.

### U.S. INTERESTS

Although the United States has a variety of interests at stake--maintaining high seas freedom of navigation and overflight and related rights, assuring conservation and optimum use of marine living resources, supporting coastal state jurisdiction over continental margin resources beyond 200 miles with revenue sharing for benefit of developing countries, establishing standards for pollution protection, and creating a free and open marine scientific regime--Ambassador Elliot L. Richardson felt that the success of the conference depended on "unravelling the tangle of conflicts surrounding the seabed mining issue." A U.S. concern is the assured access to seabed minerals. According to the Ambassador, as a compromise, the U.S. position will continue to be to achieve access through a

"\* \* \* parallel system of mining which attracts investment, is economically viable over the long term, and accommodates the just claims of the developing world. This system should ensure access and tenure by all qualified miners, set realistic production controls and financial arrangements, provide for transfer of technology under fair terms and conditions, and be administered by an international body which makes decisions on a basis that recognizes the important interests at stake in investment, production, and consumption.

"The sum of other benefits yielded by the conference, while numerous and impressive, would not be enough to persuade us to accept a seabed mining regime which does not meet these criteria. Whether such a regime is negotiable remains to be determined."

#### SCOPE OF REVIEW

We reviewed documents and reports on U.S. ocean policy, plans and preparations for the third Law of the Sea conference sessions at the Department of State, and U.S. delegation reports on each of the sessions. The review was undertaken to update our previous reports on the Law of the Sea and identifies the major issues at the close of the seventh session.

We attended U.S. advisory committee meetings before, during, and after the seventh session and interviewed several of its members. In addition, we monitored both the Geneva and New York meetings of the seventh session.

Written comments were not requested from the Office of the Law of the Sea Negotiations, Department of State, but we did discuss this report with officials of that office and considered their comments in its preparation.



## CHAPTER 2

### DEEP SEABED ISSUES--COMMITTEE I

Assured access to mineral resources of the deep seabed for private contractors or states parties under reasonable terms and conditions is central to the success of a future treaty. A system of financial arrangements which does not create burdens for prospective ocean miners is a basic requirement. Unless these conditions are met, the treaty discussions stand little chance of success.

U.S. dependence upon foreign sources of raw materials has been a constant concern in Government and academic circles for some years. Therefore, access to a secure and affordable source of raw materials is fundamental to the stability of an industrial society and makes deep seabed mining such an important issue. The combination of virtually inexhaustible quantities of raw materials and the technological ability to retrieve and use them in an economically competitive manner make the oceans an extremely attractive source of future mineral supplies.

The United States and its industrialized allies find the possibility of reducing their dependence on limited numbers of foreign sources for commodities attractive and, indeed, necessary to ensure their economic stability, but they comprise only a few voices in the global community. Of the 156 national entities in attendance at the Law of the Sea conference, 119 are developing nations.

In a 1967 statement at the United Nations, Ambassador Pardo of Malta proposed that seabed resources be regarded as the "common heritage of mankind" and that this area not be subject to national appropriation. Two years later the General Assembly passed the Moratorium on Seabed Exploration and Exploitation (Resolution 2574-D (XXIV)), which called on all states to refrain from seabed resource exploitation until the establishment of an international seabed regime which would administer the area in the interest of all mankind. The General Assembly Declaration of General Principles on the Seabed (Resolution 2749 (XXV)), adopted in 1970, endorsed the common heritage principle but included no definition of the area itself. The United States and many other nations opposed the Moratorium Resolution.

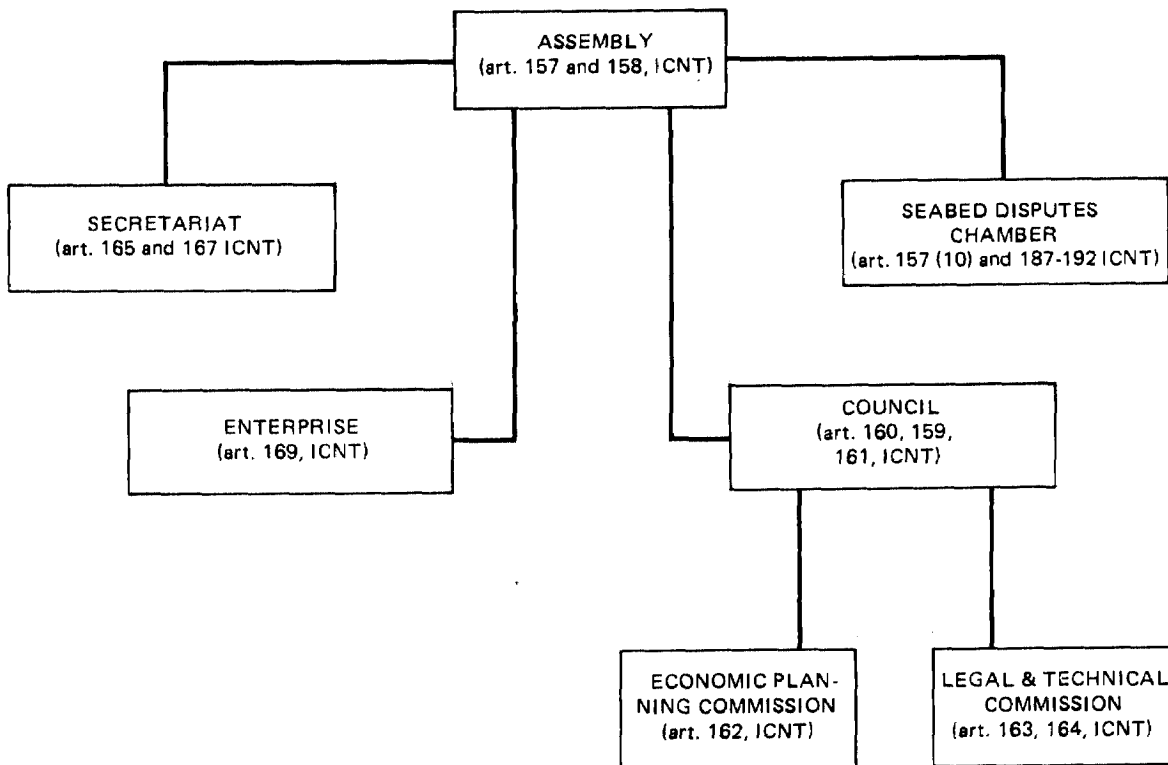
The common heritage concept, however, has wide support among both developing and developed nations, including the United States. However, the interpretations which these groups have of this principle differ markedly. The developed

nations feel that free and open exploitation of the seabeds, so long as territorial sovereignty is not claimed, is in the interest of all nations and allowable under both the common heritage principle and the traditional doctrine of freedom of the high seas. The developing nations, however, lean toward a more strict interpretation of the term "common heritage of mankind" to mean that individual states are barred from exploiting mankind's possession unless it is conducted under the auspices of a generally accepted international regime. Despite these differing interpretations, the principle itself has been the chief impetus behind efforts to establish an International Seabed Authority to administer the "common heritage" in the interest of all mankind.

INTERNATIONAL SEABED AUTHORITY

The International Seabed Authority would be composed of a supreme body known as the Assembly, an executive arm known as the Council with subsidiary specialized organs, and an operating arm known as the Enterprise. In addition the Authority would have a Secretariat, to handle administrative matters, and a Seabed Disputes Chamber, which would have judicial power over individual cases between states or between a nation and the Authority.

**INTERNATIONAL SEABED AUTHORITY**



## The Assembly

The Assembly would establish the general policies for determining the rights and duties of states in areas beyond national jurisdiction, including (1) electing members of various authority bodies, (2) establishing subsidiary organs, (3) considering problems related to resource exploitation in the area, and (4) ensuring fair distribution of economic benefits derived from activities in the area. (See app. III.)

Authority members would have one representative in the Assembly, and determinations would be made under a one-nation, one-vote concept. It is precisely this voting arrangement that is disturbing to the United States, because control over Assembly actions would be in the hands of a two-thirds majority of nations--a majority which would probably consist of nations who consider themselves members of the Third World. This eventuality creates the possibility that actions of the Authority may steer guidelines, as set forth in the treaty, toward actions which the United States may consider to be inimical to its interest.

In the Assembly, it would be difficult, owing to the sheer number of developing countries, to mobilize enough support on key issues to allow effective U.S. action, and the United States would have to look elsewhere within the Authority to have its voice heard.

## The Council

As the executive body of the international seabed regime, the Council would establish specific policies on activities in the area under international jurisdiction in conformity with the treaty and general policy guidelines adopted by the supreme organ of the Authority, the Assembly.

The ICNT provides for three subsidiary organs of the Council--the Economic Planning Commission, the Technical Commission, and the Rules and Regulations Commission. During the 1978 New York session, it was proposed that the Rules and Regulations Commission and the Technical Commission be merged into a Legal and Technical Commission.

The Council would play a critical role in regulating the activities of contractors in the area under international jurisdiction. As a prerequisite for a contract either to explore or exploit seabed resources, a contractor would file with the Council a detailed plan of work describing his proposed operations. The Council would then forward the plan to the Legal and Technical Commission for its review. Council

decisions may be considerably influenced by the conclusions of the Legal and Technical Commission. For this reason, there was much concern about the possibility that this Commission would become a political, executive entity rather than an advisory, technical body. The Council would, however, be the final arbiter of contractor plans. If the plan is rejected, all contractor activities must cease. If it is not rejected within 60 days, it is considered approved.

The composition and voting procedures of the Council would therefore be critical in determining the types of activities that may be undertaken by contractors. As outlined in the ICNT, the Council would be composed of 36 members drawn from several interest groups--seabed miners, major importers of minerals found in nodules, major exporters of such minerals, and developing countries--as well as regional representatives. (See app. IV.) The ICNT provides that a three-fourths majority be required for Council decisions.

The developing countries consider the Council's role to be merely to implement Assembly policies; i.e., to rule on day-to-day matters. Thus, the primary direction of the members would be to carry out Assembly policies and only secondarily would it represent particular economic and regional interests. The developed nations, on the other hand, look to the Council to counterbalance the Assembly by representing producer and consumer, as well as regional interests. For this reason, the United States and other Western nations have introduced weighted voting proposals. Instead of requiring a three-fourths overall majority, the United States proposed that Council decisions require concurrent simple majorities in 3 of the 4 special-interest categories or 4 of the 5 total categories. The proposal, however, was rejected by the developing nations who considered the principle of weighted voting discriminatory and recommended instead that the requirement be reduced to a two-thirds or simple majority. Assuming an overall majority of one kind or another is the requirement adopted, the United States and other developed nations would be confined to blocking actions for their voice to be heard. Further negotiations will be required to resolve this issue.

### The Enterprise

The Enterprise, as envisioned in the ICNT, would undertake commercial exploitation in a manner similar to that of private corporations or states parties. Partially explored minesites would be given to the Enterprise and it would receive technology, transferred at a fair market price, to be able to enter into production and to compete effectively.

Financing would be made available to the Enterprise, either directly or through the Authority, to allow it to enter into production at an early date.

The primary concern of the United States is to ensure creation of a parallel system of access to the deep seabed which would make exploitation of seabed resources economically feasible for both private contractors and the Enterprise. Under the ICNT, for each identified minesite to be exploited by public or private entities sponsored by states, one minesite of equal potential must be made available for exploitation by the Enterprise. The Authority could also turn over one of these "banked" minesites to developing nations for exploitation. Thus, seabed resource exploitation would be open to private contractors and individual states as well as the Enterprise.

#### The Secretariat

The Secretariat will consist of a Secretary-General and staff as required to carry out administrative functions assigned by the Authority and its subsidiary bodies. The Secretary-General will be appointed by the Assembly upon recommendations of the Council, and the staff will be appointed by the Secretary-General.

The ICNT provides that the Secretary-General and staff would be totally international in character, responsible only to the needs and direction of the Authority. They would be prohibited from having any financial interest in the exploration and exploitation of the deep seabed and forbidden to disclose industrial secrets or proprietary information. The Secretary-General, with approval of the Council, could consult and cooperate with nongovernmental organizations.

#### DISPUTE SETTLEMENT

Under the ICNT, disputes about interpretation or applicability of treaty provisions could be settled by any peaceful means. In addition to referral to the International Court of Justice for disputes between states, three other methods of settling disputes would be established--a Law of the Sea Tribunal, including a Seabed Disputes Chamber, an arbitration tribunal and a special arbitral tribunal composed of experts for particular dispute categories. Conciliation procedures may also be used if agreed to by both parties. The parties to a dispute are obligated to seek some peaceful means for dispute settlement, but the method selected depends on both the type of judicial issue involved and the preference of the parties.

--Law of the Sea Tribunal. Composed of 21 members elected for 9-year terms by secret ballot of parties to the treaty, the Law of the Sea Tribunal would have jurisdiction over all disputes submitted to it either under the treaty or by other international agreements giving it jurisdiction. No two members may be nationals of the same state, and at least three members from each geographical area as established by the U.N. General Assembly must be represented on the Tribunal. The decisions of this Tribunal would be final and binding between parties of the particular dispute. The Tribunal could also establish special chambers, of three or more members, to deal with particular types of disputes.

--Arbitration procedures. If both parties have not accepted the same settlement procedure, disputes must be submitted to arbitration unless the parties agree to some other procedure. An arbitration tribunal normally would include five members, one to be selected by each party to the dispute and the other three to be appointed by both parties from nationals of other states. Arbitration decisions would be made by majority vote and would be final and binding on the two parties, unless they agree in advance to a right of appeal.

--Special arbitration procedures. These can be used in cases of disputes relating to application of treaty provisions to fisheries; protection of the marine environment; marine scientific research; and navigation, including pollution from vessels. Under these procedures a five-member tribunal of experts would arbitrate the dispute and reach a binding settlement. This tribunal may also conduct a factfinding investigation and make recommendations which would not have the force of a decision but would be the basis for a review of the disputed issues.

These dispute settlement procedures would be more limited in cases related to exercise by coastal states of their sovereign rights. In such cases, the aggrieved party would first have to establish that the claim is "well-founded" and not "frivolous or vexatious" and the other party would have to be notified. If these conditions are fulfilled, the court or tribunal would have jurisdiction over allegations that the coastal state exceeded its discretion and contravened (1) treaty provisions on freedom and rights of navigation, overflight, or laying of submarine cables, (2) other treaty provisions, national law or international law, or (3) specified

international rules related to preservation of the marine environment. In addition, dispute settlement procedures would be applied to disputes related to use of living resources or marine scientific research in the economic zone or continental shelf area only under very limited circumstances. (See chs. 3 and 4.)

#### Seabed Disputes Chamber

To handle seabed mining disputes, the ICNT would establish the Seabed Disputes Chamber, which would consist of 11 members selected by a two-thirds vote of the Assembly from among the members of the Tribunal. The ICNT also calls on the Assembly to ensure that the Chamber has "equitable geographical distribution" and is representative of the major legal systems of the world.

This Chamber would have jurisdiction over disputes between the Authority and states parties or private miners involving (1) disputes relating to the conduct of activities or the granting of a contract to undertake any mining operations in the internationally governed area, (2) allegations that decisions made by the Assembly or the Council, or its organs, violated the treaty regulations or represented a misuse of its power, (3) interpretation or application of contracts concerning activities in the internationally governed area, (4) alleged violations by states of treaty provisions, (5) suspension of states for alleged gross violations of treaty provisions, and (6) alleged revelation of proprietary information by members of the international Secretariat.

In the case of disputes between two states, this Chamber would generally have jurisdiction over the application or interpretation of treaty provisions or contracts concerned with activities conducted in the area under international jurisdiction. Decisions of the Chamber would be enforceable in national territories. The Chamber would handle all disputes with the Authority unless the parties agree to refer the case to binding arbitration. In disputes between states parties and/or private miners where the Authority is not involved, however, any party could require binding arbitration rather than a ruling of the Chamber. A separate ICNT provision requires binding arbitration for disputes about the contractors' transfer-of-technology obligation though modifications are being considered. (See pp. 16 to 18.)

Although the Seabed Disputes Chamber appears to provide a system of judicial review and dispute settlement, its powers would be limited by an ICNT article providing that it could not challenge "legislative" and discretionary acts of the Assembly or Council and could not determine whether Assembly rules, regulations, or procedures conform to treaty provisions. The Chamber would, however, have jurisdiction over individual complaints that Assembly organs abused their powers or violated treaty regulations in particular cases and could refuse to give them effect. The limitations on the Chamber's jurisdictional authority are still unclear.

Still to be resolved are several major issues--(1) whether the Seabed Disputes Chamber or an arbitral tribunal would be entitled to review any abuse of regulatory or discretionary powers exercised by the Authority, (2) whether commercial arbitration would be available as an alternative method for handling disputes arising from contracts with the Authority in cases where the parties did not agree on another method, and (3) how that Chamber would be constituted. These questions remain to be resolved at later sessions.

#### OBLIGATIONS OF PRIVATE/STATE CONTRACTORS TO THE AUTHORITY

The conference has constructed a very elaborate system of obligations and duties for parties interested in exploiting the mineral resources of the seabeds. The stated purpose of these requirements is to ensure revenues for the Authority, while not deterring investment, encourage contractors to undertake joint ventures, and enable the Enterprise to begin operation. The issue of access to mineral resources is closely related to the question of the net effects these obligations will have upon the ability of potential ocean miners to operate effectively in the area. These obligations fall under three general headings: monetary payments, technology transfer, and production restraints.

#### Monetary payments

The system of payments is the most elaborate of the various obligations to which contractors interested in ocean mining will be subject. Included in the system are three categories of payments. The status of the proposed contractor fees at the close of the 1978 New York conference session are included in appendix V.

#### Application fee

A fee to cover the administrative cost of processing an application would be charged by the Authority at the time an



application for a contract was lodged. Fee size is still undetermined, but amounts proposed have ranged from a low of \$100,000 to a high of \$500,000.

#### Annual fixed charge to mine, or bonus payment

This fee is a payment for a contractor's right to mine and is payable for the first 3 years after a contract is signed. Although some delegations consider the fee a way to prevent contractors from delaying the start of operations, the developing countries see it as an early source of revenue for the Authority. The industrialized countries are opposed to the annual fixed charge and argue that (1) it is not necessary to have a deterrent against delay because the contractor has a very strong economic incentive to commence production as soon as possible and (2) the charge increases the contractor's financial burden at the beginning of his operations when he can least afford it. As a compromise, the Chairman of the negotiating group proposed that this annual fixed fee be considered a development cost if it is incurred prior to production or an operation cost if incurred after production.

#### Production charge

Once operations begin, the contractor must make additional financial payments based on a proportion of production. To accommodate the different economic and social systems of members, two systems of payment have been proposed--one a constant annual production charge and the other a combination of a nominal royalty charge plus profit sharing. Contractors will have the right to choose the formula. The Soviet Union, Canada, and Australia favor the first system; whereas the United States, the European Economic Community, and Japan prefer the second. The Group of 77 (G-77), made up of 119 developing Third World nations that adopted unified positions on certain international issues, appeared to have no preference so long as large amounts of income were generated. Although there is considerable uncertainty about the particular level of production charges, the two systems are designed to require equivalent payments to the Authority.

System 1--Under the first system, contractors would pay the Authority a production charge, computed as a proportion of the processed metals produced from nodules extracted from the area under contract from the Authority. To accommodate states with nonconvertible currency, these payments could be made either in currency--the amount computed as a percent of the processed metals' market value--or in kind--a charge determined as a proportion of the amount produced. According

to the latest negotiating proposal, contractors opting for a production charge would pay 7.5 percent of the market value of the processed metals during the first 6 years of commercial production, 10 percent during the next 6 years, and 14 percent from the 10th to the 20th year.

System 2--Under the second system, contractors would pay the Authority a nominal royalty charge and a share of the profits associated with the mining operations. If the contractor selects this system, the contractor would be required to pay a royalty charge of 2 percent of the processed metals' market value in the first 6 years, 4 percent in the next 6 years, and 6 percent up to the 20th year along with a share of the profits associated with the mining operations. This share of net proceeds would similarly increase from 40 percent during the first 6 years of production to 70 percent in the next 6 and 80 percent from the 13th to the 20th year. These increases, however, would be contingent upon the contractor's recouping his initial development costs during the first 6 years of production and twice those costs by the 12th year. With this safeguard mechanism, neither the production nor the profit-sharing charges would increase until the contractor's operations had become economically viable. Once the contractor's development costs are recouped, however, these charges would be scheduled to increase on the assumption that mining operations would become increasingly efficient and profitable in later years.

Developing and developed nations differ about how to determine the proportion of profits attributable to seabed mineral exploitation. The developing nations contend that the profit-sharing charge should be levied on the profits associated with the entire mining operation from extraction to final processing. In other words, the share of net proceeds would be a proportion of the profits of the processed metal. Developed nations, on the other hand, contend that the share of profits attributable to the contracted mining should be limited to the mining operation itself because transportation, processing, and marketing would already be subject to national taxation. They therefore recommend that the profit-sharing charge be applied to the imputed value of the raw ore as it is brought to the surface. Concerned delegations at the 1978 conference were not able to establish how to determine the imputed value of the raw ore, so further negotiation is required.

The chairman of the conference financial arrangements negotiating group outlined the advantages and disadvantages of the two systems as follows.

| System 1  |   | System 2  |   |
|---|---|---|---|
| <u>Advantages</u>   | <u>Disadvantages</u>  | <u>Advantages</u>   | <u>Disadvantages</u>  |
| <b>Allocation of risk:</b>  |   |   |   |
| Predicable payment of a percent of production from the beginning of commercial operations; helpful to Authority in its early years.                                     | Risks not adequately distributed between contractors and Authority.   |   |   |
| <b>Initial contractor payments:</b>   |   |   |   |
|   | Heavy initial obligations may be difficult for contractors to carry at beginning of their operations.   | Lower initial payments place less burden on contractor in early stages of operations. |   |
| <b>Relation to profitability:</b>   |   |   |   |
| Authority revenues not dependent on profitability of contractor operations.   | Revenues do not reflect profitability of commercial operations so could drive contractor out of business in a long period of unprofitability. | Authority revenues increase with contractor profits.                                  | Later payments to contractors not assured because they would be dependent on profitability of operations. |
| <b>Administration of System:</b>  |   |   |   |
| Easier to compute because eliminates problem of defining portion of profits attributable to mining operations; frees Authority from need to verify contractor accounts. |   |   | System more complicated and difficult to administer than System 1.  |

Although these proposals represent a refinement of the ICNT and provide a framework for determining contractor obligations, much work remains before a level of financial obligation can be negotiated which could be the basis of consensus. This issue has been particularly difficult to resolve--partly because of the large uncertainties about the economics of future ocean mining operations and partly because of the wide differences among nations about the respective roles to be played by private contractors and the Enterprise.

#### Technology transfer

Under the ICNT, contractors would also be obligated to make available to the Enterprise the technology used in their operations. Contractors would be required to sell that technology to the Enterprise on fair and reasonable terms. If these terms could not be negotiated in a reasonable time, they would be determined by binding arbitration. The Authority could suspend the contract rights or impose appropriate penalties on contractors who failed to implement arbitral decisions.

To ensure the viability of Enterprise operations, the United States is willing to accept that mining companies would have a contractual obligation to sell technology to the Enterprise on fair terms. The following example, however, illustrates some of the potential difficulties in determining what technology a contractor would have available to sell.

"A contractor may, for example not have invented the technology and may be only a licensee from the inventor, or parts of the equipment or technology may have been purchased from others. One can imagine, for example,--and this is purely hypothetical--a mining contractor who uses a suction head invented by himself, coupled with an electronic scanning system purchased commercially from, let us say, RCA, all attached to a suction hose designed and patented by a French manufacturer, controlled by a system designed by Honeywell. This is not a farfetched example, and it could indeed prove to be simpler than the facts. In any event, it means that, for the whole system to be acquired by the Enterprise, it will have to conclude a series of contracts, leases and training agreements with a number of companies."

During the Geneva meetings, a solution to this problem was proposed. The contractor would only be obligated to make available for sale that technology which he legally owns. In the case of other technology which he plans to use, the contractor would be obligated to facilitate its acquisition by the Enterprise by first getting a written assurance of its availability from the titleholder before using it.

Another U.S. concern about the technology transfer obligation was that access to deep sea mining would be contingent on including provisions for transfer on fair and reasonable terms in the mining contract, with the possibility that the Authority might insist upon terms unacceptable to a contractor. To alleviate these problems, the chairman of the negotiating group in Geneva proposed that the terms of technology transfer be negotiated only after conclusion of the mining contract and that compensation be based on fair and reasonable commercial terms and conditions.

Under the ICNT, if the parties could not agree to terms, the case would be referred to binding arbitration. If the contractor does not comply with the arbitral decision, his contract could be revoked. The United States considers this penalty too severe and wants to separate contract validity from the technology transfer obligation. During the Geneva session, however, it was proposed that binding arbitration be an option rather than a requirement. But, unlike procedures proposed for other types of disputes, the Geneva proposal does not specify the binding arbitration procedures to be followed. Also, the contractor's obligation would be fulfilled when a reasonable offer was made to the Enterprise, and the parties would not have to reach agreement.

Another controversial issue is the transfer of technology to developing countries. The ICNT provides that the Enterprise may conduct joint ventures with contractors, with "appropriate provision \* \* \* for participation from developing countries," to be determined by the Authority. In addition, the ICNT calls for measures to ensure that personnel from developing countries would be trained in marine sciences and technology. During the 1978 Geneva session, Brazil proposed that contractors be obligated to make their technology directly available not only to the Enterprise but also to a developing country in particular circumstances. If a developing country planned to exploit on its own the banked site corresponding to the contractor's proposed site, without the participation of any developed country, the contractor would be obligated to offer to sell its technology to that developing country. The developed countries consider this proposal unacceptable.

Certain fundamental concepts of the ICNT remained unchanged during the seventh session though some significant modifications were proposed. First, making the technology available for sale would remain obligatory and not voluntary on the part of the miner. Second, disputes about whether the miner had discharged this obligation could be referred to binding arbitration if conciliation negotiations failed to produce a settlement and if one of the parties selected this method. Third, the obligation would extend only to technology used in mining and not to subsequent stages, such as processing.

### Production restraints

The third major obligation for ocean miners would be to conform to production ceilings included in the treaty text. The ICNT calls for the Authority to adopt policies to ensure the "growth, efficiency and stability of [commodity] markets," as well as increase the opportunities of all states, particularly developing countries, to mine seabed deposits. The Authority is also to attempt to ensure "just, stable and remunerative prices," for raw materials produced from seabed mining in the internationally controlled area. At the same time, the Authority is to adopt measures to protect developing countries, which produce minerals to be found in manganese nodules, from suffering adverse effects from the initiation of ocean mining. Thus, the Authority is to attempt to ensure prices of mined commodities that would be "remunerative to producers and fair to consumers."

To carry out these multiple objectives, the ICNT proposes that mineral production from nodules mined in the international area be limited to the total projected cumulative growth of world nickel demand in the first 7 years of production and in successive years be limited to not more than 60 percent of that growth annually unless or until alternative international commodity agreements are reached. The ICNT includes a proposed formula for calculating the projected increase in world nickel demand during the first 5 years of production, which would then be adjusted every 5 years on the basis of the most recent data available.

Even though the number of nickel-producing developing nations is small, the G-77 has adopted the position that production restraints are necessary. During the 1978 Geneva session, the United States, one of the major nickel consumers, negotiated ad referendum <sup>1/</sup> an alternative formula with the Canadians, one of the major producers that hope to protect

<sup>1/</sup> To be deferred for subsequent attention.

and preserve the present and future investments of land-based nickel producers from seabed mining competition. The United States and Canada hoped to produce a clearer technical framework for calculating production limitations by adopting a formula covering the expected 20-year life of a mining operation. Under standard assumptions, this proposal calls for a production limit of 60 to 70 percent of the projected growth in the world nickel market during the first 20 years of seabed mining; i.e., through the turn of the century. It also specifies how the data would be compiled and how the growth rate would be calculated.

These production restraint formulas have been criticized for a variety of reasons. In the case of seabed mining, the proposed formulas are based on projected nickel demand despite the fact that seabed manganese nodules contain several other metals, such as copper and cobalt, whose markets would also be affected. Moreover, developing reasonable production ceilings requires accurate projections of future growth rates in nickel demand, which are particularly difficult to calculate in the traditionally unpredictable mineral industry/market.

In any given year, a scarcity of minesites to be made available could develop because under any production restraint formula less than 100 percent of the growth rate could prove to be too limited to meet the demand for minesites. To ensure a site, contractors could develop their mines prematurely in order to place an early bid. Or, the Authority could adopt some form of national quota system in awarding contracts to allocate the incremental growth. A variety of quota systems were discussed near the end of the 1978 New York session. It is also possible that pressure would develop to allow the Enterprise to automatically retain one-half of the growth segment for its own operations because under the parallel system, the Authority would retain half of the sites for which miners have requested contracts for development. It is not yet clear whether any production limit formula would apply to Enterprise operations.

Any production limit would introduce a large degree of artificiality into the economics of ocean mining and would make investment decisions of potential ocean miners particularly difficult. Such limits also would make seabed mining a marginal source for minerals rather than ensuring that the least costly mineral reserves are developed first. Prices for the metals produced from nodules could therefore be higher than would otherwise be necessary, which could lead to increased use of substitutes.

Although these limitations have been defended as a way to protect less developed countries, there will be no way to show that adverse effects are due to competition from seabed mining rather than land-based production or are due to other economic factors, such as a fall in demand. Moreover, there is no reason to assume that the nickel miners of developing nations would necessarily have the highest costs. Finally, the limitations could not protect these few developing nations from their industrialized land-based competitors and could exacerbate the market situation of both developed and developing nations by encouraging increased use of substitutes.

Although generally opposed to all production restraint formulas--because markets would be distorted, prices could increase above trends, and land-based producers would be protected at the expense of most consumer nations--the United States has supported a concept of a ceiling because of the larger U.S. interests in getting a treaty and because of the large uncertainties in judging the effects on the seabed mining regime. By supporting a ceiling, the United States has adopted a compromise position in hopes of negotiating a production control mechanism which would interfere with future seabed mining as little as possible. Further discussion on this issue is likely in future sessions.

#### FINANCIAL STRUCTURE OF THE AUTHORITY/ENTERPRISE SYSTEM

The following chart shows the financial organization of the Authority and its operating arm, the Enterprise.

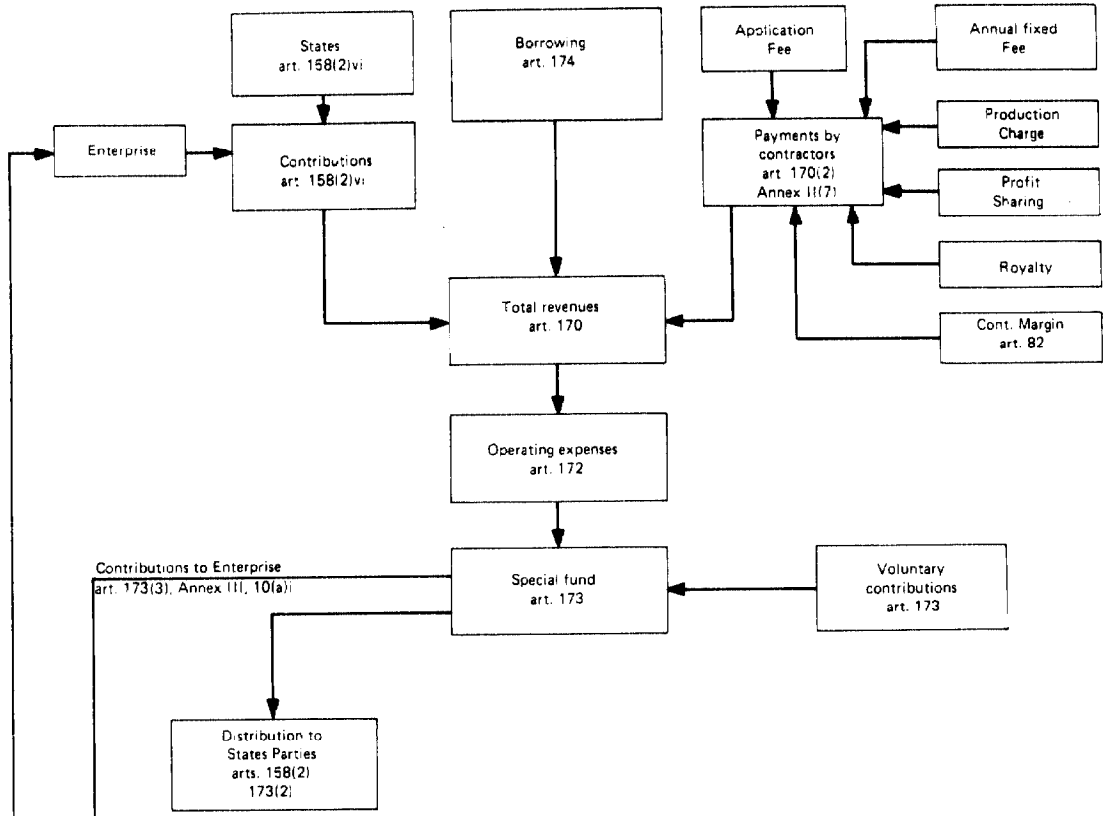
A source of funds for the Authority would be the payments which contractors exploring or exploiting the mineral resources of the seabed must make. A second source of capital would be Enterprise revenues channeled back to the Authority. Capital could also be obtained from voluntary contributions by states.

A third potential source of funds would be the borrowing ability of the Authority. Another source of funds which may be utilized, since it is not explicitly prohibited in the treaty, lies in the potential for resale of technology that contractors would have to transfer to obtain contracts to exploit the seabed.

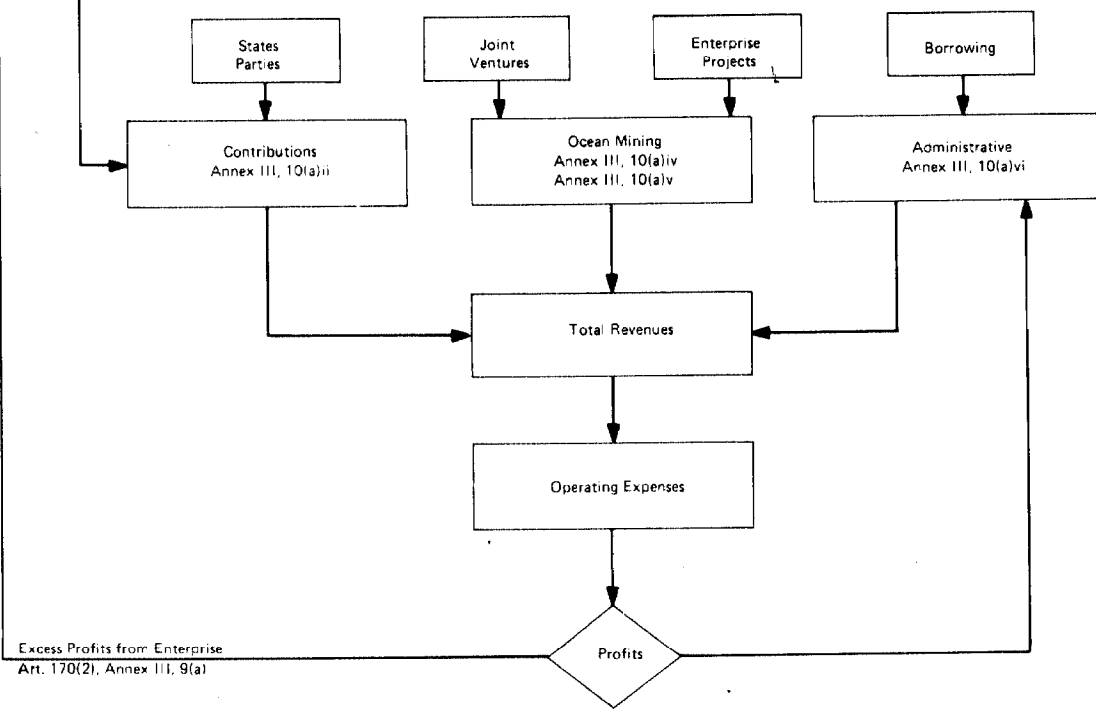
The total net revenue of the Authority, after operating and other expenses, would be reinvested in the Enterprise or



**CAPITAL FLOW OF THE AUTHORITY**



**CAPITAL FLOW OF THE ENTERPRISE**



distributed to states which are parties to the convention according to some predetermined formula, or some combination of the two.

The chart on the previous page shows the numerous revenue-generating activities in which the Enterprise may engage. It would, in the view of developed states at least, be a profit-oriented business, participating in ocean mining either by entering into joint venture agreements with private corporations or by undertaking its own mining operations. The Enterprise could also share in revenues resulting from payments to the Authority mandated by a future treaty. The distribution of revenue would be decided by the Council who would have the responsibility of determining what portion of the profits would be transferred to the Authority and what portion would be reinvested in the Enterprise.

#### DOMESTIC LEGISLATION

To provide interim guidance to U.S. seabed mining companies while a comprehensive Law of the Sea treaty is being negotiated, the U.S. House of Representatives passed on July 26, 1978, the Deep Seabeds Hard Minerals Act (H.R. 3350) authorizing domestic corporations to begin seabed mining operations until an international agreement comes into force. At that point, the act would be largely superseded and miners will be expected to abide by whatever rules and regulations are established by the treaty.

The bill, which was generally supported by the administration, specifically stated that no assertions of sovereignty or sovereign rights over seabed minesites were being advanced. In recognition that the seabeds are considered the common heritage of mankind, the bill would have established a revenue-sharing fund to which contractors would contribute a seabed tax computed at 3.75 percent of the imputed value of the minerals recovered. Upon ratification of a treaty by the United States, funds from this trust account would be available to make any revenue-sharing contribution required by the new international body. The Deep Seabed Mineral Resources Act (S. 2053) was reported out by the Senate Committee on Foreign Relations on August 25, 1978. However, the Senate failed to take any further action on the bills before the end of the session in October 1978.

At a session of the general committee in New York on August 28, 1978, to hear statements regarding national deep

seabed mining legislation, the chairman of the G-77, voiced the concerns of the developing countries.

"It is incomprehensible that at a time when the conference is at an advanced stage in negotiating an internationally agreed regime for the exploration and exploitation of the resources of the deep seabed, States engaged in those negotiations should contemplate unilateral actions which would threaten to jeopardize the pursuit of the negotiation and indeed the successful conclusion of the conference itself. Those states must be aware of the consequences of these actions."

The Soviet Union concurred with the G-77 view, stating that the proposed U.S. legislation violated the U.N. Assembly resolution which called on nations not to exploit the seabed prior to establishment of an international seabed regime. Contending that there was no urgent need for national legislation, the Canadians called for a "little more patience."

Ambassador Richardson defended the congressional action, stating that under the freedom of the high seas it was fully legal to exploit the seabed beyond national jurisdiction, that the legislation was necessary to encourage research and development preceding commercial mining, and that it was fully compatible with a future treaty. Instead of jeopardizing a future treaty, the Ambassador contended that the legislation:

"\* \* \* should facilitate the early conclusion of a generally acceptable Law of the Sea treaty by dispelling any impression that the governments of the countries preparing to engage in such mining can be induced to acquiesce in an otherwise unacceptable treaty because that is the only way to obtain the minerals."

It is too early to measure the precise impact of the progress of domestic mining legislation upon the conference. Although some reaction was evident, it was perhaps buffered by the fact that the legislation had passed the House only at that time. Because the Senate failed to take action before the end of the 95th Congress, the bill will have to be reintroduced and reconsidered.

## CHAPTER 3

### GENERAL ISSUES--COMMITTEE II

The major Committee II problem remaining is to define the extent of coastal state jurisdiction. Although most substantial issues were basically resolved in the 1975 and 1976 conference sessions, points still unsettled at the end of the 1977 New York session included access by landlocked and geographically disadvantaged states to the living resources of the exclusive economic zone; the limit of the continental margin and revenue sharing related thereto; delimitation of the territorial sea and the economic zone and the continental shelf between adjacent or opposite states.

Negotiating groups were established at the 1978 Geneva session to consider three of these still-disputed issues-- access by landlocked and geographically disadvantaged states to living resources in the economic zone; delimitation of maritime boundaries; and definition of the outer edge of the continental margin beyond 200 miles and the related revenue sharing. A fourth negotiating group was to consider settlement of disputes relating to the exercise of the sovereign rights of coastal states in the exclusive economic zone.

The first three negotiating groups met again during the 1978 New York session. In addition, during the 1978 sessions, informal Committee II meetings considered, on an article-by-article basis, articles not considered by the negotiating groups. This procedure gave delegations the opportunity to air any remaining questions. Progress was made by three of the four negotiating groups, but no progress was made in determining maritime boundaries, which involves many bilateral difficulties. The status-of-islands question was debated with little support for amendments to the ICNT and some opposition. Also considered were proposals to modify the regime for enclosed and semienclosed seas, including a proposal to restrict the article's application to "small seas." The proposals were strongly opposed by many states.

#### ECONOMIC ZONE

During the 1974 Caracas session, there was extensive support for establishing an economic zone of 200 miles (including a 12-mile territorial sea), with coastal states having exclusive rights to exploitation of living and non-living resources of the zone. Moreover, coastal states would have exclusive drilling rights on the continental shelf or

sea floor of the zone. Other states, however, would retain freedom of overflight and navigation and the freedom to lay submarine pipelines and cables. A major problem was negotiating a balance between the duty of coastal states to respect international rights of third states, such as freedom of navigation, and the obligation of states using the economic zone to respect coastal states' rights. The major maritime states, including the United States, were concerned that granting too extensive rights to coastal states could ultimately make the zone the functional equivalent of a territorial sea. Thus, the U.S. delegation proposed stating explicitly that the economic zone was high seas but that this did not derogate from coastal states' rights provided for in the Convention.

Although agreement on a 200-mile economic zone was widespread, opinions differed as to the outer limit of the continental shelf where it extends beyond 200 miles. Some states advocated an absolute limit of 200 miles; others wanted to control seabed resources to the limit of the continental margin. During the 1975 Geneva session, a compromise by which coastal states would retain the right to exploit the resources of, but would share revenues from, the continental margin beyond 200 miles won increased support. The United States supported the compromise.

During the 1976 New York session, recognition emerged that the compromise on the shelf would provide for coastal state jurisdiction to the outer limit of the continental margin and for sharing revenue from mineral exploitation beyond 200 miles. This required an agreed formula for determining the exact outer limit of the continental margin.

During the 1977 New York session, attempts to change the exclusive economic zone provisions of the text in committee were met with strong opposition from those nations that wished to make the zone an area of national jurisdiction with limited rights of navigation, overflight, and communication.

However, a group of affected states of all persuasions was formed to consider the legal status of the economic zone informally. Discussions culminated with new texts, clarifying the rights of coastal and other states in the economic zone, which were discussed in the appropriate committee and then incorporated into the informal composite negotiating text for further discussion.

During the 1978 New York session, many countries expressed the view that there should be no further changes

to the economic zone related articles. While no agreement was reached on the formula to be used to determine the limits of the continental shelf, the Irish formula supported by the United States gathered increased support.

### Continental shelf

During the 1977 New York session, the Irish formula-- to determine the outer edge of the shelf beyond 200 miles by a distance criterion from the base of the continental slope (a prominent feature) or by a depth of sediment test-- received wide support. Other formulas were discussed but received less support. No precise formula was, however, included in the ICNT.

The U.N. Secretariat was requested to prepare a map and figures on the differences in area between the various formula definitions. In April 1978, it provided the conference with a map showing the area included in (1) a 200-nautical mile formula, (2) another formula using a depth criterion, and (3) the Irish formula; but the United Nations cautioned that the study was only a rough indication with a substantial probability of error. The study showed that the area between the base of the continental margin and 200 miles, where the margin extends beyond 200 miles, is 8.2 million square nautical miles. The total area beyond 200 miles, using the Irish formula options, is 2.58 million and 2.61 million square nautical miles. Using the depth criterion formula, the area is 0.06 million square nautical miles.

The U.S. delegation concluded that formulas 1 and 2 above do not accommodate the interests of many broad margin states and cannot form the basis of consensus. It was also clear that the lack of a definition of the outer edge of the margin created some jurisdictional problems and that the Irish formula was a compromise that could be accepted by the various interest groups.

During the 1978 Geneva session, the Soviet Union introduced a distance formula which it characterized as a compromise proposal. This formula would give coastal states jurisdiction over the continental margin, in cases where it extended beyond 200 miles, to a maximum of 100 miles. The concern of the U.S. delegation and other states with this proposal was that it (1) does not accommodate key broad margin states--states with broad continental margins, (2) could evolve into a 300-mile economic zone, and (3) does not address the question of how to determine the outer edge of the margin between 200 and 300 miles. While the U.N.

Secretariat has not computed the area encompassed by the Russian proposal, it is expected to include somewhat more area than the Irish proposal. The introduction of the Russian proposal, supported by the East Europeans and Cuba, made it impossible to reach even general agreement on this issue at the 1978 sessions.

### Revenue sharing

The ICNT provides that coastal states, which exploit the nonliving resources of the continental shelf beyond 200 miles, make payment to the Authority. The Authority would then distribute these funds equitably to less developed countries. This is known as revenue sharing. There was a strong undercurrent of support for a revenue-sharing system which would benefit developing countries without discouraging production. The ICNT incorporated a formula which creates an obligation to pay 1 percent of the onsite value of production in the 6th year after beginning commercial exploitation in areas beyond 200 miles. This payment will increase in 1-percent increments annually until a maximum rate of 5 percent is reached in the 10th year. Several states prefer a maximum rate of 5 percent in the 10th year and thereafter, while others favor a higher maximum rate.

The ICNT also permits an exemption from the revenue-sharing provision for developing nations which are net importers of the particular mineral produced on the continental shelf. This provision exempts certain more progressive developing countries while certain poorer states are not exempted. This issue will be considered in future conference sessions. All payments or contributions will be made to the Authority, which will distribute the funds among the developing nations.

During the 1978 Geneva and New York sessions, revenue sharing was barely discussed, but there was a broad consensus on the percentage and rate of incremental annual increases. The maximum rate to be applied is still open for discussion.

### FISHERIES

U.S. fisheries proposals made during the 1974 Caracas session were based on the three main types of fishing stocks: coastal; anadromous (which spawn in fresh water, migrate to the oceans, and return to spawn, such as salmon); and highly migratory species, such as tuna.

- Coastal species were to be under the jurisdiction of coastal states, which would have preferential rights to harvest them within the allowable limits (the amount of fish which could be taken without endangering reproduction of the species). Other nations would be permitted to harvest the difference.
- Management jurisdiction and preferential rights to anadromous species generally throughout their range would be given to the state of origin.
- Highly migratory fish species would be subject to international or regional control.

At the 1975 Geneva session, the landlocked and geographically disadvantaged states objected to the proposed fisheries articles because they wanted a provision in the treaty giving them the right to fish in the economic zones of their neighbors and the coastal states preferred at most bilateral negotiations for these rights.

The 1975 Geneva text, issued at the end of the session, reflected a favorable position for the United States on fisheries in the economic zone. Coastal states would have management jurisdiction over fishing coastal species and would be required to adopt conservation measures to ensure that the fish stocks were not overexploited. They would provide optimum use by allowing other states to harvest what each coastal state does not have the capacity to take, up to a maximum allowable catch--the amount that could be taken without endangering the species. The state of origin would have jurisdiction over anadromous stocks. The text provided for access by landlocked and geographically disadvantaged states to the fisheries of neighboring states' economic zones, but the landlocked and geographically disadvantaged states considered the provision inadequate. It also provided for a coastal state to regulate highly migratory species as well as encourage international cooperation in its economic zone, a provision the United States considered unsatisfactory.

The revised text issued in 1976 showed few changes in the coastal and anadromous fisheries article, due to general acceptance and to the chairman's reluctance to change the 1975 Geneva text without broad support. Some technical changes which the United States considered an improvement were made to provisions for the highly migratory species but were opposed by other coastal states. Even with these



changes, the provisions were not considered satisfactory by the U.S. tuna industry. The United States wanted international or regional control of tuna in the economic zone, and the articles were ambiguous on this point.

The ICNT embodies the favorable provisions of the 1975 Geneva text on fishing in the economic zone. During the 1978 Geneva session, no changes were proposed to this text except that revised provisions on anadromous stocks were agreed upon by the delegations of Canada, Denmark, Iceland, Ireland, Japan, Norway, the Soviet Union, the United Kingdom, and the United States.

#### Domestic legislation

Because of the enormous increase in foreign fishing off the U.S. coast in the last decade, the slow progress of the Law of the Sea conference toward a treaty, and an awareness of the damage to coastal fisheries from overfishing, the Congress took action to conserve and manage fish stocks within 200 miles of the United States.

In April 1976 the President signed the Fishery Conservation and Management Act of 1976 (Public Law 94-265). The act was effective March 1, 1977, and vested the United States with exclusive management and conservation authority over coastal fishing stocks to 200 miles offshore. The provisions of the domestic legislation were generally compatible with the coastal fisheries articles of the then-current text. The law does not provide jurisdiction over highly migratory species. It provides for conforming the implementing regulations to the Law of the Sea treaty.

In connection with extending its fisheries jurisdiction, the United States has had to negotiate new agreements with nations fishing off the U.S. coasts. Negotiations have been successful and have resulted in acceptance of the new limit. Twelve major agreements have been concluded pursuant to the Fishery Conservation and Management Act of 1976.

#### Marine mammals

During the 1978 New York session, the United States spearheaded a movement to clarify the marine mammal conservation provisions. An informal group was established to consider revising the ICNT provisions and made some progress. The group will resume meetings at the next conference session with a view to revising the ICNT articles. The states are clearly aware of the need to conserve and protect marine mammals.

## DISPUTE SETTLEMENT

Most coastal states oppose compulsory and binding procedures to settle fisheries disputes as a violation of their sovereign rights in the economic zone, whereas landlocked and geographically disadvantaged states support some kind of compulsory settlement of access disputes in the economic zone of coastal states. However, coastal states with distant water fishing, like the United States, the Soviet Union, and Japan, support compulsory and binding settlement of disputes. Since the ICNT provision on this issue is highly ambiguous about the rights of other states to challenge coastal states rights to determine access to living resources, attempts have been made to draft new texts which would provide a compromise method of resolving these disputes.

At the beginning of the 1978 conference session, coastal states basically opposed application of any compulsory and binding procedures to their fisheries; and landlocked, geographically disadvantaged, and distant water fishing states supported compulsory and binding settlement. After intensive debate a compromise was developed which provided for compulsory conciliation. This procedure would require states to participate in the dispute settlement procedures but would not bind the parties to a settlement. It was decided that compulsory conciliation would be applied only to specific areas related to a coastal state's obligation to allow other states access to any surplus living resources in their economic zone. Specifically, a coastal state would be required to accept compulsory procedures where it has (1) failed to protect its living resources from serious danger through proper conservation and management measures, (2) refused arbitrarily to determine either the total allowable catch or its own harvesting capacity for particular species of fish, or (3) refused arbitrarily to allocate the remaining surplus to other states as required by the ICNT.

The question of delimitation of the exclusive economic zone and the continental shelf between adjacent and opposite states is a difficult issue involving matters of essentially bilateral concern and, in many cases, pertains to existing disputes. Related is the question of whether, and if so to what extent, provisions on settlement of disputes should be included in the Law of the Sea treaty. Little progress was made on this question which will need to be further considered at the next conference session.

## TERRITORIAL SEA AND STRAITS

Defining the maximum extent of the territorial sea is linked to the question of regulating transit through, under, and over straits used for international navigation because acceptance of a 12-mile territorial sea would give coastal states jurisdiction over 100 straits less than 24 miles wide. The United States has been willing to accept extension of the territorial sea to 12 miles as part of a Law of the Sea treaty provided that it was coupled with the right to transit straits used for international navigation.

In the 1975 Geneva session, agreement on the 12-mile territorial sea was almost unanimous, and the issues of the territorial sea and straits were virtually resolved by general acceptance of the 12-mile territorial sea and transit of straits. Attempts were made to clarify the term "innocent passage," codified in the 1958 Convention on the Territorial Sea, by compiling an objective list of activities which were "not innocent." Such provisions are included in the ICNT. The legal status of the economic zone and straits used for international navigation was again discussed at the 1978 Geneva session. While there was some opposition, it is fairly certain they will undergo no substantive change.

### Effects of a 12-mile territorial sea on U.S. Federal-State relations

Perhaps the most immediate effect of a future Law of the Sea treaty on domestic U.S. politics would be the extension of the territorial sea, from 3 to 12 miles. The 3-mile limit and the jurisdictional conflicts between States and the Federal Government over environmental, customs, taxation, and police powers within this limit have been a frequent topic of legal debate. A 9-mile extension would probably initiate a new flurry of legal activity as States attempt to assert their competence over this newly acquired territory. A 1978 monograph published by the Dean Rusk Center for International and Comparative Law, "The Law of the Sea, Federal-State Relations and the Extension of the Territorial Sea," describe three broad areas of probable Federal-State dispute.

- Jurisdiction over the water and seabed within the additional 9 miles of territorial sea.
- Allocation of income from exploitation of the territorial sea and outer continental shelf resources.

--Policing and regulation of the additional territorial sea area.

LANDLOCKED AND GEOGRAPHICALLY  
DISADVANTAGED STATES

One of the remaining critical issues is the right of access to the living resources of the economic zone by the 53 nations that are landlocked or consider themselves geographically disadvantaged. The coastal states group--over 80 members--have resisted provisions which would grant access on terms favorable to these nations.

The ICNT would give the landlocked and geographically disadvantaged states the right to harvest surplus fish in the economic zones of their neighbors; coastal states would set the maximum limits on harvesting. This text also confines the access of developed landlocked and geographically disadvantaged states to the economic zones of other developed coastal states.

A revised text was produced by the negotiating group chairman, which defined the rights of these states to "an appropriate part" of the surplus living resources, the guidelines for setting up this participation, and the procedure for handling access when the harvesting capacity of a coastal state approaches a point which would enable it to harvest the entire allowable catch. This text also defined geographically disadvantaged states and established preferential rights for developing states. Despite this progress, final resolution is not expected until the limits of the continental shelf have been determined. However, progress has been made and the text before the conference appears to increase the likelihood of consensus on this issue.

## CHAPTER 4

### MARINE ENVIRONMENT AND

#### SCIENTIFIC RESEARCH ISSUES--COMMITTEE III

##### MARINE ENVIRONMENT

An objective of the Law of the Sea negotiations has been to establish effective environmental protection against existing or potential sources of marine pollution. An additional consideration was a need to accommodate navigation interests.

During the 1975 Geneva session, articles covering the monitoring of land-based sources of pollution and a requirement for an environmental assessment to determine the possible pollution from domestic activities before they are carried out were generally agreed upon. Discussion on pollution from continental shelf activities and from dumping did not reach complete agreement. The central issues were whether these sources of pollution should be controlled by the coastal state or by international standards and how strict such standards should be.

During the spring 1976 New York session, agreement was reached to have coastal states establish national laws no less effective than the then-existing international standards to control pollution arising from seabed activities subject to their jurisdiction and the dumping of waste. A consensus was emerging on three aspects of vessel source pollution--coastal state regulations in the economic zone, general enforcement problems, and coastal state rights concerning pollution in the territorial sea. The United States and several other coastal states believed that the coastal states should be permitted to establish pollution regulations for their territorial seas stricter than international standards. Japan, the Soviet Union, and the Western European States disagreed with this approach.

Although the 1977 New York session failed to completely clarify the extent of coastal states' jurisdiction over pollution in their territorial seas, some progress was made in establishing environmental standards. For example, to ensure regulation of pollution from deep seabed mining activities, particularly nodule processing, the United States proposed that ships' flag states pass national laws as stringent as international rules. This provision was included in the ICNT. In addition, the right of a coastal state to establish and enforce discharge standards stricter than international regulations for ships in innocent passage in

its territorial sea was clarified; but it was decided that the coastal state would not have the competence to set standards over the design, construction, manning, and equipment of vessels in its territorial sea.

Although delegates were generally reluctant to make changes in the ICNT, proposed revisions to strengthen articles on the prevention, reduction, and control of pollution from ships were agreed upon during the 1978 sessions as a result of efforts by the United States, France, and Canada. The proposed revisions would (1) provide protection to endangered species and fragile ecosystems from vessel source pollution, (2) clarify the obligation to establish ship-routing systems that would protect the environment, (3) require prompt notice to a coastal state of events that could result in pollution off its coasts, and (4) remove certain restraints on the power of a coastal state to enforce antipollution measures in its territorial sea and economic zone.

Several other controversial amendments introduced by the United States were also accepted by the conference. These included proposals broadening the rights of coastal states to board, investigate, and detain foreign ships in the economic zone in cases of certain pollution violations; upgrading the penalties for serious and willful pollution in the territorial sea; and clarifying coastal states rights regarding intervention after maritime casualties. A compromise proposal was also accepted to allow participating states to request from vessels in their territorial sea information as to whether the vessel meets the port entry requirements of the state to which the vessel is destined when states are participating in a regional port entry agreement and have the same port entry requirements. The U.S. delegation indicated its willingness to conclude negotiations on pollution if the Committee would retain the amendments reported by the Committee Chairman as having a substantially improved prospect for consensus during the 1978 sessions.

#### MARINE SCIENTIFIC RESEARCH

During the 1974 Caracas session, agreement was reached on the general principles for governing marine scientific research, including requirements that research must be conducted only for peaceful purposes, must not interfere with other ocean uses, cannot form the legal basis for claims to any part of the marine environment or resources, and must comply with applicable environmental protection regulations.

Since then, the extent of coastal states' jurisdiction over marine scientific research conducted in their proposed 200-mile economic zone has been much discussed. At the 1975 Geneva session, different methods for regulating marine scientific research were discussed. The United States supported a West European proposal that an "obligation regime" would make the conduct of marine scientific research contingent on fulfillment of a set of international obligations, with differences being subject to dispute settlement procedures. The G-77 proposed that such research be conducted only with the consent of the coastal state, a "consent regime."

The Soviets proposed a combination of the two: exploration and exploitation of the living and nonliving resources would be conducted only with consent of the coastal state; other research would be subject to the fulfillment of a series of obligations; and the same regime would apply to marine scientific research on the continental shelf beyond the economic zone. Research would not be restricted in the remaining ocean area. Although there was much debate about the practical difficulties of distinguishing between the two types of research, this proposal formed the basis of the provisions included in the 1975 text.

The revised 1976 text adopted a different approach by attempting to limit the circumstances in which the coastal state could prevent scientific research. The revised text provided that consent cannot be withheld unless the research is resource oriented, unduly interferes with the economic activities of the coastal state, involves drilling and use of explosives, or involves the use of artificial islands or installations subject to coastal state jurisdiction. Disputes will first be referred to experts to help the parties reach agreement. If these efforts are not successful, the dispute will be settled by binding settlement procedures. Many of the provisions of the revised text were considered unacceptable by the U.S. scientific community because of possible constraints by coastal states on research and the publication of research results.

Little in the way of change was evidenced by the ICNT issued in 1977. The consent nature of the articles dealing with scientific research was retained with a few changes. A cross section of delegates worked out a change which provided that states "shall, in normal circumstances," consent to scientific research in the economic zone that is not of direct significance to resource exploration and exploitation.

An obvious problem with such wording is the near impossibility of distinguishing between resource and non-resource-related research. A marine scientific research project can be commenced if the coastal state has failed within a specified period to reply to a request for consent to carry out the project. This notion of implied consent is intended to counterbalance the right of a coastal state to regulate or authorize a marine scientific research project in its economic zone or on its continental shelf and is an attempt to make the coastal state take timely action.

In case of dispute, the ICNT provides for arbitration procedures when the parties cannot agree on another method. But, unlike the 1976 text which provided for binding third-party arbitration, the ICNT limits the types of projects subject to arbitration. This modification of the dispute settlement articles has, in effect, given coastal states considerable discretion to suspend research in their exclusive economic zones. As stated earlier, the 1976 text previously mandated that all disputes arising out of research-related matters would be submitted to third-party arbitration if bilateral negotiations fail. The ICNT deleted this provision and provided that a coastal state does not have to submit to arbitration if the dispute is over research which

- is of direct significance for the exploration and exploitation of natural resources, whether living or nonliving,
- involves drilling into the continental shelf, the use of explosives, or the introduction of harmful substances into the marine environment,
- involves the construction, operation, or use of artificial islands, installations, and structures,
- does not explicitly conform to the nature of the workplan first articulated to the coastal state, and
- is conducted by persons who have outstanding obligations from a prior research project.

The coastal state could apply any of the above standards to a specific research project, and in case of disputes, the court may then review whether the coastal state has exceeded its discretion. The ambiguity of these standards, however, may make judicial challenge difficult.



An additional change was the deletion of the article providing that research results not be published or made internationally available against the expressed wish of the coastal state. This deletion, in effect, limits coastal state discretion to suppress research reports. For a report to be suppressed under the ICNT, a nonpublication clause must be inserted and agreed to as a condition for the entry of a research vessel into a nation's economic zone. An article was also inserted which gives a coastal state discretionary authority to terminate an authorized research project at any time it feels the project is not in strict accordance with the original agreement.

During the 1978 Geneva session, one meeting was held on marine scientific research in which the United States, supported by the Netherlands and the Federal Republic of Germany, proposed returning to certain marine scientific research language negotiated during the 1977 session. This proposal was strongly opposed by the Soviet Union, the Eastern Europeans, and about 35 developing countries; despite repeated requests by the U.S. delegation the proposal was not included in the Chairman's report on the session. The Chairman concluded that the ICNT was a balanced compromise and suggested no amendments.

During the 1978 New York session, only two informal Committee III meetings were devoted to the subject of marine scientific research. The U.S. representative introduced a proposal for changes to the Committee text, which affected 14 articles and was characterized by the U.S. representative as editorial or clarifying in nature without altering the basic jurisdictional framework particularly in the economic zone. The proposal elicited some comment by several delegations which had questions about the characterization and suggested that the amendments fell in categories ranging from stylistic and drafting changes to changes which were substantive in nature and altered the fundamental character of the ICNT.

The chairman of the committee concluded that the session reaffirmed that the ICNT offered improved prospects for compromise and cautioned against attempts to reopen negotiations on fundamental provisions relating to the regime for the conduct of marine scientific research in the economic zone and on the continental shelf. He stated, however, that the delegations' remarks on the U.S.-proposed changes were inconclusive and that the proposal should be considered further at the next session.

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**U.S. House of Representatives**  
**Committee on**  
**Merchant Marine and Fisheries**  
 Room 1334, Longworth House Office Building  
 Washington, D.C. 20515

November 17, 1977

CHIEF OF STAFF  
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Honorable Elmer B. Staats  
 Comptroller General of the U.S.  
 General Accounting Office  
 Washington, D.C. 20548

Dear Mr. Staats:

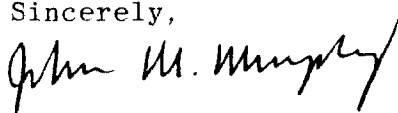
Your reports to the Congress on the various meetings of the Third Law of the Sea Conference through 1976 have proven to be most valuable to me and the Members of the Committee on Merchant Marine and Fisheries in consideration of related issues and legislation.

The last of these reports, dated June 3, 1977, covers U.S. participation in the Conference and the status of the issues as they stood at the beginning of the last session of the Conference, which was held in New York from May 23 to July 15, 1977.

In view of the fact that another session is scheduled to begin in March of next year, it would be most helpful if you could update this report to reflect the results of the last session and provide it to us sufficiently ahead of the March session to permit the Committee time for review. (See GAO note.)

Your cooperation in this respect will be deeply appreciated.

Sincerely,



JOHN M. MURPHY  
 Chairman

GAO Note: On March 20, 1978, we furnished the Committee a summary on conference results from 1974 through early 1978. We also agreed to report on the results of the 1978 conference sessions and the status of the issues at the end of 1978--the subject of this report.

RELATED GAO REPORTS

Deep Ocean Mining: Actions Needed to Make it Happen  
(PSAD-77-127; June 28, 1978)

Agency programs and projects for deep ocean mining are fragmented and uncoordinated while needed programs have gone unattended or are behind schedule. The Federal role in deep ocean mining needs to be clearly defined.

Need for Improving Management of U.S. Oceanographic Assets  
(CED-78-125; June 16, 1978)

There is no overall Government-wide guidance, limited review of operations, and no formal system to assess the necessary levels of operations or to plan needed assets for a national program.

Benefits Derived from the Outer Continental Shelf Environmental Studies Questionable (CED-78-93; June 1, 1978)

The program has been costly and it may have little effect in minimizing environmental damage during exploration, development, and production in the outer continental shelf.

Results of the Third Law of the Sea Conference 1974 to 1976  
(ID-77-37; June 3, 1977)

Status report on Law of the Sea negotiations as they stood prior to the conference session scheduled for May 23, 1977. The intention of the conference was to reach agreement on a comprehensive treaty covering all the uses of the oceans.

Outer Continental Shelf Sale #35--Problems Selecting and Evaluating Land to Lease (EMD-77-19; March 7, 1977)

Outer continental shelf oil and gas tracts were selected for leasing by the Interior Department without obtaining adequate information to determine their potential resources.

Deep Ocean Mining Environmental Study--Information and Issues  
(PSAD-76-135; September 21, 1976)

Concludes that completion of the two-phase Deep Ocean Mining Environmental Study is needed to resolve environmental impact questions which may arise when mining of manganese nodules starts on the deep seabed.

The Need for a National Ocean Program and Plan (GGD-75-97;  
October 10, 1975)

Marine science activities and ocean affairs are being conducted by 21 organizations in 6 departments and 5 agencies. Because of the vital role the oceans play in the Nation's welfare, economic self-sufficiency, and national security, a concerted effort should be undertaken to establish a comprehensive national ocean program and plan.

Information on United States Ocean Interests Together With Positions and Results of the Law of the Sea Conference at Caracas (ID-75-46; March 6, 1975)

Status report on U.S. oceans policy and Law of the Sea negotiations at the close of the first session of the Third U.N. Law of the Sea Conference.

Federal Agencies Administering Programs Related to Marine Scientific Activities and Oceanic Affairs (GGD-75-61;  
February 25, 1975)

The information contained in this report deals with funding data and describes the programs of the Federal agencies participating in marine science activities and oceanic affairs. The descriptive material is not intended to be all inclusive but is being furnished to provide a general and informative understanding of the various agencies' programs.

Achievements, Cost, and Administration of the Ocean Sediment Coring Program (B-171989; November 1, 1972)

Opportunities exist to enhance the accomplishments of the program through more timely distribution of core samples for detailed analyses and through more effective dissemination of the results of such analyses to potential users.

Coordinating Deep-Ocean Geophysical Surveys Would Save Money (B-133188; December 8, 1971)

The Federal Government could save \$20 million by the early 1980s if the deep-ocean geophysical surveys to be conducted by the Department of Commerce and the Navy are effectively planned and coordinated. Although both agencies are aware of the other's geophysical surveying activities, they do not have any formal mechanism for coordinating the surveys.

POWERS AND FUNCTIONS OF THE ASSEMBLYInformal Composite Negotiating Text  
Article 158

- "(i) Election of the members of the Council \* \* \* ,
- "(ii) Election of the Secretary-General from among the candidates proposed by the Council,
- "(iii) Selection of the 11 members of the Sea-Bed Disputes Chamber from among the members of the Law of the Sea Tribunal,
- "(iv) Appointment, upon the recommendation of the Council, of the members of the Governing Board of the Enterprise as well as the Director-General of the Enterprise,
- "(v) Establishment, as appropriate, of such subsidiary organs as may be found necessary for the performance of its functions \* \* \* In the composition of such subsidiary organs due account shall be taken of the principle of equitable geographical distribution and of special interests and the need for members qualified and competent in the relevant technical questions dealt with by such organs,
- "(vi) Assessment of the contributions of members to the administrative budget of the Authority in accordance with an agreed general assessment scale until the Authority shall have sufficient income for meeting its administrative expenses,
- "(vii) Adoption of the financial regulations of the Authority, including rules on borrowing, upon the recommendation of the Council,
- "(viii) Consideration and approval of the budget of the Authority on its submission by the Council,
- "(ix) Adoption of its rules of procedure,
- "(x) Examination of periodic reports from the Council and from the Enterprise and of special reports requested from the Council and from any other organs of the Authority,

- "(xi) Studies and recommendations for the purpose of promoting international co-operation concerning activities in the Area and encouraging the progressive development of international law relating thereto and its codification,
- "(xii) Adoption of rules, regulations and procedures for the equitable sharing of financial and other economic benefits derived from activities in the Area, taking into particular consideration the interests and the needs of the developing countries,
- "(xiii) Consideration of problems of a general nature in connection with activities in the Area in particular for developing countries, as well as of such problems for States in connection with activities in the Area as are due to their geographical location, including land-locked and geographically disadvantaged countries,
- "(xiv) Establishment, upon the recommendation of the Council on the basis of advice from the Economic Planning Commission of a system of compensation  
\* \* \*."

Article 150 (1) g (D)

"Following recommendations from the Council on the basis of advice from the Economic Planning Commission, the Assembly shall establish a system of compensation for developing countries which suffer adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or the volume of that mineral exported, to the extent that such reduction is caused by activities in the Area."

COMPOSITION AND VOTING OF THE COUNCILInformal Composite Negotiating Text  
Article 159

"1. The Council shall consist of 36 members of the Authority elected by the Assembly, the election to take place in the following order:

"(a) four members from among countries which have made the greatest contributions to the exploration for, and the exploitation of, the resources of the Area, as demonstrated by substantial investments or advanced technology in relation to resources of the Area, including at least one State from the Eastern (Socialist) European region.

"(b) four members from among countries which are major importers of the categories of minerals to be derived from the Area, including at least one State from the Eastern (Socialist) European region.

"(c) four members from among countries which on the basis of production in areas under their jurisdiction are major exporters of the categories of minerals to be derived from the Area, including at least two developing countries.

"(d) six members from among developing countries, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, and least developed countries.

"(e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose the geographical regions shall be Africa, Asia, Eastern Europe (Socialist), Latin America and Western Europe and others.

"2. In electing the members of the Council in accordance with paragraph 1 above, the Assembly shall ensure that land-locked and geographically disadvantaged States are represented to a degree which is reasonably proportionate to their representation in the Assembly.

"3. Election shall take place at regular sessions of the Assembly, and each member of the Council shall be elected

for a term of four years. In the first election of members of the Council, however, one half of the members of each category shall be chosen for a period of two years.

"4. Members shall be eligible for re-election; but due regard should be paid to the desirability of rotating seats.

"5. The Council shall function at the seat of the Authority, and shall meet as often as the business of the Authority may require, but not less than three times a year.

"6. Each member of the Council shall have one vote.

"7. All decisions on questions of substance shall be taken by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members participating in that session. When the issue arises as to whether the question is one of substance or not, the question shall be treated as one of substance unless otherwise decided by the Council by the majority required for questions of substance. Decisions on matters of procedure shall be decided by a majority of the members present and voting."



STATUS OF PROPOSED CONTRACTOR FEES (note a)

|                   |             |
|-------------------|-------------|
| Application Fee   | \$500,000   |
| Annual Fixed Fee  | \$1,000,000 |
| Production Charge |             |

System 1: "(a) If a Contractor chooses to make his financial contribution to the Authority by paying a production charge only, it shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following schedule:

"(i) Years 1-6 of commercial production..... 7.5%

"(ii) Years 7-12 of commercial production.... 10%

"(iii) Years 13-20 of commercial production... 14%

"(b) The said market value shall be the product of the quantity of the processed metals and the average price for those metals during the relevant accounting period."

System 2: "If a Contractor chooses to make his financial contribution to the Authority by paying a combination of of a production charge and a share of net proceeds, such payments shall be determined as follows:

"(a) The production charge shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following schedule:

"(i) Years 1-6 of commercial production..... 2%

"(ii) Years 7-12 of commercial production..... 4%

"(iii) Years 13-20 of commercial production.... 6%

"(b) Production charge shall not be raised from 2 per cent to 4 per cent in the years 7-12 unless the Contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the preceding years are equal to the development costs incurred prior to the commencement of commercial production. Production charge shall not be raised from

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a/These are fees proposed by the negotiating group chairman at the close of the 1978 New York conference session.

4 per cent to 6 per cent in the years 13-20 unless the Contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the preceding years are equal to twice the development costs incurred prior to the commencement of commercial production.

"(c) The Authority's share of net proceeds shall be taken out of an amount equal to 40 per cent of the Contractor's net proceeds to represent the net attributable to mining of the resources of the contract area. This amount shall be referred to hereinafter as the attributable net proceeds.

"(d) In the case of contracts for mining of nodules, the Contractor's net proceeds shall be based on the gross proceeds from the sale of nodules at prices established in a recognized international market. In the absence of such a market, the price of nodules shall be the result of arm's length transactions. In no event shall the net proceeds be less than the attributable net proceeds.

"(e) The Authority's share of attributable net proceeds shall be determined in accordance with the following schedule:

"(i) Years 1-6 of commercial production..... 40%

"(ii) Years 7-12 of commercial production.... 70%

"(iii) Years 13-20 of commercial production... 80%

"(f) The Authority's share of attributable net proceeds shall not be raised from 40 per cent to 70 per cent in the years 7-12 unless the Contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the preceding years are equal to the development costs incurred prior to the commencement of commercial production. The Authority's share of attributable net proceeds shall not be raised from 70 per cent to 80 per cent in the years 13-20 unless the Contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the preceding years are equal to twice the development costs incurred prior to the commencement of commercial production."

(46246)

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