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GAO examined U.S. participation in the various sessions of the Third Law of the Sea Conference (1974-1976) and the status of the issues as they stood before 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. The most important issues were: the breadth of the territorial sea; "transit passage" through, under, and over international straits used for navigation; use and conservation of the living resources of the sea; coastal states' rights to the mineral resources of the Continental Shelf; exploitation of the minerals of the deep seabed; protection of the marine environment; marine scientific research; and a system for settling disputes arising from the interpretation and application of the treaty. Findings/Conclusions: New U.S. proposals for an acceptable deep seabed mining regime were presented at the last conference session. They were to be considered during the intersessional period and could be the basis for discussion at the next session. The greatest degree of agreement was reached on the breadth of the territorial sea, transit passage of straits, and coastal resource rights in the economic zone. The high seas status of the economic zone remained to be resolved. There was agreement on many of the environmental protection articles. However, the United States has encountered opposition to the right of a coastal state to set ship construction, design, equipment, and manning standards in the territorial sea. Agreement was not reached on requirements for permitting scientific research in the economic zone. Although there was general agreement on the need for a dispute-settlement mechanism in the treaty, there were differences of opinion on the details. Congress expressed its support of U.S. positions at the start of the conference. Since that time, however, those positions have been modified.

(Author/QM)

REPORT TO THE CONGRESS

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

Results Of The Third Law Of The Sea Conference 1974 To 1976

Department of State

This report is a record of U.S. participation in the Third Law of the Sea Conference. It outlines the current status of conference issues, including U.S. positions thereon, as they stood before the conference session scheduled to start in New York on May 23, 1977.

ID-77-37

JUNE 3, 1977

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

B-145099

To the President of the Senate and the
Speaker of the House of Representatives

This report provides a record of U.S. participation in the Law of the Sea Conference and addresses the status of major Conference issues. The importance of reaching a treaty on the use of the oceans and their resources led us to monitor the actions being taken to create a cooperative international regime. We believe this report may be helpful to the Congress as a concise summary of treaty issues.

We did not request written comments from the National Security Council Interagency Group for Law of the Sea, but did discuss the report with officials of that office and considered their comments in preparing the report.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget; Secretary of State; Chairman, National Security Council Interagency Group for Law of the Sea; and the Special Representative of the President for the Law of the Sea Conference.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

RESULTS OF THE THIRD LAW
OF THE SEA CONFERENCE
1974 to 1976

D I G E S T

BACKGROUND

The first two Law of the Sea Conferences sponsored by the United Nations in 1958 and 1960 left some issues unresolved, including the breadth of the territorial sea, coastal state fisheries jurisdiction, and the limits of jurisdiction over the continental shelf. Also, technological advancements have created issues concerning potential mining of the deep seabed and protection of the marine environment, which in turn raised new issues for consideration.

In 1970, the United Nations called for a third Law of the Sea Conference. The first substantive session was held in Caracas, Venezuela, from June 20 to August 29, 1974. It was one of the largest international conferences ever held, with delegates from about 150 countries.

Since then, three more sessions have been held--Geneva from March 17 to May 10, 1975; and New York from March 15 to May 7 and August 2 to September 17, 1976. This report provides a record of U.S. participation in the Conference and outlines the status of the issues, as they stood before the Conference session scheduled to start in New York on May 23, 1977.

ISSUES

The intention of the Conference is to reach agreement on a comprehensive treaty covering all the uses of the oceans. The most important issues are

--the breadth of the territorial sea;

--"transit passage" through, under, and over international straits used for navigation;

--use and conservation of the living resources of the sea;

--coastal states' rights to the mineral resources of the continental shelf;

--exploitation of the minerals of the deep seabed;

--protection of the marine environment;

--marine scientific research; and

--a system for settling disputes arising from the interpretation and application of the treaty.

U.S. POSITIONS AND PROPOSALS

The United States is prepared to accept a 12-mile territorial sea as part of a treaty package. This includes the right of "transit passage" through, under, and over the more than 100 international straits which would be overlapped by the 12-mile territorial seas.

In recognition of the need for conservation and equitable apportionment of fisheries, the United States supports (1) coastal state jurisdiction for coastal species of fish in an exclusive economic zone, (2) coastal state control of fish that spawn in internal waters (anadromous species) and (3) international management of highly migratory species, such as tuna.

National jurisdiction over shelf resources was not precisely defined in the Continental Shelf Convention of 1958. Increased ability to extract minerals (oil and gas) from greater depths, the growing need for these resources, and the expectation of mining the deep seabed made an exact legal definition of the continental shelf necessary. The United States is willing to

accept the concept of an exclusive economic zone of 200 miles provided there is an agreement that the rights of other states in the zone, such as navigation and overflight, are preserved. Its primary concern is that the economic zone would become the equivalent of a territorial sea if the coastal state had jurisdiction over non-resource uses.

Parts of the deep seabeds of the oceans are covered with manganese nodules that contain exploitable amounts of copper, nickel, manganese, and cobalt. Various countries have developed the technology to raise these nodules and extract the metals; but development of an ocean mining industry has been delayed by uncertainty over the legal basis for such operations.

The United States recognizes the need for international administration of deep seabed mining, provided there is assured nondiscretionary access to the area by states and state-sponsored entities, and has proposed that revenues from seabed exploitation be shared internationally, particularly with developing nations.

The 1958 Continental Shelf Convention required the consent of the coastal state for marine scientific research on the shelf and provided that consent would not normally be withheld. In practice, consent has sometimes been denied arbitrarily or unreasonable conditions have been imposed. The Conference hoped to provide an equitable legal regime for the conduct of scientific research in the oceans.

U.S. proposals for scientific research are designed to take into account the interests of coastal states without unduly hampering research projects. There would be advance notification of the proposed project, a right of participation by the coastal state, sharing of data, and publication of the results. The United States

indicated that it could accept a consent requirement for resource-related research.

OBSERVATIONS

New U.S. proposals for an acceptable deep seabed mining regime were presented at the last Conference session. They were to be considered during the intersessional period and could be the basis for discussion at the next session.

The greatest degree of agreement was reached on the breadth of the territorial sea, transit passage of straits, and coastal state resource rights in the economic zone. The high seas status of the economic zone remains to be resolved.

There is agreement on many of the environmental protection articles. However, the United States has encountered opposition to the right of a coastal state to set ship construction, design, equipment, and manning standards in the territorial sea. Agreement has not been reached on requirements for permitting scientific research in the economic zone.

Although there is general agreement on the need for a dispute settlement mechanism in the treaty, there are differences of opinion on the details.

At the start of the Conference in 1973, the Congress expressed its support of the U.S. positions through Resolutions by the Senate and the House of Representatives. Since that time, however, the U.S. positions have been modified.

Contents

ABBREVIATIONS

SNT	Single Negotiating Text

GLOSSARY

Anadromous species	Fish, such as salmon, which spawn in fresh waters, migrate to ocean waters, then return to fresh waters to complete their life cycle.
Coastal species	Fish, such as haddock, other than highly migratory and anadromous species, inhabiting the waters off the coast.
Continental shelf	Legally described as the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or beyond to where the depth of the superjacent waters admits of the exploitation of the natural resources of these areas. Geographically described as the seabed area extending off the coast of a state to an outer edge which averages 200 meters water depth.
Highly migratory species	Fish, including but not limited to tuna, which spawn and migrate during their life cycle in broad expanses of the open ocean.
High seas	All water beyond the outer limit of the territorial sea.
Innocent passage	Navigation through the territorial sea to traverse that sea without entering internal waters, to proceed to internal waters, or to make for the high seas from internal waters, so long as it is not prejudicial to the peace, good order, or security of the coastal state.
Provisional application	Arrangement whereby a treaty, or certain aspects of it, would provisionally be applied after the treaty is signed, without waiting until it has been entered into force. Precedents exist for a provisional application regime, indicating that provisional application is legally and practically possible.

State	A country or nation.
Territorial sea	A zone off the coast of a state where complete sovereignty is maintained by the coastal state, but subject to the right of innocent passage to ships of all states.

CHAPTER 1

INTRODUCTION

The United Nations convened three Law of the Sea Conferences to resolve problems of national jurisdiction and rights in the oceans. The first Conference, held in 1958, adopted four international conventions relating to the territorial sea, the high seas, the continental shelf, and fishing. The breadth of the territorial sea was not determined and questions concerning fishery jurisdiction and rights to the resources of the continental shelf were not resolved. The second Conference, held in 1960, again failed to reach agreement on the breadth of the territorial sea.

Since these conferences, technology to mine 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 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. During the next 2 years, proposals were submitted on these issues and articles were drawn up showing the positions of the participants.

The first session of the Third Law of the Sea Conference was an organizational meeting held in New York City in December 1973. No negotiations were conducted.

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 breadth of the territorial sea, exclusive economic zone, straits, limit of the continental margin, archipelagos, problems of landlocked states, and other minor issues.

--Committee III, marine scientific research and environmental protection.

Another informal group discussed dispute settlement.

The U.S. delegation at Caracas included about 100 delegates, alternates, advisers, experts, and several Members of Congress. Federal agencies with ocean interests and the private sector were represented. The U.S. delegation was organized along the same lines as the Conference, with teams for each of the three committees and for dispute settlement.

U.S. positions on issues were determined by the President on the basis of alternatives developed by the National Security Council Interagency Task Force on the Law of the Sea (now Interagency Group for Law of the Sea).

Draft treaty articles, representing differing opinions on the various issues were developed. Many of these opinions represented differences between the developed countries and developing countries who are collectively known as the "Group of 77".

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

Since that time, three additional sessions of the Conference, one in Geneva and two in New York, have been held. This report traces the progress of the U.S. positions in negotiations since the Caracas session.

GENEVA SESSION

The third session of the Conference in Geneva from March 17 to May 10, 1975, principally resulted in the compilation of an informal Single Negotiating Text (SNT). Each Committee Chairman prepared a section on the issues considered by his Committee which represented his assessment of the trend of the negotiations based on both formal and informal discussions. The Conference President prepared the text on Dispute Settlement. The text was intended as a procedural device and a basis for negotiation. The SNT was issued on the final day of the Conference and was the basis for later negotiations.

SPRING 1976 NEW YORK SESSION

The fourth session, usually referred to as the Spring session, was held in New York City from March 15 to May 7, 1976. The Geneva SNT was used as the basis for discussions, and numerous amendments were proposed. The Committee Chairmen and the Conference President prepared a revised Single

Negotiating Text based on their appraisal of the formal and informal meetings. This revised text was issued on the final day of the Spring session.

Secretary of State Henry Kissinger visited this session to underline the importance of the negotiations to the United States. He met with the Conference President and several heads of delegations and made several proposals for facilitating agreement on key issues. (See p. 9.)

SUMMER 1976 NEW YORK SESSION

Despite some opposition from some Conference participants, a fifth, or Summer, session was held from August 2 to September 17, 1976. It is generally agreed that little or no progress was made at this session. However, each Committee Chairman published a report on the work of the session, giving his view on the status of the issues and possible future courses of action. Secretary of State Kissinger visited the session and made additional proposals intended to assist in reaching agreement. The Conference agreed to meet again in New York City beginning May 23, 1977, for 7 or 8 weeks.

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. We interviewed U.S. Government officials responsible for managing U.S. participation in the Conference and monitored meetings of the Geneva and two New York 1976 sessions as well as certain intersessional meetings.

Written comments were not requested from the National Security Council Interagency Group for Law of the Sea, but we did discuss this report with officials of that office and considered their comments in its preparation.

CHAPTER 2

COMMITTEE I: THE DEEP SEABEDS

One major objective for convening the Third Law of the Sea Conference was to establish a legal regime for the uses of the seabed and ocean floor beyond the limits of national jurisdictions--the deep seabed. The most important known resource of the deep seabed is manganese nodules, metallic chemical precipitates in the form of small rocks, containing various metals. On the average, they contain 25 percent manganese, 1 percent copper, 1.25 percent nickel, 0.22 percent cobalt, and smaller amounts of other metals, such as molybdenum, zinc, and vanadium. Parts of the ocean floor are covered with millions of these nodules. Higher concentrations of nodules and their greater metallic content make certain areas more valuable to potential seabed miners. During the 1960s, technology was developed for raising the nodules from depths of 12,000 feet or more and extracting their metals. This technology is now being tested.

The United States depends to a great extent on foreign sources of supply for most of the metals which could be extracted from the nodules, especially cobalt, manganese, and nickel. Several U.S. and foreign corporations have developed and are testing the technology necessary to mine and process the nodules; however, no commercial mining has taken place because of uncertainty about the legal regime for mining in international waters and the high cost of such an operation. To begin commercial exploitation on a single minesite would cost an estimated $300 million to $600 million in 1975 dollars and mining companies do not want to make such large investments without a clear legal right to tenure of a specific minesite. However, if U.S. miners were able to extract these metals from the seabed, dependence on foreign sources could be reduced or eliminated, the possibility of price control by foreign cartels--although not thought to be great--could be mitigated, and the U.S. balance-of-payments position could be somewhat improved. Moreover, there may be benefits from spin-off technology. Therefore, it is in the U.S. interest for U.S. miners to obtain access to deep seabed minesites.

Historically, it has been the high seas rights of any state to exploit ocean resources beyond the limits of national jurisdiction. This is still the U.S. position and it applies to the rights of U.S. miners to exploit the deep seabed. In 1970, the U.N. Seabed Committee declared that the resources of the seabed and ocean floor were the "common heritage of mankind." President Nixon's Ocean Policy statement

supported this concept, which in the view of the U.S. National Security Council Interagency Group for the Law of the Sea did not contradict the U.S. high seas right to exploit the deep seabed. Most developing countries, however, interpret the concept of "common heritage" to mean that the resources of the deep seabed are, in fact, common property. In 1970, the United States proposed draft treaty articles which provided that:

1. Coastal states would have jurisdiction over the seabed out to a water depth of 200 meters.

2. From the 200-meter depth to the limit of the continental margin, called a trusteeship zone, exploitation of the seabed would be administered by the coastal state for the international community.

3. An international Seabed Resource Authority would control exploitation beyond the continental margin area.

4. The Authority would be financed from fees for exploitation rights.

5. A portion of the income would be used for the benefit of less developed countries.

The Authority would consist of (1) an Assembly, comprising all parties to the treaty, which would make general policy and approve financial arrangements, (2) a Council, consisting of 24 members (6 designated from industrially developed countries and 18 elected, 12 of them from developing countries, and decisions would require a majority of both elected and designated members), which would adopt rules and practices, and (3) a Tribunal for settling disputes over treaty interpretation or application.

At the Caracas session, there were several major areas of disagreement. The most important one was the system of exploitation. The Group of 77 insisted that the Seabed Resource Authority should have complete control over the exploitation system. Many developing countries supported a proposal for the Authority itself to engage in seabed mining; other countries, African and Asian in particular, proposed that the Authority initially contract with commercial miners and engage in direct exploitation later. A proposal supported by Europeans included both direct and licensed operations.

The issue of the possible economic implications of deep seabed mining on countries presently producing minerals which would be mined at sea was given considerable attention. There was widespread support for price and production controls to protect landbased producers.

Another unresolved issue, one of importance to the United States, is the inclusion in the treaty of detailed rules and regulations for the operation of the Authority, especially the granting of mining contracts. The Group of 77 opposed this, preferring to give the Authority greater flexibility in rulemaking. There was also a difference of opinion as to what the basic conditions of exploitation should be.

These major issues--the basic conditions of exploitation, economic implications of seabed mining, and inclusion of rules and regulations in the treaty- were considered at the Geneva session.

INFORMAL SINGLE NEGOTIATING TEXT

In Geneva, the United States agreed to consider making basic conditions of exploitation part of the treaty on the condition that there would be detailed regulations during the period of provisional application. (See ch. 6.)

Several systems were examined which would permit a form of parallelism between operations of the Authority and the Enterprise, the operational arm of the Authority. Under a Soviet proposal, the Authority would directly exploit a portion of the seabed, either alone or under contract with state or private entities. Another portion of the area would be reserved for the exclusive use of states or state-sponsored entities.

The United States explored a system, also embodying the concept of parallelism, under which an applicant wishing to mine would submit two equal minesites to the Authority, one of which the Authority would reserve or "bank" and for which it would negotiate a contract with a state or private entity on whatever terms seemed appropriate The other area would be exploited by the states or private entities making the application. Conditions for exploitation would be specified in advance in the treaty.

The chairman of the Committee I working group also proposed a system using the concept of parallelism, under which sites would be reserved for the Authority and for private mining. One half of the private areas would be turned over

to the Authority when commercial production began, and eventually the Authority would have 75 percent of the minesites.

The Group of 77 rejected all these proposals, and the informal Single Negotiating Text reflected the Group of 77 position--complete control of the exploitation system by the Seabed Resource Authority which "may, if it considers it appropriate," enter into arrangements with states or private entities.

The Geneva SNT was not acceptable to the United States as a basis for negotiation because it provided for:

--Direct price and production control and for the Authority to control the seabed area beyond national jurisdiction, including scientific research and other non-resource uses.

--The Council to have little or no power and be subordinate to the Assembly, while a Secretariat would have audit and inspection powers but would not be responsible to the Assembly or the Council.

--No Rules Commission, which the United States considered necessary.

--Private parties to have no right of access to the Tribunal.

--Possible changes in miners' contracts.

--No security of tenure of minesites, control of prospecting by the Authority, and a quota system whereby one country could not have more than a specified number of minesites.

REVISED SINGLE NEGOTIATING TEXT

Many of the U.S. proposals for amending the Geneva seabed articles were incorporated in the revised Single Negotiating Te t issued at the end of the Spring 1976 New York session. In the opinion of U.S. delegation members, the new Committee I text was an improvement over the Geneva text; however, they believed some of the articles were still not good enough. For example:

--Production control is limited to 20 years and is specified in the treaty, with provision for an additional 5 years with Council approval. Production is based on the growth of world nickel market requirements, which

are estimated to be a minimum of 6 percent a year. This provision as drafted would not effectively limit projected seabed development. States and their nationals have the right of access to seabed resources, based on mainly objective criteria. The United States still maintained that these procedures fell short of the U.S. requirements for nondiscriminatory access.

--The Authority controls seabed resources only, not scientific or other non-resource activities.

--The Assembly would make general policy, and the Council would make specific policies. The powers and functions of the Assembly were generally consistent with the U.S. position. The voting system in the Assembly was changed from two-thirds of those present to two-thirds of all members. A "cooling off" period, during which Assembly votes could be changed, helped to ensure against arbitrary decisions.

--Rules and Regulations, Economic Planning, and Technical Commissions were established.

--The Enterprise would be allowed to operate under the same conditions as private or state contractors; however, contractors would be required to provide reserved sites for the Enterprise to exploit.

--Two possible systems of revenue-sharing were provided--the contractor could choose either profit-sharing or royalties or the Authority could choose the revenue-sharing plans.

--The ability of the Authority to revise the conditions of existing contracts was deleted; contractors could contract for separate stages of the mining operations.

The only subject discussed at the Summer 1976 New York session was the system of exploitation. This issue was raised by the Group of 77 because they found the revised SNT unacceptable and believed that access to the seabed should not be guaranteed but that the Seabed Resource Authority should have the right to refuse permission for private or state exploitation.

The United States, with the support of other industrialized countries, favored a parallel system of access under which states and private entities would be assured access to the deep seabed. The Authority would supervise all exploitation of the seabed and could make contracts with the Enterprise

and private or state miners. Unless the private or state applicants did not meet criteria to be spelled out in detail in the treaty, the Authority would be obligated to enter into the contract.

The Soviet Union proposed a somewhat similar system. The Authority could exploit certain areas, and state or state-sponsored miners would have access to other areas. The Authority would have greater control over the state and private operations than in the U.S. proposal.

On April 8, 1976, at the New York session, Secretary of State Kissinger, in a major policy speech and meetings with heads of the Conference delegations, made several new proposals for reconciling differing positions on seabed issues. He related these proposals to the U.S. positions as outlined below.

--The powers of the Authority should be detailed in the treaty.

--The Council should reflect the interests of consumer and producer states. A state's influence in the Council should be based on its economic interest in the deep seabed.

--Private parties should have access to the Tribunal to settle disputes.

--All nations should have nondiscriminatory access to deep seabed resources, with no quotas or limits on the number of sites available to a country. The Authority may itself exploit the seabed through the Enterprise. State-sponsored operators would propose two sites, one of which would be selected by the Authority, and the Enterprise could mine these areas or make them available to developing countries for exploitation. This is a refinement of the "parallel system" which had been proposed at Geneva.

--There should be a system of sharing the revenue for the benefit of the less developed nations of the world, which should also be assisted by sharing seabed mining technology and the training of their personnel in seabed mining techniques.

Secretary Kissinger also indicated U.S. willingness to accept a temporary limit on deep seabed production of minerals to reassure landbased developing country copper

producers. Production would be limited to the projected growth of the nickel market, estimated to be 6 percent a year. The limit on nickel would also serve to limit production of the other nodule minerals, chiefly copper, manganese, and cobalt. In its practical effect, however, the U.S. view is that the production ceiling would not reduce projected seabed output, although the upper limit should reassure landbased copper producers that seabed copper output would not threaten their investments. Further protection for landbased producers could be offered by having the Seabed Resource Authority participate in commodity agreements for the seabed minerals. The Authority would also arrange for adjustment assistance programs for countries whose economies may suffer as a result of ocean mining.

These proposals were well received by the Conference participants and are incorporated in part in the Committee I section of the revised SNT prepared at the New York session.

Secretary Kissinger again attended the Conference on September 1 and 2, 1976, and met with several delegations. He emphasized the importance the United States placed on the right of assured access to the deep seabed and made several proposals for consideration. First, the United States would be prepared to agree to a means of financing the Enterprise. Thus the Enterprise could commence operations at about the same time as private or state miners. Second, there would be agreed provisions for the transfer of seabed mining technology to the Enterprise so that, over time, the existing advantages of certain industrialized states would be equalized. Third, recognizing that it might be unwise to set up rules and regulations for the regime's operation on a permanent basis, he proposed that there be reviews of the regime at 25-year intervals.

The proposals were contingent upon acceptance of a parallel access system which assured access to the deep seabed to states and state-sponsored entities. Secretary Kissinger indicated that these proposals represented the limit of U.S. compromise. Because the proposals lacked details and were made late in the session, it was difficult to assess their effect on other delegations. The Committee did not discuss them, and some delegations indicated an interest in pursuing them at the next session.

The Committee Chairman's comments on the results of the Summer 1976 New York session noted that the system of access was the most controversial issue in the negotiations. He noted also that Secretary Kissinger's proposals were predicated on acceptance of the parallel system and that details

were not yet known. In regard to the offer of financial assistance to the Enterprise, he said that it must not "depend purely on the benevolence of willing States alone."

OBJECTIONS OF U.S. INDUSTRY TO REVISED SNT

Although some members of the ocean-mining industry believed that the revised SNT issued in New York was satisfactory as a basis for negotiations, others objected to it. The basic requirements of the ocean-mining industry are to assure access to sources of ore and security of tenure of minesites. Specifically, industry members want (1) free access to all seabed minerals, (2) protection against such things as price and production controls, monopolies, and cartels, (3) coverage by U.S. laws--tax, customs, safety, and antipollution, and (4) U.S. Government diplomatic protection.

Many industry members do not believe that the New York Committee I text met these requirements. They believe the text provided for unfair competition by the Enterprise, which would be provided with seabed minesites located at the expense of private companies. The Seabed Resource Authority would regulate seabed mining and control mining operations and could exploit the seabed through the Enterprise. Also, the text offers no guarantee of access to the seabed and access could be limited by an anti-monopoly clause.

Another objection was the tax question, which concerns domestic U.S. policies rather than the treaty text. By law, payments made to the Authority would not be subject to U.S. foreign tax credit provisions since they would be made to an international organization. The Treasury Department believes that any U.S. contribution to an international organization should be subject to the congressional appropriation process.

For these reasons, several U.S. companies interested in deep seabed mining have stated that they will not attempt to engage in ocean mining if the final treaty contains the provisions in the New York text.

DOMESTIC LEGISLATION

Legislation was introduced, but not passed, to provide for deep seabed mining by U.S. companies 2 years before the first organizational session of the Third Law of the Sea Conference in 1973. Similar legislation was introduced at each subsequent session. The legislation, although differing on some details, would provide for the issuance of licenses to mine a specified area of the seabed and for compensation for

any adverse effects of an international agreement. Numerous hearings have been held on the proposed legislation, and the views of advocates and opponents have been made known to the appropriate congressional committees.

U.S. mining companies have advocated passage of the legislation as a means of preserving the technological lead over foreign competitors. Some companies could have begun mining, but a substantial investment would be required to commence operations and, without the security of tenure of a minesite and protection of the U.S. Government, they are reluctant to begin.

The executive branch has opposed the legislation because it believes unilateral action would hurt the U.S. negotiating position at the Law of the Sea Conference. It would endanger not only the seabed articles but also the entire treaty, including fishing, navigation, and other important provisions.

UNRESOLVED ISSUES

From the U.S. point of view, probably the most important unresolved issue is the system of exploitation--the access system. The United States continues to seek acceptance of provisions which would grant assured access to the deep seabed for state-sponsored miners. This is a fundamental U.S. objective. Other important issues include the Council's voting system and composition. As the rulemaking arm of the Authority, the structure and procedures of the Council would substantially affect access to the deep seabed and contractor operations. The United States wanted to ensure that it and the other industrialized countries with seabed mining capability would have sufficient influence in the Council.

The quota system caused a difference of opinion among the industrialized nations. Some nations wanted to limit the number of individual country minesites and/or contracts. The United States opposed this because it felt that there are more than enough prime sites for potential miners.

For provisional application of the treaty, the question is: Should the entire treaty, only Committee I articles and those pertaining to fisheries in Committee II, or none of the treaty become provisionally applicable? The U.S. position supports provisional application of at least the Committee I articles. Some states have domestic legal problems with this concept. There are precedents for U.S. provisional application of international agreements, but some Members of Congress have reservations about its use in this case. However, the treaty will require Senate approval.

Although the new text provided for funding the Enterprise by several methods--voluntary contributions, borrowing, charges to member states--there was little discussion of this at the 1976 New York sessions other than the Secretary Kissinger initiative.

CHAPTER 3

COMMITTEE II: TERRITORIAL SEAS AND STRAITS ECONOMIC ZONE, CONTINENTAL SHELF, AND HIGH SEAS ARCHIPELAGOS, LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES

TERRITORIAL SEAS AND STRAITS

The maximum breadth of the territorial sea and passage through, under, and over straits used for international navigation have been inseparably linked. With acceptance of a 12-mile territorial sea, over 100 straits less than 24 miles wide would come under the jurisdiction of the bordering coastal states. The U.S. position has been to accept extension of the territorial sea to 12 miles, provided the right of "transit passage" through, under, and over the international straits was retained.

The right of transit passage differs from the right of innocent passage which, under the 1958 Convention on the Territorial Sea, is limited to vessels on the surface and does not apply to overflight or submerged passage. This Convention has been used to make subjective interpretation of the type of passage which will be permitted. Some states have claimed a right to exclude certain types of ships and to restrict passage on the basis of cargo, nationality, or destination of the ship. Lack of the clear right of transit would seriously impede the mobility of the U.S. Armed Forces.

In Caracas, the United States expanded its acceptance of a 12-mile territorial sea conditioned upon an acceptable straits regime, to include conditional agreement on a 200-mile economic zone as part of a comprehensive treaty package.

There was general agreement on the 12-mile territorial sea, although there were no formal negotiations on this issue. Several proposals were made regarding innocent passage, the majority of which were concerned with developing objective criteria.

In Geneva, agreement on the 12-mile territorial sea was almost unanimous. Discussions were held on the baseline from which the territorial sea is measured. Attempts were made to clarify the 1958 Convention regime of innocent

passage by compiling an objective list of activities which were "not innocent."

Informal Single Negotiating Text

The United States objected to the provision in the SNT that coastal state laws and regulations "shall not apply to or affect the design, construction, manning or equipment of foreign ships or matters regulated by generally accepted international rules * * *." This conflicted with the U.S. position and laws and appears to conflict with the environmental protection articles in part III of the SNT. (See ch. 4.)

An attempt was made to balance the rights of states that border coastal straits with traditional freedom of navigation. The SNT provided for "transit passage" for straits used for navigation between one area of the high seas or an exclusive economic zone and other areas of the high seas or an exclusive economic zone. Passage and overflight using the "normal mode" would be for continuous transit of the straits without delay and without threat or use of force. The use of the phrase "normal mode" is important to the United States, because the normal and safest mode of submarine transit is underwater. The SNT also provided for establishment of a contiguous zone of an additional 12 miles beyond the territorial sea at the option of a coastal state. This zone would extend the state's right to control its customs, immigration, and sanitary regulations.

At the Spring 1976 New York session, the question of division or delimitation of territorial sea boundaries was raised. This issue applied also to economic zones and continental shelves. There were advocates of both equidistance and equity for determining these boundaries.

Revised Single Negotiating Text

The issues of territorial seas and straits were virtually resolved at the Geneva session by general acceptance of the 12-mile territorial sea and transit passage in straits.

Discussion of the rights of coastal states to set design, construction, and manning criteria for ships in their territorial seas was limited to a short period at the end of the Summer 1976 New York session. It is to be brought up again at the May 1977 session and will need to be coordinated with the Committee III anti-pollution articles.

ECONOMIC ZONE, CONTINENTAL SHELF, AND HIGH SEAS

Before the Caracas session, the U.S. policy on resources of the coastal zone was that coastal states should have preferential fishing rights and exclusive minerals control on the continental shelf to a water depth of 200 meters. Beyond this depth would be an intermediate zone reaching to the outer edge of the continental margin, for which a coastal state would act as trustee for the Seabed Resource Authority. A large part of the revenues from exploitation of this area would be made available to developing countries.

Possibly because of changing conditions in this period--continual decline of the U.S. coastal fishing industry and the energy crisis--U.S. policy changed to some extent. There was strong international and domestic support in favor of a broad national resource or economic zone. The United States proposed that coastal states have control over construction, operation, and use of offshore drilling platforms and deep-water ports and similar installations.

The fisheries position became one of broad coastal state control of coastal and anadromous species subject to certain international obligations. U.S. fisheries proposals are 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 them to the extent of their ability to harvest them within the allowable limits. The allowable limit would be 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 throughout the oceans was given to the state of origin.

Under the U.S. proposals, highly migratory fish species would be subject to international or regional control and there would be provisional application of the fisheries articles of the treaty.

During the Caracas session there was extensive support for establishing an economic zone of 200 miles (including the 12-mile territorial sea), with a coastal state having exclusive rights to exploitation of the living and nonliving

resources of the zone. A coastal state would have exclusive drilling rights on the continental shelf or sea floor of the zone and control of installations. There would be freedom of overflight and navigation, and other states would have the right to lay pipelines and cables.

States with broad shelf margins opposed the U.S. revenue-sharing proposal but some developing countries supported it. Extension of coastal state resource jurisdiction beyond 200 miles to the end of the continental margin was supported by many Latin American, Asian, and Western European nations and by Canada, Australia, Mauritius, and New Zealand. It was generally opposed by African nations, Japan, and landlocked and geographically disadvantaged states.

The question of the economic zone was raised during the Caracas session. Creation of the zone would remove or modify some of the traditional high-seas freedoms, such as fishing, while retaining others, including navigation and overflight. The United States feared that granting rights to coastal states in the zone would erode the status of the high seas and, through extension of various forms of jurisdiction, make the zone the equivalent of a territorial sea. Thus the U.S. delegation proposed a text stating that the regime of the high seas applied to the economic zone except as modified by the provisions of the treaty.

Although there were no negotiations on details, the proposals were set out in working papers, with alternative texts covering the main trends on the issues.

The Evensen Group 1/ considered economic zone matters at the Caracas session and met frequently during the period between sessions. It produced articles which covered most Committee II issues except highly migratory species, although attempts were made to negotiate an article on this issue.

Informal Single Negotiating Text

The Evensen articles greatly influenced the Single Negotiating text issued by the Chairman of Committee II. A major problem was negotiating a balance between the duties of the coastal states to respect international rights, such as

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1/A group of about 40 delegates, including many delegation chiefs and representatives of all regional groups.

freedom of navigation, and the duties of the states that use the economic zone to respect coastal state rights. The SNT articles reflect the general acceptance of freedom of navigation, overflight, and related rights and give the coastal states the right to exploit and manage the natural resources of the zone. There was no provision, however, for assigning unspecified or "residual" rights to coastal states or user states. This is related to the overall issue of the legal status of the economic zone as high sea.

There were other indications in the text that the economic zone should be considered a separate area, neither high sea nor territorial sea. A formal discussion of the definition of high sea was postponed until the overall economic zone issue was settled.

Fisheries

At the Geneva session, there was substantial opposition to the Evensen fisheries articles. The landlocked and geographically disadvantaged states objected because the articles failed to provide them access to a fishing territory. They wanted a provision in the treaty to give them the right to fish in the economic zones of their neighbors. Coastal states preferred bilateral negotiations for these rights.

The Geneva SNT reflected a favorable position for the United States on fisheries in the economic zone--coastal state management jurisdiction over fishing. The coastal states were required to adopt conservation measures to ensure that the fish stocks were not over-exploited and to provide optimum use, allowing other states to harvest up to the maximum allowable catch over that which each coastal state does not have the capacity to take. The state of origin was responsible for anadromous stocks and for protecting other states which suffered "economic dislocation."

The SNT provided for access by landlocked and geographically disadvantaged states to the fisheries of neighboring state economic zones, but the concerned states considered the provision inadequate. The SNT also provided for a coastal state to regulate highly migratory species in its economic zone, a provision the United States considered unsatisfactory.

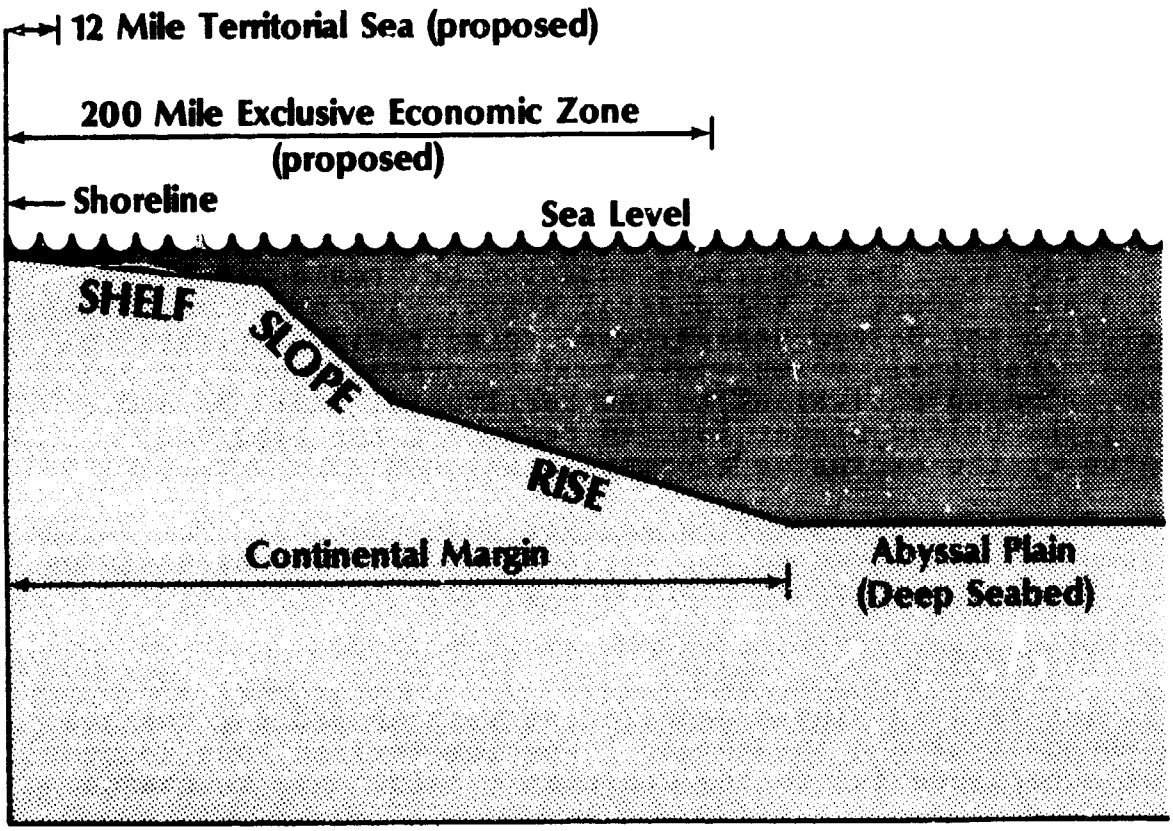
Continental shelf

Although there was widespread agreement on a 200-mile economic zone, there was a difference of opinion 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 Geneva session, a compromise by which coastal states would retain the right to exploit the resources of the continental margin beyond 200 miles but would share revenues from exploitation beyond 200 miles won increased support.

The United States supported the compromise and, modifying its original position of revenue-sharing beyond 12 miles or the 200-meter depth, which had little support, indicated that it could support revenue-sharing starting at 200 miles. It suggested a 1-percent revenue-sharing of the wellhead value of production after 5 years, followed by an increase of 1 percent a year up to 5 percent. This general method of revenue-sharing was reflected in the revised SNT, although proposals for profit sharing or contributions in-kind were made during the Geneva session.

THE CONTINENTAL MARGIN IN PROFILE



Revised Single Negotiating Text

Coastal state jurisdiction over the resources of the economic zone continued to be acceptable to the majority of participants. The major problem was negotiating a balance between coastal state resource jurisdiction and other ocean uses. Some countries continued to support greater coastal state jurisdiction in the zone.

In the Spring 1976 New York session, Secretary Kissinger stated that the high seas is the economic zone; however, the introduction by the Chairman of Committee II to the revised text states "Nor is there any doubt that the exclusive economic zone is neither high seas nor the territorial sea." He believes that it is a separate regime.

During the Summer 1976 New York session, the United States considered the legal status of the economic zone to be the most important outstanding issue in Committee II, and it was accorded priority status. A negotiating group open to all members was set up for discussion. The issue was divided into (1) the legal status of the economic zone and (2) the rights and duties of states with respect to the living resources of the economic zone. Later, small consultative groups were set up for each of these items.

Debate on the legal status of the economic zone was generally between coastal and maritime states. Coastal states wanted the treaty to provide for specific international rights in the economic zone, such as navigation rights and cable laying. The remaining unstated or "residual" rights would also revert to the coastal state. The maritime states, including the United States, want these residual rights to be international. which would tend to prevent the high sea from becoming equivalent to the territorial sea. In addition, the United States favored retaining the high sea status of the exclusive economic zone.

No acceptable solution has yet been reached. The United States did not agree to the revised SNT article which states that the economic zone is not a high sea.

Fisheries

The revised Single Negotiating Text showed few changes in the coastal and anadromous fisheries article, due to general acceptance and to the Chairman's reluctance to change

the SNT articles without broad support. Some technical changes were made to the highly migratory species articles. The changes, which the United States considered an improvement, were opposed by other coastal states. Even with these changes, the revised articles were not considered satisfactory by all of the U.S. tuna industry.

In April 1976, the President signed Public Law 94-265, the Fishery Conservation and Management Act of 1976, extending U.S. fisheries jurisdiction to 200 miles.

The provisions of the domestic legislation were generally compatible with the coastal fisheries articles of the revised SNT, but did extend U.S. management authority of salmon beyond the fisheries zone to wherever the fish were found, except if found within a foreign nation's recognized territorial sea or fishery conservation zone. 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 extension of its fisheries jurisdiction, the United States has had to negotiate new agreements with nations fishing off the U.S. coasts. Negotiations were quite successful and resulted in acceptance of the new limit by other countries.

During the 1976 New York sessions, highly migratory species were briefly discussed. The tuna articles of the revised SNT were a slight improvement from the U.S. point of view. The United States wanted international or regional control of tuna in the economic zone and the articles were ambiguous on this point. Some coastal states want to control the economic zone in order to increase their influence in the zone. The issue was not resolved.

The continental shelf

There was emerging recognition that the accommodation on the shelf would provide for extending 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. Two formulas were proposed. One was a standard geological principle. The other, proposed by the Irish delegation and acceptable to the United States, included a formula based on seabed sediment thickness. The United States supports revenue-sharing beyond 200 miles with percentages specifically designated as part of the treaty.

During the Summer 1976 New York session, the main topics discussed in the negotiating groups were:

--The limits of the shelf.

--Possible exemption of developing states from contributions.

--Which states would benefit from the contributions.

--Which organization would distribute the contributions.

OTHER ISSUES

Archipelagos

Several island states maintain that they have sovereignty over the waters within baselines connecting the outermost points of the outermost islands. The United States does not recognize the current claim by such states. The revised SNT does address this issue by limiting its applicability and by providing navigation and overflight through and over the waters of the archipelagos.

Landlocked and geographically disadvantaged states

About 52 countries at the Conference are actually landlocked or consider themselves to be geographically disadvantaged. There was no official definition of the latter type of state. These states want to obtain fishing rights and other concessions in the economic zones of their neighbors, and landlocked countries want to gain transit rights to the sea. They believed their interests were not reflected in the revised Single Negotiating Text.

Negotiations were held and some progress was made. The United States is sympathetic to the concerns expressed and is encouraged that the states directly concerned have been negotiating to resolve differences.

Territories under foreign domination--resource rights in the economic zone

An article in the SNT would give resource rights established by the treaty to certain non-self-governing territories. The issue was sensitive because it raised difficult questions for states with dependent territories. It also raises issues

regarding liberation organizations recognized by the Organization of African Unity and the League of Arab States. The U.S. position was that the question was not appropriate for the Law of the Sea Conference.

The transitional provision was not acceptable to the United States, and at the Spring 1976 New York session the U.S. delegation proposed compromise wording which would, among other things, provide for its application to commonwealth associations.

OBSERVATIONS

There was probably greater agreement on Committee II issues than on the other parts of the Conference.

The issue of delimitation of boundaries between opposite and adjacent states was essentially a bilateral problem and might be settled on this basis with the general guidelines for negotiation contained in the Law of the Sea Treaty.

The issue of the legal status of the economic zone was extremely important and may be difficult to resolve.

Passage of legislation extending U.S. fisheries jurisdiction has required restructuring of U.S. bilateral fishing agreements. To a great extent, members of the U.S. delegation concerned with Committee II fisheries' discussions were also involved in the bilateral negotiations.

CHAPTER 4

COMMITTEE III: PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT AND MARINE SCIENTIFIC RESEARCH

MARINE ENVIRONMENT

The marine environment has been deteriorating for many years, and there have been several attempts at international cooperation in marine pollution control, including the:

--Amendments to the 1954 Convention for the Prevention of Pollution of the Sea by Oil.

--Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter.

--Regulations adopted by the Intergovernmental Maritime Consultative Organization.

--U.N. Environment Program.

--U.N. Marine Environment Protection Committee.

Discussions in the Seabed Committee and in the initial phases of the Law of the Sea Conference identified several existing or potential sources of marine pollution. These include (1) landbased sources of pollution, such as sewage or industrial waste, (2) potential pollution from manganese mining of the deep seabed, (3) pollution from the development of oil and gas and from other activities on the continental shelf, (4) pollution from ocean dumping, and (5) accidental or intentional vessel pollution.

The objective of the Law of the Sea negotiations concerning the protection and preservation of the marine environment has been to establish effective environmental protection obligations with regard to these sources of marine pollution. In general, this would include standard-setting and enforcement rights for each source and, with the exception of landbased pollution, would require that domestic regulations be at least as effective as international regulations.

During the Caracas session of the Conference, draft articles were completed on general obligations for preventing

pollution, some particular obligations, global and regional cooperation, technical assistance, rights of states to exploit their resources, and the relevance of economic factors to developing-country obligations. These texts were not fully agreed upon. The major item of contention was the double standard issue raised by some developing countries, which felt that the obligations on developing states should be less stringent than those placed on developed states.

Single Negotiating Text

During the Geneva session, articles covering monitoring, landbased sources of pollution, and environmental assessments were generally agreed upon. The environmental assessment provision required states to determine the possible polluting effects of domestic activities before they are carried out. The Single Negotiating Text issued at the session generally reflected these agreements.

The monitoring and assessment articles were intended to ensure that states assess in advance the environmental impacts of activities which may cause substantial marine pollution and follow up with reasonable monitoring efforts. The article on landbased sources of pollution requires states to establish national regulations to control pollution and includes special mention of toxic and persistent substances. Discussions on pollution from the continental shelf and from dumping did not reach complete agreement during this session of the Conference. The central issue was whether these sources of pollution should be controlled only by the coastal state or should be subject to a binding obligation to accept international standards.

Revised Single Negotiating Text

The revised SNT produced during the spring session in New York reflected general agreement on several outstanding issues. The provisions of this text obligated (1) coastal states to establish national laws to control pollution arising from seabed activities subject to their jurisdiction and (2) all states to establish rules to control pollution from the dumping of wastes. These laws are not subject to, but must be as effective as, international or global standards. The text also reflected an emerging consensus on three major aspects of vessel source pollution--coastal state pollution regulations in the economic zone, general enforcement problems concerning vessel source pollution, and coastal state rights concerning pollution in the territorial sea.

The right of a port state to prosecute was extended from vessels in port to violations regardless of location. Flag-state enforcement rights and obligations were increased, balanced by safeguards, such as liability for unreasonable enforcement. The setting of standards in the territorial sea was a major source of disagreement. The United States and several other coastal states believed that coastal states should be permitted to establish regulations stricter than international standards in their territorial seas for such things as ship design, construction, and manning. U.S. domestic legislation has already provided for this. Most West European nations and Japan and Russia, however, were opposed to this view. The U.S. position was reflected in the Committee III section of the revised SNT, but the Committee II articles on the territorial sea contained the opposing view.

At the Summer 1976 New York session, coastal state competence to establish standards for ship construction, manning, and equipment in the territorial sea was discussed, but the session ended with no resolution of the issue.

The revised SNT, containing the degree of balance between environmental protection and navigational rights advocated by the United States, was not revised during the Summer New York session.

Observations

Coastal state authority to prescribe ship design, construction, and manning and equipment standards in the territorial sea is a basic U.S. interest and an unresolved issue in Committee III. Domestic legislation now provides for the United States to exercise authority in these matters in U.S. territorial seas. The domestic legislation was intended to protect U.S. coasts from environmental damage.

MARINE SCIENTIFIC RESEARCH

The right to conduct scientific research in the oceans beyond the territorial sea has been traditionally one of the freedoms of the high seas. The 1958 Convention on the Continental Shelf, which required consent of the coastal state for research on another continental shelf, imposed the first limit on this right. Consent is not normally withheld when the research is purely scientific. Coastal states are to have the right to participate in the research, and the results of the research are to be published.

In practice, however, states have withheld consent through not replying to requests or in other ways impeding research efforts. This situation, combined with technological advances and coastal state claims of extended jurisdiction, made revision of the existing regime necessary.

During the Caracas session, the United States supported treaty articles it felt would protect coastal state interests without discouraging research. Coastal state protection would be provided by obliging those conducting the research to:

--Notify the coastal state in advance.

--Allow coastal state participation.

--Share data and samples with the coastal state.

--Assist the coastal state in interpreting data.

--Publish the results of the research.

--Comply with environmental regulations.

--Certify that the research is purely scientific and is to be conducted by a qualified scientific organization.

The proposed articles also provided for compulsory dispute settlement to resolve questions of compliance with the obligations and any other disputes. However, most developing countries felt that their interests could be protected only by requiring consent for all research in areas under coastal state jurisdiction. As a result of the differing views, the Caracas session produced agreement only on general principles for the conduct of marine research. These principles include requirements that research must be conducted for peaceful purposes only, must not interfere with other ocean uses, cannot form the legal basis for claims to any part of the marine environment or its resources, and researchers must comply with applicable environmental protection regulations.

Single Negotiating Text

During the Geneva session of the Conference three main trends developed. The first was reflected by the proposal of the Group of 77, which provides that all scientific research in areas under coastal state jurisdiction be conducted only with the consent of the coastal state. The second, supported by the United States, was reflected in the proposal of several West European countries that marine scientific

research be conducted if a list of internationally agreed obligations are fulfilled, subject to dispute settlement procedures. The third was reflected by a Soviet proposal that marine scientific research in the economic zone "related to the exploration and exploitation of living and non-living resources" be conducted only with the consent of the coastal state; research not so related would be conducted subject to the fulfillment of a series of obligations; a similar regime would apply to research on the continental shelf beyond the economic zone. Research in the international area could be conducted freely. As this approach, focusing on the purpose of the research, had some appeal to both those seeking a consent regime and those advocating marine scientific research under an obligation regime, it was the center of discussion throughout the session and was reflected in the SNT.

The major criticism levied at the Soviet approach by developing and some developed countries was the practical difficulty of making such a distinction. Some countries, led by Canada, concluded that all marine scientific research should be subject to consent regime, while others stated that they could accept distinction if the coastal state had the exclusive right to determine whether the research related to exploration or exploitation of resources. This controversy continued during most of the New York Spring session.

Revised Single Negotiating Text

The text required consent for all scientific research in the economic zone. Consent was not to be withheld unless it was resource-related or involved drilling, explosives, or structures. There was also recourse to the treaty dispute settlement provisions if a dispute could not be resolved within 4 months by the conciliation procedures detailed in the text. These procedures involve the use of experts in the field of marine research, to be chosen by the parties to the dispute.

The revised Single Negotiating Text, however, reflected a different approach from those discussed in the negotiation. It requires consent for all scientific research in the economic zone but provides that consent shall not be withheld unless the research is resource-oriented, unduly interferes with economic activities of the coastal state, involves drilling and the use of explosives, or involves the use of artificial islands or installations subject to coastal state jurisdiction. The new text also provides that disputes over research will first be referred to experts to aid the parties in reaching agreement, and if those efforts are not successful, to the binding dispute settlement procedures set forth in Part IV.

Many provisions of the revised SNT are considered unacceptable by the U.S. scientific community. Two specific provisions will serve as examples. The text provides that a coastal state can withhold consent if the research falls into any of the four categories outlined above. These categories are so broad that consent can be denied for virtually any research project. The text also permits a coastal state to prohibit publication of the research results if the project "bears substantially upon the exploration and exploitation of living or non-living resources of the economic zone or continental shelf." Few scientists will conduct research without an assurance that they can publish the results. Experience with the Continental Shelf Convention has shown that if consent can be denied it often will be denied.

Observations

The problems concerning marine scientific research remain unresolved. Members of the U.S. marine scientific community believe that the current revised SNT is unacceptable. They see it as containing the worst features of both consent and obligation regimes. Secretary Kissinger reemphasized the importance of the issue to the United States and pointed out the dissatisfaction of U.S. scientists with the revised SNT during his attendance at the Conference. This issue remains one of the most difficult facing the Law of the Sea Conference.

CHAPTER 5

DISPUTE SETTLEMENT

A major objective of a comprehensive Law of the Sea Treaty was to minimize conflict between nations. It was generally agreed, however, that there would always be differences of interpretation of the treaty which could be resolved only by an agreed means of settlement. During the U.N. Seabed Committee meetings in preparation for the Caracas session, the United States introduced draft articles allowing states to choose the type of dispute settlement mechanism they preferred. A Law of the Sea Tribunal was to be established for use when parties to the dispute could not agree on the means of settlement.

The United States further emphasized the importance it attached to this subject by inserting cross references to the Dispute Settlement section of the treaty in all its draft treaty articles except those on the territorial sea and straits. The original U.S. proposals applied only to states, except for vessel owners to obtain release of a vessel and certain continental shelf cases. Fishing disputes would be settled by a special commission rather than by the proposed tribunal.

Informal meetings by a small group of states at the Caracas session resulted in a working paper of draft alternative texts for use at the Geneva session. The texts offered three basic forums for dealing with disputes: The Law of the Sea Tribunal, The International Court of Justice, and arbitration.

The question of access to the system by private persons and international organizations was also raised but not resolved. During the Geneva session, there was support for each of the basic forums discussed at Caracas, but no clear majority for any one forum. There was considerable support, however, for a compromise by which a state could choose one of the basic forums upon ratifying the treaty.

Some states opposed the establishment of a permanent Law of the Sea Tribunal. There was also opposition to application of dispute settlement to the economic zone, except for specific items, such as navigation or pollution.

The working group provided the Conference President with four proposed articles on which there was general

agreement and three alternative proposals. The four articles provided for peaceful settlement of disputes and choice of forum. The articles and alternative proposals were issued by the Conference President as an adjunct to the SNT at the end of the Geneva session.

REVISED DISPUTE SETTLEMENT TEXT

In May 1976, the President of the Conference issued a revised text on dispute settlement, a document based primarily on the plenary discussions to be used for further negotiations. The text provided for a special Law of the Sea Tribunal and for private persons to have access to the Tribunal. A fourth method of dispute settlement was added to the three basic forums--a special procedure in combination with any one of the three forums. Parties to the treaty were to be bound by existing dispute settlement procedures. Cases involving mixed seabed and non-seabed disputes were to be referred to the chosen method for settlement. Special procedures were to be used in cases of treaty application or interpretation.

During the Summer 1976 New York session, almost all delegations participated in an article-by-article review of the revised text. About 100 amendments were proposed to the text, but few had broad support.

Most states accepted the principle of dispute settlement for the high seas, but many had reservations about its application to the economic zone. Most agreed that navigation, overflight, scientific research, and pollution should be included and national boundaries and military matters excluded. Coastal states generally opposed dispute settlement for fisheries. Notable exceptions were the United States and coastal states with distant-water fishing industries.

There was widespread support for allowing a choice of the four procedures. However, some delegations were concerned that this would subject them to an objectionable procedure. The revised text required that the plaintiff use the procedure chosen by the defendant when differing procedures had initially been chosen. As a compromise, the United States proposed that the plaintiff have a choice between the defendant's chosen procedure and arbitration. The United States did not state which procedure it intends to choose.

The question of access to procedures for dispute settlement involves private persons, groups of states, and politically orientated entities. An example of the latter is the Palestine Liberation Organization.

The United States continued its support for access by vessel owners and masters to obtain release of their vessels on bond without a formal judicial decision in the cases. This had the support of some European countries.

Some states favored the establishment of two tribunals, one for the seabed and one for other disputes arising under the treaty. It was proposed that there be a single tribunal with two chambers, one for the seabed and one for general disputes. The United States, with support from maritime nations, favored a separate Seabed Tribunal for speed and consistency and as a check on the Authority.

In November 1976, the President of the Conference issued a new revised text on dispute settlement. The text was presented as a further stage in the work of the Conference and was prepared to serve as a basis for continuing negotiations. The United States considered the revision to be a general improvement over the previous text issued in May 1976.

OBSERVATIONS

Although there is general agreement on the need for a dispute settlement mechanism in the treaty, there is a difference of opinion on the details. It is possible that some issues could be incorporated into a treaty, or treaties, representing something less than a comprehensive Law of the Sea Convention. This could result in a need for dispute settlement procedures, requiring that negotiations on this issue be accelerated.

The following issues remained unresolved.

--Categories of disputes to be excluded from economic zone settlement procedures.

--Choice of forum.

--Access to the forums by private persons, intergovernmental organizations, and nongovernmental entities.

--Relationship of the overall dispute settlement system to a Seabed Tribunal.

CHAPTER 6

PROVISIONAL APPLICATION

Some international agreements contained a provision to become effective upon signature by a specified rumber of the parties rather than upon full ratification by the respective governments. This is known as provisional application. At the 1973 meeting of the U.N. Seabed Committee, the United States proposed provisional application of the treaty articles on deep seabed mining to accelerate the development of seabed mining and to ensure that mining would be conducted under international regulations. The U.S. position included support for provisional application of the fisheries articles and, possibly, other sections of the treaty. The Seabed Resource Committee had a study prepared on the subject and circulated to the delegations.

Provisional application was discussed only slightly in the various Conference sessions. The Geneva SNT contained a section on provisional application by which the seabed articles would enter into force upon notice of intent to ratify the convention by 36 states. This section was carried over to the revised SNT.

Provisional application of the seabed articles may cause a problem. The current text on the Council of the Seabed Authority specifies membership requirements by categories of states. These requirements would not be fulfilled unless the states in these categories had accepted the treaty.

OBSERVATION

Members of Congress have expressed concern at the possibility that an international agreement of major importance, or significant portions of it, could become binding on the United States without congressional action or approval. The U.S. delegation has assured the Congress of consultation before provisional application of any portion of the treaty is accepted.

PRINCIPAL OFFICIALS

RESPONSIBLE FOR ADMINISTRATION OF

ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office From	To
DEPARTMENT OF STATE		
SECRETARY OF STATE:		
Cyrus R. Vance	Jan. 1977	Present
Henry A. Kissinger	Sept. 1973	Jan. 1977
DEPUTY SECRETARY OF STATE:		
Warren M. Christopher	Feb. 1977	Present
Charles W. Robinson	Apr. 1976	Jan. 1977
Robert S. Ingersoll	July 1974	Mar. 1976
NATIONAL SECURITY COUNCIL		
CHAIRMAN OF THE NATIONAL SECURITY COUNCIL INTERAGENCY GROUP FOR LAW OF THE SEA: (note a)		
Elliot L. Richardson	Mar. 1977	Present
T. Vincent Learson	Dec. 1975	Jan. 1977
Carlyle E. Maw	Aug. 1975	Dec. 1975
John R. Stevenson	Aug. 1973	May 1975
SPECIAL REPRESENTATIVE OF THE PRESIDENT		
SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR THE LAW OF THE SEA CONFERENCE:		
Elliot L. Richardson	Mar. 1977	Present
T. Vincent Learson	Dec. 1975	Jan. 1977
Carlyle E. Maw	Aug. 1975	Dec. 1975
John R. Stevenson	Aug. 1973	May 1975

a/Formerly National Security Council Interagency Task Force on the Law of the Sea.