



Ocean Law Memo

PREPARED BY THE OCEAN RESOURCES LAW PROGRAM, UNIVERSITY OF OREGON
LAW SCHOOL, EUGENE, OREGON 97403, AS AN ADVISORY SERVICE OF THE
SEA GRANT COLLEGE PROGRAM.

Issue 10

Vol. 4, No. 2

January 6, 1978

THE LAW OF THE SEA CONFERENCE: WHAT HAPPENED IN NEW YORK?

The Third United Nations Conference on the Law of the Sea completed its sixth session in New York this past summer. The first two Conferences were held in 1958 and 1960 and produced the four well-known Geneva Conventions dealing with the high seas, the territorial sea and contiguous zone, the continental shelf, and fisheries. The third Conference has proved to be the biggest, longest, and most ambitious yet. During its four years of continuous existence, including six major sessions in Caracas, Geneva, and New York, the Conference has undertaken to hammer out a single, comprehensive treaty that will serve as a foundation for a permanent international legal regime to govern the seventy percent of the earth covered by water.

The complexity of the task has grown. The 157 nations participating in the Conference are attempting to negotiate a treaty, which, if the present working document is an indication, will consist of over three hundred Articles and seven detailed Annexes. The Conference has dedicated itself to producing a "package deal" -- an all-or-nothing approach that by its nature limits the possible outcomes of the conference to success or failure. As the critical seventh session -- scheduled for this spring in Geneva -- approaches, it is useful to review the directions taken by the Conference this past summer.

The sixth session began in New York early last summer on a note of optimism. Most observers felt that the vital issues were identified and that there was a sense of overdue urgency among the delegates to work diligently and quickly toward a generally acceptable compromise text. Some of this confidence was based on the success of intersessional work meetings held the preceding spring. There were indications of a softening of the position of the "Group of 77" -- a voting block of over 100 developing nations which has often been at odds with the industrial nations at past sessions. As the session began, many participants were pleased with the progress of the negotiations. Toward the end of the session, however, procedural difficulties, further complicated somewhat by the New York blackout, abruptly ended the session on a negative note. It is not clear, however, whether the sour ending accurately reflects the overall progress of the session.

To understand what, if any, progress was made during the session, one must analyze the major substantive issues individually. A useful starting point is a comparison of the major provisions of the working text produced out of

the 1976 session (called the Revised Single Negotiating Text, or RSNT) with the final version produced at the end of the 1977 session (called the Informal Composite Negotiating Text, or ICNT). The 1977 ICNT is a 200-page document consisting of 303 Articles and seven Annexes. The Text is called "Informal" because it is only a working document put forth to provide a basis for further negotiation. It is called "Composite" because it combines in a single document the work product of the several working committees of the Conference to which the major substantive issues have been delegated. Broadly, Committee I deals with the issue of seabed mining -- the single most stubborn issue confronting the Conference. Committee II considers a collection of subjects including the exclusive economic zone, the territorial sea and contiguous zone, international straits, island archipelagos, the continental shelf, and the interests of landlocked and economically disadvantaged States. Committee III is concerned with protection of the marine environment and with scientific research. A special plenary committee deals with dispute settlement procedures.

I. DEEP SEABED MINING

Seabed mining is still the most intractable issue before the Conference. Although many participants were apparently satisfied with the progress made on this issue during the 1977 session, the text that was finally produced (the ICNT) does not accurately reflect this progress. At the moment many delegates are encouraged by the prospects for further progress in Geneva this spring and do not view the ICNT as representative of the current consensus on the seabed mining issue. The U.S., however, has expressed dismay at the failure of the ICNT to resolve certain substantive issues and at the procedural irregularities involved in its preparation.

Prior to the opening of the Sixth Session last May, the official posture of the U.S. delegation was one of cautious optimism. Ambassador Elliott Richardson declared before the House Oceanography Subcommittee that he felt some progress had been made during recent intersessional meetings led by Norway's Jens Evensen in Geneva, and that continued progress could be made during the approaching session in New York. As other U.S. ambassadors have done each year for the past several years, he urged against passage of unilateral seabed mining legislation pending the outcome of the upcoming session. At the same time, Richardson warned that another year of failure to make progress toward an agreement could not be tolerated.

This same view came from other quarters in the Carter Administration. Just prior to the opening of the session, Secretary of Commerce Juanita Kreps declared that the Administration would recommend passage of unilateral seabed mining legislation if "substantial progress" was not made in the approaching New York session.

The session opened on an optimistic note. The seabed negotiations in Committee I were led by Jens Evensen in the same style he successfully used at the Geneva meetings only weeks earlier. But midway through the session the negotiations suffered a setback. On June 10 Ambassador Richardson abruptly declared that the working text of the Evensen group did not show as much progress as had been expected on a number of substantive issues, and that further compromise in the direction of U.S. positions was essential in the remaining weeks of the session. He also expressed his general concern that the negotiating process itself was deteriorating into a highly politicized debate under the strains inherent in a large group attempting to negotiate in a highly visible, public forum. More specifically, he accused the Group of 77 of failing to compromise despite substantial compromise moves made by the U.S. during the past year.

Three weeks later the delegates voted to have the President of the Conference, H.S. Amerasinghe of Sri Lanka, direct the drafting of a new working text, the ICNT, to constitute the final work product of the Sixth Session. Observers felt that this move indicated a desire to produce a document that would evidence substantial progress. There was even speculation that major concessions would be made to the U.S. on seabed mining. Putting the final drafting in the hands of H.S. Amerasinghe, it was believed, would produce a coherent, unified document that would incorporate earnest compromises from all interest groups.

What happened next is not exactly clear. The blackout in New York interrupted the last few days of the session and delayed publication of the ICNT. When it was finally produced after the session had adjourned, it was quickly declared "fundamentally unacceptable" by Richardson. There were no concessions to the U.S. on seabed mining. Instead of flowing out of the much-discussed Evensen texts, the provisions of the text on seabed mining bore the stamp of Committee I chairman Paul Engo, and represented a step backwards from the specific compromises sought by Richardson weeks earlier. Rather than meeting the "necessary and reasonable" demands set forth by Ambassador Richardson weeks earlier, the text represented a compromise to the demands of the Group of 77 on almost every issue. The most controversial parts of the new text had not been seen before nor discussed in negotiations of Committee I.

Within days Richardson had made his disappointment clear in appearances before four different Congressional committees. He declared that the U.S. position was undergoing intensive review in light of the failure of the Sixth Session, and even advised Congress that "the legislative process should move forward." This comment was in reference to H.R. 3350, commonly known as the seabed mining bill. Passage of this bill would

create a federal regulatory framework to control and encourage the development of deep seabed mining by U.S. interests. Although the bill is expressly intended to operate only as an interim measure pending adoption of an international regime, it is nevertheless viewed by most Conference participants as a direct threat to the ultimate outcome of the Conference. To developing nations around the world the bill represents the threat of a unilateral "land grab" of the most valuable seabed mineral deposits. The fear is that once this occurs a rash of irreversible national claims by other countries will follow, and the opportunity for an international regime based on the "common heritage of mankind" will be lost forever.

Within days the seabed mining bill was reported out of the House Merchant Marine Committee. A few weeks later the House Interior Committee followed suit. In October mark-up of the bill began in the Senate Energy Committee where it is stalled until the disposition of President Carter's energy bill is finally resolved. For the first time in five years that the seabed mining bill has been in Congress, the Administration is not actively opposing its enactment. If the House and Senate versions are brought into agreement and a final version is passed this winter, President Carter will have the bill in hand when the Seventh Session meets in Geneva in March. This may well be the bargaining chip that determines the course of that session.

What are the basic substantive issues blocking agreement? With respect to seabed mining Ambassador Richardson has specifically pointed to a handful of unacceptable features of the ICNT:

(a) Reasonable Access

Foremost among the issues is the question of reasonable access. The U.S. insists on reasonably unfettered access for its seabed miners. In return, the U.S. promises full support for the "parallel access" plan proposed by Secretary of State Kissinger in 1976. Under the parallel access plan the International Seabed Authority--an international agency to be established by the treaty--would conduct seabed mining activities through its operational arm, the Enterprise. The U.S. would agree to a funding arrangement which would assure the Enterprise the capability to enter the field in parallel with private miners. But here the agreement ends. The U.S. insists that access by its seabed miners must not be tightly linked to the entry of the Enterprise. The U.S. wants some assurance that private miners who meet certain specified qualifications will not be subject to arbitrary denial of access by the Authority.

The Group of 77, and others, are just as insistent that "parallel access" means "equal and contemporary" access by the Enterprise. This means that private miners will only be granted access when the Enterprise is fully operational. The terms of the ICNT reflect this view and the underlying conviction that if private interests ever "get the jump" on the Enterprise, the Enterprise will never be able to catch up and compete with them on equal terms.

One of the more controversial terms in the ICNT

is Article 151(1), which broadly states:

"Activities in the Area shall be carried out by the Authority on behalf of mankind as a whole in accordance with the provisions of this article as well as other relevant provisions of this part of the present Convention and its annexes, and the rules, regulations and procedures of the Authority. . . ."

The U.S. objects to this provision on the grounds that it does not adequately give any assurance that private or national interests will be able to independently mine the deep seabed under reasonable conditions.

Paragraph (2) of the same article further provides that seabed mining activities:

"shall be carried out on the Authority's behalf . . . (i) by the Enterprise, and (ii) in association with the Authority by States Parties or State Entities. . . which . . . undertake . . . to contribute the technological capability, financial and other resources necessary to enable the Authority to fulfill its functions pursuant to paragraph 1 of this Article."

This is a most controversial section which is certain to arouse a great deal of debate at the next session. The section derives from a similar section in the 1976 RSNT, except that the 1976 version had no reference to financial or technological contributions. In its original form the section was the object of specific U.S. objections and was debated extensively in the Evensen group. U.S. objections were directed at the apparent failure of the section to clearly contemplate any seabed mining by entities independent of the Authority. In his mid-session statements this year, Ambassador Richardson declared the section to be one of the major obstacles to further agreement.

As objectionable as the original section was, the section as finally published in the ICNT is certain to be even more objectionable. The original language was retained, and, in addition, the new conditions of technology transfer and financial contributions were added to the section. The new conditions had not been discussed in the Evensen group.

President Amerasinghe recognized the probable reaction to the new version of Article 151. In his statement accompanying the ICNT he tried to soften the impact by declaring that the wording of Article 151 is not intended to determine the actual form of a mining contract, and that the article will not automatically impose joint arrangements. Nevertheless, it is not likely that the U.S. will find much consolation in his view. It is more likely that the U.S. will find the article doubly objectionable--on grounds of lack of assured access and because of the new conditions imposed on potential seabed miners.

None of the provisions of the ICNT guarantees a right of independent access by national and private miners, but the power of the Authority

to mandate joint ventures has been reaffirmed in a new section added to the ICNT in the last few weeks of the 1977 session. The new provision is Paragraph 5(i) of Annex II, which provides:

"Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements between the contractor and the Authority through the Enterprise, in the form of joint ventures, production sharing or service contracts, as well as any other form of joint arrangement for the exploration and exploitation of the resources of the Area."

This provision further clarifies the power of the Authority to mandate joint ventures with the Enterprise as a condition to the granting of a mining contract to private or national seabed miners.

Finally, the U.S. is opposed to a new provision which would automatically cause the regime to convert to a "unitary joint-venture" system after 25 years, unless an agreement to the contrary is reached before that time. This provision incorporates Henry Kissinger's 1976 proposal for a review conference to be held after twenty years to assess the overall success of the treaty. But the new provision goes further with the added proviso that, unless an agreement is reached within five years after the review conference begins, private and national seabed miners shall only be allowed further access through joint ventures with the Enterprise.

(b) Mandatory Technology Transfer

The U.S. also finds unacceptable certain provisions that make technology transfer by seabed miners a likely condition of access to the deep seabed. Paragraph (2) of Article 151, quoted above, is one of these, as is a new provision in Annex II which provides:

"Every applicant without exception shall. . . undertake to negotiate upon the conclusion of the contract, if the Authority shall so request, an agreement making available to the Enterprise under license, the technology used or to be used by the applicant. . . ." (Para. 4(c)(ii), Annex II, ICNT)

The next paragraph further provides that when the Authority is considering an application for a contract, it shall first ascertain that the applicant has given assurance that it will indeed negotiate the agreement described above. In effect, the ICNT adopts an "agreement to agree" approach here. The language does not require technology transfer to be mandated by the terms of the contract to mine the seabed, but in order to be considered for a contract in the first place the applicant must agree to negotiate a technology transfer agreement upon conclusion of the contract. After the contract is issued, failure to negotiate the agreement on technology transfer within a reasonable period of time will result in the dispute being submitted to binding arbitration under the arbitration provisions of the ICNT.

These provisions on technology transfer are

new. Equivalent provisions did not exist in last year's text. In his mid-session statements, Richardson made only vague reference to U.S. opposition to technology transfer provisions, since the issue had not been raised at that point. The surprise inclusion of these provisions in the ICNT in the last days of the session was a major source of U.S. disappointment with both the substantive changes and the procedural irregularities. Opposition of the developed nations to mandatory technology transfer provisions had long been known, and inclusion of these provisions had not been discussed in the Evensen group discussions.

(c) Limits on Production

The U.S. has specifically objected to new provisions in the ICNT which would result in what the U.S. calls "artificial" limits on production. The new ICNT provisions apply to two categories of production--minerals from manganese nodules and all other minerals. With respect to minerals other than manganese nodules, the Authority would be given virtually absolute discretion to regulate all production. This blunt new provision appears almost as an afterthought in the ICNT. It will surely lead to more detailed negotiation on this issue at the next session.

More importantly, the ICNT imposes ceilings on the production of minerals from manganese nodules. Under Article 150 the Authority is obligated to protect the mineral exporting countries of the world in several ways. For example, direct compensation is available to developing countries which suffer any adverse economic effect as a result of seabed mining. Also, the Authority is authorized to enter into international commodity agreements and take other measures to stabilize and expand international markets for minerals which cause an economic dislocation. But most importantly, production ceilings are set on minerals from manganese nodules, regardless of the actual economic impact of seabed mining.

During the first seven years of the treaty, production of nodules would be limited so as to not exceed the growth increment of nickel. (The growth increment is the annual percentage increase in the worldwide demand for nickel.) After the initial seven-year period production would be further curtailed so as to not exceed sixty percent of the nickel growth increment. These limitations could, however, be abolished by agreement at any time.

The U.S. has opposed any automatic limitations on production. The RSNT contained fixed production limits also, but the limitations were not as severe as those proposed in the ICNT. Despite Richardson's mid-session appeal for concession on this issue, the ICNT took a step toward more stringent production limitations. Ironically, it is Canada, the world's leading nickel producer, which has been instrumental in obtaining the production limitations. On most other Law of the Sea issues Canada is in general agreement with the U.S.

(d) Composition of the Council

Another seemingly minor but nonetheless significant change in the ICNT has been made regarding

composition of the Council. The Council is the executive branch of the Seabed Authority charged with the duty to approve and control all seabed mining activities. The Council is assigned the power to adopt provisional rules and regulations governing seabed mining, subject to final adoption by the Assembly. In addition to a number of other enumerated functions, the Council would approve all work plans regarding seabed mining and exercise control over activities in the deep seabed by the Enterprise or others as is necessary to ensure compliance with the Convention.

This large amount of executive power vested in the Council makes its composition crucial. In the past the U.S. has expressed concern that the western nations lack adequate representation on the Council. The changes made in this year's ICNT diminish even further the representation of the industrial nations in the Council.

The total number of representatives comprising the Council remains at 36. However, the number of special interest representatives from seabed mining nations (defined as those who have made the greatest contributions in terms of financial and technological investments) has been reduced from six to four, while the number of special interest representatives from various categories of developing countries (landlocked, least developed, exporters, etc.) has been increased from six to at least eight. This will undoubtedly be found less acceptable to the U.S., which has already expressed its concern that the system of governance will not adequately protect minority interests from an abuse of power by a majority of less developed countries.

It might also be noted that this change in the Council composition takes on additional importance in the light of another change, also new to the ICNT, which subjects the functions and powers of the Technical Commission to "such guidelines and directives as the Council may adopt." Among other functions, the Technical Commission would review work plans submitted by seabed mining applicants and supervise mining activities on a regular basis. Any independence the Technical Commission might have had in conducting these functions under the RSNT has been somewhat diminished by the new language of the ICNT.

(e) Financing of the Enterprise

The financing scheme of the Enterprise is at present only vaguely outlined and is certain to become a much more difficult issue as the Conference faces the task of adopting a more specific plan. The general goal of the industrial nations is to keep funding of the Enterprise a separate and independent issue which will not be connected to activities of national and private seabed miners. The Group of 77 and others, on the other hand, are determined to enable the Enterprise to compete with such other miners on an equal and contemporary financial footing.

As currently described in the ICNT, the funding scheme for the Enterprise is at best only a rough outline designed to insure that the Enterprise will be adequately funded. It consists of the funding scheme of the 1976 RSNT, but is expanded to include several more alternative sources of

funds. A comprehensive plan proposed by the U.S. in 1976 has been rejected.

Provisions carried over from the RSNT include financing the Enterprise out of voluntary contributions, allocations from the "Special Fund" of the Authority, loans, and the "other funds made available to the Enterprise including charges to enable it to carry out its functions."

Several new provisions have been added. One of these provides that States Parties (that is, nations who are parties to the Law of the Sea treaty) shall guarantee debts incurred by the Enterprise to the extent that the Enterprise cannot cover the costs of its first mining operation by other sources. These nations will be liable as loan guarantors on a basis proportionate to the U.N. scale of assessments -- meaning, of course, that the wealthier industrialized nations will bear the bulk of the liability burden.

Another new provision requires States Parties to "make every effort to support loan applications of the Enterprise to international institutions and other capital markets, and to cause appropriate changes in the constitutive interests of such institutions where necessary."

A further provision allows for direct funding of the Enterprise through "contractual relationships" with national and private mining entities. This is coupled with an additional new provision which mandates that the Authority shall seek to obtain optimum revenues to "enable the Enterprise to engage in seabed mining effectively from the time of entry into force" of the Convention. Taken together, these new provisions firmly tie the financial capacity of the Enterprise to entry by prospective national and private seabed miners.

Ambassador Richardson has criticized the funding scheme as creating such a compound burden on seabed miners as to stifle all investment. Rather than merely ensuring adequate funding for the Enterprise, the scheme creates a set of overlapping, alternative financing sources which would result in a potential for large financial burdens on both seabed miners and States Parties.

II. THE CONTINENTAL SHELF

The Conference has undertaken to redefine the boundary between a coastal nation's continental shelf and the international deep seabed, or "Area." This has been done in order to resolve the persistent ambiguity of the "exploitability test" that was adopted in the 1958 Convention on the Continental Shelf. Under that test the outer boundary of a coastal nation's continental shelf was limited only by the ability of the nation to exploit the resources of its continental shelf. Although it was generally recognized that this was not intended to allow a nation to claim portions of the deep seabed on the basis of the exploitability test, it was not clear what the limits of the test actually were. Consequently the Conference has rejected the notion of "exploitability" altogether in its new attempt to define the seaward boundary of the continental shelf.

The definition of the continental shelf remains

the same in the ICNT as it was in the RSNT. Under this definition, the "continental shelf" of most coastal nations will include a substantial amount of abyssal seafloor not normally included in the geographic or geological description of the continental shelf. Article 76 provides that the "continental shelf" extends to the 200 mile line or to the outer edge of the continental margin, whichever is farthest. Hence, every coastal nation will have a "continental shelf" at least 200 miles wide, regardless of the actual width of its geological continental shelf.

In the process of adopting this new definition a new ambiguity has arisen. The exact definition of the "continental margin" is not given anywhere in the text. It is not clear to what extent the continental rise and continental slope are included in a coastal nation's "continental shelf" that is wider than 200 miles and thus, by definition, extends to the outer edge of its "continental margin." The U.N. Secretariat is now preparing a report evaluating the relative merits of several proposed formulas for ascertaining the "edge of the continental margin."

Article 82 of the ICNT provides for royalties to be paid to the Seabed Authority by coastal nations who exploit non-living resources (oil and gas for all practical purposes) from their continental shelves beyond the 200-mile line, on the theory that these distant shelf areas, like the deep seabed, are part of the "common heritage of mankind."

Specific royalty rates were not adopted in the RSNT, but in the ICNT they have been set at an initial rate of one percent of value or volume of recovered resources beginning after five years of production, and increasing by one percent per year to a maximum fixed rate of five percent after the tenth year of production. These royalties will be paid to the Authority which will distribute them on an equitable basis to the parties to the treaty, with special dispensation towards the least developed and landlocked countries. The landlocked countries were specifically included as favored royalty recipients under the ICNT this year, but they have been otherwise generally unsuccessful in their collective demand for greater rights to resources of the coastal nations' exclusive economic zones.

III. EXCLUSIVE ECONOMIC ZONE

Although it has been clear for several years that recognition of a 200-mile exclusive economic zone (EEZ) for coastal nations will be part of any future Law of the Sea, the precise nature of the rights and duties of coastal nations with respect to their EEZ's is not yet quite resolved. This was one of several issues to which special effort was devoted in Committee II this summer. From the viewpoint of the U.S. and other maritime powers, substantial progress was made in this area.

Most importantly, new provisions were included in the ICNT which spell out the safeguarding of certain high seas freedoms in the EEZ. A late-session compromise development was the adoption of part of the so-called "Castañeda text," which gives all nations certain specified freedoms of

the high seas within the coastal zones. These include the right to "internationally lawful uses of the sea related to these freedoms such as those associated with the operation of ships, aircraft and submarine cables and pipelines. . . ." The equivalent provision in the 1976 RSNT had recognized only those other "internationally lawful uses of the sea related to navigation and communication." The most important consequence of the broader ICNT language referring to "operation of ships, aircraft" is that it presumably embraces certain military activities that could arguably be excluded by the RSNT language referring to "navigation and communication." The ICNT language also provides more clearly for the freedom to conduct activities related to the laying and operation of pipelines and cables in the EEZ.

IV. TRANSIT THROUGH STRAITS

The U.S. noted with approval that the provisions on rights of transit through international straits passed through this year's session essentially unchanged. A delicate balance has been reached on this issue, with only a small and apparently dwindling minority of strait-bordering nations still seeking to reopen negotiations on this topic.

Two small changes were made during this session. A specific prohibition against unauthorized research or survey activities by ships passing through straits was added to the text. Also, the scope of authority of strait-bordering nations to control pollution was slightly increased.

V. MARINE RESEARCH IN THE EEZ AND ON THE CONTINENTAL SHELF

Although some redundant provisions in the RSNT requiring coastal nation consent to conduct research in the EEZ or on the continental shelf have been deleted in the ICNT, the so-called "consent regime" has been retained for all practical purposes under Part XIII of the ICNT. Article 247(2) bluntly states:

"Marine scientific research activities in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State."

This provision creating a consent regime as the general rule is apparently mitigated by the following paragraph in the ICNT, which provides that coastal states "shall, in normal circumstances grant their consent for scientific research projects. . . ." But on further reading one finds that the mitigating effect is lost, because the next paragraph allows a coastal nation to withhold its consent in its own discretion whenever a project "is of direct significance for the exploration and exploitation of natural resources, whether living or non-living." Arguably, this provision would permit a coastal nation to arbitrarily exclude almost all biological, geological, and geophysical research--the major part of all marine research. It appears that the issue of freedom of scientific research has not yet been clearly resolved, and that the only progress in 1977 has been some consolidation of the language in last year's text.

VI. DISPUTE SETTLEMENT

Substantial progress was made last summer concerning dispute settlement procedure. The RSNT had been burdened with two separate dispute settlement regimes. One tribunal, the judicial branch of the International Seabed Authority, was created for resolution of seabed mining disputes. The other, the Law of the Sea Tribunal, was proposed as the general tribunal to resolve all other law of the sea disputes. These two judicial bodies were independently created by Committee I and a special plenary committee for dispute settlement. Having been prepared largely independent of one another, these two dispute settlement regimes presented some questions of conflicting jurisdiction and overlapping authority when they were placed together for the first time in the RSNT.

This situation was resolved in the ICNT by consolidating the two judicial bodies into a single Law of the Sea Tribunal which is the general judicial body for resolution of all disputes arising under the Law of the Sea Convention. Within this Tribunal is established a special Sea-Bed Disputes Chamber to deal with seabed mining disputes. The resulting scheme presents a much cleaner and more coherent document.

Outlook for the Seventh Session in Geneva, 1978

The conference is scheduled to resume in Geneva in March, 1978. At the moment, the prospects for progress at the next session seem bleaker than ever, but this impression may be deceiving. Despite the procedural problems and the production of a text "fundamentally unacceptable" to the U.S., some participants of the Conference are more optimistic than many outside observers. They view the ICNT as a poor representation of the current consensus. Many believe that the ICNT should not be taken too seriously between now and Geneva. They hope that by then the procedural troubles will be eliminated and serious progress can continue.

Nevertheless, the U.S. will continue to apply pressure for more acceptable compromises. For the first time the seabed mining bill has been voted out of committee in the House and is now being considered by the Senate. By the time the next session begins in Geneva, President Carter may have the bill on his desk ready for signature. In the meantime intersessional work meetings are scheduled to begin in January and the Group of 77 is planning its own last minute meeting in Jamaica in March. Whether any progress is made in the next session may depend on whether the Group of 77 perceives the use of the seabed mining bill by President Carter as an unacceptable threat to disrupt the Conference or as a valid bargaining chip. If perceived as an unacceptable threat, the use of the bill may provoke an overreaction by the Group of 77 and result in substantial losses to the U.S. in the form of reversals on other issues, such as rights of transit through straits. This could create a situation whereby the U.S. would have little choice but to withdraw and shoulder the worldwide blame for scuttling the Conference. If, on the other hand, the Group of 77 is willing to recognize such a move by the Carter Administration as a valid bargaining tool that need not threaten the principles of the "common heritage of mankind" and the "new

economic order," then progress may be made.

The negotiating process itself continues to be one of the more meaningful international dialogues of the seventies. In the absence of any immediate adverse consequences, there is little reason to demand an overnight resolution of the few remaining issues before the Law of the Sea Conference.

William A. Eklund
December 20, 1977

Ocean Law Memo is an aperiodic publication of the University of Oregon Ocean Resources Law Program (ORLP) and is distributed as an advisory service by the OSU Extension Service' Sea Grant Marine Advisory Program. ORLP is supported in part by the U.S. Department of Commerce, National Oceanic & Atmospheric Administration, Sea Grant Program through the Sea Grant College Program, Oregon State University, Corvallis, Oregon.

For further information on subjects covered in the Ocean Law Memo, contact Professor Jon Jacobson, Ocean Resources Law Program, University of Oregon Law School, Eugene, OR 97403. Tel. (503) 686-3845.



*Sea Grant College Program
Oregon State University
Corvallis, Oregon 97331*

Non-Profit Org.
U.S. Postage
PAID
Permit No. 200
Corvallis, OR