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December 18, 2008

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Attachment

Final Report

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I. Summary and Organization

The U.N. Seabeds Committee which is preparing for the Third U.N. LOS Conference met in Geneva from July 2 until August 24. The Committee completed its consideration of the articles dealing with the regime and the organization of the new international authority for the deep seabeds. These articles include both agreed texts and, where agreement was not possible, agreed alternatives. Some progress was made in drafting agreed articles on marine pollution. Although work was begun on scientific research articles, the Committee was unable to reach agreement on any significant texts. Because of the complexity and sensitivity of the issues and because of organizational problems, there was only limited progress in agreeing on treaty articles or a limited number of alternatives on the territorial sea, straits, fisheries, coastal state jurisdiction over offshore seabed resources and related issues. However, delegations did submit proposed texts on most of the important subjects and issues. Despite the disappointing lack of progress in some areas, the general view among delegations, with the possible major exception of the Soviet Union and some others, was that the Conference should proceed on schedule.

SEABED COMMITTEE ORGANIZATION AND SCHEDULE

MAIN Committee

Sub-Committee I

Sub-Committee I Working Group (1): Mandate includes regime and machinery for seabed area beyond national jurisdiction.

SubCommittee II

Sub-Committee II Working Group of the Whole: Mandate includes territorial sea, straits, archipelagoes, continental shelf resources, fisheries and related subjects.

Informal Working Group on Fisheries
(met twice)

Informal Consultations on Territorial Sea
(met periodically toward end
of session)

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Sub-Committee III

Sub-Committee III Working Group (2): Mandate includes protection of marine environment.

Informal Drafting Group on Marine Environment

Sub-Committee III Working Group (3): Mandate includes marine scientific research and transfer of technology.

Informal Drafting Group on Marine Scientific Research

Sixth Preparatory

Meeting..... 8 weeks -- July 2-Aug 24, 1973
Geneva

Conference Organizational Session...

2 weeks -- Nov/Dec, 1973
New York

Conference.....

8 weeks -- Apr/May, 1974
Santiago, Chile

II. Deep Seabed Regime

One area on which the Seabed Committee made discernible progress was in the preparation of draft treaty articles on the regime for the deep seabed. A 33-member open-ended working group (WG) was established at the end of the spring 1972 Seabed Committee session to prepare articles on the seabed principles and machinery. Since then, it has held 90 meetings and has produced over 50 draft treaty articles. Subcommittee I, which has responsibility for the seabed issue, all but ceased to function during the latest session. The WG, and informal drafting group, under the excellent chairmanship of Christopher Pinto of Sri Lanka, was able to develop alternative and bracketed texts reflecting the broad range of views reflected within the Seabed Committee.



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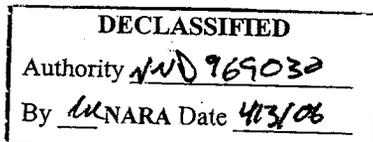
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Although there were no formal negotiations on substantive issues, preparation of articles served to highlight issues on which there are fundamental differences and those on which there appears to be common ground. The Chairman of Subcommittee I, Paul Engo of Cameroon, attempted from time to time throughout the session to encourage more basic negotiations. However, most delegations were not ready to enter such negotiations and many felt that the time would be more usefully spent at the working group level in preparing clear draft articles.

Some of the most useful work was done in the informal drafting group. During the opening days of the session the group was attended by many delegations, but, by the end, participation was reduced to essentially the developed countries (with the chairman from Sri Lanka). Latin American representatives, probably as a matter of policy, ignored the informal working group almost from the beginning.

The principal activists in the working group were developed countries, notably the US, USSR, UK and to a lesser extent, France and Japan, and on the other hand, Peru and Brazil, with the support of Jamaica who took a hard line in opposition to the developed country positions. This polarization affected the discussions throughout the session. The French representative, Mlle. Martin-Sane, continued, as she has in past sessions, to serve a very helpful, sometimes critical, function in working out delicate compromises when the working group became embroiled in prolonged disputes. Of the Africans, only Tanzania and Ghana were active at all. They played a limited, but moderating role.

The working group witnessed solidarity among the LDCs on issues of who may exploit the seabed and who will control the Authority. There also appeared to be dissimilarities in the positions of the developed countries, i.e., US, UK, France, Japan, USSR, Canada and Australia, on the exploitation system. However, these countries displayed great uniformity in their opposition to a policy-making role for the Assembly of the Authority and their



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support for inclusion in the treaty of rules and regulations governing resource exploitation.

In the closing weeks of the March session, the working group completed a second reading of the draft articles dealing with the international regime to govern deep seabed mineral exploitation and began the first reading of draft articles on the international machinery. During the first seven weeks of the July-August session, the WG continued consideration of these articles, which were contained in a working document prepared by its Chairman.

The machinery articles proved to be more complex than those on the regime, although there have generally been only two or three divergent views on each important item. Moreover, it was difficult to fit into the framework of the working paper some of the more lengthy and intricate concepts embodied in the U.S. draft treaty, such as systems for adopting rules and regulations, for regulating resource exploitation and for settling disputes. The provisions on these questions are scattered throughout the US treaty and it was necessary to redraft several important provisions in order to effectuate a coherent presentation in the format being used by the working group.

The major areas of disagreement arising during the recent session included:

A. Powers of the Assembly vs Powers of the Council:

The preponderant LDC view is that effective power in the new international organization should rest in the Assembly in which all parties are represented with one vote, while the US and other developed countries maintain that the Council should exercise fundamental control over the operations of the Authority. The US explained its position on this issue in terms of the pragmatic necessity for having a smaller, permanent body deal with urgent operational matters arising from the Authority's role as resource manager. The US expressed its willingness to give the Assembly broad recommendatory powers as an alternative to other delegations' desire to give the Assembly policy-making functions.



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B. Rules and Regulations:

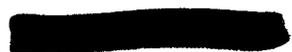
In explaining the US position on the Council's role in the Authority, the US repeatedly emphasized the need for including in the treaty itself basic rules governing resource exploitation, thus withholding even from the Council broad policy-making powers.

C. System for Resource Exploitation:

Early in the session the Latin American states introduced a detailed proposal on the Enterprise concept. In essence, their proposal would establish the Enterprise as the operating arm of the Authority exclusively empowered to exploit the deep seabed, either through service contracts or joint ventures with companies or states. The LDCs reactivated the Group of 77 in order to garner unanimous support within the group for the Enterprise concept, but this proved impossible. Informal sources have indicated that two or three members (including India, Sri Lanka, and Iraq) of the Group of 77 would not endorse the Enterprise concept as proposed by the Latin Americans and endorsed by the Africans. Throughout the discussions, the US Rep pointed out the practical advantages of the licensing system versus an exploitation monopoly by the international authority. As noted above, the US stressed that the basic conditions and terms of licensing should be established in the treaty itself and not left to an organ of the international authority to determine so as to avoid a subjective and possibly discriminatory and unpredictable licensing policy.

While the Latin American supporters of the Enterprise concept resisted efforts to acknowledge that there were any alternatives to the Enterprise the US tried to highlight the practical differences and similarities between the Enterprise and licensing systems. It generally appeared that many of the Asian and African delegations were willing to engage in such a pragmatic comparison and found it helpful.

Several new proposals as to who may exploit the seabed were submitted. These include two proposals by Australia and Canada, both of which lean heavily toward the Enterprise



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but permit the Authority to issue licenses or enter into other contractual arrangements for exploitation. Japan, the U.K., France and the USSR maintained solidarity with the US in favoring a licensing system to the exclusion of other systems. No other delegation spoke in favor of this approach. These countries at one time or another all expressed the view to the US privately that compromise would be inevitable and we should begin to prepare for a negotiation which would include the Enterprise concept.

D. Production Controls:

Virtually no substantive discussion took place on the issue of production controls, although alternative texts now appear which grant various organs of the Authority power over this question. These proposals range from mere recommendatory power to power to reduce production and fix price levels. The US took the position throughout that the International Authority should have no powers in the area of production controls.

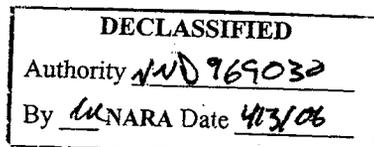
E. Composition of Council:

It has been recognized since the beginning of this negotiation that one of the most contentious issues will be the composition of the Council. Many LDCs have made it clear that they will strongly support a Council consisting of countries selected on an equitable geographical basis and in which decisions are made by a 2/3 majority. The US and several other developed countries, on the other hand, have stressed the need for some formula by which those countries which will have the greatest involvement in deep seabed mining will be assured that their views will be given proper weight. It was evident that at this stage in the preparations there was no possibility of concession by either side on this issue and therefore the Working Group passed over the question without debate simply including a set of alternative treaty articles reflecting various approaches.

F. Tribunal:

The WG thoroughly discussed the question of the system for dispute settlement, although there was little substantive debate on the detailed US proposal for a Tribunal. General attitudes expressed in the discussion indicate that many delegations favor creation of a





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Tribunal to settle seabed disputes, although the scope of its powers and details of its organization remain controversial. The concept of compulsory settlement of disputes met with less opposition than was expected and was presented by the US as one of the cornerstones of the Subcommittee I negotiations.

G. Provisional Regime:

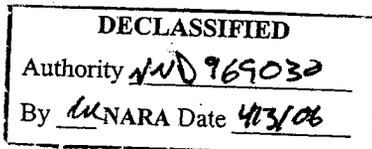
At the Spring session of the Seabed Committee the US proposed that the Conference consider the possibility of having those portions of the LOS treaty affecting deep seabed mining go into effect on a provisional basis immediately following signature without waiting for the treaty to enter into force which might be a matter of years. The purpose of the US proposal was to assure that seabed mining, when it begins, will be subject to the internationally agreed regime. The Seabed Committee requested the SYG to prepare a study on applicable precedents for the provisional application of treaties. This study was prepared and circulated at the summer session. There was very little discussion of the US proposal at this session although several dels indicated serious interest in the suggestion.

In a statement on August 22, the US Rep stated that the US is prepared to support provisional application for both deep seabeds and fisheries aspects of the treaty and to consider provisional application in connection with other aspects of the treaty as well.

III. Territorial Sea and Straits.

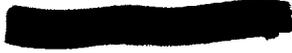
There were three distinct approaches to the question of the breadth of the territorial sea which emerged at this session. The first approach, which was widely supported among all regional groups, was for a 12-mile territorial sea. However, a number of States conditioned their acceptance of the 12-mile figure on satisfactory settlement on other issues in an overall treaty. Backers of the OAU Declaration and the Santo Domingo Declaration explicitly conditioned acceptance of a 12-mile territorial

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sea on acceptance of a 200-mile economic zone or patrimonial sea. The US has repeatedly stated that our willingness to recognize a 12-mile territorial sea is contingent upon satisfactory provisions ensuring free and unimpeded transit through and over straits used for international navigation.

The second approach was advocated by Peru, Ecuador and Uruguay. They envision a plurality of regimes under the term "territorial sea". In the first zone out to 12 miles, the regime of innocent passage would apply. In the second zone from 12 to 200 miles, freedom of navigation, overflight and the laying of submarine cables and pipelines would apply.

The third approach was advocated by Brazil. They supported a standard 200-mile territorial sea in which the coastal State would exercise sovereignty subject to the regime of innocent passage.

The question of whether straits used for international navigation, which would be overlapped by a territorial sea of 12 miles, should be treated differently from other areas of the territorial sea remained a contentious issue. Major maritime States such as the US, UK, France and the Soviet Union continued to stress their need for a guaranteed right of passage through and over international straits. Certain archipelago and "strait states", supported by others such as the PRC, Kenya and Peru, continued to press for the application of the doctrine of innocent passage in the entire territorial sea. Spain, in particular, led the opposition to the US position while Egypt and some other Arab States worked actively behind the scenes to resist acceptance of free and unimpeded transit. The vast majority of States, however, remained silent on this issue or at least did not take an active stance on either side. In general, at this session, there seemed to be a much better comprehension than at prior sessions of the rationale behind the US proposal and it seemed widely understood among delegates that acceptable provisions on this issue were essential for a successful Conference.

There was considerable discussion on the archipelago concept. As in the past, Indonesia and the Philippines,



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supported particularly by Ecuador and Spain, were vigorous in their efforts to achieve acceptance of this concept. The endeavors of these States were substantially enhanced by the fact that the OAU group endorsed the archipelagic idea. At the same time, Fiji was an effective moderating influence on the question of notice for passage of military vessels and on defining the area within an archipelago as something other than internal waters. The US participated in exploratory discussions but made no commitments concerning a general settlement on this issue. The UK, on the other hand, introduced draft articles on the subject suggesting maximum baseline length (48 miles) and land-to-water ratio (1:5) criteria for determining application of the archipelago concept. Australia endorsed the archipelagic concept in principle but stopped short of full acceptance on points such as prior notice for warships. The Soviet Union laid down conditions which clearly hinted that, if met, would enable them to recognize the archipelagic concept.

The status and maritime jurisdictional entitlement of islands clearly emerged at this session as one of the most troublesome and least understood issues in the negotiations. Turkey, which has Greek islands off its coast, made a number of long interventions arguing that ad hoc determinations based on equitable factors should be the basis for maritime jurisdictional entitlement for islands. Greece responded at length to the Turkish speeches, maintaining that islands should have the same territorial sea and economic jurisdiction as coastal States. The OAU declaration includes a statement on islands basically in support of Tunisia whose position vis-a-vis Italy is similar to Turkey's in relation to Greece. In fact, virtually every coastal State has an island problem of some nature. States' positions on this issue materially affected the progress of the work in Subcommittee II. Egypt desires to retain control over certain islands in the Red Sea which could enhance their claim to metalliferous muds in the Red Sea. The island issue illustrates as well as any that law of the sea interests cut across regional group lines.



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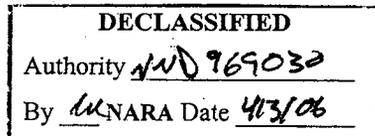
On several occasions there were unusually sharp exchanges between the Tunisian Chairman M. Moncef Kedadi, and the Egyptian Representative Shaffie Abdel-Hamid, particularly in the context of the preparation of Subcommittee II's report for which the Egyptian was responsible as Rapporteur for the Subcommittee.

IV. Coastal State Resource Jurisdiction Beyond the Territorial Sea-Seabeds

On July 18, 1973, the US tabled draft articles which would give coastal States the exclusive right to explore and exploit seabed resources in the Coastal Seabed Economic Area. Coastal nations would have the exclusive right to authorize and regulate all drilling in the area as well as the construction, operation and use of offshore installations such as offshore ports and airports affecting their economic interests in the area and the waters above. Coastal States would have to conform to internationally prescribed and agreed standards to prevent pollution and unjustifiable interference with other uses of the marine environment, although coastal nations could apply higher environmental standards to those activities under their jurisdiction. Investment agreements would have to be observed strictly and just and prompt compensation given in the event property were taken. Some revenue sharing from mineral exploitation of the area and compulsory dispute settlement were contemplated. The US proposed that the Coastal Seabed Economic Area extend beyond the 12-mile territorial sea allowing for the fact that the Continental Shelf Convention already specified the 200-meter depth figure. The outer limit of the area was not specified but the US noted that the preponderant view favored 200 miles. At the same time, the US observed that a sizeable number of delegations preferred, in addition to this mileage limit, an alternative seaward limit which would embrace the full continental margin where it extended beyond 200 miles.

States generally reacted favorably to the US draft articles and introductory speech. Some key developing countries such as Venezuela and Mexico told us privately that

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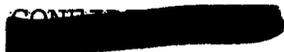

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the US initiative was well-received. In spite of this, we have experienced difficulty in getting other delegations to focus on the question of the international standards in the area. Some African states were critical of the provision for protection of investment and compulsory dispute settlement.

There were basically two controversial issues in connection with continental margin resources. The first concerned the so-called concept of "acquired rights." This concept referred to the fact that certain broad shelf countries such as Argentina, Australia, New Zealand and Canada desired to retain exclusive rights to the resources of the continental margin where it extended beyond 200 miles. The African Group, in particular, resisted this approach as being inconsistent with the OAU Declaration. In addition, the acquisition of such rights was strongly opposed by landlocked and other geographically disadvantaged States who favored an intermediate zone with revenue sharing in any "acquired rights" areas. The second controversial issue related to the desire by landlocked and other disadvantaged States to share in the ocean resources of neighboring coastal States. On this point, there was a sharp division in the African and Latin American groups with Kenya arguing with Zambia and Peru opposing Bolivia.

A 200-mile exclusive economic resource zone clearly had wide support. For example, such a zone was included in the OAU Declaration, the Santo Domingo Declaration and in a paper submitted by Norway and Canada. Certain archipelagic and strait States such as Indonesia and Spain also supported this concept. Certain States, such as India and Kenya, stated that the starting point of negotiations had to be an exclusive economic zone. Therefore, they were unwilling to discuss functional aspects of the zone such as fisheries in great detail until there was acceptance of the exclusive economic zone principle as such. On the other hand, the USSR and its satellite countries opposed not only the 200-mile exclusive economic zone but also the 200-mile boundary for the seabed.

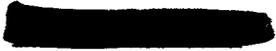
V. Coastal State Resource Jurisdiction Beyond the Territorial Sea-Fisheries



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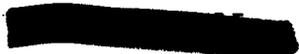


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The United States continued to emphasize conservation, maximum utilization and special treatment for anadromous and highly migratory stocks, (i.e., host State management and preferential rights to anadromous stocks and international management of highly migratory stocks.) and compulsory dispute settlement. On August 22, the US Representative stated that we were prepared to support provisional application for both deep seabeds and fisheries aspects of the treaty and to consider provisional application in connection with other aspects of treaty as well.

Coastal States' desire to control offshore fisheries probably provides the principal impetus behind the widespread support for a 200-mile exclusive economic zone. At this session, the most meaningful point by point exchanges on fisheries took place in two informal meetings chaired by Canada as spokesman for six co-sponsors (Canada, India, Kenya, Sri Lanka, Senegal and Madagascar) of a fisheries proposal. There were detailed discussions on the issues of maximum utilization and conservation of fisheries resources. The United States emphasized the equity of the maximum utilization concept, underscoring the world's need for high protein food from the sea, pointing out that fisheries are a renewable resource, and we said food was thus being wasted when a fish stock is underutilized. In addition, Canada, Iceland, U.K., Ireland and the U.S. strongly supported the need for host State control over anadromous fish stocks. Japan consistently resisted attempts to give coastal States control over anadromous stocks. The Soviet Union, Japan and the UK were readily identifiable as the leading advocates for distant water fishing rights in general. It was noteworthy that the informal consultations on fisheries were terminated largely because some States were simply unprepared to negotiate seriously prior to the Santiago Conference. In the informal negotiations among contact groups called by the Chairman of the Committee, the Soviet Union indicated its willingness to accept a fishing zone provided that foreign fishing rights are protected within the zone, but was unable to initiate a discussion with the sponsors of the economic zone on the nature of these rights.

Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore urged acceptance of a right of neighboring



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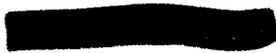
States to participate in the exploration and exploitation of living resources of the zone on an equal and non-discriminatory basis. This effort was opposed by Kenya, Peru and Cameroon. Ecuador, Panama and Peru introduced draft articles on fisheries which would give the coastal State complete legal authority over living resources in national zones of ocean space. In what they termed the international zone of ocean space (presumably beyond 200-miles) the coastal State would enjoy preferential rights over living resources in a sector of the sea adjacent to the zone under its sovereignty and jurisdiction.

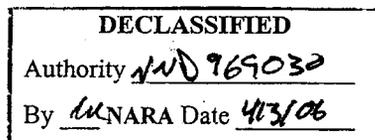
VI. Pollution

A. General. The US Delegation submitted a set of draft articles on the protection of the marine environment and the prevention of pollution. The articles were designed to demonstrate that satisfactory arrangements for environmental protection and an accommodation of coastal state concerns could be achieved without undue prejudice to navigational rights. The United States pointed out in a statement of August 13, 1973, that the establishment of zones of jurisdiction which included pollution control competence would have the unexpected and unintended consequence of cutting off the majority of coastal states from direct access to the high seas without going through another state's zone of jurisdiction, thus making them "zone-locked". Australia reacted sharply to the US statement as did several other supporters of broad marine pollution control jurisdiction such as Canada. In private, a number of other delegations such as Thailand and others bordering on closed or semi-enclosed seas welcomed the US initiative. The USSR, the UK and most other maritime states also welcomed the initiative.

The Marine Pollution Working Group used the proposals of the US, Canada and others as a basis for its work. In the March/April session articles were drafted on the general and particular obligations of States to protect and preserve the marine environment.

At this session, alternative texts were prepared on global and regional cooperation and on the source of





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standards for controlling land-based, seabed-source and vessel-source pollution. Agreed texts were provisionally adopted on monitoring and technical assistance and there was consideration of articles on the duty of States responsible to terminate activities violating the Convention and the method of determining whether a State had discharged its obligations under the LOS Convention. Finally, there was considerable discussion on enforcement issues but no agreement on a narrowing of options or even on a method of presenting alternative texts. There was no consideration of the issues of state responsibility and liability, military exemption or compulsory dispute settlement although texts have been proposed by delegations of each of these issues.

B. Economic Consequences of Pollution Control. A major development in the Working Group was the appearance of a strong desire by developing countries to avoid binding environmental standards which they feel could restrict their economic development. This was characterized by a strong push to include language in many articles indicating that economic development factors must be taken into account when pollution control standards are established. While many LDCs were willing to restrict their demands for special treatment to standards for land-based marine pollution (which could only be recommendatory in any case), others wanted broader exceptions. Several countries opposed the US proposal for minimum international standards for seabed resource activities and some, notably Brazil and Argentina, argued that developing country flag vessels should not be subject in any case to higher standards than those applied by the flag state (the US has proposed a floor of international standards with higher standards to be applied only by port or flag States).

C. Standards Discussion. A great deal of time was given to consideration of pollution standards applicable to land-based, seabed-source and vessel-source pollution. While the US, in tabling the draft articles, did not include articles concerning standards for control of land-based sources of marine pollution, the informal drafting group, with US support, provisionally agreed on an article obliging states to establish national standards and to endeavor to establish and adopt international



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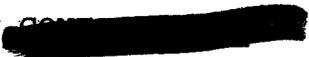
standards. On the question of standards with respect to seabed sources of marine pollution, the US draft articles called for the establishment of and agreement to minimum international standards and the right of coastal states to set higher standards. Alternative texts reflect the view of some states (Tanzania, Kenya and Brazil) that there need not necessarily be minimum international standards and that primary responsibility for establishing seabed standards should lie with the coastal states. On the questions of standards for vessel-source pollution, the US--both in the earlier working paper and in the draft articles--favored exclusively international standards, and proposed that IMCO should have the primary responsibility for establishing such standards. In this regard, the US, supported by the UK, Denmark, Norway, Sweden, Japan and others advocated that only port states and flag states should be able to apply higher standards. Our proposals were attacked by a coalition of Canada, Australia, and the developing countries who opposed a system of exclusively international standards. Part of that coalition, namely Canada and Australia, favor primary reliance on international standards, but forcefully advocate a right for the coastal state to establish supplemental standards for special circumstances or for situations in which in their view international standards are inadequate or non-existent. Some LDCs, notably Kenya and Tanzania, and the PRC, favored exclusive coastal state competence to set standards both for seabeds and vessels in their economic zone. The Soviet Union, acting in a somewhat equivocal manner throughout these discussions, insisted that States have the right to establish standards for their own vessels, although they conceded that these should not be lower than those agreed internationally (the USSR, unwilling to accept an economic zone, is committed to coastal state standards only in the territorial sea and probably in the Arctic). LDCs, in responding to US arguments, indicated they had no interest in interfering with navigation, but Tanzania, on at least one occasion, reserved the right to discriminate against certain states (unnamed). Several LDCs opposed IMCO as the primary source of international standards and some felt that the Authority or UNEP should have a role. Several alternative texts were laid out on these issues.

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D. Enforcement. The US proposed several general articles on enforcement based mainly on flag and port competence as well as bonding and other release measures. In addition, the US draft articles contain extraordinary coastal state rights in three situations:

(i) a finding by the dispute settlement machinery of persistent flag state failure to enforce.

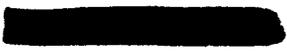
(ii) reasonable emergency enforcement measures to prevent, mitigate or eliminate imminent danger to its coast from a violation of applicable standards.

(iii) intervention in circumstances spelled out in the 1969 Intervention Convention.

These extraordinary enforcement articles were proposed as an alternative to the pollution zone concept supported by the majority of states in the committee but received little support.

Canada, Australia, Kenya and Peru, supported by other less-developed countries, argued for a right of the coastal state to enforce standards within the limits of their national jurisdiction. France and Japan proposed coastal state enforcement only against discharges or dumping in contravention of international rules in an unspecified zone. The Soviet Union forcefully opposed any coastal state right of enforcement beyond the territorial sea and opposed forwarding any alternative texts on this subject to the Santiago Conference.

E. US Consultations. The US was able to expand its consultation and coordination group on pollution to include Norway, Sweden, Denmark, the Netherlands and Greece in addition to France, the UK, Japan, and the USSR. Although the group generally coordinated well, the Soviet Union utilized extremely hard-line negotiating tactics, often stalling work and preventing many efforts at compromise and consolidation of texts.



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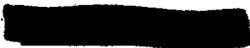
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F. IMCO. IMCO was a prominent topic in Subcommittee III and its WG. The US explained its proposal regarding a Marine Environmental Protection Committee which could be empowered to adopt regulations on vessel-source pollution and send them directly to States. Ambassador Pardo of Malta responded to that proposal with a long speech attacking the proposition as being beyond the authority of the IMCO Charter, This attack was joined by Canada, Peru, Chile, Kenya, Tanzania and others. Canada qualified her opposition to the MEPC by saying that she opposed it only if it was tied to exclusively international standards. In addition to the MEPC proposal, IMCO was attacked by LDCs as not being representative of coastal states with an interest in marine pollution but rather only of flag states with a primary interest in shipping. These allegations were answered by various maritime states including the US, UK, the USSR, Greece, Norway, Sweden, and Denmark who stated that IMCO had at least 50 LDCs as members; that almost all members are coastal states with coastal state interests; that IMCO had been effective in reduction of marine pollution from ships and was the only international organization with the necessary expertise; that IMCO membership was open to all; that the 1973 Marine Pollution Conference was a plenipotentiary Conference; and that the MEPC was open to all nations who were members of IMCO or who were signatory to a treaty administered by IMCO.

The Group of 77 attempted to arrive at a consensus resolution to have the results of the 1973 Marine Pollution Conference sent of the LOS Conference for review prior to its entry into force but they could not reach agreement. However, a letter was sent to the SYG IMCO sending selected records and documents from the Seabed Committee and noting the relation to some areas being dealt with by Subcommittee III and by the 1973 Marine Pollution Conference. Article 9(2) of the IMCO draft on not prejudicing the LOS Conference was also noted.

This letter was not entirely satisfactory to the Group of 77 who are now sending a letter to their members encouraging attendance at the 1973 Conference to protect their LOS interests.



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VII. Scientific Research

The US delivered a statement in Subcommittee III and introduced draft articles on scientific research on July 20. Other separate drafts were submitted by the Eastern Europeans (Soviet draft), Malta, Canada, China and the Latin Americans (Brazil, El Salvador, Ecuador, Peru and Uruguay). A limited general debate occurred on the topic of technology transfer with statements by Yugoslavia, USSR, France, US, Greece, Venezuela and Malta. All of the draft articles were referred to a Working Group chaired by Andrzej Olszowka (Poland), who had difficulties with the pressure of work in an abbreviated schedule due to his late arrival and because of his insistence on conducting sessions in his troubled English.

The US proposal calls for cooperation in facilitating research in the territorial sea and provides for a set of obligations for the conduct of research in areas beyond the territorial sea where the coastal state exercises jurisdiction over seabed resources and coastal fisheries. This obligation would be in lieu of consent and would include: advance notification, coastal state participation, flag state certification of the bona fides of the researcher, sharing of data and samples, assistance in interpreting the data and compliance with international environmental standards.

The Chairman and the Secretariat produced an outline of a comparative table consisting of ten sub-sections with comparative texts for six of them. The organization of this table contributed significantly to the difficulties of the Working Group in subsequent efforts to achieve progress. The LA group attacked the titles of some sections, particularly one reading "right to undertake marine scientific research." They considered this to be prejudicial to the question of whether such a right existed, especially within the limits of national jurisdiction.

The major dispute in the Working Group was created by an item which was subdivided into "consent", "participation" and "obligations." When the comparative table was distributed, the Chairman, at US urging, announced that these sub-items would be considered together, but when discussion commenced on this item he stated the first concept to be considered would be "consent." When draft articles were being considered the US insisted that its Article 7 (which does not mention consent but concentrates

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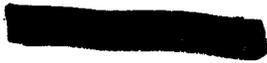

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instead on detailed obligations of the researcher when conducting research in areas beyond the territorial sea) was, in fact, an alternative to the consent regime. Many delegations, particularly Brazil, Peru, Argentina, and Canada, actively opposed inclusion of the US article as an alternative to the consent regime. Others (including the Soviet Union and Tanzania) claimed further that by referring to jurisdiction in a zone between the territorial sea and the high seas the US was prejudging work of a different sub-committee. Some delegations indicated a willingness to accept the US proposal under the consent heading but not the associated listing of obligations. The Working Group could reach no agreement on this sub-section but did produce texts on the definition and conduct of scientific research.

During the discussions on the question of consent, no delegation actively supported the US proposal although France, Mexico, Australia and Italy made suggestions which would qualify the right of the coastal state to refuse consent. Kenya and Tanzania supported the consent regime stating that such an adjunct of sovereignty was necessary for consistency with the concept of an exclusive economic zone. Private discussions with the African and Mexican delegations indicate some willingness to be more flexible on consent in return for a more forthcoming position by the US on technology transfer in marine science.

VIII. Dispute Settlement

Throughout the session, the US stressed the view that there was a need for an effective dispute settlement mechanism to ensure that conflict could be avoided or resolved. All draft articles introduced by the US during this session contained a cross-reference to a section of the LOS treaty on dispute settlement. The US introduced general draft articles on dispute settlement on August 22. In a statement on the same day, the US Rep emphasized that a system of peaceful and compulsory dispute settlement is an essential aspect of an overall comprehensive LOS settlement. He indicated that, in the US view, a system is needed that ensures, to the maximum extent possible, uniform interpretation and immediate access to dispute settlement machinery in urgent situations while at the same time preserving the flexibility of States

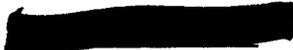


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to agree to resolve disputes by a variety of means. Thus, the US articles reflect a system of settlement of disputes by any manner agreed to by the parties with an LOS Tribunal to settle disputes if parties do not agree to another method.

IX. Regional Groups, Soviet Union and China

A. Group of 77. As noted elsewhere, there was an effort to organize the Group of 77 in the context of preparation of articles for the seabed regime. The LDCs attempted to achieve a unified position on the concept of the Enterprise (giving the Authority the exclusive power to exploit seabed resources directly) but this effort failed as there was some opposition to the Latin American Enterprise concept within the group. The actual spokesman for the Group of 77 seabeds negotiation was the Jamaican Rep. but he failed to give any discernable direction or leadership to the LDC group. Insofar as Subcommittee II issues were concerned, there was no evidence of a unified Group of 77 position. To the contrary, most states appeared to be actively pursuing their individual interests to a degree not seen previously. Undoubtedly the Group of 77 will be making every effort during a spring meeting of the group to reconcile differences. It is possible that the broad parameters of a political settlement could emerge at that meeting but it is unlikely that detailed agreement can be reached in light of the diversities evidenced this session. In Subcommittee III, the Group of 77 representatives did not act as a group. However, they did attempt to organize opposition to IMCO. There are indications that they may have reached agreement on a letter to member states encouraging them to participate in the 1973 IMCO Conference in order to protect their LOS interests.

B. Landlocked/Shelflocked Group. This group limited its participation in SC I seabeds discussions almost exclusively to issues directly affecting its members. The principal spokesmen were Singapore and Austria. The main issues of interest were equitable representation on the Council and their organs of the Authority and the formula for distribution of benefits. After intensive private negotiations, landlocked countries were able to agree on



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a set of draft articles on the rights of landlocked states. In the main Committee, Singapore made a strong plea for a large international area and opposed broad coastal state jurisdiction. The geographically disadvantaged group gave greater public evidence of unanimity than actually existed. For example, there is a division in the group over whether there should be a distinction in the treatment of developing and developed geographically disadvantaged states with relation to such matters as entitlement to fish in the economic zones of neighboring states, etc. One encouraging note was the fact that Zambia participated actively at this session and openly disagreed with Kenya and Cameroon in Subcommittee II on the issue of whether geographically disadvantaged states in a region should be entitled to participate in the fisheries in the exclusive economic zone. The fact that this group constitute a blocking third voting bloc at the Conference seems to be unappreciated by many delegations, perhaps because the group is underrepresented in the Seabed Committee. There was little landlocked attendance at the marine pollution Working Group meetings and no real participation. Denmark and the Netherlands were moderately active shelflocked states whose positions were generally in support of US proposals. Their views represented their maritime interests rather than any particular concerns that the shelflocked group might have.

C. African Group. The African group supported the Enterprise concept apparently because the group believes that this system will give them the best opportunity for maximum benefits from resource exploration and exploitation. The Africans tended to be more responsive to US statements on resource management systems and also tended to be a moderating influence on the Latin Americans. The African group clearly did not want to see SC I polarized, evidently concerned that the US position was in large part founded on a reasoned approach to resource management rather than a political approach as, for example, the Soviet Union's position. The major activist was Tanzania, who attempted in SC I, to preserve as much of its seabeds treaty as possible in the new draft articles. The only other African to become involved was the Zambian Rep who appeared in the Working Group only to insert a draft text regarding commodity



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price controls. Kenya, Cameroon, Senegal and Tanzania were particularly active in Subcommittee II. As pointed out elsewhere, there were sharp exchanges between the above supporters of the exclusive economic zone and the landlocked disadvantaged bloc, especially Zambia and Uganda (which received permission to make a statement although it was an observer). In general, the coastal State leaders were sophisticated and effective. There still is a long educational process ahead for the 13 landlocked States in Africa before they can effectively compete with the coastal States in the region. Ethiopia, on the other hand, removed its name from the sponsorship of the draft articles based on the OAU Declaration and Liberia took moderate positions insofar as navigational interests are concerned. Overall, it appears that the African group will have difficulty reaching a common position when they meet at the Afro-Asian Legal Consultative Committee meeting this coming January in Tokyo. One important factor this session was that the Chairman of the African Group did not regularly call African Group meetings and unlike last year, there was little opportunity for group consultations. Tanzania and Kenya, and to a lesser extent, Ethiopia, participated in the marine pollution deliberations. All three adopted a generally cooperative attitude and attempted to work in a constructive manner toward the consolidation of texts. At the same time these states maintained a substantive position in opposition to that of the US. These three also participated in deliberations on scientific research and generally supported the consent regime.

D. Asian Group. This group is all but non-existent in the SC I seabeds discussions. The Asian group did not take a unified position in SC I, and Singapore representatives, speaking for the landlocked and shelflocked countries, tended to confine their comments to specific portions of the SC I work which dealt with benefit sharing. India was active but, in the Working Group itself did not want to break solidarity with the Group of 77. Within the Group of 77, however, India, Sri Lanka and Iraq maintained a firm position which prevented the Group of 77 from reaching agreement on the Enterprise. They insisted that while they support the Enterprise concept allowance should be made for it to employ licensing as one means of exploration and exploitation. On Subcommittee II issues, the Group is badly

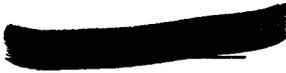
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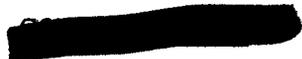
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divided with supporters of the archipelago concept, broad shelf states, strait states and both coastal and distant-water fishing states having apparently decided to pursue their interests independently or in conjunction with like-minded states in other regions. While several key members of this group attended the marine pollution Working Group, only Japan actively participated. Japan generally supported the US position in all areas except enforcement.

E. Latin American Group. In Sub-Committee I, the principal Latin American activists were Peru and Brazil. They were strident and uncompromising in their support for positions designed to give maximum power to the Assembly of the new International Seabed Organization and to insure acceptance of the Latin American approach toward exploration and exploitation--the Enterprise. The Latin American Group could not be pinned down on substantive issues nor explain the Enterprise concept which appeared to be poorly thought out. It seemed clear that the Latin American tactics in Sub-Committee I were motivated by political considerations and objectives in other sub-committees rather than any fundamental concern with establishing an effective resource organization. Chile and Peru at times made obvious efforts to obstruct progress in the Sub-Committee I Working Group but gained no support in this from other LDCs. In Subcommittee II, there are two Latin Groups. The first consists of Brazil, Ecuador, Panama and Peru. The second consists of those states who rally around the patrimonialists. Both groups have been very active but it is clear that the great weight of voting strength lies with the second group. It now appears that the "hard-liners" on a 200-mile territorial sea are becoming increasingly isolated. Brazil intervened infrequently and, while it was clear that instructions were being followed, did not waste the time of other delegations. Peru was especially vocal but still seemed to be holding open a possibility for a compromise on a two-zone approach to the territorial sea. It should also be noted that while the patrimonialists were unable, despite intensive negotiations, to merge their positions with the Africans, this will probably be their major effort before the Santiago Conference. Latins regularly attended SubCommittee III and the Working Group on pollution.



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However, with the exception of Brazil, which generally intervened to obstruct the work of the Group, the LAs did not participate actively in the deliberations. The Brazilian position was clearly outside the main stream of the other LDCs.

F. China. China played a relatively small part in the discussions in SC I and was much less polemical than at the spring session in this and the other committees. China, in what appeared to be an essentially ideological issue, became involved in a dispute with the USSR regarding the latter's proposed preamble to the treaty. The Chinese Rep persisted in keeping the issue alive until the last day of the Working Group session despite the compromise that had been reached. The Chinese were equally quiet in Subcommittee II. However, they did submit alternative draft texts and it is possible that they are undergoing a period of reevaluation of the wisdom of their early commitment to the positions of the Peruvians and Ecuadoreans. While attending Subcommittee III and its marine pollution Working Group regularly, the PRC rarely intervened in the discussions.

G. USSR. The USSR continued to play an active role in SC I seabed discussions. Through most of the session, the Soviet Rep cooperated closely with the US in the tactical handling of issues in the seabeds Working Group. Toward the end of the session, however, the Soviet Del began to take very strong issue with the US position on several questions. He objected strenuously to key aspects of the US licensing proposal, inspection functions, and dispute settlement. He continued to stress that the USSR would accept a regime in which the international authority would have the right to exploit resources directly, provided that states would also have such rights. In Subcommittee II the Soviets cooperated very well with the US Delegation. In general, they were looked upon as being extremely conservative, particularly on the fisheries issue. They were often a popular target for verbal attack and Spain was very pointed in disagreeing with the Soviet straits position. It may be possible that the Soviets have recently concluded that a Conference will produce results damaging to their positions and they may be wavering on the desirability of a Conference at all. In Subcommittee III, the

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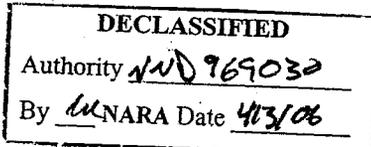
Soviet Union made strong statements in support of freedom of science and stuck resolutely to their position that research in the water column beyond the territorial sea should remain unregulated. On pollution, the Soviets used extremely hard-line negotiating tactics, often stalling work and preventing efforts at compromise and consolidation of texts.

X. Contact Groups.

Chairman Amerasinghe convened six meetings of the regional contact groups (plus the Chairman of the US Delegation) during the last 10 days of the session to attempt to facilitate the success of the Conference by initiating political discussions on the principal elements of an eventual settlement, the organization of the Conference and the Committee's recommendation to the General Assembly. The US, some Latins (Columbia, Venezuela, Mexico and Chile), and the leaders of the Asian and Eastern European Group supported the initiation of discussions across regional group lines while the WEO's and other Latins (Chile and Brazil) opposed such discussions. The African group indicated that it only had authority to listen. After three meetings of dispute over the best use of the contact group, there was some brief discussion of substantive issues, particularly coastal State economic jurisdiction. Two basic approaches were taken, one that the principle of an exclusive economic zone must be accepted first and the other that there should be negotiation of coastal state rights and duties as a first order of business. Since there was no possibility of agreement on this difference of principle and since the Africans and Latins did not speak, the Chairman devoted the last two meetings to Conference organization and procedure.

There was broad support for maintaining the Conference schedule from all groups except Eastern Europe. The Soviet Union strongly opposed any recommendations on this point until further preparatory work was completed since they felt the Committee had not begun to fulfill its mandate. The other delegations agreed that some further work was needed with emphasis on introducing some order into the proposals within Subcommittee II. The main suggestion was to





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have an informal working paper prepared during the next two months on those items which would be reviewed at a brief fall meeting of the Committee and forwarded to the Conference if found acceptable. Because of Soviet opposition, there was no agreement on this although the Chairman indicated that delegates could certainly do such informal work if they wished.

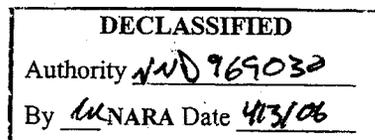
Finally, there was general agreement that the Conference organization should basically parallel that of the Seabed Committee although there was a difference of view as to whether Subcommittee II's items should be split up for consideration by two working groups. There was also general agreement on the need for a credentials committee, a small drafting committee (with no negotiating power) and a special matters committee to deal with issues such as dispute settlement which cut across all committees. On voting, everyone wanted to maintain consensus as long as possible. The Soviet Union, France and Japan wanted a consensus procedure specified in the rules while the others felt that voting would be necessary at some stage of the Conference.

XI. Procedural Aspects.

The Seabed Committee has operated on a consensus basis. Consequently, a few dissenting States have been able to easily impede the progress of work. In subcommittee I, the combination of a very skillful Chairman of the Working Group (Mr. Christopher Pinto) and the fact that more concrete draft articles were available at the outset resulted in largely satisfactory completion of that Subcommittee's preparation for the Conference.

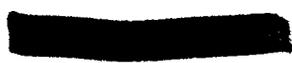
Procedural problems were also largely overcome in the Subcommittee III Working Group on Marine Pollution and approximately half of the draft articles were placed in an acceptable form for the Conference. This Group did, of course, have a relatively narrow mandate and many fewer drafts to work with than the Group in Subcommittee II.

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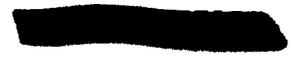
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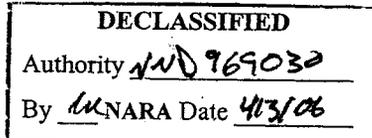
The Subcommittee III Working Group on Scientific Research started late in the session due to the absence of its Chairman and little substantive progress was made. A great deal of time was spent sorting out procedural problems as this Working Group had not established a work method before the start of this session.

Subcommittee II and its Working Group continued to face a variety of time-consuming procedural obstacles at this session. Underlying the difficulties was the fact that unlike the other subcommittees, Subcommittee II has the broadest mandate for dealing with traditional law of the sea subjects upon which most states have strong, long-standing views. Moreover, the questions of offshore fisheries and petroleum resources as well as the questions of maritime commerce and navigation and straits passage affect the hard economic and security interests of States.

The above factors and others combined to produce a bewildering number of draft alternatives under the various subjects and issues allocated to Subcommittee II. The procedure followed was to allow any State to introduce any draft article or articles that it desired under any list item. Unfortunately, draft alternative articles submitted at prior sessions, ones formally introduced at this session as well as ones informally or orally introduced at this session, were placed in various places under comparative tables, in consolidated texts and sometimes alone. The resulting documentation was voluminous and confusing, resulting in a largely useless work product.

In many instances, substantive positions were veiled behind procedural wrangling. Spain, for example, went to great lengths to concentrate the WG's attention on the question of innocent passage in the territorial sea while others attempted to focus the discussions on the concept of the exclusive economic zone. In one case, Spain insisted on the deletion of a footnote in a compromise alternative submitted by the US, USSR, Bulgaria, Mexico and Argentina on the breadth of the territorial sea. The Working Group consumed several working sessions on the issue of whether or not a delegation could submit footnotes in proposals.

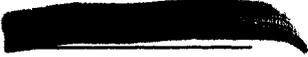




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It was clear that some of the delegates in Subcommittee II were prepared to undertake detailed explorations and comparisons of one another's positions at this session but that some were not so prepared. Strong leadership from the Chairman of the Working Group could, nevertheless, have led to more progress and more sensible organization of draft alternative texts.

XII. Evaluation.

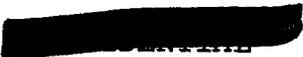
The large majority of delegations now appear to regard a Law of the Sea Conference as inevitable, and do not seem to wish any significant delay in beginning the Conference. There is a growing feeling that the Seabeds Committee has served its purpose and outlived its usefulness except perhaps for a few specific preparatory tasks. The need for a comprehensive package settlement is widely recognized, although the precise alterations in position that may be made to achieve such a settlement remain unclear.

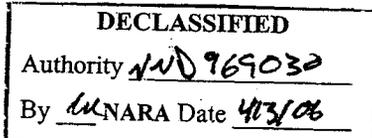
Despite these attitudes, no major political issues were resolved, although some issues were narrowed. Some of the reasons for this may have a bearing on our tactics for the Conference.

The Chairman of the Subcommittee I Working Group was highly skilled, while the behavior of the Chairman of Subcommittee II Working Group tended to impede its work.

Delegations did not seem prepared to negotiate the difficult political issues until the Conference. African States at the start were preoccupied with the elaboration of a common text based on the OAU Declaration; coordination between key Africans and Latin and other supporters of an economic zone was intensive but difficult. The same was true of LDC coordination on the deep seabeds "Enterprise". However, the results of such coordination may bring a clearer focus to the difficult resource issues.

The disparity of views among States in the Western European and Other group make it difficult for them to agree to a small negotiating group on substance based on regional groups.





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Only a few delegations appeared to be deliberately using the consensus procedures of the Committee to obstruct progress. These tended to be the "extremists" on the territorial sea and straits issues, mainly Peru, and Brazil, and at times Spain or Egypt (and possibly Tunisia) in more subtle ways. This is an indirect--but important--confirmation of our own view that the Conference is not likely to confirm the positions of these States on those issues. Despite regional solidarity, on a few occasions Peru met with public opposition and criticism from more moderate Latin American leaders, including Colombia, Mexico, Venezuela, and even Chile.

The large amount of time wasted by the constant exchanges between Greece and Turkey on islands may have convinced delegations of the need to prevent the intrusion of issues that, although important, are not central to the negotiations.

Strident Soviet attitudes on the deep seabeds regime and negative attitudes toward the Conference seem to have reduced developing country willingness to accommodate Soviet interests on any issue. This may have some negative effect on our own interests.

At this point, a reasonable consolidated elaboration of working group texts exist on the deep seabed regime and several issues on pollution. Little effective consolidation was achieved in the area of scientific research, and essentially none on the coastal State resource jurisdiction issues or navigation issues. A large number of proposals have been made bearing on the resource issues, although many reflect nuanced but important differences among supporters of an economic zone. While there seems to be a basic understanding among key delegations of what the major issues are, the existence of a basic text or reduced alternatives would greatly facilitate negotiations at the Conference.

The attitude of most developing countries to the role of the US remains ambiguous. On the one hand, many tend almost instinctively to regard their own interests and ours as incompatible, roughly in the form of rich and powerful vs poor and weak. They also seem at times to be encouraged to keep their distance from us by countries such



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as Canada. On the other hand, they recognize our willingness to deal reasonably with their interests in the context of a broader perspective, our technical command of the issues, and the contrast between our positions and the generally more conservative and sometimes harsh approach of the USSR. They also recognize the importance of big power participation in a treaty, but their relative isolation of the Soviets raises doubts as to the extent to which this factor alone is enough of a negotiating incentive.

One important consequence of this ambiguity relates to US influence over the shaping of new developing country proposals. While we have not, for example, participated in the informal group working on a consolidated economic zone proposal, Colombia, Venezuela, and others have maintained private contact on this matter with our head of delegation, and responded warmly to our presentation of new articles on the coastal seabed economic area. Kenya made some encouraging "interpretations" of the exclusive fisheries zone during informal consultations. Whatever the case, it is clear that every move we make is being watched carefully and with considerable sensitivity.

Insofar as substance is concerned, key developing countries, largely privately, but in some measure publicly, appear to conceive of the following general outlines of a possible overall settlement, although this of course is necessarily speculative :

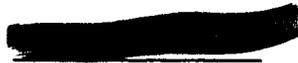
1. A twelve-mile territorial sea.
 2. Something in the nature of a re-defined innocent passage right which would substantially approximate free transit, with a lesser right in certain straits (clearly Tiran).
 3. Recognition of archipelagoes on roughly the same terms.
 4. An economic zone extending to 200 miles and, in the view of many, including the continental margin and coastal fisheries beyond 200 miles either as part of the economic zone or in terms of an "intermediate zone" or "preferential rights."
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5. Coastal State "regulation" (of uncertain scope) of scientific research in the economic zone.

6. A "pollution zone" for vessel source pollution for purposes of enforcement but not standards.

7. A strong deep seabed organization with some "mixed" system that accommodates their desire for direct exploitation by the organization with our desire for a right of access, with a "compromise" on voting in the organization, and some basic rules for exploration and exploitation being included in the treaty itself to allay some of the concerns inherent in the dispute over giving policy-making powers to the Assembly or Council.

Nevertheless, official positions tend to be further away from our own views. The reasons for this relate in part to tactics and in part to the ability of extreme States to utilize group solidarity. The relative confidence of developing countries that they can negotiate with us on terms other than group confrontation depends in large measure on their confidence that we do not have insurmountable problems with their major approaches. Conversely, our reaction to their major approaches depends in most cases on our confidence regarding the details, elaborations, and exceptions which they are prepared to accept. This obstacle to further negotiation has yet to be overcome and probably cannot be overcome fully until the Conference.

