An International Regime for the Sea-Bed Beyond National Jurisdiction

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A. INTRODUCTION

It is concern over the disposition and husbanding of the as yet only faintly apprehended resources of the sea-bed beyond national jurisdiction that impelled Ambassador Pardo of Malta to direct the attention of the United Nations toward the concept of a "common heritage of mankind". This resulted in the Declaration passed by the U.N. General Assembly on December 17, 1970 which sought to establish the principle that the sea-bed and its resources beyond national jurisdiction were not subject to unilateral appropriation by any state or persons. Rather, the U.N. declared, this area would be developed in accordance with a new international regime to be created by negotiation.\(^1\)

The General Assembly thereupon moved to enlarge both the composition and mandate of its Ad Hoc Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction\(^2\) and to charge it with responsibility for convening a global conference on the law of the sea which would deal with the establishment of an equitable international regime — including international machinery — for the area and resources of the sea-bed and ocean floor.\(^3\)

This Preparatory Committee began meetings in Geneva in March and July-August, 1971 and in New York in October, 1971. During the inceptive year it elected the Sri Lanka Ambassador, Mr. H. S. Amerasinghe, as Chairman and divided its mission among three Sub-Committees. Sub-Committee I was charged with the task of preparing
draft treaty articles embodying the international regime — including an international machinery — for the area and resources of the sea-bed and the ocean floor, and the sub-soil thereof, beyond the limits of national jurisdiction, taking

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\(^1\) G. A. Res. 2749 (XXV).

\(^2\) The Ad Hoc Committee had been established by G. A. Res. 2340 (XXII) and its mandate augmented by G. A. Res. 2467A (XXIII).

\(^3\) G. A. Res. 2750C (XXV).
into account the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of developing countries...economic implications resulting from the exploitation of the resources of the area...as well as the particular needs and problems of land-locked countries...4

Sub-Committee II was concerned with problems of the territorial sea and the economical zone, while Sub-Committee III focussed principally upon the marine environment. Already during this session of the Conference, the first Sub-Committee had laid before it the thoroughly-formulated but radically divergent views of various states and groups of states: a draft treaty prepared by the United States,5 a working paper by the United Kingdom,6 proposals by France,7 a Tanzanian draft statute for a sea-bed authority,8 Soviet draft articles for a treaty,9 a Polish working paper,10 a Maltese draft ocean space treaty,11 a working paper submitted jointly by thirteen Latin American states,12 a preliminary working paper introduced by seven land-locked, shelf-locked and zone-locked (“geographically disadvantaged”) states13 and a Canadian working paper.14 As the rapporteur observed with considerable understatement: “It was generally accepted that the establishment of an international sea-bed regime should be based on the Declaration contained in resolution 2749(XXV). But the various draft proposals and opinions expressed reflected different interpretations as to the nature of this relationship.”15

In the period 1971 to 1973, the First Committee,16 primarily under the chairmanship of Paul B. Engo of the Cameroons and with a working group headed by C. W. Pinto of Sri Lanka, succeeded in preparing an extensive set of alternative texts for 52 articles of a draft sea law convention. These again reflected sharply divergent views, but did at least present them in an

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7 Id., Annex VI and supra, note 4 at 18-19.

8 20 July 1971. A/AC.138/33 and supra, note 4 at 19.


15 Supra, note 4 at 23-24.

16 The basic structure of the U.N. Committee on the Peaceful Uses of the Sea-Bed carried over into the Conference. Ambassador Amerasinghe, Chairman Engo and Mr. Pinto simply assumed at the Conference positions analogous to those held during the sessions of the Committee and the First Sub-Committee essentially became the First Committee of the Conference, albeit with the enlarged membership of all participating states.
organized fashion suitable for serious negotiations. Thus, by the time the first working session of the Third United Nations Conference on the Law of the Sea was convened in Caracas between June 20 and August 29, 1974, the First Committee, in the view of one U.S. representative, "was far ahead of the other Committees of the Conference."

By the time the next meeting of the Conference had concluded in Geneva, on May 9, 1975, another U.S. representative, Ambassador John N. Moore, was moved to exactly the opposite conclusion. In his opinion, the First Committee was now far behind the other two in progressing toward an acceptable Universal Convention on Sea Law. The object of this paper, therefore, is to examine the causes of this loss of momentum and to examine the prospect of avoiding a situation in which an otherwise agreed universal convention — which now appears within reach — with its substantial benefits for all mankind, is allowed to founder on the issue of international regime.

It is important, at the outset, to note that Committee I’s loss of momentum toward an agreeable text is not due to indolence. At its plenary meeting on April 18, 1975, the Geneva Conference requested the Chairman of each of the three main committees “to prepare a single negotiating text covering the subjects entrusted to his committee.” Chairman Paul Engo, in a minor miracle of drafting zeal, did produce a complete text of 75 articles and one annex — a remarkable feat considering the variety and dispersion of views in his Committee. The difficulty with this draft, however, is that, to a greater extent than those prepared by the chairmen of the other two committees, it represents one tendency — that of the Group of 77 or the Developing Countries (actually now more than 100) — and fails to achieve a workable reconciliation with the strongly held views of the United States, the Soviet Union, Canada, Europe, Australia and New Zealand. These differences extend over almost — but not quite — all the issues within the jurisdiction of the First Committee.

B. THE AREA SUBJECT TO AN INTERNATIONAL REGIME

Fundamental to an agreed convention establishing a sea-bed regime is a consensus on the area to be included. Such a consensus does not yet exist. A study made in 1972 by the United States Geographer analyzes the areas that would be allocated to each state if outer limits of national jurisdiction were


19 Interview with author, Washington, D.C., 19 May 1975.

20 United Nations A/Conf. 62/WP. 8/Part I (7 May 1975) at 1. Third United Nations Conference on the Law of the Sea, Informal Single Negotiating Text. The President of the Conference has stated that this Single Text “should take account of all the formal and informal discussions held so far, would be informal in character and would not prejudice the position of any delegation nor would it represent any negotiated text or accepted compromise.”
set, respectively, at 40 miles from shore, at 200 miles, at a depth of 200 meters and at the edge of the continental margin. Notably, the study showed that the United States, the Soviet Union, Canada, Australia and Indonesia stood to be five of the six top gainers among all the states under any of these four options. The growing awareness of the fact that they could not lose made both superpowers — originally reluctant to accede to the demand of the Group of 77 for a 200 mile economic zone under national jurisdiction — much less opposed to schemes for reducing the area of sea-bed under international jurisdiction.

The economic zone refers to that area of the sea directly adjacent to a nation's coast, in which the country will have exclusive mineral resource exploitation rights. The term must be distinguished from that of “territorial waters”, since the latter is tied to the notion of legal sovereignty.

Seven different off-shore limits of the economic zone have been discussed by the Committee and Conference at various times: 40 miles, 200 meter isobath, 200 miles, 500 meter isobath with a 100 mile minimum width, 3,000 meter isobath, 200 miles, and the edge of the continental margin. The economic implications of some of these alternatives have been explored in some detail. Which limit is adopted obviously affects the extent of resources available to an International Regime. Under the 40 mile limit, 90 percent of the world's proved off-shore hydrocarbon resources and 59 percent of ultimate as yet unproved potential hydrocarbon reserves are believed to be within economic zones. No known mine-grade manganese nodules would be within the national areas, and it is expected that rich mineral deposits (e.g. gold, platinum, zircon, sulphur) will be exploited beyond the 40 mile limit in the future.

In the case of the 200 meter isobath limit, about all the proved reserves and 68 percent of total potential sea-bed petroleum resources would be within the economic zone. While no manganese nodules are located landward of the 200 meter isobath line, some of the minerals noted above will probably be found within the zone. If a 3,000 meter isobath limit is used to define the economic zone, all known reserves and 93 percent of potential hydrocarbon resources will come under exclusive national control. Moreover, some quantities of manganese nodules (albeit less abundant than at lower depths) and many of the minerals listed above would also be within the national economic zones. The 200 mile limit would embrace all known petroleum reserves and approximately 87 percent of estimated total sea-bed hydrocarbon resources, as well as about 10 percent of possible mine-grade manganese nodules, all of the presently exploitable mineral resources and most of those having potential

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22 Id. at 5-34.
24 Id. at 34-35.
25 Id. at 36.
economic value in the next few decades. The edge of the continental margin limit would include all potential hydrocarbon resources.

The first deduction to be drawn from this evidence is that under any conceivable new global convention, the principal benefits will accrue to already affluent states, including the U.S., the Soviet Union, Canada, and Australia. Among the less developed, Indonesia, Argentina, Mexico and Brazil (the wealthier of the poor) stand to gain substantially, while China, Japan, Vietnam, the Philippines and India have high hopes of finding large petroleum deposits in the sizable areas between their coasts and the edge of the continental margin. Most other states probably stand to gain little. Landward of the 200 meter isobath line there may be as much as 1,544 billion barrels of oil. At a price of $5.50 per barrel, the aggregate value of these reserves is $8,492 billion. However, thirteen nations with G.N.P.s greater than $1,000 per capita have approximately 66.2 percent of this oil. In effect, no conceivable economic zone agreement, despite its being the brainchild of the less developed countries (prodded by the Latin Americans) is likely to have anything but a re-enforcing effect on the present overall global disparity between the rich states and the poor, although it might incidentally make a few of the poor less so. This outcome is, to a large extent, the fault of the poor nations themselves. Instead of pressing for some system of general revenue sharing in the huge windfall area that will constitute the economic zone, they have instead focused their attention on establishing a regime favorable to their interests in the area beyond national jurisdiction, even as the size and economic importance of that area has continued to shrink with the full consent of the Group of 77. This mismanagement of the less developed countries' strategy is primarily attributable to the genius of a relatively small number of broad-shelf and rich coastal fisheries states in their ranks — Brazil, Equador and Argentina who were able to persuade the rest that their interest lay in the direction of very broad economic zones established solely for the benefit of the coastal state.

This attitude toward revenue sharing need not have been a foregone conclusion. In 1970, the U.S. supported the notion of a worldwide renunciation of any sovereignty claims to the sea-bed beyond a depth of 200 meters. Its draft treaty of August 3, 1970 envisioned the creation of "Coastal State Trusteeship Areas" in the area beyond the 200 meter depth, embracing the continental margins, in which revenue derived from sea-bed exploitation would be equitably shared and in which the International Authority to be

26 Id. at 37-38.
29 Id. at 2.
31 Id. at 212.
established by the Law of the Sea Convention would share rule-making jurisdiction with the coastal state. At this time, Canada, as another major broadshelf beneficiary, took an equally generous position, actually proposing in 1969 to share revenues from the entire area between the 12 mile territorial sea and the continental margin. When these proposals elicited no visible response from the Afro-Asian states which would have stood to gain the most, the position was quietly down-graded by the U.S. and abandoned outright by Canada. At Caracas, the United States indicated its willingness to go along with the Group of 77 to accept a 12 mile territorial sea and a 200 mile economic zone, so long as these changes in the status quo were part of a comprehensive package including freedom of navigation and overflight. The United States, like Canada, also indicated that where the continental margin was more than 200 miles from shore, the coastal state's rights should extend to the additional area.

The Soviet position also evolved toward broader national — and commensurately smaller international — areas of jurisdiction. At Geneva in 1973, the Soviets had supported a 12 mile territorial sea and a limit for the economic zone at the 500 meter isobath (with a minimum of 100 miles from the baselines from which the territorial sea is measured). At Caracas, the Soviets, like the U.S., embraced an economic zone of 200 miles, contingent upon reaching agreement on transit of straits and overflight as well as on an agreed 12 mile limit for the territorial sea. France, too, at Caracas agreed that "for reasons of simplicity and of fairness to the countries lacking a continental shelf, a distance criterion should be used" and "favoured a limit of 200 nautical miles from the baselines."

At their Spring, 1974 meeting in Nairobi prior to the Caracas session, the members of the Group of 77 still found themselves basically grouped around the 200 mile economic zone concept, but with some favouring an option by the coastal state to extend its economic jurisdiction to the edge of the continental margin where that was more than 200 miles from shore, while still others, some of the land-locked, called for a less than 200 mile economic zone or preferred it to be a regional, rather than a national zone. At Caracas, an irresistible momentum emerged around the 200-mile-or-more limit and when the issue was again taken up in Geneva in 1975, the overwhelming majority of nations had formally lined up behind an economic zone of at least

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82 Toronto Globe and Mail, 19 April 1975 at 7.
86 Supra, note 17, Vol. III at 1.
87 Id. at 29.
89 Id., Vol. I at 154.
200 miles, leaving open the question of any further extension to the edge of the continental margin.

One ray of hope did emerge for salvaging something for the cause of an equitable international system out of all this national aggrandization. The unofficial working group of approximately 35 states convened by the Norwegian Minister Jens Evensen early recognized during meetings in New York in mid-February, 1975, that the idea of revenue sharing could be revived in a limited way so as to gain general acceptance among all states for the claims of broad-shelf nations to an economic zone incorporating the area between 200 miles and the edge of the margin: a distance which, in Canada's case, could be as much as 600 miles off the Newfoundland coast. The U.S. continues to support some form of sharing in this area, proposing that it begin in the sixth year of production at one percent of "wellhead market value", rising to five percent after ten years. Canada, at the end of the 1975 conference, has again accepted some form of revenue sharing in this area. Great Britain has indicated a willingness to "look seriously" at sharing but Australia, another broad-shelf state with a margin of up to 600 miles, has so far refused to go along.

In any event, the international area has now been firmly forced back to the sea-bed beyond the continental margins. While the draft text prepared by the Chairman of the Second Committee at the end of the 1975 Geneva Conference distinguishes between the regime of the Economic Zone and the Continental Shelf, this could become largely a distinction without a difference as far as the regime of the shelf is concerned. The result would grant exclusive "sovereignty" to coastal states over the continental shelf to "the outer edge of the continental margin" for the purpose of "exploring and exploiting its natural resources". It remains to be seen whether fisheries and other jurisdictions (pollution control, etc.) will similarly be recognized as extending to the margin. There are reasonably good prospects that they will, with revenue sharing as the quid pro quo.

In sum it appears that the international regime will be confined to an area seaward of the 200 mile limit or of the edge of the margin, whichever is the farthest from the coastline, and that its jurisdictional importance, range of activities and revenues will, accordingly, be far less than had originally been proposed by the initial U.S. draft treaty. On the other hand, it does now again appear possible that there will be revenue sharing in the area between 200 miles and the continental margin, and, in the estimate of U.S. authorities, even though only a few states would be required to make contributions under such a project, the amount accruing from this source to the International Authority would, for the foreseeable future, substantially exceed revenues derivable from the sea-bed beyond national jurisdiction. For this reason a few delegations, the French in particular — even though their

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41 Logan, supra, note 33 at 24.
42 Supra, note 32 at 7.
43 Supra, note 20 Part II at 27.
44 Id., Arts. 62, 63.
45 Supra, note 19.
coastal configuration does not place them in the position of having to share with the International Authority any part of their coastal production — are opposed to the proposal because they fear that it would unduly strengthen the Authority and make it too independent: a sort of world government of the seas.\textsuperscript{46} To France, a continental margin revenue sharing scheme would be acceptable only if it by-passed the International Authority and if revenues derived from production were distributed directly by contributors to recipients in accordance with an agreed formula laid down in the treaty. The outcome of this unresolved issue will considerably affect the viability and future development of an International Authority.

C. THE POWERS AND FUNCTIONS OF THE AUTHORITY

The degree to which nations are willing to entrust independent supervisory powers to the Authority is inversely proportional to individual national mining capabilities. Thus, the "capable" nations favour — at the most — some form of licensing or contractor system, while the developing countries support a stronger Authority in which they can exercise a large degree of control.\textsuperscript{47}

The United States, Canada, the European Countries and Japan have consistently pressed for freedom of exploitation under minimum conditions of international standards and regulations while the developing countries have wanted the International Authority, which they designate "the Enterprise", to have maximum powers. The U.S. favours a sea-bed mining system in which access will be permitted under conditions favouring investment\textsuperscript{48} but has asserted that the Authority must have basic rights: to protect the environment, accumulate data on matters relevant to its function, prevent unauthorized exploitation, require that mining be carried out safely, develop overseas training and technology transfer programs set up to benefit the developing countries, insure against monopolies by a few developed states and, itself, participate in the benefits of resource development.\textsuperscript{49} Similarly, the Authority should assume certain duties: to assure free, equal and non-discriminatory access for all states to deep-sea resources and to provide stable investment conditions. It should avoid needless regulation and protect proprietary data,\textsuperscript{50} and its control should be limited to matters directly related to the exploration and exploitation of sea-bed resources.\textsuperscript{51} Initially, the U.S., Japan and Western Europe wanted the Authority to be limited to granting exclusive mining licences to natural and juridical persons\textsuperscript{52} but the U.S. has since begun to broaden its approach to include other, presumably

\textsuperscript{46} Interviews with members of the Evensen Group, New York, 20 February 1975.


\textsuperscript{49} Id. at 15.

\textsuperscript{50} Id. at 15-16.

\textsuperscript{51} Id. at 17.

\textsuperscript{52} Supra, note 47 at 7.
more complex "legal arrangements"\textsuperscript{53} perhaps including some forms of joint venture.\textsuperscript{54} It prefers the Authority not itself to operate as a mineral exploiter but to grant areas to state and private enterprises which, in the case of "hard minerals" would not exceed 30,000 square kilometers — areas half the size proposed by Western Europe.\textsuperscript{55} Lastly, the U.S. has favoured a treaty which would set out quite specifically in an appendix the basic conditions of exploitation.\textsuperscript{56}

The Soviet position is only to a limited extent different from that of the U.S. The Soviets have supported a licensing system similar to that proposed by Washington, but they would make lots for exploitation available only to nations, not to private enterprises.\textsuperscript{57} The Soviet Union has also pioneered the idea of reserving lots for later exploitation by developing nations,\textsuperscript{58} a proposal which has had a sympathetic hearing in the U.S. delegation and is also supported by France\textsuperscript{59} and some other Western states. The French have also pressed for very specific regulation of the terms of licensing and exploitation in the treaty itself — the term of years and the size and condition of leases, for example, leaving less discretionary or rule-making power in the organs of the International Authority.\textsuperscript{60}

At Caracas, the Group of 77 submitted its proposal to the First Committee. It states:

All activities of exploration of the Area and of the exploitation of its resources and all other related activities including those of scientific research shall be conducted directly by the Authority. The Authority may, if it considers it appropriate, and within the limits it may determine, confer certain tasks to juridical or natural persons, through service contracts, or association or through any other such means it may determine which ensure its direct and effective control at all times over such activities.\textsuperscript{61}

The Group of 77 thus strongly aligned itself with an International Authority having wide powers to regulate all activities in the international area and which would, itself, conduct exclusive mining activities through service contracts with appropriate parties.\textsuperscript{62} The service contract approach was intended by the 77 as a concession to the developed countries,\textsuperscript{63} but they were careful to provide that "direct and effective control" over all operations will remain with the Authority at all times.\textsuperscript{64} At Caracas, the 77 did offer to include

\begin{itemize}
\item \textsuperscript{53} Supra, note 18 at 3.
\item \textsuperscript{54} Supra, note 19.
\item \textsuperscript{55} A/Conf.62/C.1/L/6, 13 August 1974 at 3.
\item \textsuperscript{56} Id.
\item \textsuperscript{57} A/Conf.62/C.1/SR.8 at 9.
\item \textsuperscript{58} Id.
\item \textsuperscript{59} Supra, note 33, Vol. I at 155, Vol. II at 25.
\item \textsuperscript{60} A/Conf.62/C.1/L.8, 16 (August 1974), Arts. III, IV, VII, VIII and X.
\item \textsuperscript{61} A/Conf.62/C.1/L.3, Art. 9B.
\item \textsuperscript{63} Supra, note 18 at 4.
\item \textsuperscript{64} Stevenson and Oxman, \textit{supra}, note 62 at 9.
\end{itemize}
certain provisions in the regime which were intended to placate the technologically advanced states. Contracts would be awarded on a competitive basis. A contractor who fulfils the requirements of one stage would get priority in later stages. The Authority would have the duty to ensure security of tenure to a contractor, within the terms of the agreement. But there is much in the Group of 77 proposals that is left to the discretion of the Authority. The size of the areas to be subjected to service agreements is not specified, nor is the time span of the individual agreements.

Most private entrepreneurs would almost certainly be unwilling to operate under so little protection. In particular, it is quite clear that the 77 see their approach as wholly unlike any form of licensing — an unacceptable concept to the third world.

The 77 further proposed at Caracas that any proceeds collected by a nation through taxing an exploiting enterprise which is its national must be paid to the Authority. If the state itself is the party to the service contract, an equivalent amount will be paid. The central role envisioned by the 77 for the Authority is underscored by several elements added to their position at Caracas:

- Title to the international area, as well as to the resources in it, should be inalienable and reside in the Authority;
- There must be no assignment of contractual rights without consent of the Authority;
- The Authority shall constantly be informed of all relevant data uncovered by the contractor;
- The Authority can take steps to ensure the efficient and timely performance of service contracts;
- A broad right of inspection is vested in the Authority.

The Canadians, some Europeans and the Australians, seeking to reconcile the approach of the 77 with that of other states, have suggested a parallel licensing/direct exploitation system. Thus Australia has stated that the Authority should be empowered to enter into other contractual arrangements with States and also to undertake exploration and exploitation on its own behalf when it had accumulated the necessary resources and experience.
Essentially, the developing countries fear that the U.S. and Soviet approaches would lead to all-out exploitation of mankind's last frontier by a few technologically advanced nations to the exclusion of the vast majority. The developed states, on the other hand, are concerned that the Group of 77 would set up an Authority controlled by the least advanced states with unlimited authority to curtail production, control marketing, and discriminate in their own favour in allocating mining rights and setting prices.

The Single Text drafted by the Chairman of the First Committee at the end of the 1975 Geneva Conference sides decisively with the Group of 77's views, despite some efforts at compromise. It establishes an operating Enterprise which, "subject to the general policy direction and supervision of the Council" shall "undertake the preparation and execution of activities of the Authority in the Area..." The Governing Board of The Enterprise is to be heavily controlled by the Group of 77 with the seats being allotted half to Africa, Latin America and Asia, one third to Eastern European and other Socialist states and one sixth to Western Europe, U.S., Canada, Australia, New Zealand and others. It provides for a Hydra-headed bureaucratic system for administering the deep sea-bed including not only The Enterprise and its Board, but an Assembly, Council, Economic Planning Commission, Technical Commission, Tribunal and Secretariat. These are discussed below. Within the area beyond national jurisdiction "all rights in the resources are vested in the Authority" including all "title to the minerals or processed substances derived from the area" except as provided by the Convention, the rules of the Authority and the terms of the contracts made by the Authority. Exploration and exploitation "shall be conducted directly by the Authority" or by states or by entities or persons sponsored by states to the extent that the Authority, in its unfettered discretion, decides to share its monopoly. The Authority may also construct processing facilities and engage in transportation or marketing. It may "to the extent that it does not currently possess the personnel, equipment and services for its operations" employ outsiders on service contract. Marketing of its products is to be carried out with a double standard: at not less than international market prices except that lower prices may be charged to developing countries. The Authority may enter into joint ventures, but these must "ensure direct and effective fiscal and administrative control by the Authority at all stages of operations..." There is no provision for state or private exploitation of the ocean floor except through a joint venture contract with the Authority. But these joint-ventures do not approximate the concept as understood in the capitalist states. The Authority is left essentially unfettered discretion in

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76 Supra, note 20, Part I, Art. 35.
77 Id., Part I, Art. 27(1)(e).
79 Id., Art. 2.
80 Id., Art. 3(b).
82 Id., Art. 4(d).
83 Id., Art. 4(e)(ii).
84 Id., Part I, Annex I, Part C, Art. 6(b).
awarding joint-venture contracts and setting their terms, except that “selection from among the applicants shall be made on a competitive basis”\(^8\) taking the Convention as a whole into account and preference shall be given to an applicant who, pursuant to an earlier contract, is the discoverer.\(^8\) The maximum number of contracts any state may hold shall be the same for all nations, regardless of size or level of technological development.\(^8\)

There is nothing in the proposed rules to require the Authority to enter into contracts with any parties anywhere. Contractors are required, in accordance with their contract, to give the Authority access to all their secret data to the extent “relevant to the effective implementation of the powers and functions of the organs of the Authority. . . .”\(^8\) The Authority also would have an unlimited right to inspect all facilities of a contractor in the Area.\(^8\) Industrial enterprises contemplating this requirement will scarcely be comforted by the ensuing proviso that the “Authority shall not disclose to third parties . . . such of the transferred data as is deemed to be proprietary by the Contractor”\(^8\) given the fact that the Authority, its Enterprise and Secretariat, will be heavily staffed by persons who, if U.N. experience is any guide, may be presumed to be reporting back to “third parties”.

The discretion of the Authority to make rules and regulations is left extremely wide by the Single Draft Annex, particularly as to the size of contractually-allotted areas of exploitation and the length or renewability of tenure. This virtually unlimited discretion may work well enough if its effect is to cause the Authority and those with advanced technology to bargain in good faith. On the other hand, there is a justifiable suspicion that the developing countries would just as soon see sea-bed resources — which, despite evidence to the contrary,\(^9\) they continue to see as dangerous competitors to their own land-based resources — continue to go unexploited. If so, the unlimited discretion to set terms would facilitate a “take-it-or-leave-it” approach by the Authority to developers which would be anything but serious arms-length negotiations.

On a more constructive note, the Single Text does provide that in the event of a dispute between the Authority and the contracting party arising out of the interpretation of the Convention, Contract, or Authority rules and regulations, either party may invoke the dispute settlement procedures provided by the Convention.\(^9\) This provides, successively, for consultation, negotiation, conciliation or other procedures chosen by the parties. If these three alternatives fail to resolve the dispute within one month of its commencement, “any party to a dispute may institute proceedings before the

\(^{85}\) Id., Art. 8(c).

\(^{86}\) Id., Art. 8(e).

\(^{87}\) Id., Art. 8(f).

\(^{88}\) Id., Art. 10(a).

\(^{89}\) Id., Art. 13.

\(^{90}\) Id., Art. 10(a).

\(^{91}\) For a study of this question, see supra, note 23. A revised version of this report has been prepared for the Secretary General prior to the 1975 Geneva Conference.

Tribunal, unless the parties agree to submit the dispute to arbitration...".93 The judgments of the Tribunal shall be final and binding and enforceable in the territories of Members as if awarded by the highest domestic court.94 But if the judgment goes against the Authority, there is no "domestic jurisdiction" within which enforcement may be levied. It should be noted, also, that the Single Text seems to contradict this wide grant of judicial review by suggesting elsewhere that the Tribunal's jurisdiction to enter into contractual disputes exists only where specifically provided by a contract.95 It also appears that the Soviet Union and several other states may not yet have accepted the proposed procedures for compulsory judicial settlement of disputes.96 It may be, however, that it is the Western powers that ought to be reluctant. Given the proposal that the judges be elected by the Assembly on the recommendation of the Council (both to be controlled, if the Single Text were adopted, by states not notoriously sympathetic to free enterprise) and that their terms are for only five years, it is more than a little likely that the Tribunal will reflect the dominant socio-political and economic assumptions of the numerical majority in the other organs of the Authority.97

D. THE DECISION-MAKING PROCESS
AND THE AUTHORITY'S STRUCTURE

Just as the dimensions of a satisfactory role for the Authority depend on the size of the area under its jurisdiction, so, too, designing appropriate powers and discretion for the Authority is closely related to the way power is balanced within and among its organs. The American position is best summarized in the words of Ambassador John Stevenson and Bernard Oxman, another U.S. representative to the Law of the Sea conference:

The best alternative is to agree on a Council that, in composition and voting structure, sufficiently balances the substantive interests involved to inspire confidence when coupled with precise and enforceable treaty limitations on the substantive scope of decisions.98

The Americans in 1970 suggested an Authority consisting of an Assembly, a Council, and an operational arm and a dispute settlement body. The Assembly would be responsible for broad policy guidance and would make decisions by a majority vote of those present and voting.99 The Council would handle executive decision-making with concentration on exploitation.100 It would have 24 members, including the six most industrially advanced states, at least twelve developing states and at least two land-locked or geographically disadvantaged states. Decisions by the Council would require triple majorities

93 Supra, note 20, Part I, Art. 57.
94 Id., Art. 59(1), (2).
95 Id., Art. 32(b).
96 Id., Settlement of Disputes, Annex I, IA, IB SD/2nd Session/No. 1/Rev. 5.
97 Supra, note 20, Part I, Art. 32(b)(5), (6).
98 Supra, note 62 at 11.
100 Supra, note 48 at 15.
among all the members, the six industrially advanced states and the other eighteen members. The dispute settlement body — or Tribunal — would consist of five to nine judges elected by the Council. Lastly, the United States has suggested a rule-making procedure similar to that employed by the International Civil Aviation Organization: rules would be drafted by a specialized subsidiary organ, and after Council approval, forwarded to all states for review. If after a fixed period, less than one-third of the members have objected, the proposed rules would become binding. As has been observed, these proposals are light-years removed from those of the Group of 77 first circulated in a draft of January 1975 and February 1975. (An earlier similar proposal had also been put forward by thirteen Latin American states.) The Group of 77 proposed that the Assembly be “the supreme policy-making organ” with power to lay down general guidelines. It would vote, in substantive matters, by two-thirds majority. The Council would be the executive organ of the Authority and would also vote, in substantive matters, by two-thirds majority. Its membership would be elected by the Assembly. Up to one-third of the places would be reserved for states with “special interests” — half of these from among developed and half from developing nations. Among the former would be those with the most advanced technology and sea investment as well as the major importers of the land-based minerals also produced from the sea. Among the developing states, “special interests” would include the principal exporters of the land-based minerals also found on the sea-bed, as well as the states with large populations and the land-locked and geographically disadvantaged. The principal of geographical distribution would apply to election of both the special interest and the general members of the Council. In addition there would be The Enterprise to explore, exploit, and enter into joint ventures and a Governing Board of The Enterprise elected by the Assembly which would operate by majority vote.

The Soviet position, like the U.S., differs markedly from that of the 77. In the Soviet version, there would be a Conference of all members and an Executive Board of 30 members, elected on a geographically-allocated basis with five for each of five regions and one land-locked from each region.

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102 Id.
103 Supra, note 48 at 17.
104 These memoranda were circulated privately and have no document number. The February draft is referred to as the “Supplemental Draft Articles of the Working Group of the Group of 77” and contains new drafts of Arts. 10, 22-24, 32-35.
105 A/AC.138/49.
106 Supra, note 104, Art. 34.
107 Id., Art. 36.
108 Id.
109 Id., Art. 35.
110 Id., Art. 38.
111 Id.
112 Socialist Countries, Asia, Africa, Latin America, Western Europe and others.
113 Supra, note 4 at 73.
The Conference would take substantive decisions by a two-thirds majority\textsuperscript{114} while the Board, wielding most specific powers, would proceed by consensus in matters of substance.\textsuperscript{116}

There are numerous variations on these themes. The Canadian proposal, for example, calls for an Assembly — on which all members would be represented — empowered to approve budgets, elect members of its Executive Body (the Council) and decide on matters referred by the Council. Assembly decisions would be made by a two-thirds majority vote.\textsuperscript{116} The Council would approve mining and exploration regulations, manage marketing operations and oversee the distribution of benefits. In constituting the Council the Canadian proposal utilizes classes of national interest: level of technology, length of coastline, land-locked status, and level of economic development and, not unexpectedly, size of continental shelf. Total membership would not exceed 30, and decisions would be made by a two-thirds majority vote.\textsuperscript{117} Canada also proposed creation of a Secretariat — to report to the Council and Assembly on the Authority's work and to collect and disseminate data,\textsuperscript{118} and a Resource Management Commission with mixed operating and licensing functions combining some elements of the U.S. and the Group of 77's proposals. This Commission, notably, would be made up of experts who, among other things, would issue licences, supervise and inspect mining operations, enforce regulations, collect fees and royalties and regulate volume and method of production.\textsuperscript{119} Canada also proposed establishment of a dispute-settling Tribunal, comprised of experts representing various legal systems and elected by the Council or Assembly. Alternatively, disputes could also be settled by the peaceful means set out in Article 33 of the U.N. Charter. Appeals from Tribunal could go to the International Court of Justice (I.J.C.).\textsuperscript{120}

As with the allocation of functional responsibility to the Authority as a whole, so in the instance of the Authority's institutional structure, the Single Text prepared by Chairman Paul Engo leans precipitously towards the preferences of the Group of 77. Between now and the resumption of the conference in New York in 1976, much hard bargaining will be required to accomplish something approximating an agreed text.

The Single Text proposes establishment of an Assembly, Council, Tribunal, Enterprise and Secretariat.\textsuperscript{121} The Assembly, consisting of all members, is allocated powers exactly as set out in the January-February 1975 draft of the 77.\textsuperscript{122} It is specifically given control over revenues and budgets and has a mandate to adopt the criteria, rules and regulations for "the equitable

\textsuperscript{114} Id. at 72-73.
\textsuperscript{116} Supra, note 18 at 7.
\textsuperscript{118} Supra, note 4 at 219.
\textsuperscript{117} Id. at 219-20.
\textsuperscript{118} Id. at 220-21.
\textsuperscript{119} Id. at 221-22.
\textsuperscript{120} Id. at 222.
\textsuperscript{121} Supra, note 20, Part I, Art. 24.
\textsuperscript{122} Id., Art. 26.
sharing of benefits derived from the Area and its resources..."\textsuperscript{123} In this connection, it should be noted that the Single Text is quite unclear as to whether the expenses of the Authority constitute a first charge on all income derived from licensing, joint ventures and other operations.\textsuperscript{124} The Council is to be the "executive organ" as proposed in the 77 draft. It shall implement the "apportionment of benefits derived from activities in the Area" on the basis of the rules laid down by the Assembly, and it will have power to supervise the activities of The Enterprise and to approve and supervise contracts.\textsuperscript{125} It shall consist of 36 members, one-third to represent "special interests" as set out in the proposal of the 77, and two-thirds to be distributed, four each, among Africa, Asia, Eastern Europe, Socialist states, Latin America, and Western Europe and others.\textsuperscript{126} This differs from the proposal of the 77 only in adding a category of "socialist" in addition to that of Eastern Europe — an addition quite unacceptable to the Western states, a substantial number of which, including the U.S., Australia and Canada, are left to scramble for a place among the "others" sub-category of "Western European and others." As already noted, the same eccentric "geographic" allocation is also applied by the Single Text to the important Governing Body of The Enterprise.

The proposal of Chairman Engo's Single Text regarding The Enterprise has already been discussed above, as has the draft concerning The Tribunal.

E. MODES OF RECONCILING DIVERSE PROPOSALS
ON THE INTERNATIONAL REGIME

Regime

The disagreement over the scope and method of operations by the International Authority could delay or even frustrate agreement regarding the convention of the law of the sea as a whole. It is therefore essential for all sides to begin to negotiate this issue seriously and in a spirit of compromise — something which has not yet occurred in the First Committee.

Both the developed and the developing nations, as well as the Single Text, have accepted the "joint venture" concept, and it is from this nominal agreement that a substantive consensus may yet be built. The concept of "joint venture" defined in the Single Text does not, however, embody such a compromise and constitutes little more than sub-contracting of functions essentially reserved to the Authority. A genuine compromise would reserve to the Authority or The Enterprise overall control within specified guidelines as to matters pertaining to the environment, safety, and the awarding of exclusive contracts. Beyond that, joint venture contracts should contain certain standard provisions permitting the state or private enterprise, as contractee, to operate without administrative or other intervention by the Authority except in instances where the contract is being violated — a matter to be

\textsuperscript{123} Id., Art. 26(2)(x).
\textsuperscript{124} Id., Arts. 42-45.
\textsuperscript{125} Id., Art. 28.
\textsuperscript{126} Id., Art. 27(1)(c).
determined by the Tribunal. In other words, the benefits derived from the joint venture would be divided between the parties in accordance with the terms of the contract, while the administration of the venture, subject to applicable provisions of the Convention, would rest with the contract-holder. The Convention would also have to provide with greater certainty than at present that a party authorized to explore would have an option to develop, and that a developer would have reasonable security of tenure with an option to renew under conditions reasonably within the original expectations of the parties. The proviso for unilateral revision or termination of contract by The Enterprise “in case of radical change in circumstance”\(^2\) will have to be tightened up.

The joint venture concept does not exclude the possibility that a contracting state or private entrepreneur may agree to pay The Enterprise its share of profits in a joint venture by providing other services to The Enterprise. Thus a typical joint venture exploitation agreement could conceivably include a proviso by which the state or private contracting party agreed to exploit two adjacent blocs of sea-bed, one as lease-holding operator with sole operational responsibility and the other as The Enterprise's sub-contractor operating under its direction. In the first bloc, the participation of The Enterprise would be limited to profit sharing. In the latter, its participation would be tantamount to operational control. The Authority's profits from its share in the former — which would presumably be put into production first — would thus be available to pay for the delivery of sub-contracted services in the development of the latter.

The prospects of achieving some such compromise between the technologically underdeveloped majority and the only states capable, within the foreseeable future, of exploiting the deep sea-bed, depends upon achieving a further compromise on institutional arrangements for governing the activities of the Authority in general and The Enterprise in particular. The key to such a compromise is the principal organ of the proposed Authority, its Council. One proposal, made by Professor Louis Sohn, is as follows:

In view of the constant increase in the size of international councils, it is quite likely that a relatively large Seabed Council would be created. The figure of 48, proposed by Kenya, coincides with the number of members of the General Committee of the Law of the Sea Conference, which was finally agreed upon after a considerable discussion. If the distribution of seats in that Committee were followed, Africa would get 12 seats, Asia also 12, Latin America 9, Western Europe 9 and Eastern Europe 6.

Within these numbers a few permanent seats might be reserved for some countries. To avoid the stigma of inequality, equal numbers of such seats might be provided for the major developed countries and for the major developing countries. While the first ones might be chosen on the basis of gross national product, the second ones might be chosen on the basis of population, three from each developing region. In any case, to protect the interests of all major groups, a high majority should be required, for instance five-sixths. In view of recent difficulties about some so-

\(^2\) Supra, note 104, Art. 38(3). The matter has been left for further study by the Single Text, supra, note 20, Part I, Annex I, Art. 15.
called "procedural" decisions, it might be desirable to apply this majority to all decisions, without any distinction between substantive and procedural decisions.\textsuperscript{128}

F. LONG-RANGE PROBLEMS

It is already possible to foresee the kinds of problems which would become central concerns of the Authority once an international regime for the exploitation of the sea-bed has been established.

1. Sourcing and Redistribution of Revenues

There is no single formula agreed on either for assessing the costs of the proposed Authority or for redistributing such profits as it may eventually derive. The matter of profit redistribution is likely to become important early rather than late if revenue sharing becomes applicable to the outer continental margin beyond 200 meters and if those shared revenues are made payable to the Authority. A simple formula proposed by the authors and pursued with some success by the Ambassador of Singapore in the Evensen forum would confine itself to two variables, population and poverty:

\[
\frac{\text{Average per capita income of world}}{\text{Average per capita income of state}} \times \frac{\text{Population of state}}{\text{Population of world}} \times 100
\]

There is much to be said for an agreed allocation formula since an annual pie-splitting contest within the organs of the Authority could plunge that organization into bitter factionalism.

It should also be clarified that the general expenses of the organization constitute a first charge on the income of The Enterprise and of the Authority as a whole, if only to prevent the development of a sea-monster bureaucracy financed by annual assessments.

2. The Rate of Exploitation

Even if the Convention makes adequate provision for joint ventures under defined operating conditions, it will still, to some extent, be up to the Authority to control the rate at which areas of the sea-bed enter into production. It will presumably be the Authority which can create reserved areas specifically set aside for future production by the developing states. Moreover, the Authority will be in a position to decide when to let contracts for the exploration and exploitation of specified areas. While there will be some pressure on the Authority and The Enterprise to authorize production — not only from the technologically advanced and industrial states but also from populous and poor states that would stand to benefit from the redistribution of The Enterprise's income — it must also be expected that there will be countervailing pressures to delay exploitation indefinitely.

The debate on this point to date is instructive in considering the long-term problems. Two reports on this subject have been prepared by (for) the

\textsuperscript{128} Supra, note 18 at 8.
Secretary General of the U.N. The major differences between the two studies may best be underscored by a brief listing of the central propositions of each:

The First Report states that:129

- Manganese nodules are the most likely deep-sea minerals to be exploited in the foreseeable future.
- Enough is now known to permit commercial exploitation (in the Pacific and Indian Oceans — especially in the central Pacific region).
- Significant technical problems are being encountered in dredging and pumping minerals to the surface.
- A detailed comparative study of marine versus land-based mining is not yet practical, largely because of the lack of publicly available cost information, the immaturity of the marine mineral industry which results in higher costs, and questions concerning the future extent of regulation. However, it is believed that mining is viable and can begin as soon as 1976.
- The likelihood that marine mining will commence depends largely on: whether firms feel that they are technologically ready, whether they believe that the legal setting is "safe" and whether they have adequate financing.
- It is predicted that by 1985, six groups will be mining marine minerals, involving a total volume of about 15 million tons.
- Nickel will be the "mainstay" of deep sea-bed mining, with copper, cobalt and manganese obtained as by-products.
- Nickel production should experience a minimum long-term growth rate of six percent per annum, and nodule production may account for eighteen percent of total world demand by 1985.
- Developing countries now account for thirteen percent of world nickel production and are increasing rapidly as principal suppliers. This will have a substantial impact on the industry, "but it should not have a serious effect on land-based production as a whole".
- The world market for copper is about fourteen times that for nickel. Nodule production of copper is expected to have a small impact on the large, growing copper industry.
- The market for manganese is small, and therefore nodule production will probably depress prices. This may hurt earnings of present producers. Many of these are developing countries, although only one such producer depends heavily on these revenues.
- Cobalt is an expensive, lightly-used metal. By 1985, nodule production may account for half of the world demand. Prices may decrease to approximately two-thirds of present levels.
- By 1985, if maximum production is permitted, sea-bed mining might account for 66 percent of cobalt demand and 28.6 percent of world nickel demand. The impact of sea-bed development could be quite substantial in terms of the interests of developing nations.

129 A/Conf.62/25.
The Second Report, while agreeing with the First Report's estimate of the effect on cobalt production, holds that:180

— The probable impact on manganese prices is still uncertain, since several potential miners are doubtful whether the recovery of this mineral will be economically viable. Nickel production from nodules will probably only help to counter the steady trend of price increases for this metal around the middle of the next decade. Copper prices are not expected to be much affected by nodule mining since supply from this source is likely to account for only 1.3 percent of the world demand by 1985.

— It is obvious from the interrelation of variables in the impact model that decreases in metal prices would act as a brake to the further expansion of the nodule industry.

— Developing countries, with just one exception, are not highly dependent on the exports of these minerals. By the end of the next decade nodule mining might exert a downward pressure on nickel prices, affecting a few developing countries; the countries in question, however, are not highly dependent on nickel exports.

— If the impact of nodule mining is expected to be rather moderate for both producers and consumers for the foreseeable future, who will benefit most from this new industry? The answer is obviously the world community at large and the advanced countries possessing nodule technology in particular.

The United States' position has essentially been that it is in the interests of all consumers to encourage sea-bed mineral production. It is further claimed that appreciable decreases in existing producer income are unlikely.181 The U.S. argues that increases in copper demand will greatly exceed the rate of development in sea-bed production. Nickel presents a similar picture, and manganese production from the sea-bed is presently unlikely. Thus, says the U.S., it is only with respect to cobalt that a significant adverse impact on developing nations may result from sea-bed mining operations. In this case, appropriate relief (e.g., a compensation scheme) could be fashioned.182

It is the U.S. view that production restrictions, multi-lateral commodity agreements and compensation plans will all force mineral prices up.183 Since only a small number of developing countries are producers of nickel, copper, cobalt, and manganese,184 such price increases would primarily benefit the developed countries. Moreover, because sea-bed mining will account for only a small proportion of total world production of these minerals, its restriction would not effectively stabilize (or increase) the revenues of land-based producers.185 In any event, the real losers in any attempt to restrict sea-bed

180 A/Conf.62/37.
181 Stevenson and Oxman, supra, note 62 at 10.
182 Supra, note 48 at 16-17.
183 A/Conf.62/C.1/L.5 at 8-9, C.1/SR.9 at 15-16.
184 Id., L. 5 at 1.
185 Id. at 10.
mineral production will be the consumers, including the peoples of the de-
veloping countries who depend on capital goods made with these min-
erals. Lastly, the United States supports the notion of non-discriminatory access
to the sea-bed’s resources.

The 77, on the contrary, are most concerned that prices paid to land-
based producers be protected. Fluctuations must be minimized while re-
sources are developed through a system of comprehensive control. Similarly they argue that the benefits of sea-bed exploitation should be equitably distributed, with special concern for the developing countries. While the Group concedes that a majority of developing countries would benefit from decreased prices that would likely result from increased resource supply, the members are quick to question the accuracy of U.N. studies which minimize the negative impact of sea-bed mining. In these conflicting concepts, which are unlikely to be resolved in any but the most general way by the Convention, lies another important source of future disagreement.

3. Creeping Jurisdiction

All institutions to some extent suffer (or benefit) from a tendency to-
ward self-aggrandizement. There is no reason to expect an International
Authority for the High Seas and Sea-Bed to behave differently. The Single
Text, however, leaves ajar the door to virtually unlimited expansion. It
visualizes power for the Authority not merely to manage resources but to
control all activities in the area beyond national jurisdiction. Specific
authority is given to control pollution, control technology transfer to de-
veloping countries, control scientific research and more generally, to regulat
“activities in the area” which is defined to include not only exploration and exploitation of resources but also “other associated activities...” On the other hand, the “area” is defined specifically to exclude the water column and the superadjacent air space. The prevention of pollution from sea-bed mining, however, implies some responsibility for the eco-system of the sea column, since this is where pollution damage is likely to occur. There are, moreover, various national proposals for the creation of interna-
tional regulatory mechanisms to prevent sea-pollution by ships and to

\[\text{Id. at 6, 10.}\]
\[\text{Dept. of State Publications 8781 at 5 (1974).}\]
\[\text{Supra, note 33, Vol. II at 61.}\]
\[\text{Supra, note 61, Art. 10(B).}\]
\[\text{Supra, note 33, Vol. II at 61.}\]
\[\text{Supra, note 20, Part I, Art. 21.}\]
\[\text{Id., Art. 12.}\]
\[\text{Id., Art. 11.}\]
\[\text{Id., Arts. 1(iii), 10.}\]
\[\text{Id., Arts. 6, 1(ii).}\]
\[\text{Id., Arts. 2(1), 15.}\]
\[\text{For the U.S. proposal which puts forward the possibility of utilizing IMCO, see supra, note 48 at 7.}\]
preserve living resources\footnote{The U.S. proposal for draft articles on living resources of the high seas was circulated 23 August 1974: A/Conf.62/C.2/L.80.} in the area beyond national jurisdiction. While it has not so far been proposed that the International Authority expand its regulatory functions to include the regulation of such shipping and fishing activities in the sea column above "its" sea-bed, it is not inconceivable that it might be a more appropriate agency for these purposes than the Intergovernmental Maritime Consultative Organization (I.M.C.O.), the Food and Agriculture Organization (F.A.O.).

4. Conflict with Coastal States

While there is as yet no indication that oil, gas or other mobile substances can be extracted from the deep sea-bed beyond national jurisdiction, it is perfectly conceivable that problems of encroachment on mutual fields might arise between the Authority and coastal states' economic zones and continental shelves. Even more futuristically, a state might construct traps or barriers along the edge of its shelf or zone to prevent the "flow" of nodules or other surface mineral deposits to the deep sea. Problems of this sort are touched upon, but scarcely resolved by the Single Text's provision that activities in the International Area "with respect to resources in the Area which lie across limits of national jurisdiction, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such resources lie".\footnote{Supra, note 20, Part I, Art. 14(1).} This provision is much weaker than others considered by the First Committee at Geneva in 1975, which stated that resources of the Area "which lie across limits of national jurisdiction shall not be explored or exploited except in agreement with the coastal State" and that where the resources of the Area are located near the boundary of national jurisdiction, exploration and exploitation shall be carried on "in consultation" and "where possible through such State . . .".\footnote{Supra, note 61, Rev. 1.} Even more remote, but still relevant, are potential problems of faulting and subsidence which could occur on the continental shelf (or even more remotely, the territory) of a coastal state as a result of mining activities carried on in the Area. The Single Text merely provides for liability on the part of states, corporations or international organizations which "cause damage" by carrying on activities in the area not in conformity with the provisions of the proposed Convention\footnote{Supra, note 20, Part I, Art. 17.} — a non-absolute definition of liability insufficient to cover other forms of damage caused by activities carried on in conformity with the Convention.

There are also likely to be legal problems pertaining to the recovery of historical treasures from the sea-bed.\footnote{See: Stanislaw Matysik, "Legal Problems of Recovery of Historical Treasures from the Sea-Bed" in Maria Frankowska (ed.), Scientific and Technological Revolution and the Law of the Sea (Polish Academy of Science Institute of Legal Science: 1974).} It has been pointed out, for example, that in 1959-61 the warship of King Gustav II Adolph was recovered after
over 300 years on the sea-bed and now constitutes the "biggest tourist attraction of Stockholm". The Single Text would make the disposition of wrecks more than 50 years old subject to the regulation of the Authority and appears to give that Authority an option either to "preserve or dispose" of such objects "for the benefit of the international community as a whole", albeit giving "particular regard" to the "preferential rights" of the country of cultural or historical origin.

Finally, of considerable practical importance among futurological issues is the question of amending the Convention after its coming into force. Under the draft prepared by Chairman Engo, amendment by the majority would be so easy — a vote of two-thirds of the Assembly present and voting and ratification by two-thirds of the states parties to the Convention — as to put in doubt the usefulness of preparing a written document with long-term guarantees. The key to an agreeable amending process will probably have to be the participation of a Council voting along lines of a concurrent triple majority of all its members and of representatives of both technologically advanced and developing state members. A subsequent requirement for a four-fifths majority in the Assembly and ratification by four-fifths of the parties to the Convention would provide some guarantee against the rapid disintegration of the international regime once established.

154 Id. at 141.
155 Supra, note 20, Part I, Art. 19(1).
156 Id., Art. 63.