

Law of the Sea: The End Game

Intelligence Community Assessment

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Background

The ocean covers 70 percent of the world's surface; has an enormous impact on global climate, weather, and air quality; covers extensive mineral and petroleum resources; and provides 20 percent of the protein eaten by humans. During the past few decades, as man's capability to exploit (and deplete) the ocean's resources and damage its ecosystems grew, and as many countries sought to increase their own benefits from the ocean at the expense of others, the need to develop a more comprehensive law of the sea became increasingly evident to many governments.

The First and Second UN Conferences on the Law of the Sea sought to develop widely accepted treaties that would govern uses of the oceans and set seaward limits on the permissible breadth of the territorial sea (the part of the ocean nearest the shore, over which the coastal state enjoys sovereignty) and the extent of jurisdiction of coastal states over the resources off their coasts in regions beyond the territorial sea. Many states had declared territorial seas broader than the traditional 3 miles [\(1\)](#) and were asserting various rights in much broader zones off their coasts. The United States and other maritime countries were extremely concerned about this creeping encroachment of coastal state jurisdiction over areas of the high seas:

- The first conference, held in 1958, produced four treaties: on the Territorial Sea and the Contiguous Zone, on the Continental Shelf, on the High Seas, and on Fishing and the Conservation of Living Resources on the High Seas. That conference, however, could not reach agreement on the maximum breadth of the territorial sea or the seaward extent of national jurisdiction over the continental shelf.
- The second conference, held in 1960, aimed to standardize the breadth of the territorial sea, but also failed to reach agreement, mainly because the United States and other maritime countries refused to countenance a territorial sea broader than 6 miles.

The Genesis of UNCLOS III

In the midst of the Cold War it was unusual for the United States and Soviet Union to cooperate in any international arena, but as the world's leading maritime powers they shared a deep concern over the continuing creep of coastal-state jurisdiction, with concomitant restrictions on freedom of the seas. With their joint support, the Third UN Conference on the Law of the Sea (UNCLOS III) convened in 1973. More than 150 countries participated in nine years of negotiations with the goal of creating a comprehensive framework for the regulation of all activities on, under, and over the ocean:

- In 1982 the UN Convention on the Law of the Sea was adopted, notwithstanding the strong objections of the industrialized states to many of the provisions of Part XI, on seabed mining. Many developing countries ratified the Convention during the next few years, but no industrialized state did so.
- In 1990 the UN Secretary General sponsored new negotiations in an effort to resolve objections of the industrialized states. Those negotiations were still in progress on 16 November 1993, when the Convention garnered its 60th ratification. The knowledge that, consequently, the Convention would enter into force a year later galvanized the negotiators into resolving their remaining differences.
- In July 1994 the UN General Assembly overwhelmingly approved a new Agreement that effectively amended the seabed mining provisions in ways that largely accommodated the objections of the industrialized states.
- On 16 November 1994 the LOS Convention entered into force. As of early March 1996, 85 countries had become parties to the Convention--in other words, had consented to be bound by its provisions.
- The seabed mining Agreement is being applied provisionally until it is ratified by the specified mix of governments, which is likely to occur within the coming year.

A Package Deal. The LOS Convention was a package deal among many states with widely different attitudes and interests, not only with regard to the ocean and maritime issues, but also with regard to larger matters such as the manner in which countries should cooperate with one another for the common good, the extent to which international relations should be governed by law, and how the global economy should or should not be organized.

Among the major LOS interest blocs were:

- *The maritime states*: those with extensive operations on the high seas. Their chief objectives were maintaining the freedom of the seas and limiting the seaward creep of coastal state jurisdiction--the contentious issue that the two preceding LOS conferences had failed to resolve.
- *The coastal states*: those with substantial ocean coastlines. Their chief objectives were to maximize their jurisdiction over coastal waters and their control over the exploitation of resources off their coasts.
- *Supporters of the global commons*: states that sought to protect the ocean environment and living resources, minimize international conflict over ocean issues, and ensure that exploitation of the ocean's wealth is carried out in an equitable way.
- *The landlocked and geographically disadvantaged states*: those with no coastlines or very short ones relative to their size and population. With little direct interest in maritime or coastal issues, this group tended to focus on seabed mining, because its members hoped to benefit from a seabed mining system in which they could participate and from which they could share in any profits.

- *NIEO advocates*: countries chiefly interested in LOS issues as they related to efforts to bring about a "New International Economic Order" thought at the time to favor the interests of the developing countries.

Evolving US Attitudes Toward Coastal State Rights

With regard to LOS issues, the United States traditionally identified itself primarily as a maritime power whose interests were best served by restricting to a minimum the amount of ocean area under national jurisdiction:

- *Long after many states had declared 12-mile territorial seas, the United States stuck with the 3-mile territorial sea initiated by Thomas Jefferson in 1783 and questioned the validity of wider ones. Not until 1988 did the United States declare its own 12-mile territorial sea.*
- *Similarly, not until 1976, by which time many littoral states had already extended their jurisdictions seaward to 200 miles, did the US Congress enact the Magnuson Fishery Conservation and Management Act, whereby the United States claimed a 200-mile fisheries conservation and management zone off its coast.*
- *And not until 1983, after the discovery of potentially valuable metal deposits along a portion of the midoceanic ridge off the northwest US coast and on the underwater flanks of islands and seamounts near Hawaii, did the United States declare a 200-mile exclusive economic zone (EEZ). The US EEZ is the largest and arguably the richest in the world and contains by far the greatest biological and geological diversity.*

A good number of countries were predisposed to compromise, however, because they belonged to more than one bloc. The Soviet Union, United States, and United Kingdom, for example, were maritime powers with major coastal equities. Many states with disparate individual interests were solicitous of the ocean as a global commons. Eventually, most countries were able to support most of the Convention's provisions as being in their own interests, as constituting reasonably equitable compromises, or as required to ensure that the Convention would be universally accepted. Only with regard to seabed mining did consensus elude the negotiators.

The Seabed Mining Controversy

Sideshow Becomes the Main Event. Notwithstanding the low current importance of seabed mining--an industry unlikely to move to the production phase for at least a decade or two--the controversy over seabed mining has occupied the center of the LOS stage for more than 15 years. Indeed, this deadlock threatened to unravel the work of decades:

- In the early 1970s, at the time drafting of the LOS Convention began, seabed mining seemed to offer the prospect of immense profits to those who controlled it. The developing countries argued that, because the resources of the area beyond the zone of coastal state jurisdiction--known as "the Area"--were "the common heritage of mankind," the deep seabed should be exploited only under the auspices of the United Nations, and seabed miners should share the benefits from their endeavors with mankind as a whole. [\(2\)](#)
- Most of the exploration and technology development related to seabed mining, however, was being undertaken by private firms and consortiums from the industrialized states. These firms risked their own assets and worked for their own stockholders, and neither they nor their governments felt an obligation to share either their profits or their technology with a UN "Enterprise" that proposed to compete with them. Indeed, they saw no reason why they should have to ask permission from--much less pay substantial fees to--some international organization before engaging in mining or any other activities on the high seas.

As the negotiations wore on, the basis of this disagreement changed. It gradually became clear that seabed mining would not be economically viable for decades. Far from facilitating agreement, however, that development led both sides to harden their positions. With little immediately at stake, neither side had any strong reason to compromise its goals. Moreover, because all other issues had been settled relatively early in the LOS Conference, negotiators had nothing left to trade.

Because the developing countries (supported on this issue by the Soviet Union and its allies) greatly outnumbered the industrialized democracies, the seabed mining provisions of the Convention ended up reflecting their views, interests, and objectives much more than those of the industrialized states. As a result, none of the industrialized states would agree to be bound by the treaty.

Nodule Mining—Dead in the Water

An Exciting Discovery. *The discovery that potato-size polymetallic nodules litter certain portions of the deep seabed stimulated great interest in seabed mining during the 1960s and early 1970s because of worries over the accelerating depletion of land-based resources and because the nodules constituted a potential alternative source of certain strategic minerals. The nodules are composed largely of iron and manganese oxides but often contain small amounts of nickel, copper, cobalt, and other metals. At the time, cobalt and, to a lesser extent, manganese were deemed to be strategic minerals.*

Since then, however, the prospects for land-based mining have improved significantly. Modern exploration techniques have uncovered additional resources, and new mining methods have decreased costs. Furthermore, changing political situations have opened up new sources of minerals in Eurasia and China. During the 1980s, it became

increasingly evident that seabed mining--though feasible with current technology--is not economically competitive with land-based mining.

Not All Nodules Are Valuable. *The main components of polymetallic nodules--iron and manganese oxides--are currently of no interest to prospective seabed miners, because they are available in abundance from numerous cheaper land sources. To be even minimally attractive to seabed miners, nodules must have a combined nickel, copper, and cobalt content of at least 3 percent. Moreover, they must be especially concentrated on the seabed, as they are in the region between the Clarion and Clipperton fracture zones southeast of Hawaii, where most of the registered minesites are located.*

Of the aforementioned metals, cobalt offers the most potential for profit. Cobalt is a component of special alloys employed in many military, aerospace, and industrial applications, and there are no satisfactory substitutes in critical applications. The demand for cobalt is currently being met by a combination of limited surface mining from several sources--mainly in Zambia, Zaire, and Russia--and recycling of used turbine blades and other cobalt-containing scrap metals.

Overall, supplies of cobalt will remain adequate for US national defense needs under all foreseeable circumstances, but, because the sources of cobalt are limited and not easily expanded, a disruption in the supply of cobalt from one of the land-based producers could drive up global prices. Even if cobalt prices were to soar, however, it is questionable whether operations to recover cobalt from the seabed would be economically feasible.

Costs Would Be Prohibitive. *According to mining industry analysts, it would probably cost several billion dollars to mount a seabed cobalt-mining operation--far more than the cobalt would be worth, given the small size of the cobalt market. A single nodule operation could add to the market up to 7,000 metric tons of cobalt a year, more than a third of the world's current annual supply, likely causing a price collapse. Prospects for making a profit from the recovery of other minerals found in seabed nodules are even worse. Industry experts estimate that seabed-nodule mining is not likely to become competitive with land-based mining for at least the next decade.*

Nodules Not the Only Game in Town. *Polymetallic nodules are commonly found far out at sea at depths of 20,000 feet or more. Other mineral deposits found at much shallower depths may offer attractive alternatives to nodule mining, especially if the deposits are within 200 miles of a coastal state.*

Vent Deposits. *The discovery of metalliferous sulfide deposits along the crest of the midoceanic ridge brought a new variable to seabed mining prospects. These deposits have formed at depths of 12,000 feet or so near volcanic vents that have heated the seawater to hundreds of degrees. At that pressure the seawater remains liquid but turns strongly acidic, to the point that it leaches minerals out of the rock. As the warm,*

mineral-rich water rises it cools, and the minerals precipitate out and are deposited on the seafloor.

At some vent sites, the deposits contain metal compounds of singular purity. At other sites they contain a much wider variety of minerals--including lead, zinc, silver, gold, and germanium--than the polymetallic nodules lying on the deep seabed. Such variety would offer investors and miners some protection from plunging prices of a single metal.

The vent deposits are concentrated in small areas, in contrast to the huge minesites--up to 150,000 square kilometers, bigger than the area of the states of Delaware, Maryland, and Virginia combined--over which polymetallic nodules would be collected. Thus, a different formula for determining the size of vent minesites needs to be developed, along with different procedures for licensing and managing their exploitation.

Crust Deposits. *Oxides of nickel and cobalt have been discovered on the flanks of islands and seamounts in the Pacific at depths of about 3,000 feet. In general, such crust deposits would most likely be found within the EEZs (on the continental shelves) of coastal states, which consequently would have the sole right to exploit them. Most of the crust deposits identified so far have been found within the US EEZ around Hawaii.*

Possibly Cheaper and Easier To Exploit. *The technology for mining vent and crust deposits has yet to be developed, but preliminary indications are that both forms of mining could be undertaken with significantly less up-front investment than nodule mining would require. In both cases, the technology for processing the ores would be similar to that already used on land.*

The Seabed Revisited. By 1990, the breakup of the Soviet Union and the collapse of communist regimes in Eastern Europe had largely discredited the centralized, collectivist economic approach on which the Convention's seabed mining provisions had been modeled. Recognizing, in addition, that a global convention not supported by the industrialized countries would lack force, representatives of the developing countries accepted the UN Secretary General's invitation to return to the negotiating table and work out more broadly acceptable seabed mining provisions.

The new implementing Agreement reached in 1994 eliminated, or greatly weakened, the provisions to which the industrialized states most objected but retained the framework in which seabed mining would be conducted under the authority of a new organization, the International Sea-Bed Authority (ISBA). The compromise was made possible by the conclusion of both sides that what each viewed as the optimal seabed mining regime was not achievable:

- The general view among the industrialized states is that the seabed mining provisions are now acceptable, particularly when weighed against the importance of supporting the rest of the objectives of the LOS Convention.

- The general view among the developing countries is that paving the way for universal acceptance of the Convention was worth the concessions they made on seabed mining in the Agreement.(3)

What the Convention Covers

The Convention provides a legal framework governing man's peaceful interaction with the oceans. To attract the widest possible support and promote the Convention's durability, the drafters limited its encroachment upon national sovereignty (4) and dealt with localized and specialized issues by laying down broad principles and obligating states parties to work out solutions to individual problems according to these principles.

Impeding Jurisdictional Creep

Balancing Competing Interests. The drafters attempted to establish an equitable balance between the interests of individual coastal states in controlling the activities and exploiting the resources off their coasts and the interests of all states--but especially maritime states--in maintaining freedom of navigation and other freedoms of the seas and sharing in the bounty of the high seas and the seabed below. The balance is dynamic, because in coming years some coastal states are likely to renew their efforts to increase their control over activities and resources in coastal zones and to extend their sway seaward into the area now beyond the zones of national jurisdiction.

This Far and No Farther. The Convention has formally established a system in which the exclusive rights and control that a coastal state exercises over maritime areas off its coast diminish in stages as the distance from shore increases. In so doing, the Convention has validated claims of jurisdiction--12-mile territorial seas, 200-mile exclusive economic zones (EEZs)--that had become commonplace but that had not yet become fully established as customary international practice. By validating and clarifying customary international practice with regard to rights of navigation through coastal zones, the Convention has strengthened its legal status and made it harder to ignore or violate.

At the same time, by explicating the permissible extent of the various maritime zones of jurisdiction, the Convention has constrained the proliferation of claims of jurisdiction over still greater portions of the open sea. About 20 states still claim territorial seas or other coastal zones broader than those authorized by the LOS Convention, but many other states have rolled back their maritime claims to conform to the Convention's standards. Moreover, the Convention contains provisions requiring states parties to submit to adjudication, conciliation, or binding arbitration if other states parties object to their jurisdictional claims. The availability of this alternative could reduce the need for physical challenges of excessive claims of jurisdiction where states parties are involved.

Delimiting the Continental Shelf. Geologically, the continental shelf is the natural prolongation of the landmass beneath the sea. More accurately called the continental

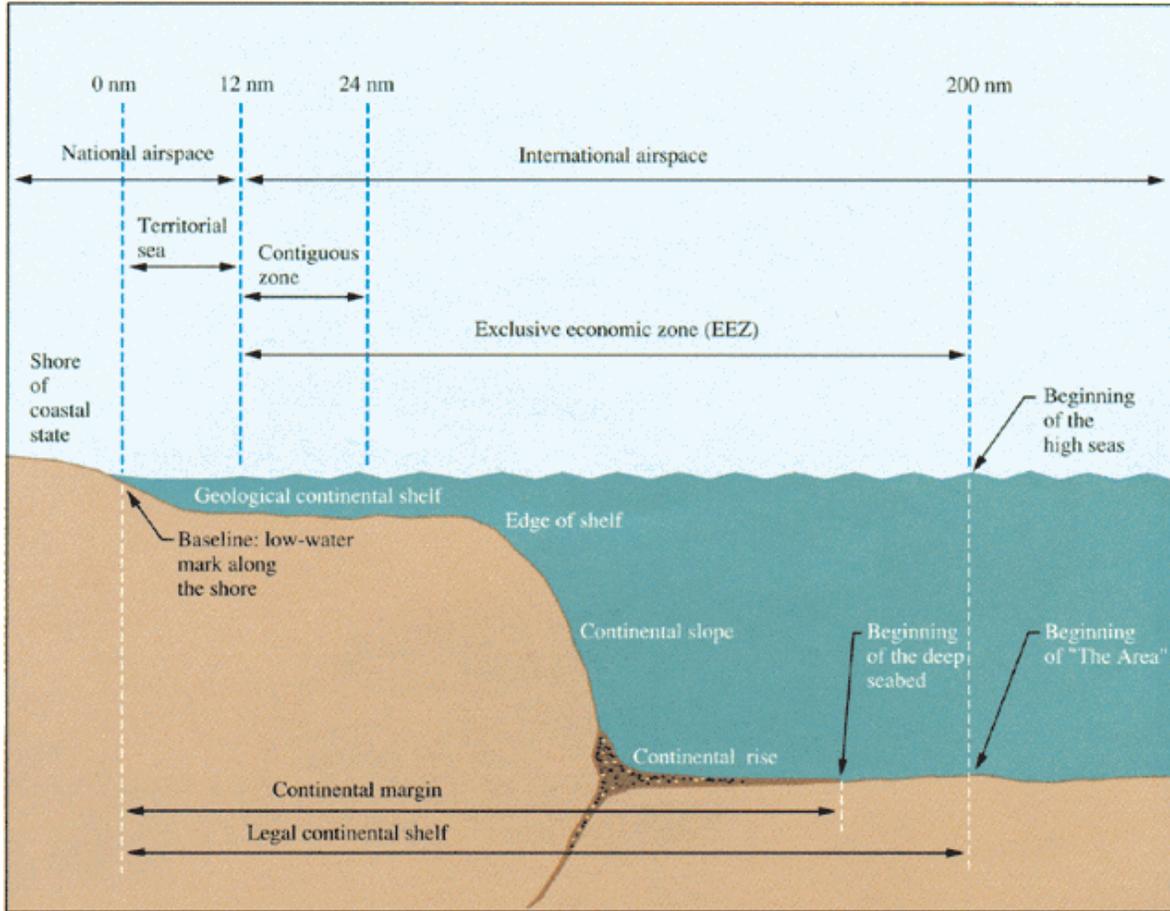
margin, it includes the continental shelf, slope, and rise. Like the land, it may contain valuable petroleum or mineral deposits.

*The regime of **transit passage** gives ships and aircraft the right to travel through international straits in their normal operational mode on, over, or under the water. The regime of **archipelagic sea lanes passage** conveys similar rights to ships and aircraft travelling between the islands of an archipelagic state on routes normally used for international navigation (or in other sea lanes designated by the archipelagic state). The regime of **innocent passage** is much more restrictive; in particular, it permits travel only on the surface.*



Figure 2
Typical Offshore Regions and Zones

Transverse view—not to scale



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Coastal State Jurisdiction

Internal Waters. A state exercises sovereignty over all baseline. The baseline is normally the low-water mark along the shore, but the Convention permits closing lines and other straight line segments under specified geographic circumstances.

Territorial Sea. The coastal state exercises sovereignty over the territorial sea. The Convention fixes the maximum breadth of the territorial sea a state may claim at 12 miles seaward from the baseline.

The United States has declared a 12-mile territorial sea.

Freedom of the Seas

Foreign ships have no navigational rights in a country's internal waters—all lakes, rivers, and bays within the internal waters.

Innocent Passage. The Convention confirms the right, established in customary international practice of all ships to innocent passage through the territorial sea. It specifies activities of ships not considered innocent. The regime of innocent passage does not include the right of overflight or submerged passage.

Transit Passage. The Convention also confirms the right, established in customary international practice, of all ships and aircraft to unimpeded passage in the normal mode through, over, and under the territorial sea when transiting an international strait without a high-seas route through it. An international strait connects one area of the high seas (or an EEZ) with another. The extension by coastal states of their territorial sea out to 12 miles eliminated high-seas routes through many international straits, thereby

Contiguous Zone. The Convention recognizes the right of a state to enforce its customs, fiscal, immigration, and sanitary laws in a contiguous zone adjacent to the seaward limit of the territorial sea, which can extend as far as 24 miles from the baseline.

The freedoms of navigation and overflight, as well as other internationally lawful uses of the seas related to these freedoms, including the right to lay submarine cables and pipelines, are the same in the contiguous zone as on the high seas.

The United States claimed a 12-mile contiguous zone before extending its territorial sea out to 12 miles.

Archipelagic Waters. The Convention grants archipelagic states a new right to establish perimeter the sovereignty of the archipelagic state. So far, 17 states have claimed archipelagic status, and 12 of them have established archipelagic baselines. Four other states may qualify for this status if they want it. The largest archipelagic states are Indonesia and the Philippines. Some of the busiest shipping lanes in the world pass among the islands of such states.

Archipelagic Sea Lanes Passage. To preserve the freedoms of navigation and overflight in archipelagos, the Convention establishes the regime of archipelagic sea lanes passage. In archipelagic sea lanes, ships and aircraft have the right to transit in their normal mode. The new regime applies in routes normally used for international navigation. Archipelagic states can designate specific routes as archipelagic sea lanes, but the normal routes must be included. Foreign ships can travel through archipelagic waters outside archipelagic sea lanes under the regime of innocent passage.

Exclusive Economic Zone (EEZ). The Convention recognizes a coastal state's right to exploit the resources of the water column and seabed in the zone extending seaward from the outer limit of the territorial sea out to 200 miles from the baseline.

The freedoms of navigation and overflight, as well as other internationally lawful uses of the seas related to these freedoms, including the right to lay submarine cables and pipelines, are the same in EEZs as on the high seas.

With the right of exploitation comes the responsibility of stewardship over living resources in the EEZ.

Foreign states may also undertake military activities in EEZs, with due regard for the rights and duties of the coastal state. Foreign vessels fishing for straddling stocks and highly migratory species in the portions of the high seas adjacent to EEZs must have due regard for the impact their actions might have on coastal state interests.

The United States has declared a 200-mile EEZ.

Continental Shelf. The Convention fixes the breadth of the continental shelf at 200 miles from shore whether or not the coastal state has declared an EEZ. Where the continental margin (the geological shelf, slope, and rise) extends farther from shore, it is to be delimited according to guidelines in the Convention, and this

Coastal state jurisdiction over the continental shelf does not affect the legal status of the waters above. Thus, beyond the territorial sea, the freedoms of navigation and overflight, as well as other internationally lawful uses of the seas related to these freedoms, including the right to lay submarine cables and pipe lines, are the same above a

delimitation is to be reviewed by the Continental Shelf Commission, whose ruling will determine whether the states parties accept it as valid.

continental shelf as on the high seas.

Coastal states have the right to exploit the mineral resources of their continental shelf but must pay a small commission through the ISBA to other states from the proceeds of any exploitation of resources beyond 200 miles from shore.

The US continental shelf extends farther than 200 miles from shore in some places and, were the United States to become a party to the Convention, would be delineated in accordance with the Convention's guidelines.

The Area. The nonliving resources found on or beneath the seabed in the area beyond the limits of national jurisdiction, known as the Area, are held to be the common heritage of mankind. The International Sea-Bed Authority (ISBA) is to regulate and supervise the exploitation of these resources.

The High Seas. All ships and aircraft enjoy freedom of navigation on, under, and over the high seas, as long as they operate with due regard for the rights of other states and the operation of other ships and aircraft. For military ships and aircraft, high-seas freedoms also include such activities as task force maneuvering, flight operations, military exercises, surveillance, and ordnance testing and firing. All countries have the right to lay undersea cables and pipelines.

The LOS Convention explicitly authorizes each coastal state to explore and exploit the resources of the continental shelf and adjacent seabed out to 200 miles from shore, whether or not it has declared an EEZ. This "legal continental shelf" is broader than the actual continental margin in most places. Where the margin extends beyond 200 miles from the baseline, delimitation of the seaward boundary is to be made by the coastal state, pursuant to rules set forth in the Convention, which among other things fix the maximum permissible breadth of a legal continental shelf at 350 miles on submarine ridges, even if the continental margin is still broader. The coastal state's delimitation of its continental shelf is to be reviewed by the Commission on the Limits of the Continental Shelf, whose response would determine whether the rest of the world accepts this delimitation.

Most of the countries at the LOS Conference held that continental margins that extend more than 200 miles from the baseline encroach upon the Area, and that profit from exploitation of any resources found there should be shared with all mankind. To gain the support of the majority for coastal state ownership of continental margins broader than 200 miles, the few states that have such broad margins (including Argentina, Australia, Canada, India, Ireland, Russia, the United States, and the United Kingdom) agreed to pay the rest of the world small royalties from the proceeds of the exploitation of nonliving resources in the regions beyond 200 miles from shore. [\(5\)](#)

The US Freedom of Navigation Program. The US Government has long conducted a vigorous freedom of navigation program through which it has asserted its navigational rights in the face of what it has regarded as excessive claims by coastal states of jurisdiction over ocean space or international passages. When remonstrations and protestations are unavailing, elements of US military forces may sail into or fly over disputed regions for the purpose of demonstrating their right and determination to continue to do so. But such actions can have drawbacks:

- Most of the coastal states that control international straits and passages are on friendly terms with the United States and would rather use the LOS Convention's dispute settlement provisions than confront a physical challenge.
- In some instances, the cost, disadvantages, or risks of physically challenging excessive claims of jurisdiction might be deemed higher than the benefits would warrant.

Other maritime states that also object to excessive coastal state claims of jurisdiction are both less willing and less able than the United States to physically challenge such claims.

The Commission on the Limits of the Continental Shelf

Consisting of 21 experts in fields such as geology, geophysics, and hydrography, the Commission would rule on the acceptability of proposed delimitations of the continental margin by coastal states in regions where the margin extends beyond 200 miles from the baseline. Members of the Commission must be citizens of states parties, and only states parties can nominate and vote for candidates. The first election of members is scheduled to be held in March 1997.

Exploitation Versus Conservation

The advance of technology on both land and sea is putting the ocean's environment and living resources at increasing risk. Overexploitation and pollution broadly threaten marine life. The rate at which global stocks of many fish and some marine mammals are declining has accelerated alarmingly in the past two decades. Notwithstanding continuing improvements in fishing technology and more intense exploitation of species that used to be ignored or discarded, the global catch has plateaued and could be headed downward.

The LOS Convention recognizes the right of coastal states to exploit both the living and nonliving resources in an EEZ that may extend up to 200 miles from the shore or other baseline. The Convention allows coastal states with especially broad continental margins to exploit petroleum and mineral resources found even farther offshore. About 90 percent of the world's fish and marine mammal populations are found within 200 miles of shore.

Coastal Fisheries. Coastal states are required by the Convention to establish maximum sustainable yields for the fisheries in their EEZs; they are authorized to keep all of the harvest themselves but obliged to give other states access to any surplus. Indeed, foreign enterprises line up to pay for the right to fish in the EEZs of states that cannot efficiently harvest all of their fish themselves.

The management by coastal states of the living resources in their EEZs is not subject to the Convention's binding dispute settlement procedures; thus, there is no way to prevent coastal states from overexploiting their fisheries, and many have been doing so; this is one of the reasons for the precipitous declines in many fisheries.

High-Seas Fisheries. Recognizing that ocean environment and resource problems are not amenable to one-size-fits-all solutions, the Convention's drafters opted to enunciate principles and provide a framework in which agreements tailored to specific regions or environmental problems would be worked out.

This approach has worked well in areas where states need to collaborate with one another in order to achieve their own objectives. Thus, considerable progress has been made regarding the management of straddling stocks and highly migratory species of fish, which occupy more than one state's EEZ or extend outside the zone of national jurisdiction:

- Absent special agreements dealing with such fisheries, the portions found beyond the zone of national jurisdiction are often regarded as fair game for fishermen from any country.
- Clearly, efforts of a single coastal state to build up stocks of such fish by limiting the catch within its EEZ can be negated by overfishing of the same stocks outside its EEZ.
- Similarly, efforts by some states to conserve a high-seas fishery by limiting their catch would be unavailing if other states exploiting the same fishery simply increased their catch.

The Bering Sea "Donut Hole" Agreement and Straddling Stocks Agreement exemplify how concerned states can work out among themselves ways to cooperate to conserve high-seas fisheries they jointly exploit.

Limiting Pollution. The drafters of the Convention obligated states parties to commit themselves to protect and preserve the ocean environment and to limit ocean pollution. States parties have access to a range of legal mechanisms and dispute settlement procedures if they want to induce other states to comply with antipollution provisions of the Convention.

Figure 3 **Not Enough Fish To go Around**

The increasingly intensive and efficient fishing practices made possible by advancing technology have pushed the global catch near 80 million metric tons annually. Owing to

the depletion of many fisheries, the global yield is unlikely to increase and may be headed downward. One million fishermen crew an industrial fleet of some 37,000 vessels worldwide, which accounts for half the global catch; the world's other 12 million fishermen share the rest. Both high-tech and low-tech fishermen face declining prospects, because the global fishing industry is overbuilt and overmanned. Already, many fishermen are unable to make a living, and many more will join them in the coming years.

The Convention's enforcement mechanisms apply chiefly to the 20 percent of pollution that comes from maritime sources such as leaking seabed oil wells, spills from tankers, and dumping at sea. The rest of the pollutants reaching the ocean come from land-based sources that are under the jurisdiction of coastal states--and thus beyond the writ of the Convention for practical purposes.

To be sure, international discussions on how to reduce pollution from land-based sources are under way. For example, a US-hosted conference on the subject ended in November 1995 with the adoption of a plan for further action. Achieving agreement on effective measures is likely to be a long and arduous process.

Preparing To Manage Seabed Mining

Under the 1994 Agreement superseding the original seabed mining provisions, a skeletal seabed mining regime is to be set up, one that will not do much nor cost much until such time as seabed mining becomes economically feasible. Plans called for an administrative Secretariat, a legislative Assembly, and an executive Council to be established, along with a Legal and Technical Commission and a Finance Committee. The establishment of other components of the ISBA is to be postponed until there is a demonstrated need for them.

The ISBA's Assembly of current and prospective states parties (6) held its first meeting in Kingston, Jamaica (where the ISBA is to be based), from 27 February through 17 March 1995. The meeting concluded without having reached the required consensus on which countries would be represented on the Council and in the Council's three four-member chambers with special voting rights--the Consumer, Investor, and Producer chambers.

The representatives of current and prospective states parties met again in August 1995 but failed again to reach consensus on these issues. The main stumblingblocks concerned the membership of the Investor chamber and the distribution of seats among the world's various regional blocs:

- The eight largest investors in seabed mining (7) were to decide among themselves which should fill the four seats in the Investor chamber. With three of them already penciled into the Consumer chamber (Russia, the United Kingdom, and the United States), the other five were competing for the four available seats in the Investor chamber.

- The Group of Latin American and Caribbean Countries (GRULAC) had been offered six of the 36 seats on the Council but was seeking at least seven. However, none of the other regional groupings was willing to give up a seat to the GRULAC.

Conserving High-Seas Fisheries

An Ace in the Hole. *The "Donut Hole" is a high-seas region of the Bering Sea enclosed by the EEZs of Russia and the United States.*

By the beginning of the 1990s it was clear that the Alaskan pollock resource, the principal fish stock of interest in the Donut Hole, was facing collapse. In February 1991 the six countries with fishing fleets that operate there--China, Japan, Poland, Russia, South Korea, and the United States--met in Washington to address the problem. They agreed to a moratorium on pollock fishing in the Donut Hole while they crafted an arrangement that would help them jointly conserve and manage this fishery.

In February 1994, 10 conferences later, the six parties completed negotiation of the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea. The Convention established a mechanism for setting, on a scientific basis, an allowable annual harvest level and allocating it among the parties. It also encouraged the parties to use the Convention mechanisms to establish measures for the conservation and management of other living marine resources in the region as required. (a)

This convention is but the latest of numerous arrangements that regulate specific sorts of fishing on the high seas--agreements that protect dolphins and whales, that prohibit fishing with long driftnets, and that regulate the catching of tuna, salmon, pollock, turbot, and other species that traverse the high seas. An emerging trend in these agreements is the inclusion of enforcement mechanisms and authorization for states to intervene when violations by ships of another flag are encountered.

The Straddling Stocks Agreement. *In early December 1995, the Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks was approved by the UN General Assembly and opened for signature. So far, 23 countries including the United States have signed the treaty.*

This convention aims to involve both coastal states and distant-water fishing states in a program to protect fisheries that extend beyond the EEZs of coastal states. It obligates parties to cooperate in specific ways to protect such fisheries and to minimize the "by-catch" of other fish stocks, and it authorizes monitoring and inspection regimes that would make it hard for rogue fishing vessels and fleets to get away with cheating.

(a) *Overfishing has also depleted the pollock fishery in the smaller "Peanut Hole," a high-seas area of the Sea of Okhotsk that is surrounded by the seaward margin of Russia's EEZ. As in the Donut Hole, the five countries involved--China, Japan, Poland, Russia, and South Korea--are observing a moratorium on fishing for pollock in the Peanut Hole, but they have not yet agreed on how to share the resource once the stocks recover.*

In March 1996 another meeting of representatives of current and prospective states parties was under way in Kingston. The conferees were making encouraging progress toward resolving these issues.

Facilitating Settlement of Disputes

The Convention calls for disputes between states parties concerning the application or interpretation of the Convention to be settled under the terms and conditions of relevant specific agreements or by another peaceful means agreed to by the parties involved. Compulsory provisions would come into play only for certain classes of disputes and only after other available approaches had failed to produce a resolution. The dispute settlement procedures established by the Convention are available only to states parties, and only states parties are subject to its compulsory and binding provisions.

Compulsory Conciliation. Certain disputes, such as a charge that a coastal state was refusing to share surplus fish from its EEZ, are subject to compulsory conciliation, and states enmeshed in other disputes may also opt for conciliation. Such disputes are handled by a five-member *conciliation commission* constituted under Annex V of the LOS Convention.⁽⁸⁾ The recommendations of a conciliation commission are not binding on either party; thus, even compulsory conciliation may fail to resolve a dispute.

Compulsory and Binding Arbitration. The Convention provides four venues for the compulsory settlement of disputes. With certain exceptions, when they become party to the Convention or at any time thereafter, states parties can declare which venues they intend to use for dispute settlement. The four venues are:

- *The International Court of Justice.*
- *The International Tribunal for the Law of the Sea* (once it is set up). The Tribunal's Sea-Bed Disputes Chamber will be the only authorized venue for such disputes.
- A five-member *arbitral tribunal* constituted in accordance with Annex VII of the LOS Convention.⁽⁹⁾ If the parties to a dispute (not involving seabed mining) cannot agree on any other venue, the dispute will be handled in this venue.
- A five-member *special arbitral tribunal* constituted in accordance with Annex VIII of the LOS Convention, for disputes involving fisheries, protection and preservation of the marine environment, marine scientific research, and navigation including pollution from vessels and by dumping.⁽¹⁰⁾

Although the procedures for setting up the two sorts of arbitral tribunals are a bit different, they are both designed to establish a level playing field in which neither

disputant would have an innate advantage and cases would be decided solely on their legal and technical merits.

Figure 4
High-Sea Pollock Fisheries in the Northern Pacific



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Based in Kingston, Jamaica, the ISBA will serve as the body through which parties to the Convention organize and carry out exploitation of the mineral resources of the deep seabed. It will consist of:

- **The Assembly**, in which each state party has one vote.
- **The Council**, which is to have 36 seats apportioned so as to provide representation for all major blocs of countries with special interests in seabed mining, as well as balance among the world's geographic groupings. The Council will have three four-member chambers with special voting rights, the **Consumer**, **Investor**, and **Producer** chambers. (a)
- **The Secretariat**, headed by a **Secretary General** elected by the assembly from among candidates nominated by the Council.
- **The Enterprise**, which would engage in seabed mining on behalf of the developing world. It will not be established unless and until the economic viability of seabed mining has been demonstrated.
- **The Finance Committee**, eventually to comprise 15 persons elected by the Council--including representatives of the five largest financial contributors to the ISBA, until such time as the ISBA becomes financially self-supporting. For the time being, the ISBA's expenses are to be paid out of the general UN budget, and the Finance Committee is to consist of the representatives of the five largest contributors to that budget. In 1995 those countries were the United States, Japan, Germany, France, and Russia, in that order.
- **The Legal and Technical Commission**, also to comprise 15 experts elected by the Council.
- **The Economic Planning Commission**, also to comprise 15 experts elected by the Council. Its establishment has been deferred indefinitely, in view of the economic unviability of seabed mining, and its functions are to be handled by the Legal and Technical Commission.

(a) The **Consumer** chamber would protect the interests of the major importers of minerals found on the seabed; the **Investor** chamber would protect the interests of the states that had invested the most in seabed mining; the **Producer** chamber would protect the interests of the major land-based exporters of the minerals found on the seabed, especially those countries whose economies are especially dependent on such exports. Three of the countries in any of these chambers could block (veto) decisions of the Council as a whole. The United States and Russia are guaranteed seats in the Consumer chamber, along with two other industrialized states.

The United States proposes to submit LOS disputes in which it is involved to special arbitral tribunals constituted under Annex VIII when the disputes fall into any of the categories handled by such tribunals, and to submit to arbitral tribunals constituted under Annex VII all other LOS disputes in which it is involved--except those related to seabed mining, which would be handled by the LOS Tribunal.

The International Tribunal for the Law of the Sea

Based in Hamburg, Germany, the LOS Tribunal is to consist of 21 judges, of whom 11 will also be members of the Sea-Bed Disputes Chamber. The Tribunal is to adjudicate disputes among states parties over matters covered in the LOS Convention, though only disputes involving seabed mining must be brought before it. Membership is to be geographically balanced, and all of the world's major legal systems are to be represented. Each judge is to be a citizen of a different country. The first election of judges is scheduled for early August 1996. Only states parties may cast votes.

At time of ratification or accession, states may opt out of the Convention's compulsory dispute settlement procedures in the cases of maritime boundary disputes, military operations and certain law enforcement operations, and disputes involving activities authorized by the UN Security Council. The US Government proposes to do so.

Basic or Contractual Rights? Some of the states that control international straits or archipelagic sea lanes have suggested that key navigational freedoms such as transit passage are not customary international law but rather rights that flow from becoming a party to the LOS Convention. They have argued, contrary to the understanding of the United States and other maritime countries, that the Convention is a contract among the states parties and that states that have refused to be bound by its provisions should not enjoy its benefits. Most of these states are not currently pressing for this interpretation.

What Other Governments Plan To Do

The Downside of Delay

Many states are moving quickly to become parties to the Convention because they want:

- To help shape the institutions that are being set up under the Convention and to promote the adoption of policies they may favor, such as holding down administrative costs.
- To try to arrange for their own citizens to be elected to positions in the organizations established by the Convention. The elections for the seats on the LOS Tribunal and the Continental Shelf Commission are scheduled to be held in 1996 and 1997, respectively.
- To nominate their own citizens to the UN-maintained lists of experts and arbitrators from which dispute settlement panels would be drawn.

The Industrialized States

Impending Rush to Ratification. For many years, the industrialized states held back, waiting first for a better deal on seabed mining and then for the US Government to pronounce itself satisfied with the deal. Once Washington indicated it supported the Convention, as amended by the Agreement, the governments of most of the other industrialized states set in motion the procedures through which they would become parties to the Convention.

Already, Australia, Germany, Greece, and Italy have ratified the Convention. Many others, including Canada and Japan as well as France, the United Kingdom, and most of the other West European states, have indicated their ratifications are pending. Nearly all of the rest of the developed countries are likely to become parties to the Convention during 1996.

The Former East European Bloc

The Soviet Union and its allies formed a separate regional bloc during the LOS negotiations. They supported the original seabed mining provisions, mainly to show solidarity with the developing world, and they all signed the Convention. But none of them subsequently ratified it. With the termination of the Communist alliance and the dissolution of the Soviet Union, the East European bloc has dissolved, although it continues to be treated as a regional grouping in the ISBA organizational meetings. Each country in the region must now decide for itself what to do about the Convention.

Russia Dubious. Russia liked the original seabed mining provisions no better than the United States. Moreover, it has reservations about the 1994 Agreement, questioning whether it will be possible to create a small, efficient, and inexpensive UN bureaucracy to manage seabed mining. Russia was one of the few states that abstained on the UN resolution adopting the Agreement, and it has not signed the Agreement. But it did agree to apply the Agreement provisionally, so that it could participate in the ISBA organizational meetings. Given these mixed signals, it is difficult to predict with confidence what Russia will do about the LOS Convention.

NIS Disengaged. With Russia inheriting the place of the Soviet Union in LOS conclaves, the newly independent states of the former Soviet Union have no established roles or positions with regard to LOS. Aside from the Baltic states, these countries have no ocean coastlines, although some in central Asia border on large inland seas. Among them, only Ukraine is currently moving toward ratification.

East Europeans Supportive. Among the East European countries, Poland is moving toward becoming a party to the Convention, and Bulgaria has expressed interest in doing so. We anticipate that, eventually, most of the East European countries will follow the example of the West European countries and become parties to the Convention.

Apart from former Warsaw Pact states, the former Yugoslavia, reflecting its position as a leader of the nonaligned movement, became a party to the Convention in 1986. The "Federal Republic of Yugoslavia" (Serbia and Montenegro) claims to have inherited Yugoslavia's position as a party to the Convention, but the United States does not recognize this claim. The other Yugoslav successor states--Bosnia and Herzegovina, Croatia, The Former Yugoslav Republic of Macedonia, and Slovenia all have consented to be bound by the Convention.

Looming Deadlines

- **17 June 1996.** Nominations close for candidates for the International Tribunal on the Law of the Sea.
- **30 June 1996.** Nominations for the Tribunal lapse if nominating state has not submitted instrument of ratification or accession.
- **Early August 1996.** Election of the 21 judges on the International Tribunal on the Law of the Sea, including the 11 who will sit in the Seabed Disputes Chamber. The Convention allows only states parties to nominate and vote for candidates, though the candidates do not have to be citizens of states parties.
- **16 November 1996.** Until this date, states that have signed but not ratified the Agreement and that are moving toward ratification of the Convention may participate in the ISBA as if they were states parties, whether or not the Agreement has entered into effect. This two-year grace period may be renewed once, for two more years.
- **March 1997.** Election of the 21 members of the Commission on the Limits of the Continental Shelf. The Convention allows only states parties to nominate and vote for candidates, who must be citizens of states parties.
- **16 November 1998.** If the Agreement has not entered into effect by this date, it is void, and the seabed mining provisions revert to the original text of Part XI of the LOS Convention. Furthermore, whether or not the Agreement has entered into effect, as of this date states that have not ratified or acceded to the LOS Convention may no longer participate in the ISBA. The legal status of the minesite claims of seabed mining consortiums from these states may be called into question.

Developing Countries

Many of the developing countries that ratified the Convention before the seabed provisions were modified did so because they liked the original provisions. They are doubtless disappointed that the Agreement watered down these provisions; indeed, many have said so. Nevertheless, they are happy that the logjam over seabed mining has broken and enthusiastic about the prospects for US accession, which they believe will ensure that the LOS Convention will attain all but universal support.

A good number of developing countries that had not ratified the Convention did so in the wake of the seabed mining Agreement. Among them were Bolivia, India, Lebanon, Mauritius, Sierra Leone, and Sri Lanka. Among other developing states South Korea has just ratified the Convention, and Chile has said it intends to do so. China will probably ratify the Convention but appears to be waiting until the other major countries do so.

All of the members of the Association of Southeast Asian Nations (ASEAN) signed the Convention, and four have ratified it--Indonesia, the Philippines, Singapore, and Vietnam. Wary about China's power and intentions in the South China Sea, the ASEAN countries have been hoping that widespread acceptance of the Convention, which facilitates the peaceful resolution of maritime disputes, will help establish a climate in

which the conflicting claims of sovereignty in the Spratly Islands can be peacefully--and equitably--resolved. To be sure, the Convention's provisions do not apply to disputes over the ownership of land.

Opponents of the Convention

A few countries oppose the Convention because they object to specific provisions that, they hold, would damage their national interests if implemented.

Turkey is not acceding to the Convention, in part because it objects to the provision that coastal countries may claim up to a 12-mile territorial sea. The extension by Athens of the territorial sea around all Greek islands from the current 6 miles to 12 miles would reduce the area in the eastern Aegean in which Turkish ships and aircraft, along with other foreign ships and aircraft, would enjoy high-seas freedoms of navigation and overflight.⁽¹¹⁾ Instead, foreign ships and aircraft operating in the expanded Greek territorial sea would be subject to the more restrictive regimes of innocent passage and transit passage. Turkey also fears that such a declaration by Greece would jeopardize its claim to jurisdiction over the continental shelf off its Aegean coast.

Figure 5
Extent of Hypothetical 12-Nautical-Mile Greek Territorial Sea in the Aegean



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Israel long opposed the Convention, partly because of objections to seabed mining provisions that could have conveyed benefits to the Palestine Liberation Organization (PLO), and also because of objections to other provisions related to navigation through straits. But changes to the Convention's seabed mining section and progress in the Middle East peace process have reduced the salience of these objections. Israel has substantial maritime interests and is now giving serious consideration to acceding to the Convention.

A number of Latin American states that objected to certain provisions of the LOS Convention refused to sign either the Convention or the Agreement. Their absence at LOS conclaves thinned the ranks of the GRULAC and limited their influence on the Convention. Now several of those Latin American countries are considering acceding to the LOS Convention.

Contention in the South China Sea

Sovereignty over the islands and waters of the South China Sea has been disputed by regional claimants for decades. At the center of the disputes lie the Spratly Islands, a group of islands, islets, reefs, atolls, and cays in the southern part of the South China Sea, near strategic sea lanes and lines of communication between the Indian and Pacific Oceans. The archipelago has no indigenous inhabitants.

Oil Discoveries Raise the Stakes

In 1969, interest in the Spratlys intensified after a UN-sponsored seismic survey suggested the presence of extensive deposits of oil and gas under the South China Sea. Although reliable estimates of reserves were (and still are) lacking, and recovery costs would be high, the discovery of oil and gas deposits in the continental shelves of Vietnam, Malaysia, and Brunei heightened anticipation that additional petroleum deposits might be discovered farther offshore. Confirmation came when oil was found in the region between the Vietnamese coast and Spratly Island--the westernmost island in the chain.

Vietnam and China (as well as Taiwan) claim sovereignty over the entire Spratly archipelago; the Philippines claims a substantial part of it; Malaysia and Brunei claim much smaller parts. In support of these claims, outposts have now been established on dozens of islands and reefs. Most were built by Malaysia, the Philippines, and--especially--Vietnam in the early and mid-1980s. (a) In 1988, China adopted a much more assertive approach toward the Spratlys by occupying six reefs, resulting in a brief clash with Vietnamese naval forces and prompting Hanoi to expand and reinforce its outposts.

Efforts To Reduce Tensions

China has been trying to deal with each of the other claimants on a bilateral basis. All of the claimants except China, however, belong to the Association of Southeast Asian Nations (ASEAN) and would rather deal with China as a bloc than individually.

Since 1993, Indonesia has hosted a series of informal "workshops" for all rival South China Sea claimants as part of an ASEAN effort to reduce regional tension and peacefully resolve conflicting claims. Officials and scholars from China, Taiwan, and Southeast Asian countries participated in the sixth such workshop, which ended in October 1995.

They did not address the crucial sovereignty issues, and they could not agree on measures to reduce military activity in contested areas. They did agree, however, to

participate in a study of biodiversity in the South China Sea and to cooperate on marine legal and scientific research and on navigation and shipping safety issues.

All of the claimants hold that their positions are consistent with the LOS Convention, which all have signed and some have ratified. The Convention contains guidelines on settling overlapping maritime claims--mainly, it encourages rival claimants to split the differences unless special circumstances call for a different delineation. (Recent decisions by the International Court of Justice have tended to give more weight to continental areas than to islands.) But these provisions pertain to circumstances where ownership of the relevant land areas is not in dispute. The Convention contains no guidelines for adjudicating disputes over the ownership of land. Thus, until the competing claims of sovereignty are resolved, the Convention's provisions for dealing with overlapping maritime zones cannot be applied.

(a) Possession of the islands--the habitable features above sea level at high tide--could be important because, according to the LOS Convention, they can cast territorial seas and, in some cases, EEZs up to 200 miles from shore. (Features that are under water at high tide do not qualify, even if structures have been built on them and are permanently occupied.)

How Close to Universality?

Many countries believe that US accession would lead to the Convention achieving virtually universal support--something many of the countries participating in the negotiations regarded as an important milestone in international relations. Though most if not all of the other industrialized countries will ratify the treaty whether the United States does so or not, some of the smaller countries with no direct stake in maritime issues may view a global maritime convention without US participation as not worth joining. On the other hand, US accession would probably trigger ratifications and accessions by other countries not yet on board.

Annex

The Seabed Mining Provisions: Old and New Compared The Controversial Original Text

The original Part XI of the LOS Convention explicitly asserted UN control over the mineral resources of the area of the deep seabed seaward of the limits of national jurisdiction--called the Area for short. Moreover, it established a seabed mining regime under which a new agency--the International Sea-Bed Authority (ISBA)--would not only authorize and oversee seabed mining undertaken by organizations from the developed world but would also engage in seabed mining itself, on behalf of the developing countries.

Specifically, the Convention set up a "parallel system" in which the seabed would be mined both by an Enterprise controlled by the ISBA and by various national and

multinational entities, mostly from the industrialized world--with ISBA oversight. To make this system feasible, the latter were to be required to pay substantial up-front fees, which would be used to fund the ISBA and the Enterprise. The other mining entities were also to turn over to the ISBA for exploitation by the Enterprise half of each minesite they had identified. And they were to transfer to the Enterprise their proprietary mining technology, so the Enterprise could compete with them on even terms.

These and other seabed mining provisions were strongly opposed by the United States and many other industrialized countries, which characterized the regime as so interventionist, centrally planned, and bureaucratic that it would discourage investment and prevent development of the seabed resources. The US Government objected specifically that, among other things, these provisions would:

- Require the US Government to fund 25 percent of the cost of the ISBA but without guaranteeing the United States a seat on the Council of the ISBA.
- Allow amendments to be adopted without US consent that would nevertheless be binding on the US Government.
- Permit distribution of revenues from seabed mining to national liberation movements.
- Require the transfer of proprietary seabed mining technology to the Enterprise and, indirectly, to other nations.
- Impose limits on the quantities of minerals produced from the seabed, in order not to disadvantage land-based producers.
- Force commercial miners to pay the Authority large initial and annual fees well before production had commenced, indeed, well before the feasibility of their operations had been established.

The Interregnum

Because of their objections to the seabed mining section, the United States, United Kingdom, and West Germany did not sign the Convention, and the other industrialized nations that did sign it did not subsequently ratify it. Instead, they proceeded to abide by the provisions of the Convention except for those relating to seabed mining.

In 1984, Belgium, France, West Germany, Italy, Japan, the Netherlands, the United Kingdom, and the United States entered into the "Reciprocating States Agreement," which set forth the rules and procedures under which, in the absence of an LOS Convention, their firms would undertake seabed mining. In lieu of registering their minesites with the ISBA Preparatory Committee as called for in Part XI of the Convention, most of the Western seabed mining consortia registered their exploratory sites under the existing laws of the United Kingdom, the United States, or West Germany.

The Amending Agreement

In 1990, amidst a general thaw in both East-West relations and North-South relations, the UN Secretary General sponsored new consultations aimed explicitly at ameliorating the objections of the United States and the other industrialized countries to the Convention's seabed mining regime. Many of the developing countries had become willing to revisit this issue, because they recognized that the developed countries were unified in opposition to these provisions and would not accede to the Convention unless they were changed. Moreover:

- Support for the NIEO had waned, apace with the weakening of G-77 cohesion caused in part by increasing disparities in economic development among member states.
- The advantages of market economics and decentralized management had become increasingly obvious in the wake of the collapse of the Soviet Union; in this context the seabed mining provisions were recognized as unworkable and anachronistic.
- Continued depressed global metal prices and the escalating costs of mounting a deep-seabed mining effort had combined to push the prospect of revenues from such mining well into the future.

Over several years, an Agreement designed to supersede the seabed mining provisions of the Convention was hammered out between representatives of the United States and other developed countries and representatives of developing countries. The latter yielded on many of the original provisions with reluctance, and only because they understood that in return the United States and the other developed countries would accede to the Convention. Indeed, the Agreement contains a provision to the effect that, unless seven of the 14 pioneer seabed mining investor states, including five developed countries, ratify the LOS Convention by 16 November 1998, that is, within four years after it went into effect, the seabed mining provisions will revert to the Convention's original text:

- The 10 developed countries registered as pioneer investors are Belgium, Canada, France, Germany, Japan, Italy, Netherlands, Russia, the United Kingdom, and the United States; the other four pioneer investors were China, India, Poland (fronting for Eastern Europe), and South Korea.
- Of those countries, so far only Germany, India, Italy, and South Korea have become parties to the Convention, but enough of the others are likely to do so to meet the specified conditions by mid-1996.

In July 1994, the new Agreement was presented to the UN General Assembly, and a resolution supporting it was overwhelmingly approved, with 121 states in favor and none opposed. The next day, more than 50 states-- including the United States--signed the Agreement. As of early December, 124 countries including all of the other major industrialized states have indicated their support of the Agreement.

The New Provisions

The Agreement changed the proposed regime in several fundamental ways. In particular, it reduced the power of the developing countries as a voting bloc in the ISBA and increased the influence of the United States and other industrialized countries, should they accede to the convention. The Assembly is now permitted only to ratify or remand decisions of the Council; it cannot originate policy. Among other things, the Agreement:

- Sets up three four-member chambers of the Council--one for the major **Consumers** (importers) of minerals that could be mined from the seabed, one for the major **Investors** in seabed mining, and one for the major land-based **Producers** (exporters) of minerals that could be mined from the seabed. [\(12\)](#) Three of the members of any of these chambers could block decisions of the Council. Another arrangement would permit as few as 11 developing countries to block decisions of the Council.
- Gives the United States one of the seats in the Consumer chamber, thus guaranteeing it a seat on the Council as a whole. Russia is also guaranteed a seat in this chamber. [\(13\)](#) The other two members would be industrialized states that are major importers of the minerals available from the seabed. Consequently, the US Government could block decisions of the Council with the support of two of the other three members of the Consumer chamber.
- Requires that substantive decisions in four areas be made only by consensus. The areas are (1) protecting land-based producers from adverse effects of seabed mining; (2) revenue sharing; (3) amendments to rules, regulations, and procedures implementing the seabed mining regime; and (4) amendments to the seabed mining regime itself.

In addition, the Agreement addresses other US objections to the original seabed mining provisions by:

- Establishing a Finance Committee controlled by the five largest contributors to the Authority's budget to make budget and financial decisions by consensus. Because the ISBA's expenses are currently being defrayed out of the UN budget, to which the United States is the largest contributor, the United States is a member of the Finance Committee.
- Eliminating the provisions compelling the transfer of technology to the Enterprise. Instead, seabed mining consortia are simply encouraged to undertake joint mining operations with the Enterprise. [\(14\)](#)
- Eliminating production control measures.
- Significantly reducing the fees required of commercial miners before the onset of production

**Parties to the LOS Convention
(as of February 1996)**

Angola

Kenya

**States Taking the Steps Needed To
Become Parties**

Belgium

<i>Antigua and Barbuda</i>	<i>Kuwait</i>	<i>Canada</i>
<i>Argentina</i>	<i>Lebanon</i>	<i>Chile</i>
<i>Australia</i>	<i>Mali</i>	<i>China</i>
<i>Austria</i>	<i>Malta</i>	<i>Denmark</i>
<i>The Bahamas</i>	<i>Marshall Islands</i>	<i>Finland</i>
<i>Bahrain</i>	<i>Mauritius</i>	<i>France</i>
<i>Barbados</i>	<i>Mexico</i>	<i>Ireland</i>
<i>Belize</i>	<i>Micronesia, Federated States of</i>	<i>Japan</i>
<i>Bolivia</i>	<i>Namibia</i>	<i>Luxembourg</i>
<i>Bosnia and Herzegovina</i>	<i>Nauru</i>	<i>Netherlands</i>
<i>Botswana</i>	<i>Nigeria</i>	<i>New Zealand</i>
<i>Brazil</i>	<i>Oman</i>	<i>Panama</i>
<i>Cameroon</i>	<i>Paraguay</i>	<i>Portugal</i>
<i>Cape Verde</i>	<i>Philippines</i>	<i>South Africa</i>
<i>Comoros</i>	<i>St. Kitts and Nevis</i>	<i>Spain</i>
<i>Cook Islands</i>	<i>St. Lucia</i>	<i>Sweden</i>
<i>Costa Rica</i>	<i>St. Vincent and the Grenadines</i>	<i>Switzerland</i>
<i>Cote d'Ivoire</i>	<i>Sao Tome and Principe</i>	<i>Ukraine</i>
<i>Croatia</i>	<i>Senegal</i>	<i>United Kingdom</i>
<i>Cuba</i>	<i>Seychelles</i>	
<i>Cyprus</i>	<i>Sierra Leone</i>	
<i>Djibouti</i>	<i>Singapore</i>	
<i>Dominica</i>	<i>Slovenia</i>	
<i>Egypt</i>	<i>Somalia</i>	
<i>Fiji</i>	<i>South Korea</i>	
<i>The Gambia</i>	<i>Sri Lanka</i>	
<i>Germany</i>	<i>Sudan</i>	
<i>Ghana</i>	<i>Tanzania</i>	
<i>Greece</i>	<i>The Former Yugoslav Rep. of</i>	
<i>Grenada</i>	<i>Macedonia</i>	
<i>Guinea</i>	<i>Togo</i>	
<i>Guinea-Bissau</i>	<i>Tonga</i>	
<i>Guyana</i>	<i>Trinidad and Tobago</i>	
<i>Honduras</i>	<i>Tunisia</i>	
<i>Iceland</i>	<i>Uganda</i>	
<i>India</i>	<i>Uruguay</i>	
<i>Indonesia</i>	<i>Vietnam</i>	
<i>Iraq</i>	<i>Yemen</i>	
<i>Italy</i>	<i>Yugoslavia (a)</i>	
<i>Jamaica</i>	<i>Western Samoa</i>	
<i>Jordan</i>	<i>Zaire</i>	
	<i>Zambia</i>	

(a) The former Yugoslav republics of Serbia and Montenegro have formed a political entity-the Federal Republic of Yugoslavia-that claims to have succeeded Yugoslavia, but the United States does not recognize this claim.

Footnotes

(1) In this paper, all references to "miles" mean nautical miles. One nautical mile equals approximately 1.15 statute miles or 1.85 kilometers. Thus, a 200-nautical-mile exclusive economic zone extends about 230 statute miles or 370 kilometers from the baseline.

(2) US support for this concept goes back to when President John Adams said that "the ocean and its treasures are the common property of all men." In 1970 the United States, along with most other UN members, voted in favor of a UN resolution that explicitly declared seabed resources to be the common heritage of mankind. This concept is also mentioned in the Deep Seabed Hard Minerals Resources Act. On a practical plane, at the time the LOS Convention was being negotiated, it was thought that giving every country a stake in the resources of the area outside the zone of national jurisdiction would encourage noncoastal states to support efforts by the United States and other maritime countries to limit creeping jurisdictional claims by coastal states.

(3) The Annex to this paper compares the original seabed mining provisions with those in the amending Agreement.

(4) The LOS Convention recognizes that warships and naval auxiliaries and other government-owned or -operated noncommercial ships, as well as aircraft, enjoy sovereign immunity; accordingly, although they are subject to many provisions of the Convention, they are generally not subject to enforcement actions by countries other than the flag state.

(5) Revenue sharing from such a project would begin in the sixth year at 1 percent of the value of production and increase by 1 percent annually before topping out at 7 percent in the 12th and succeeding years. Revenue sharing could consist of payments of money or contributions in kind through the International Sea-Bed Authority to other countries, according to a formula favoring especially poor states and landlocked states. According to US petroleum industry statistics, project investment is generally recouped by the fifth year, and 85 percent of recoverable deposits are usually recovered by the 11th year.

(6) All states that signed the Agreement are allowed, during the two years following the entry into force of the LOS Convention that is, until 16 November 1996 to participate in the ISBA even if they have not become parties to the Convention, so long as they are moving toward accession or ratification. This grace period may be renewed one time for two more years.

(7) Fourteen states are registered as pioneer seabed mining investors. In order of the value of their claimed investments they are: 1. Germany 2. Netherlands 3. United States 4. United Kingdom 5. Japan 6. South Korea 7. Russia 8. Italy 9. China 10. Belgium 11. India 12. Canada 13. France 14. Poland

(8) A list of potential conciliators nominated by states parties each can nominate four to be maintained by the UN Secretary General. Each party to a dispute would select two members of the commission (one of whom could be its national), preferably from the list, and they would jointly select the other member, also preferably from the list, to serve as president; if they could not agree, the UN Secretary General would select the president.

(9) A list of potential arbitrators nominated by states parties each can nominate four to be maintained by the UN Secretary General. Each party to a dispute would select one member of the tribunal, preferably from the list, and they would jointly select the other three members, also preferably from the list. If they could not agree, the President of the LOS Tribunal would select the other three members.

(10) Lists of potential arbitrators in each of the four categories of disputes are to be maintained by the applicable UN agency the UN Food and Agriculture Organization, for example, will maintain the list of potential arbitrators on fisheries disputes. Each state party can nominate two experts in the relevant field to be on each of the four lists. Each party to a dispute in one of these categories would select two arbitrators (of whom one could be its national), preferably from the relevant list, and they would jointly

choose the fifth member, also preferably from the list, who would serve as president; if they could not agree, the UN Secretary General would choose the president.

(11) Currently, Greece claims a 6-mile territorial sea and a 10-mile territorial airspace around all of its territory. Turkey claims a 12-mile territorial sea along its coast in the Black Sea and Mediterranean Sea but only a 6-mile territorial sea along its coast in the Aegean.

(12) The original provisions called for these interest blocs to be formally represented on the Council by four countries each, but they were not granted special voting rights.

(13) The United States is guaranteed this seat by virtue of its having had the world's largest gross domestic product (GDP) on 16 November 1994, the date the Convention went into effect. Russia is guaranteed its seat by virtue of its having had the largest GDP in "the Eastern European region" on that date.

(14) Because seabed miners must gradually turn over to the Enterprise half of each minesite they discover, the only way they can fully exploit their finds is by cooperating with the Enterprise. The sites already registered under the laws of Germany, the United Kingdom, or the United States as part of the Reciprocating States Agreement, however, do not have to be split with the ISBA.