Director of
Central
Intelligence

Confidential

25X

Law of the Sea

National Intelligence Estimate

Confidential

NIE 2/1-81
7 December 1981

Copy 323

25

NIE 2/1-81

LAW OF THE SEA

Information available as of 7 December 1981 was used in the preparation of this Estimate.

25

25X

THIS ESTIMATE IS ISSUED BY THE DIRECTOR OF CENTRAL INTELLIGENCE.

THE NATIONAL FOREIGN INTELLIGENCE BOARD CONCURS, EXCEPT AS NOTED IN THE TEXT.

The following intelligence organizations participated in the preparation of the Estimate:

The Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and the intelligence organizations of the Departments of State, Treasury, and Energy.

Also Participating:

The Assistant Chief of Staff for Intelligence, Department of the Army

The Director of Naval Intelligence, Department of the Navy

The Assistant Chief of Staff, Intelligence, Department of the Air Force

The Director of Intelligence, Headquarters, Marine Corps

CONTENTS

25

SCOPE NOTE

The United States is currently at a critical decision point in its participation in the Third UN Conference on the Law of the Sea (UNCLOS III). The recently completed review of US policies on the law of the sea found the provisions covering navigation, coastal state jurisdiction, scientific research, and pollution control generally acceptable, but the treaty's provisions for the exploration and exploitation of the deep seabeds fundamentally unacceptable. In determining its position for the UNCLOS III session in New York City in March 1982, the United States needs to evaluate whether continued participation in the treaty negotiations serves its national interests. This Estimate looks at four possible outcomes to these negotiations and assesses their implications for US interests.

The outcomes are:

- Achievement of a comprehensive treaty with US accession.
- Achievement of a comprehensive treaty without US accession.
- Achievement of a comprehensive treaty without accession by all industrial countries.
- A no-treaty world.

25

DEPARTURES FROM EARLIER ESTIMATE

The 1977 estimate on law of the sea (NIE 2-1-77) was the first attempt by the Intelligence Community to assess the utility of a comprehensive LOS treaty and the possible consequences of its failure. In the intervening years, law of the sea issues and our perception of these issues have changed. The changes are most notable in five areas:

Navigation. In the course of years of negotiation, a negotiated text covering transit rights through straits and archipelagoes has gained widespread acceptance. In view of this, we now judge the risks of losing important navigation and overflight freedoms under any of the treaty outcomes as somewhat less than previously stated.

Customary International Law. The earlier estimate was silent on the importance of customary international law. We are now more aware that, in the absence of a treaty or without accession to a treaty, a nation can still seek to protect its navigation interests by relying on the principles of customary international law, supplemented when necessary by timely and purposeful exercise of its power. The degree of stability and predictability in the navigation regime, therefore, is somewhat greater than we previously believed.

Seabed Mining Regime. The disincentives to commercial seabed mining created by the proposed treaty regime are now more clearly understood, as are the objections to it of both the private sectors and the governments of leading industrial democracies.

Undesirable Precedent. There is more concern now that acceptance of Third World ideological principles in a seabed mining treaty would establish a negative precedent for other future global negotiations on matters such as outer space, the radio spectrum, and Antarctica.

North-South Dialogue. We are more sensitive in the current Estimate to the political content and implications of North-South relations and more aware of the diversity of economic interests that limits the cohesion of the Third World.

BASIC CONCLUSIONS

Navigation

In spite of the few remaining ambiguities in the treaty language, a comprehensive treaty has the advantage of codifying a set of international rules that will, for some time, inhibit the extension of coastal state jurisdiction—a development viewed as highly beneficial by all the maritime powers. Even without acceding to it, however, the United States would benefit from the treaty's navigational provisions. In the absence of a treaty there would be doubt whether the United States could maintain certain navigational rights by relying on customary international law. A successful treaty process, therefore, is in the United States' interest whether or not it is a signatory.

Seabed Mining

Given a more realistic appraisal of the resources likely to be generated by seabed mining in the foreseeable future, the focus of Third World interests in the mining regime has increasingly emphasized the politics of control. At the same time, the industrial countries are more sensitive now to the importance of not having a treaty regime that adds to the risks and costs of seabed mining. This dichotomy between North and South in seabed mining goals poses an impasse not likely to be resolved. Most industrial countries, however, would prefer to prolong the negotiations indefinitely rather than join the United States in walking out of the negotiations and developing an alternative minitreaty. In the meantime they are showing an increasing willingness to work with the United States to develop an interim reciprocating states regime.

Seabed mining could occur under any of the treaty outcomes if economic conditions permitted. Under some outcomes, however, there would be distinct limitations:

- If the United States acceded to a comprehensive treaty requiring mandatory transfer of technology to the proposed International Seabed Authority, most US firms would find such a mining regime unattractive.
- If the United States does not accede to a treaty, US seabed mining claims would be legally shaky. Investors would then be deterred from supporting US mining ventures. In that event, US firms could mine the seabed under foreign registry, but this would constrain development of a US-flag industry.

25X

- If all the industrial countries interested in seabed mining were to abstain from the treaty, or if there were no treaty, an alternative seabed mining regime that would meet the needs of the private sector would probably evolve.

Foreign Relations

None of the outcomes of UNCLOS III considered in this Estimate would seriously impair the United States' ability to carry on its relations with its defense and industrial partners or with the Third World. An abrupt US abandonment of the negotiating process would cause some adverse political repercussions, but these effects would be short lived. For most countries, law of the sea has become a relatively low priority issue except for its ideological impact. Some Third World countries view law of the sea as an important symbol of political solidarity among the Third World "Group of 77" (G-77). For a few countries, notably Indonesia, specific ocean jurisdictional issues provide important opportunities for furthering their national interests. Major industrial countries are concerned about unfavorable Third World reactions to a failure of UNCLOS III. But relations between North and South are founded on concrete matters of trade, investment, and other bilateral interests that would not be ruptured in the event of a no-treaty outcome.

There is an alternative view [1] which holds that the major industrial countries are concerned that a failure of UNCLOS III would represent a potential setback to the institutionalization of peaceful settlements of international disputes. Furthermore, the EC Ten may be motivated to accelerate their current tendency to pursue an independent European foreign policy on issues of vital interest to the United States.

[1] *The holder of this view is the Bureau of Intelligence and Research, Department of State.*

KEY JUDGMENTS

LOS in the Foreign Policy Context

- Nearly all foreign governments believe that the time and intellectual energy already committed to UNCLOS III are too great to warrant walking away from the bargaining table and deserting what has been accomplished to date.
- On the other hand, most states accord the LOS negotiations low priority relative to other foreign policy issues, although for some countries of special importance to the United States, such as Indonesia, Australia, Japan, and Canada, the negotiations have a position of higher visibility.
- Uses of the oceans will intensify, as will the likelihood of conflict over ocean issues. While the LOS treaty would establish a generally shared legal framework covering activities in the ocean, its entry into force would probably not eliminate conflicts. Some parts of the Draft Convention are ambiguously worded, and disputes could arise over certain aspects of the treaty language.
- LOS-related incidents occasionally flare to a high level of international visibility, but such events are frequently rooted in longstanding antagonisms or involve broader issues of prime national concern. Such incidents will continue to occur with or without a comprehensive treaty.
- Hence, even if a collapse of the treaty effort were perceived to be a direct result of US actions, we doubt that the ability of the United States to pursue its long-term foreign policy interests would be significantly impaired. The costs of achieving some US objectives, however, might be increased, and confidence in US negotiating consistency diminished.

The World With a Comprehensive Treaty—With Accession by the United States

- A comprehensive treaty would, for some time, inhibit the large-scale expansion of geographic claims. The 12-mile limit for the territorial sea and the 200-mile limit for the exclusive economic zone would probably satisfy present needs of most coastal states.

25X

- Most coastal states would comply with the treaty provisions on navigation and overflight in straits and archipelagoes.
- In the longer run, if the provisions of the treaty no longer satisfy coastal states and they seek to expand their jurisdictions, the United States would have a clear basis under the treaty for rejecting claims that exceed the limits authorized by the treaty.
- None of the treaty provisions would obviate the need for the United States occasionally to exercise its rights to ensure that its interpretation of the treaty's navigational and jurisdictional provisions were indeed accepted by other nations.
- If, even after substantial revision, the deep seabed mining provisions of the treaty required private firms to share technology with the mining subsidiary of the proposed International Seabed Authority (ISA), most US firms would find such investments unattractive.
- Even if a favorable legal regime is crafted for corporate seabed miners, the state of the world economy and the future pace of technological change would be the principal factors determining the scope of seabed exploitation. However, some governments with a strongfelt need for access to strategic minerals might be inclined to subsidize their firms.
- One consequence of acceding to an LOS treaty close to present terms would be the negative precedent it sets for the United States and other industrial countries in future negotiations, such as exploitation of the resources of outer space, allocation of the radio spectrum, and the governance of Antarctica.

A Comprehensive Treaty—Without Accession by the United States

- The navigational and jurisdictional impact of the treaty would be essentially the same whether or not the United States acceded to the treaty.
- The US ability to affect the interpretation of the treaty would be reduced if the United States were not a party. US industrial allies and the Soviets, however, being treaty parties, could be expected to protect their own navigation interests under the treaty—which are similar to those of the United States.
- Where the new treaty defines rights in great detail—as in the case of permitted activities under innocent passage in the

territorial sea—US ability to benefit from these rights might be impaired. The United States might have to rely on the less specific customary international law, which is subject to restrictive interpretation by coastal states.

- US-sponsored seabed mining would have to be conducted under the traditional high-seas principle that the resources of the deep seabed are *res nullius* (belong to no one). This would reduce opportunities for reciprocal mining agreements with other industrial countries that would be tied to the LOS treaty regime.
- Without internationally recognized guarantees of security of capital and tenure, the private sector would be unlikely to invest significantly in US seabed mining ventures. US firms, however, could register under foreign flags and mine the seabed under their jurisdictions. This would constrain development of a US-flag industry.

A Comprehensive Treaty—Without Accession by the Industrial Democracies

- Such a situation would not come about quickly. It could arise, however, if the negotiations bogged down, ratifications were slow to accumulate, and seabed mining opportunities outside the treaty became strongly attractive.
- Under this scenario, the major maritime powers would seek to ensure that the jurisdictional and navigational provisions of the treaty are respected as customary international law. But lacking a widely accepted treaty, these navigation rights for both military and commercial ships and aircraft would be vulnerable to modification by state practice.
- Economic conditions permitting, the United States and other seabed miners—West Germany, France, the United Kingdom, Belgium, Italy, the Netherlands, and Japan—could begin site-specific development under a reciprocating states agreement which could take place under any scenario.
- While the G-77 and the USSR would severely criticize such an alternative regime, physical reprisals against it are unlikely. Legal challenges and financial threats could be mounted by developing countries against corporations participating in such ventures, but would risk costly reprisals by their sponsoring governments.

25X

The World Without a Comprehensive Treaty

- In a nontreaty world, confrontations and conflicts are likely to be fewer than suggested by the rhetorical statements in UNCLOS III. Most maritime disputes will arise less from the absence of a treaty than from longstanding political rivalries and the growing diversity and intensity of ocean use.
- If UNCLOS III fails, its last treaty draft will strongly influence the evolution of customary international law. Its provisions, other than for seabed mining, would survive as an authoritative statement of international law.
- Economic conditions permitting, the seabed mining states could be expected to initiate commercial operations under an expanded reciprocating states agreement within the next decade or two.

Global Polarization?

- For the developing countries, UNCLOS III has been a bellwether of progress in the North-South dialogue. The seabed mining provisions embody some key principles of the "new international economic order."
- Failure to reach a seabed mining accord seen as equitable in Third World eyes would evoke recriminations by South against North. Beyond the rhetoric, however, the developing nations would continue to nurture their vital economic and political ties with the industrialized countries.
- A unilateral decision by the United States to withdraw from the negotiations would not elicit parallel action by other industrial countries. They would prefer to prolong the negotiations while giving at least the semblance of trying to reach an accord. The majority of other industrial countries would probably be prepared to sign the Convention, even without the United States, though ultimate ratification would be in question.
- Because of their greater sense of North-South interdependence, other industrial nations would prefer to have the United States continue to seek some manner of accommodation in UNCLOS III. If the impasse over seabed mining continues, and in the unlikely event that the stalemate could be attributed to G-77 intransigence, the industrial countries might be more inclined to join the United States in an alternative mining regime.

DISCUSSION

I. The Third UN Conference on the Law of the Sea: Background and Perspective

1. The international law of the sea has undergone considerable change in the last few decades. Until the 1940s, it was essentially customary law, a body of rules and regulations based on widely accepted practices and customs. As long as major users of the sea continued to be interested primarily in near-shore fishing and navigation, this state of affairs was adequate.

2. Once nations appreciated the potential of the sea's resources and developed efficient long-range fishing fleets, however, they began to harvest fish off foreign shores. Traditional rules quickly became outdated, and nations with rich fishing grounds off their coasts responded by extending their maritime jurisdictions. The United States claimed the natural resources of the adjacent continental shelf in 1945. Chile and Costa Rica did likewise in 1947 and 1949, respectively, and both states also claimed exclusive jurisdiction over fisheries out to 200 miles.[2] Peru claimed a 200-mile territorial sea in 1947, and a variety of other offshore claims followed. These claims forced a critical reassessment of legal principles governing international maritime relations.

3. The First and Second United Nations Conferences on the Law of the Sea (UNCLOS) sought to eliminate the evolving confusion through the development of widely acceptable treaties governing the uses of the oceans. The first conference was held in 1958, with 86 delegations in attendance. It produced four general conventions dealing with fisheries, the continental shelf, the high seas, and the territorial sea, but it did not reach agreement on a maximum limit for territorial sea claims or set a precise seaward limit to coastal state jurisdiction over the resources of the continental shelf. Two years later, 88 delegations reconvened for the Second UNCLOS, chiefly to standardize the breadth of the territorial sea, but once again failed to reach agreement.

4. In the mid-1960s, the United States and the USSR initiated efforts to secure international agreement on standardization of maritime claims. Their objective was to protect their interests in sailing through and flying over distant coastal waters and straits. Both nations hoped to limit territorial sea claims to 12 miles and to preserve navigation rights in broader resource zones. These events, plus the increasing awareness of the economic potential of seabed minerals, led in the late 1960s to the establishment of a UN committee to study the peaceful uses of the seabed and, finally, in 1970 to a resolution to convene a third law of the sea conference. Concurrently, the developing countries pushed a resolution through the UN General Assembly that declared seabed resources beyond areas of coastal state jurisdiction "the common heritage of mankind." The United States voted in favor of both resolutions, although it made clear that it was not bound by the "common heritage" resolution and that the precise meaning of that resolution would have to be elaborated in a comprehensive treaty. The Third United Nations Conference on the Law of the Sea (UNCLOS III) was convened in December 1973.

5. The conference has since reached substantial agreement on a Draft Convention text in most areas, notably on the principles of the 12-mile territorial sea, 200-mile exclusive economic zone, definition of the continental shelf, and freedom of transit through straits and archipelagoes. The conference has been less successful, however, in reaching agreement on a deep seabed mining regime. The failure to achieve an acceptable compromise on this issue at UNCLOS III, after no fewer than 13 major negotiating sessions, is telling.[3]

6. The agreements on the extent of national jurisdiction over coastal fisheries and continental shelf oil and gas (which have already been implemented through unilateral state practice in the interim) greatly reduced the negotiating leverage of the major industrialized nations, whose initial opposition to the principle

[2] All distances are expressed in nautical miles.

[3] The key groups of nations involved in UNCLOS III are discussed in annex A.

25X

of the 200-mile economic zone had been their main bargaining chip.[4] Settlement of this, the primary dollars-and-cents issue, left relatively few nations with an economic stake in the outcome of the seabed mining controversy. The developing countries, aside from the few whose mineral exports might be affected by large-scale seabed mining, were therefore free to consider the issue in terms of supposed self-interest and general ideology concerning North-South relations.

7. As a result, a speculative and high-risk nascent industry has become the focus of a legal and political negotiation ill equipped to deal with it. No procedural device yet tried at UNCLOS III has produced results on mining acceptable to the United States. The seabed issue graphically demonstrates the difficulty of trying to establish a legal regime or code for private entrepreneurs in global forums and the obstacles to redistributing wealth through global negotiations.

8. National interest in law of the sea negotiations tends to vary from region to region, but most nations generally accord it a relatively low priority vis-a-vis other foreign policy issues. For most countries, LOS ranks below such issues as trade and aid policies, balance-of-payments problems, access to private and official credits, critical imports, and terrorism. While Latin American states are, by and large, somewhat more interested in LOS matters, the subject is still clearly subordinate to events related to old boundary disputes and other bilateral animosities, and to broader issues of economic development. Archipelagic states, such as strategically located Indonesia, probably have a greater interest in the success of UNCLOS III than any other group. With its claim to archipelagic status being the most tenuous of the new jurisdictional concepts addressed by UNCLOS III, Jakarta is uniquely sensitive to any event that threatens to derail the Draft Convention.

9. While LOS-related incidents are occasionally accorded top priority consideration by states, such events are usually rooted in historical antagonisms that will persist long after UNCLOS III is terminated. The Greek-Turkish dispute in the Aegean Sea and the Argentine-Chilean argument over the Beagle Channel are examples of this type of incident. Even such highly emotional events as the Icelandic-UK "cod war" and the breakup of the tanker Amoco Cadiz off the coast of France were painful incidents, but ones for which the international system found acceptable adjustments.

10. Thus, if there were to be no law of the sea treaty, and the United States were to be held responsible for scuttling the conference, we seriously doubt whether that would make it significantly more difficult to pursue any of the major foreign policy interests facing the United States. Nor would it have more than a transitory effect on the conduct of bilateral relations with the broad range of states with which the United States maintains diplomatic relations. However, it would tend to erode confidence in the United States as a reliable negotiator in other multilateral forums.

11. Entry into force of a law of the sea treaty on present terms—which requires ratification by 60 states—would certainly not eliminate conflicts in the ocean. Some critical parts of the treaty—including some dealing with national security—are ambiguously worded and disputes could arise over interpretation of treaty language. Thus, in certain instances, a treaty would merely shift the form of the debate from one over rules of customary international law to one over interpretation of ambiguous treaty terms.

12. The Law of the Sea Conference should not be viewed as an isolated, static occurrence, but rather as part of a process of evolving customary law for the use of ocean space and exploitation of ocean resources. Even without a treaty, this process will continue to evolve along the present track of state claims and counterclaims coupled with bilateral and regional arrangements that serve the interests of states sharing common problems or opportunities.

13. The United States, if it were to become a party to an LOS treaty on present terms, would still be required to take some occasional action to ensure that its own interpretation of those navigational freedoms were indeed accepted by other nations. This would entail the development of interpretive statements and positions and, in extreme cases, the insertion of naval and air forces to ensure that the claimed treaty right was in fact available to it.

[4] The trends and motives of the various jurisdictional claims are discussed in annex B.

II. The World With a Comprehensive Treaty . . .

A. With Accession by the United States

14. Although it is difficult to envision the resolution of the North-South impasse over the form and substance of a proposed seabed mining regime, we assume for the purpose of this Estimate that some middle-of-the-road compromise is struck that will put the Draft Convention in a form acceptable to the United States, its Western allies, the Communist Bloc, and a majority of the developing states comprising the Group of 77 (G-77). The seabed regime that emerges would probably still contain various principles associated with the "new international economic order" (NIEO), but they would be substantially watered down from their present formulation in the draft treaty.[5]

15. ***Coastal State Claims and Navigation.*** If such a treaty came into force, its provisions would, for some time, inhibit a large-scale expansion of geographic claims. The 12-mile limit for the territorial sea and the 200-mile limit for the exclusive economic zone (EEZ) would probably satisfy the present needs of most coastal states. However, some expansion of geographic claims could result in the near term from the improper use of straight baselines for drawing offshore boundaries and from claims for historic waters, as, for example, in the case of the Libyan claim in the Gulf of Sidra.

16. A treaty on present terms, however, might not serve to stem the expansion of all coastal state functional claims within the 200-mile economic zones. The terms of the Draft Convention on the juridical status of the economic zone are somewhat cloudy. It will take some time before the status of high-seas rights of navigation inside the zone are clarified through state practice.

17. All or most states would comply with the treaty provisions on navigation and overflight, including the right of transit passage through straits used for international navigation and through archipelagic sea lanes.

18. The United States and other major maritime states would have a basis in conventional international law for not recognizing foreign claims to offshore zones that exceed the limits authorized by the treaty and for opposing any efforts to impede transit within straits and archipelagoes. Further, the jurisdictional, navigation, and other nonseabed provisions of the treaty generally favorable to US interests would also serve as the best evidence of customary international law and therefore would be binding on nonparties as well.

19. The entry into force of a broadly supported LOS convention would not, however, assure that all the jurisdictional and navigational provisions of the treaty would stay in place over a long period. As uses of the oceans intensify and coastal states acquire a greater technical capability to exploit and control their offshore resources and zones there will be a greater tendency for states to seek to impose controls on navigation in the territorial sea, straits, and archipelagoes, and to extend their jurisdiction over coastal resources.

20. Most future claims that exceed the limits imposed by an LOS convention would probably occur as isolated incidents, reflecting specific national or regional economic or strategic needs. Most of these incidents are local or regional in nature and, thus, might not directly involve the United States. Some new functional claims would probably be advanced in such a way as to be difficult to comprehend or too petty to protest and challenge.

21. The degree to which such creeping jurisdiction takes hold, however, would largely depend on the response of the major maritime states to those claims and, occasionally, on the decisions of the treaty's dispute settlement mechanisms. Should the maritime states' responses be timely and purposeful, exercising the required degree of naval, legal, or political power, most claims would be blunted. If, on the other hand, maritime states acquiesce or are indecisive, such claims would stand and perhaps proliferate, with adverse impact on the naval and commercial interests of the United States.

22. ***Seabed Mining.*** The exploitation of the seabeds beyond the limits of national jurisdiction would be conducted under the parallel system wherein private firms and state enterprises would share available minesites with the Enterprise, the mining subsidiary of the proposed International Seabed Authority (ISA). Some, but not all, of the private consortiums

[5] A summary of the seabed texts is provided in annex C.

25X

would be willing to operate under the treaty and fulfill the consequent obligations to share their revenues with and sell their technology to the seabed authority. Some firms, as well as selected equipment manufacturers, would be likely to balk at the ISA's terms and decide against investing the $1-billion-plus necessary to engage in full-scale seabed mining.

23. Even if the legal regime provided by the treaty appeared attractive to the private sector, the scale of commercial mining activity would still depend on the economics of the marketplace. The markets for nickel, cobalt, copper, and manganese are likely to be such that the scale of output would be below the ceiling imposed by the treaty. Given long-term market expectations for nickel and copper, revenues derived from seabed production of these metals would not be enough to attract investment away from land-based alternatives. The prospects for manganese would be no better, in view of the high costs of separation and the resulting noncompetitiveness of this seabed product. The attractiveness of seabed mining as an investment, therefore, would hinge critically on cobalt. The cobalt market, however, could easily be flooded by only a handful of seabed minesites. The resulting price collapse would make additional seabed mining unattractive.[6] Hence, unless some governments were prepared to subsidize seabed mining, it is unlikely that more than a few sites would be developed.

24. There is an alternative view [7] which holds that insufficient evidence exists to support the conclusions in the above paragraph, particularly since seabed mining is unlikely to occur before the 1990s. The markets for these commodities are highly volatile and the situation could change completely by that time.

25. A possible consequence of adoption of an LOS treaty could be the precedent it might set for possible resolution of other global issues, such as exploitation of the resources of outer space, allocation of the radio spectrum, and perhaps even the governance of Antarctica. It is evident that one of the principal goals of the Group of 77 in UNCLOS III has been to establish legitimacy for the NIEO concept of a system of ownership and management of resources of the global commons under the rubric of "common heritage of mankind." If the Draft Convention enters into force on present terms, the "common heritage" concept would, in the view of most states, have taken on the meaning that the seabed resources beyond the limits of national jurisdiction are owned in common by the international community and cannot be exploited without the consent of that community through a decisionmaking process of the International Seabed Authority that would be heavily influenced by the developing countries.

26. Thus, a comprehensive law of the sea treaty could be used as a precedent for further incursion of the NIEO into Western economies and political systems. This is already evidenced by the copying of the "common heritage of mankind" language and concept in the so-called "Moon Treaty," which itself closely tracks the Draft Convention on the Law of the Sea.

27. ***Other Issues.*** Marine scientists would conduct research in foreign EEZs and on foreign continental shelves under a regime that obliges coastal states to respond to a foreign researcher's request within four months—absence of a reply would permit the research to proceed—and which permits the coastal state to withhold consent only if the projected research is related to resources, involves drilling into the continental shelf, uses explosives or harmful substances, or requires the construction and use of artificial islands, installations, and structures.

28. A treaty on present terms, if it entered into force, would establish a regime for marine environmental protection against pollution from land-based sources, continental shelf activities, dumping, and ships by requiring states to adopt internationally approved standards and to adopt domestic laws to implement them. Against ship-source pollution the treaty would institute a cooperative enforcement regime, together with appropriate safeguards, dividing responsibility among flag states, port states, and coastal states, permitting enforcement against ships that pollute, while limiting interference with freedom of navigation to cases of willful or flagrant pollution. 25X 25X

29. The outer limit of coastal state jurisdiction over the continental shelf would be determined by any of

[6] These prospects could change radically if technological breakthroughs greatly reduced costs of production

[redacted]

[7] *The holder of this view is the Department of the Treasury.*

several options based on a combination of distance, thickness of shelf sediment, and water depth, allowing relatively precise establishment of the outer edge of the shelf (technically the continental margin) which constitutes the boundary with the area of the seabed under the jurisdiction of the International Seabed Authority. The outer limit would not exceed 350 miles from the coastal baselines, or 100 miles beyond the 2,500-meter isobath. Submarine ridges, however, would be limited to 350 miles, except for those that are natural components of the margin such as plateaus, rises, caps, banks, and spurs. Parties to the treaty would be required, after the first five years of mineral or energy production from a site located on the shelf beyond 200 miles, to make payments to the International Seabed Authority of a percentage of value or volume of production; this would average 2.2 percent of the value of production over the 20-year producing period of a typical installation.

B. Without Accession by the United States

30. There are two basic assumptions involved in this scenario. The first is that the navigation provisions of an LOS convention entering into force would be those of the current Draft Convention: there would be a 12-mile limit for the territorial sea, a 200-mile limit to the exclusive economic zone, and regimes for transit passage of straits used for international navigation and for archipelagic sealanes passage. Similarly, the juridical status of the economic zone would be identical to that established in the present draft treaty. That is, the coastal state would enjoy various sovereign rights in the zone while the international community would, by and large, retain high-seas rights of navigation. It is inconceivable that the Soviet Union, the European states, and Japan would settle for anything less.

31. The second assumption is that the United States finds itself isolated from its major commercial partners on the seabed mining issue—that is, that the G-77 had agreed to changes in the seabed texts sufficient to assuage West European and Japanese concerns but not to meet the minimal needs of the United States.

32. ***Coastal State Claims and Navigation.*** In this situation, the claims of coastal states to extended geographical and/or functional maritime jurisdictions would be very similar to what they would be in a situation where the United States was a party to a comprehensive treaty. The treaty would serve to inhibit any large-scale expansion of geographic claims, at least for the short run. Deviations from the treaty in state practice would occur gradually, often as a result of incidents unrelated to the United States, and would be subject to the usual claims and counterclaims and, occasionally, dispute settlement.

33. What if the developing coastal states and straits states were to construe the treaty provisions on straits or high-seas freedoms in the EEZ in a way that would limit the freedoms sought by the United States and other maritime powers? Without being party to the treaty, the United States would have a sharply reduced capacity to affect the interpretation of the treaty. The industrial allies, however, as well as the navigation-conscious Soviets, would still be parties to the treaty, and they could be counted on to be as diligent in protecting the rights they had negotiated for straits, the EEZ, and archipelagoes as would the United States if it were a party to the treaty. Accordingly, insofar as the rights regarding navigation are concerned, the United States ought to be able to obtain most of the benefits whether it were a party to the treaty or not.

34. Technically speaking, the United States could not accuse a particular nation of breaching an international treaty obligation toward the United States, should that nation try to impair straits or EEZ navigational rights granted by the treaty. In the navigational realm, however, the United States would take the position that the treaty provisions are consistent with customary international law. Hence, the United States would not be without a basis for asserting a breach of international law.

35. Thus, where the law of the sea treaty provides a regime favorable to US interests, the United States would still be able to obtain most of the benefits of such a regime without becoming a party to the treaty. This is particularly true where treaty provisions reflect existing rules of customary international law.

36. On the other hand, where the new treaty defines rights in great detail—as it does, say, in the case of permitted activities under innocent passage in the territorial sea—it could be argued that the United States would be restricted to the traditional customary international law principles, which contain less precise definitions and which could be subject to restrictive interpretations by a coastal state.

25X

37. ***Seabed Mining.*** It is in the area of deep seabed mining beyond the limits of national jurisdiction that the most difficult problems arise in a situation where the United States is the only major state not participating in a law of the sea treaty. US-sponsored seabed mining would have to be conducted on a unilateral basis under the traditional high-seas principle that the nodules are *res nullius* (belong to no one) and subject to title by those who first use or take them. There would be a reduced opportunity for entering into reciprocal mining agreements with US industrial allies because they would be parties to the comprehensive oceans treaty.

38. Without internationally recognized guarantees of security of capital and tenure, banking houses and investors would be unlikely to commit large funds to US seabed mining firms. US firms could, of course, register in foreign countries that are parties to the treaty and mine the seabed under their jurisdictions. To the extent this occurred, it would tend to constrain development of a US-flag seabed industry.

39. If the United States were to opt out of the treaty before or at the time of the signing of the final act, it would not be able to participate in the work of the Preparatory Commission, which is to be established to draft the provisional rules, regulations, and implementing procedures for the ISA pending the entry into force of the Convention. Consequently, the United States would thus lose an avenue of influence on the operating rules for seabed mining under the treaty.

40. ***Other Issues.*** If the United States were alone in turning its back on UNCLOS III and an LOS treaty, US marine scientists might find it difficult to obtain permission to conduct nonresource research off the coasts of some developing countries. Some states might be piqued at US nonaccession and publicly deny US scientists permission to operate in their waters while other states could, as in the past, deny research simply by refusing to answer US requests. However, research related to resources of the EEZ and the continental shelf would still be conducted by private US groups and energy companies under contract to coastal states.

41. The United States, with a strong domestic regime for the control of pollution from vessels within the territorial sea, will have adequate protection for its coasts because 90 percent of the vessels passing within 200 miles of US coasts visit US ports. Harmonization of US port state enforcement with that of Canada and Mexico could provide almost total protection for the US coasts. The United States, however, would lose a degree of protection for its commercial navigation interests because it would not be able to demand respect for the treaty provisions on enforcement by foreign states of regulations on vessel-source pollution.

42. As regards the continental shelf, existing conventional as well as customary international law confers upon coastal states exclusive rights to the natural resources of the seabed and subsoil throughout the natural prolongation of the continental landmass. This, added to the fact that the treaty's criteria for determining the outer limit of jurisdiction over the shelf meets US needs, assures the United States rights to its offshore deposits of oil and gas. By standing outside the treaty, the United States would not have a duty to share with the ISA any revenues from exploitation of the shelf beyond 200 miles.

C. Without Accession by the Industrial Democracies

43. For the purpose of this discussion, we assume that a treaty emerges from UNCLOS III that is unacceptable to the United States and other Western industrialized states but which is accepted by many developing countries and the Soviet Union and its allies. Implicit in this assumption is that the seabed mining provisions of the draft treaty are so onerous to the United States and its allies that the latter are willing both to withstand the ire of the Third World and to rely on customary international law as the legal underpinning for their navigation interests. In this situation, the jurisdictional and navigation provisions of the treaty are likely to be much as they are in the current Draft Convention; for the USSR would not accede to a convention that does not limit the territorial sea to 12 miles and provide for unimpeded passage of straits and archipelagoes.

44. ***Coastal State Claims and Navigation.*** As in the previous treaty situations, the terms of the convention would serve to inhibit any large-scale expansion of geographic claims by developing coastal states, at least in the short run. Gradually, however, and with intensified uses of the oceans and with technological growth, a number of states would begin to claim broader geographic and functional jurisdiction over both navigation and resources.

45. Were the United States and its major Western allies not to be party to a comprehensive treaty, their capacity to affect the interpretation of the treaty would be reduced. Technically speaking, they could not assert that a particular state was breaching an international treaty obligation toward them should that state try to impair straits or EEZ navigational rights in a manner inconsistent with the treaty. Nevertheless, because of pressures from both the Soviet Union and the Western industrialized countries, all or most states would regard the navigation provisions of the treaty as being applicable to nonparties as well as parties to the treaty. Also, when the navigation regime is consistent with existing customary international law, the United States and its Western allies would not be without a basis for asserting a breach of international law.

46. Thus, as in the previous situation, where the law of the sea treaty provides a regime favorable to US interests, it should still be possible to obtain many of the benefits of such a regime without becoming a party to the treaty. Such an outcome would, of course, require strong assertion of rights by the major maritime powers. As noted earlier, this would be particularly true where those provisions are reflective of existing rules of customary international law.

47. However, on such issues as permitted activities under innocent passage in the territorial sea (outside of straits), where the new treaty might (or might not) go into great detail, it could be argued that the states outside the treaty would be restricted to the traditional customary international law principles, which contain less precise definitions and which could be subject to restrictive interpretations by a coastal state.

48. ***Seabed Mining.*** Seabed mining by the United States and other industrialized states outside the framework of a comprehensive treaty would probably occur only if the West European states and Japan can ease their way out of a current predicament. They share many of the US misgivings about the seabed texts of the Draft Convention but are reluctant to offend the developing countries by rejecting the texts at this time. However, if the industrialized states could participate in the work of the Preparatory Commission without having to become a signatory to the treaty, they could postpone their decision on ratification until the time when the emotional climate would be more favorable and the detailed mining rules and regulations of the International Seabed Authority were in hand. The issue of the "ticket of admission" to the Preparatory Commission, though, is still unresolved, as the G-77 declares that only signatories to the treaty should be eligible to participate, while the United States and other industrialized states argue that signing the Final Act of the Conference (which does not oblige a nation to adhere to the treaty) should be sufficient to allow a state to participate in the workings of the Commission.

49. Assuming their participation in the Preparatory Commission on the terms sought above, the United States and other nations interested in sponsoring seabed mining firms would, when the Commission's work is completed, be faced with the decision of ratifying the LOS treaty or remaining outside and conducting seabed operations under the terms of an alternative seabed mining regime. That decision would be based on an evaluation of the worth of the ISA's future rules and regulations, assessment of the economic feasibility of seabed mining, and the priorities accorded LOS in each nation's array of foreign policy concerns. In any event, there will be a need for a stable interim regime under which the firms could continue to develop seabed mining and processing technology.

50. To this last concern, the United States, the United Kingdom, West Germany, France, Belgium, the Netherlands, Italy, and Japan are negotiating to develop an interlocking series of interim bilateral arrangements, or a reciprocating states agreement, by which each such nation would agree to recognize the licenses granted by any other state party to the reciprocal arrangement. The United States, the United Kingdom, West Germany, and France have enacted supporting domestic legislation, while Italy and Belgium have legislation in process. Japan is developing the technology to mine the seabeds. It has postponed legislative action for fear of offending developing countries. At the same time Japan has expressed concern that its interests will not be adequately protected in the interim reciprocating states agreement nearing completion.

51. The United States, the United Kingdom, France, West Germany, Italy, the Netherlands, and Belgium would probably be the initial partners in a

reciprocating states agreement on seabed mining. Japan would follow suit if it felt that, by not joining such an agreement, it would fall behind other industrialized states in the development of a new high-technology industry promising great benefits. It is doubtful at this stage whether any of the Nordic states would participate, inasmuch as they have accepted the notion that the resources of the seabed are the "common heritage of mankind" and can be exploited only with the consent of the entire community of nations. Canada, being a land-based producer of metals found on the seabeds and anxious to preserve its market position, must also be considered, at this juncture, as being opposed to the concept of a reciprocating states agreement. However, such advanced Pacific-rim countries as Australia, South Korea, and Taiwan are possible adherents to an agreement among seabed mining states.

52. Such an arrangement forged among leading industrialized states would create an atmosphere necessary for seabed mining development activities to continue. The massive investment required to establish commercial-scale seabed operations is too far down the road to be a subject of current negotiations. Willingness to invest would depend, in part, on how many reciprocating states are in the system. The reciprocating states regime at the outset would be a somewhat loose arrangement, but with adroit political and diplomatic maneuvering it could mature into a more formal pact open to all. Such formality would become more important as the commercial production phase neared. With accession by 15 to 20 states of the right economic/geographic/political mix, there would be little question concerning the investment climate.

53. There is little doubt that the Group of 77, the USSR and its allies, and such Western states as the Scandinavian nations would severely criticize any alternative seabed mining regime. However, to the extent that only the United States and other like-minded nations were to engage actively in mining deep seabed resources, a rule of customary international law standing against it would be unlikely to arise. This is so simply because seabed mining by the United States and like-minded states would be the "only game in town." Opponents of seabed mining under an alternative regime are very unlikely to develop the technology necessary to mine the ocean depths or to raise the large sums of capital required.

54. The issue then becomes one of where and how seabed mining rights under an alternative regime might be challenged. First, some have argued that the Group of 77 nations could take physical reprisal against seabed mining operations. We consider this highly unlikely. If seabed mining were to occur 201 miles off the coast of a militant developing country, anything could happen, but such a location would not be selected. The first generation of seabed miners would probably be operating in the region of the Clarion and Clipperton fracture zones in the northeast central Pacific Ocean, 1,000 miles or more from land—which, in that case, would be the Hawaiian Islands. However, if interference were threatened, naval protection might be necessary for a time.

55. A second means of challenging seabed mining might involve economic reprisals against corporations that have assets or franchises in developing countries. The expropriation of assets and the canceling of leases or operations comes to mind as an immediate form of economic retaliation. We think the likelihood of this course of action is small, particularly inasmuch as it could precipitate costly counterretaliation by governments sponsoring the affected seabed miners.

56. Finally, legal actions might be instituted challenging title to the nodules and seeking a declaration that the resources of the deep seabed were in fact the "common heritage of mankind" and that the miners of such resources under a reciprocating states agreement would have to account to the international community for such resources. It is conceivable that such an action could be brought by a foreign country in a US Federal District Court if seabed nodules were transported to the United States for processing. The possibility of a US Federal District Court holding in favor of the Group of 77 on this issue would appear to be extremely remote. Another possibility is a suit brought in the International Court of Justice by a developing country against the United States, West Germany, or other states challenging the right to mine seabed resources. The outcome in that forum would be considerably less certain than in a US Federal District Court, but if the United States felt that the outcome was likely to be unfavorable it could refuse to adjudicate the case on the basis that the matter was of essentially domestic concern to the United States and thus not within the compulsory jurisdiction of the World Court.

57. ***Other Issues.*** In this situation, the effect on US interests in marine scientific research, protection of the marine environment, and jurisdiction over the continental shelf would be similar to what they would be in the situation where the United States alone remained outside the treaty.

III. The World Without A Comprehensive Treaty

58. A comprehensive law of the sea treaty is perceived by many as valuable in terms of promoting world order, avoiding conflicts, ensuring stability, and encouraging orderly resolution of disputes. The absence of such a treaty, however, does not necessarily lead to opposite results. Though there would be disappointment and some political aftershocks following a failure of UNCLOS III, customary law of the sea would continue to evolve and the direction of that evolution would depend on states' practice over time.

59. ***Coastal State Claims and Navigation.*** Actions and claims by states in a nontreaty world are likely to be more restrained and fewer in number than is indicated by the rhetorical statements in UNCLOS III. To the extent the past is any indication, the number of ocean-related conflicts to be expected in the near future is likely to be small. Conflicts in the ocean will stem less from a failure to have an agreed treaty than from longstanding political rivalries and from the increased diversity and intensity of the uses of ocean space.

60. Even if UNCLOS III does not adopt a formal treaty, the last draft treaty presented to the conference by its president is apt to have considerable influence on the direction of the customary international law process. The provisions of the Draft Convention, excluding the seabed mining texts, would probably survive as an authoritative statement of international law. Thus, it would be incumbent on the United States and other major maritime states to continually reaffirm their support of the navigation provisions of the draft treaty regardless of the outcome of the LOS Conference.

61. A draft treaty on present terms that fails to enter into force will deter national claims that exceed its norms and will also create a basis for protests against the exercise of excessive national jurisdiction by coastal states. Individual portions of the draft treaty could be eroded as certain states pick and choose among articles, accepting those which they support, and rejecting those they would claim failed to gain a genuine consensus at UNCLOS III. The degree to which draft treaty articles were or were not accepted as norms of international law, however, would come as a result of state practice on navigation and overflight as evidenced by declarations and counterclaims, and, occasionally, dispute settlement.

62. The majority of territorial sea claims will be within the 12-mile limit, but a number will continue to exceed that figure. A 200-mile fishing zone will continue to meet the needs of most coastal states, but such states as Canada and Argentina will press to manage fish stocks that straddle the 200-mile limit. Although 200-mile resource zones are now a part of the body of customary international law, the more comprehensive notion of an exclusive economic zone with detailed rights and duties is not yet firmly established in international law. Accordingly, there will be grounds for claiming that waters more than 12 miles from the coast are high seas and subject to the traditional freedoms of the high seas.

63. Some states will, over time, try to give a more "territorial" orientation to their economic zones, and attempt to create such special-purpose areas as security zones, nuclear-free zones, and zones of peace, but these will not be widely recognized, and in some instances will be directly challenged.

64. Innocent passage will prevail in the territorial sea, but some states will continue to declare that this right exists for warships only upon prior notification to and with the consent of the coastal state. Nuclear-powered ships, those carrying dangerous cargoes, and large tankers may be subjected to additional limitations, perhaps the requirement to notify the coastal state of their approach or special routing, but there would be no impairment of the basic right of innocent passage. Sovereign immunity would still be respected for warships, however.

65. Transit through straits used for international navigation will generally not be subject to interference by bordering states, although there may be efforts in certain instances to impose limitations not specified in the draft treaty. Certain straits states, such as Oman, South Yemen, Indonesia, Malaysia, Singapore, and

Spain, may invoke domestic laws for the safety of navigation, regulation of marine traffic, and pollution control, statutes which, if acquiesced in, could hamper commercial traffic.

66. If the 12-mile territorial sea becomes a widely accepted norm of international law, then many existing international straits, which currently have high seas running through them and thus free passage, would become overlapped by territorial waters and might well be subject to a regime of "innocent passage" only (which does not permit overflight and submerged passage). Additionally, the coastal state could claim the right to insist upon conformance to national standards regarding such items as the safety of traffic and pollution control. This could be used to control the size, cargo, and system of power of ships transiting the straits. In countering such contingencies, however, the maritime nations would be able to argue—though not necessarily sustain—the point that a regime of free passage would still exist on the basis of customary law, in straits overlapped by territorial sea extensions.

67. If UNCLOS III fails to produce a treaty, the concept of archipelagic sea lane passage through the internal waters of archipelagic states could be threatened. Like transit passage in international straits, archipelagic sea lane passage would permit continuous, expeditious, and unobstructed transit. In the absence of a treaty, archipelagic states such as Indonesia might ignore provisions in the Draft Convention for unimpeded passage of military and commercial vessels and aircraft. Indonesia's interest in the LOS Conference has been particularly intense. Its primary aim in UNCLOS III has been to secure international recognition of its archipelagic definition of sovereign territory. Without a treaty, Indonesia will continue to assert vigorously its right to receive prior notification of foreign warships and aircraft transiting the archipelago, threatening severe and lasting political consequences whenever this is contested.

68. ***Seabed Mining.*** In the event UNCLOS III cannot reach agreement on a treaty or the LOS convention does not garner enough ratifications to enter into force, the United States, the United Kingdom, West Germany, France, Belgium, the Netherlands, and Italy would be quick to upgrade to treaty status their reciprocating states agreement on seabed exploitation. Japan and other developed states would also accede to such a treaty, ending most questions concerning the adequacy of the investment climate.

69. There could still be political tensions concerning areas claimed on the seabed, particularly if UNCLOS III ended in an acrimonious North-South split. There would be little likelihood of any direct physical reprisals against seabed mining operations occurring in the region of the Clarion and Clipperton fracture zones southeast of Hawaii. However, corporations participating in the seabed mining consortiums might be subjected to harassment or threats. It is even conceivable that firms with assets or franchises in militant developing countries might face threats of expropriation of their properties or termination of their leases.

70. In the absence of a competing, widely accepted comprehensive treaty, there would be a reduced basis for instituting legal challenges to commercial seabed mining conducted under a treaty crafted by and for the industrialized states. Any legal challenges would have to be based solely on the questionable argument that the developed states were violating the concept that the seabed resources were the "common heritage of mankind" rather than on the claim that such mining was in violation of conventional international law.

71. ***Other Issues.*** Without a treaty, marine scientific research in the economic zone would be subject to a discretionary consent regime. Developing coastal states would be likely to claim control over non-resource-related research as well as over research related to living and nonliving resources, as provided for in the Draft Convention, and might claim a full consent regime for the entire continental shelf. Access to foreign waters for research would be based increasingly on political criteria, and the coastal states would demand more say in whether and how the results of the research are published.

72. In the absence of a treaty, there would be only an implied duty to cooperate in preventing pollution, and none to develop uniform international pollution control standards and evenhanded enforcement procedures. Developing countries, in particular, would be content to avoid the costs which might have been incurred by adherence to an international agreement to regulate pollution. As noted earlier, however, the United States, with a strong domestic regime for

pollution control, would have adequate coastal protection, but commercial navigation interests would not enjoy a treaty's tempering effect on coastal states' enforcement of their pollution regulations.

73. The United States and most of the other states with broad continental shelves would follow the criteria of the Draft Convention in establishing the outer limits of jurisdiction over the shelf where it extends beyond 200 miles. Boundaries between opposite and adjacent states would be established, as at present, through bilateral negotiations. There would, of course, be no obligation to share any revenues from exploitation beyond 200 miles.

IV. Potential for Global Polarization

A. North-South Relations

74. The law of the sea negotiations—especially those on seabed mining—encompass some of the more important goals of the "new international economic order" sought by the developing countries. Their involvement in seabed mining, on the present terms of the Draft Convention, would enable them to extract modern technology from seabed mining companies as a condition for corporate access to minesites in the areas beyond the limits of national jurisdiction. It would also enable them to establish upper limits on seabed output of manganese, nickel, copper, and cobalt to protect developing countries that are land-based suppliers of these metals. Also, if the International Seabed Authority could succeed in mining and selling these seabed metals, the profits could be distributed among the Third World states.

75. Hence, for the developing countries the outcome of UNCLOS III is a bellwether for measuring progress in the North-South dialogue. The desire for such progress in the Third World is great and the effort to bring it about, persistent. The developing countries as a group feel that they have to succeed in the one forum where they are strongest—the United Nations—before they can force any meaningful changes in direction of power in such institutions as the IMF and IBRD, where they are a voting minority.

76. Even the least sophisticated of the developing countries is aware that, by articulating the concept of the "common heritage of mankind," they have more or less succeeded at UNCLOS III in creating a political climate in which their participation is felt to be necessary to develop a legal regime for seabed mining. They have successfully bargained navigation provisions against seabed mining provisions in the Draft Convention, and have sought to mold a nascent seabed industry into a working example of the type of system the Third World considers just and equitable.

77. The developing countries' patience with the treaty process and their tenacity on the seabed issue may also be explained by the plenipotentiary nature of UNCLOS III. In other recent North-South forums the developing countries also constituted a majority and could pass measures or resolutions at will, but such statements have had no legal force; the industrialized nations could ignore them. In the LOS Conference, however, some of the decisions will be binding on much of the international community and could have a precedent-setting effect on future UN-sponsored negotiations that might seek to manage other global commons.

78. If pressed by the United States and other industrialized states interested in mining the seabeds, the G-77 will agree to limited concessions on the seabed texts in the Draft Convention. The G-77 leadership would probably accept changes that would assure a seat on the ISA Council for the United States, better guarantee access to minesites for qualified corporations, ease requirements for the forced transfer of technology, and liberalize the proposed controls on the output of seabed metals. Such alterations are likely to be viewed as changes in degree, not kind, since the philosophic underpinnings of the seabed texts, particularly the common heritage concept, would remain unscathed.

79. There would be strong resistance, however, to US insistence on changes that would clearly undermine the common heritage concept. The G-77 would strongly resist changes that would reject:

— An International Seabed Authority with powers to govern the exploitation of seabed resources.

— A functioning Enterprise.

— The parallel system of exploitation with provision for the reservation of prospected minesites.

— Arrangements for the transfer of technology to the Enterprise, production controls, and revenue sharing.

80. With or without a comprehensive LOS treaty, North-South discussion about an NIEO would continue along much the same track that would be taken if the seabed issue and UNCLOS III had never existed. However, if the treaty process fails or the industrialized states fail to accede to a comprehensive treaty, the Group of 77 would raise the issue again and again in international forums as proof of the North's unresponsiveness to the Third World's "just and equitable" claims. The South, as a group, would continue to demand concessions from the North and to try to wrest control over international institutions. The G-77 would probably view the absence of a treaty as a setback, but one that would not require changing either the goal of a "new international economic order" or the confrontational, rhetorical methods used to gain it.

81. It would be a mistake, however, to assume that failure to adopt an LOS treaty would seriously impair relations between industrialized countries and the developing countries. The latter are not homogeneous on either LOS or North-South issues. On most seabed issues, official statements of the developing countries are remarkably uniform; yet there has been sporadic dissension within the G-77. The divergent interests and economic performance of the developing countries weakens the South's ability to make serious threats. So long as the LOS treaty is up in the air and seabed mining only a distant possibility, the cost to individual developing countries of maintaining a seemingly united negotiating front on this and other North-South issues is small. Meanwhile, the developing states would continue to make their necessary economic transactions with and foreign policies toward the industrialized countries as usual through bilateral negotiations and dealings with multilateral organizations.

B. Relations Among Industrial Nations

82. Attitudes of the major developed nations toward law of the sea in general, and the question of seabed mining in particular, are a complex amalgam of broad foreign policy concerns, parochial national interests, and pragmatic economic considerations. Each of the states potentially interested in sponsoring seabed consortiums—West Germany, France, the United Kingdom, Japan, Belgium, Italy, Australia, and the Netherlands—is motivated by different historical legacies and economic necessities.

83. In most developed countries, law of the sea is not a high-visibility subject. In West Germany there is little public scrutiny of the subject. Bonn believes that the present Draft Convention offers the nation few benefits. The treaty's award of near-total jurisdiction over fisheries to coastal states discriminates against Germany's distant-water fishermen. Further, the seabed mining texts have shortcomings that the Germans have been pointing to for several years.

84. In Japan the LOS treaty is not a high-profile political topic, being handled chiefly by technicians in the bureaucracy. The Japanese share some of the US reservations on seabed mining. They see a powerful movement, however, toward adoption of the treaty in 1982, and they will not stand alone with Washington in opposing that movement.

85. France, on the other hand, has shown a heightened interest in the subject. French interest was greatly stimulated by the destructive consequences of the breakup of the tanker Amoco Cadiz off the coast of Brittany in 1978. The resultant damage to their coast sensitized the French to the threat of marine pollution and, indeed, turned Paris into a vigorous advocate of expanded coastal state control over tanker traffic passing close to shore.

86. The British also have shown a greater interest in the effort to fashion a new oceans treaty than have the Germans and Japanese, but the treaty has not become a major public issue. The United Kingdom has important interests at stake in the negotiations because of its large continental shelf oil and gas deposits, and it would prefer to see the talks wrapped up soon. Like the other major industrialized states, however, the United Kingdom hopes that the treaty can be revised to make it acceptable to the United States.

87. Law of the sea is also a relatively low-visibility topic in the other three states comprising the "like-minded" group of potential seabed miners. Neither the public nor the governments of Belgium, the Netherlands, and Italy accord high priority to the workings of UNCLOS III. The only strong emotion that emerges is Belgium's concern over the inadequacy of the seabed mining texts, because Belgian industry wants to diversify its sources of industrial ores by gaining access to seabed resources.

25X

88. In spite of their strong reservations about the seabed mining provisions of the draft treaty, the industrialized states will not desert the LOS Conference as long as there is some prospect that negotiations could yield improvements in the texts. Even if it became clear that the Group of 77 was unyielding, the West Europeans and Japanese would be very reluctant to withdraw from UNCLOS III while negotiations were still alive. If the United States were to abruptly withdraw before the 11th Session in March 1982, it is most unlikely that any of the "like-minded countries" would follow its lead. While some might state privately that they understood the US position, they would not publicly support the US stand. Some might even be openly critical.

89. Because of their sensitivity to world opinion and domestic criticism, their commitment to North-South negotiations, and their view that the Draft Convention does have certain redeeming features, the like-minded nations would want the United States to remain in the Conference and continue to seek acceptable revisions. Rather than withdraw, they would prefer prolonging the negotiations indefinitely while giving at least the semblance of trying to reach an accord.

90. Recent statements by Western diplomats and foreign ministry officials expressing sympathy for the current US position on LOS may not be indicative of the positions their governments would take should they be faced with a near-term decision that would carry a heavy political price. The willingness of several governments to promote seabed mining legislation, and their consultations with the United States on developing an interim reciprocating states agreement, should not be construed as reflecting a shared view that the Draft Convention is generally unacceptable or that they are set to desert the treaty process. These initiatives are largely precautionary measures intended to ensure that their own economic interests will be protected while the treaty issue remains undecided.

91. The reluctance of like-minded states to abandon the UN treaty process is rooted in various national needs. Some of these states place a high value on the navigation, fisheries, continental shelf, and marine pollution features of the Draft Convention. They are concerned that a sudden collapse of UNCLOS III could result in an unraveling of favorable texts on these subjects. As architects of some of these provisions, they are loath to forfeit the fruits of many years of negotiations in which they have invested heavily.

92. The major developed states also do not wish to disturb their extensive economic ties with the Third World over a relatively low priority issue like LOS. Dependent as they are on the fuels, raw materials, and agricultural products of developing countries, the West Europeans and Japanese are anxious not to offend these supplier countries, which also serve as important markets for their manufactured goods.

93. Perhaps more important, some among the like-minded group are strongly committed to assisting the Third World. The United Kingdom has its long tradition of post-empire Commonwealth relations. France thinks of itself as a "privileged interlocutor" of the Third World, and seeks to preserve its francophone relations with its former colonies, particularly in Africa.

94. Even West Germany, which has a far more arm's-length relationship with developing countries, sees events in the Third World as posing a potential threat to European economic interests and as an invitation for superpower intervention.

95. Japan firmly believes that its stability and prosperity depend upon an uninterrupted flow of energy and raw materials from developing countries, particularly those of the Middle East. Recognizing its vulnerability to instability there, Tokyo is committed to promoting economic cooperation, both private and public, as the most effective means of strengthening the political, economic, and social fabric of the developing countries. Moreover, Japanese leaders consider trade, aid, and foreign investment as the most effective bulwark against Soviet expansionism.

96. The Netherlands seems to have a genuine concern for the needs of the developing countries and encourages other industrialized states to increase their developmental aid to the Third World. Belgium's interest is largely confined to aiding Zaire, its former colony, while Italy has only a modest interest in providing aid to Third World countries.

97. None of the possible outcomes of UNCLOS III would seriously impair long-term relations between the United States and its major defense allies and

industrial partners. As previously noted, LOS is but a small segment of US relations with Western Europe, Australia, and Japan. Even in the unlikely event of a serious split on LOS, the impact on the broad economic, military, and political linkages among these states would be minimal.

25X

ANNEX A

KEY GROUPS IN UNCLOS III

1. The eight-year-long participation of 154 nations in the 13 negotiating sessions of UNCLOS III attests to the belief of many states and blocs of states that some of their long-range interests, LOS or otherwise, will be served by a comprehensive oceans treaty. Although governments realize that the talks are deadlocked over the seabed mining issue, they feel that too much time, money, and intellectual energy have been committed to UNCLOS III to warrant walking away from the bargaining table and deserting what has been accomplished to date.

2. Most of the problems that the conference has encountered in trying to reach agreement on major issues have been attributed to fundamental differences between the developed and the developing nations—the so-called North-South dialogue. Without minimizing this very important aspect of the conference, it must be recognized that because of such factors as geographic location and economic requirements, there are many conflicting national drives operating on individual countries within such seemingly homogeneous groups as:

— The Group of 77, the caucus of 121 developing nations.

— The Soviet Union and its allies.

— The Organization of African Unity.

— The Latin American Group.

— The Group of Five, representing the major industrial/maritime powers (the United States, the United Kingdom, the Soviet Union, France, and Japan).

— The Coordinating Group of Five, representing the major Western industrial/maritime powers (the United States, the United Kingdom, West Germany, France, and Japan).

— The Group of 17, representing the leading maritime nations.

— The Group of 22, the caucus of states favoring the use of the median and equidistant lines for delimiting overlapping national maritime claims.

— The Group of 29, representing the states that favor "equitable principles" as the major guideline for delimiting overlapping maritime claims.

— The European Community.

3. Frequently cutting across the objectives of such major regional or special interest groups are other interests shared by countries normally not considered allies, but finding common purpose at UNCLOS III because they happen to be:

— Major naval and maritime states.

— States with long coasts and/or broad continental shelves.

— Landlocked or geographically disadvantaged states.

— Distant-water fishing states.

— Straits states.

— Potential seabed mining states.

— Archipelago states.

— Oil-producing states.

— Mineral-producing states.

4. With such an admixture of interests, it is difficult to construct a definitive matrix of just where all of the 150-odd participants stand on all of the various issues involved and harder yet to determine now whether a state will, upon termination of the conference, find the Draft Convention on the Law of the Sea acceptable enough to ratify. Cuba is a case in point. Havana is a member in good standing of the Group of 77, but it must be in synchronization with the USSR, remain mindful of its Latin American interests, and try to protect its nickel exports through participation in the group of land-based mineral producers.

5. What follows is an analysis of those key groupings of countries that will play a significant role at this stage of the negotiations. Alliances not explicitly discussed—for example, the Organization of African Unity—have concerns that are addressed in the comments on other interest groups.

The Group of 77

6. The major political reality of UNCLOS III is its domination by more than 120 developing countries. These nations have generally questioned the universal application of oceans concepts fashioned in the past by the major maritime powers, some of which were their colonial overlords. The developing-countries caucus, the Group of 77, has adroitly managed to avoid discussion of issues that would divide its membership—issues such as fishing rights within 200-mile economic zones—and has concentrated its energies on fashioning a seabed mining regime tailored to the "new international economic order." The cohesion of the G-77 on this single, unifying theme over eight years has been remarkable.

7. Many developing countries do not have a large national stake in the LOS Conference apart from their interest in securing control over near-shore resources. Most do not possess a navy, have little industry to speak of, and do not produce metals that are also found on the seabed. They feel, however, that they are part of a historic effort to create a precedent-setting mechanism—the proposed International Seabed Authority (ISA).

The USSR and Its Allies

8. UNCLOS III has presented a difficult negotiating environment for the USSR, as Moscow has simultaneously attempted to pursue two conflicting goals. It has aligned itself with the Western maritime states to forge provisions that protect its navigational interests, while at the same time trying to appear sympathetic to the needs of the developing countries.

9. The Soviet Union has emerged as one of the strongest proponents of retaining the traditional high-seas rights of navigation. Indeed, navigation is the key LOS issue for Moscow. To that end, the Soviets joined the United States, the United Kingdom, France, and Japan in the caucus called the Group of Five, the major industrial/maritime powers. The USSR has also seen to it that its allies, in Eastern Europe and elsewhere, support the concepts of a 12-mile territorial sea and freedom of navigation in straits.

10. The convergence of Soviet interests with those of the United States and other Western nations, however, has frustrated the USSR's desire to promote itself as the friend of the developing countries. The Soviets realize that over the course of the LOS negotiations the G-77 states have tended to identify the USSR and the United States as kindred superpowers, each solely concerned with its own interests. Moscow feels that the United States is currently isolated on the seabed mining issue, but it is finding it difficult to exploit the situation and is not able to build for itself an image as the protector of the Third World from capitalist exploitation.

11. In the negotiations on seabed mining, Moscow has played a complex game. Like the United States, the USSR wants all states to have guaranteed access to the seabed resources on an equal legal footing with the Enterprise. But Moscow has sat back and relied on the United States to do battle with the G-77 over who will be permitted to mine the seabed. The Soviets, however, oppose unlimited access by Western firms and support a quota/antimonopoly system that would allocate access to minesites. Actually, Moscow sees little merit in the creation of a seabed authority, but it is pleased with the three-seat representation the USSR and its allies have been accorded on the ISA's executive organ, the Council.

12. In the 1981 Geneva session of UNCLOS III, the Soviet Union and the East European states pushed for the approval of the Draft Convention as it stands. They fear that reopening negotiations on the seabed mining issue might jeopardize their hard-won gains on navigation matters. They fear, in particular, that the Latin Americans would retaliate by reopening negotiations on such sensitive issues as the legal status of the exclusive economic zone and navigation in territorial waters.

13. The Soviets will continue to emphasize support for adoption of the Draft Convention by consensus. As a second-best alternative, they will accept a vote on the text as a whole. They will, however, strongly resist an article-by-article vote on the document. If the

USSR were to ally itself with the G-77 and attempt to force the adoption of the Draft Convention over the objections of the United States, it would be only on the condition that negotiations not be reopened on settled issues.

14. The Soviet Union, of course, would try to exploit the situation to gain as much capital as possible with the developing countries, alleging that the United States intended to grab for itself the resources of the seabed that the United Nations declared were the "common heritage of mankind."

15. All indications point to support of the Draft Convention by the East European states. Hungary, speaking for the group in Geneva, commented that the landlocked/geographically disadvantaged states are the real losers at UNCLOS III but that, nevertheless, Budapest can accept the overall package of compromises found in the Draft Convention. Cuba and Vietnam would also accept the present text.

Naval and Maritime States

16. The major maritime states of Europe, North America, and Asia have collaborated to protect traditional concepts of freedom of navigation and overflight on the high seas in the face of vastly increased ocean usage and spreading coastal state territorial and resource claims. From the outset of the LOS undertaking, the naval and maritime states have sought to maintain navigation rights in the territorial sea as well as navigation and overflight rights in all areas beyond the territorial sea, in archipelagoes, and in international straits that are overlapped by 12-mile territorial seas. None will adhere to a treaty that would restrict military and/or commercial navigation and overflight in these realms.

17. Since coastal nations, under normal circumstances, are unlikely to interfere with international commercial navigation and overflight in their coastal zones, archipelagic sea lanes, and straits, it is the military navigation and overflight rights in these three areas that become the key concern of the naval and maritime group. Moreover, of the three areas, straits pose the most critical problem (figure A-1 shows selected world shipping lanes and straits).

Coastal States

18. The overriding objective of developing countries that fall in this interest group has been to extend their jurisdiction over offshore resources and to control and benefit from scientific research conducted in their waters. Accompanying this is a strong source of national pride in extending the reach of national jurisdiction over adjoining seas. The United States, Japan, and the Soviet Union were initially opposed to the principle of the 200-mile economic zone, but they were overwhelmed by weight of numbers in the conference, the inclusion in the Draft Convention of such a zone having become the *sine qua non* at the conference for the large number of developing coastal states. Early support for the 200-mile zone among developed states came only from Iceland, Norway, and Canada, largely because of their interest in controlling Japanese and Soviet exploitation of fish stocks along their coasts.

19. The coastal resource and scientific research aspects of this group's LOS objectives, however, are no longer at issue. About 70 percent of the world's coastal states have already claimed jurisdiction over the resources and control over the conduct of marine scientific research within 200 miles of their coasts. Moreover, these claims are now generally recognized by other states and are rapidly becoming part of customary international law.

20. The attitudes of the various members of this group toward the navigation and overflight provisions of the Draft Convention are, however, germane to this NIE. The Draft Convention calls for high-seas freedoms of navigation and overflight beyond the territorial sea, a form of unimpeded military and commercial navigation and overflight rights in international straits and through archipelagic sea lanes, and the right of innocent passage for both military and commercial ships in the territorial sea. The Draft Convention's provisions for military ships and aircraft, however, have never set well with some coastal states, and recently at the conference a group of them (Argentina, China, Ecuador, North Korea, the Philippines, Malta, Pakistan, Libya, Papua New Guinea, Romania, and Indonesia) drafted an informal proposal that would restrict military navigation in the territorial sea by requiring prior coastal state authorization. Of these 11,

Argentina and Ecuador claim 200-mile territorial seas. The Argentine law, however, allows free navigation and overflight beyond a 12-mile coastal zone. Ecuador has been the staunchest defender of the 200-mile territorial sea, to the point where it now may have become isolated. Recent statements by Ecuadorean officials and in the local press, however, give strong indications that, within the context of a comprehensive oceans treaty, Ecuador will bring its maritime claim in line with the Draft Convention. The remaining states claim 12-mile territorial seas, but Libya and North Korea claim jurisdiction over navigation and overflight beyond: Libya throughout the Gulf of Sidra, and North Korea for 50 miles. Libya made its claim originally to gain control of offshore resources in the pre-200-mile EEZ era (1973), a claim that the entire gulf is internal waters. The Korean claim, made in 1977, was promulgated entirely for security reasons. Neither country, for reasons of national pride, is likely to roll back these claims to the limits proposed in the Draft Convention.

21. Indonesia, which sits astride several important international straits, probably does not want to change the Draft Convention's transit passage regime, having said in the past that it could live with the straits regime in the context of an oceans treaty that recognizes the archipelagic state concept. Its motive for wanting to restrict foreign warship passage in the territorial sea, like that of the Philippines, is rooted in a desire to defend against perceived internal and external security threats and to protect its asserted sovereign rights. China wants to keep foreign warships at arm's length from its coast and to protect its broad and longstanding claims to the continental shelf and the islands of the China seas.

22. Morocco and Oman, coastal states that border other important straits, have accepted the transit passage regime in the context of an operative, comprehensive oceans treaty after having been assured that the Draft Convention permits them to designate sea lanes and traffic separation schemes and allows for establishing liability for damages resulting from collisions and pollution. Spain's position on transit passage is unclear at this point. Madrid indicates that it can accept the regime if minor cosmetic changes are made in the Draft Convention's language listing coastal state rights in setting pollution control rules for straits. What Syria intends in its newly declared 35-mile territorial sea is unclear. A Syrian official has stated that "international shipping" will not be affected. He did not mention military navigation and overflight.

Seabed Miners

23. The United States, Japan, and the states of Western Europe are heavily reliant on imports of minerals in general and particularly of those to be found on the seabed (see figure A-2). From 1976 through 1980, US mines supplied none of the cobalt or manganese and less than 10 percent of the nickel consumed in the United States.[1] Moreover, although it is the world's largest copper producer, the United States imported more than 10 percent of the copper it consumed during those years. The cost of 1979 imports of these four metals into the United States exceeded $2 billion. However, there are many land-based suppliers of these ores, and there is little likelihood that effective producer cartels will be formed.

24. A key concern underlying the current interest in seabed mining is the growing anxiety about African suppliers of critical metals. The uncertain future of South Africa, Zimbabwe, Zaire, and other mineral-producing states in southern Africa raises the possibility of supply interruptions. These countries are major producers and exporters of metals found on the seabeds—manganese, cobalt, and copper—as well as such nonseabed metals as chromium and the platinum group, and the United States and other Western industrial nations are highly dependent on imports from them. For instance, approximately 58 percent of US cobalt supplies come from Shaba Province in Zaire, an area of chronic instability. South Africa, believed to possess close to half the world's reserves of manganese and responsible for 39 percent of non-Communist world production in 1976, is also potentially unstable.

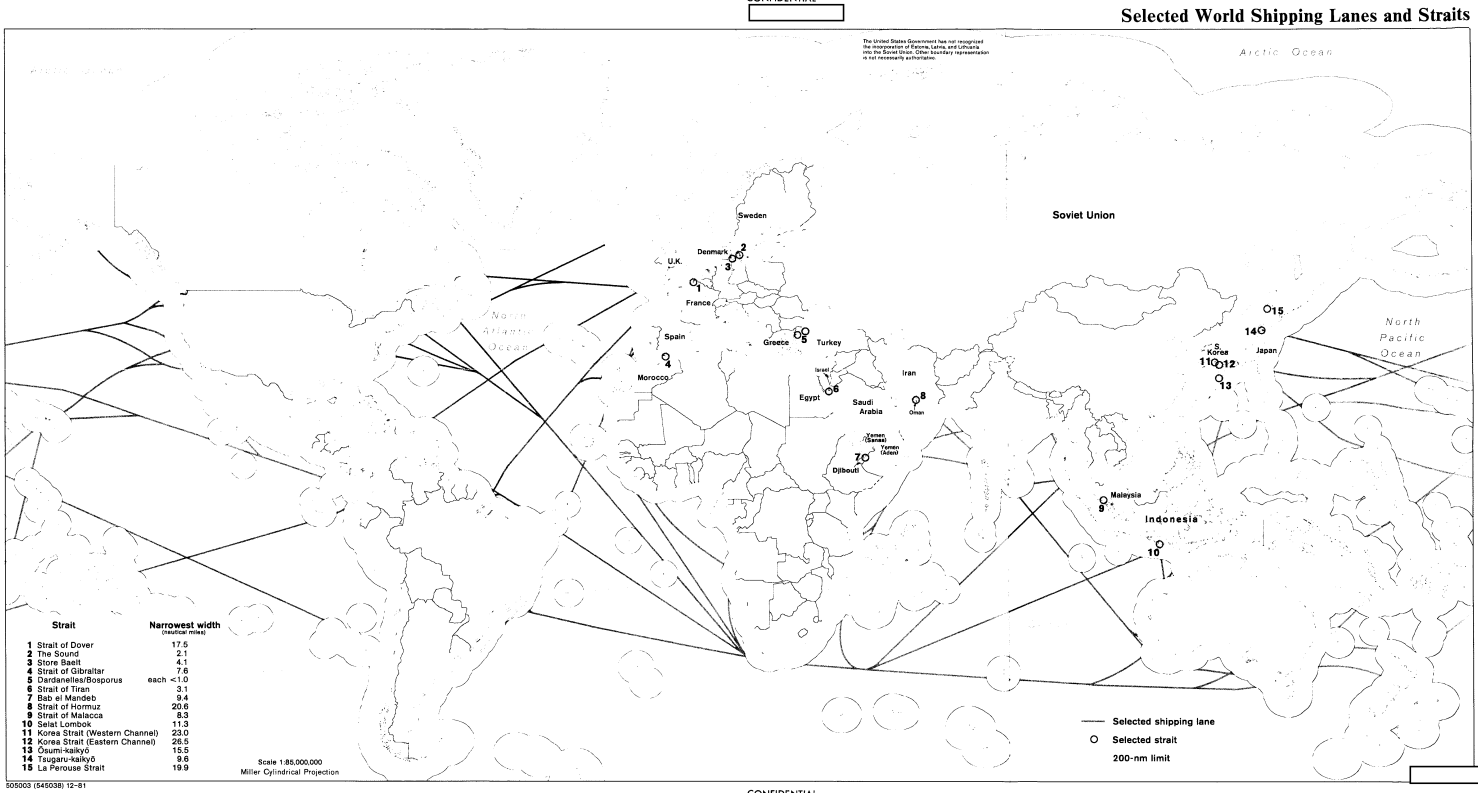
25. A handful of international consortiums (see table) have been formed to develop deep ocean mining systems capable of lifting manganese nodules from depths as great as 6.5 kilometers below the ocean surface. The membership of the consortiums has changed little since their creation in the late 1960s and

[1] In this paper, references to metal production, consumption, and trade are in terms of metallic content unless otherwise specifically noted.

Figure A-1

Selected World Shipping Lanes and Straits

25X1



	Strait	Narrowest width (nautical miles)
1	Strait of Dover	17.5
2	The Sound	2.1
3	Store Baelt	4.1
4	Strait of Gibraltar	7.6
5	Dardanelles/Bosporus	each <1.0
6	Strait of Tiran	3.1
7	Bab el Mandeb	9.4
8	Strait of Hormuz	20.6
9	Strait of Malacca	8.3
10	Selat Lombok	11.3
11	Korea Strait (Western Channel)	23.0
12	Korea Strait (Eastern Channel)	26.5
13	Ōsumi-kaikyō	15.5
14	Tsugaru-kaikyō	9.6
15	La Perouse Strait	19.9

505003 (545038) 12-81

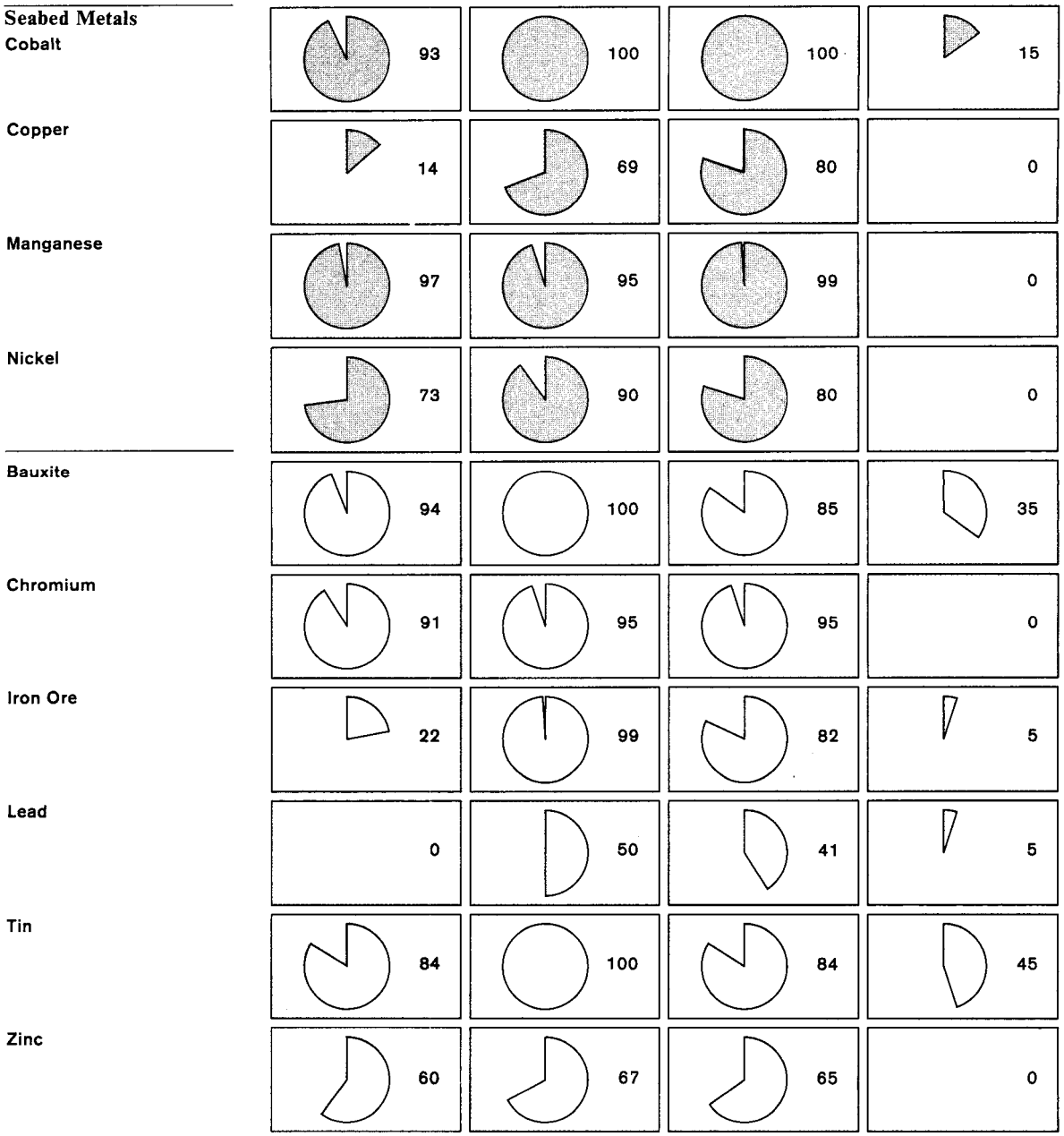
25X1

25X

Figure A-2

Minerals and Metals: Imports as a Share of Consumption, 1980

Percent



25X

585828 12-81

25X

Seabed Mining Consortiums

Consortium/Members	Country	Reported Share (%)
Kennecott Group		
Kennecott Copper Corporation	US	50
Rio Tinto Zinc Corp., Ltd.	UK	10
Consolidated Goldfields, Ltd.	UK	10
British Petroleum Co., Ltd.	UK	10
Noranda Mines, Ltd.	Canada	10
Mitsubishi Corp.	Japan	10
Ocean Mining Associates		
US Steel Corp.	US	25
Sun Co., Inc.	US	25
Union Miniere S.A,	Belgium	25
Ente Nazionale Idrocarburi	Italy	25
Ocean Minerals Company		
Royal Dutch Shell Group	Netherlands	25
Royal BOS Kalis Westminster, NV	Netherlands	10
Lockheed Aircraft Corp.	US	25
Standard Oil of Indiana	US	25
Ocean Management, Inc.		
Inco, Ltd.	Canada	25
AMR (Preussag, Metallgesellschaft, Saltzgitter)	West Germany	25
Deep Ocean Mining Company: 23 Japanese companies, including Sumitomo, Nippon Mining, Dowa Mining	Japan	25
Sedco, Inc.	US	25
AFERNOD		
Centre National Pour l'Exploitation des Oceans (CNEXO)	France	
Commissariat a l'Energie Atomique (CEA)	France	
Societe Metallurgique le Nickel (SLN)	France	
Chantiers de France-Dunkerque	France	
Bureau de Recherches Geologiques et Minieres	France	
Pechiney	France	
Deep Ocean Minerals Association		
35 firms	Japan	
Eurocean		
3 Swedish firms	Sweden	
1 French firm	France	
Continuous Line Bucket Group		
CNEXO	France	
SLN	France	
CEA	France	
Deepsea Ventures, Inc.	US	
Dome Exploration	Canada	
COMINCO	Canada	
Tech Corporation	Canada	
International Nickel Company	Canada	
Sumitomo	Japan	
AMR	West Germany	
Atlantic Richfield Corporation	US	
Occidental Minerals	US	
Placer Developments	US	
Utah International	US	
Superior Oil Corporation	US	
Broken Hill Pty.	Australia	
Phelps Dodge	US	
Furutaka	Japan	
Ocean Resources, Inc.	US	

25X

25X

early 1970s. Three are US led—Ocean Mining Associates, Ocean Management, Inc., and Ocean Minerals Co. The Kennecott Group is controlled by UK interests. Other entrants include the French enterprise, AFERNOD, and the Continuous Line Bucket (CLB) Group, a consortium of firms principally interested in developing seabed mining equipment.

26. There is considerable involvement of firms from the European Economic Community. In addition to AFERNOD, companies chartered in the United Kingdom, Italy, Belgium, the Netherlands, and West Germany hold significant equity positions in all four of the major seabed mining enterprises. Canadian and Japanese corporations share ownership of the Kennecott Group and Ocean Management, Inc. The British members of the Kennecott Group (with the exception of British Petroleum) were subsidized in 1974 by a grant of 860,000 pounds (then about $1.8 million) from the British Government. It is reported that West Germany's AMR Group was even more heavily subsidized, and the support of the French Government is also thought to be extensive. Tokyo plans to spend $200 million on the development of seabed mining and processing technology over the next seven years.

Land-Based Producers

27. The land-based producers are responsible for the production limitation provisions in the Draft Convention that are anathema to the United States and other seabed miners. Designed to protect their mineral industries from competition of the seabed deposits, these production limitations are of varying importance to the members of this group and are not always determined by the position of minerals production in a country's economy. Canada, for example, whose nickel accounts for only 0.3 percent of the country's exports, gives high priority to maintenance of production controls in order to protect employment in its mining areas. Anti-US feelings may also play a part in Canada's tactics on this issue. Chile and Peru, whose copper production would be little affected by production from the seabed, and other G-77 land-based producers view production controls as a key element in the NIEO and accord high priority to maintenance of these limitations.

28. The land-based producers that would be severely affected by a functioning seabed mining industry are Zaire and Zambia, which depend on exports of cobalt for a large part of their foreign exchange earnings. Manganese producers, like Gabon, also have a stake in protecting their domestic industry.

25X

ANNEX B

RECENT TRENDS IN JURISDICTIONAL CLAIMS

1. In recent years there has been a steady expansion of coastal state claims to offshore waters in terms both of the geographical extent of areas over which jurisdiction is asserted and of the rights claimed within these areas. This process of "creeping jurisdiction" over former high-seas areas has been aided both by past lack of consensus among governments as to what the maximum extent to offshore claims should be and by the increase in the number of independent coastal countries.

2. Sixty percent of the national claims to the territorial sea (see figure B-1) are to a 12-mile breadth, the maximum extent permitted by the Draft Convention. In December 1973, when UNCLOS III began, 43 states claimed less than a 12-mile territorial sea; of these, 28 (including the United States) claimed 3 miles. By the fall of 1981, the number asserting less than a 12-mile territorial sea had dropped to 29, with 23 of these (again including the United States) claiming 3 miles. During the same period, the list of countries with 12-mile territorial seas had grown from 52 to 80. Also, during this period, the number of states claiming breadths of greater than 12 miles grew from 19 to 26, with 14 countries now claiming a 200-mile territorial sea (see figure B-2).

3. Expansion also occurred with respect to exclusive fishing zones. In December 1973, 21 countries claimed exclusive fishing zones beyond their territorial seas out to 12 miles. Eleven others claimed zones with breadths of between 12 and 200 miles, and three asserted jurisdiction out to the full 200 miles. By the fall of 1981, 23 countries had 200-mile exclusive fishing zones, while the number with fisheries zones less than 200 miles in breadth had dropped from 28 to 14.

4. As for claims to a 200-mile exclusive economic zone, there were none in December 1973, but some eight years later 51 coastal states claimed such zones. By definition, of course, the EEZ is also a zone of exclusive fisheries. Both categories of zones are permitted under the terms of the Draft Convention. However, a number of countries assert rights in the economic zones that go beyond those allocated to coastal states under the Draft Convention.

5. One difficult issue in the law of the sea negotiations has been the question of whether a coastal state should have the right to require prior notification for the passage of warships through its territorial sea. The United States has successfully resisted the inclusion of such a provision in the Draft Convention; yet 29 states now have regulations requiring prior notification, an increase of 14 countries since the start of the Law of the Sea Conference (see figure B-3). Eight states also claim extraterritorial security zones, extending generally 18 to 24 miles beyond their coasts (see figure B-4). The broadest of these is the 50-mile-wide security zone claimed by North Korea. Such zones, of course, are not authorized by the Draft Convention.

6. Another form of jurisdictional claim relates to pollution control regulations. The Draft Convention permits all coastal states to enjoy certain defined controls over marine pollution in their offshore areas, but 56 countries have moved beyond this and have unilaterally established pollution regulations in maritime zone claims. Of these states, 15 claim such controls only in their territorial sea, 27 in their exclusive economic zones, and the remaining 14 in other extraterritorial areas.

7. The contiguous zone is a specialized type of offshore area, seaward and adjacent to the territorial sea, within which the coastal state has the right to prevent infringement of its customs, fiscal, immigration, and sanitary laws. The Draft Convention authorizes such a zone out to a maximum of 24 miles, and 20 countries have proclaimed contiguous zones.

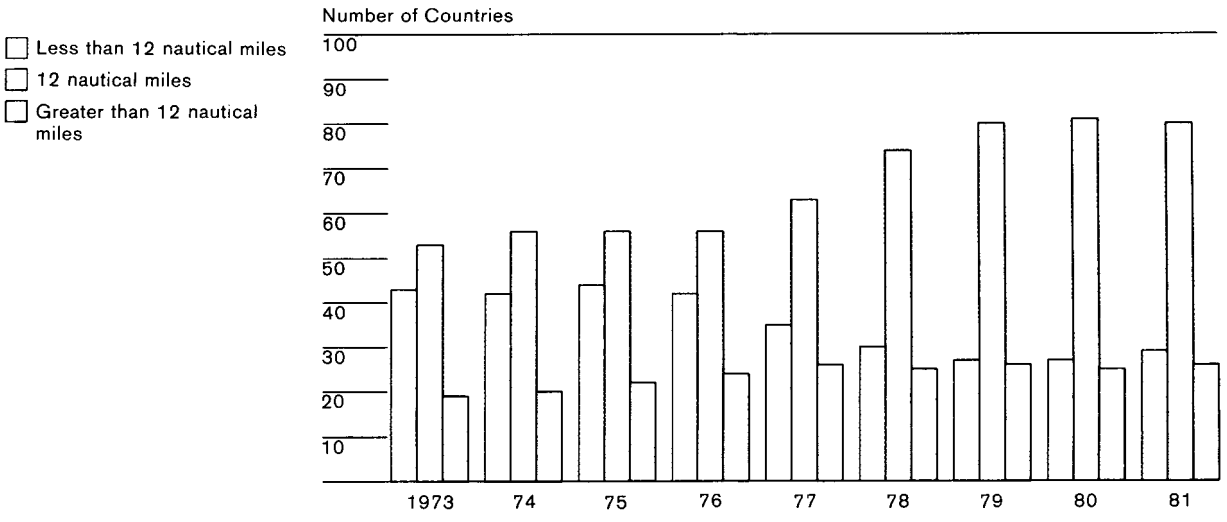
Motives for Jurisdictional Claims

8. National pride coupled with a desire to derive economic benefits from coastal resources are the fundamental motives underlying expanded maritime

25X

Figure B-1

Breadths of Territorial Sea Claims, 1973-81

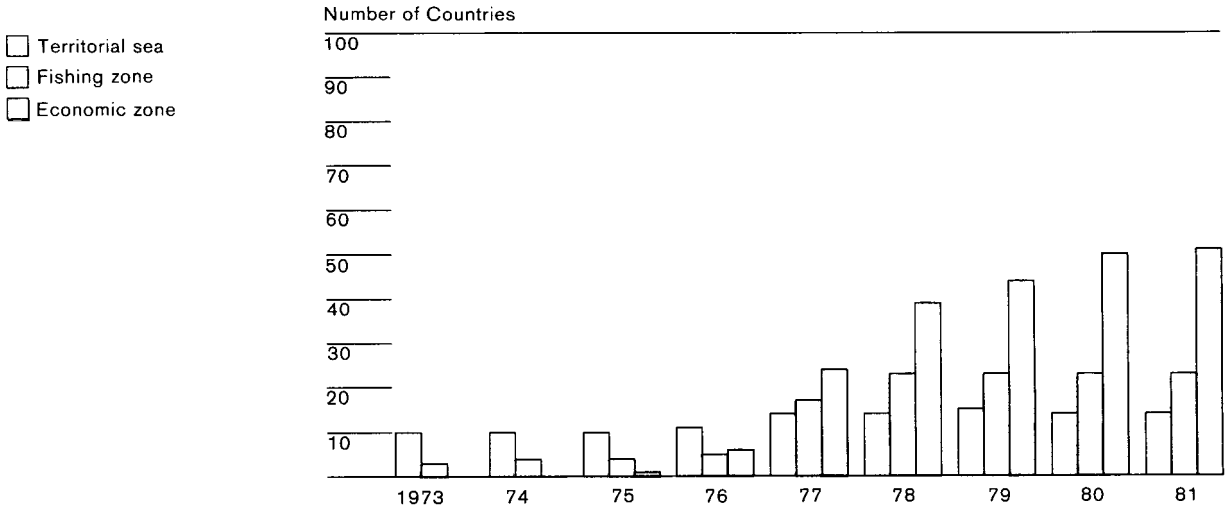


25X

585829 12-81

Figure B-2

200-Nautical-Mile Maritime Claims, 1973-81



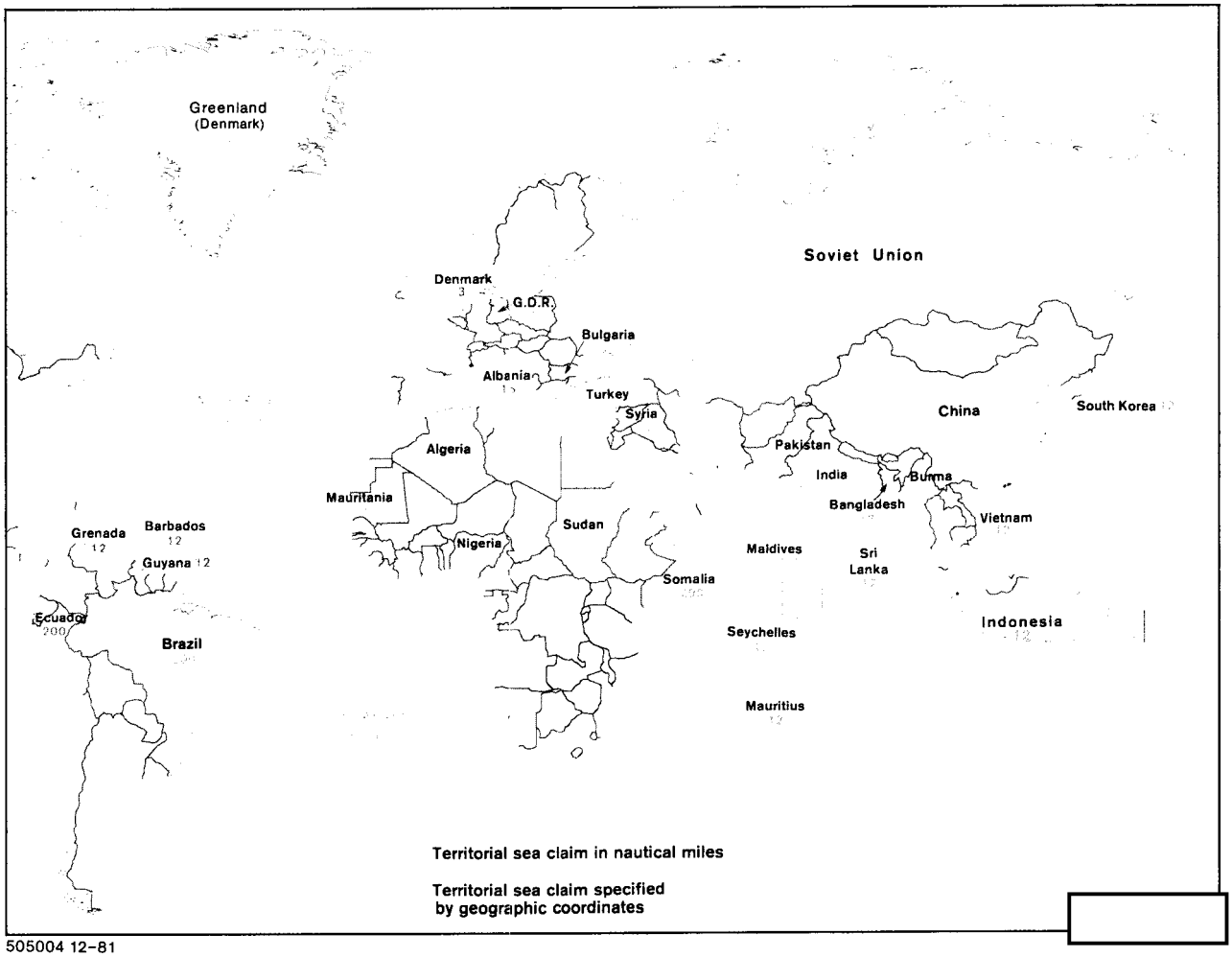
Unclassified

585830 12-81

25X

Figure B-3

States Requiring Prior Notification of Warships Entering Claimed Territorial Seas, December 1981



505004 12-81

25X

claims. The major resources currently at stake are offshore oil/gas deposits and coastal fisheries. The 200-mile exclusive fishing and economic zones will encompass most of the world's oil/gas and fish resources. Other offshore mineral and energy exploitation must await the development of cost-effective technology.

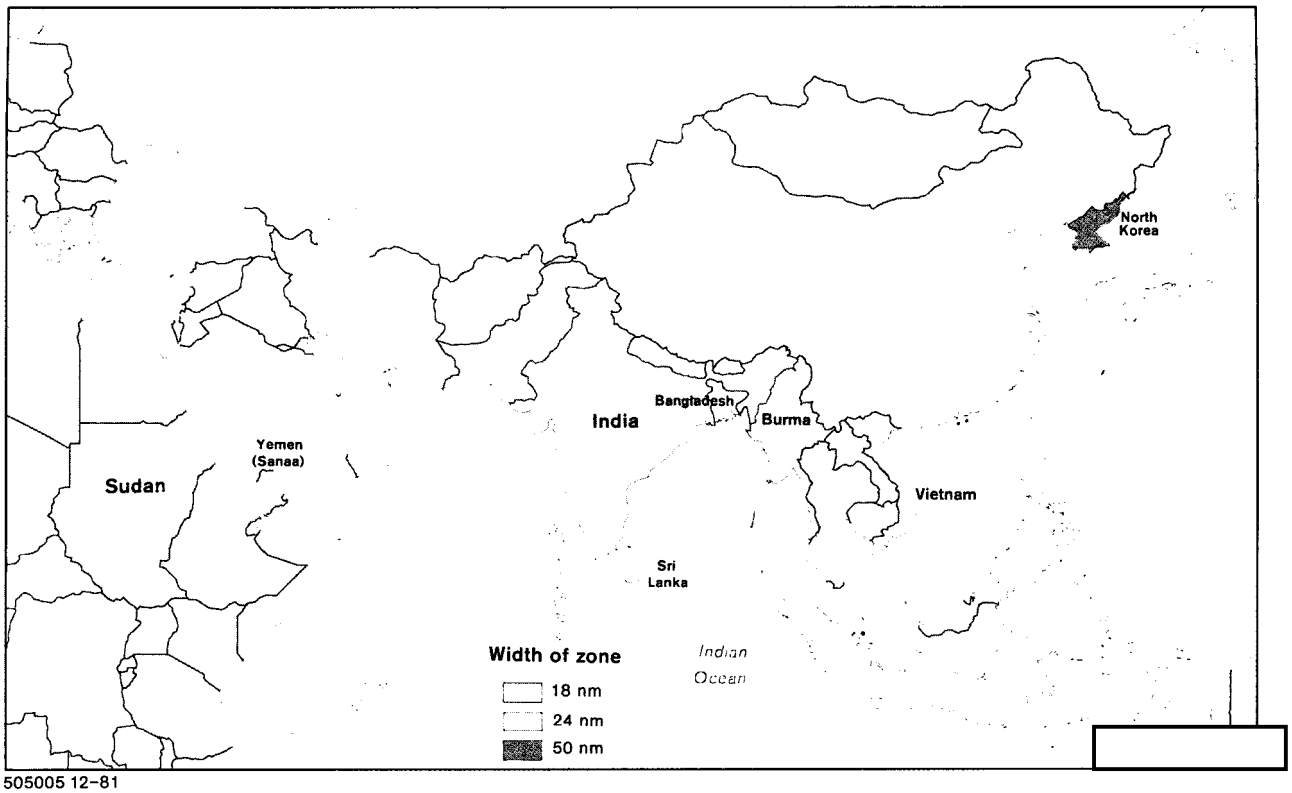
9. National security constitutes another rationale, particularly in the case of such archipelagic states as Indonesia and the Philippines, where separatist movements may be under way in the more remote islands. Their concerns are to limit externally fomented rebellions. Other states are more concerned with curbing smuggling activity. Concern over security aspects of foreign marine scientific research may also be a factor in the assertion of some coastal jurisdictional claims.

10. No nation—even the most advanced—has the capability now to enforce all of its regulations throughout its entire maritime claim. This is particularly so with small island and archipelagic nations such as Papua New Guinea, Mauritius, and the Solomons, which claim ocean areas many times larger than their land areas (see figure B-5). Whatever the enforcement capability, however, there has been no reluctance to

25X

Figure B-4

States With Security Zones, December 1981



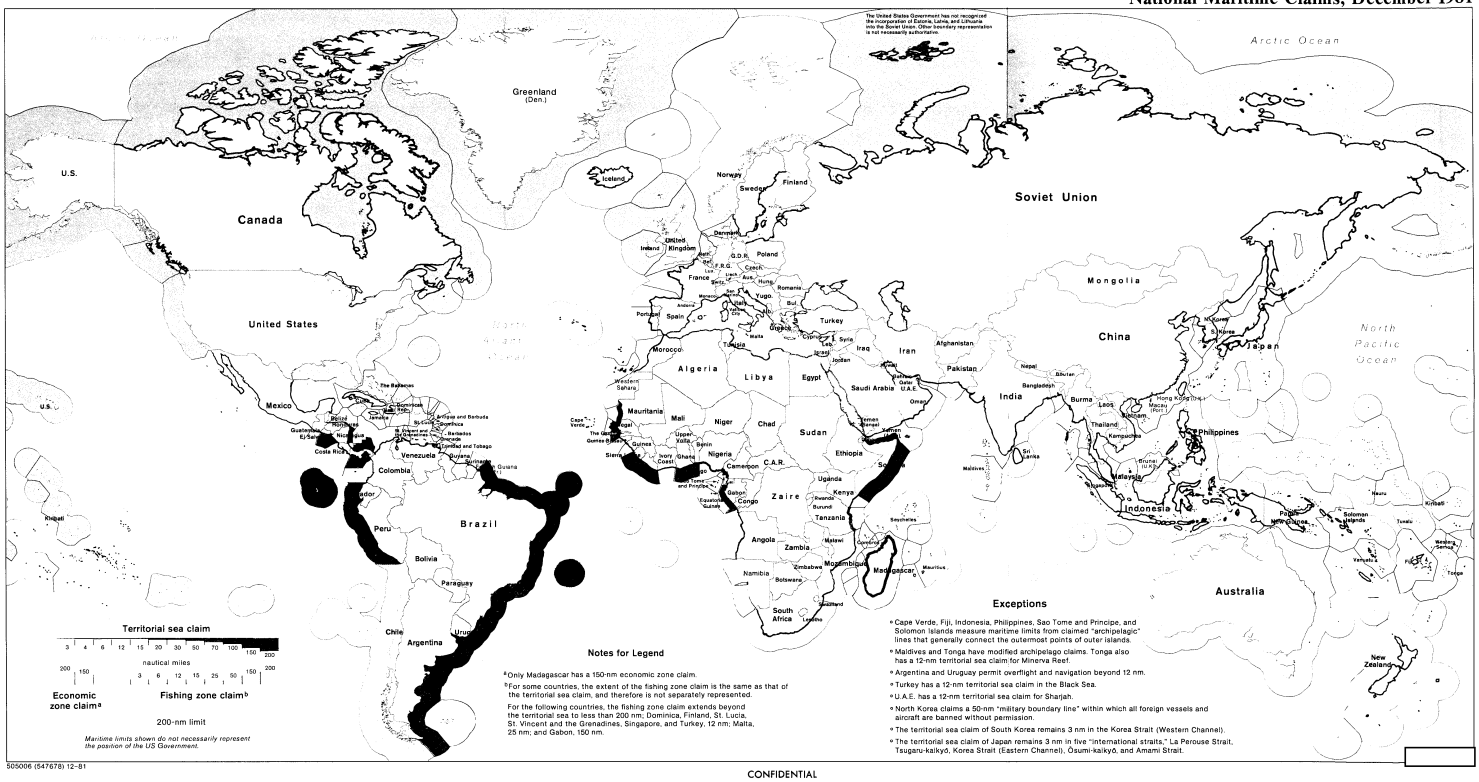
505005 12-81

25X

enforce national regulations—witness the countless fishing boat seizures worldwide, occasionally with loss of life and property.

11. Fisheries regulations are, perhaps, the most effectively monitored because the seasonal nature of fishing patterns enables the coastal state to plan its enforcement activities accordingly. Violations of pollution and smuggling regulations, because of their random nature, are more difficult to curb. Enforcement effectiveness will increase as nations acquire patrol boats, aircraft, and monitoring equipment—a process that is proceeding apace worldwide.

Figure B-5
National Maritime Claims, December 1981



505006 (547678) 12-81

25X1

25X

ANNEX C

SUMMARY OF SEABED MINING TEXTS OF DRAFT CONVENTION

The International Seabed Authority

1. The Draft Convention proposes that an International Seabed Authority be created consisting of an Assembly, Council, Secretariat, various technical commissions, and a mining subsidiary, the Enterprise. All signatories to the Law of the Sea Convention would become members of the Assembly; the 36-member Council, with the power to award mining contracts, would be the principal managerial body.

System of Access

2. This legal regime as set forth in the Draft Convention would be built around a basic compromise between the developing countries, which wanted all seabed exploitation in the international areas of the oceans reserved for the ISA and the Enterprise, and the industrialized Western nations, which initially advocated a licensing system for all qualified corporate and state miners on a first-come, first-served basis. Under this compromise, generally known as the "parallel system," both the companies and the Enterprise would have the opportunity to mine. For every mining site to which the private and/or state-owned firms of the developed countries would have access, another mining site would be reserved for the Enterprise and developing countries.

3. To make both halves of the parallel system workable, the Draft Convention calls for the provision of prospected minesites, technology, and startup financial assistance for the Enterprise. Potential miners, when applying to the seabed authority for a contract, must tender an area of sufficient size to allow two commercial mining operations. The applying firm would indicate coordinates to divide the prospected area into two sites of estimated equal commercial value. The ISA would then select one of the sites for exploitation by the Enterprise. The site thus chosen would be termed a "reserved area," and all sites so designated would collectively constitute the "reserved side" of the parallel mining system. The Enterprise would then decide whether to exploit directly the site chosen by the ISA. If it exercises this option, the Enterprise could mine the site alone, hire contractors to lift and process the nodules, or enter into joint ventures with corporate partners. If it declined to mine, the site would be open for exploitation by developing countries. The developed-country firm, meanwhile, would enter into a long-term contract with the seabed authority to mine the unreserved site, provided it met the ISA's financial and technical qualification standards and agreed to technology transfer and revenue-sharing obligations. Although the power to approve mining contracts rests with the Council, the first judgment on contract applications would be made by the Legal and Technical Commission that would be dominated by developing countries.

Technology Transfer

4. Among the most controversial features of the Draft Convention are its provisions for the transfer of seabed mining technology. The Convention as now drafted would obligate seabed miners to provide the ISA with a general description of their mining equipment, the know-how necessary to use it, and the source of such technology on the open market. If the Enterprise were unable to obtain the same or equally efficient and useful technology in the marketplace, the Enterprise would require the mining firms to sell their technology on fair and reasonable commercial terms. Failure to meet this obligation could result in the loss of an operator's contract.

5. Even technology not owned by the mining firms could be subject to the transfer obligations imposed by the Draft Convention. The mining companies would have to obtain written assurances from their suppliers that they would, if and when the ISA so requested, make their technology available to the Enterprise on reasonable commercial terms if it were not available on the open market. Both of these technology transfer requirements would be included in all mining con-

tracts until 10 years after the initiation of commercial production of minerals from the seabed by the Enterprise.

6. Under the prodding of Brazil, the conference has also produced texts requiring mining firms to transfer their technology to developing countries seeking to exploit reserved sites on the same conditions as those prescribed for technology transfer to the Enterprise. The United States and other industrialized nations have strongly opposed this added obligation, but it remains popular with influential G-77 states that will unquestionably fight hard to retain the "Brazil clause" as part of the Draft Convention.

Subsidies for the Enterprise

7. Some of the extreme positions taken by the developing countries in UNCLOS III reflect their apprehensions about the viability of the parallel system of exploitation. They specifically worry about the capacity of the Enterprise, over the long run, to operate self-sustaining, integrated mining projects. Therefore, in addition to subsidies in the form of prospected minesites and state-of-the-art technology and know-how, the developing countries also seek direct financial support for the Enterprise. To that end, the Draft Convention calls for one-half of the costs of a fully integrated four-metal (manganese, nickel, copper, and cobalt) mining project (commonly thought to exceed $1 billion) to be met by interest-free, refundable loans provided by states that accede to the convention. This initial capital would be furnished by states in the same ratio that they contribute to the regular budget of the United Nations. Debts incurred by the Enterprise in raising the balance of the funds for its first operation would be guaranteed by states in accordance with the same assessment scale. These funds could also be used by the Enterprise for investment in one or more joint ventures with corporate partners in addition to or instead of exploiting a minesite alone. Other direct support would come from a transfer of funds from the ISA, whose revenues would include fees and royalties collected from commercial seabed miners.

8. Perhaps the most novel aspect of the proposed International Seabed Authority is that, if established, it will not only implement the rules and regulations governing the conduct of private firms and states exploiting the seabeds, but will also participate, through the Enterprise, in the business of mining the seabed and processing and marketing the metals derived therefrom. The first responsibility casts the ISA in a traditional role, making it comparable to such organizations as the International Civil Aviation Organization (ICAO) or the Intergovernmental Maritime Consultative Organization (IMCO), which deal with the formulation and implementation of rules regarding certain aspects of commercial air and maritime traffic. The second role proposed for the ISA—the mining function—has no counterpart among existing international organizations. It could make the ISA a self-financing entity free from UN budget control. The mining function of the Enterprise, in effect, would be tantamount to permitting ICAO to run an airline or IMCO to run a shipping firm as businesses in competition with existing commercial and state-owned carriers.

Production Controls

9. Another hurdle to consensus agreement on a seabed regime is the issue of how to soften the impact of seabed mining on the economies of developing countries that produce and export manganese, nickel, copper, and cobalt. These states—including Zaire, Zambia, Chile, Peru, Brazil, Cuba, Gabon, Zimbabwe, and Indonesia—along with Canada (the world's largest supplier of nickel) view the prospect of an unfettered seabed mining industry dominated by US, Japanese, and West European interests as potentially threatening. The new industry, they hold, would compete in the world metals markets against their mines, and then tend to hold prices down. The land-based producers fear that seabed mining would, in effect, transform the current major industrial consumers of the four metals into producers with a guaranteed market.

10. In the course of its deliberations, UNCLOS III has developed a complex production control formula that attempts to placate the land-based producers without unduly restricting the growth prospects for commercial seabed mining. The formula would limit the seabed mining industry to meeting 60 percent of the yearly growth in demand for nickel. The remaining 40 percent of the annual increment would be reserved for land-based producers. In order not to hamstring the seabed industry at the outset, however,

the seabed operators would also be permitted to produce from the first year of commercial production a volume of nickel equal to the cumulative growth in demand for the metal during the five years immediately preceding the startup of commercial production. The production ceiling is pegged to nickel because that metal is currently seen to be the profit leader of the seabed industry. Control of the nickel output would govern the tempo of mining for other seabed metals as well. If the production ceiling is reached, the Council is granted total discretion to select among competing applicants. These controls would last for 20 years, until commodity agreements on the several metals entered into force, or until a review conference amended the LOS Convention, whichever happened first. The Draft Convention's "resource policy" also calls for the establishment of a system of compensation or other measures of economic adjustment assistance to aid any developing-country metals producers that suffer serious adverse economic effects as a result of seabed mining.

11. Although the present texts on production limitation are generally thought to form a solid basis for future negotiation, Canada continues to balk at the compromise. Concern for the future of its nickel industry has led Ottawa to lobby the African land-based producers to support added restrictions on seabed mining output. Zaire, Zambia, and Zimbabwe have given support to the Canadians.

Revenue Sharing

12. Throughout the seabed negotiations, the Group of 77 has pressed the industrialized nations for a high level of transfer payments to the International Seabed Authority, the Enterprise, and ultimately the developing countries themselves. The G-77 views these transfers as payments for the right to mine, arguing that they should be fully compensated for their equity interests in the common heritage of mankind. The developed states have resisted the G-77's efforts to straitjacket the mining firms fiscally, pleading that the details of a financial payments package should await actual operations because the size of the profits cannot be determined in advance.

13. The Draft Convention calls for mining firms to make revenue-sharing payments to the ISA, either through a mixed system of royalties and profit sharing or through a royalties-only system. It is estimated under the so-called MIT Base Case that under either system the ISA's revenues could total nearly $600 million per minesite over a 25-year period of commercial production. If the convention enters into force, governments of the states sponsoring the seabed miners will have to grapple with the problem of tax treatment of the payments to the ISA. Granting national tax relief for such payments would aid the firms, but it would also have the side effect, through its recognition of the ISA as a taxing body, of elevating the status of the seabed authority from a technical organ of the United Nations to a quasi-governmental body.

14. The ISA would be empowered by the Draft Convention to use these funds for defraying its administrative expenses, subsidizing the Enterprise, compensating developing-country land-based producers, and making distributive payments to all the developing countries.

System of Governance

15. The question of who controls day-to-day decisionmaking in the ISA has been one of the most critical political issues facing the LOS Conference. The developed nations have insisted on vesting executive control in the proposed 36-member Council and protecting their substantial economic interests in seabed mining with some manner of specialized voting procedure. The developing states, however, have lobbied to place executive power in the other major organ, the Assembly, which would seat all the signatories to the treaty and employ a one-nation, one-vote procedure.

16. The industrial nations generally prevailed in this debate: the Draft Convention assigns most of the major powers and functions to the Council. The 36 member states would be elected by the Assembly according to the following economic and geographic criteria:

— Four states from among the eight that have made the largest investments in seabed mining, including at least one East European state.

— Four of the major consumers or importers of manganese, nickel, copper, and cobalt, including at least one East European state.

— Four major net exporters of manganese, nickel, copper, and cobalt, including at least two developing countries.

— Six developing countries representing such special interest groups as nations with large populations, landlocked or geographically disadvantaged states, major importers of the four metals, and least developed countries.

— Eighteen states elected on the basis of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region (Africa, Asia, Eastern Europe, Latin America, Western Europe, and others) would have at least one member elected under this category.

17. The Draft Convention establishes a one-nation, one-vote, three-tiered voting system on substantive questions. Fundamental changes in the mining regime, such as amendments to the treaty or changes in the rules and regulations, would require the consensus of the Council, which would enable the United States (or any other Council member) to block such changes. The United States, in concert with like-minded industrialized states, however, would not be able to block any other substantive decisions of the Council since these would require only three-fourths or two-thirds majorities. Among the Council decisions subject to such majorities would be control over seabed mining, the annual budget of the Authority, production authorization, directives to the Enterprise, suspension of members, and specific policies of the ISA.

Review Conference

18. Another controversial feature of the Draft Convention is the provision for a Review Conference, to be convened 15 years after the startup of commercial seabed mining. The conference would review the system of exploitation to determine whether developing countries are sharing in the benefits and whether the principles of the "common heritage of mankind" were being maintained. If consensus agreement could not be reached within five years to continue or modify the existing mining regime, states could, by a two-thirds majority, adopt amendments that would radically change the parallel system of mining. Such amendments would enter into force for all parties to the treaty following ratification of the amendments by two-thirds of the states. A state that did not support the amendments would then be faced with the option of adjusting to a potentially unacceptable seabed regime or denouncing the treaty.

DISSEMINATION NOTICE

1. This document was disseminated by the National Foreign Assessment Center. This copy is for the information and use of the recipient and of persons under his or her jurisdiction on a need-to-know basis. Additional essential dissemination may be authorized by the following officials within their respective departments:

a. Director of Intelligence and Research, for the Department of State
b. Director, Defense Intelligence Agency, for the Office of the Secretary of Defense and the organization of the Joint Chiefs of Staff
c. Assistant Chief of Staff for Intelligence, for the Department of the Army
d. Director of Naval Intelligence, for the Department of the Navy
e. Assistant Chief of Staff, Intelligence, for the Department of the Air Force
f. Director of Intelligence, for Headquarters, Marine Corps
g. Deputy Assistant Secretary for International Intelligence Analysis, for the Department of Energy
h. Assistant Director, FBI, for the Federal Bureau of Investigation
i. Director of NSA, for the National Security Agency
j. Special Assistant to the Secretary for National Security, for the Department of the Treasury
k. The Deputy Director for National Foreign Assessment for any other Department or Agency

2. This document may be retained, or destroyed by burning in accordance with applicable security regulations, or returned to the National Foreign Assessment Center.

25X