Denver Journal of International Law & Policy

Volume 12
Number 1 *Fall*

Article 10

January 1982

The Convention on the Law of the Sea: Prospects for the Future

Denver Journal International Law & Policy

The Convention on the Law of the Sea: Prospects for the Future

Keywords
Law of the Sea, States

which exists with respect to the delimitation of continental shelf boundaries, it is likely that those rules and procedures of international law will be most fully utilized by the Court to fashion a resolution in the Gulf of Maine dispute.[42] The precedents which the Court shall rely upon will be illuminating for those situations in which concave coastlines are involved in delimitation proceedings.[43] Furthermore, the Gulf of Maine decision will contribute direction and substance to an area of maritime delimitation law which, to date, has been sparsely developed.

In conclusion, the utilization of the I.C.J. Chamber for the adjudication of international disputes should attract the attention of parties in conflict who are in need of a more flexible process of decision making. The Gulf of Maine decision will be the first test of this procedural device which, hopefully, will lighten the cumbersome process of third-party adjudication. Finally, this case will provide the International Court of Justice an opportunity to develop and clarify the legal and equitable principles which are necessary for the delimitation of maritime boundaries.

Ellen K. Eggleston

The Convention on the Law of the Sea: Prospects for the Future

On April 30, 1982, the nations of the world witnessed the adoption of a new charter for the world's oceans by the United Nations Conference on the Law of the Sea (UNCLOS III). After eight weeks of informal negotia-

---

42. The *North Sea Continental Shelf* case, and the *Anglo-French Arbitration* proceeding, shall most likely be the predominant case law precedents which the Court shall rely upon to reach a decision. The *North Sea* decision emphasized the use of equitable procedures and the importance of the physical relationship of the land to the adjacent continental shelf, while the *Anglo-French Arbitration* stressed that equity is the primary issue in a delimitation proceeding, and that there is no priority given to the principle of equidistance as a means of boundary delimitation. Rather, the determination of whether a special circumstance exists for the purpose of achieving an equitable result depends upon "geographical and other circumstances." Delimitation of the Continental Shelf (Fr. v. Gr. Brit.), Cmnd. 7434 (1978), *reprinted in* 18 I.L.M. 397 (1979).

43. Article 6(2) of the Geneva Convention addresses adjacent states and sets forth the principle of equidistance as the proper equitable solution to apply in maritime delimitation proceedings. However, the article is careful to distinguish between its application in regard to adjacent and opposite states. The difficulty which arises from distinguishing between the two situations is where the equidistance principle is applied to concave coastlines, as in the present case. Here, equidistance methods may not be equitable, and the presence of "special circumstances" in each case may be cause for an exception to the equidistance rule. Geneva Convention on the Continental Shelf, note 37 *supra*.

tions, the Convention on the Law of the Sea (Convention) was adopted by 130 countries. Four countries were opposed to adoption, seventeen countries abstained, and four countries did not participate.[1] Significantly, the United States voted against adoption, while the Soviet Union was among the countries which abstained. These results indicate that the aim of UNCLOS III, which was to obtain an agreed balancing of interests between all states regarding the uses of the sea and its resources,[2] has not yet been achieved.

The adoption of the Convention by UNCLOS III is the culmination of fifteen years of effort by the international community to establish an overall legal order for ocean space.[3] However, the failure to achieve a consensus on the Convention is evidence of the conflicts of interest which have arisen throughout the negotiations. Most of the controversy centers around the provisions of the Convention which regulate deep seabed mining.[4] The United States' objections to these provisions is the basis for its vote against the Convention.[5]

In March 1981, at the Tenth Session of UNCLOS III, the United States announced its decision to re-evaluate its position toward the Convention. Specifically, the Reagan Administration's commitment to free enterprise kept it from voting for an agreement which would place restrictions on private corporations as to future exploration and exploitation of the seabed.[6] The seabed contains metallic nodules which are composed of manganese, cobalt and nickel; these minerals are essential to the U.S. steel industry. Technology for recovering these minerals from the seabed has been developed by Western companies based primarily in the United States. The United States objects to provisions for mandatory transfer of technology from private mining companies to the Enterprise, which is the mining arm of the International Seabed Authority created by the Con-

---

1. U.N. CHRONICLE, June, 1982, at 13.

2. *See* Bentham, *The Third United Nations Law of the Sea Conference: Final Act of Failure—What Next?*, 10 INT'L BUS. LAW. III (1982).

3. The United Nations Conference on the Law of the Sea (UNCLOS III) began in the United Nations General Assembly in August 1967, with Ambassador Pardo's statement that the resources of the sea are the "common heritage of mankind." The United Nations Committee on the Law of the Sea was formally created in 1968, and texts of the Convention were developed in each session. For a review of the history and goals of UNCLOS III, see U.N. CHRONICLE, *supra* note 1, at 14-15.

4. These provisions are especially important due to the recent discovery of the metallic nodules which cover the ocean floor and contain fine-grain oxides of copper, nickel, cobalt and manganese. For a discussion of the regulations of the Convention with respect to the development of these nodules, see U.N. CHRONICLE, *supra* note 1, at 5-12.

5. For commentaries on this issue, see Chapman, *Underwater Plunder*, THE NEW REPUBLIC, Apr. 21, 1982, at 17; Hawkins, *How to Give Away Your Future*, NAT'L REV., Apr. 16, 1982, at 410; Stone, *The U.S. Again at Bay*, U.S. NEWS & WORLD REP., Apr. 19, 1982, at 108; BUS. WK., May 10, 1982, at 39; NEWSWEEK, May 10, 1982, at 74; U.S. NEWS & WORLD REP., Mar. 15, 1982, at 69.

6. AM., May 15, 1982, at 373.

vention.[7] Additionally, the provision allowing the mining clauses of the Convention to be rewritten in twenty years if three-fourths of the world's nations agree is unacceptable to the Senate, as the Senate cannot assent to a convention or treaty that might bind the United States to changes in the future.[8] Finally, the United States objects to an agreement that would place power in the hands of the Seabed Authority, an international agency in which the United States and other industrialized countries have minimal influence.[9]

The United States has argued that the deep seabed is subject to the legal regime of the high seas, and therefore, seabed mining by nations with the appropriate technology is permissible as one of the freedoms of the high seas.[10] The United States has also passed the Deep Seabed Hard Mineral Resources Act,[11] which governs U.S. operations in the absence of an international treaty. This act is to be superseded by any Law of the Sea Convention which the United States ratifies. The act could possibly serve as the basis for the development of the oceans by U.S. companies outside the framework of the Convention, but for the United States to allow this may be a violation of international law,[12] since the Law of the Sea Convention would become the international legal charter regulating all deep seabed development.

In early December 1982, the Convention on the Law of the Sea was opened for signature in Caracas, Venezuela. Although most observers expect that the Soviet Union will eventually sign, U.S. action is not as predictable. If the United States does not sign, it could lose its leadership position in undersea mining.[13] Additionally, the Administration may ratify the Convention in order to insure the gains that will result from the creation of the exclusive economic zone, the continental shelf, and rights to navigation, overflight, offshore oil, and fisheries.[14] However, there are those who argue that it would be better for the United States to have no agreement at all rather than to accept this one.[15] Others argue that the provisions in the Convention have already become part of customary international law, and therefore, the United States need not sign the Convention to benefit from it.[16] Finally, there is the question of how much

---

7. THE INTERDEPENDENT, June/July, 1982, at 1.

8. *Id.*

9. *See* Hawkins, *supra* note 5, at 412.

10. *See* Van Dyke and Yuen, *"Common Heritage" v. "Freedom of the High Seas": Which Governs the Seabed?*, 19 SAN DIEGO L. REV. 493 (1982).

11. Deep Seabed Hard Minerals Resources Act, 30 U.S.C. §1401-1473 (Supp. 1982). This Act was signed into law by President Carter on June 28, 1980, and allows a potential miner to receive interim permits to explore and exploit the seabed of the ocean. The Act prohibits significant commercial exploitation of the seabed until January 1, 1988, but permits licensing of mine sites and preliminary investment and preparation.

12. *See* THE INTERDEPENDENT, *supra* note 7, at 6.

13. BUS. WK., May 10, 1982, at 41.

14. *Id.*

15. *See* Chapman, *and* Hawkins, note 5 *supra*.

16. *See* THE INTERDEPENDENT, note 7 *supra*.

force and effect the Convention will have without the signature of the United States. For the United States to choose not to sign would be a serious blow to the Convention's effectiveness as an internationally recognized legal charter, and international law would continue to be established by custom and practice of nations. It is hoped that the United States will carefully consider the consequences of its decision before it decides whether to sign the Convention on the Law of the Sea.

C.M.M.