# NATIONAL IDEOLOGY: RHETORIC OR REALITY?

# AN EXAMINATION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

by

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## ABSTRACT

This thesis examines whether or not there is a significant correspondence between the ideological principles adhered to by a nation and its subsequent behavior in issues of international significance. The thesis further attempts to determine if there is a greater correspondence between ideology and behavior among some nations or blocks of nations, as opposed to others.

To limit the scope of the study, five states were selected as representative of the ideologically-distinctive Western Bloc and Eastern Bloc. Chosen to be representative of the Western Bloc were the United States, Canada and Britain. The nations selected to represent the Eastern Bloc were the USSR and Cuba.

The Third United Nations Conference on the Law of the Sea, which took place between 1973 and 1982, was selected as the data base for this study for the following reasons: The Law of the Sea Conference involved many issues of ideological as well as practical significance which are of some, if not major, importance to every nation in the world: Discussions over these issues (of which four were used for this study) continued for eight years and made it possible to distinguish consistent behavioral patterns from singular responses.

Chapter One outlines the objectives of the thesis and defines the use of ideology as the medium for studying national behavior. Chapters Two and Three outline the key ideological principles of the Eastern Bloc

and the Western Bloc respectively. These principles were used as the basis for determining what response would be expected by each nation towards each issue, if ideological disposition played a distinguishable role in shaping national behavior.

The four Law of the Sea issues selected for this study are detailed in Chapter Four and include: a) the establishment of the International Seabed Authority; b) the establishment and funding of the Enterprise as a supranational seabed mining company; c) the right of the Enterprise/ISA to demand and receive all technological and military information related to the oceans, from all nations; and d) the obligation of all nations/ companies involved in seabed mining to share resulting revenue.

Chapters Five and Six detail what responses were expected from each Bloc if ideology were a significant behavioral determinant and then examines the actual position of each nation toward each issue. The primary source for each state's position are the official records of UNCLOS III.

Chapter Seven summarizes the findings, compares the expectations with the responses and postulates various conclusions which can be drawn given the results of the comparison.

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# NATIONAL IDEOLOGY: RHETORIC OR REALITY?
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## Preface

It is generally acknowledged that the behavior of states and blocs of states does not necessarily correspond to national beliefs and ideological positions, yet few studies have been undertaken using specific activities in the realm of international politics to determine whether there is evidence to support this assumption.

The Third United Nations Conference on the Law of the Sea (UNCLOS III) which took place between 1973 and 1981, and involved 157 nations, provides an arena for carrying out such a study. By specifying the ideological principles of a selected group of nations it is possible to examine specific activities which took place during the Conference to determine:

a) Whether there is evidence to suggest that a correspondence exists between the fundamental ideological principles of nations and national behavior;[1] and

b) Whether there is a greater correspondence between ideology and behavior among some nations, as opposed to others.

For the purpose of this study individual comparisons will be made between Cuba and the USSR, as representative of the Eastern Bloc, and among Canada, the United States and Britain, as representative of the Western Bloc. An aggregate comparison will then be made between the Eastern and Western Blocs. By comparing the behavior of these nations and Blocs with

respect to specific, selected issues with the behavior that would be expected given each Bloc's ideological beliefs, it will be possible to address the above questions and, perhaps, determine whether there was a correspondence between ideology and national behavior.

## Preface

## Endnote

[1]It should be pointed out that the underlying assumption of this paper is not that ideology is, or should be, the major determinant of national behavior. Given the diversity of factors which a nation must take into consideration in any given situation it would be impossible to legitimize such a position.

# Chapter One

## Introduction and Framework

While the objectives of this study are fairly straightforward, the approach used to achieve these objectives is more complex and involves a number of points which should be clarified. First it should be noted that this study is not meant to be a treatise on national ideologies nor an in-depth analysis of UNCLOS III. Second, it must be remembered that the objective of this study is to determine the degree to which a nation's behavior corresponded with its ideology. No attempt will be made to explain or speculate why a nation behaved as it did. Not only would such explanations go beyond the bounds of this paper, much of it would be based on conjecture rather than fact and would detract from the original purpose for making the comparison. UNCLOS III will be used as a laboratory while the ideologies of the two blocs[1] being discussed will constitute a basis of comparison in an effort to reach conclusions regarding the correlation of national beliefs with actual behavior.

While a number of activities within the international arena might have been used for this study, the Third United Nations Conference on the Law of the Sea was chosen for a number of reasons. With the exception of the United Nations itself, UNCLOS III provides one of the only instances where the great majority of the world's nations met for an extended period of time to discuss and deal with issues which have the potential to significantly affect every member of the world community. The eight-year length of the Conference was long enough to provide ample information regarding national behavior and allow us to determine patterns (consistencies,

inconsistencies) in this behavior.

An important concern, in outlining the framework for this study, is to limit the issues and nations being discussed to a manageable number without reducing the ability to come to valid conclusions. The nations chosen for this study include the USSR and Cuba as representative of the Eastern Bloc, and the United States, Canada and Britain as representative of the Western Bloc. The above nations were chosen for this study based on their strategic position in the world community, and not on the stance they adopted regarding the Law of the Sea. Once the behavior of each of these nations with respect to particular issues at UNCLOS III has been studied, it will be possible to determine whether there is a correspondence between ideology and national behavior.

The goal of UNCLOS III was to discuss and draw up laws for issues concerning the world's oceans. The Draft Treaty, which finally came together in 1980 after many attempts, but has yet to be ratified, contains 320 articles and nine annexes dealing with 25 major issues and approximately 90 related but less important questions. Four issues have been chosen from UNCLOS III for this study. The issues are:

1) The establishment of the International Seabed Authority (ISA) designed to regulate internationally the development of all the resources of the seabed and subsoil beyond the limits of national jurisdiction, promote the right of exploitation without prejudice, and the development of a strategy in which the benefits accrued from the exploitation of oceanic resources will be distributed in a manner that will benefit all nations.

2) The establishment of a supranational mining company, called the Enterprise, which will initially be funded by all participating nations in amounts which correspond to that nation's financial contribution to the United Nations.
3) The ability of the Enterprise and ISA to have access to, or be able to demand and receive, all information with respect to seabed technology, including that related to military security.
4) The levying of revenue-sharing obligations on corporations and states involved with seabed mining.

One of the more difficult tasks of this study is to outline the ideological beliefs of each bloc in a manner that will allow for an accurate and acceptable comparison with national behavior. Although it is difficult to summarize these ideologies in a form that is universally acceptable this problem is not insurmountable. As previously mentioned, this study does not endeavor to present a thorough delineation of all the vagaries of Western and Eastern Bloc ideology. It should be noted that, although it will be possible to make blanket statements regarding generally-acknowledged ideological beliefs, there may be instances where a nation appears to go against a certain ideological stance. For example, although the United States believes that a system of free enterprise should not be unduly regulated or interfered with by governmental authority, it nonetheless subsidizes private business. Except where a nation's behavior deviates significantly from a particular ideological principle, examples such as the United States' subsidization of private business will not be used to invalidate an otherwise acknowledged ideological principle.

The value of using ideology as the common factor to divide states into various groupings for the purpose of studying behavior is not without support in the academic community. In an article outlining the importance of studying the response of nations to questions of international law, James P. Piscatori suggests that, while there are different approaches to such a study,

> it would also be interesting to apply it to groups of states joined by a common factor such as ideology, culture or geography. The advantages could be twofold: first, the findings might be more accented, and therefore hopefully clearer, by their comparison to those of other groups; and, secondly, the examination might reveal more of the nature of the grouping itself....[2]

Like other concepts, "ideology" can be interpreted different ways. Webster's New Collegiate Dictionary defines "ideology" as the fundamental "integrated assertions, theories and aims that constitute [a nation's] socio-political program." The International Relations Dictionary[3] expands this definition by asserting that: "An ideology is concerned with the nature of the political system, the exercise of power, the nature of the economic and social system and the objectives of society." This definition will be used to outline which principles will comprise the ideological belief structures detailed in Chapter Two and Three. The principles to be included will be drawn from statements made in official documents, as well as from general knowledge and a common understanding of what is implied by key concepts such as communism and liberalism.

Other ideological principles will be drawn from policy papers and statements made by leaders and governments which reveal the relationship of ideology to a particular issue or circumstance. It is important that

ideology be separated from the behavior against which it will be examined. As a result there are no statements defining ideology which specifically set forth an opinion regarding the ocean. The reason for this is simple: If we accepted the statements made during UNCLOS III or those concerning the issues which were being dealt with at the Conference as ideology, we would have nothing with which to compare conduct, as ideology and conduct would then be one and the same.

Although the ideological principles attributed to each bloc do not make specific reference to Law of the Sea issues, it is assumed that the nature of the principles chosen are of a kind which can easily be superimposed on different issues. For example, a very obvious ideological principle of the Eastern Bloc is the belief there should be public control of the means of production. Thus when delegates to UNCLOS III began discussing whether or not the resources of the oceans should belong to everybody and be controlled by an International Seabed Authority, one would be justified in assuming that the Eastern Bloc, given its belief in public control, would support this proposition.

The recorded proceedings of the various Conference meetings will provide the source for most of the information regarding national behavior. These proceedings are detailed in volumes entitled Third United Nations Conference on the Law of the Sea - Official Records. These records provide the most thorough commentary of national positions. There are a number of additional sources which provide significant information on the behavior of a particular Bloc or nation with regard to particular issues; these sources include the Informal Single Negotiating Text and the Revised

Single Negotiating Text. Additional information will be drawn from preliminary work as well as from the minutes of ad hoc discussions and negotiating and working groups.

## Chapter One

### Endnotes

[1]The use of the term "bloc," in reference to the groupings of states according to ideology may suggest more of a cohesion between nations than actually exists. Nonetheless it is the most applicable term to label the division of states which occurs in this study.

[2]James P. Piscatori, "The Contribution of International Law to International Relations" in International Affairs, Vol. 53, No. 2 (April 1977), p. 229.

[3]Jack C. Plano & Roy Olton, The International Relations Dictionary (New York: Holt, Rinehart and Winston, 1969).

# Chapter Two

## Ideological Principles of the Eastern Bloc

While the socialist ideology of the Eastern Bloc is complex and can be interpreted in numerous ways, it is possible to outline key principles which are relevant to this study. The principles chosen will be presented as they appear in the various sources from which they are extracted and will not be subjected to value judgements or interpretations except as necessary to make their meaning clear. What will become obvious is that there is a distinct ideological gap between the Eastern and Western Blocs and very little tolerance for each other's ideological stance. Given this gulf it seems safe to assume that respective behavior toward ideological issues should be similarly polarized. While most of the documentation for the following principles is drawn from Soviet sources they apply equally to both the Soviet Union and Cuba as Cuba claims to base its behavior on the Soviet model.[1]

In all respects Eastern Bloc society is organized in a manner which attempts to reflect the political, economic and social principles of Marxism/Leninism. These principles support the concept of an authoritarian and monistic system of government where a single vanguard party is responsible for directing and controlling the means of production with the goal of ultimately creating a classless society where there is no private property and goods are held in common and distributed equitably as needed.[2]

Legitimation for organizing society in this manner is based on support for the principle of egalitarianism. Egalitarianism suggests that everybody

owns everything and should have equal access to the physical and material resources which are available. The concept of egalitarianism encompasses both the economic and political systems of a socialist society and is aimed at ensuring that all individuals are treated equally with regard to important areas such as their rights and how much income they have.

Marx's commitment to "egalitarianism" was based on his belief that it was the disparities in wages, control over production and overall positions in society which result in antagonisms among different classes, and which not only prevents the achievement of true communism but allows the masses to be exploited and controlled by a few. If this antagonism is to be eradicated distinctions between classes must be removed. Marx believed that the main factor leading to class antagonism results when one class controls a disproportionate share of resources and the means of production. To prevent class antagonism the ability of one class to control or exploit another must be eradicated.

While Marx believed complete egalitarianism could only occur once a truly "communist" society was achieved it was commitment and belief in the achievement of this ultimate goal which led to his profession of the principle "From each according to his abilities, to each according to his needs." In his manuscripts of 1844 Marx also stated: "Equality as the groundwork of communism is its political justification."[3] Hence in a socialist/communist society it is the role of the state to ensure the maintenance of an equitable society for its citizens. A capitalist economic system cannot be tolerated because commitment to individualism fosters a disparity in incomes and an inequitable sharing of available resources.

To prevent the development of a capitalist economic system and its perceived inherent inequalities the Eastern Bloc expounds Marx's belief that, with the exception of individually earned income and personal household goods, control and ownership of property must remain in the hands of the state (this implying everyone). This principle is clearly outlined in Articles 4-10 of the Soviet Constitution. Article 4 states:

> The socialist economic system and socialist property in the instruments and means of production, firmly established as a result of the abolition of the capitalist economic system, private ownership of the instruments and means of production, and the exploitation of man by man, shall constitute the economic foundation of the USSR.

Of all the principles governing a socialist/communist society those relating to economic organization are easily the most important. This is because economics is believed to be the most crucial factor affecting the development of the state. Again Marx was largely responsible for fostering this belief through the assertion that economics forms the base structure of society and determines the nature of the political superstructure.

> Communists have thought of the state and its activities not as an institution with a meaning of its own but as a mere superstructure rising over the 'real' foundation of economic relations. In this sense Communists consider state, law and government as secondary—the historically economic relationships... being primary.[4]

The political system in this view plays an important role in directing society toward the achievement of perfected communism. This perception of the role of the state is responsible for the Eastern Bloc's commitment to the principles of public control and comprehensive (economic) planning. Based on commitment to the socialist ownership of the means of production the above principles suggest that the state should own and control resources

and plan their development in a manner which discourages capitalistic competition and ensures that the needs of all individuals are adequately met. In effect this system leaves no room for the operation of the free market mechanism.

Instead of private property and the free market the Eastern Bloc supports the principle of nationalization. According to Marx:

> The nationalization of land will work a complete change in the relations between labour and capital, and finally, do away with the capitalist form of production, whether industrial or rural. Then class distinctions and privileges will disappear together with the economic basis upon which they rest.... National centralization of the means of production will become the national basis of a society composed of associations of free and equal producers, carrying on the social business on a common and rational plan.[5]

For the Eastern Bloc "nationalization" is the major element characterizing a successfully operable socialist/communist economic system. Nationalization, the antithesis of capitalism and private ownership, is the concept that the "state" should own and exercise control and responsibility for all important aspects of the economy. The objective of nationalization is to enable the state to plan the direction of the economy of the nation by setting production goals and methods, controlling distribution of resources and assuming responsibility for all necessary accounting and management. As Lenin stated:

> Accounting and control—these are the chief things necessary for the organizing and correct functioning of the first phase of communist society. All citizens are here transformed into hired employees of the state....[6]

An obvious example of nationalization in the Eastern Bloc has been the creation of "collective farms" and the abolition of any rights to own

land as an individual. The attitude of the Eastern Bloc toward the collectivization of farms provides a good basis for comparing the attitude of the Soviet Union and Cuba to the establishment of the ISA and the subsequent "nationalization" of the sea and its resources.

"Collectivization" suggests that labour and resources are pooled and income is shared among all the members of the collective, thus discouraging economic and social inequities. These characteristics can be closely correlated to the Law of the Sea Draft Convention provisions for how the sea should be controlled and administered and how its resources should be distributed.

In a society based on communism all aspects of economic planning are the responsibility of the Communist Party. The result has been the development of a system of plans every five years which outline the objectives and means of achieving strong economic growth, full employment and a system whereby income is distributed in a manner which conforms to the principles of equalitarianism.[7]

These principles are again embodied in the Soviet Constitution which states, in Article 11, that:

> The state economic plan shall determine and guide the economic affairs of the USSR for the purpose of increasing the wealth of society, steadily raising the material and cultural standards of the working people and strengthening the independence of the USSR and its defense potential.

Applied to society this means that in attempts to further the establishment of a communist economy the state has the right to take arbitrary or forceful possession of any necessary resources or products. It can assign labour and tasks any way it wishes, put limits on levels of consumption in all

areas, and prohibit the accumulation of capital above a certain level both by individuals and industries. Lenin made this clear when he asserted:

> ... the Socialists demand the strictest control, by society and by the state, of the quantity of labour and the quantity of consumption; only this control must start with the expropriation of the capitalists, with the control of the workers over the capitalists....[8]

Eastern Bloc ideology does not reject the notion of "profit" per se. Rather it rejects the capitalist conception of profit—viewing it as the misappropriation of excess capital or resources. Although the Eastern Bloc also views profit as excess capital or resources it asserts that this excess has no other end but to benefit the needs of the working class. Profit is believed to be necessary to improve overall economic performance not only because a portion goes to meet the overall needs of the state but also because a portion is distributed to enterprises and collectives to meet their operating needs.

The Eastern Bloc continues to believe that humanity can be released from its suffering through increased economic growth and industrialization. Because capitalism works under a system of production for profit, the Eastern Bloc asserts that it does not promote the full use of available scientific and technological information. The above positions provide an interesting basis for examining the Eastern Bloc's position on the nature and authority of the ISA.

An examination of the specific method of economic organization in the Eastern Bloc further provides an informative model for comparing attitudes toward domestic economic organization and the establishment of the ISA. The Eastern Bloc refers to organizations which encompass economic functions,

such as factories and shops, as "enterprises." Recognized as a basic structural unit of a socialist economy all enterprises are subject to and run according to state guidelines. They are given control over an area and/or resources with enough independence to allow them to make moves which are meant to be economically viable, but do not own anything. The state owns everything and decides who will work for the enterprise and who will be responsible for its administration. V. Afanasyev points out that:

> The reform [referring to the change made from evaluating the success of an enterprise based on output volume to evaluating its success according to the profit it makes] ... greatly extends the economic independence of the enterprise, but this does not signify that it remains outside the sphere of state guidance. On the contrary, exerting economic influence on the enterprise by way of cost accounting, profit, prices, wages, credits, and also in other areas associated with value relationships, the state is in a position to provide guidelines likely to be much more effective than any purely administrative action.[10]

Because of the socialist belief in the need for centralized economic control it is not surprising that the key ideological principles governing politics in the Eastern Bloc are monism, authoritarianism and democratic centralism. These latter principles suggest that the Communist Party, as the embodiment of socialist communist principles, has the unquestionable authority to do what it deems necessary to achieve its goals.

Monism is reflected in the Eastern Bloc by the existence of a one-party system which exercises exclusive control, allows for support of only one philosophy and has only one set of goals. Justification of monism stems from Marx's commitment to achievement of the Dictatorship of the Proletariat and, ultimately, of a classless society.

The Eastern Bloc's commitment to the principle of authoritarianism is again evidenced in the Soviet Constitution which asserts that "All power in the USSR shall be invested in the people." This "power" is of course exercised by the Communist Party which according to the Rules of the Communist Party of the Soviet Union:

> ... exists for and serves the people. It is the highest form of socio-political organization and is the leading and guiding force of Soviet society. It directs the great creative activity of the Soviet people and imparts an organized, planned, and scientifically-based character to their struggle to achieve the ultimate goal, the victory of communism.

In other words, the Party is viewed as the repository of all knowledge and, as such, has the right to command complete obedience.

Although the Party exercises control over all aspects of Eastern Bloc society, its authority is not equated with that of a superior class in a class-divided society. The Party is believed to be composed of individuals possessing a greater class consciousness. This greater understanding justifies their assuming direction over the rest of society and making laws meant to be strictly observed:

> The laws of the... socialist state... guarantee the rights and freedoms of citizens and at the same time make it incumbent on them to define their duties, regulate their activities and their organizations in the interests of society as a whole and of each member individually.[11]

Democratic centralism is the third major principle governing Eastern Bloc political organization. The emphasis should, however, be placed on the notion of "centralism." Democratic centralism is defined in Article 19 of the 1961 Communist Party of the Soviet Union Statutes as:

> ... election of all governing bodies of the Party from bottom to top; periodic accountability of Party bodies to their Party

> organizations; strict Party discipline and subordination of the minority to the majority; and the unconditionally binding character of higher body decisions upon lower bodies.

Article 68 goes on to assert that "Party groups must strictly and unswervingly follow the decisions of leading Party organs on all questions."

The final major principle governing the Eastern Bloc's political and social outlook is "internationalism." Broadly speaking, internationalism implies closer or more co-operative relations between countries. More specifically Marx referred to proletarian internationalism. His belief, and subsequently that of the Eastern Bloc, is that workers around the world would realize they all face the same struggle and will thus join together to fight against imperialism and the bourgeoisie. Hence his plea for the "workers of the world to unite." Marx further stated in the Communist Manifesto that:

> In place of the old local and national seclusion and self-sufficiency, we have intercourse in every direction, universal interdependence of nations, and as in material, so also in intellectual production.

Since World War II the phrase "proletarian internationalism" has been replaced with the term "socialist internationalism." This merely expands the focus of internationalism in order to express the international orientation and co-operation among Eastern Bloc nations. As stated earlier, the ultimate goal of the Eastern Bloc is to see the formation of a global socialist system with its ideology based, of course, on Marxism, and the overriding rule governing the economy being public control of the means of production. In reference to internationalism,the above implies that the Eastern Bloc supports any move which encourages economic and political

co-operation and increased mutual aid. Examples of such co-operation include Comecon and the Warsaw Pact. Originally the Council for Mutual Economic Assistance (CMEA or Comecon) was set up in 1949 to co-ordinate the economic policies of socialist countries. Through co-operation, specialization and the development of economic plans, Comecon aims to achieve its objectives by devising a rational and efficient means of exploiting and making use of various natural resources. According to V. Afanasyev:

> Its essence [socialist economic integration] is to pool the labour, material and financial resources of a number of countries for the purpose of securing the further advance of production both in each individual country and the socialist community as a whole. Of especially great importance is the unification of the scientific and technological potentials of CMEA countries, their joint development and use of the latest technology with a view to securing the fast rate of scientific and technological progress and intensive production on this basis.[12]

In all aspects of society the Eastern Bloc is organized in a manner which attempts to reflect the political, economic and social principles of Marxism/Leninism. Briefly, the key principles of socialist society are: 1) equalitarianism; 2) public control and comprehensive planning; 3) monism, authoritarianism and democratic centralism; and 4) internationalism.

## Chapter Two

### Endnotes

[1]Carmelo Mesa-Lago, Cuba in the 1970s: Pragmatism and Institutionalization (Albuquerque, New Mexico: University of New Mexico Press, 1974, pp. 70-71.

[2]See Articles 4, 5, 6, 11 and 12 of the Soviet Constitution 1977.

[3]Morris Stockhammer, Ed., Karl Marx Dictionary (New York: Philosophical Library, Inc., 1965), p. 78.

[4]Joseph M. Bochenski, & Gerhart Niemeyer, Handbook on Communism (New York: Praeger Publications, 1962), p. 65.

[5]Gerard Bekerman, Marx and Engels: A Conceptual Concordance, Trans. Terrell Carver (Oxford, England: Basil Blackwell Publisher Ltd., 1981), p. 114.

[6]V.I. Lenin, State and Revolution (New York: International Publishers, 1932), p. 83.

[7]Josef Wilczynski, Marxism, Socialism and Communism (London, England: The MacMillan Press Ltd., 1981), p. 162.

[8]V.I. Lenin, State and Revolution, p. 83.

[9]Donald D. Barry & Carol Barner-Barry, Contemporary Soviet Politics - An Introduction (Englewood Cliffs, New Jersey: Prentice Hall Inc., 1978), p. 162.

[10]V. Afanasyev, Socialism and Communism (Moscow: Progress Publishers, 1972), pp. 148-149.

[11]Ibid., p. 167.

[12]Ibid., p. 42.

# Chapter Three

## Ideological Principles of the Western Bloc

The ideological principles of the Western Bloc are outlined in the same manner as those of the Eastern Bloc. The sources from which they are drawn are similarly based on common knowledge regarding the principles of the Western Bloc and the interpretation of these principles as outlined by recognized (democratic) leaders and thinkers. Again the principles are not necessarily drawn from primary sources, although primary sources (i.e. constitutions) will be used where necessary to prove the validity of a particular principle's application.

The Western Bloc has a clearly identifiable set of ideological principles which are, in many cases, directly opposed to those of the Eastern Bloc. The United States, Canada and Britain share a common history with regard to the beliefs which they value, the principles upon which their societies are founded and the goals for which they strive. In addition, they all acknowledge the validity of each other's rights and positions as equal members in the world community working to guarantee the maintenance of their individual sovereignty and independence. The cohesiveness implied by the above conditions is clearly evidenced in the close ideological link between the nations of the Western Bloc.

While the Eastern Bloc is established on the basis of a Marxist/Leninist understanding of communist society, the Western Bloc is based on an understanding of the principles inherent in liberal democracy and free enterprise capitalism. It is obvious that a number of structural and social differences exist in the political and governmental institutions of

Britain, Canada and the United States; however, these differences have little impact on the common nature of their ideological principles.

The profession and implementation of liberal democratic and capitalistic principles is not dependent on the existence of a unitary constitutional monarchy, a federal constitutional monarchy or a federal republic. That is, democracy and capitalism do not refer to an institutional arrangement but rather they refer to a method or procedure for arriving at a decision or carrying out certain activities.

There is overall agreement in the Western Bloc regarding the nature of the principles inherent in "democracy" despite the fact that there are numerous interpretations over which principles are the most important and which conditions are necessary for the maintenance of a democratic/capitalist state. A broad overview of the contributions of such thinkers as Locke, Jefferson and others, as well as an examination of the ideological principles embodied in the constitutions of each nation, provides a thorough and relatively clear understanding of the ideological principles of the Western Bloc.

The concept of democracy reflects principles relating to the role of the individual in the state, the subsequent rights of each of these individuals, the duties and responsibilities of the state, the nature of the decision-making process and, to some extent, the actual organization of the political machinery. The nature of democratic principles with respect to social and political principles is further reflected in the establishment of an economic system based on complementary capitalist/free enterprise principles. The liberal democracy of the Western Bloc is

characterized by the fact that each individual has a number of rights and freedoms simply because he is a human being. These rights are accompanied by a number of responsibilities. It is recognized that the maintenance of "freedom" as understood by the Western Bloc requires the recognition that there must be a mutually recognized and accepted authority, a common understanding of key principles and a common desire to maintain a democratic system.

The very root of the democratic system is firmly based on the principle of individualism which opposes people being classed together. Individualism stresses that everyone should stand alone as a complete, moral being and that no one person is more important than any other. Belief in individualism has resulted in both the profession of a number of individual rights and principles and has, as well, led to the establishment of a political/economic structure which is believed to best reflect and protect this understanding of the nature of man.

A liberal democracy acknowledges the importance of free, periodic elections and universal suffrage. Everyone has the right either to vote for whomever he feels will best represent his interests, or run for political office himself. The transfer of decision-making power to these few elected officials ensures that the opinion of the majority is represented. The existence of opposition parties, who assume the major role in pointing out the errors and possible end results of governmental policies, is an important factor in guaranteeing the maintenance of the democratic system as it is understood by the Western Bloc.

To further ensure that political power and control do not end up in

the hands of any particular group or individual, the Western Bloc asserts the principles of an independent judiciary and separation of powers. Thus the governments of the Western Bloc are divided so that the right and ability to make and carry out laws lies in the hand of the legislature while the right to enforce laws is placed in the hands of the judiciary. The courts offer an avenue of criticism for citizens and groups who feel a particular piece of legislation affects adversely their constitutional rights.

> In the government of this commonwealth, the legislative shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them. The judicial shall never exercise the legislative and executive powers, or either of them.[1]

The indiscriminate exercise of power is further restrained by the existence of a system of checks and balances which ensure that not all authority is held in the hands of one body. The power of restraint which this implies refers not only to decisions which are made but also to the appointment of individuals to particular positions.

The existence of such checks and restraints on political power, coupled with the election of freely-chosen representatives who are accountable to their electorate and must make laws which the people approve or else be removed, work together to ensure the maintenance of the belief that in a democratic system it is the people as a whole who are the source of political power.

As a member of a democratic state the responsibilities of each person are complemented by a number of inherent rights and liberties. These rights

and liberties form an integral part of the ideology of the Western Bloc. From a political perspective these include the right to participate in free periodic elections and expect that each vote will be given equal value; the right to become freely involved in political associations or parties, the right to oppose the government and/or its decisions and to present criticisms or alternative choices, and the right to expect that government will be of, by and for the people.

From a social perspective, democracy guarantees certain rights in keeping with the principles inherent in individualism: individuals have the right to equality before the law. Because people have the right to make their own decisions without the help or coercion of the state they cannot blame anyone else for their mistakes. In turn they alone are responsible for their behavior and acknowledge the right of the state and/or courts to judge them for breaking the code of conduct freely accepted by the populace as a whole and designed to maintain order within the society. These laws are equally applicable to all individuals regardless of racial, societal, economic or political status. This equality extends to the right of individuals to receive legal representation, to have their side heard and to be judged and punished based on the law which they broke and not the political party to which they belong or the amount of wealth or power they control.

The concept of equality as it is professed by the Western Bloc can be traced back to a common Christian heritage. It is deeply embedded in the belief structure of each Western Bloc nation and has become a fundamental principle of liberal democracy.

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.[2]

To guarantee the protection of this equality each Western Bloc nation has a firmly established (written or traditional) Bill or Charter of Rights and Freedoms. While the rights and freedoms which they outline are applicable to all equally, it is not a part of the ideology of the Western Bloc to assert that everyone is equal in every way. Lincoln stated that it was obvious people are different and unequal with respect to colour, intelligence and so forth. However, all people are equal with respect to the Life, Liberty and Pursuit of Happiness which is promised in the Declaration of Independence.

> They [the founding fathers] did not mean to assert the obvious untruth, that all men were then actually enjoying this equality.... They meant simply to declare the right, so that the enforcement of it might follow.... They meant to set up a standard maximum for free society that should be familiar to all and revered by all—constantly looked to, constantly laboured for, even though never perfectly attained, constantly approximated; and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people, of all colours, everywhere.[3]

Some of the most fundamental democratic principles of the Western Bloc are those relating to individual rights and freedoms. In addition to those referred to above, citizens of the Western Bloc acknowledge the right of all people to enjoy freedom of the press, freedom of religion, freedom of thought and freedom of speech.[4] The Western Bloc's interpretation of the ideological principles referring to freedom of the press, speech etc. is based on the belief that because each individual is equally

important he has the right to express his opinion and be acknowledged on an individual basis.[5]

The Western Bloc is further characterized by adherence to the belief that man has the right to choose the type of work he wants to do, to form trade unions, to move wherever he wishes and to acquire an education, and hence the means to develop his moral and mental abilities to the fullest. Furthermore man has the right to feel safe and to be able to enjoy his property as he wishes without the fear of having it taken from him arbitrarily. He also has the right to be free from the fear that public authorities will intrude into his affairs for no reason.

Britain, Canada and the United States all attribute the initial expression of the principle under which they function to a few noted thinkers. Britain's John Locke played a particularly important role in promoting the principles which make up the foundation of Western liberal democracy. While certainly not revered in the same manner as Lenin and Marx, it was Locke who specifically articulated the principle of individualism and the concept that each person has inherent rights which cannot be taken away from him by the state. Although Canada has expressed a greater tolerance and support for more collectivist principles than the United States or Britain, all three nations have been established on Lockean principles of liberal individualism and are generally antipathetic to communization or collectivism.

The nature of the Western Bloc's political structure on both theoretical and institutional levels reflects the predominant principles of democracy. The major ideological principle governing the organization of Western

political institutions is the belief that a correct decision can only be reached through the encouragement of continual inquiry and the presentation of opinions from all sides. This belief stems directly from adherence to Locke's assertion that any knowledge which we acquire can only come from direct experience. Thus, because we are continually experiencing new things, what we consider "fact" (i.e. with reference to the most effective means of governing) does not remain constant.

The Western Bloc's belief that what is "fact" is not a constant is largely responsible for the development of an institutional structure which encourages the free expression of all sides of an issue: Instead of dictating a policy or decision the political assemblies of the Western Bloc are responsible for investigating all possibilities, analyzing all opinions and then making a decision which reflects the wishes of the majority but takes into account the needs and concerns of minorities. The importance which the Western Bloc places on the concerns of minorities has no counterpart in the Eastern Bloc where the needs of society are viewed from a collectivist perspective and are, thus, believed to be the same for all. Hence, the important differences between the two Blocs with respect to political institutions relates not to the nature of its organization but, rather, the means which are used for arriving at a decision.

Theoretically the governments of the Western Bloc have no inherent value in and of themselves. Governments retain their legitimacy only insofar as they promote the ability of individuals to freely pursue a fuller life.

Although the principles relating to individualism and responsibility

have already been outlined it is important to note further that a key principle of the Western Bloc is the right (and duty) of individuals to resist unjust authority. The right to resist authority is based on the belief that because government derives its power from the consent of the governed, all laws which it makes must have the approval of the majority of those whom it serves. The need for the approval of the majority reflects the principles of the "law behind the law:" although the state enacts a law its legitimacy is derived from public consent.

In practical terms we can see the principles of individualism and responsibility applied in a number of ways. The establishment of Royal Commissions to conduct inquiries into the need for, or possible results of, a particular policy reveals an attempt by the state to determine what action it should take based on what would be the most beneficial to society. To this end individuals are allowed to express their opinions and can expect to have their contributions judged equally.

It is the belief of the Western Bloc that governments are in place to protect the rights of the individual. Therefore all decisions made by government are judged according to the impact they will have on individuals. It could be argued that the above principle holds true only for Canada and the United States because both nations operate according to the notions inherent in the idea of constitutional supremacy[6] whereas Britain operates according to the principle of parliamentary supremacy. However, whether it is specifically expressed or not, all three nations exercise customs and/or conventions which ensure that the government remains answerable to the people and prevents it from amassing power at the expense of the

individual. This is most effectively achieved through the decentralization of political/governmental functions exercised by the state. Again, although Britain's unitary system, lack of a specific Bill of Rights, and the limited role of the judiciary in challenging parliament's decisions, tend to preclude such delineation, there is clear evidence that a great deal of attention goes into ensuring that parliamentary power is not abused at the expense of the electorate.

In Canada and the United States the constitutions make it abundantly clear that "limited government" is an important ideological principle of the Western Bloc. The constitutions of all three nations grant sanctity (in varying degrees) to the notion of decentralized responsibility and the diffusion of authority. Different levels of government retain complete control over certain spheres of interest. This necessitates constant bargaining between the various levels of government in an attempt to reach some kind of consensus and has led to the legitimization of the principle of mutual accommodation.

At the state level, the principle of liberal democracy implies that the government is limited in its behavior and/or exercise of power either directly or indirectly by the recognition that the opinion and rights of the individual must be considered at all times and that governmental power is best limited through decentralization and the diffusion of authority. In reference to the Canadian Charter of Rights and Freedoms, the Honourable Jean Chretien stated:

> Entrenchment of these rights [referring to power relationships between governments] will not increase my power or your power, in fact it will reduce both my power and your power. What entrenchment will do is transfer power to the people.[7]

The notion of "power to the people" is further expressed in the Ninth and Tenth Amendments of the United States Bill of Rights.

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. (Ninth)
>
> The powers not delegated to the U.S. by the Constitution nor prohibited by it to the states, are reserved to the states respectively or to the people. (Tenth)

Each Western Bloc nation has many responsibilities in addition to guaranteeing the individual rights enumerated earlier. Although not an express aspect of liberal democracy, the fact that the principle of individualism plays such a pivotal role in all aspects of Western Bloc society ensures that all three nations are concerned with strengthening their position as sovereign and independent nations.

An important characteristic of the Western Bloc which does not appear to stem from the liberal democratic principles which have been discussed is the move toward the acceptance of a limited welfare state. The concept that the state has the responsibility for ensuring that its citizens do not fall below a prescribed level of economic well-being has become an accepted principle of the Western Bloc. Although the whole idea of collective liability appears to run contrary to the liberal principle of individual responsibility, nonetheless the Western Bloc acknowledges the need for the state to ensure that all citizens are adequately provided for and that a system of equal opportunity is encouraged. The increasing role which governments play in the provision of various types of services has led to greater centralization of control and a more collective orientation toward the population in general. The principles

of centralization and collectivism are clearly opposite to those we already attributed to Western liberal democracy but are not necessarily incompatible with them.

Liberalism, for example, asserts that one of the duties of government is to ensure that individuals experience equality with respect to acquiring an education or pursuing happiness. Obviously if one lives each day struggling to survive, such equality of opportunity does not exist. The principle of social welfare can be used by the state to ensure that a minimum standard of uniformity is maintained.

It was also mentioned earlier that in order to ensure the maintenance of 'freedom' as it is defined by liberal democracy there must be a common desire to sustain a democratic system. It is quite obvious that a government which wishes to protect liberal democratic principles must behave in a manner which attempts to keep people satisfied. Accepting the duties inherent in the idea of a "welfare state" can be the most effective way in which the state can be a government "for the people."

Although politics and economics are not as closely linked in Western Bloc society as they are in the Eastern Bloc, there is little doubt that capitalism is the form of economic system most compatible with a liberal democracy. This is because the two systems share commitment to the principles inherent in individualism. In a capitalist system the means of production are owned and controlled by individuals or groups rather than by the government in the name of the collective.

The commitment to capitalism accepts that whoever owns property and/or the means of production will inevitably have control over other individuals.

Thus one individual owning or controlling a small fraction of society's wealth will have far less power which could be used over other individuals than would a state which owns everything. A government elected by a free vote would be able to utilize its political power to limit the potentially-exploitive power of the owners of private property.

A further assumption of capitalism is that the productive mind is best able to function when it has a motivation for doing so and is not forced to limit itself because of arbitrary governmental regulations or decisions. Thus, a society which is interested in augmenting its technological ability would best be served by allowing individuals to think and plan according to a system which sees that they are rewarded for their achievements.

The third important principle of a capitalist system is that of the market economy. A market economy is a move away from the past commitment to self-sufficiency. It is characterized by a division of labour which implies that each individual has a responsibility for a part of society's overall needs and which sees produced goods designed for a domestic and/or international market. The capitalist economic system of the Western Bloc ensures that, for the most part, any one individual has only limited control over the means of production and is, therefore, far more capable of managing it.

Despite the commitment toward an economic system based on free enterprise capitalism, the Western Bloc has given increasing recognition to the principle of a mixed economy and, as with the question of social welfare, has acknowledged that there are aspects of society which are too

complex or expensive for individuals or groups to run on their own.

As in the political realm, however, the state is held accountable for its behavior in areas under government control through the democratic principles of periodic elections, freedom of speech, the obligation to listen to all sides and to act in the best interests of the majority. Despite instances of public control the Western Bloc still places the most emphasis on the private/individual aspects of a mixed economy. The principle of competition and a competitive market is very important and is encouraged in almost all aspects of society.

Although monopolies still exist in the Western Bloc it remains largely anti-monopolistic. The encouragement of competitive capitalism also works to protect the principles of freedom and equality by allowing individuals the opportunity to work where they want and advance to the level they want. Further it reinforces the liberal democratic principle of voluntarism—the belief that each individual is responsible for determining a decided choice of action and, on the whole, ensures that the individual consumer is not forced to pay exorbitant prices for a particular item because one company has a monopoly over its production.

Except where the interests of the nation are at stake (i.e. the British steel industry) individuals have the right to choose what to produce and where to set up their business or industry. An important professed economic principle of the Western Bloc closely linked to competition is that of the "free market." Although Canada, the United States and Britain all levy tariffs on imported goods, it is, nevertheless, the ultimate goal of Western ideology to see the principle of the free movement of

goods applied at the international level.

The general feeling is that there is no legitimate excuse in a democratic country for preventing foreign goods from being imported. Although it is understandable that domestic industries would wish to take measures which would protect or enhance their share of the home market—the use of trade barriers to do so is in direct contradiction to the more important principles of absolute and comparative advantage. Britain has taken an important step toward putting the principles of economic freedom into practice by joining the European Economic Community (EEC) while all three Western Bloc nations have indicated their support for the principle of free trade by becoming signatories to the General Agreement on Tariffs and Trade (GATT). The three major goals of GATT include achieving a decrease in tariff levels through mutual agreement among nations, adopting a non-prejudicial method of applying tariffs on all adherents to the agreement and working toward getting rid of all forms of non-tariff barriers.

A further example of the Western Bloc's support for the capitalistic principle of free trade, open competition and comparative advantage is its involvement in the International Monetary Fund (IMF). The objective of the IMF is to prevent nations from purposely devaluing their currency in order to encourage exports and discourage imports, thus protecting domestic industries and generating employment. Although the Western Bloc still has tariffs, a gradual move is being made toward applying the democratic principle of freedom in the economic sphere as well as reducing governmental strictures on trade policies.

The Western Bloc's involvement in the EEC, GATT and the IMF also reflects the principle of international economic co-operation. Indeed, the move toward trade liberalization is a direct result of the encouragement of large markets, specialization, the achievement of comparative advantage and the lowering of all kinds of trade barriers. The whole concept behind the principles of absolute and comparative advantage involves determining trade methods which will benefit all nations involved, not just one at the expense of another.

> ... the multi-lateral system is based on the theory of comparative advantage and the belief that the competitive forces at work in international trade, and the effective operation of the price mechanism, are beneficial and should be strengthened. It also reflects the importance attached to stability, order and predictability provided by the rule of law for the conduct of international trade relations.[8]

Other important aspects of the Western Bloc's ideology with respect to economic organizations are the principles which govern the operation of corporations. The "corporation" is one of the most important forms of business organization in the Western Bloc. Although rather complex, a "corporation" is formed when individuals join together to run an industry or business. In creating a corporation, individuals are free to join and withdraw as they choose. In most instances individuals own a certain percentage of shares in the business.

The type and amount of shares which a person controls determines the amount of return he can expect when the corporation experiences a profit, because a shareholder is part owner of the corporation and is thus entitled to receive his fair share in returns. On the opposite side it also means

he could lose everything he has invested if the business does not succeed. Clearly the nature of corporations reflects the ideological principles of the Western Bloc with regard to economics: Individuals choose to set up and become involved in a corporation if they perceive that public demand will consume whatever services or goods they produce. Individuals make their own decision about investing in such ventures and do so based on their belief that they can make a profit. The amount of profit which a corporation can make is not limited by the government but rather by the level of supply and demand determined by a free market economy. Thus an individual (or, at a more broad level, a Western Bloc nation) will base his (its) decision to invest in a business venture on the profits he (it) expects to receive. The support for the notion of corporations clearly reflects the liberal democratic principle of laissez-faire profit-seeking.

In summary, the major ideological principles of the Western Bloc include: 1) democracy; 2) individualism; 3) free elections and universal suffrage; 4) independent judiciary, separation of powers and a system of checks and balances; 5) equality before the law; 6) freedom of the press, speech, thought, religion and movement; 7) decentralization and limited government; 8) capitalism and free enterprise; 9) market economy and the specialization of labour; and 10) free trade, open competition and comparative advantage.

## Chapter Three

### Endnotes

[1]This quote comes from the 1780 Bill of Rights of the Constitution of Massachusetts which originally came from Montesquieu's "Spirit of the Law." It should be noted that while separation of powers exists in the United States, Canada and Britain, it is only in the United States where there are three divisions. Neither Canada nor Britain practise the separation of legislative and executive functions.

[2]United States Declaration of Independence.

[3]Richard V. Allen, et al., Democracy and Communism: Theory and Action (Princeton, New Jersey: The Institute of Physical and Political Education, 1967), p. 37.

[4]See for example: 1981 Canada Constitution Act, Part I, Schedule B; Canadian Charter of Rights and Freedoms 2 a-d; European Convention on Human Rights, Section I, Articles 9-11; U.S. Constitution, Article 5, Amendments I, IV, & VI.

[5]A practical example substantiating the Western Bloc support for the principles of free speech and press is its initial approval for the concept of a "New International Information Order" (NIIO). Initiated by the United States in 1981 the objectives of the NIIO include encouraging increased liberty for journalists in Third World countries, preventing government control of the media, and improving international access to news in all nations. However, the Western Bloc has quite clearly expressed its concerns at (UNESCO) NIIO conferences that some Third World and Socialist countries may use the NIIO as a means of maintaining government control of the media and limiting the free flow of information. As a result it is withholding complete support for the provisions being set forth for the NIIO until it can be assured that the proposals will not allow such limits to be placed on free speech and freedom of the press. New York Times, "U.S. Assailed at UNESCO Conference on Press" (Jan. 19, 1982) p. 13, Column 3; New York Times, "New Information Order: Debating Pragmatics" (Jan. 24, 1982), Section 4, p. 4, Column 1.

[6]It could be argued that Canada professes the principle of parliamentary supremacy. However, the acceptance of the new Constitution Act indicates a clear move toward the American system of constitutional supremacy.

[7]Jean Chretien, "Meeting of the Continuing Committee of Ministers

On the Constitution," Document 830-81/025 (Montreal, July 8-11, 1980).

[8]Department of External Affairs, Canadian Trade Policies for the 1980s, A Discussion Paper (Ottawa: 1983), p. 36.

# Chapter Four

## Outline, Background and Explanation of UNCLOS III and the Issues Involved

Before beginning a comparison and analysis of ideology and behavior with respect to the Law of the Sea issues enumerated, brief attention will be given to:

a) the background, organization, goals, dates of sessions, etc., involved in UNCLOS III;

b) a brief explanation of the reference/source material used to provide the information necessary to make the analysis;

c) a short description of the four Law of the Sea issues being used as the basis for this study.

While the background of UNCLOS III has little direct bearing on the discussion at hand it is important for providing some information with respect to the overall context within which UNCLOS III can be placed regarding the time, issues, and nations involved.

The first UN conference on the Law of the Sea was held in Geneva from February to April, 1958, after it became apparent that some form of internationally-agreed-upon code was necessary for governing the activities of various states with respect to their use of the ocean. Although the conference adopted conventions on a number of important issues relating to the territorial sea, the High Seas and the Continental Shelf, it failed to set limits for fishing zones and the territorial sea despite the fact that six years of intensive preparatory work had gone into UNCLOS I.

UNCLOS II met from March 17 through April 27, 1960, again in Geneva, but this time with 87 nations participating in an attempt to deal with

the above issues. However, no satisfactory conclusion was reached. A break of almost 14 years occurred between the second and third sessions and during this time a number of important developments occurred.

The first major step took place at the 22nd Session of the UN General Assembly in 1967 when Dr. David Pardo (UN delegate from Malta), introduced an agenda item which requested a

> declaration and treaty concerning the reservation exclusively for peaceful purposes of the seabed and of the ocean floor, underlying the seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind.[1]

This declaration not only shifted the focus of Law of the Sea discussions from traditional issues to those reflecting a number of key ideological questions but also set the tone for UNCLOS III and the preparatory work which preceded it.

Before the 22nd UN Session adjourned an ad hoc committee was set up to "study the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction."[2] This committee eventually became a preparatory standing committee for UNCLOS III. In 1970 the UN General Assembly passed resolution 2749 (XXV) which supported Pardo's suggestions, resulting in a set of declared principles which controlled all areas of the ocean and seabed beyond limits of national jurisdiction. However, the Law of the Sea Declaration in resolution 2749 of the UN General Assembly failed to provide guidelines for several important ocean-related issues. To provide guidelines for the territorial sea, the establishment of an international regime and so forth, the UN set 1974 as the date for the Third Conference on the Law of the Sea.

By the time the UN passed resolution 3067 which convened UNCLOS III it was obvious that the questions dealing with the international legal regime to control the use of the oceans, the equitable distribution of ocean wealth, the establishment of a supranational mining company and its funding, and the peaceful use of the ocean and seabed were becoming increasingly important. The first session of UNCLOS III met in New York from the 3rd to 15th of December, 1973, to organize the second session held from June 20 to August 29, 1974, in Caracas, Venezuela, where most of the important issues relating to sea law were expected to be dealt with.

The goals of UNCLOS III were clearly set forth at this second session. During part of his speech at the opening of the session, Secretary General Kurt Waldheim asserted that:

> Many factors made this Conference imperative. First there were the problems unsolved at the 1958 and 1960 Conferences. Then there was the dissatisfaction felt with existing law, stemming in part from the fact that many states which have since acceded to independence had no role in shaping that law and did not feel that it conformed to the realities of the international community. A crucial element was the very rapid progress of technology and the rising demand for resources.... Most important of all in bringing about the Conference has been the mounting pressure on world resources and the awareness that the seabed and the oceans contain some of the largest unexploited reserves available to man. The calling of this Conference lies in the realization that these resources must be developed in an orderly manner for the benefit of all and contribute to a more equitable and workable global economic system.[3]

In attempting to deal with these problems and concerns the major objective of the second session of UNCLOS III was to draw up a convention providing laws for every possible issue related to the oceans. It was hoped that all nations would agree to follow these laws and that an

acceptable regime for governing the ocean would ensue. The utopianism of this goal became apparent as each nation began voicing its opinion and position with respect to various issues. A number of significant schisms became apparent and nations began to form alignments with nations that professed opinions similar to their own. Any hopes of dealing with all the questions at the Caracas Session were dashed as these gaps grew.

The desire to deal with the problems which arose during the First and Second Sessions of UNCLOS III initiated a further ten sessions between 1974 and 1982.[4] It was 1980 before a draft Law of the Sea treaty was finally tabled before UNCLOS III for ratification and 1982 when the Convention was finally adopted during the Eleventh UNCLOS session in New York.

By October 31, 1985, 142 nations, including Canada, the USSR and Cuba had signed the Treaty, while a few nations, the FRG, Belgium, Italy, the United States and Britain, had not. Articles 306-308 of the Law of the Sea Convention state that the Treaty will come into effect 12 months after it has been ratified by 60 nations. Although 142 nations had signed the Treaty by October 31, 1985, only 20 nations have formally ratified it.

The source material for this study includes the position papers contributed by each of the nations, the work of the preparatory committees, numerous proposed texts, draft conventions, revisions and so forth. The most important sources of information were the Official Records of UNCLOS III, the five negotiating texts[5] and, of course, the Draft Convention of the Law of the Sea. Of the five negotiating texts the Revised Single Negotiating Text, presented at the Fourth Session in 1976, served as the basis for

future negotiations. It was divided into four parts. Part I dealt with the notion of the International Seabed Authority and its control over seabed resources beyond limits of national jurisdictions which were the "common heritage of mankind." Part II dealt with the limits of the territorial sea, continental shelf etc., as well as setting up the conditions for, and system of, revenue sharing. Part III dealt with marine research and the transfer of technology, while Part IV laid out a system for the compulsory settlement of disputes.

The text of discussions, along with other works presenting national opinions, will be used to determine whether a correlation exists between national/bloc ideology and behavior. While the background of the four Law of the Sea issues will not be traced each issue will be briefly described in order to clarify its practical implications. It should be noted that, in relation to many other Law of the Sea issues, those discussed in this study are fairly recent developments. Each of the Law of the Sea issues selected for this study has undergone alterations and they now stand as the most important and contentious aspects of what has been labelled "the new era of ocean politics."[6]

The articles of the Draft Convention applicable to this study are outlined in Appendix A. The articles are taken from the Draft Convention of the Law of the Sea published after the Ninth Session in Geneva. The version of the Convention published after the Ninth Session is virtually identical to the Treaty now standing for full ratification. The Law of the Sea Draft Convention is 179 pages long, contains 320 articles, and is divided into 17 sections as well as nine annexes. Given the many Law of

the Sea issues outlined in the Draft Convention it would appear that the four issues being examined have assumed an importance which, with the exception of questions concerning the limits of the territorial sea, the continental shelf and the contiguous zone, far outweigh all the rest. The importance of the four subject issues is demonstrated by the fact that disagreement by some nations with their content has hindered, if not halted, the ratification and implementation of the Law of the Sea Treaty.

The first issue concerns the establishment of an International Seabed Authority (ISA). The concept of an International Seabed Authority to regulate activities related to the seabed has become increasingly important with the recognition that the ocean can have a tremendous impact on the economy and policies of every member of the world community. A full description of the ISA is found in Articles 156-160 of the 1980 Draft Convention, and is the result of many years debating and numerous alterations. The idea of a seabed authority has been granted general acceptance for many years, ever since nations became aware that there must be some kind of control to govern man's demand for raw materials and his subsequent exploitation of the ocean. Despite acceptance of this general concept there were numerous problems in reaching an agreement on the exact nature of the Authority. Many crucial decisions had to be made with respect to the ISA's functions, powers, structure and goals.

The result was a proposal for a Seabed Authority which will function as a supranational institution imbued with powers which take precedence over the powers of individual states to make decisions on issues to do with the ocean and deep seabed. The ISA (henceforth referred to inter-

changeably as the ISA or Authority) is responsible for supervising, regulating and advising all activities to do with the ocean and does so based on the principle of international co-operation. It is also responsible for the equitable distribution of the benefits accrued from seabed mining to all nations (Art. 157/3) and functions according to the notion that the oceans and their wealth are the common heritage of mankind (Art. 137/2 and 153/1).

The distribution of benefits is to be based on an assessment of the needs of each nation determined by the Authority. The decisions of the Authority are binding (Art. 160/1); it has the power to settle disputes between nations, and to assign responsibilities to member states as well as its own related bodies, to ensure that the decisions which it makes are carried out and the goals and principles of the Convention are honoured (Art. 153/4 and 5).

The second issue concerns the establishment of a supranational mining company (the Enterprise) funded by nations party to the Law of the Sea Convention in amounts consistent with the financial contribution each nation makes to the UN. The establishment of the Enterprise as a mining company is closely linked to the establishment of the ISA. Several articles in the Law of the Sea Draft Convention describe the organization of the Enterprise.[7] There are, however, a couple of points regarding the organization of the Enterprise which should be emphasized. First, the Enterprise is an organ of the Authority and despite the fact it has its own governing board and carried out its responsibilities on a seemingly independent basis it, nonetheless, functions in accordance with the directives of the

ISA Assembly (Annex IV, Art. 2i) which is the supreme organ of the ISA (Art. 160/1) and consists of all its members (Art. 159/1).

Second, the Enterprise functions under largely the same principles as the Authority and, although it operates at a supranational level, its specific responsibilities are more closely related to those of a commercial mining company. The Enterprise is the operational arm of the Authority with respect to actual mining operations in the ocean and in the refining and sale of seabed resources. One of the stated objectives of the Enterprise is to enable those nations, who would not otherwise be able, to become involved in deep seabed exploitations. The Enterprise would assume the role of determining how and where resulting revenues should be distributed.

Asking member nations to fund the Enterprise as well as the ISA generated much discussion. The initial suggestion that the funding come from wealthier nations was almost immediately rejected by those affected countries, who saw themselves investing vast sums of money into a mining operation and then being the last to receive any benefits. This problem was somewhat alleviated when a clause was included to ensure that mining companies, or countries, were repaid the money they initially invested before the actual distribution of benefits to nations on a needs basis began.

The question of financing was further dealt with when it was suggested that the most practical thing to do was to wait to establish the Enterprise until the ISA had generated enough revenue to fund it. According to the Treaty, funding for the Enterprise will come from the ISA. However, according to Art. 160e, until the ISA can generate its own funding the

Enterprise will be paid for by the member nations in amounts determined by a general assessment scale similar to that used for the regular budget of the UN (Art. 160/2e). Members have no choice in this matter.

The third issue is the question of the mandatory transfer of technology. Perhaps the most important aspect of the Enterprise is the authority which it has to request/demand and receive technological information from private mining companies as well as the countries party to the Convention. The justification for granting the Enterprise the power to request technological information is that wealthier nations have a far greater capacity to fund research and development and thus develop increasingly new and improved methods of resource extraction. Without taking steps to spread or share technology, inequality between world nations can only increase and wealthier nations will continue to amass more and more knowledge. Developing countries would be left to cough in the dust of the wealthier nations as they raced up the road toward maximizing their ability to meet their demand for raw materials.

Nations would relinquish information on technology as requested by the Enterprise which would, in turn, distribute this information through the ISA to developing countries (Art. 144 and Annex 3 and 5). Nations or companies would be remunerated in a manner determined by the ISA according to what it felt was fair. Should nations refuse to release such information, Annex 3, Art. 5/5 empowers the Authority to convene a group of state parties "which shall consult together and shall take effective measures to ensure that such technology is made available...."

The Law of the Sea Treaty makes room for the joint exploitation of

the seabed by the Enterprise and a state or state company. Should a company or state find an area it wishes to mine it must give its plans to the ISA for approval. One of the conditions of this agreement is that there be room for two operations at the one site (Annex III). The ISA chooses the site it wants and gives it to the Enterprise. The company or state is given the authority to mine the other site. Despite this sharing of authority the state or company involved in mining the one site must carry out its operations in compliance with Treaty provisions. Room must be made for an increased opportunity for other nations to participate; any revenues accruing from exploitation must be shared with the Authority; nations or private companies must still be prepared to relinquish information regarding technology to the Authority who would in turn, distribute this to developing countries; finally, special care must be taken to ensure that the principle of the ocean as the "common heritage of mankind" is promoted, and that the effect which such exploitation will have on the economies of Third World nations is taken into account.

The fourth issue discussed in this study is the imposition of revenue sharing obligations on corporations and countries involved with seabed mining. The provisions for revenue sharing are laid out in Articles 140/2 and 160/2 f, i, and j. The control which the ISA would have over private or national mining companies is extensive. Once a mining company has decided it would like to mine a certain area of the ocean it must submit its plans, in full, to the Authority. These plans must comply fully with Treaty provisions (i.e. with respect to pollution, marine protection, etc.), and must include all information regarding the equipment and technology to

be used and the projected costs involved. The Authority then has the right to review the qualifications of the prospective mining company, demand that the company agree to abide by its decisions (Annex 2, Art. 4/b), set production limits, approve location and size of sites, and set the conditions of exploitation which the company must follow.

When a mining company finds resources of any kind worth extracting, it does not automatically have preferential rights of ownership. It is expected that the company will be allowed to recover its initial operating costs. Any profits or benefits accrued from seabed mining not used to meet operating costs are expected to be placed in the hands of the Authority. The Authority has the power to decide how such benefits should be distributed and to ensure both that it receives a share of the proceeds and that developing and landlocked countries receive an equitable share. Mining companies must comply with these revenue-sharing obligations or be prepared to have their license to mine revoked by the Authority and penalties assessed.

## Chapter Four

## Endnotes

[1]United Nations, General Assembly, Document A/166695, Aug. 17, 1967. This item included a memorandum which further expanded this request by stating:

a) that nations could not appropriate areas of the ocean floor beyond limits of national jurisdiction.
b) any exploitation of the seabed had to be guided by the purposes and principles of the UN.
c) that revenue coming from such exploitation had to be used to encourage Third World development.
d) all areas of the ocean which are beyond current limits of national jurisdiction must be used only for peaceful purposes.

[2]Ibid., Resolution 2340, Dec. 18, 1967.

[3]United Nations, Official Records, UNCLOS III, 1975, pp. 37-38.

[4]UNCLOS III - Sessions:

| | |
|---|---|
| First | - Dec. 3-15, 1973, New York |
| Second | - June 20-Aug. 29, 1974, Caracas |
| Third | - Mar. 17-May 9, 1975, Geneva |
| Fourth | - Mar. 15-May 7, 1976, New York |
| Fifth | - Aug. 2-Sept. 17, 1976, New York |
| Sixth | - May 23-July 15, 1977, New York |
| Seventh | - Mar. 28-May 19, & Aug. 21-Sept. 15, 1978, Geneva and New York |
| Eighth | - Mar. 19-Mar. 27, & July 19-Aug. 24, 1979, Geneva |
| Ninth | - Mar. 3-Apr. 4, & July 29-Aug. 29, 1980, New York and Geneva |
| Tenth | - Mar. 9-Apr. 24, & Aug. 3-28, 1981, New York and Geneva |
| Eleventh | - Mar. 8-Apr. 30, & Sept. 22-24, 1982, New York |
| Twelfth | - Dec. 1982, Montego Bay. |

[5]These texts are composed of the "Informal Single Negotiating Text" (ISNT), the "Revised Single Negotiating Text" (RNST), the "Informal Composite Negotiating Text" (ICNT), the ICNT/Revision 1, and the ICNT/Revision 2.

[6]A.L. Hollick and R.E. Osgood, New Era of Ocean Politics (Baltimore: John Hopkins University Press, 1974), p. XI.

[7]Articles 153/2 a, 158/4, 160/2 c, 170 and Annex IV.

# Chapter Five

## Behavior of the Eastern Bloc at UNCLOS III

This chapter will examine the reaction/behavior of Cuba and the Soviet Union with respect to the four issues outlined in Chapter Four. In most cases the final position which the countries took on an issue will be used as the basis for comparison. However, instances where significant or obvious changes in position occurred will be pointed out.

The method used for this part of the study is as follows:

a) The issue being discussed, and the country whose behavior is being examined, will be identified.

b) A statement will be given regarding the expected behavior of each country with respect to each issue. The nature of this expectation will be explained on the basis of the ideologies of each Bloc outlined earlier.

c) The position(s) of each nation will then be examined and compared with the expected behavior.

## Expectations

The concept and principles behind the establishment of the ISA are outlined in Part XI of the 1980 Law of the Sea Draft Convention (Sections 1 to 5), and are entirely compatible with those professed by the Eastern Bloc. The functions and powers allotted to the Authority are very similar to those exercised by the Politburo and the Central Committee of the Communist Part of the Soviet Union,[1] as well as the Council of Ministers and the National Assembly of Cuba.[2] Given this similarity it would be reasonable to expect that the Eastern Bloc would not only support the

establishment of the ISA which would function supranationally to regulate the exploitation of the seabed, enact developmental strategies and administer the equitable distribution of benefits in a manner consonant with the "common heritage" principle, but would also work to fashion its development based on the Eastern Bloc model.

It was pointed out earlier that Communism implies centralized control by an autocratic authority; that the Communist Party is the repository of all knowledge and control and has the right to command complete obedience. In a Communist system there is a vanguard, authoritarian party responsible for directing and controlling the means of production whose aim is to create a society where goods are held in common and distributed as needed.

The key concept behind the establishment of the ISA is the belief that "the area and its resources are the common heritage of mankind..." (Section 2, Art. 136) and "the Authority shall provide for the equitable sharing of financial and other economic benefits" (Art. 140). There are many obvious similarities between the functions and powers of the ISA and the governing political bodies of the Eastern Bloc. Article 137/2 asserts that the ISA acts on behalf of mankind as a whole, while Article 139 obligates participating states to act in accordance with the Treaty and the directives of the Authority. These assertions and obligations are commensurate with those of the Politburo/Council of Ministers. The power of the Politburo and Council of Ministers stems from commitment to the Marxist/Leninist principle of egalitarianism. Egalitarianism obligates individuals to surrender their interests and accept the directives of the Communist Party so that the interests of the collective can be achieved.

The production policies of the Law of the Sea Convention give an extensive explanation of how the ISA will fulfill its mandate regarding the exploitation of seabed resources. There is a close resemblance between the production policies outlined in the Convention and the economic practices of the Eastern Bloc. One of the most obvious examples of the similarity in the management of economic activity between the Enterprise and the governments of the Eastern Bloc is the establishment of a system of five-year plans for reviewing and analyzing exploitation and production activity (151/2a and 154).

> Every five years from the entry into force of this Convention, the Assembly shall undertake a general and systematic review of the manner in which the international regime of the area established in this Convention has operated in practice. (Art. 154)

Article 151 of the Convention adds to the socialist character of the ISA by legitimizing its right to participate in, and be party to, all plans relating to economic arrangements as well as authorizing it to set performance and production requirements (151/12). Articles 152 and 157/3 assert that the Authority will avoid discrimination when carrying out its functions and will act on the basis of the sovereign equality of all members.

The Authority has an Assembly, Council and Secretariat (158/1). The Assembly is the supreme organ of the Authority to which all other organs are accountable (160/1). It elects council members, the Secretary General and the governing board of the Enterprise (160/2a, b, c). The Council is responsible for all executive matters and deals with economic plans, approves production sites, and makes recommendations on seabed issues to

the Assembly.

Part XI (Subsection G, Articles 176-182) reveals the extent of the power enjoyed by the Authority. The Authority has the legal power necessary to fulfill its obligations. The Authority and its property are exempted from any legal process, from any kind of search, confiscation or expropriation as well as from any restrictions, regulations or controls. None of the Authority's books, records, or industrial secrets are open for public inspection.

The Convention also refers to the fact that the Authority shall ensure that member states carry out their responsibilities with regard to the ISA, and shall use any method within its power to ensure the fulfillment of these obligations.[3] Although the Convention provides some specific guidelines for the methods the Authority can use to achieve its objectives it also contains several provisions which fail to place restriction on the extent to which the Authority can exercise its powers. Specifically the Convention grants the Authority the power to establish policies for any Law of the Sea issue and to propose methods for achieving such policies. The Convention further ensures that the Authority will be provided with the funds necessary to achieve its obligations and authorize it to examine installation sites to ensure compliance with Treaty provisions. On a more general level the Convention states that the Authority

> shall also ensure the maintenance of the principles laid down in this Part with regard to the exclusion of claims or exercise of sovereignty over any part of the Area, the rights of states and their general conduct in relation to the Area.... (Art. 155/2)
>
> The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance

> with the relevant provisions of this Part.... (Art. 153/4)

and

> shall have the right to take at anytime any measures provided for under this part to ensure compliance with its terms.... (Art. 153/5)

The Convention states that if nations fail to comply with Treaty provisions, then state parties are obligated to assist the Authority "by taking all measures necessary to ensure such compliance" (Art. 153/4). The Convention fails to define or place limits on the phrase "any necessary measures."

The powers and functions granted to the Authority under the Convention are similar to the powers and functions exercised by the governing bodies of the Eastern Bloc. In both the Soviet Union and Cuba a small group of individuals is responsible for making political and economic decisions in the name of the collective, appointing important officials, setting production standards and goals (i.e. the Soviet GOSPLAN—State Planning Committee and the Cuban JUCEPLAN—Central Planning Board), reviewing and making recommendations in all areas, and ensuring that individuals are fulfilling the obligations which the Party has established for them. Thus the nature of the Politburo of the Soviet Union and the Council of Ministers of Cuba is virtually identical to that of the ISA. This similarity extends to the Council of the Authority (Art. 165/2, a-y) whose functions parallel those of the Communist Party of the Soviet Union Central Committee and the Cuban National Assembly.

> The Central Committee of the Communist Party of the Soviet Union directs the activities of the Party and local Party bodies, selects and appoints leading functionaries, directs the work of central government bodies and public organizations of working people through the Party groups in them, sets up various Party organs, institutions, and enterprises and

> directs their activities... and distributes the funds of the Party budget and controls its execution.[4]

> The Council of Ministers of Cuba is in charge of socio-economic development, administration, monetary and fiscal policies, foreign trade, defense, international security, foreign policy and international treaties... 43 central state administration agencies are under the Council's jurisdiction.[5]

Of further interest is the comparison which can be made between the rights granted to the ISA in Articles 176 to 182 of the Draft Convention and the rights granted to the Communist Parties of the Eastern Bloc. The Constitution of the Soviet Union as well as the Rules of the Communist Party provide for a system of monetary checks and audits of the treasuries, activities and books of state bureaucrats and administrative bodies.[6] There is, however, no reference which would extend the right to conduct such an external examination of the Communist Party itself. The Communist Party is, of course, the repository of power in the Eastern Bloc. Except for provisions allowing the Party to set up its own auditing commission from within its ranks, the fact that the Constitution and the Party Rules do not provide for any other form of external control, implies that the Communist Party can exercise rights similar to those granted to the Authority in Articles 176 to 182. This apparent similarity between the Authority and the Communist Party is reinforced by an examination of the Law of the Sea Draft Convention. Several articles in the Convention[7] grant the Authority the power, either on its own or through the Seabed Disputes Chamber (Art. 186), to review the activities of nations engaged in seabed mining, ensure that contract obligations are being fulfilled, and examine installations. The Draft Convention does not make provision for external examinations to be carried out against the Authority. In fact, Article 190

states that:

> The Sea-bed Disputes Chamber shall have no jurisdiction with regard to the exercise of discretionary powers in accordance with this part....

Article 175 emphasizes, even further, the similarity between the rights of the Authority and the Communist party by granting the Authority the right to appoint the Auditor responsible for examining its financial records. The right of the Authority to appoint its own auditor is easily comparable to the right of the Communist Party to set up its own auditing commission.

The second issue to be addressed is the establishment of the Enterprise as the operative arm of the ISA. The Enterprise would have some autonomy in its operations but would be answerable to the ISA Assembly. The Assembly would establish production levels, carry out reviews of the Enterprise's performance, appoint its officers and collect the revenue which it generates. The principles which these characteristics reflect are highly indicative of the economic organization of the Eastern Bloc. Both the Soviet Union and Cuba have a centralized system of economic control and planning. The Soviet GOSPLAN and the Cuban JUCEPLAN can be equated with the Enterprise and its relationship with the Authority. In both cases the State and the Authority establish and approve plans and ensure that industries and the Enterprise are adhering to the conventions and principles of State and Treaty guidelines. In both cases the State and the Authority collect revenue, claiming that, in accordance with the principles upon which they are based, they must ensure an equitable distribution of benefits as determined by themselves. In addition both the State and the Authority approve the appointment of directors and other key personnel.

The concept of the "Enterprise" reveals complete compatibility with

the Eastern Bloc's perception of the principles upon which an economic system should be based. Both the Eastern Bloc and the Enterprise encourage economic co-ordination by emphasizing the need for centralized, authoritative control, by prohibiting the accumulation of capital at any one level and by discouraging private entrepreneurial activity. Given the similarity in the principles expressed by the Eastern Bloc and those governing the operation of the Enterprise it is justifiable to assume that the Eastern Bloc will support the latter's establishment.

The Eastern Bloc's dedication to the principle of "from each according to his ability" would seem to ensure its support for the idea that initial funding for the Enterprise be provided by member nations. In the Eastern Bloc most revenue is provided by industrial and business enterprises. Enterprises are assessed a tax based on their profit ratios which is collected and then redistributed by the State. The Eastern Bloc's system of revenue collection is similar to that proposed in the Law of the Sea Convention for the Authority and Enterprise. The Convention proposes (Art. 160/2,e) that nations be assessed a fee based on their ability to pay. The Authority would collect the fees and ensure that the Enterprise is provided with the funds necessary to carry out its functions (Art. 170/4).

There is a close relationship between the rationale governing the above system and that reflected in the funding arrangements of the UN. Member states fund the operation of the UN through a system of mandatory assessments. In comparison to a nation's GNP this assessment is relatively small and, hence, many of the UN's activities are funded voluntarily.

Should a nation fail to meet its assessed payments for two consecutive years the UN has the option of suspending its voting privileges. Except for the emphasis on voluntary contributions, the provisions for funding the ISA and its activities (Arts. 60, 171-173) are virtually identical to those outlined above: Nations are expected to submit payments to the ISA equal to those they submit to the UN (Art. 160/2, e), and will lose their voting privileges in the ISA Assembly if they fail to pay for two years. The major difference between the funding arrangements of the UN and the ISA is that for the latter it is a temporary arrangement until it becomes self-financing.

The third issue to be addressed is the obligation of member nations to make all information related to seabed technology available to developing countries through the Enterprise. Distribution of technological know-how by the Enterprise reflects the principle of mutual co-operation and the desire to create a fraternally-oriented, egalitarian society. Those that "have" should share with those that "have not." So that greater equality can be promoted between nations, Annex III (5) 5 provides the Enterprise with the powers it needs to ensure that such technological information is forthcoming and that the monopolization of technological information by certain nations is prevented. The power of the Enterprise to prevent monopolization of ocean-related technology can be equated with the Eastern Bloc's belief that, in the interest of the collective, the state has the right to take arbitrary or forceful possession of any necessary goods or resourses.

The fourth issue deals with the obligation of (state) mining corporations to share the revenue which is generated from seabed mining operations.

A detailed explanation of these provisions is contained in Annex III, Article 13 (Draft Convention). Once again, the ideological principles reflected in these provisions appear compatible with those of the Eastern Bloc.

Initial support for the concept of revenue sharing was based on belief in the "common heritage" principle governing UNCLOS III. Acceptance of the "common heritage" principle legitimized the need for an International Seabed Authority to be responsible for distributing benefits accruing from the oceans in an equitable and non-discriminatory manner. To ensure that the Authority would have the power to carry out the responsibilities arising from acceptance of the common heritage principle, important principles were articulated, re-inforcing the concept that the ocean (beyond national limits) belonged equally to everyone. Because the ocean would belong to everyone, no one corporation or nation would have the right to claim any one area for itself. Article 137/3 asserts that

> no State or national or jurisdictional person shall claim, acquire or exercise rights with respect to minerals of the Area except in accordance with the provisions of this part. Otherwise, no such claim, acquisition or exercise of any such rights shall be recognized.

The principle that the ocean belongs to everyone accords with the Eastern Bloc's belief that there should be no private property. Because the Eastern Bloc believes there should be no private property it should agree that a percentage of the benefits accrued from seabed mining must be handed over to the Authority[8] so that the Authority can fulfill its obligations and be able to promote the principles of egalitarianism, public ownership and control and prevent the accumulation of surplus value.

The expectations of the way in which the Eastern Bloc would respond to each of the above four issues is based on important aspects of its ideology. As is evident, the principles governing the establishment and operation of the Authority and Enterprise are in agreement with the (related) ideological beliefs of the Eastern Bloc. Because of the compatibility between the Eastern Bloc's ideology and the nature of the ISA and the Enterprise it is justifiable to assume that the Eastern Bloc will support the ISA and the Enterprise.

Cuba

Because of its position as an island nation, Cuba has long been concerned with ocean-related issues. In 1936 it claimed a three-mile limit (Decree Law 70) and on April 30, 1954, it claimed sovereignty over the continental shelf (Decree Law 952). The preamble to Decree Law 1948 drawn up on January 5, 1955, mentions

> the right of the coastal state to extend its maritime jurisdiction over areas of the high seas, to the extent required for the protection and conservation of the resources of the sea.

A gradual evolution of the Cuban position on ocean issues occurred during this period and by the time the initial Law of the Sea Conference was convened Cuba had assumed a firm stance on a number of crucial issues.

It should be noted that Cuba holds a special position among the Latin American nations. Although bonded together by similarities in race, heritage and tradition, Cuba, nonetheless, stands apart due to its position as an island and the subsequent isolation this implies, as well as its commitment to Marxism/Leninism and the expulsion of the Cuban government

from the Organization of American States (OAS). The above factors are largely responsible for the development of an independent, self-determined attitude on the Law of the Sea which may or may not coincide with the common opinion of the rest of the Latin American nations.

The comments made by the Cuban delegation at the various sessions of UNCLOS III indicate that Cuba strongly supported the establishment of an ISA with the power to control all areas of activity in the ocean and to guarantee the equitable distribution of benefits from seabed mining operations. Support for the power of the ISA did not, however, extend to within the 200 mile zone. The Cuban delegate (Mr. Torras de la Luz) asserted that Cuba did not recognize any distinction between the economic zone and the territorial sea and that

> dictated by a principle of solidarity with the Latin American countries... which were firmly defending their right to sovereignty over their natural resources against imperialism ... [Cuba] recognized the right of coastal states to exploit and benefit from the resources in the sea adjacent to their coasts for a distance of 200 miles.[9]

Cuba held that coastal states should retain the right to control exploitation of resources within the 200 mile limit. Cuba further contended that the minerals in the 200 mile zone were clearly part of the national heritage and that resulting benefits must go to the coastal states. A trans-national or foreign authority could not be entrusted to regulate exploitation in the 200 mile area because the coastal state could not then be guaranteed of receiving all the benefits.

For all areas beyond the 200 mile zone, however, Cuba strongly supported the concept of an ISA. It believed that in the same way Cuban resources

could be exploited by foreign companies in the 200 mile zone, transnational or state companies could unfairly exploit resources in the deep seabed. Because of the possibility of foreign exploitation Cuba supports the principle of the ocean as the common heritage of mankind,[10] and asserted that the

> International Authority should have the exclusive right to exploit that Area either directly or through the intermediary of an enterprise.[11]

Draft Article 9 entitled "Who may exploit the Area" was presented by the Group of 77 (G-77) and outlined four approaches to the ideas of an ISA. At the basis of all four options, however, was the assertion that

> all activities of exploitation of the area and the exploitation of its resources... shall be conducted directly by the Authority.[12]

The following year the Cuban delegate (Mr. Carmejo Argudin) stood in support of the Peruvian delegate who was speaking on behalf of the G-77. The Peruvian delegate expressed concern that a (then unnamed but obvious) participant in the Conference was unilaterally proceeding with exploratory activity on the ocean floor. Because the principles upon which the Law of the Sea were based reflected the "common heritage" notion the G-77 asserted that it felt all states should abide by an exploitation moratorium which was in effect until the machinery for the ISA was in place and it could begin controlling such activity.[13]

In 1978, the G-77 presented a proposal for the preamble of the Convention Treaty. Among other things the preamble reflected the position and opinion of the G-77 (including Cuba) with respect to developing an

equitable manner of ocean exploitation under international control by noting that states/parties to the Convention

> would recognize the desirability of adopting a universal convention on the use of ocean space... and would bear in mind the need to lay down just and equitable conditions for the exploitation of the resources of the sea with a view to establishing a new international economic order in accordance with relevant UN resolutions and safeguarding the special interests and needs of developing countries.[14]

In most respects there was a correspondence between Cuba's behavior at UNCLOS III, regarding the issue of an ISA, and the ideological principles which it professes, i.e. internationalism, equitability, goods (resources) held in common and distributed on a needs basis. Referring to the organization and power of the Authority, Cuba further stated that:

> The Authority should consist of an Assembly with the ultimate power of decision, a Representative Council and a Secretariat. One of the functions of the Assembly would be to consider the establishment of any necessary subsidiary bodies.[15]

Despite the fact that Cuba was adamant in its support for universal ownership, international control and equitable distribution of benefits at the international level, it remained a jealous advocate of the right of coastal states to have exclusive control over their 200 mile limit and wanted to ensure that the benefits accrued from development in this area were maintained for that country alone. Cuba's jealous attitude regarding the 200 mile zone is the only aspect of the ISA issue where Cuban behavior did not correspond with its ideology. All other contributions made by the Cuban delegation regarding the ISA issue were consistent with Eastern Bloc ideological principles.

The proposal for the creation of the Enterprise as a supranational

mining company, to be initially funded by member nations, was fully endorsed by Cuba:

> The International Authority should have the exclusive right to exploit the area either directly or through the intermediary of an enterprise irrespective of the fact there might be need during the initial stage for the assistance of developed countries.[16]

> The Enterprise, mankind's business arm, must be viable. It cannot, and must not depend purely on the benevolence of willing states alone. Financing should be on a proportionate and representative basis to the extent possible.[17]

A document presented to the Conference on August 13, 1976 (to which Cuba was a signatory) made the reasoning behind the Cuban support of the Enterprise very clear. Cuba believed that without the Enterprise, advanced countries would continue to take advantage of their technological superiority to decrease their dependence on foreign resource suppliers by monopolizing ocean mining activities. Cuba views the Enterprise as an effective way of preventing such monopolistic behavior thereby allowing the rest of the international community an equal opportunity for participating in ocean mining.

Cuba believes that for the Enterprise to fulfill its responsibilities, it must be firmly established and financially stable, regardless of the opposition of the advanced countries who will be put in a position of funding it.[18] Cuba further feels that private consortiums or individual states that continue to conduct seabed mining operations must do so on a joint contractual basis with the Enterprise, must adhere to the guidelines and restrictions which the Enterprise imposes, and must honour the principles upon which the new Law of the Sea is based.

Cuba also made it quite clear that it cannot accept the proposal of some of the advanced countries that private commercial (seabed mining) entrepreneurs be able to continue operating independently from or on an equal level with the Enterprise. Although Cuba accepts the idea that private companies should play some role in ocean mining it continues to insist that to prevent the advanced countries from increasing the existing level of inequality the Enterprise must play the dominant role in controlling and regulating such activity. Indiscriminate freedom of action cannot be allowed.[19]

Cuba's attitude regarding the Enterprise again corresponded with the ideology of the Eastern Bloc. The Cuban position on the establishment of the Enterprise reflected the principles of anti-monopolization, centralized control and direction of the means of production, the utilization of supra-national bodies and, to some extent, anti-imperialism.

Cuba granted support to the concept of an Enterprise established on a basis almost identical to that of the "enterprise system" of the Eastern Bloc: In the same way the State controls these enterprises, directs their operations and gives them limited jurisdiction over a particular business or area, so the Authority controls the Enterprise, presents guidelines and approves its operations.

Although the issue of technology transfer was referred to by the Cuban delegate on only a few occasions the Cuban position on the matter is crystal clear. If the principles of co-operation and the promotion of equality among nations, as well as the concept of the "common heritage" are to be furthered then, as far as Cuba is concerned, the transfer of

technology is a foregone conclusion. Cuba asserted that

> International co-operation should be encouraged in the field of scientific research, which must be linked to the development of skills of the nationals of developing countries... the same applied to the transfer of technology....[20]

Cuba is concerned with ensuring that it can become actively involved in developing and applying available technology and, hence, be guaranteed its share of accrued benefits. To ensure that Cuba will receive its share of benefits it advocates allowing countries to continue conducting unrestrained scientific research so long as the results are made available to all nations.[21] As a member of the G-77, Cuba supported the belief that developing countries had reached the point where they realized that the only way of guaranteeing the transfer of technology, and thus receiving their fair share, was by becoming very involved in exploring and exploiting the resources on the ocean floor.[22]

Cuba's anti-Western attitude and support for international control with regard to the issue of technology transfer was more than apparent when it stated that:

> The proposed International Authority should be responsible for promoting and controlling... the transfer of technology to the developing countries on a non-commercial basis.... The demands of the developing countries for the transfer of technology on non-commercial terms were justified since the wealth and technological superiority of many developing countries derived in part from imperialist, colonialist and neo-colonialist policies of exploitation of the developing countries.[23]

With regard to the issue of imposing revenue-sharing obligations on private and national corporation involved in seabed mining, Cuba was again adament about protecting the rights of those companies which carried

out their operations within the 200 mile limit and ensuring that they would have exclusive control over all resulting financial benefits. However, in accordance with the Law of the Sea principle that the international seabed must be mined/exploited for the benefit of all, Cuba was equally as adament that any private companies which continued to operate in the deep seabed be obliged to share revenue resulting from their operations.

Cuba believed that developing countries should be entitled to protect their own natural resource industries and should only be required to make concessions in areas which would not hurt such industries. Cuba asserted that if developing countries are to be guaranteed the right to protect their natural resources it is up to the developed countries to give up more privileges. Cuba stated, for example, that coastal states must have complete control over the exploitation of their coastal resources and that developed countries must refrain from usurping this right in any way—even though coastal states might currently lack the technology necessary to exploit these resources themselves. Cuba insisted that only those interests of the developed countries which were deemed legitimate by the global community should be protected.[24] The interests of developed countries which could be considered legitimate include their right to act independently in their 200 mile zones, and to expect that recognized principles of international law regarding freedom of navigation, transit, etc. would be upheld.

Cuban support for revenue sharing was further evident in its condemnation of states which had already proceeded with exploratory activity on an independent basis and were exploiting seabed resources for their own

benefit. Cuba rejected the idea of a "licensing system" which would allow private companies to work in association with, and not under, the Enterprise. Cuba believed that a licensing system would continue to give private companies too much control over seabed resources and the financial benefits resulting from their exploitation. The G-77 presented a document that asserted that if the goal of increasing the availability of raw materials was to be realized, the Convention must, among other things, include provisions to ensure that resources accruing from seabed exploitation be made available on the world market and that the skill and technology of private companies be utilized to strengthen the Authority.[25]

Ideally, however, Cuba would prefer that the ISA and the Enterprise conduct all seabed mining operations and that private companies be allowed to operate only within their own 200 mile limit, thus guaranteeing the equitable distribution of seabed resources for the benefit of all nations.

With the exception of its position on a coastal state's right to exclusive control over its 200 mile zone, Cuban behavior at UNCLOS III mirrored Eastern Bloc ideological principles: no private property, an authoritarian system of control, distribution of goods on a needs basis, anti-imperialism and prevention of exploitation of man by man or the weak by the strong.

### The Soviet Union

The Soviet Union's position on ocean law has, for most of this century, been based on the perception of the ocean as the most effective means of protecting national security and encouraging economic growth by way of trade. The Soviet Union has also been concerned with protecting its access

to the fish and resource wealth of its coastal waters. The Soviet Union has long acknowledged the division of the ocean into two distinct categories: the first being inland and coastal waters (over which the state has exclusive control), and the second being international waters, which was everything beyond the territorial sea.

An examination of the agreements which the Soviet Union entered into and the various international proposals which it made regarding ocean-related issues indicates that the Soviet Union was particularly concerned with the right of states to have exclusive control over their coastal waters.[26]

During the 1950s the Soviet Union expressed its opinion on a few ocean issues. Although it is not the purpose of this paper to trace the development in the positions which the various nations took on different issues, it should be noted that during the 1950s the Soviet Union was opposed to setting up an international body with the authority to investigate means of mining the ocean, believing that such a body would be an advantage to capitalist nations.[27] The Soviet Union felt that nations should continue to use the International Law Commission of the UN as the avenue for expressing their position on concerns about ocean issues.[28]

Although the Soviet Union agreed that there was an area of the ocean (past the 12-mile limit) which should be beyond national jurisdiction, it did not agree with the idea that the deep seabed should be considered the common property of everyone nor that an international body or authority should be given the right to govern the ocean.[29]

During the 1950s and 1960s the Soviet Union also expressed concern

about the ocean being used for storing nuclear weaponry. At the first Law of the Sea Conference in 1958 the Soviet Union asserted that "the continental shelf should be used for exclusively peaceful purposes," and by the time the Third Law of the Sea Conference began it was encouraging the complete denuclearization of the ocean floor beyond the 12 mile limit.[30]

Despite the Soviet Union's concern with the above issues it was not until UNCLOS III was convened that it began to articulate exactly where it stood with respect to questions concerning the seabed and oceans. The Soviet Union's commitment to Socialist/Marxist principles, and its desire to work toward the creation of a world social order based on these principles is, as with Cuba, the justification for the nature of the expectations made with respect to Soviet behavior at UNCLOS III.

A year after UNCLOS III concluded (1983) the Soviet Union published a number of articles condemning the United States for failing to sign the new Law of the Sea Convention.[31] The Soviet Union asserts that it welcomes the provisions made in the Treaty and views the Treaty as an important step toward establishing a more just and equitable world.

Soviet support for the new Law of the Sea Treaty, detailed in the articles noted in Footnote 31, fails to reflect the hesitation which the Soviet Union expressed during UNCLOS III. An examination of the papers which it presented during the Conference and the positions which it took on a number of issues indicate that the Soviet Union disagreed, at least initially, with many of the proposals which were subsequently included in the Treaty.

The Soviet Union was particularly concerned with the establishment of

the ISA with all its inherent rights. The opinions and proposals expressed by the Soviet delegates presented, rather, a compromising position which both acknowledged adherence to the notion of the "common heritage" principle, while simultaneously rejecting the idea that the ISA should have complete control over the mining and distribution of ocean resources.

The Soviet Union's compromising approach started to become obvious in June 1974 when the Soviet delegate, Mr. Kolosovky, stated that:

> His delegation advocated the establishment of [an international seabed] regime which would meet the interest of all countries in the development of their national economies. It favoured the establishment of an international organization in which states would co-operate in industrial exploration and exploitation of the mineral resources of the seabed... which should be for the benefit of all mankind.[32]

From the beginning of the Conference the Soviet Union supported a more equitable distribution of oceanic wealth while disagreeing that, in order to promote such equitability, the ISA should be endowed with complete authority over seabed exploitation. The Soviet Union preferred a system in which the Seabed Authority acted more like an overseer to ensure that nations participating in exploitation were co-operating in an acceptable manner. The Soviet Union made it clear that states must maintain the right to carry out their own exploratory activities as long as this was done within the guidelines of internationally-accepted legal principles.[33] The Soviet Union believed that if the Law of the Sea Treaty came into effect, it was the responsibility of states to ensure that the Treaty's provisions were respected, and that exploitation guidelines were followed. At this point the Soviet Union was assuming that the Treaty would allow independent exploitation and would merely set guidelines for pollution control and

the standard of rigs.

On March 21, 1975, the USSR presented a document to the First Committee which outlined the rules and conditions it felt should be included in any convention on the Law of the Sea.[34] The Soviet delegate to the First Committee, Mr. Igrevesky, defended the content of the Soviet document on March 26, 1975.[35] Mr. Igrevesky pointed out that the suggestions which the document contained took the rights and concerns of all nations into account and ensured the most equitable approach to exploitation and exploration of the seabed. However, despite Soviet insistance on the equitable nature of the suggestions contained in the document, it is interesting to note a number of the proposed provisions were aimed at guaranteeing that a relatively high degree of control over ocean-related activities remained in the hands of individual nations. The Soviet document asserted that the ISA, through the Enterprise, should not be allowed to reserve large areas of the seabed for itself.[36]

The Soviet delegate stated that the USSR felt that individual states must maintain a guaranteed right to exploit the ocean floor and that applications made by states to the ISA for contracts to carry out exploratory activity should not be refused unless it appeared quite clear that such permission would encourage the development of monopolies at the expense of some of the lesser-developed states.[37]

The Soviet attempt to encourage a compromise which would allow individual nations to retain the right to exploit the seabed on a level equal with the Enterprise was re-iterated in September 1976. Although the Soviet Union continued to emphasize its support for active involvement of

the ISA in supervising ocean-related activities, it stressed that:

> the USSR could not agree that the Authority should be granted the exclusive right to exploit the resources of the seabed. Indeed to give the Authority the power to select the contractor from among different entities was tantamount to giving it the power to choose between different economic and social systems, and worse still, completely disregard any of those systems.[38]

The Soviet Union was concerned with maintaining its right to engage in seabed exploitation to augment its ability to compete with other nations in the extraction of mineral wealth; thus it opposed the suggestions made in a paper presented by the G-77 which gave the ISA complete control over seabed and ocean activities and did not allow independent involvement of individual states in such exploratory activities.[39]

The Soviet delegation's support for the right of guaranteed access to the seabed reflects capitalistic economic principles. On the one hand the Soviet Union asserted that the right to guaranteed access was absolutely necessary from an economic point of view. It reasoned that if the Authority assumed total control over deciding which state or party had the right to mine, the USSR would be forced to become involved in competition—a practice which went against one of the very basic principles of its ideological structure. In addition the above practise could very easily lead to the creation of monopolies at the expense of all nations which did not have access to necessary technology and capital.

On the other hand, although the opinions expressed by the Soviet delegation mirror Marxist/Leninist ideology, the Soviet Union further asserted that if it supported the provisions set forth with respect to the ISA it would be forced to make large capital expenditures should it be

granted the right to conduct exploratory activities in the seabed, without any guarantees that it would receive a return or profit on its investments.[40]

The Soviet Union attempted to justify its hesitation in supporting the ISA and the Enterprise on the grounds that the USSR could not take a capital risk with socialist assets because these belonged to every member of the state.[41] Not only did the Soviet's position differ from Cuba's regarding the extent of the ISA's powers over controlling access to ocean resources, it also differed over the question of how the Authority should actually be structured, and how the benefits accrued from seabed exploitation should be distributed. As outlined earlier, Cuba granted complete support to the concept of an ISA with the ultimate power of decision over seabed issues beyond the 200 mile limit and fully supported the notion that benefits resulting from ocean exploration be distributed on an equitable basis.

The Soviet Union, on the other hand, agreed that the deep seabed was the common heritage of mankind, and that no one state should have unfair access to its riches. However, the Soviet Union did not agree that the ISA should have the ultimate power of decision.

> Its [the ISA's] competence must not extend to any questions of the law of the sea unconnected with the exploitation of the resources of the seabed. Attempts to invest the international organization with functions relating to ocean space and its living resources would destroy the very basis for a generally accepted regime for the seabed.[42]

The Soviet Union will not accept a proposal for an ISA and Enterprise which will adversely affect its right of self-direction. Thus the Soviet Union said it would not support the Authority if its power would have a negative impact on freedom of navigation, scientific research, laying of

pipelines and submarine cables and fishing.[43] The Soviet Union gave particular stress to the question of freedom of scientific research. It was adamant that nations be allowed to conduct scientific research in the deep seabed without interference from the ISA and Enterprise. Only after nations were guaranteed this freedom would the Soviet Union embark on methods for helping developing countries augment their research and technological capabilities.[44]

The Soviet Union further disagreed that individual nations should have to put their research materiel (i.e. equipment, scientists) at the disposal of the ISA. The Soviet Union claimed that granting the ISA and the Enterprise the right to control ocean research was not only against the interests of all nations but would also effectively halt progress in ocean research.[45]

The Soviet Union opposes granting ultimate authority to a governing body in areas which would adversely affect its freedom to conduct research and act autonomously. It asserts that the ISA and the Enterprise should not have the exclusive right to decide which nation can explore and exploit which areas of the seabed. Instead, nations must maintain an equal right to mine where they wish so long as recognized international laws are adhered to. The profits which nations receive from such exploration must not be limited by the ISA if seabed exploitation is to be encouraged. Decisions made regarding oceans must be based on co-operation and consultation among nations and must not be made unilaterally by the ISA acting as a supranational body.

The Law of the Sea Convention includes a proposal for the Enterprise

which states that when member nations apply for a license from the Enterprise to mine a particular area of the ocean there must be room for two operations on the site—one for the nation involved and one for the Enterprise itself. The Enterprise would have the right to decide who would be awarded contracts (Annex IV, Art. 12/3, a) and the sole right (in consultation with the ISA) to decide how and where resulting revenues would be distributed (Art. 160, j). The Enterprise would also be responsible for setting production requirements and ceilings (Art. 151/3) and would be authorized to utilize any necessary measures to ensure that its directives are carried out (Art. 153/4 and 5).

The Soviet Union disagreed with the above proposal, suggesting instead that the Enterprise should set aside areas for individual states (particularly Third World countries) to carry out mining activities also.

> In each area of the seabed in which the International Seabed Organization reserves sectors of the Seabed for itself, sectors must be allocated for evaluation and exploitation by state parties under contract.[46]

In addition, the paper which the Soviet delegation presented limited the amount of seabed area the Enterprise could set aside for itself.

As with the limitations which the Soviet Union suggested for the ISA, likewise it felt that operational decisions should not be decided upon unilaterally but rather after consultation with affected parties and consideration of their interests.[47] Thus, for example, if the Assembly of the ISA authorized the Enterprise to carry out extensive nickel mining operations which required substantial funding from member nations and could potentially affect adversely land-based nickel producers, the Soviet Union

believes it would be necessary to consult with all affected parties/nations and take all interests into account. The Soviet Union sees no justification for unilateral activity on the part of the Authority or the Enterprise. As outlined in Chapter Three, it is the Western, not the Eastern Bloc, which is committed to the idea that all parties to an issue have the right to present their opinions and have them considered on an equal basis before a final decision is made. Thus, once again, Soviet behavior failed to reflect its ideology (i.e. not supporting the right of a central authority to choose courses of action).

The Soviet Union disagreed with Cuban (and G-77) support for the Enterprise having complete authority over relegating mining privileges.[48] It stated that all applications for licenses (which adhered to acknowledged, existing principles of international law) be approved, and was particularly concerned that individual nations be guaranteed the right of assured access.[49]

On the one hand, the Soviet Union adhered quite closely to a number of socialist principles, i.e. anti-monopolism and, to some extent, goods held in common and distributed as needed. On the other hand there was a noticeable lack of support for the notion of centralized control by an autocratic authority endowed with the right to expect total compliance. The Soviet Union recognizes the need for the ISA and the Enterprise as a universal authority over certain ocean issues but does not acknowledge that the interests of this Authority supercede those of nations.

Although the Soviet Union agrees that the Enterprise should play an important role in ensuring that ocean resources are exploited and utilized in a rational manner,[50] with a percentage distributed equitably to Third

World countries, it does not agree that the Enterprise should direct and control the means of production regarding ocean resources.

For the Soviet Union, the principle of "goods held in common" applies only to those resources mined by the Authority itself in the international zone. Once a nation has received a license to conduct mining operations the Soviet Union believes that the Authority has no say beyond assuring the fulfillment of contract obligations and collecting a certain percentage of the revenue. The Soviet Union agrees with the Western nations that all remaining revenue must remain in the hands of the state conducting the operation and that the ISA has no inherent right to claim control over it.

The principle of "centralism," with reference to the organizational structure of the Enterprise, is acknowledged only insofar as it does not threaten Soviet autonomy. Thus there is no attempt to honour the commitment to "centralism," as it is defined in the CPSU Statutes, at the international level.[51]

The Soviet Union took an interesting stand on the whole question of whether or not the ISA/Enterprise should have the authority to demand and receive all seabed-related technological information, including seabed military technology, from nations involved in seabed exploitation. Given the Soviet Union's commitment to equality, mutual co-operation and public property, it is justifiable to assume that it would approve the notion that the ISA be able to use any necessary measures to obtain technological information from more recalcitrant parties. The right to obtain information or technology which will benefit all society is in keeping with the socialist belief that man has no right to monopolize information which

could otherwise be utilized to further the general interests of the state.

The position which the Soviet Union took on the issue of technology transfer was closely tied to the question of scientific research. The Soviet Union was concerned that the ISA not have the power to interfere with freedom of scientific research. The Soviet Union asserts that the key to assuring continued technological progress rests with the freedom of individual nations to carry out scientific research.

In 1974 the Soviet delegate, Mr. Movchan, stated that the Soviet Union upheld the concept of an ISA which would discourage any interference with freedom of the high seas.[52] The Soviet Union's concern with freedom of the high seas was related to military, fishing and navigational questions but laid particular emphasis on the freedom of scientific research. A month earlier another delegate, Mr. Kovalev, had asserted that to give any kind of supranational institution the right to regulate, guide or restrict ocean research and technological development would cause serious problems.[53]

Before the Soviet Union would accept a seabed regime, the regime would have to guarantee the continued rights of all nations to conduct scientific research using any technological know-how which they had at their disposal. Still the Soviet Union held that special consideration must be given to developing countries and that the benefits resulting from scientific and technological research in the ocean must be for the benefits of all mankind, as determined by the ISA.

The Soviet Union believed that nations should co-operate in scientific and technological research activities through the ISA. However the Soviet

Union's agreement to do so was marked by a number of clear stipulations. First, the Soviet Union would only agree to provisions dealing with the transfer of technology if freedom of scientific research and non-interference on the part of the ISA was guaranteed.[54] Second, it was quite apparent that it would be selective technology which the Soviet Union would agree to transfer and that such transfer would preferably occur directly between the Soviet Union and the recipient nation, rather than via the medium of the ISA:

> The Soviet Union provided extensive scientific and technological assistance to other, particularly developing countries, tens of thousands of whose citizens studied in the USSR, and would be willing to expand that assistance to include marine technology.[55]

The Soviet Union does not support the right of the ISA to use any means necessary to obtain desired technological information and feels that granting the ISA such open power both threatens an individual nation's right to make its own decisions and extends beyond ocean-related issues.

On April 3, 1975, the Soviet Union, along with a number of other socialist nations, presented a paper in which it asserted that nations should work to encourage the transfer of research information and data at both individual and multi-lateral levels and should pay particular attention to improving the abilities of Third World nations to carry out their own research both through the avenue provided by an international authority, as well as by agreeing to provide training.[56]

In expanding on the Soviet Union's role in aiding Third World countries, the Soviet delegate, Mr. Tikhonov, said that because the Soviet Union did not agree that the ISA should have the responsibility for all forms of

marine research it "was accordingly prepared to co-operate in devising and implementing on a multi-lateral and bi-lateral basis the necessary programmes and measures."[57]

There are a number of comparisons and criticisms which can be made between Soviet ideology and behavior with respect to the issue of technology transfer. On the one hand the Soviet Union gives support to the notion of encouraging technological development in Third World countries and preventing monopolizing of benefits by encouraging co-operation in sharing information on a more equitable basis but believes such co-operation should be done on a bi-lateral or multi-lateral basis, or in co-operation with the ISA.

The Soviet Union does not support the notion of a supranational institution with supranational powers. Although the Communist Party of the Soviet Union supports the right of the state to take from "those who have" to give to those "who have not," once again this support does not extend to the international level.

The Soviet Union suggests that the West is not willing to agree to measures regarding technology transfer unless benefits are guaranteed, yet the Soviet Union has also made it clear that it was only willing to agree to transfer technology to developing countries if this were carried out on the basis of equitable and reasonable commercial terms.

The Soviet Union recognizes the importance of the oceans as a means of improving Soviet seapower and enhancing its security.[58] Thus, for example, the Soviet Union agrees to train specialists from other countries on the condition that Soviet scientists are allowed to participate in

subsequent maritime investigations and experiments.

The Soviet Union's support for the issue of revenue sharing was also marked by stipulations. The Soviet Union recognized the need to agree to a convention which would ensure that developing nations received a percentage of the benefits derived from the ocean.[59] However, it was equally as concerned with ensuring that its access to ocean resources was not threatened.

In 1974, the Soviet delegate, Mr. Romanov, asserted:

> States themselves must have the right to exploit the resources of the seabed in accordance with the convention and with licenses obtained from the seabed organization. In such a system part of the income from the exploitation of the resources would be distributed among the states which were party to the Convention with special account being taken of the needs of the developing countries.[60]

How much comprised a "part" was never clarified.

The position the Soviet Union took with respect to the question of imposing revenue sharing obligations on companies/nations involved in seabed mining can be examined from two different perspectives. The first concerns the assessment of fees while the second involves the distribution of resulting benefits.

In 1975 the Soviet Union presented working document A/Conf. 62/C/L.12 to UNCLOS III which outlined, among other things, where it stood regarding the imposition of fees. In this document the Soviet Union suggested that states should pay contract fees to help meet the exploitative and administrative expenses of the ISA. The Soviet Union further asserted that states should also be assessed a fee based on what they exploit[61] (Art. 17, Paragraph 1 and 2).

Although the 1975 draft gives only a sketchy outline of how the fee will be determined, the Soviet Union suggests that nations which mine for liquid/gas substances or solid minerals which are three meters or more below the earth's surface should pay a cheaper fee than those nations which mine for minerals (such as manganese) that are less than three meters under the surface. According to C.C. Joyner, should nations begin to mine the ocean seriously it is likely that the Soviet Union would mine for the first two types of minerals while the United States would probably mine for manganese.[62]

In reference to revenue sharing a number of interesting circumstances are presented. The Soviet Union is willing to permit and even encourage the distribution of ocean resources through the medium of the ISA only if the nature of the ISA is such that the Soviet Union plays a crucial role in the Authority's ability to make decisions. The Soviet Union would play a crucial role in decision making if the ISA was based on the Soviet preference for a regime in which the Executive board reached decisions by consensus and not majority vote because

> This would ensure that each bloc, including the Soviet bloc, would have an effective veto over organizational decisions.... Thus the Soviet Union would always be in a position to forbid decisions which might restrict her ocean activities....[63]

Janis and Daniel[64] suggest that the Soviet Union attempted to align itself with developing countries during UNCLOS III merely because it wanted to maintain Third World support. Yet, despite the Soviet Union's apparent alignment with developing countries, Janis and Daniel point out that although the Soviet Union supported maintaining the 12 mile limit, it did not support

the desire of many developing (coastal) countries to have this limit extended. It preferred instead to see the ocean beyond the 12 miles as an area free for use by all.

The Soviet Union does not believe that Third World coastal countries have a legitimate special claim to the resources of either the 200 mile area or the deep seabed, because of their poverty. The Soviet Union asserts that the poverty of Third World nations has been caused by the Western world and, as a result states it is unfair of these developing nations "to restrict the activities of the socialist countries in the world oceans to make up for the previous foul play and exploitation of the colonial and imperialist powers."[65]

What the Law of the Sea debates seem to make clear is that the Soviet Union is willing to accept the imposition of fees and revenue sharing as long as it has a guaranteed voice in ascertaining where and how such resulting benefits would be distributed. Ideally the Soviet Union believes that only existing principles of International Law and a nation's capabilities should restrict a nation's right to exploit the oceans.

The Soviet Union's support for revenue sharing results from a desire to foster Third World approval. Nevertheless the Soviet Union's agreement to share ocean revenue is marked by so many conditions and restrictions, substantive action appears unlikely.

Indeed, the Soviet Union's behavior on the issue of revenue sharing since the Conference closed in 1981/1982 indicates it does not feel bound by statements it made or positions it took, during UNCLOS III. In 1982, just after the Soviet Union signed the Law of the Sea Treaty, the Presidium

of the USSR Supreme Soviet enacted a fairly extensive set of measures, which will be outlined below, setting out how it planned to deal with many of the ocean issues already dealt with in the Law of the Sea Treaty.[66] The Soviet Union stated that:

> At the same time, taking into account that other states are unilaterally commencing the practical exploitation of seabed mineral resources beyond the limits of the continental shelf, the Soviet Union is obliged to take measures to protect its interests with respect to the exploitation and exploration of the said resources.[67]

What the provisional measures passed by the USSR Supreme Soviet do, in effect, is grant the USSR Council of Ministers the same authority as the ISA, and Soviet enterprises the same sphere of jurisdiction as the ISA Enterprise. For example, the Council of Ministers is responsible for giving Soviet mining enterprises licenses for mining the seabed and for ensuring the inviolability of mining installations.[68] The responsibilities of the Soviet Council of Ministers are virtually identical to those of the Enterprise. Further, the Soviet Union acknowledges its willingness to co-operate with other states regarding exploitation, providing equipment and technology etc., as long as these states acknowledge the licenses given to Soviet enterprises,[69] again indicating that the Soviet Union has assumed the responsibilities which it supposedly is prepared to transfer to the ISA by signing the Treaty.

Of particular importance to this discussion, however, is Article 12 of the Soviet provisional measures, which states:

> Mineral resources extracted by Soviet Enterprises in seabed areas, and also data and samples obtained in the course of exploring these mineral resources, shall be in the state of ownership of the USSR.[70]

There is no attempt to address the question of benefit distribution to developing countries in this document. On a global scale, the Soviet Union has claimed (until it decides otherwise) the areas of the seabed which it is, or will be, mining as Soviet property and has not acknowledged the need to distribute benefits on any kind of equitable basis to developing countries.

In reference to the Soviet Union's position on ocean issues, W.E. Butler stated:

> It is difficult to identify a distinctly Marxist/Leninist ideological approach to substantive issues of the Law of the Sea.... Soviet legislation and state practise have differed from that of other states in only minor details. Soviet practise reveals a pattern of realistic, rather traditional, often sensitive appraisals of the existing state of international law by Soviet Authorities.[71]

## Chapter Five

## Endnotes

[1]Donald D. Barry, & Carol Barner-Barry, Contemporary Soviet Politics - An Introduction (Englewood Cliffs, New Jersey: Prentice Hall Inc., 1978), p. 109, and Article 34.

[2]Carmelo Mesa-Lago, Cuba in the 1970s: Pragmatism and Institutionalization (Albuquerque, New Mexico: University of New Mexico Press, 1974), p. 76.

[3]Articles 139, 153/4 and 5, 155/2, 157/4, 160/1, 164/2 a, 170/4. My emphasis.

[4]Rules of the Communist Party of the Soviet Union, IV (34).

[5]Carmelo Mesa-Lago, p. 76.

[6]See the Constitution of the Union of Soviet Socialist Republics, Articles 92, 105, 117, 125 and Rules of the Communist Party of the Soviet Union, Article 36.

[7]Articles 151, 153, 155, 157, and 187.

[8]Under the guidelines established by Article 13 state contracting parties must pay an initial $500,000 fee to the Authority when applying to mine a particular site. Once an application to mine has been approved, a contracting party must pay an annual $1,000,000 before it can begin operations. Under a contract with the Authority these parties are obligated to make a "financial contribution" to the Authority every year they are in production. This contribution is calculated in one of two ways: They can either pay a production charge calculated at 5% of the resources extracted during the first 10 years and 12% after 10 years; or they can pay a respective two and four percent production charge during these same periods plus contribute a share of the net proceeds. This latter amount ranges from 35% during the first term of production on profits which run between 1-10%, to 70% during the second term of production if the profit ratio exceeds 20% (Article 13/4 to 6).

[9]Second Session, 29th Meeting, July 4, 1974, p. 115(67). Also Second Session, Second Committee, 20th Meeting, July 30, 1974, p. 164(55).

[10]Second Session, First Committee, Fourth Meeting, July 15, 1974, p. 14(13).

[11]Ibid., p. 14(14).

[12]Ibid., Eleventh Meeting, August 6, 1974, p. 54(19).

[13]Third Session, First Committee, 19th Meeting, March 26, 1975, p. 53(21).

[14]Seventh Session, Document A/Conf. 62/L.33, October 13, 1978, Volume II, p. 188.

[15]Second Session, First Committee, Fourth Meeting, July 15, 1974, p. 14(24).

[16]Second Session, First Committee, Fourth Meeting, July 15, 1974, p. 14(14).

[17]Fifth Session, Document A/Conf. 62/L.16 (Presented by G-77), August 13, 1976, p. 133.

[18]Ibid., Document A/Conf. 62/L/15, 131-132, September 6, 1979.

[19]See note 22. Also Second Session, First Committee, Eleventh Meeting, August 6, 1974, pp. 56(34) and (47).

[20]Second Session, First Committee, Fourth Meeting, July 15, 1974, p. 14(20).

[21]Ibid., Third Committee, Ninth Meeting, July 19, 1974, p. 347(7).

[22]Ibid., First Committee, Eleventh Meeting, August 6, 1974, p. 57(47).

[23]Second Session, Third Committee, Ninth Meeting, July 19, 1974, p. 347(10).

[24]Second Session, Plenary Meetings, 29th Meeting, July 4, 1974, p. 115(66).

[25]Fifth Session, Document A/Conf. 62/L.16, September 6, 1976, p. 134.

[26]i.e. Establishment of a 12 mile customs zone in 1918, the 1935, 1954 and 1958 legislation of fishing zones, the 1958 USSR proposals to UNCLOS I for the right of states to establish a 3-12 mile exclusive territorial zone, etc.

[27]United Nations Yearbook of the International Law Commission 1953 (New York: United Nations, 1954) I, p. 116.

[28]William E. Butler, The Soviet Union and the Law of the Sea (Baltimore: John Hopkins Press, 1971), p. 163.

[29]Ibid.

[30]Ibid., p. 158.

[31]See Vladimir Taranyan, "Developing Countries and the U.N. Convention on the Law of the Sea," (Dec. 16, 1983), and Vladimir Golubkow, "The U.N. Convention on the Law of the Sea: Who is For and Who is Against It?" (Dec. 29, 1983), Press Office of the USSR Embassy in Canada.

[32]Second Session, Plenary Meetings, 22nd Meeting, June 28, 1974, p. 69(39).

[33]Second Session, First Committee, Eighth Meeting, July 17, 1974, p. 39(28).

[34]Document A/Conf. 62/C. 1/L.12.

[35]First Committee, Third Session, 19th Meeting, March 26, 1975, p. 52(9 & 10).

[36]Document A. Article 5(3).

[37]First Committee, Third Session, 19th Meeting, March 26, 1975, p. 52(9 & 10).

[38]Ibid., Fifth Session, 36th Meeting, September 14, 1976, p. 52(9 & 10).

[39]Ibid., p. 76(20).

[40]First Committee, Fifth Session, 36th Meeting, September 14, 1976, p. 75(18).

[41]Ibid. Although phrased in a manner reflecting Socialist ideology, the Soviet Union's hesitation in supporting the ISA and the Enterprise was based on the fact that such support included no guarantee of making a profit and, further, threatened its right to remain freely and actively involved in ocean exploration.

[42]Second Session, First Committee, Eighth Meeting, July 17, 1974, p. 39(30).

[43]Ibid., p. 38(25), and Second Session, Second Committee, 31st Meeting, August 7, 1974, p. 237(73).

[44]Second Session, Third Committee, Ninth Meeting, July 19, 1974, p. 349(25).

[45]Ibid., 16th Meeting, August 23, 1974, p. 379(41).

[46]Third Session, Document A/Conf. 62/C.1/L.12, p. 184, Article 5 (3 & 4).

[47]Fifth Session, First Committee, 36th Meeting, p. 76(21).

[48]Ibid., p. 76(20).

[49]Ibid., p. 75(19).

[50]Second Session, First Committee, Eighth Meeting, July 17, 1974, p. 38(23).

[51]The CPSU Statutes assert that higher body decisions are binding on lower bodies.

[52]Second Session, Second Committee, 31st Meeting, August 7, 1974, p. 237(73 & 75).

[53]Ibid., Third Committee, Ninth Meeting, July 19, 1974, p. 349(23).

[54]Ibid., 16th Meeting, August 23, 1974, p. 379(43).

[55]Second Session, Plenary Meetings, 22nd Meeting, June 28, 1974, p. 379(43).

[56]Third Session, Document A/Conf.62/c.3/L.26, Article 3(1, 2 & 3).

[57]Third Session, Third Committee, 22nd Meeting, April 25, 1975, p. 102(16).

[58]Thomas A. Clingan, et al., The Oceans and U.S. Foreign Policy (New York: The Michie Company, 1978), p. 25.

[59]Second Session, Plenary Meetings, 22nd Meeting, July 28, 1974, p. 69(39).

[60]Ibid., First Committee, Eighth Meeting, July 17, 1974, p. 39(28).

[61]C.C. Joyner, "Towards a Legal Regime for the International Seabed: The Soviet Union's Evolving Perspective" in Virginia Journal of International Law, Vol. 15, No. 4, Summer 1975, p. 899.

[62]Ibid.

[63]Mark W. Janis, & D.C.F. Daniel, "The USSR: Ocean Use and Ocean Law," in Maritime Studies and Management, July 1974, p. 84.

[64]Ibid., p. 71.

[65]Ibid., p. 81.

[66]Presidium of USSR Supreme Soviet. "On Provisional Measures to Regulate the Activity of Soviet Enterprises Relating to the Exploration and Exploitation of Mineral Resources of Seabed Areas Beyond the Limits of the Continental Shelf," trans. W.E. Butler, in Oceana Publications, Inc., December, 1983.

[67]Ibid., p. 2.

[68]Ibid., Articles 1 and 10.

[69]Ibid., Articles 3 and 8.

[70]Ibid., Article 12.

[71]William E. Butler, p. 201.

# Chapter Six

## Behavior of the Western Bloc at UNCLOS III

From an institutional, social and economic perspective the principles inherent in the notion of an ISA are incompatible with the ideology of the Western Bloc. The above observation is especially true with respect to the issue of establishing an ISA as a supranational institution for regulating all activities of the deep seabed and ocean including the equitable distribution of resources and benefits.

The Western Bloc does not support the concept of supranationality or the ability of international institutions to make unilateral decisions. Governmental institutions retain their legitimacy only insofar as they promote the ability of individuals to obtain a fuller life and attempt to ensure that some individuals do not encroach upon others in doing so. Representatives are elected on a periodical basis and are held accountable for their behavior and for representing the opinion of the majority. Western governments are prevented from amassing power at the expense of individuals and their legitimacy to exercise power (i.e. with respect to welfare distribution, control of the military, etc.) is based on the belief that control in these particular areas is in the overall interest of the nation. When possible, authority is decentralized and the notion of collectivism shunned as a threat to the most basic principles of democracy.

The ISA has little in common with the above nature of institutions valued by the Western Bloc. The basic Western Bloc principles of decentralization, individualism and responsibility are negated by the very fact that

it is supranational; the decisions it makes supercede those of its members. Complete control over every aspect of ocean activity lies in the hands of a small group of individuals whose decisions are binding and whose responsibility extends only to fulfilling its mandate. The notions of capitalism and free enterprise do not exist as the ISA controls who can pursue what activity where and lays out all regulations for production and redistribution of revenues. Under the ISA, nations lose their ability to make their own decisions regarding ocean issues and have little, if any, recourse should they disagree with its directives. It is obvious that the Western Bloc should be opposed to the notion of an ISA and its inherent powers.

The opposition of the Western Bloc to the ISA should extend to the establishment of the Enterprise as a supranational mining company and the resulting responsibility of nations to provide the necessary funding so that it can carry out its administrative and exploitative activities. The Western Bloc believes there should be minimal governmental control in the economy and that competition and private ownership are the key principles in ensuring a healthy, viable economy and preventing any one person or group from acquiring power at the expense of someone else.

The Western Bloc believes that the productive, competitive mind is stymied when it is completely regulated and that monopolies should be discouraged because of the difficulty in managing them capably and because they inevitably end up taking advantage of a particular person or group. It is because the Enterprise can only be perceived as a threat to private entrepreneurship, competitive capitalism, freedom, voluntarism, trade liberalization and economic nationalism that the Western Bloc should oppose

its establishment.

Whether or not the Western Bloc would support the funding arrangement for the Enterprise based on its ideological principles is not quite as straightforward. Obviously if the Western Bloc is against the idea of the Enterprise to begin with, it is hardly about to agree with any kind of funding arrangement. On the other hand, the governments of the Western Bloc are supported by various taxes and duties levied against individual citizens and corporations based on their ability to pay. If an institution is created with the aim of protecting or enhancing democratic principles it would then be the duty and responsibility of citizens to support it. However, given that the ISA and the Enterprise are based on principles which are, in many cases, directly opposed to those valued by the Western Bloc, it would appear likely the Western Bloc would not be in favour of providing even its initial funding. The Western Bloc's agreement to fund the UN cannot be used to discredit any decision about not funding the ISA and the Enterprise because the UN does not exercise supranational authority in the same manner as the ISA and the Enterprise would.

That the Western Bloc would be opposed to the issue of technology transfer as it is outlinedin the Draft Convention appears to be a matter of course. With the West's main objectives being the protection of vital economic and military interests and the protection and enhancement of democratic principles, it hardly seems likely that it would support a proposal which will effectively make all its seabed-related military and technological knowhow available to an unaccountable supranational institution dominated by socialist and Third World countries.

The concept of simply providing the means to achieve something without having to work for it goes against Western Bloc support for the notion of individual effort and allowing competition in order to achieve the best results. The Western world operates under the belief that the productive mind will function best when it has a motivation for doing so and is not constrained by arbitrary regulations. Further, the Western Bloc believes that offering rewards is the best means of ensuring the improvement of technological ability. Because of this belief it is expected that the Western Bloc perceives the Law of the Sea Treaty provisions for technology transfer in a very negative light.

This expected disapproval should not imply that the Western Bloc is opposed to other nations obtaining such technology; rather it feels these nations will be better served by having to strive for it themselves. While the above opinion can be viewed as one motivated by self-interest, nonetheless given the nature of Western Bloc ideological principles regarding economics and the nature of a free society the West really has no other option regarding the stand it should take. Combining the supranational nature of the institutional machinery governing the oceans with the issue of mandatory technology transfer presents a scenario which, in all respects, virtually denies any of the Western Bloc's commitment not only to democratic ideological principles but also to the belief that man has the right to work where he wants, to feel safe and to enjoy his property without the fear of having it taken from him. It is the Western Bloc's belief that the state does not have the authority to take these rights away from individuals. By granting the ISA the right to demand and receive all the technological

information it wishes, these rights would, on an international level, effectively be removed.

The concept of revenue sharing is also a contradiction to the Western Bloc's perception of how a free capitalist society should be run. Although there is room for a limited notion of a welfare state in the Western world, this support is based on the belief that the state has an obligation to step in only to meet needs which individuals or society are unable to meet. Introducing the notion of revenue sharing as it is outlined in the Draft Convention reflects a number of principles which are clearly socialist in nature and, as such, are not likely to be endorsed by the Western Bloc. Although the West believes individuals should control the means of production so that economic power does not become concentrated in the hands of a few, it does not discourage the accumulation of capital. Indeed, the ability to accumulate capital is viewed as a reward for hard work and innovation and is encouraged so that individuals are motivated to do their best. This reflects belief in a market economy: A service or product which is marketable will survive while those which are not won't.

The negative impact which the Western Bloc feels revenue-sharing would have on society is similar to the negative impact that maintaining a non-profit making product (for example) would have on a business. Upholding something, other than necessary services, which does not produce a viable return can only result in a continual loss of money and a constant drain on available financial resources.

Although the Western Bloc may not directly reject the notion of the oceans as the "common heritage" (that is, owned by everybody—res communis) it is more likely, given its ideology, that it would prefer the ocean

belonged to no one—res nullius— but was available for all to use to the extend their capabilities allow.

The United States

Attempting to summarize the American position on the Law of the Sea in a few pages inevitably means having to omit many important developments. Although this problem is, of course, also true for the other nations being discussed, the United States was one of the most outspoken of the participating states and underwent a number of significant vascillations in its position on the Law of the Sea Treaty. It moved from encouragement of multilateral discussions on ocean issues during the early 1970s, to its present position of completely refusing to sign the finished Draft Convention. It is rather ironic that the United Sates, which is now the most adamant of all nations in opposing the Treaty, was originally one of the key instigators of the idea of organizing an International Law of the Sea Conference.

Prior to Arvid Pardo's 1967 statement to the UN, President Lyndon Johnson had asserted:

> Under no circumstances, we believe, must we ever allow the prospects of a rich harvest of mineral wealth to create a new form of colonial competition among the maritime nations. We must be careful to avoid a race to grab and hold the lands under the high seas. We must ensure that the deep seas and the ocean bottom are, and remain, the legacy of all human beings.[1]

Thus it was not only Dr. Pardo's suggestion which initiated UNCLOS III but also the willingness of the United States to begin serious discussions concerning the establishment of an international regime to control mining operations in the deep seabed. The United States presented its position in 1970 in the form of a Draft Treaty which it submitted to the Seabed

Committee. The Draft Treaty further indicated that the United States was just as concerned as the USSR in assuring the protection of free navigation and transit rights.[2]

Between 1973 and 1984 the United States passed through four different administrations and Presidents. During the Nixon/Ford phases, government policy reflected a far stronger concern with coastal, rather than deep seabed, issues. There was also a marked attempt to achieve some kind of compromise with the position of the Third World. Secretary Henry Kissinger was responsible for much of the substantive work, as well as many of the American proposals, which was suggested during this period. When President Carter came into office in 1977 Elliot Richardson took Mr. Kissinger's place. His attempts to balance many of the concessions Mr. Kissinger had made to Third World demands with national economic and security interests was the first major indication that drawing up a mutually-acceptable Convention was not going to be as simple as originally hoped. Changes in national focus (i.e. with regard to security interests) as well as the increasing number of concerns being brought to light by a series of intense review procedures led the new American spokesman, Mr. Richardson, to develop a number of alternate proposals which took American as well as various international positions into account.

By 1980 there were only four Law of the Sea issues left to deal with and it appeared relatively certain that the United States would soon be willing to sign the Convention. That same year, however, Mr. Reagan was elected to replace Mr. Carter as President. His administration immediately decided there were a number of crucial flaws in the Treaty which would have

to be reviewed very carefully before the United States would even consider signing. The end result of this review has been that the Reagan administration considers the current Draft Convention of the Law of the Sea fatally flawed and has refused to become a signatory. Because of these changes it will be less easy to pinpoint the American position on the four issues without explaining some of the background. Thus, when applicable or important, positional changes will be identified.

During the beginning phases of UNCLOS III the United States expressed its approval for the creation of an ISA and the principle of the oceans as the "common heritage of mankind." However, the nature of the ISA which the United States approved differed fundamentally, even in the early stages, from that conceived by the developing nations. The United States believed that the needs of developing nations must be met but not if this meant jeopardizing the position of the advanced countries. Thus in 1974 the American delegate, Mr. Stevenson, asserted that:

> The Authority's jurisdiction over the exploitation of the deep seabed—the common heritage of mankind—must be balanced by duties that protect the rights of individual states... to non-discriminatory access to seabed resources on a basis that provided for the sharing of the benefits of their exploitation with other states.[3]

The United States believed that the Authority should not be able to exercise jurisdiction over all areas of the seabed but instead should function more as a regulatory institution acting to ensure the marine environment was protected and nations were following pollution control measures. The greatest power it felt the ISA should have was the ability to issue mining licenses and oversee the collection and redistribution of

revenues.

In August of 1974 the American delegate, Mr. Ratiner, said it was the opinion of his government that one of the most important aspects of the Convention must be that it would ensure an economically viable and relatively effective means of obtaining minerals from the oceans in a manner that was fair to all. The United States believed such a solution was possible without affecting adversely the "common heritage" notion. However it did not believe that the right of states to conduct mining activities should be restricted by an International Authority.

> In order to ensure fair and secure access by all States to the mineral resources of the Area, it was not reasonable or proper to impose restrictions on the area available for exploitation or the number of areas which a particular country or company might be permitted to mine pursuant to legal arrangements with the Authority.[4]

A few days prior to making the above statement the United States had presented a paper[5] which, among other things, asserted that all states should have the right to mine the ocean. It also stated that when a nation begins seabed mining operations it must inform the Authority which shall issue a mining certificate. The wording of this document made it appear as though the awarding of licenses should be a mere formality and that the Authority should not possess the power to decide which nation would, or would not, be allowed to mine.

By 1975 the American position on the nature of the Authority was defined even further by Mr. Ratiner who presented 12 concerns that the United States insisted must be addressed regarding the nature and responsibility of an acceptable ISA. The most important issue was the assertion that

the power of the Authority should not extend beyond that related to exploitation of the international area (thus the Authority should have no jurisdiction over scientific research). In addition, the nature of the Authority's decision-making body must be organized so as to ensure that every state was equally represented.[6]

As negotiations concerning the ISA progressed it became increasingly apparent that it was going to be more and more difficult to reach a compromise between the position of the developing countries and that of the United States. Not only was the United States becoming more and more concerned with the extent of the power developing nations wished to extend to the ISA, it was also beginning to stand its ground in the face of veiled threats which implied that unless the United States agreed to the Law of the Sea Convention it would end up losing many of its existing rights.

That these factors effected a more negative stance on the issue of the ISA was apparent in the altered position expressed by Mr. Richardson in 1978:

> If states were to subscribe to a Convention establishing an International Authority entrusted with overseeing the seabed mining, they would then be subject to additional restraints, since they would have voluntarily accepted the alterations of their freedoms in the interest of establishing a stable legal regime to regulate the exploitation of ocean resources. But the U.S. could not accept the suggestion that, without its consent, other states would be able, by resolutions or statements, to deny or alter its rights under international law.[7]

Despite the fact that the United States had initially attempted to accommodate Third World interests and had voiced approval for the establishment of an ISA which would have the power to collect and distribute revenues, American conformity to Western Bloc ideological principles still appeared

very clear. Agreement with the notion of the "common heritage" was balanced by an emphasis on the individual rights of states to exercise their freedom (i.e. in mining where they choose). The United States was obviously very concerned with ensuring that the Authority's powers were constrained according to the principle of "limited government" so that it was not able to develop into an institution capable of exercising supra-national authority.

Once Mr. Reagan was elected there was no question that the American position on the issue of the ISA corresponded to Western Bloc ideological principles. When Mr. Reagan announced (July 9, 1982) that the United States would not sign the Law of the Sea Treaty, and then followed with a new American policy on the oceans a few months later, the Assistant Secretary of State for Oceans stated:

> With these decisions the President asserted the virtues of democracy and free enterprise and rejected efforts to impose a collectivist ideology upon the multi-national negotiating process....[8]

The United States made it clear that it believed the Law of the Sea Treaty was intentionally designed to strengthen support for the concept of the New International Economic Order (NIEO). It disagreed with the concept of the NIEO because of its orientation toward socialist principles and the desire to see the resource wealth of the world controlled and distributed by a central authority. The United States further felt that the ISA was playing into the hands of proponents of the NIEO; it asserted:

> The U.S. cannot and will not turn over the management of the resources of the oceans and other largely unexplored frontiers to new multi-national bureaucracies controlled by Third World and Soviet Bloc countries.[9]

The above statements indicate that the American position on the issue of the ISA corresponds to the Western Bloc principles of democracy, individualism, decentralized control, freedom and the protection of national integrity. It is also interesting to note the comments of the United States on the organizational structure of the Authority. It has already been mentioned that the United States would only support an Authority that was structured so that every state was equally represented. In addition the United States was concerned that there be provisions in the Treaty which ensured that the rights of smaller states were protected and the interests of all nations were taken into account. It further stated that decisions of the Authority should be reached through consensus wherever possible and that whatever power was granted to the Authority must not overlap with that of the Council and should be controlled by a system of checks and balances.[10] The desire to see the above provisions included in the Law of the Sea Treaty reflect American commitment to the principles of the division of power, the need for checks and balances, and the right of all sides to be heard and represented.

Determining the American position on the right of the Authority to collect and distribute ocean resource revenue is slightly confusing. In earlier speeches the United States indicated that it supported the notion of the ocean as the "common heritage" and believed that benefits of exploitation should be shared with other states.[11] The United States still supports this belief but feels the nature of the proposal which it supported has been misconstrued. It asserts that it never interpreted the principles of the "common heritage" to mean the oceans belonged to everybody (res

communis). Rather it believes the ocean should belong to nobody (res nullius) and, as such, everyone should have an equal right to try to mine its resources.[12]

Although the United States moved from support for the notion of an ISA to the complete rejection of the Treaty which would put it into place, it has not compromised apparent commitment to identifiable Western ideological principles. This is because the nature of the Authority which the United States initially supported, differs fundamentally from that proposed in the Law of the Sea Treaty. The ISA proposed by the Treaty is endowed with a degree of supranationality which cannot possibly coincide with the ideological principles of the United States.

From the outset the United States made it clear that it would support the creation of the Enterprise only if the latter's powers did not extend beyond set, specific jurisdictional limits. These limits were outlined in the Draft Appendix which the United States tabled in August of 1974.[13] The United States asserted that any nation which informed the Authority of the specifics of its proposed mining operations had the right to mine. In addition, once such mining operations had been initiated no other state or party should be allowed to mine for the same minerals in the same area.[14]

The above proposals differed quite signficantly from those put forward by the developing countries, as well as from those that were finally incorporated in the 1980 Draft Convention. For the United States the principles which were to govern deep seabed mining were the most important considerations of UNCLOS III. The position which it took regarding limits on the power of the Enterprise and the Authority remained consistent

throughout the Conference. The failure of other nations to agree to such limits was largely responsible for the American refusal to ratify the Treaty.

Throughout the UNCLOS III proceedings discussions by the United States on the Enterprise were almost completey influenced by its interpretations of an Enterprise with limited power whose major goal was to further national economic interests. This distinction should be kept in mind when reviewing American proposals for financing Enterprise operations.

It is difficult to separate the American position on the Enterprise from its view of the ISA. This is partly because the idea of an independent mining company operating as a supranational entity was never granted legitimacy by the United States. The United States revealed a fundamental difference in principles from most other participating nations when it insisted that all states must have the right of access to the deep seabed on a non-discriminatory basis[15] and must be guaranteed the exclusive right to exploit the area which they have proposed to mine.

The United States placed further limits on the supranational nature of the Enterprise when it opposed the notion that the Enterprise be granted the right to carry out its own refining and sale of seabed resources. In referring to the limits of jurisdiction which the United States felt the Enterprise should have over ocean resources, the American delegate stated:

> The conditions of exploitation should only apply to commercial activities which occurred within the international seabed area and therefore not to transportation by sea, processing, marketing or scientific research.[16]

Originally the United States had not been willing to grant the Authority

or the Enterprise any more power than that of issuing licenses and collecting a percentage of mining profits for redistribution. Later it agreed to extend the jurisdiction of the Enterprise so that it could carry out its own mining operations. The American agreement that the Enterprise be allowed to carry out its own operation was, however, based on a number of conditions: specifically that the Enterprise not be allowed to control production limits, set prices or exercise exclusive power to mine the seabed.

The justification for the American stance again corresponds with the Western Bloc ideological principles of individualism, equality, decentralization and anti-monopolization. For example, in 1976 Henry Kissinger stated:

> What the U.S. cannot accept is that the right of access to seabed minerals be given exclusively to an international authority or be so severely restricted as to effectively deny access to firms of any individual nation, including our own.[17]

He went on to say that:

> The U.S. proposed that the Treaty should guarantee non-discriminatory access for states and their nationals to deep seabed resources under specified and reasonable conditions. The requirements of guaranteed access will not be met if the Treaty contains arbitrary or restrictive limitations on the number of mine sites which any nation might exploit. Any such restrictions are unnecessary because deep seabed mining cannot be monopolized....[18]

When the United States realized that the limitations it felt should be imposed on the Enterprise were not to be forthcoming it withdrew support for the Enterprise completely. The United States found the principles upon which the Enterprise was based to be incompatible with American economic interests. Although the United States had wanted to encourage other nations, especially those which were less developed, to take part in

seabed mining exploration, it was, and is, equally as concerned with protecting its own access,

> through the efforts of private mining companies.... Avoiding any potential monopolization of mining operations by the Enterprise... was recognized as central to U.S. efforts to protect American security needs and economic interest in commercial development.[19]

The American refusal to participate in proposed schemes reflects a correlation with the capitalist economic principles of private enterprise, competition and the free market. The United States believes that granting the Enterprise preferential rights to mine the seabed would end up causing mineral prices to fall by artificially encouraging production.

> Private investors, who must be concerned about market prices that determine the profitability of projects, will thus be at an unfair cost advantage. Essentially the operation of market forces will be severely restricted by the production provisions built into the Convention... and private efforts will be unprofitable.... The disincentives in the Convention are too great.[20]

Initially the Americans supported developing funding arrangements for the Enterprise. However, it must be realized that these early proposals were based on the American belief that the scope of the Enterprise's authority would be limited. Although financing discussions did not really begin in earnest until 1977, in 1975 the United States stated that:

> The Authority [and the Enterprise] should be financially self-sufficient, although it might be necessary to empower it to borrow funds during the early years of its existence.[21]

In 1977 the United States proposed a system of profit sharing which set rates ranging from 15% on low-return operations to 50% on high-return operations. It disagreed with the developing countries' proposal that

profit sharing should be based on all mining activities and insisted that only revenue from deep seabed mining should be shared.[22] At this time the United States also suggested that the Enterprise be financed by loans with up to 10% of its financing coming from grants by participating nations. In 1978 it opposed the suggestion of developing states that nations planning to mine pay a high, set payment so that the Enterprise's first operations could be fully financed.

The above proposal was obviously considered too big a risk when there were no guarantees of financial return. Curiously the USSR and Cuba also disagreed with the proposal although they justified their refusal on the collectivist principle that the ocean belonged to everyone and, as such, there should be no charge for using it. In 1979 the United States drew back a little further from the concessions it had made regarding profit sharing although it did agree that up to a third of the money which the Enterprise needed to begin operations should come from no-interest loans.[23]

By 1980 the United States had reached the decision that it could not agree to provisions which

> would impose unconscionable financial and regulatory burdens on American industry and government requiring... a potential liability for the U.S. of $1 billion in direct costs and loan guarantees for both initial expenses and continuing operations of the Enterprise and the ISA itself.[24]

Once again American behavior correlated with identifiable democratic and capitalistic principles throughout discussions concerning the Enterprise and its funding despite the fact that the American position vacillated somewhat between 1974 and 1982. The more agreeable stand which the United

States took regarding the Enterprise during the first few years was the result of the American view of the Enterprise as an important regulatory body responsible for protecting and promoting the rights of individual nations with regard to the seabed.

As was expected, the United States opposed the incorporation of provisions concerning mandatory technology transfer into the Law of the Sea Treaty. Although it was not opposed to sharing technology with other nations it believed this should be done on a voluntary basis and should not include military-related technology. One of the first references the United States made with regard to technology was the assertion that an important policy objective of the Authority must be encouragement of technological development in Third World countries so that these nations could take part in seabed exploitation activities.[25] The American stand on technology transfer corresponds with the democratic belief that individuals (nations) should be provided with an equal opportunity to strive for goals and participate in available activities.

Like the Soviet Union, the United States believes that the scientific research conducted in international waters should be for universal benefit. Furthermore the United States is equally as insistent as the Soviet Union that freedom of research should not be controlled, or in any way hampered, by an ISA. The ISA must merely ensure that such research is conducted along internationally-accepted guidelines. The United States believes that any control over research would tend to discourage it, or lead to results which are not scientifically valid.[26] This American stand on the importance of maintaining freedom of scientific research mirrors the

capitalistic belief that the productive mind is best able to function when it has a motivation for doing so and is not limited by any kind of arbitrary (governmental) regulations.

During a speech on scientific research the American spokesman made it apparent that his delegation opposed placing any restrictions on the distribution of scientific data and findings and believed that to have any effect "technology transfer must be regular and sustained and not the result of negotiations...."[27] The above statement indicates that the United States encourages the voluntary distribution of such technology and opposes limiting such freedom by establishing a consent regime. Because of the commitment to the voluntary transfer of (selected) technology the United States stated in 1975 that:

> certain aspects (of current proposals) however, create difficulties. One example was the connection made between the transfer of marine technology and the International Authority. Another feature with which his delegation had difficulty was the reference to the transfer of patented technology: in the U.S. such technology was private property and therefore not subject to government transfer.[28]

The provisions for the transfer of technology contained in the 1980 Draft Convention imply that the ISA has seemingly unlimited jurisdiction in being able to impose mandatory technology; for example, Annex 3, Article 5/5 states that the ISA "may use any necessary measures to ensure the Enterprise receives technology." Supporters of the provision for mandatory transfer are convinced that the Enterprise will receive so many offers for the sale of technology it will not have to resort to such drastic measures. Such reassurances have had little impact on the opposition of the United States to the Treaty articles referring to mandatory transfer.

The previously cited Malone article stated that the United States could not consent to provisions which

> would enjoin the mandatory transfer of private and possibly sensitive technology to an International Seabed Authority dominated by developing and Warsaw Pact countries as the price of its use in private mining operations.[29]

In 1974 the United States acknowledged that some way must be found to meet the needs of developing countries so that all nations would be able to benefit from the exploitation of seabed resources. At the same time it insisted that a proper balance must be maintained between all economic interests.[30]

The most important objectives of American resource policy include ensuring a guaranteed supply of necessary resources, limiting economic dependence on other nations and preventing political vulnerability. The United States also hopes that by taking economic limitations and international complications into account it will be able to enhance the control it has over its economic future.[31] To achieve these goals it aims to put conservation measures into effect, to stimulate American production and to seek to ensure guaranteed supplies from foreign sources.

The United Stated believes that the procedure for distributing seabed benefits to Treaty members outlined in the Draft Convention threatens the achievement of its economic objectives. As outlined earlier, the Draft Convention proposes that countries/companies which become involved in seabed mining should, in addition to paying imposed royalties and fees, turn over a share of their mining profits to the ISA. The decision as to whether these monies should be given to the Enterprise to finance future mining

operations or be distributed to member nations would be decided by the ISA Assembly operating under the one-nation one-vote system. For the United States the fact that the Assembly, under this system, is dominated by socialist and Third World countries is an additional cause for concern. The United States expressed its hope that the Law of the Sea agreement which was finally accepted be internationally acceptable. As such it asserted that it is not necessarily against increasing the control of the Third World over resource management. Instead it is more concerned for the precedent which such a policy would set.[32]

> The U.S. interest lies in insuring that the new seabed regime does not strangle economic efficiency in an effort to share the so-called common heritage of mankind.[33]

The United States is not so much against the distribution of revenues to Third World countries as it is against the proposed method by which this will be done. The notion of unilateral decision-making on the part of the ISA is anathema to the principle of volunteerism. In addition the revenues which the ISA would collect for redistribution would otherwise have been the "rewards for effort" going to the producing nation or company; effective capitalism is motivated by the belief that such efforts will result in tangible returns.

Although the United States is committed to a limited welfare notion, the application of this principle is carried out only when individuals are unable to provide for basic needs. The United States far prefers to help people help themselves and to set up the conditions conducive to achieving an equality of opportunity. Given this commitment it is not surprising that it opposes the principle of collective responsibility inherent in the

concept of revenue sharing and the ISA. As an alternative the United States suggested a system in 1974 which would

> provide for modest and uniform international payments for the extraction of mineral resources beyond 12 miles.... Those payments would be used primarily for developing countries, including land-locked and other geographically disadvantaged states.[34]

The American proposal to "provide modest and uniform international payments" was one of the few concessions it made regarding its willingness to endorse the provisions for revenue sharing which were incorporated into the Draft Convention. When justifying the American refusal to support the Treaty, President Reagan not only stated that the United States was not prepared to support a funding scheme which allowed a share of seabed revenues to benefit terrorist and national liberation organizations,[35] but also said that American security depended on guaranteed access to, and development of, important minerals. It was because of threats to this accessibility that the United States could not align itself with schemes such as revenue sharing.

Despite the fact the American response to revenue sharing appears to encompass opposing principles, the correlation between its behavior and the Western Bloc ideological principles of capitalism, preventing centralized control by an autocratic authority, protecting the rights of individuals (nations) and ensuring equality of opportunity, remains consistent.

Even though changes did occur in the American position on Law of the Sea issues during the last decade, the above examples indicate quite clearly that its behavior throughout the Conference paralleled the Western Bloc ideological principles outlined in Chapter Three. This commitment is,

according to Sebenius, most apparent in the American refusal to sign the 1980 Draft Convention.

> ... questions of adverse precedent and ideology weighed much more heavily in the Reagan administration's decisions to reject the Treaty than they had previously.[36]

Canada

In 1972 Alan Beesley, the Canada Ambassador to the UN, asserted that

> Canada's interest in the Law of the Sea can be viewed as a product of all its geographical, resource and functional characteristics that relate to the agenda of the Third United Nations Law of the Sea Conference.[37]

That the Canadian position on the Law of the Sea does not correspond with Western Bloc ideological principles appears obvious when we are presented with the fact that Canada not only actively encouraged, and participated in, UNCLOS III, but also readily agreed to sign the Treaty when it was presented to the world community.

When reviewing Canadian behavior at UNCLOS III, however, there are two factors which must be kept in mind. The first is that, as with the Soviet Union, although Canada signed the Treaty this should not imply it was in full agreement with all the Treaty's provisions. The second item to remember is that, as Chapter Three indicated, the Canadian position can be expected to differ slightly from that of its Western partners given its support for more collectivist principles at the national level and its "middle power" commitment to internationalism and peacekeeping at the global level.

Despite this deviation Canada remains a strong advocate of the

principles and institutions inherent in Liberal Democracy and capitalism. Given this dichotomy it is interesting to review the positions which Canada took during the Conference to see whether it was able to effect a successful balance between these two considerations, or whether its behavior reflected a closer correspondence with practical considerations than with commitment to capitalistic and democratic institutions and principles.

Canada's early attitude toward ocean law was very similar to Britain's. It was not until after World War II that Canada began taking control of its own foreign policy in a manner which more adequately dealt with Canadian economic and geopolitical interests. The desire to function on an independent basis was apparent in the active, flexible role which Canada played during UNCLOS I and II. Defining a set approach which Canada has taken regarding ocean issues is very difficult, for history has shown that Canada has opted to take whatever action appeared most appropriate at the particular time.

> The Canadian approach is not a doctrinaire one based on perceived notions of traditional, international law, nor is it a radical or anarchistic approach.... The Canadian position has been to analyze the problem and attempt to determine the specific measures needed to resolve the issues.[38]

As the international community began to prepare for UNCLOS III, Canada consistently asserted that a successful convention must deal with all the important ocean-related issues. In order to be a more effective lobbying force Canada took an active part in preliminary negotiations and became a member of the UN Seabed Committee which had been initiated following the Malta proposal. What is quite clear is that Canada was, and is, a

strong supporter of the Law of the Sea Convention and the resulting Draft Treaty. What is not so clear is how Canada manages to support the Treaty wholeheartedly and simultaneously feel convinced it will serve Canada's best interests as a liberal democracy, while also serving the interests of all other nations.

One cannot read about Canada's position on the Law of the Sea without being reminded of the importance which it places on the fact that it has one of the longest coastlines in the world and the second largest continental shelf. In addition Canada has consistently emphasized the importance which it places on the protection of its land-based mineral production and on the exclusive right of coastal states to exploit the resources of the continental shelf.

By the time UNCLOS III was convened Canada had already initiated a number of unilateral policy decisions aimed at dealing with ocean-related concerns (i.e. extending to 12 miles the limits of the territorial sea, and asserting the rights of coastal states to control the resources of their continental shelf even if the shelf went beyond the agreed-on 200-mile limit).

At this time Canada was experiencing both an increase in nationalism as well as in its commitment to internationalism. The rise in nationalism was responsible in part for the division which has occurred between Canada and the United States on Law of the Sea issues. Because Canada is a mineral producing country and sells most of its resources to the United States it is against the stance which the latter took regarding the rights of all nations to mine the ocean as their technology allows. Canada believes that

should the United States exercise its ability to mine the ocean the Canadian mining industry could be severely affected. This concern, among others, plus the whole concept of internationalism encouraged during the Pearson era which supported increasing the functions and authority of international organizations, were what insured Canada's support for the notion of an ISA. Furthermore, it is because Canada views itself as a developing mineral producing country that it has aligned itself in some areas with the concerns of the Third World as opposed to the developed world.[39]

The Canadian position toward the establishment of an ISA has undergone a number of gradual changes since it first became an issue following Pardo's proposal. The scope of Pardo's proposal caught Canada somewhat unprepared and the vagueness of the former's suggestion regarding an international ocean regime resulted in a very cautious attitude on the part of the Canadian delegation.[40] In 1971 Canada presented a detailed paper which indicated it had given close consideration to all aspects of an ISA and the principles upon which it would be based.[41]

The paper attempted to achieve a compromise between those nations of the Third World which wanted a control set up to regulate the exploitation of the ocean, and the more developed nations which wanted the freedom to conduct exploitation activities as they chose. The paper tried to achieve the above objectives by acknowledging the oceans as the common heritage and suggesting the establishment of an international regime which did not limit the rights of states to conduct mining operations in the oceans but which would exercise effective control over the maintenance of standards

and so forth. Basically the paper suggested a weak licensing system although room was made to allow the regime some control over the collection and redistribution of resource revenues.

At this point Canada was still reflecting support for the principles that individual nations had the right to follow their own initiatives and that private companies and states should be encouraged to invest in seabed mining. This was obvious from the fact that Canada initially preferred not to grant an ISA supranational power and, hence, the ability to control the rights of individual states to mine the ocean.

By 1974 Canada had moved to the position which it now holds regarding the ISA. The Canadian delegate at the time (Mr. Jack Davis) made this position quite clear when he stated:

> On the question of the mineral resources of the seabed beyond the limits of national jurisdiction... some new form of international co-operation and a strong international authority to manage the resources is needed. Exploitation of the resources of the international seabed should be planned and executed with full regard for all the factors involved, including access to the area, minimization of possible adverse economic effects, collection and distribution of financial benefits among states....[42]

The reference to a "strong international authority" indicates acceptance of the idea that controlling ocean-related activities of individual nations should be removed from the hands of national governments and put into the control of an authority whose responsibility was to the global community and not to any particular nation-state. Canada further accorded the Authority the right to "plan" the exploitation of resources and control their redistribution to achieve, what Mr. Davis referred to later in the same speech, "a system that would work to the benefit of mankind in general

and of the developing countries in particular."

Canada justified this position based on its commitment to improving the overall conditions of the world community and to achieving greater co-operation among states. Evidence that Canada was, in any way, adhering to Western Bloc ideological principles is virtually non-existent. Canada's position on the ISA indicated a willingness to transfer the rights of individuals and nations (i.e. in reference to choice of action) to an institution whose organizational structure and decision-making ability has nothing at all in common with Canadian (and/or Western) institutions.

By acknowledging the legitimacy of the ISA, Canada has indicated acceptance for the idea of centralized authority and the removal of freedom of action. That is, Canada has effectively given up its right to freedom of action (regarding use of the ocean floor) and has allowed a body which is not responsible or accountable to member nations to assume decision-making authority. In effect Canada has acknowledged the Eastern Bloc principle that the "superior interests of the state" (in this case the world state) must take precedence over the interests of individual states. In addition by supporting the Authority, Canada has indicated it believes that a small elite group is the most capable of identifying what these "superior interests" are.

Mr. Davis' speech further hinted at the right of the ISA to plan for the exploitation of the seabed. Although this issue will be discussed more thoroughly later, clearly the support for centralized economic planning and control which this approval implies is anathema to capitalist economic principles. As indicated in Chapter Four, the ISA does not allow for

individuals or small groups to own and control the means of (seabed) production. Furthermore the ISA represents the epitome of monopolization.

What is interesting about Canada's attitude during UNCLOS III is that such disregard for Western Bloc principles extended only to issues of the deep seabed and the control of international waters. Like Cuba, Canada asserts complete sovereignty and control over all resources within the 200 mile zone. Somewhat ironically Canada sincerely believes that allowing the ISA control over the international seabed will protect the ability of its land-based mineral producers to compete in the sale of resources and to expect a profitable market.

In 1976 J.A. Beesley, the most involved Canadian delegate at UNCLOS III, asserted that:

> In legal terms the Law of the Sea Conference presents the opportunity to leave behind us both the narrow nineteenth century concept of sovereignty, and its faithful companion, the laissez-faire principle of freedom of the high seas, and to create new laws in place of each, embodying a totally new conceptual approach reflecting the need to manage ocean space in the interest of mankind as a whole.[43]

In 1978 Mr. Beesley reiterated Canada's willingness to forego commitment to liberal democratic principles with respect to the deep seabed when he stated, in reference to the ISA, that "any negation of individual rights or state sovereignty involved is far outweighed by the collective benefit that may ultimately ensue." He went on to say that the whole concept of the ISA "could teach us lessons in international co-operation" and "the experience we can gain in the first true example of supranationalism can have profound effects upon existing world order, founded as it is on the concept of the nation state." Mr. Beesley concluded this speech by saying

that what was most important (regarding acceptance of the principles of the ISA) was that "the common heritage is directly relevant to—and may even be a pre-condition to—attainment of the New International Order."[44]

By indicating a preference for collective over individual rights, the acceptance of supranationalism, the dismissal, if necessary, of the notion of sovereignty and the indirect approval for the concept of the New International Order, Mr. Beesley could hardly have dismissed Western Bloc ideological principles more thoroughly.

As was indicated in Chapter Five, a striking similarity exists between the provisions for conducting audits and external examinations on the Communist Party outlined in the Rules of the Communist Party, and the provisions contained in the Law of the Sea Draft Convention for conducting examinations and audits on the Assembly and the Enterprise. The principles of the inviolability of the records and operations of governing bodies is an identifiable characteristic of Eastern Bloc social systems.

An examination of Conference proceedings indicates that Canada did not directly address the issue of inviolability of the ISA and the secrecy of its records. Nevertheless, given related evidence it can be assumed that Canada supported the provisions for the inviolability of the Authority/ Enterprise outlined in Sections 176-183 of the Convention.

From the Ninth session on Mr. Beesley acted as Chairman of the Drafting Committee responsible for a complete review and revision of the Convention. During the Ninth session he repeatedly addressed the Conference regarding the progress being made. Although references were made to different weaknesses and problems in the Law of the Sea provisions, especially regarding

Part XV and Annex V, no comments at all were made concerning Section 176 to 183. It can only be assumed that no comments were made on the sections because they were not considered problems.

Given Canada's approval for the concept of an ISA, it is not surprising that support was extended to the idea that an Enterprise be established as the operational arm of the Authority. Canada's attitude toward this issue has remained relatively consistent over the past decade. The best way of describing this position would be to say that Canada has again adopted a middle stance between the demands of the Third World countries who want the Enterprise to exercise complete control over seabed exploitation, and the demands of the developed countries who want the right of exploitation left to the initiative of individual states or private companies.

Canada realized that if the success of the Convention was to be assured, some kind of compromise would have to be reached which would satisfy both sides before polarization on this issue became so extensive any hope for an agreement would be lost.

A compromise proposal which Canada presented to the Convention again showed little, if any, concern with accommodating applicable Western Bloc ideological principles. In 1973 the Canadian Department of External Affairs published a paper on the Law of the Sea which asserted that:

> Canada has recognized the necessity of compromise on this delicate issue and has proposed a system involving a mix of licensing, as well as activities contracted by the Authority, including the possibility of direct exploration and exploitation by the Authority itself when it acquires the means to do so.... This regime, which must ensure that the utilization of these resources will be of benefit to mankind should

> also provide opportunities for Canada's minerals industry to develop and be protected against the undesirable effects that the substantial increase in the production of certain minerals could have on its own position.[45]

The ironies in the above statement are obvious. On the one hand Canada acknowledged support for the identifiable socialist principles inherent in the notion of a supranational company endowed with the power and ability to conduct its own mining operations in a manner which it deems to be in the best interests "of the collective." Yet, conversely, Canada's support for the Enterprise was based on its capitalist-motivated concern that market forces would continue to work to the advantage of Canadian mining companies so that their ability to make a profit would be protected. However, on the opposite side once more, we realize that in striving to achieve this protection by supporting the Enterprise, Canada has effectively rejected support for the free market principles of competition and the free exercise of a system of supply and demand.

Over the past few years Canada has maintained a delicate balance between the positions of the developed and developing countries on the issue of the Enterprise. Keeping this balance has meant concurring with the Western countries that the Enterprise should be limited to supervising fair and effective exploitation of the ocean floor yet upholding the stand of the Third World countries that the Enterprise should ensure the exploitation of ocean resources for the benefit of all mankind. Although Canada has continued to try to maintain this balance there is no doubt that in seeking to protect its economic interests it has moved closer to the position of the developing countries in wanting a regime which would set up production

controls and limit unrestricted freedom of the seas.[46]

In favouring a regime with this type of controlling authority, Canada has displayed a disregard for the Western Bloc ideological principles of freedom of movement—with respect to determining a decided choice of action, the reduction of governmental strictures on economic activity, and being able to exercise the right to choose what to produce and where to set up a business or industry.

Canada was able to formulate its own response to the idea of the Enterprise because "the government did not have an ideological reaction to Pardo's proposal" and "it was prepared to take a flexible and pragmatic approach and to consider almost any solution which might result in a workable international agreement."[47]

The solution which Canada came up with reflected the 1973 position referred to earlier and presented a proposal for an Enterprise which granted private companies certain rights of access and allowed them to work with, or beside, the Enterprise in exploiting the ocean floor but which did not allow unrestricted access to the seabed which Canada felt would be in contradiction to the "common heritage" principle.

The overture made to private companies in this solution did not appear to be made with any great concern for protecting the sanctity of this particular aspect of Western ideology. As long as Canada did not possess the technology to mine the deep seabed it was prepared to support a regime which would control such activity by other states and simultaneously protect its own position as a mineral-exporting nation. However, in acknowledging the right of access to national or private companies to the seabed (in

conjunction with the Enterprise), Canada was preparing for the day when it would be financially and technologically able to participate in deep-sea mining itself.[48]

Despite its support for the Enterprise, Canada made no clear reference to its position on any kind of funding scheme. Canada did imply that it believed the Enterprise should one day acquire the means to carry out its own exploitation activities. Beyond this we will have to satisfy ourselves with assuming that because Canada supports the Authority and the Enterprise so strongly, and because its contribution to the UN is comparatively small, it would probably have little difficulty in contributing a corresponding amoung for the establishment of these institutions.

Canada confirmed its commitment to the belief that all nations should be able to benefit from the potential of the oceans when the Canadian delegate, Mr. Needler, stated:

> The strengthening of the research capabilities of developing countries and the transfer of technology to them [is] necessary if the developing countries [are] to benefit from the resources of the economic zone or the patrimonial sea ....[49]

Throughout UNCLOS III Canada remained insistent that there be an uninhibited flow of technological and scientific information between all states and that all marine-related information be made available to the global community:

> The transfer of technology should apply to the whole range of uses of the sea, including the exploration and exploitation of seabed resources....[50]

At a 1976 Conference session Canada expressed concern with the nature

of the Convention's provisions on technology. It was concerned that it might end up giving the limited information which it had on marine technology to Third World countries, without receiving any compensation. Canada also made it apparent that it was concerned that such provisions would grant governments access to patents previously considered private property.[51] This attitude toward the transfer of technology was one of the only occasions during UNCLOS III that the Canadian position corresponded with Western Bloc principles: It acknowledged the sanctity of private property, the right to choose which information an individual/company or nation wishes to transfer, and the right to expect a return from such a transfer.

Apart from these qualifications the Canadian position on technology transfer was almost identical to that of the developing countries. Canada encouraged the use of the ISA as a means of encouraging co-operative marine scientific research and of facilitating the transfer of related information and technology between all countries.[52] Canada also asserted that it did not believe that individual states should have the right arbitrarily to refuse to allow scientific research or technology transfer, even in coastal waters, unless positive proof could be given to indicate that such action would have an adverse effect on a coastal state's marine environment or resources.[53]

Once again Canada legitimized the use of a supranational authority to deal with questions of technology transfer in a manner the latter deems to be in the interest of all mankind. In granting the Authority this legitimacy, Canada has taken the right of decision making away from individual states, it has disregarded the Western Bloc commitment to the

the principle of private property and it has dismissed the capitalist belief that individual effort is the key to success.

Before tying a red banner around Canada's neck, however, there is an important aspect of the Canadian attitude toward the issue of technology transfer which should be considered. Quite apart from the four issues discussed in this study, Canada is very concerned with control of marine pollution and the effective utilization of coastal seabed and marine resources. During part of its speech encouraging the transfer of technology to developing countries, Canada maintained that such transfer was necessary if these countries were going to be able to live up to their responsibilities in the areas of pollution control and resource management.[54]

This statement reflects Canada's concern that unless the Third World is given the technology to deal with such issues, the developed world will be shouldered with all the problems and costs which will inevitably be incurred. In addition, although Canada acknowledged the right of the ISA to be responsible for facilitating technology transfer, encouraging revenue sharing and preventing nations from arbitrarily refusing to allow research, etc. to be conducted in their coastal zone, nonetheless it was insistent that, if at all possible, the transfer of technology should be carried out on a voluntary basis and that the sovereign right to refuse to allow potentially harmful research should be maintained. Canada does not support the provisions for the mandatory transfer of technology.

An analysis of the Canadian position on revenue sharing reveals a curious mixture of socialist, capitalist/democratic and, if there is such a thing, internationalist, ideological principles. In line with its

commitment to the common heritage principle Canada believes that states or corporations involved in deep seabed mining have an obligation to share a percentage of resulting revenues with other states. Further, Canada acknowledges the right of the ISA to be responsible for this redistribution.

> What the international community is attempting to do is to develop the first international management system for some of the resources of the planet earth based on principles of sound conservation, rational development and equitable distribution of benefits... the seabed below and its resources will be subject to a regime of international management governed by a new international authority... [which] can reshape the thinking of all of us about how to live together in harmony, sharing instead of competing for finite resources.[55]

The vague reference to the role of the ISA in revenue sharing present in the above quote is one of the few statements Canada made regarding this issue. It does not appear as though discussions took place with respect to the method by which revenue sharing should occur, nor is it apparent that a formula for revenue sharing was ever reached. From this vague perspective the blanket approval for the "distribution of benefits by the ISA" (with emphasis on those developing countries which particularly need it) reflects the Eastern Bloc principle of "from each according to his ability, to each according to his need."

Canada's support for the important role that the ISA will play regarding revenue sharing closely reflects the behavior expected of the Eastern Bloc. It must be remembered, however, that, in reference to technology transfer, Canada favoured a system whereby nations participated on a voluntary basis finding the concept of mandatory transfer unpalatable. Although technology transfer implies substantive action at the domestic level (because of the actual role played, and possible loss sustained by

by private and state companies), while revenue sharing from deep seabed mining really implies little more than a percentage loss of extra profit, nevertheless it seems likely that Canada would prefer some kind of strictures on the ISA's unilateral right to requisition such benefits. This is conjecture of course, and it must be remembered that Canada has stated "that it preferred a strong international authority to ensure the equitable distribution of benefits."

While it has not been within the scope of this paper to discuss the attitudes of the various nations to the other ocean-related issues involved in the Law of the Sea, a quick look at Canada's unique position on revenue sharing within the 200 mile limit, as well as its attitude toward the resources of the continental shelf, will perhaps give a clearer insight into the Canadian position on revenue sharing in general.

Canada is, as has been indicated, exceptionally protective of its rights as a coastal nation and its autonomy over access to, and control of, the mineral and living resources of its coastal waters. In fact, the Canadian attitude toward this area is virtually opposite to that which it expresses regarding the international area. The difference in attitudes toward these two areas is evident by the long-standing offshore jurisdictional disputes which have occurred both between the federal and provincial governments and between Canada and the United States. Canada is more than willing to legitimize the establishment of a new form of control over the international seabed but insists that existing international laws should continue to govern activity within the 200 mile zone. What is noteworthy about Canada's position on revenue sharing in this coastal area is that,

despite its attitude of jealous guardianship, it was the first nation to suggest that a percentage of the revenues accrued from exploitation within the 200 mile limit should also be shared with the world community.

> Since the coastal state enjoyed special rights and privileges with regard to the resources of the continental shelf, it could recognize some duty towards the international community as a whole, and particularly the developing countries, and share at least some of the benefits derived from those rights and privileges.[56]

This seemingly altruistic approach appeared to be based on, and governed by, capitalist/democratic principles. Canada wants such contributions conducted on a voluntary basis and in line with its commitment to internationalism, insists that a share of the benefits from this area must go to Third World countries. Canada did not want these contributions to look like royalty payments.[57] Royalty payments refer to shares or rights of jurisdiction granted to individuals or part owners. Canada did not want to set a precedent for Third World countries to claim royalty rights within its, or any other nation's, coastal waters.

When formulas for revenue sharing in the 200 mile area were being discussed Canada opposed proposals for production sharing in favour of proposals for profit sharing.[58] The latter is an important aspect of a free enterprise system and provides for a method whereby employees (usually) are given a share of the profits from a business enterprise. The former reflects a more socialist view of economics because it suggests approval for the idea that (in this case) the global community and Canada would share control and ownership of ocean resources.

Although Canada encourages the identifiable Eastern Bloc principle

of revenue sharing, nonetheless there is also clear support, at least at the coastal level, for the more democratic notions of volunteerism, exlusive state control and profit sharing.

Canada's position on the above four issues does not correspond with Western Bloc ideological principles. Even the more collectivist orientation of the Canadian government fails to justify the extent to which Canada's behavior strayed from support for democratic, capitalist principles and reflected support for identifiably socialist institutional and economic principles.

Britain

Britain has followed in the steps of the United States and has refused to attach its signature to the Law of the Sea Treaty. Britain's interest in the oceans has a far more extensive history than either the United States or Canada. The validity of this last statement is more than obvious when we consider the crucial role which the oceans have played in British trade activities and national defense. For Britain the maintenance of its economic well-being has always depended on the existence of freedom of the seas. This view of the oceans clearly marked the British attitude toward the different issues discussed during the Law of the Sea Conference.

As we examine the position which the British took on these different issues we will note an interesting change which has taken place. Prior to UNCLOS III Britain had made it clear that its major concerns were assuring control over its coastal waters and maintaining the right of freedom of navigation.[59] Although these concerns remained priorities during the Conference, it was consideration of the four issues being discussed in this

paper which were responsible for the attitude adopted by the British delegation toward the overall Draft Convention.

During some of the first Seabed Committee discussions concerning the establishment of an ISA in 1969 and 1970, Britain voiced its disapproval for the proposal of the developing countries to establish an ISA which had the authority to exploit the resources of the deep seabed. Britain pointed out the problems inherent in allowing an organization with this type of power to control the revenues accruing from ocean exploitation. As an alternative Britain sided with the United States in supporting the idea of a "joint venture" system in which the ISA would play a more downgraded role as a weak licensing body.[60]

A more detailed outline of the British position on the ISA was contained in a paper presented in 1971.[61] In this paper Britain confirmed its support for an ISA with characteristics parallel to those desired by the United States and fully in keeping with liberal democratic principles of governance. Britain expressed support for the establishment of an ISA with an Assembly, Secretariat and Council which was to be responsible for ensuring the maintenance of standards. The paper made it clear that individual nations should retain control over the areas of the seabed allotted to them. Britain was concerned that the interests of more advanced nations were protected and that the right to engage in exploitation activity not be hindered. This attitude mirrored support for the Western Bloc principles that governmental control be limited, and that individuals have jurisdiction over their own property (or, in the Law of the Sea context, nations have exclusive control over their coastal waters and those areas of the

international seabed they have received licenses to mine).

One cannot conclude that because Britain has refused to sign the Treaty it opposes it completely. Indeed, as the British delegate J.E. Powell-Jones stated in 1982:

> The overriding concern of the United Kingdom as was stated in the speech of 1974 was and has remained "to seek a new Convention which would be generally acceptable to all states."[62]

Reviewing the 1974 speech referred to in this quote could lead to some confusing conclusions regarding Britain's current disapproval for the 1980 Draft Convention. Britain went to UNCLOS III, as did Canada and the United States, fully in support of the need for some kind of international seabed regime. Nonetheless, it is somewhat surprising to note the approval which the British delegation gave to the socialist ideological principles inherent in the proposal for an ISA with the right to collect and distribute resource benefits. What is particularly interesting is that it is the inclusion of a number of these same principles in the 1980 Draft Convention which led to a reversal in the British position and its subsequent refusal to sign the Treaty.

In 1974 Britain acknowledged its support for an ISA in phraseology which closely paralleled that of the developing countries and, from all outward appearances, did not appear to take the concerns included in its 1971 position paper, into account.

> These new sources of wealth [referring to seabed resources] present exciting prospects for a world with a rapidly rising population and a shortage of many resources. However they also present dangers. It is not difficult to imagine the competition which could be stimulated if the seabed was not internationalized.... It is therefore important to devise

> equitable methods for controlling and sharing the benefits of that new wealth. It could not become the preserve of just those nations or enterprises that now have the technology to exploit it, but must be used for the benefit of every member of the international community.[63]

Britain granted approval for the Eastern Bloc concept of internationalization and appeared to assert that uncontrolled competition should not only be disallowed but be rechannelled in order to more effectively meet the needs of the world community on an equitable basis. This belief was asserted even more clearly in the same speech when the British delegate went on to say:

> The U.K. supports the... declaration that the resources of the seabed beyond the limits of national jurisdiction were the common heritage of mankind. These resources must be developed for the benefit of the whole world community, especially the developing countries. One of the major tasks of the Conference is to determine the structure and powers of the International Seabed Authority and to define the areas over which it has jurisdiction. It has to develop a system of common ownership which ensures that resources are exploited for the common good.[64]

The above statement indicates that Britain supported the creation of an ISA with at least some supranational authority. This support is evident by the fact that Britain endorsed the right of the ISA to determine a "system of common ownership for the common good." In effect, Britain's statement legitimized the role of a centralized authority to plan a system of economic organization which was believed to be in the best interests of all. A major socialist ideological principle is "common ownership." Yet Britain, as one of the chief exponents of the virtues of capitalist democracy, appeared to acknowledge the achievement of a system of common ownership as a desired goal.

It is, in fact, quite true to say that the early British position on the ISA was fairly similar to that of the Soviet Union. Both agreed that some kind of authority was necessary to ensure a more equitable distribution of seabed resources. In addition, Britain agreed with the Soviet Union that it continued to prefer an Authority which functioned as a licensing system and which did not have the ability or power to control scientific research, arbitrarily impede exploitation or in any way inhibit a nation's freedom of navigation or its exclusive right to control and exploit the area within the coastal region. That is, Britain did not support the creation of an ISA as was envisioned by Cuba (and other developing countries).

However, by the time UNCLOS III had drawn to a close the British position on the ISA and its right to redistribute resource revenues had altered quite remarkably to the point that Britain now concurs with the United States that the concept of the ISA as it is outlined in the Draft Convention is not an acceptable alternative for a nation committed to capitalist/democratic principles. As with Canada, it can only be assumed that Britain's rejection of the nature of the ISA detailed in the Convention includes the ISA's rights to inviolability and secrecy outlined in Articles 176 to 183.

The reversal of Britain's position has not occurred without a great deal of dismay from both the political and economic sectors of British society who continue to be divided over the course which Britain should take. However, even the supporters of an ISA had altered their approval for a regime which had those characteristics outlined in the 1974 speech

to one which "would keep at bay the more outrageous ideas of the supporters of the internationalization of the resources of the deep seabed."[65]

The term "Enterprise" was used only rarely by Britain during the actual conference and is not present in either the 1970 or 1971 working papers. A careful examination of these latter documents would appear to indicate that although Britain had stated in 1974 that the Authority must ensure that the resources of the seabed be exploited for the common good, this should not necessarily be taken to indicate that Britain felt the Authority (or the Enterprise) should be responsible for such exploitation. Never, at any point, does Britain suggest that the rights of private mining companies be usurped by an international Enterprise. Nevertheless, although Britain did not approve of an Enterprise being able to engage in actual mining operations, it did appear to approve of a number of the principles upon which the Enterprise was established, especially during the early part of the Conference. For example, the Enterprise was formed in support of the idea that the oceans are the common heritage and, as such, should be exploited for the benefit of all. The statement made by Britain in 1974 reflected approval for this idea and the subsequent need for some kind of centralized control to co-ordinate economic activities in the oceans on a global level.

Britain also acknowledged support for the non-prejudicial nature of the Enterprise when it asserted that an important role of the Authority (which has been delegated to the Enterprise by the Draft Convention) is to ensure that all nations and individuals in the global community, especially the developing countries, benefit from seabed resources and not just those

with the technology to exploit it.

British support for these foundational principles did not extend to the Enterprise's operational principles. Various comments made by the different delegates, in addition to the preferred nature of the Authority outlined in the 1970 and 1971 paper,[66] conclusively indicate that Britain did not advocate that the Enterprise be empowered with the ability to conduct actual mining operations at the expense of (or in the place of) individual nations or companies. Britain wanted guarantees that states would retain the exclusive right to exploit and benefit from the resources within its 200 mile coastal zone. Beyond this limit Britain continues to assert that the Enterprise must function as no more than a licensing body which would ensure that nations/companies conducting mining operations honour accepted standards. Britain did suggest that the Authority/Enterprise be able to restrict to six the number of operations which any one nation chose to initiate, in order to save areas of the ocean for those states not yet able to conduct mining operations.

This last suggestion could be said to go against the capitalist belief in the right to unrestrained competition, the right to work and move where one wishes and the right to accumulate capital. But when we realize that Britain agreed to such provisions in order to encourage a situation which would provide an equal opportunity for all states to mine the ocean this restriction does not appear inexplicable. In addition Britain made it quite clear that although it supported the idea that mining companies would turn over a share of resulting revenues to the Enterprise, this was to be a fixed rate set prior to the initiation of mining operation, and

not directly tied to the actual amount of revenue accrued from such exploitation.[67] Britain also maintained that initial licensing fees must be as low as possible so as not to discourage mining activity and that the royalty payments which are to be paid to the Enterprise once operations have begun must be a set figure and calculated according to profits or revenues.[68]

Britain was protecting the rights of mining companies/nations to make a profit and/or accumulate revenue from seabed operations by suggesting a formula which would ensure that not all excess revenue went to the Enterprise. Britain never supported the notion that the Enterprise be authorized to set production limits (except to prevent waste), determine which nations/companies could mine where, or conduct business activity in the same manner as a private company. In 1974 the UK delegate, Mr. Chamberlain, stated that Britain felt "the Seabed Authority was not an appropriate organization for arranging commodity agreements."[69]

Throughout UNCLOS III the role which Britain felt the Authority should play continued to be based on the above-mentioned position papers. Although numerous references are made in these papers regarding the mining activities and responsibilities of state contracting parties, no indication is given that the Enterprise itself can contract out or engage in its own operations. This omission would seem to indicate that Britain did not approve of the idea of a supranational mining company and was not willing to relinquish its support for the right of individual nations or companies to engage in private entrepreneurial activity in the ocean, to mine where they foresaw a profit (although, as mentioned, Britain agreed to the six-site limit),

or to accept external control in the form of production limits, etc.

Britain's disapproval for the Enterprise and its related powers has become quite obvious since the election of Prime Minister Thatcher, who consistently expresses great distaste for the idea of public enterprise in the business or industrial world.[70] It appears that it was only once Britain realized that the power of the Enterprise was to be extended beyond that of a licensing regime that it withdrew its support. Donald Watts notes that

> At the same time [as withdrawal of British support] it was made clear that there was no question of invoking the mini-treaty [with the US, Germany, etc.] and setting up a regime of deepsea exploitation and exploration in rivalry to that set up by the Convention.[71]

By becoming involved in this mini-treaty Britain has clearly expressed its belief in the right to compete and not to have its activity constrained by a supranational body.

The suggestion that the Enterprise be initially funded by member nations in amounts corresponding to UN contributions has never received support in Britain. Britain's alternate proposal was that the administrative expenses of the Enterprise and the Authority be met by the licensing fees paid by nations/companies, as well as by annual payments made during the period the license was in effect.[72]

Britain believed that if the Enterprise was to be effective it would have to be self-financing. As a result, it initially suggested a continuing system of royalty payments from companies involved in mining operations to the Enterprise.[73] Britain did not feel, as suggested by the developing countries' UN payment proposal, that the financing of the Enterprise should

come from member countries on the basis of their ability to pay. Again Watt points out that under Prime Minister Thatcher there is suspicion for "any proposal to create another UN agency whose income would come, at least in the beginning, from levies on the most industrialized countries."[74]

Britain's opposition to the proposed financial arrangements of the Enterprise and its own, alternative, suggestions concur with the expectations of Western Bloc behavior outlined earlier. If the Enterprise had been established strictly as a licensing body without the power it now has to usurp, or supercede, the rights of member nations, there is no doubt that Britain would have stood by its proposal for a funding system based on royalty payments and licensing fees. However, Britain will not recognize the supranational nature of the Enterprise now proposed and, as such, will not support any type of funding scheme.

Britain supported the notion that developing countries should be given access to the technological innovations of the more advanced nations in order to augment their ability to benefit from ocean exploitation. It was, nonetheless, largely because of the Draft Convention's provisions on technology transfer that led Britain to refuse to endorse the Treaty. Far from being inconsistent, this behavior reflects a correlation between British behavior and a number of recognizable Western Bloc ideological principles.

In its 1971 position paper, Britain hinted at the fact that if an ISA was established as a licensing body, nations would be more encouraged and have a greater opportunity to develop their technological abilities with respect to seabed exploitation.[75] While this statement could suggest

that such development would occur unilaterally, the paper goes on to say that room should be made in the administrative structure of the ISA for those technologically-advanced nations whose knowledge of seabed exploitation would be crucial for the viable operation of the Authority.[76] This stand appears to indicate that Britain was not averse to encouraging the distribution of seabed mining technology.

Given the Western Bloc's commitment to freedom of speech, the press and information, as well as the democratic belief that continual efforts should be made to improve equality of opportunity so that individuals (nations) can "pursue a fuller life," this support should not be surprising. Indeed, as with the other developed countries, Britain maintained that the spread of such information must be encouraged.

> What must be achieved is a regime which serves the interests of all countries by promoting the increase and dissemination of that knowledge [scientific, technical] rather than restricting it.[77]

Although this comment was directly addressed toward making such information universally available, Britain's concern was largely directed toward ensuring the protection of freedom of scientific research. In 1976 Britain rejected the RSNT proposal for ISA control of scientific research, saying that, put into effect, the proposal

> ... would lead to something approaching a total consent regime, with the result that marine scientific research would not take place.... The reduction, and perhaps complete cessation, of marine scientific research—the inevitable consequence of the recognition of the principle of total consent—would unquestionably be damaging to all.[78]

The above quote indicates that Britain did not oppose the general spread of technological and scientific information. Rather, it opposed the proposed

method by which this was to be done and the compulsory role which would be played by the ISA. As outlined at the beginning of Chapter Four, Article 144 and Annex III, Article 5 of the Draft Convention outline the provisions for the system of technology transfer to be imposed once the Treaty receives ratification. As was further indicated, it is the very socialist nature of these provisions which the West should find unpalatable. Britain clearly reflected distaste for these provisions when it stated in no uncertain terms that

> ... the provision relating to deep seabed mining including the transfer of technology are not acceptable. They are based on undesirable regulatory principles and could constitute unsatisfactory precedents.[79]

Although the above Treaty articles ensure that a nation or company which turns over such information to the Enterprise is justly compensated by payments based on determined fair market value (Annex III, Art. 5/3 a) Britain opposed the compulsory nature of the articles which, in effect, force nations or companies to transfer technology whether they want to or not. Despite the fact nations/companies would receive payment for their technology, Britain disapproves of the fact that having sold its technology to the ISA, the Enterprise can turn around and sell it to someone else.

As Donald Watts points out, patent holders hope to sell technological innovations for a cost (far) above fair market value, not only so that initial developmental expenses can be repaid, but also to ensure that such efforts are rewarded with a profit.

> The provisions of Part XI [of the 1980 Draft Convention] have been drawn therefore as in such a way to be grossly unfair to the innovator or patent holder, who might indeed

> find his product, leased to a company which then applied for a license to the Authority, transferred against his will and for no compensation as part of a larger transfer of technology deal between the licensee and the Enterprise. These provisions are inequitable and unjust and should be withdrawn.[80]

Britain's position on the issue of mandatory technology transfer is, thus, consistent with the ideological principles of the Western Bloc. By encouraging the dissemination of technological and scientific information to all nations, Britain behaved in a manner which corresponded to the Western Bloc principles of freedom of information, equality of opportunity, freedom of choice and protection of private patented property. Further, by opposing the Treaty provisions which allow the ISA to impose terms of settlement, and remove the right to bargain, and which legitimize the exercise of arbitrary authority without consideration for individual interests, Britain has behaved in a manner which corresponds with the capitalist belief in profit making, the importance of encouraging initiative through the expectation of a reward, and the right to choose a course of action.

During the opening stages of UNCLOS III, Britain had asserted that it was willing to consider proposals for an ISA which would:

> ensure that all countries, including the developing countries, were able to participate in exploitation and enjoy the benefits of the international area when they were ready to do so [and] favour developing countries in the distribution of revenue, perhaps through an organ of the Authority ....[81]

This was the only statement which Britain made during the Conference relating to this issue. However, a review of the 1971 British position

paper reveals a more detailed outline of its stand. The 1971 paper indicates that Britain was not opposed to the general idea of revenue sharing and, indeed, felt that next to licensing it should be a major responsibility of the ISA. Equally as clear is the fact that Britain had no ideological misgivings about supporting a notion for revenue sharing which would be administered by a regime with limited jurisdictional authority. Such practise could be equated with the limited welfare role of the state endorsed by the Western Bloc and allows Britain to feel as though it was doing its part to increase the opportunity of individual nations to benefit from seabed resources. Thus when Britain withdrew its support for the ISA largely due to the supranational character with which it had been endowed, we cannot help but assume that had the Treaty allowed nations to retain their individual right of control over their actions regarding the ocean, Britain would have been willing to do its part to help other states.

However, when the Treaty made it clear that the ISA's role in collecting and distributing seabed benefits was based on the socialist-related belief that the oceans belonged to everyone and, as such, it has the right to determine how seabed resource revenue should be distributed, Britain quite probably added this to the list of reasons why it could no longer endorse the concept of a seabed authority.[82]

In Articles 13 to 15, and 22 and 23 of the 1971 paper, Britain suggested that the ISA would become self-financing through the revenue it generated from the collection of licensing fees and royalty payments (as discussed in issue two). The money which Britain felt should be distributed to the developing countries was that which was left over from this revenue

once the Authority's administrative expenses were paid. In many ways this reflects the financing system of Western Bloc nations: Individuals pay property and income taxes to national governments so that the latter can fulfill their responsibilities to the electorate. Once the government has met these duties (i.e. building highways, funding schools) the excess can be used for foreign aid.

The British response to the four Law of the Sea issues is very similar to that of the United States and has been consonant with the ideological principles of the Western Bloc. Like the United States, Britain's refusal to sign the Treaty is based on disagreement with Section XI which details the nature and power of the ISA and the Enterprise. As of February 1986, neither Britain nor the United States appears any closer to ratifying the Law of the Sea Treaty and only the future will tell if the ISA and the Enterprise will become a reality.

# Chapter Six

## Endnotes

[1]Quoted in James K. Sebenius, Negotiating the Law of the Sea Cambridge, Mass.: Harvard University Press, 1984), p. 7.

[2]Ann L. Hollick, U.S. Foreign Policy and the Law of the Sea (Princeton, New Jersey: Princeton University Press, 1981), p. 196.

[3]Second Session, Plenary Meetings, 38th Meeting, July 11, 1974, p. 161(35).

[4]Second Session, First Committee, 14th Meeting, August 19, 1974, p. 161(35).

[5]Document A/Conf.62/C.1/L.6. August 13, 1974, Article III, 1 & 3.

[6]Third Session, First Committee, 21st Meeting, April 28, 1975, p. 61(2 & 4).

[7]Seventh Session, Plenary Meetings, 109th Meeting, Sept. 15, 1978, p. 104(27).

[8]James L. Malone, "Who Needs the Sea Treaty?" in Foreign Policy, No. 54, Spring 1984 (Carnegie Endowment for International Peace, Washington), p. 44.

[9]Ibid., p. 46.

[10]Third Session, First Committee, 21st Meeting, April 1975, p. 61(14), and Second Session, First Committee, 14th Meeting, Aug. 1974, p. 74(52).

[11]Second Session, Plenary Meetings, 38th Meeting, July 11, 1974, p. 161(35).

[12]Malone, p. 45.

[13]Document A/Conf.62/C.1/L/6, August 13, 1974.

[14]Ibid., Art. IV (1 & 4).

[15]Second Session, First Committee, 14th Meeting, Aug. 19, 1974, p. 74(45).

[16]Ibid., p. 74(49).

[17]Henry A. Kissinger, "The Law of the Sea: A Test of International Co-operation," Department of State Bulletin, 73, No. 1889 (Sept. 8, 1975), p. 355.

[18]Ibid.

[19]Malone, p. 50.

[20]Ibid., p. 62.

[21]Third Session, First Committee, 21st Meeting, April 28, 1975, p. 61(22).

[22]Sebenius, p. 25.

[23]Ibid., p. 38.

[24]Malone, p. 47.

[25]Second Session, First Committee, 14th Meeting, Aug. 19, 1974, p. 74(51).

[26]Second Session, Third Committee, 8th Meeting, July 19, 1974, p. 341(8 & 9).

[27]Ibid., p. 342(15).

[28]Third Session, Third Committee, 22nd Meeting, April 25, 1975, p. 103(20).

[29]Malone, p. 47.

[30]Second Session, First Committee, 13th Meeting, Aug. 8, 1974, p. 65(12-13).

[31]T.W. Stanley, et al., "U.S. Resource Policy in Today's World," Raw Materials and Foreign Policy (Washington, D.C.: International Economic Studies Institute, 1976), p. 103.

[32]Ibid., p. 256.

[33]Ibid.

[34]Second Session, Plenary Meetings, 38th Meeting, July 11, 1974, p. 161(36).

[35]Malone, p. 47.

[36]Sebenius, p. 104.

[37]J.A. Beesley, "The Law of the Sea Conference: Factors Behind Canada's Stance," International Perspectives, July/August 1972, p. 28.

[38]Barry Buzan & Barbara Johnson, Canada at the Third United Nations Law of the Sea Conference: Policy, Role and Prospects, Occasional Paper No. 29 (Rhode Island: Law of the Sea Institute, Dec. 1975), p. 33.

[39]T.W. Stanley, et al., p. 113.

[40]Barbara Johnson & Mark Zacher, Canadian Foreign Policy and the Law of the Sea (Vancouver, B.C.: University of British Columbia Press, 1977), p. 16.

[41]Barry Buzan, Seabed Politics (New York: Praeger Publishers, 1976), p. 165.

[42]Second Session, Plenary Meetings, 27th Meeting, July 3, 1974, p. 97(15).

[43]J.A. Beesley, "The Implication to Western North Atlantic Countries of the New Law of the Sea," an excerpt from a speech at a seminar held in Bermuda, Nov. 8-10, 1976, p. 5.

[44]J.A. Beesley, "The Third Law of the Sea Conference: Success or Failure 1976," Canada - The Law of the Sea: Resource Information (Ottawa: Dept. of External Affairs, 1978), p. 31.

[45]Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defense. Issue No. 22, Appendix H, Nov. 6, 1973, in Third United Nations Law of the Sea Conference (Ottawa: Dept. of External Affairs, Nov. 1973), pp. 45-46.

[46]Ibid., pp. 30 & 35.

[47]Johnson & Zacher, p. 22.

[48]Ibid., p. 23.

[49]Second Session, Third Committee, Ninth Meeting, July 19, 1974, p. 351(47).

[50]Ibid., p. 35(48).

[51]Johnson & Zacher, p. 302.

[52]Third Session, Third Committee, 24th Meeting, May 7, 1975, p. 110(33).

[53]Ibid., p. 110(37).

[54]Second Session, Third Committee, Ninth Meeting, July 19, 1974, p. 351(47).

[55]Beesley, Canada - The Law of the Sea: Resource Information.

[56]Johnson and Zacher. From A/AC.138/SC.1/SR.43, pp. 145(46).

[57]Ibid., p. 27.

[58]A/Conf.62/L.17, p. 3.

[59]Buzan, Seabed Politics, p. 49.

[60]Seabed Committee Proposals. Britain. 138/26, Aug. 3, 1970.

[61]Ibid., 138/46, Aug. 3, 1971.

[62]Statement by the leader of the UK delegation, Ambassador J.E. Powell-Jones, at UNCLOS III, Montego Bay, Dec. 8, 1982. Annex C., p. 4(2).

[63]Second Session, Plenary Meetings, 29th Meeting, July 4, 1974, p. 110(21).

[64]Ibid., p. 112(40).

[65]Donald Cameron Watt, "To Sign or Not to Sign: The Debate in Britain on the Law of the Sea Convention," in International Journal, Summer, 1983.

[66]At this time the functions now accorded to the Enterprise were attributed to the Authority which encompassed the notion of a supranational mining company but had not yet been so defined. Thus we must use comments made regarding the Authority to determine Britain's position on the nature of the responsibilities now delegated to the Enterprise.

[67]UN Document A/AC.138/46, Article 14, 1971.

[68]Ibid., A/AC.138/26, Article 10 (a, c, & d), 1970.

[69]Second Session, First Committee, 15th Meeting, Aug. 20, 1974, p. 78(25).

[70]Watt, p. 505.

[71]Ibid., p. 498. The mini-treaty referred to in this quote resulted from an attempt by a number of nations to circumvent the restrictions of the Law of the Sea Treaty. It was initiated when President Reagan was first elected and the US passed legislation entitled "Deep Seabed Hard Mineral Resources Act of 1980." Germany followed suit and passed the "Act of Interim Regulation of Deep Seabed Mining." A number of other nations passed similar legislation which basically granted citizens of these countries the right to go ahead with exploitation activities in the oceans outside the framework of the Law of the Sea Treaty. Then, in September 1982, the US, Britain, France and West Germany joined together and initiated the "mini-treaty" which set up a system parallel to that outlined in the Law of the Sea Treaty but without its restrictions.

[72]UN Document A/AC.138/46., Article 14.

[73]Ibid., A/AC.138/26, Article 10 (a - e), 1970.

[74]Watts, p. 500.

[75]UN Document A/AC.138/46, Article 7, 1971.

[76]Ibid., Article 19.

[77]Second Session, Plenary Meetings, 29th Meeting, July 4, 1974, p. 117(29).

[78]Fifth Session, Third Committee, 29th Meeting, Sept. 10, 1976, p. 93(31).

[79]From a speech by Under-Secretary of State for Foreign and Commonwealth affairs (Mr. Malcolm Fifkind), in the British House of Commons, Dec. 2, 1982, p. 410.

[80]Watts, p. 503.

[81]Second Session, Plenary Meetings, 29th Meeting, July 4, 1974, p. 112(40).

[82]We can only assume this based on Britain's similar behavior to related issues (i.e. its opposition to the supranational right of the Enterprise to demand and receive technological information), as Britain has not stated clearly that it disapproves of the exclusive right of the Authority to determine the distribution of seabed benefits.

# Chapter Seven

## Conclusion

This study has provided enough information to make some significant observations regarding the correspondence between ideology and national behavior. Of the two questions which provided the basis for this study the answer to the first is fairly detailed and complex, while the answer to the second is more straightforward and flows from the first. The first question concerns whether there is evidence to suggest that a correspondence exists between the fundamental ideological principles of nations and national behavior. The second question concerns whether or not there is a greater correspondence between ideology and behavior among some nations as opposed to others.

After studying the behavior of five nations at UNCLOS III the assumption postulated at the beginning of this study has been confirmed: National beliefs and ideologies do not necessarily correspond with the actual behavior of states. In summarizing the observations leading to this conclusion, it is apparent that each of the four comprehensive Law of the Sea issues used as reflectors of national behavior encompass a number of related sub-issues. It is awareness of the positions which nations took on these more specific issues that provides the information necessary to make substantiated conclusions.

Table 1 summarizes the positions adopted by each of the five nations by the conclusion of the Conference in 1982. The first five relate to the establishment of the ISA, the next three deal with the establishment

Table 1. NATIONAL POSITIONS AT THE CONCLUSION OF UNCLOS III

| | USSR | Cuba | United States | Canada | Britain |
|---|---|---|---|---|---|
| 1. Supranational control of all resource activity in the international area under the auspices of the ISA. | No | Yes | No | Yes | No |
| 2. ISA control of revenue collection and distribution. | No not completely | Yes | No if ISA supra-national, Yes if licensing | Yes including 200 mz. | No |
| 3. Complete freedom of scientific research in the deep seabed. | Yes | Yes if results available to all nations | Yes | Yes | Yes |
| 4. Role of the ISA limited to licensing. | Yes | No | Yes | No | Yes |
| 5. Right of the ISA to set production levels. | No | Yes | No | Yes | No |
| 6. Establishment of the Enterprise to carry out its own mining activities. | No | Yes | No | Yes | No |
| 7. Right of the Enterprise to carry out its own mining activities. | Yes to limited right of ISA | Yes | No | Yes | No |

Table 1. NATIONAL POSITIONS AT THE CONCLUSION OF UNCLOS III

| | USSR | Cuba | United States | Canada | Britain |
|---|---|---|---|---|---|
| 8. Funding of the Enterprise and the ISA by nations according to the same formula as the United Nations. | Provisional Not directly addressed | Yes | No | Yes | No |
| 9. Authority of the Enterprise to ensure the transfer of technology from developed to developing states. | No | Yes | No | No | No |
| 10. Royalty payments or profit sharing (which should be imposed on nations and companies involved in deep seabed mining). | Royalty 1978 7.5% Profit Sharing | Profit Sharing | Royalty 1977 2% 1-10 yrs. 10% 11-25 yrs. Profit sharing 15-50% depending on low, medium or high return. | Profit Sharing | Set rate profit sharing. Fixed royalties. |
| 11. Oceans belong to everybody or nobody? | Everybody (resources - nobody) | Everybody | Nobody | Everybody | Nobody |
| 12. Exclusive state control in 200 mile economic zone. | Yes | Yes | Yes | Yes | Yes |

of the Enterprise, the next concerns technology transfer, and the final three are concerned with aspects of revenue sharing.

When the ideological principles of each Bloc were outlined in Chapters Two and Three, the assumption was that should the behavior of the nations/blocs at UNCLOS III correspond with these principles there would be valid grounds to believe that ideology is a major factor in determining national behavior and could subsequently be used as a means of predicting national behavior in a given situation. Similarly, if there was little or no correspondence between ideology and behavior, then it would be justifiable to conclude the opposite: ideology plays a limited or negligible role in shaping national behavior. Another initial assumption was that if ideology did, indeed, have a significant impact on behavior then we could expect a similar response by Cuba and the Soviet Union to each of the issues because of their common commitment to Marxist/Leninist ideological principles. Further, because of the nature of Marxist/Leninist principles, it was expected that the Soviet and Cuban response to the various Law of the Sea proposals would, broadly speaking, be positive. Likewise because of the nature of liberal democratic principles it was expected that the American, British and Canadian positions on the four Law of the Sea issues discussed in this study would be negative. Given the results of this investigation it appears that such is not the case.

As noted, the first five issues on Table 1 detail questions relating to the International Seabed Authority. The first is the broad question concerning whether the ISA should have the authority to exercise supra-national control over all resource activity in international waters. To

this the USSR, the United States and Britain said "no," while Cuba and Canada said "yes." One of the major, specific responsibilities of the ISA would be to collect and distribute revenue accrued from the mining of seabed resources. The response of the nations to this issue was the same. For three of the nations, however, the position taken on this issue was provisional. The USSR was opposed to the ISA having complete control over revenue collection and distribution; however, it was willing to grant the ISA an undefined level of authority in this area as long as the USSR played a role in determining how these revenues were to be distributed.

The United States will not support the supranational authority of the ISA to distribute resource revenue. The United States did indicate at the beginning of UNCLOS III that should the ISA function as a licensing body with a more limited authority, it would be willing to see it play a defined and limited role in revenue sharing. Canada supported the ISA's role in revenue sharing and went further than the other four nations in asserting that revenue sharing should not only refer to international waters but should also include a portion of revenue derived from those resources mined in the 200 mile zone. Canada did, however, assert that revenue sharing from this latter area should be on a voluntary basis.

The third question deals with whether the ISA should be limited to licensing—in other words, whether it should act merely as an overseer, to ensure that the exploitation of the oceans is conducted in an orderly and rational manner. The USSR, the United States and Britain all agreed that this was the preferred role which an acceptable ISA would play.

Because Canada and Cuba supported the supranational authority of the ISA they opposed limiting its functions to that of a licensing body.

Under the provisions of the current Law of the Sea Draft Treaty the ISA is granted virtually complete control over scientific research in the international area. Nonetheless, all five nations were adamant that states retain the freedom to conduct scientific research in international waters. Again the USSR, the United States and Britain were the most insistent that this occur. Cuba's support for continued freedom of individual state research was limited by the provision that results from such research must be made available to all nations.

Issues six through eight detail aspects of the establishment of the Enterprise. Number six concerns whether the Enterprise should be set up as a supranational mining company. Given the position that the nations took on the first question regarding the establishment of the ISA, it is not surprising that it is again Cuba and Canada which support this proposition and the USSR, the United States and Britain which oppose it. For the latter three nations, support for this provision of the Treaty will only be rendered if nations, and the private companies of these nations, retain the right to conduct their own mining operations in the deep seabed.[1]

Closely related to the notion of the Enterprise as a supranational mining company is whether or not it should be able to carry out its own mining activity in the deep seabed. Both Cuba and Canada feel the Enterprise should be able to exploit the seabed itself while, again, the USSR, the United States and Britain feel that it should not. The USSR appears to be the only nation whose position on this issue is provisional. The

USSR supports the right of the ISA/Enterprise to carry out limited independent exploratory and mining ativities in the deep seabed but only if the ISA does not monopolize large tracts of the ocean floor to the detriment of individual nations. The USSR unequivocally refuses to support the idea that the Enterprise should have the exclusive right to exploit the deep seabed. The USSR's position differs from that of the United States and Britain who see no need nor legitimate reason for the Enterprise to become actively involved in any kind of exploitive activity in the oceans.

Because Cuba and Canada feel the Enterprise should be able to carry out its own mining activity it is not surprising that both these nations support the proposal that the initial funding of the ISA and the Enterprise come from member nations in amounts proportionate to the payments which they make to the United Nations. Such a scheme would ensure that the Enterprise could become self-supporting and be able to finance unilateral exploratory activity in the deep seabed. The United States and Britain completely disagreed with funding the Enterprise in this manner while the USSR did not directly address the issue. The USSR's eventual support or disapproval for such a scheme will be predicated on the level of authority which the ISA and Enterprise will exercise if the Law of the Sea Treaty is ratified and put into practise. Hence if the Enterprise is given the right to carry out its own mining operations the USSR will not support any type of funding scheme. Conversely, if the role and authority of the ISA and the Enterprise are deemed to be within limits acceptable to it there does not appear to be much doubt that the USSR will support some form of funding arrangment—although whether this would be equivalent to its UN

contributions is a matter of speculation.

Question nine concerns whether the Enterprise should have the authority to ensure that seabed technology is transferred from developed to developing states. As was indicated in Chapter Four, should the Law of the Sea Treaty be ratified as it currently stands, the Enterprise will have the vaguely worded authority to "use any necessary measures to ensure this transfer to technology occurs." Cuba is the only subject nation which has given its unconditional approval to this issue. The other four nations do not support this proposal. They all feel that less technologically-developed nations should have access to technological innovations but believe that any transfer must occur on a voluntary basis and be subject to "just and reasonable commercial terms."

Generally speaking, issues ten through 12 have to do with sharing or controlling the oceans. Issue ten concerns whether or not nations or companies involved in deep seabed mining should have royalty payments or profit-sharing obligations imposed on them. Cuba and Canada both support the notion of profit sharing. While the amount of information available regarding the positions of the other three nations on this question differs, it would appear that the USSR, the United States and Britain support establishing both a system of profit or revenue sharing as well as a system of royalty payments if the ISA was to have limited authority. As outlined in Table 1, proposals for rate levels (where they were given) differed. The USSR suggested a set royalty rate of 7.5%, and the United States suggested 2% for the first ten years and 10% for the next 15 years. Britain did not propose a specific rate but did assert that it should be

fixed. The USSR supported profit sharing in principle, while the United States suggested that between 15-50% of profit should be shared, depending on whether resource exploitation yielded a low, medium or high return. Britain again supported establishing a set rate for profit sharing without saying what this rate should be.

The position of the USSR, the United States and Britain on this question is somewhat misleading considering the fact that all three nations opposed granting the ISA the authority to collect and redistribute ocean resource revenue. These nations were willing to support the idea of revenue sharing if it was to be carried out on a voluntary basis with the ISA fulfilling a limited overseeing regulatory role. Because of the proposed supranational nature of the ISA contained in the 1981 Draft Convention these nations have withdrawn support for their previous revenue-sharing proposals.

The concept behind issue 11 is rather vague. All five nations acknowledged that the oceans were "the common heritage of man" but this phrase has been so overused it has become virtually meaningless. The major distinction which nations make is that because the oceans are the "common heritage" they either belong to nobody—res nullius—therefore no one can claim special rights to them, or else they belong to everyone—res communis—and everyone has a right to share in their benefits.

The Cuban and Canadian position is that the oceans belong to everyone while the USSR, the United States and Britain are again in agreement believing the oceans belong to no one. The USSR has clarified this stand somewhat by saying, like the United States and Britain, it is the actual resources which belong to no one while the oceans themselves should be for

everyone's use and benefit, i.e. in terms of navigation, research and fishing.

The position of the nations on question 12 is straightforward: they all feel there should be exclusive state control within the 200 mile EEZ. For Canada this control extends to the outer edge of the Continental Shelf.

Based on the above observations we could arrive at somewhat confusing observations regarding the correspondence between ideology and national behavior. With the exception of one issue, the positions of Cuba and Canada are virtually identical. Both support the establishment of the ISA and the Enterprise and agree to the authority granted them in the 1981 Draft Convention. Similarly the positions of the USSR, the United States and Britain are the same—even the provisional stipulations which have determined their individual positions are closely related. In general these three nations oppose the establishment of the ISA and the Enterprise based on the provisions of the Draft Convention.

Our expectation was that if there was a significant correspondence between ideology and national behavior then Cuba and the USSR would agree to support the provisions of the Convention while the three Western nations would largely disagree with them. Because of the actual stands taken it would appear as though a correspondence does exist between national ideology and the behavior of Cuba, the United States and Britain, but does not exist between the national ideology and behavior of Canada and the USSR. However, this conclusion could be misleading.

It is not the purpose of this study to explain why the nations behaved as they did. Nonetheless, it is difficult to look at how the nations

divided in their stands on the issues and how consistent these stands were without speculating on what other factors were involved in determining how a nation responded: What role did the nature of the issues play in influencing national responses? How much was at stake for each nation depending on the outcome of each issue? Does the way in which the nations have divided reflect a common understanding regarding the interests which each nation has in the ocean and how these interests can best be met?

For example, both the USSR and the United States have developed advanced technology for the exploitation of the oceans and have professed the need to ensure that continual efforts are made to equal or surpass the strength of the other. From this perspective it is not surprising that both the USSR and the United States reject proposals for mandatory technology transfer and refuse to be placed in a position of vulnerability on any of the issues. That the position of the USSR and the United States is simply a response to these perceptions is, of course, conjecture and believing that practical considerations are what determined the nature of a particular nation's response presents an overly simplistic and, in some cases, incorrect understanding of the factors which appear to be at play in shaping national behavior. Without a doubt the examples given indicate that consideration of ideology did play a role in determining how a particular nation responded to a particular issue. We need only recall the laudatory comments of the US Assistant Secretary of State for Oceans that "the virtues of democracy and free enterprise" were being upheld (by not signing the Treaty) and Britain's disdain for the "outrageous idea of internationalism" to realize that ideological principles were taken into

account when nations sat down to determine what stand they would take. What is not apparent is just how important a role ideology did play, whether or not this role was the same for each issue, and whether the degree of consideration given to ideology would remain constant in other situations. For example, Britain acknowledged that its disapproval for the Treaty was based on commitment to free enterprise, yet Donald Watt notes[2] that Britain's decision was also predicated both on a desire to maintain good relations with the United States, and on the fact that most of what Britain wants out of the oceans is already codified under International Law. In the face of so many apparent variables, and consideration of other possible variables, it is virtually impossible to say how large or small a role ideology plays. It can only be concluded that although only one of many factors, there is a correspondence between ideology and behavior.

Reaching the above conclusion effectively deals with the second question which this study set out to answer: Is there a greater correspondence between ideology and behavior among certain nations, as opposed to others? From the results of this particular investigation it could be concluded that there is a greater correspondence between the ideology and behavior of the United States, Britain and Cuba than between the ideology and behavior of Canada and the USSR.

Given the obvious existence of various factors which play a part in shaping national behavior and the impossibility of identifying any consistency or pattern in the application of ideological principles, it can only be concluded that in the very defined setting of UNCLOS III there is a

greater correspondence between the ideology and behavior of the United States, Britain and Cuba. No evidence exists to indicate, however, that these nations would align themselves similarly in different circumstances.

Because of the above variables the question posed in the title of this study can not be definitively answered. What is apparent is that international response to the issues addressed by UNCLOS III indicates that a significant change is occurring in how nations view their rights as members in the world community. Should the system proposed by the Law of the Sea Conference be accepted and put into practise the world will clearly have taken a major step toward accepting a new approach to global organization which effectively revises the hitherto acknowledged and accepted methods of conducting world affairs.

## Chapter Seven

## Endnotes

[1]While it is true that the USSR has signed the Law of the Sea Treaty legitimizing the establishment of the Enterprise as a supranational mining company, it must be remembered that immediately after signing the Law of the Sea Treaty the USSR enacted provisional measures granting its own companies the authority to mine and requisition the resources of the deep seabed. This was in contradiction to the mining stipulations laid out in the Law of the Sea Treaty. It would appear as though the USSR signed the Treaty to placate the Third World nations. Knowing that the United States would never agree to such a proposal it would be able to justify "postponing" fulfillment of its commitment to Treaty obligations in order to "protect" its interests against "unilateral American imperialist activity in the deep seabed." By rationalizing its position in this manner, the USSR is assured of maintaining control over its mining activity in the deep seabed and the resources it mines, as well as fulfilling its (verbal) commitment to the Third World.

[2]Donald C. Watt, "To Sign or not to Sign: the Debate in Britain on the Law of the Sea Convention," in International Journal, Summer, 1983.

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# APPENDIX

Articles from

THE LAW OF THE SEA

United Nations Convention on the Law of the Sea

## Article 144 - Transfer of technology

1. The Authority shall take measures in accordance with this Convention:

   (a) to acquire technology and scientific knowledge relating to activities in the Area; and

   (b) to promote and encourage the transfer to developing States of such technology and scientific knowledge so that all States Parties benefit therefrom.

2. To this end the Authority and States Parties shall co-operate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States Parties may benefit therefrom. In particular they shall initiate and promote:

   (a) programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, *inter alia*, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions;

   (b) measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area.

## Article 153 - System of exploration and exploitation

1. Activities in the Area shall be organized, carried out and controlled by the Authority on behalf of mankind as a whole in accordance with this article as well as other relevant provisions of this Part and the relevant Annexes, and the rules, regulations and procedures of the Authority.

2. Activities in the Area shall be carried out as prescribed in paragraph 3:

   (a) by the Enterprise, and

   (b) in association with the Authority by States Parties, or state enterprises or natural or juridical persons which possess the nationality

of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements provided in this Part and in Annex III.

3. Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with Annex III and approved by the Council after review by the Legal and Technical Commission. In the case of activities in the Area carried out as authorized by the Authority by the entities specified in paragraph 2(b), the plan of work shall, in accordance with Annex III, article 3, be in the form of a contract. Such contracts may provide for joint arrangements in accordance with Annex III, article 11.

4. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139.

5. The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract. The Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area.

6. A contract under paragraph 3 shall provide for security of tenure. Accordingly, the contract shall not be revised, suspended or terminated except in accordance with Annex III, articles 18 and 19.

Article 157 - Nature and fundamental principles of the Authority

1. The Authority is the organization through which States Parties shall, in accordance with this Part, organize and control activities in the Area, particularly with a view to administering the resources of the Area.

2. The powers and functions of the Authority shall be those expressly conferred upon it by this Convention. The Authority shall have such incidental powers, consistent with this Convention, as are implicit in and necessary for the exercise of those powers and functions with respect to activities in the Area.

3. The Authority is based on the principle of the sovereign equality of all its members.

4. All members of the Authority shall fulfil in good faith the obligations assumed by them in accordance with this Part in order to ensure to all of them the rights and benefits resulting from membership.

Article 158 - Organs of the Authority

1. There are hereby established, as the principal organs of the Authority, an Assembly, a Council and a Secretariat.

2. There is hereby established the Enterprise, the organ through which the Authority shall carry out the functions referred to in article 170, paragraph 1.

3. Such subsidiary organs as may be found necessary may be established in accordance with this Part.

4. Each principal organ of the Authority and the Enterprise shall be responsible for exercising those powers and functions which are conferred upon it. In exercising such powers and functions each organ shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ.

Article 160 - Powers and functions

1. The Assembly, as the sole organ of the Authority consisting of all the members, shall be considered the supreme organ of the Authority to which the other principal organs shall be accountable as specifically provided for in this Convention. The Assembly shall have the power to establish general policies in conformity with the relevant provisions of this Convention on any question or matter within the competence of the Authority.

2. In addition, the powers and functions of the Assembly shall be:

(a) to elect the members of the Council in accordance with article 161;

(b) to elect the Secretary-General from among the candidates proposed by the Council;

(c) to elect, upon the recommendation of the Council, the members of the Governing Board of the Enterprise and the Director-General of the Enterprise;

(d) to establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with this Part. In the composition of these subsidiary organs due account shall be taken of the principle of equitable geographical distribution and of special interests and the need for members qualified and competent in the relevant technical questions dealt with by such organs;

(e) to assess the contributions of members to the administrative budget of the Authority in accordance with an agreed scale of assessment based upon the scale used for the regular budget of the United Nations until the Authority shall have sufficient income from other sources to meet its administrative expenses;

(f) (i) to consider and approve, upon the recommendation of the Council, the rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of developing States and peoples who have not attained full independence or other self-governing status. If the Assembly does not approve the recommendations of the Council, the Assembly shall return them to the Council for reconsideration in the light of the views expressed by the Assembly;

(ii) to consider and approve the rules, regulations and procedures of the Authority, and any amendments thereto, provisionally adopted by the Council pursuant to article 162, paragraph 2 (o) (ii). These rules, regulations and procedures shall relate to prospecting, exploration and exploitation in the Area, the financial management and internal administration of the Authority, and, upon the recommendation of the Governing Board of the Enterprise, to the transfer of funds from the Enterprise to the Authority;

(g) to decide upon the equitable sharing of financial and other economic benefits derived from activities in the Area, consistent with this Convention and the rules, regulations and procedures of the Authority;

(h) to consider and approve the proposed annual budget of the Authority submitted by the Council;

(i) to examine periodic reports from the Council and from the Enterprise and special reports requested from the Council or any other organ of the Authority;

(j) to initiate studies and make recommendations for the purpose of promoting international co-operation concerning activities in the Area and encouraging the progressive development of international law relating thereto and its codification;

(k) to consider problems of a general nature in connection with activities in the Area arising in particular for developing States, as well as those problems for States in connection with activities in the Area that are due to their geographical location, particularly for land-locked and geographically disadvantaged States;

(l) to establish, upon the recommendation of the Council, on the basis of advice from the Economic Planning Commission, a system of compensation or other measures of economic adjustment assistance as provided in article 151, paragraph 10;

(m) to suspend the exercise of rights and privileges of membership pursuant to article 185;

(n) to discuss any question or matter within the competence of the Authority and to decide as to which organ of the Authority shall

deal with any such question or matter not specifically entrusted to a particular organ, consistent with the distribution of powers and functions among the organs of the Authority.

Article 170 - The Enterprise

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2(a), as well as the transporting, processing and marketing of minerals recovered from the Area.

2. The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity as is provided for in the Statute set forth in Annex IV. The Enterprise shall act in accordance with this Convention and the rules, regulations and procedures of the Authority, as well as the general policies established by the Assembly, and shall be subject to the directives and control of the Council.

3. The Enterprise shall have its principal place of business at the seat of the Authority.

4. The Enterprise shall, in accordance with article 173, paragraph 2, and Annex IV, article 11, be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in article 144 and other relevant provisions of this Convention.

Annex III: Article 5 - Transfer of Technology

1. When submitting a plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology is available.

2. Every operator shall inform the Authority of revisions in the description and information made available pursuant to paragraph 1 whenever a substantial technological change or innovation is introduced.

3. Every contract for carrying out activities in the Area shall contain the following undertakings by the contractor:

(a) to make available to the Enterprise on fair and reasonable commercial terms and conditions, whenever the Authority so requests, the technology which he uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer. This shall be done by means of licences or other appropriate arrangements which the contractor shall negotiate with the Enterprise and which shall be set forth in a specific agreement

supplementary to the contract. This undertaking may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions;

(b) to obtain a written assurance from the owner of any technology used in carrying out activities in the Area under the contract, which is not generally available on the open market and which is not covered by subparagraph (a), that the owner will, whenever the Authority so requests, make that technology available to the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, to the same extent as made available to the contractor. If this assurance is not obtained, the technology in question shall not be used by the contractor in carrying out activities in the Area;

(c) to acquire from the owner by means of an enforceable contract, upon the request of the Enterprise and if it is possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology used by the contractor, in carrying out activities in the Area under the contract, which the contractor is otherwise not legally entitled to transfer and which is not generally available on the open market. In cases where there is a substantial corporate relationship between the contractor and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken to acquire such a right. In cases where the contractor exercises effective control over the owner, failure to acquire from the owner the legal right shall be considered relevant to the contractor's qualification for any subsequent application for approval of a plan of work;

(d) to facilitate, upon the request of the Enterprise, the acquisition by the Enterprise of any technology covered by subparagraph (b), under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, if the Enterprise decides to negotiate directly with the owner of the technology;

(e) to take the same measures as are prescribed in subparagraphs (a), (b), (c) and (d) for the benefit of a developing State or group of developing States which has applied for a contract under article 9 of this Annex, provided that these measures shall be limited to the exploitation of the part of the area proposed by the contractor which has been reserved pursuant to article 8 of this Annex and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third State or the nationals of a third State. The obligation under this provision shall only apply with respect to any given contractor where technology has not been requested by the Enterprise or transferred by that contractor to the Enterprise.

4. Disputes concerning undertakings required by paragraph 3, like other provisions of the contracts, shall be subject to compulsory settlement in accordance with Part XI and, in cases of violation of these undertakings, suspension or termination of the contract or monetary penalties may be ordered in accordance with article 18 of this Annex. Disputes as to whether offers made by the contractor are within the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. If the finding is that the offer made by the contractor is not within the range of fair and reasonable commercial terms and conditions, the contractor shall be given 45 days to revise his offer to bring it within that range before the Authority takes any action in accordance with article 18 of this Annex.

5. If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

6. In the case of joint ventures with the Enterprise, transfer of technology will be in accordance with the terms of the joint venture agreement.

7. The undertakings required by paragraph 3 shall be included in each contract for the carrying out of activities in the Area until 10 years after the commencement of commercial production by the Enterprise, and may be invoked during that period.

8. For the purposes of this article, "technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

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