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Review: The Politics and Policy of Deep Sea-Bed Mining

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Source: *The American Journal of Comparative Law*, Vol. 40, No. 1 (Winter, 1992), pp. 276-288

Published by: [American Society of Comparative Law](#)

Stable URL: <http://www.jstor.org/stable/840695>

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national legal treasures and particularities also deserve preservation. The Kerameus-Kremlis-Tagaras book makes its presence felt in the field of jurisdiction and judgements where works written in any minor national language are rare indeed. What adds to its value is that it does not purport so much to reflect a Greek reaction to the Community as to make an independent contribution from Greece to the development of an autonomous Community order. While, for linguistic reasons, this text cannot command as wide an audience as other standard works such as those of Bulow-Bockstiegel, Droz, Gothot-Holleaux, Kaye and Kropholler, it stands out as a voice worth listening to in a complex and exciting field of legal scholarship.

## PUBLIC INTERNATIONAL LAW

### THE POLITICS AND POLICY OF DEEP SEA-BED MINING

COMMON HERITAGE OR COMMON BURDEN? THE UNITED STATES POSITION ON THE DEVELOPMENT OF A REGIME FOR DEEP SEA-BED MINING IN THE LAW OF THE SEA CONVENTION. By Markus G. Schmidt, Oxford University Press, 1989. Pp. 366.

*Reviewed by Paul R. Williams\**

1982 marked the end of the ten-year negotiation of the United Nations Convention on the Law of the Sea (LOS Convention),<sup>1</sup> the most complex and comprehensive multilateral agreement ever negotiated. In April 1982, one-hundred and thirty countries voted in favor of the LOS Convention, seventeen abstained, and only four voted against the treaty. The United States was one of the four countries voting against the LOS Convention. Markus Schmidt's *Common Heritage or Common Burden?* is a comprehensive work that examines the formulation of United States foreign policy, the dynamics of international negotiations, and the United Nations treaty/decision making process.

Schmidt explores the formulation of United States foreign policy by using the development of the United States platform for deep seabed mining as a case study for the description and examination of the many actors, agencies, and interests that affect the formulation and implementation of that policy. Schmidt contemplates the dy-

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\* J.D., Stanford Law School, 1990; B.A., University of California, Davis, 1987.

1. *United Nations Convention of the Law of the Sea*, opened for signature December 10, 1982, U.M.N. Doc. A/Conf. 62/122, reprinted in 21 *Int'l Legal Matters* 1261 (19820).

namics of international negotiation by furnishing a detailed account of the myriad of international interests, ideologies, and personalities that affected and inhibited the development of the LOS Convention. Finally, Schmidt examines the process by which treaties are negotiated and formulated under the sponsorship of the United Nations by tracking the deep seabed provisions of the LOS Convention through ten years of negotiation and compromise.<sup>2</sup>

Schmidt's work is the product of over 140 interviews with key United States and foreign participants in the LOS Convention, and an extensive investigation of the relevant literature, both legal and technical. By basing his work on personal interviews, Schmidt provides a work accessible to laymen, diplomats, lawyers, and technicians. Reliance on personal interviews also allows Schmidt to take the reader beyond a summation of the recorded proceedings and provide a look into secret negotiation groups, backroom political bargaining, negotiation tactics, bureaucratic infighting, and personality clashes.

Although Schmidt interviews an impressive array of individuals he failed to, or was unable to, interview a wide selection of developing country representatives, Reagan administration bureaucrats, and technical scientists. Schmidt therefore must use the second-hand perceptions of a developed country representative when explaining how the developed country representative when explaining how the developing countries reacted to actions taken by the United States. Similarly, Schmidt often relies on Ford and Carter administration bureaucrats to explain how Reagan administration bureaucrats perceived the LOS Convention, and must rely on diplomats to explain the technological mechanics of deep seabed mining.

*Common Heritage or Common Burden?* is strengthened by Schmidt's focus on explaining rather than advocating. Unlike many of the other works dealing with the deep seabed provisions of the LOS Convention, Schmidt does not argue that the United States made a colossal mistake by not adopting the Convention, or that the no vote cast by the United States was the only reasoned choice. By seeking to explain the motivations and perspectives of United States interests, as well as foreign interests, Schmidt provides the reader with a balanced case study uncolored by a need to prove that a particular outcome was the most sensible. This approach also allows Schmidt the opportunity to propose improvements to the LOS Convention that are not what he believes is in the best interest of the United States, but that he believes are likely to be acceptable to United States interests, as well as acceptable to foreign interests.

Schmidt's work further benefits from his ability to resist the temptation to overly discuss portions of the LOS Convention dealing

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2. The negotiation and formulation of the LOS Convention is a particularly insightful casestudy of the U.N. process given that many participants now estimate the LOS Conference's total expenditures will probably exceed the revenues that might be generated from sea-bed mining well into the next century.

with elementary issues such as navigational rights and fisheries privileges. By focusing on deep seabed mining, Schmidt is able to describe the day by day evolution of the regime for the international regulation of deep seabed mining. As a result, Schmidt devotes his time to discussing the secret maneuverings and personality contests, which provide the necessary flavor to a potentially dry subject.

*Common Heritage or Common Burden?* is a valuable book for students interested in an in-depth study of the dynamics of United States foreign policy formulation, international negotiation, and the United Nations treaty process. *Common Heritage or Common Burden?* is also essential for the diplomats, bureaucrats, academics, and technicians working in the arena of ocean affairs and the law of the sea. Finally, Schmidt's work is a necessary handbook for any individual, group, or interest who will be involved in future seabed negotiations or the formulation of international agreements concerning similar common world resources or problems, such as the exploitation of antarctic mineral deposits or the abatement of global warming.

#### THE IMPETUS FOR A CONVENTION ON THE LAW OF THE SEA

Schmidt begins his work with a detailed description of the international developments catalyzing a need for a third United Nations Conference on the Law of the Sea and the subsequent development of the LOS Convention.<sup>3</sup> In the mid-1960s, John Mero postulated that there were close to 1.66 trillion tons of manganese nodules on the floor of the Pacific Ocean.<sup>4</sup> Mero's estimates conjured up visions of vast amounts of wealth, both in the eyes of developing and developed countries.<sup>5</sup> The United States quickly and erroneously came to the conclusion that as many as five-hundred mining sites could be available for exploitation.<sup>6</sup>

In 1967, the Maltese ambassador to the United Nations, Arvid Pardo, suggested that the seabed beyond national jurisdiction should be declared the common heritage of all mankind by the United Nations General Assembly, and placed under international management.<sup>7</sup> On May 23, 1970, in response to the mining industry's desire for a secure legal environment,<sup>8</sup> and the United States government's

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3. For a history of the Law of the Sea, see Pardo, "The Law of the Sea: Its past and Its Future," 63 *Or. L. Rev.* 7 (1984).

4. Schmidt at 13-14. Manganese nodules are composed of a variety of minerals; the most economically desirable are manganese, copper, nickel, cobalt, and silver.

5. More recent geological surveys have concluded that this original figure was grossly exaggerated, and that the number of zones with sufficiently high nodule densities is limited. *Id.* at 14. For a detailed description of the scientific and technological advances prompting an interest in deep sea-bed mining, see Craven, "Technology and the Law of the Sea: The Effect of Prediction and Misprediction," 45 *La. L. Rev.* 1143 (1985).

6. More recent studies indicate that the number of economically feasible mining sites is nearer to twenty. Schmidt at 14.

7. *Id.* at 23.

8. Because the mining of nodules from the deep sea-bed is a capital intensive

concern over unilateral declarations of exclusive economic zones, and unilateral extensions of territorial zones with the potential to restrict straits passage, the Nixon administration issued an ocean policy statement. Nixon's ocean policy statement proposed that "all states negotiate an international regime under which they would renounce national claims over natural resources of the seabed beyond the point where the depth of the high seas reaches 200 metres and agree to regard these resources as the common heritage of all mankind."<sup>9</sup>

Although the implications of declaring the deep seabed to be the common heritage of all mankind were unclear, in December 1970, the United Nations General Assembly passed Resolution 2749 declaring the seabed beyond national jurisdiction as well as its resources to be the common heritage of all mankind.<sup>10</sup>

Parallel to the development of Pardo's common heritage of all mankind concept, was the evolution of a desire on the part of many developing countries for a reallocation of resources from developed to developing countries, and the subsequent emergence of the call for a new international economic order.<sup>11</sup> Developing countries perceived the LOS Convention as an opportunity to establish a precedent for sharing the revenue procured from common natural resources, and for establishing a mechanism for protecting land-based mineral producing states from adverse economic consequences that might result from extensive deep seabed mining.<sup>12</sup> While the United States perceived the common heritage of all mankind doctrine as a perpetuation of the freedom of the high seas principle, the developing countries equated common heritage with common property.<sup>13</sup>

Ultimately, technological advancements making deep seabed mining imminently feasible, and the request by mining consortia to the State Department for recognition and protection of exclusive mining rights to seabed sections prompted the convening of the Third United Nations Conference on the Law of the Sea.<sup>14</sup>

#### THE FORMULATION OF A UNITED STATES NEGOTIATION PLATFORM FOR THE LOS CONFERENCE

The effective formulation of a United States policy on the law of the sea, and in particular a deep seabed policy, was handicapped by the multitude of actors with constituent interests in the issues to be

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operation, mining companies or consortia are unwilling to invest in such a venture without a secure legal environment. *Id.* at 15-16, 34.

9. *Id.* at 26-27.

10. *Id.* at 28. The United States voted in favor of this resolution, and in favor of General Assembly Resolution 2750C calling for the convening of a comprehensive LOS Conference. *Id.*

11. *Id.* at 21, 40.

12. *Id.* at 40.

13. *Id.* at 40.

14. *Id.* at 36.

addressed by the LOS Convention.<sup>15</sup> Schmidt painstakingly identifies key institutions and players, unveiling their levels of influence and examining their interrelationship in the formulation of the deep sea-bed portion of the United States negotiation platform.

At the Executive level, seabed policy was dominated by a conflict between "internationalist" and "domestic constituency-oriented" positions. The State Department, Defense Department, and White House tended to be more internationalist in orientation, while the Treasury, Interior, and Commerce Departments tended to be more domestic constituency-oriented.<sup>16</sup> The internationalists tended to support the idea of trading off resource interests with navigational and security interests. The domestic constituency-oriented interests, however, pressed the concerns of domestic mining and manufacturing interests and emphasized the dangerous domestic economic implications of the creation of a strong international regulatory body for deep sea-bed mining.<sup>17</sup>

The early stages of LOS policy formulation coincided with Congress' realization that issues once deemed to be exclusively international now had significant domestic repercussions and domestic

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15. Fifteen government departments and agencies had input into the development of the United States negotiation platform for the LOS Conference: the Departments of State, Defense, Interior, Treasury, Commerce, Justice, Energy, and Transportation, the National Security Council, the Office of Management and Budget, the Environmental Protection Agency, the Central Intelligence Agency, the Coast Guard, the National Science Foundation, and the Council for Environmental Quality. *Id.* at 44. In addition, nine Congressional committees, and a number of domestic interest groups and nongovernmental organizations attempted to influence the development of the United States platform for the LOS Convention. *Id.* at 77-78.

16. *Id.* at 45. The development of Nixon's May 1970 ocean policy statement provides a particularly astute example of the clashes between the different interests, and the agencies that they attempted to capture.

[The Department of Defense's] overriding concern was protection of freedom of military manoeuvres for the Navy in Coastal waters and unimpeded passage through international straits for surface ships and submarines. If it could secure agreement on unrestricted passage and get coastal states to agree to narrow continental shelves, it was willing to support a generous international sea-bed regime, if United States companies were guaranteed access to sea-bed resources. This philosophy made [the Department of Defense] a supporter of the calls for a LOS Conference in 1970. [footnote omitted].

State espoused similar arguments, hoping to reach an early agreement with moderate developing countries at an international conference. while the hard mineral industry supported [the Department of Defense] views on the need for a narrow shelf, it could not resist the Pentagon's advocacy of a powerful sea-bed regime. Industry therefore looked to Interior and Commerce for support—Interior in particular was committed to natural resource development and eschewed support for any measures that might stifle the companies' R/D [programs], such as requirements that large royalties be paid into an international fund. [footnote omitted] However, hard minerals interests had to compete with petroleum interests for attention, and Interior gave the latter priority. Military-strategic and coastal-economic interests were thus pitted against each other. . . .

17. *Id.* at 78.

constituencies.<sup>18</sup> Although few members of Congress actually knew or cared about deep sea-bed mining, Congress' conservative and protectionist nature led it to reject proposals for a powerful Sea-bed Authority, and to support resource policies determined by market forces, in addition to policies promoting unrestricted access to seabed resources.<sup>19</sup>

The United States mining industry played a key role in the development of the United States deep seabed policy. The industry had an acute amount of leverage because they had taken an early lead in the development of seabed mining technology, four of the six international seabed mining consortia were headed by United States companies, and by the mid 1970s, the industry had invested heavily in deep seabed mining research and development.<sup>20</sup> The extensive involvement of United States companies in early seabed research gave them a virtual monopoly over the data and statistics necessary to evaluate the potential and feasibility of deep seabed mining.<sup>21</sup> It was difficult, however, for the mining companies to translate this monopoly of information into raw political power. Deep seabed mining is a highly competitive business in which a slight technological advantage over a competitor could be the difference between success or failure, and therefore companies were reluctant to freely disseminate their research findings.<sup>22</sup> The mining companies might have overcome this predicament by pooling their information, but, this would have likely led to antitrust investigations by the Department of Justice.<sup>23</sup>

The 120 member United States delegation sent to the LOS Conference in the early stages of the negotiations is indicative of the number of interests making it nearly impossible for the United States to construct a coherent negotiation platform.<sup>24</sup> The White House created the National Security Council Interagency Task Force on the LOS to meet the need for increased interagency cooperation and coordination between the negotiation sessions of the LOS Conference.<sup>25</sup> Schmidt provides a detailed account of the successes and pitfalls of the task force. Although the task force often suffered from bureaucratic inertia and infighting,<sup>26</sup> Schmidt con-

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18. *Id.* at 51. During this period of time, Congress repealed the Gulf of Tonkin Resolution, passed the War Powers Act, the International Security Assistance and Arms Export Control Act, and the Nuclear Non-Proliferation Act. *Id.*

19. *Id.* at 53-54.

20. *Id.* at 55.

21. *Id.* at 56.

22. *Id.* at 57.

23. *Id.* at 57. The Department of Interior provided a partial opportunity for the mining industry to overcome this dilemma when it requested that a detailed description of deep sea-bed mining issues and the technology necessary for deep sea-bed mining be provided to the government. *Id.*

24. *Id.* at 60.

25. *Id.* at 70.

26. For example, prior to each LOS Conference session, the task force promulgated a set of negotiation instructions for the United States delegation.

cludes tht it was the most efficient framework for agencies to explain and defend their views on LOS issues, to exchange information, and to facilitate communication between the policy makers and the agencies.<sup>27</sup>

The development of domestic seabed legislation coincided with the development of United States policy on the LOS Convention. Although the mining industry placed a great deal of pressure on Congress to pass seabed mining legislation protecting its interests, its early efforts were unsuccessful since seabed mining was a low-salience issue and internationalist perspectives tended to prevail over particular concerns of the mining industry.<sup>28</sup> During the latter part of the LOS Conference, the head of the United States delegation was able to effectively use the threat of unilateral United States legislation as a bargaining chip, delaying the legislation's progress when compromises in the negotiations seemed near and pushing legislation whenever the developing countries became unwilling to make concessions.<sup>29</sup>

#### THE NEGOTIATION OF A DEEP SEABED REGIME AT THE LOS CONFERENCE

The international delegations participating in the LOS Conference were presented with several possible regulatory mechanisms for deep seabed mining: a simple registration system, a licensing system, a regime under which an operating authority would directly exploit seabed resources, or a combination of direct operating authority and licensing by individual nations.<sup>30</sup> The industrialized nations tended to favor the weaker registration and licensing systems, while developing countries favored the direct exploitation of the deep seabed by an international authority.<sup>31</sup> Schmidt reveals and examines the complicating factors underlying these polarized positions.

The issue of deep seabed exploitation and regulation was a new and complex subject, and thus many countries were unable to arrive at the Conference with a defined national position or negotiation

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Each agency wanted to have its way in the drafting of every paragraph in the instructions. Three or four agencies would carry out the main drafting and attempt to cut the process short by presenting the others with a fait accompli. In these circumstances, the instructions recommended to the White House, and usually approved by it with minor modifications, were inevitably vague. The delegation itself would have to decide on the specifics of these at its daily morning meetings. Alternatively, they had to be interpreted in a way that would accommodate a multitude of bureaucratic interests, which caused frequent intradelegation infighting.

Id. at 73.

27. Id. at 75.

28. Id. at 101.

29. Id. at 102.

30. Id. at 104.

31. Id. at 104.

platform.<sup>32</sup> The industrialized states, in particular the United States, were concerned about the course of deep seabed negotiations as they viewed the issue "as one of 'economic pluralism versus centralism projected on a global scale,'" and were concerned about the precedent of creating a strong international seabed regulatory regime.<sup>33</sup> Some delegates from industrialized countries, however, viewed the formation of a strong central authority as beneficial, in that it could potentially block the excessive expansion of coastal state territorial and economic zones.<sup>34</sup>

Developing countries perceived the LOS Conference as an ideal platform for launching their claims for a new international economic order. Believing that deep seabed mining would generate vast amounts of wealth, developing countries gave little credence to calls from countries for a market system of exploitation that would provide sufficiently high rates of return to induce development of the deep seabed.<sup>35</sup> The developing countries instead focused their attention on protecting the economies of land-based producers located in the developing regions of the world.<sup>36</sup> The consistent advocacy of the new international economic order both at the LOS Conference and in other United Nations negotiations, produced a conservative reaction in the United States and generated sympathy in Congress and the Executive for the position of abandoning the negotiations and pursuing unilateral development of deep seabed mining.<sup>37</sup>

The United States delegation's negotiation position thus became a balancing-act between "the endorsement of the international community's requirements and the defense of domestic interests."<sup>38</sup> Recognizing the need for a package deal, Secretary of State Henry Kissinger proposed a system of parallel exploitation whereby a private company would operate simultaneously with a public entity, the "Enterprise."<sup>39</sup> The developing countries believed that such a system diluted the essence of common heritage and betrayed the unitary system approach that they desired.<sup>40</sup> Developing countries

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32. Id. at 105.

33. Id. at 106.

34. Id. at 106.

35. Id. at 108.

36. Id. at 108.

37. Id. at 108-09. Members of the United States delegation soon came to believe that "the linkage between the [new international economic order] and the sea-bed negotiations fostered interventionist resource policy concepts and [eviscerated] the [common heritage doctrine], reducing to a trickle the financial benefits that could otherwise accrue from it." Id. at 109.

38. Id. at 211.

39. Id. at 124-25. Such a system would require that a company wishing to develop a mining site would submit proposals for two mining sites to the Enterprise. The Enterprise would then choose one site for itself to develop and license the other site to the private corporation. The Enterprise would have the option of developing its site on its own, or entering into a joint venture with another private company. See Charney, "The Law of the Deep Seabed Post UNCLOS II," 63 *Or. L. Rev.* 19 (1984).

40. Schmidt at 126-27.

failed to recognize that if they did not allow for fifty percent of the seabed to be developed privately, the remaining fifty percent might never be exploited.<sup>41</sup> Western Europe and Japan reacted in a similarly cool fashion, but for different reasons. They believed it was a tactical mistake by the United States to make such a concession to developing countries at such an early stage in the negotiations.<sup>42</sup>

Schmidt illustrates personality problems that further complicated the negotiations. Unable to bring the developing countries and the developed countries to a compromise on an initial single negotiating text (ISNT), the chair of the ISNT Committee passed the task off to a more politically astute chair of a smaller working group.<sup>43</sup> The working group used the pendulum approach to develop a workable negotiation text. The chair of the working group drafted a text that he believed met the basic needs of the developing countries, then took that text to the developed countries and invited them to make essential changes. The chair then took the text to the developing countries for their comments and worked the draft back and forth until he reached a compromise.<sup>44</sup>

Unfortunately, the chair of the ISNT Committee felt he was losing control over the negotiations to the working group and cut the process short. He took the original draft based on the needs of the developing countries and, after making a few changes, submitted it as the official negotiation text.<sup>45</sup> By doing so, the chairman recovered some of the status he had lost with the developing countries, however, the developed countries reacted with indignation, insisting on a more sophisticated process for formulating negotiation texts.<sup>46</sup> Many of the developing countries saw the negotiation text as an unmitigated disaster, catering excessively to the interests of developing countries, and subsequently became more reserved in further negotiations concerning deep seabed mining.<sup>47</sup>

As the negotiation text began to unduly favor the developing countries, the United States embarked upon a strategy aimed at demonstrating United States willingness to dispense with the LOS Convention and act unilaterally, or through mini-treaties.<sup>48</sup> The

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41. *Id.* at 126.

42. *Id.* at 126.

43. *Id.* at 121-22.

44. *Id.* at 122.

45. *Id.* at 122, 132-34.

46. *Id.* at 122.

47. *Id.* at 123.

48. *Id.* at 136. The chair of the U.S. delegation

abandoned the steps he had begun to take with the Senate and House Armed Services Committees and the Navy League to promote the Convention; reversed the Administration's position on sea-bed mining legislation so as to create the impression that the United States was prepared to go ahead with deep sea-bed mining under domestic statutes; and even went so far to persuade Zbigniew Brzezinski, the National Security Adviser, to set up a Task Force to examine the possibility of ensuring navigational freedoms without concluding a treaty and to prepare procedures for protecting United States navigational interests.

United States strategy did convince domestic officials and constituencies that the United States did not need an LOS Convention, but failed to convince any of the developing country delegations that the United States would abandon the Convention.<sup>49</sup>

#### THE UNRAVELING OF THE UNITED STATES NEGOTIATION PLATFORM FOR THE LOS CONVENTION

The unraveling of the United States negotiation platform for the LOS Convention came with the inauguration of Ronald Reagan in January 1981. Although the Reagan administration did not have a clear negotiating position on the draft LOS Convention, it did have a distinct distaste for the LOS Conference.<sup>50</sup> The Reagan administration believed that the draft LOS Convention, as it stood in 1981, was incompatible with the administration's conservative political ideology and free enterprise philosophy. Although the navigational guarantees that had been achieved were advantageous and important, they were not valuable enough to offset the defects of the emerging deep seabed regime.<sup>51</sup>

The Reagan administration dismissed many of the top United States negotiators and announced to the LOS Conference that it would be undertaking a wholesale review of the Draft Convention on the LOS.<sup>52</sup> The review became a sweeping process, "marred by both personal and bureaucratic infighting among some of the major actors involved as well as charges that it was not being conducted objectively."<sup>53</sup> The review process became unnecessarily sweeping and protracted, due primarily to ideological vendettas, bureaucratic revenge,<sup>54</sup> lack of comprehension of the issues by high-level officials, and personality differences between some of the major actors involved.<sup>55</sup> The review process culminated in January 1982, with the announcement of six objectives to be achieved by the United States delegation,<sup>56</sup> and the subsequent publication of the "green book,"

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Id. at 136-37.

49. Id. at 137-38. For a discussion of the negotiations concerning other issues addressed at the LOS Conference, see Clinga, "An Overview of Second Committee Negotiations in the Law of the Sea Conference," 63 *Or. L. Rev.* 53 (1984).

50. Schmidt at 257.

51. Id. at 257-58.

52. Id. at 214-15, 257-58.

53. Id. at 258.

54. Id. at 225.

55. Id. at 233.

56. Id. at 240-41. The six objectives were that the LOS Convention:

(a) must not deter the development of any deep sea-bed mineral resources to meet national and world demand;

(b) must assure national access to those resources by . . . qualified entities to enhance United States security of supply, avoid monopolization of the resources by the Enterprise, and promote the economic development of the resources;

(c) must provide a decision-making role in the deep seabed regime that reflects the political and economic interests and financial contributions of participating states;

which contained sixty-eight pages of proposed amendments to the Draft LOS Convention.<sup>57</sup>

The announcement of the review was ill received at the LOS Conference.

On the opening day of the final session, everyone was eagerly awaiting a statement from one of the United States negotiators. Representing the United States on that day was Harry Marshall, a Deputy Assistant-Secretary of State. He had not been briefed prior to his arrival, and when asked about the status of the review, simply stated that he could not explain the United States position.<sup>58</sup>

Foreign delegates became convinced that the United States was not a trustworthy negotiation partner. They also became confused about who was in charge of the United States delegation,<sup>59</sup> and began to wonder whether the United States delegation actually represented the official United States position.<sup>60</sup> This atmosphere prompted developing countries to reopen compromises that had been previously decided upon,<sup>61</sup> and even prompted some of them to block compromises in which they had no real interest.<sup>62</sup>

Schmidt contends that if the United States delegation had entered the final stage of negotiations with clear objectives and tough instructions to negotiate, it could have achieved major improvements in the seabed regime.<sup>63</sup> This was possible because the announcement of the review caught the developing countries off balance, creating a division among them about how they should respond to the review. Although the prevailing belief among the developing countries was that they were not willing to renegotiate the fundamentals of the seabed regime, they wanted the United States to adhere to the LOS Convention and were willing to meet major United States demands for changes of the seabed text.<sup>64</sup>

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(d) must now allow for amendments to come into force without approval of the participating states, including . . . the advice and consent of the United States Senate;

(e) must not set other undesirable precedents for international organizations; and

(f) must be likely to receive the advice and consent of the Senate; the Convention should not contain provisions for the mandatory transfer of technology and participation by and funding for national liberation movements.

Id.

57. Id. at 244. The green book was described as "'an anthology of virtually everything that anybody in the Administration had ever wanted in regard to deep sea-bed mining.'" Id.

58. Id. at 243.

59. Id. at 239.

60. Id. at 243.

61. Id. at 229.

62. Id. at 252.

63. Id. at 239.

64. Id.

## CURRENT UNITED STATES POLICY ON THE LOS

After rejection of the LOS Convention in July 1982, the Reagan administration's LOS policy aimed to ensure that, even as a non-signatory to the Convention, the United States would benefit from the nonseabed provisions of the Convention, and to establish an alternative regime among other industrialized states for the mining of the deep seabed.<sup>65</sup> In order to meet the first goal, the Reagan administration proclaimed an exclusive economic zone of two-hundred miles in March 1983.<sup>66</sup> The administration also issued an ocean policy statement claiming that issues such as navigation and overflight addressed in the LOS Convention had become customary international law, and that the United States would exercise and assert its navigation and overflight rights in a manner consistent with the LOS Convention.<sup>67</sup> Many of the signatories to the LOS Convention contend that the Convention is a package deal and the United States may not enjoy any of its benefits unless it also assumes all its duties.<sup>68</sup> The outcome of this debate remains to be seen, and will be determined in large part by whether the United States and other maritime powers abide by the LOS Convention both by restraining themselves, and by adopting policies designed to restrain others.<sup>69</sup>

In September 1982, the United States, the United Kingdom, West Germany, and France signed an Agreement Concerning Interim Arrangements Relating to Polymetallic Nodules of the Deep Seabed. This agreement is intended to facilitate the identification and resolution of conflicts that may arise from the filing of applications by mining consortia under domestic seabed legislation enacted by the parties to the agreement.<sup>70</sup> In August 1984, the members of the 1982 agreement, plus Japan, Italy, Belgium, and the Netherlands, signed a Provisional Understanding Regarding Deep Seabed Matters.<sup>71</sup> The provisional understanding prohibits any party from authorizing or engaging in mining activities in seabed areas covered by an application that is pending or has been approved by another state. Each party to the provisional understanding has developed its own application and licensing process for its nationals who wish to engage in deep seabed mining.<sup>72</sup> An ocean mining arbitral tribunal has also been established to arbitrate disputes among competing claimants.<sup>73</sup>

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65. Id. at 261, 304.

66. Id. at 261-63.

67. Id. at 263.

68. Id. at 264-65.

69. Id. at 273-74. For a detailed examination of the future of deep sea-bed mining, see Welling, "Mining of the Deep Seabed in the Year 2010," 45 *La. L. Rev.* 1249 (1985).

70. Schmidt at 277-78.

71. Id. at 281.

72. Id. at 280-82.

73. Id. at 280-81. For a more extensive discussion of the U.S. efforts to establish a successful deep sea-bed mining regime outside the LOS Convention, see Note,

As a result of these agreements and domestic seabed legislation, the United States National Oceanic and Atmospheric Administration has been able to issue licenses without overlaps to three United States-based mining consortia.<sup>74</sup> The success of the United States' efforts to create a deep seabed mining regime apart from the LOS Convention will be based in large part on whether these agreements provide sufficient legal security for the mining consortia.<sup>75</sup> In order to provide a minimum of legal security, the United States will likely have to convince all the countries with the potential to engage in deep seabed mining to join the agreements.<sup>76</sup> Although some United States officials believe that the agreements as they exist will be sufficient to enable United States-based consortia to operate outside the LOS Convention,<sup>77</sup> it is unlikely that financial institutions will be willing to lend the large amounts of capital necessary to undertake deep seabed mining until they are assured that the licenses of the creditor consortia will be free from political or legal challenges.<sup>78</sup>

Unlike the negotiation of bilateral agreements, or even the negotiation of the current multilateral GATT Uruguay Round, the negotiation of the LOS Convention provides a unique casestudy of a negotiation process besieged by economic, military, ideological, and socio-political interests and agendas. Schmidt teaches many lessons in his examination of the ten-year negotiation between 151 countries on the issue of how to regulate the exploitation of an untapped resource, value unknown, at the bottom of the high seas.

Each reader will likely walk away from *Common Heritage or Common Burden?* having learned a number of lessons about international relations. For example, the primary lesson learned by this reviewer is the need for basic teamwork within a particular delegation, and within a group of delegations with similar interests. Although the United States policymakers established the inter-agency task force, they failed to include the necessary scientific and economic expertise that would have enabled them to develop a politically palatable, as well as technologically and economically workable, proposal for regulation of the deep seabed. Greater teamwork at the conference itself might have fostered greater trust amongst the delegates, reduced the compulsion to consider and threaten unilateral actions, and more quickly dispelled the myth that the deep seabed harbored untold riches.

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"United States Activity Outside of the Law of the Sea Convention: Deep Seabed Mining and Transit Passage," 84 *Colum. L. Rev.* 1032 (1984).

74. Schmidt at 281.

75. *Id.* at 284.

76. *Id.* at 284-85.

77. *Id.* at 285.

78. *Id.* at 285-87.