Assessing the Reality of the Deep Seabed Regime

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In order to be effective, international law must stand in some direct relation to state practice. The gap between legal prescription and state practice must not be too large or the law will be ineffective. This article examines this gap relative to the deep seabed provisions (Part XI) of the 1982 United Nations Convention on the Law of the Sea. If the gap is not narrowed, the treaty may never enter into force.

INTRODUCTION

Virtually no area of international law commanded more attention during the last decade than the law of the sea. Because the academic community so occupied itself with the emerging new treaty signed on December 10, 1982,[1] an assessment of the aspirations of that treaty in comparison with other successes and failures of international law is important. Of essential note is the political context that created the United Nations Convention on the Law of the Sea[2] (1982 Convention). The Convention was an end-product which recognized the numerous shortcomings of post-World War II international law, many of which stemmed from archaic conventional law that ignored the aspirations of developing states and did little more than codify existing customary law. Thus, the 1982 Convention was a new stroke; an attempt to create modern treaty law sensitive to the needs of the poor states and attuned to the state system of the 21st century.

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1. United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, U.N. Doc.A/CONF.62/122.

2. *Id.*

International law can be profitably viewed as directly proportional to state practice. International law prescribes certain standards of conduct which states feel obligated to follow. Law may chart new directions, though practice lags behind. When the gap between law and practice is reasonably small, law may mold practice, thereby striking congruence with the legal prescription. Arguably, this is the way custom usually develops. On the other hand, law may play no useful role whatsoever when it is out of line with state practice. In fact, it may do a disservice by creating the illusion of compliance where none exists. This article will examine the deep seabed provisions of the 1982 Convention with a view to assessing the extent of this gap between treaty-law prescription and state practice. In particular, this article will examine the portion of the treaty dealing with "The Area" beyond national jurisdiction,[3] where an International SeaBed Authority is established with control over the exploration and exploitation of seabed resources.[4]

THE PRESCRIBED LAW

The provisions of the 1982 Convention dealing with "The Area" are among the most complex in the entire treaty. The actual provisions of Part XI are best understood in light of the legal/political context in which they were produced. The first two United Nations Conferences on the Law of the Sea of 1958 and 1960[5] seem to have paid no attention to the resources of the deep sea-bed, although it is arguable that these resources were included in the regime of the high seas.[6] Yet more important than the actual provisions contained in the four 1958 Conventions,[7] is the fact that these Conventions were produced in one of the last full-scale diplomatic conferences dominated by views of a small group of developed states. By contrast, the working context of the 1982 Conference (UNCLOS III) reflected the perceptions of developing countries that old international law was antique, and favored the rich and powerful. The United Nations Moratorium Resolution of 1969 is one of the most concise and powerful statements evidencing the strong sentiment calling for a new international economic order.[8] Although this Resolution suffers from

3. *Id.* at p. XI.
4. *Id.*
5. For an excellent description of these Conferences, see M. MCDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS (1962).
6. Convention of the High Seas, *done* Apr. 29, 1958, 13 U.S.T., 450 U.N.T.S. 11.
7. The other three 1958 Conventions are: Convention on the Continental Shelf, *done* Apr. 29, 1958, 14 U.S.T. 471, 499 U.N.T.S. 311; Convention on Fishing and Conservation of Living Resources of the High Seas, *done* Apr. 29, 1958, 17 U.S.T. 138, 559 U.N.T.S. 285; Convention on the Territorial Sea and the Contiguous Zone, *done* Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205.
8. G.A. Res., 2574D, 24 U.N. GAOR, Supp. (No. 38), U.N. Doc.A/7630, at 11

all the limitations of U.N. resolutions which generally are thought to lack the weight of law,[9] the impact of the statement is hard to overestimate. The 1958 Geneva Conventions were in force at this time; yet, in one motion, this Resolution restricted all law applicable to the seabed area to a very narrow realm. That realm was to be the international regime created by a new treaty, the negotiating of which had hardly begun.

When UNCLOS III convened, the mandate given the First Committee, "[t]o prepare draft treaty articles embodying the international regime — including an international machinery — for the Area and the resources of the sea-bed and ocean floor,"[10] operationalized the Moratorium Resolution. Thus, the bounds of law were somewhat tightly drawn *before* the Conference commenced. Specifically, the ideological balance shifted so that an international regime became the central focus.

Part XI of the 1982 Convention was intended to advance certain general principles of international law. Ambassador Jens Evensen of Norway, one of the leading figures in the negotiations, identified three major principles from which specific provisions derived. These principles included: the common heritage of mankind; that there shall be no expropriation or claim or exercise of sovereign rights; and that no entity could claim, exercise or acquire rights with respect to this area incompatible with the international regime to be established.[11]

Another, more specific, typology was suggested by Ambassador Paul Engo of Cameroon, the chairman of the First Committee at UNCLOS III. Engo found five key issues illustrating the nature of the obligation created by the treaty. First, UNCLOS III needed to determine which states were assured access to the seabed minerals.[12]

(1969), adopted Dec. 15, 1969 by a vote of 62 in favor, 28 against and 28 abstentions. The most important portions of the Resolution are:

> [T]he exploitation of the resources of the sea-bed and the ocean floor. . .beyond the limits of national jurisdiction should be carried out for the benefit of mankind as a whole. . . .
>
> . . . pending the establishment of the aforementioned international regime:
>
> (a) States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area. . . .
>
> (b) No claim to any part of that area or its resources shall be recognized.

9. *See* Rozental, *The Charter of Economic Rights and Duties of States and the N.I.E.O.*, 16 VA. J. INT'L L. 309, 314 (1975-76).

10. U.N. Doc.A/AC/138/SR.45 (1981).

11. Evensen, *Keynote Address*, in THE 1982 CONVENTION OF THE LAW OF THE SEA xxv (1984).

12. Engo, *Issues of First Committee at UNCLOS III* in THE 1982 CON-

Second, UNCLOS III had to circumscribe the strength of the regime.[13] Third, a system of exploitation needed to be selected.[14] The fourth issue mandating consideration was transfer of technology.[15] Finally, according to Engo, the nature of decision-making within the organs of the Authority had to be decided.[16] As discussed below, certain law is prescribed in each of these five areas under UNCLOS III.

Access

The issue of access is complex, as it means different things to different groups of states. For developing states, the term connotes access to the benefits from seabed mining.[17] Such access means the right to exploit the resources with a minimum of interference. The terms of access are spelled out in article 137.[18]

The provisions are very direct and clear. In essence, access to the seabed will occur *only* under the terms of this Convention. Consequently, access for states must be "bought" by adhering to a number of stipulations, most of which are subsumed under the other issues herein discussed.

Strong Regime

Predictably, UNCLOS III created a strong regime; nothing else would have been acceptable given the political *milieu*. Engo notes that the hallmark of a strong regime is "a monopoly in the exploitation of its resources."[19] The exploitation system is, in large measure, what made the regime strong. Yet certain attributes of regime strength are not directly related to this system. For example, activi-

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VENTION ON THE LAW OF THE SEA 33, 39 (1984).

13. *Id.* at 41.
14. *Id.* at 42.
15. *Id.* at 45.
16. *Id.* at 46.
17. *Id.* at 39.
18. 1982 Convention, *supra* note 1, at art. 137.

1. No state shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any state or natural or juridical persons appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.
2. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority.
3. No state or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.

Id.

19. Engo, *supra* note 12, at 41.

ties in the Area must: "be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing states."[20]

Article 151 specifies production policies. For example, parties are to cooperate "to promote the growth, efficiency and stability of markets for those commodities produced. . .[from] the Area."[21] An elaborate set of production controls, however, is set up later in the article.[22] These production stipulations appear reasonable, yet note that they are extremely rigid and leave little room for maneuvering.

These are only two examples of one of the most elaborate systems ever envisioned for controlling the use of a natural resource. The ab-

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20. 1982 Convention, *supra* note 1, at art. 150.
21. *Id.* at art. 151.
22. *Id.* The production controls include the following:

2. (a) During the interim period specified in paragraph 3, commercial production shall not be undertaken pursuant to an approved plan of work until the operator has applied for and has been issued a production authorization by the Authority. Such production authorizations may not be applied for and issued more than five years prior to the planned commencement of commercial production under the plan of work unless, having regard to the nature and timing of project development, the rules, regulations and procedures of the Authority prescribe another period.

(b) In the application for the production authorization, the operator shall specify the annual quantity of nickel expected to be recovered under the approved plan of work. The application shall include a schedule of expenditures to be made by the operator after he has received the authorization which are reasonably calculated to allow him to begin commercial production on the date planned.

(d) The Authority shall issue a production authorization for the level of production applied for unless the sum of that level and the levels already authorized exceeds the nickel production ceiling, as calculated pursuant to paragraph 4 in the year of issuance of the authorization, during any year of planned production falling within the interim period.

4. (a) The production ceiling for any year of the interim period shall be the sum of:

(i) the difference between the trend line values for nickel consumption, as calculated pursuant to subparagraph (b), for the year immediately prior to the year of the earliest commercial production and the year immediately prior to the commencement of the interim period; and

(ii) sixty percent of the difference between the trend line values for nickel consumption, as calculated pursuant to subparagraph (b), for the year for which the production authorization is being applied for the year immediately prior to the year of the earliest commercial production.

7. The levels of production of other metals such as copper, cobalt and manganese extracted from the polymetallic nodules that are recovered pursuant to a production authorization should not be higher than those which would have been produced had the operator produced the maximum level of nickel from those nodules pursuant to this article. The Authority shall establish rules, regulations and procedures pursuant to Annex III, article 17, to implement this paragraph.

solute discretionary power retained by the Authority is one further provision ensuring a strong regime.

System of Exploitation

Ambassador Engo's third issue, involving the system of exploitation, is covered in article 153. The hallmark of this provision is the so-called "parallel system," with activities carried out both by the Enterprise and "in association with the Authority by States Parties, or state enterprises . . . which meet the requirements provided in this Part. . . ."[23]

The detail and specificity required to develop a plan of work is astounding — in fact a sizeable portion of Annex III deals with these plans.[24] The work plan requirements are totally unrealistic for an emerging, developing, and uncertain industry. In addition, the Authority can exercise any control it deems necessary over activities in the Area conditioned only on "securing compliance with the relevant provisions of this Part and the Annexes."[25]

Transfer of Technology

The transfer of technology is an important issue in any discussion of the New International Economic Order. Part XI indicates that the transfer of technology occurs on two levels. First, it enables the Enterprise to exploit seabed resources itself. Second, the transfer of technology is thought to be an effective way to redress the economic imbalance in the world. The intent of the provisions is clear, but specific applicability appears open-ended.

Article 144, which addresses the transfer of technology, embodies two ideas.[26] These provisions are potentially very far reaching; they

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23. *Id.* at art. 153-2(b).
24. *Id.* at 3, 4. A portion of article 153 gives a flavor of the requirements:
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.
25. *Id.* at 4.
26. *Id.* at art. 144:
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

are more than *quid pro quo* deriving from a state's exploitation of the seabed. A state party to the 1982 Convention with no aspirations to mine the seabed might still incur an obligation to transfer technology to the Enterprise and to other parties.

Another form of technology transfer is detailed in Annex III, article 5. In essence this requires that every operator, upon request of the Enterprise, make available "the technology which he uses in carrying out activities in the Area under the contract."[27] Far more details are contained in Annex III; many of these attempt to provide fair payment for the technology transferred.[28] Yet it remains evident that such provisions would cause industry representatives to cringe. They would respond that such technology is invaluable. If in the process they exaggerate the cost, then the Enterprise could evoke compulsory settlement of the dispute in accordance with Part XI.[29]

Decisionmaking

Decisionmaking within the various organs of the Authority is typical of a large international organization. Article 156 establishes the International SeaBed Authority with all state parties as members of the Authority.[30] The Authority is composed of four organs: an Assembly, a Council, a Secretariat, and the Enterprise.[31] The Assembly consists of all members of the Authority, each having one vote.[32] Much of the *de facto* power of the Authority rests with the 36-mem-

(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) programs 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 the developing States to 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.

27. *Id.* at Annex III, art. 5-3(a).
28. *Id.* at art. 5-3(a),(b),(d).
29. *Id.* at art. 186-91.
30. *Id.* at art. 156.
31. *Id.* at art. 158.
32. *Id.* at art. 159.

ber Council.[33]

Though unlikely, it is possible that some of the most important mining states would be excluded from a seat on the Council, the executive organ of the Authority. If certain states were hesitant to become parties to the 1982 Convention, such provisions may have convinced them not to participate.[34]

The procedure for a review Conference after fifteen years is also provided for by the 1982 Convention.[35] Most of this seems reasonable, since it follows the consensus approach of UNCLOS III itself. If agreement is *not* possible, however, the system of exploration and exploitation may be modified.[36] This provision creates the real, and perhaps extraordinarily disquieting prospect, that original parties who do not agree to changes accepted by three-fourths of the parties may be bound by these changes against their will.

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33. *Id.* at art. 161. Article 161 details the required composition of the Council:
1. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:
(a) four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 percent of total world consumption or have had net imports of more than 2 percent of total world imports of the commodities produced from the categories of minerals to be derived from the Area, and in any case one State from the Eastern European (Socialist) region, as well as the largest consumer;
(b) four members from among the eight States Parties which have the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals, including at least one State from the Eastern European (Socialist) region;
(c) four members from among States Parties which on the basis of production in areas under their jurisdiction are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;
(d) six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals, and least developed States;
(e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern European (Socialist), Latin America and Western European and Others.

34. J. Breaux, *The Case Against the Convention*, in THE 1982 CONVENTION ON THE LAW OF THE SEA 10, 12 (1984).

35. 1982 Convention, *supra* note 1, at art. 155.

36. *Id.* If five years after its commencement, the Review Conference has not reached agreement on the system of exploration and exploitation of the resources of the Area, it may decide during the ensuing 12 months, by a three-fourths majority of the States Parties, to adopt and submit to the States Parties for ratification or accession such amendments changing or modifying the system as it determines necessary and appropriate. Such amendments shall enter into force for all States Parties 12 months after the deposit of instruments of ratification or accession by three-fourths of the States Parties.

REACTIONS TO THE PRESCRIPTIONS

The situation with respect to seabed mining is different from that usually encountered by international law, since no actual state behavior exists to which the legal prescription can be compared. No commercial mining is underway. Numerous projections have been made,[37] but the combination of falling prices for the minerals and the uncertainty of the international legal situation makes commercial mining unlikely before the next century.

Two approaches are possible to assess the gap between prescription and reality. First, one may consider states' official pronouncements about the new treaty. This gives some idea of behavior, if and when mining occurs. Second, one can examine the firmer index of signature and ratification of the 1982 Convention.

The position of the United States regarding the new treaty is well-known. After participating in the negotiations for more than a decade, the United States announced that it would not sign the 1982 Convention.[38] In fact, the United States declined to participate in the Preparatory Commission as an observer, although entitled to as a signatory of the Final Act.[39] Further, while approximately thirty additional states remain eligible to sign the treaty, only the United States, Argentina and Turkey have conspicuously stated that they would not sign.[40]

The position of the Reagan administration has been put forth in many official documents. Recently, Congressman Breaux of Louisiana succinctly explained the position of the United States:

> The President has stated, and many members of Congress have agreed, that in the area of deep sea mining the [1982] Convention is flawed because there is no assured access to the mineral wealth of the oceans. The security of tenure of contracts is lacking; and technology transfer requirements are unfair and impractical. . . . I submit that when we are considering this treaty we are not just dealing with the law of the sea; there are implications for future treaties and for future discussions on technology transfer.[41]

Breaux went on to enumerate some of the other concerns of the

37. M. SHYAM, 1 METALS FROM THE SEABED (1982). Shyam projected that there would be several large-scale, commercial mining operations before 1990.

38. For a discussion of the position of the United States, see Gamble & Frankowska, *The Significance of Signature to the 1982 Montego Bay Convention on the Law of the Sea*, 14 OCEAN DEV. AND INT'L L.J. 121 (1984).

39. *Id.* at 138-42.

40. R. Platzoeder, *Who will Ratify the Convention*, in THE 1982 CONVENTION ON THE LAW OF THE SEA 662, 663 (1984).

41. J. Breaux, *supra* note 34, at 12.

United States, including voting in the Council,[42] contract approval,[43] production limitations,[44] and the amendment procedure.[45]

The position stated by Congressman Breaux represents the anti-Convention extreme. Ambassador Elliot Richardson, who fought a gallant losing battle in support of United States participation, believes that the Breaux position is counterproductive:

> If indeed deep sea-bed mining were a high-seas freedom equivalent to catching tuna, anyone else who came along would be free to engage in the exploitation of that same area of the deep sea-bed — even perhaps deciding to follow your mining vessel in the same track. . . . The result is that, in order to achieve the security that will justify investing $1.5 billion in a single deep sea-bed mining site, and in order to have the opportunity to recover that investment over a period of twenty years, the miner must have the consent of substantially all countries. Universality thus becomes necessary to the investor.[46]

Support for the United States' position is mixed among the developed states of Western Europe. UNCLOS III, in general, and Part XI, in particular, have long been a *cause célèbre* for developing states. They maintain the new treaty provisions are *the* law on the subject and must be followed to the letter. Statements may be cited from most Third World Governments asserting their belief in the absolute applicability of Part XI. Typical of these positions is the statement by S.M. Thompson Flores of Brazil:

> Universal recognition of the principle of the common heritage of mankind is one of those events that few generations have the privilege of witnessing. The birth of a principle of international law assumes that for a specific objective nations agree to put aside their individual powers and channel their own interests through the path of the common interests of all.[47]

One can sense the apprehension in this statement — universality is the goal, but Thompson Flores realizes it has yet to be achieved. Many seem to be trying to will the new regime into existence. In a sense, Thompson Flores believes the hard work put into the 1982 Convention over so many years and widespread agreement should give birth to a legal principle. Tommy T. B. Koh, the president of the 1982 Conference, succinctly expressed this line of reasoning, stating that "[m]any are of the view that article 137 (seabed mining provisions) of the Convention has become as much a part of customary international law as the freedom of navigation."[48]

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42. *Id.*
43. *Id.*
44. *Id.* at 13.
45. *Id.*
46. E. Richardson, *The Case for the Convention*, in THE 1982 CONVENTION ON THE LAW OF THE SEA 4, 6-7 (1984).
47. U.N. Doc.A/CONF.62/PV.187, at 12 (1983) (statement by S.M. Thompson Flores).
48. U.N. Dept. of Public Information, Press Release, SEA/MB/14, at 2 (Dec. 10, 1982), T. Koh.

TABLE I

SIGNATURES AND RATIFICATIONS TO THE U.N. CONVENTION ON THE LAW OF THE SEA
(Lower Case = Signature Only; UPPER CASE = Signature and Ratification)

Afganistan	*Denmark	Kuwait	St. Vin. & Gren.
Algeria	Djibouti	Lao PE. D. Rep.	Samoa
Angola	Dominica	Lesotho	Sao. Tome & Prin.
Ant. & Bar.	Dom. Rep.	Liberia	SENEGAL
Argentina	EGYPT	Madagascar	Seychelles
Australia	Equa. Guinea	Malaysia	Sierra Leone
Austria	Ethiopia	Maldives	Singapore
BAHAMAS	FIJI	Mali	Solomon Is.
Bahrain	Finland	Malta	Somalia
Bangladesh	*France	Mauritania	Sri Lanka
Barbados	Gabon	Mauritius	Sudan
BELIZE	GAMBIA	MEXICO	Suriname
Benin	Germany (GDR)	Monaco	Swaziland
Bhutan	GHANA	Mongolia	Sweden
Brazil	Greece	Morocco	Switzerland
Bulgaria	Grenada	Mozambique	Syr. Arab Rep.
Burma	Guatemala	NAMIBIA	Thailand
Burundi	Guinea	Nauru	Togo
Byelorussia	Guinea-Bissau	Nepal	Trin. & Tob.
Cameroon	Guyana	*Netherlands	Tunisia
*Canada	Haiti	New Zealand	Tuvalu
Cape Verde	Honduras	Niger	Uganda
Cen. Afr. Rep.	Hungary	Nigeria	Ukr. SSR
Chad	Iceland	Norway	USSR
Chile	India	Oman	Utd. Arab Ems.
China	Indonesia	Pakistan	Upper Volta
Colombia	Iran	Panama	Uruguay
Congo	Iraq	Papua N. Gui.	Vanuatu
Cook Islands	Ireland	Paraguay	Viet Nam
Costa Rica	IVORY COAST	PHILIPPINES	Yemen
CUBA	JAMAICA	Poland	Yugoslavia
Cyprus	*Japan	Portugal	Zaire
Czechoslovakia	Kenya	Romania	ZAMBIA
Dem. Kampuchea	Korea (DROK)	Rwanda	Zimbabwe
Dem. Yemen	Korea (ROK)	Saint Lucia	

*Strong interest in seabed mining.

Thus the battle lines are clearly drawn. The vast majority of states in the world support Part XI as the *only* auspices and rules under which deep seabed mining may occur. Conversely, the Reagan administration opposes the treaty, maintaining that there is not universal agreement about Part XI. Under the Reagan view, states have the right to undertake deep seabed operations outside the treaty framework. These dichotomous viewpoints indicate that an assessment of the realities of the gap must be examined via the more concrete manifestations of support for the 1982 Convention, such as signatures and ratifications.[49]

49. Up-to-date information provided by the Treaty Division of the U.N. Secreta-

This is a propitious time to look at signature; the deadline for signatures (two years after the signing ceremony) is almost upon us. It is reasonably safe to assume that in the process of considering whether or not to sign the Convention, most states have critically examined it.

Table I shows signatures and ratifications as of November 12, 1984.[50] The number of signatories is very impressive, and very high by historical standards. The treaty now has 139 signatories, 22 since the signing ceremony. An abundance of literature exists on the meaning of signature to a convention.[51] The general attitude, briefly summarized, is that states incur an obligation not to defeat the object and purpose of a Convention between signature and ratification.[52]

In some ways, the most significant question regarding the 1982 Convention is which states have *not* signed the Convention. Although 139 signatures represent a preponderance of states in the world, they may not include many of the states most likely to participate in seabed mining. Further, although the states in the world might be able to raise the $1.5 billion needed for a full-scale mining operation,[53] very few are likely to use resources in this manner. Renate Platzoeder, a member of the Delegation of the Federal Republic of Germany and skilled observer of seabed politics, felt that these few states have the keenest interest in mining:

Belgium	Italy
Canada	Japan
Denmark	The Netherlands
France	The United Kingdom
Germany (F.R.)	U.S.A.[54]

Certain other countries may get involved, e.g, Brazil, India and Mexico,[55] at some later date. Only half of this "group of ten," namely, Canada, Denmark, France, Japan and the Netherlands, have signed the 1982 Convention.

It is widely acknowledged that signature does not guarantee ratification.[56] In the case of the 1982 Convention, there have been only fourteen ratifications, far short of the 60 required for its entry into force.[57] This group contains *none* of the states most likely to be ma-

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riat, Nov. 13, 1984.

50. *Id.*

51. *See, e.g.*, Gamble & Frankowska, *supra* note 38.

52. *Id.* at 123-29.

53. M. SHYAM, *supra* note 37.

54. R. Platzoeder, *supra* note 40, at 665-66.

55. For an excellent discussion, see Boczek, *Ideology and the Law of the Sea: The Challenge of the NIEO*, 7 B.C. INT'L AND COMM. L. REV. 1 (1984).

56. *See* Gamble & Frankowska, *supra* note 38.

57. 1982 Convention, *supra* note 1, at art. 308.

jor players in seabed mining. This does not bode well for the 1982 Convention, nor, inferentially, for assertions that this new legal prescription is universal law binding on all states in the world. The slow rate at which ratifications have been accumulating, coupled with continued belief on the part of the developing states that the 1982 Convention is the only legal way to mine the seabed, clearly indicates a huge, perhaps unbridgeable, gulf between prescription and reality.

CONCLUSION

The deep seabed regime exemplifies the significant gap between legal prescription and probable state behavior. It represents a complicated situation, because in the view of most states the prescription is already entrenched, even though the 1982 Convention may be years away from entry into force and mining may not begin in this century. The modal view of the developing states is understandable and not unreasonable. They feel the treaty is the culmination of a long negotiating process replete with scores of balances and compromises. These states believe the United States and others incurred a moral obligation, if not a legal one, to accept the terms of the new treaty. Statements of the United States, to the effect that a treaty negotiation does not guarantee an acceptable end-product, seem chauvinistic and petty to the developing states.[58]

Whether this gap between prescription and practice can be bridged, or at least narrowed, depends principally on the United States. The present position of the Reagan administration seems irreversible.[59] The ocean industry remains firmly against the treaty. Platzoeder holds out a glimmer of hope that the United States will change its mind.[60] She finds such a change unlikely, however, noting that only "big powers and some odd states having no interest in the use of the sea can afford to stay away from the [1982] Conven-

58. Engo, *supra* note 13, at 47.

59. "The best of all worlds . . . ." Letter from Jeffrey Ansbaugh, President of Ocean Ministry Associates, cited in K. Shusterich, 202 RESOURCE MANAGEMENT AND THE OCEANS (1983). Recently, Ambassador Engo captured some of the feelings and frustration:

> The U.S. seat on the train to the international cooperation of which Henry Kissinger spoke is empty. Standing near seats reserved for them are some of its allies—demonstrating either hardened solidarity or seeking reasons to waiver. For those who spent a critical part of their lives dedicated to the great ideal of peace through universally recognized law in the ocean space, it is an occasion for remorse, but, one hopes, not for discouragement.

60. R. Platzoeder, *supra* note 40, at 663.

tion."[61] What might reverse the United States position? Perhaps Soviet Union ratification of the 1982 Convention would persuade the United States to reconsider its stance. However, the Soviet Union's main objectives from UNCLOS III, passage through international straits and a 12-mile territorial sea, may be obtainable from customary law.[62] Possibly the second Reagan administration will seek advice from different quarters which might result in a reconsideration of its original decision. Ambassador Elliot Richardson, a Republican, supports the treaty and makes numerous cogent points:

> Frankly, I do not see how the United States or anyone else can ever undertake to engage in serious international negotiations unless it is prepared to make basic compromises. As to my own observation in 1977 that the treaty was flawed, I would like to remind you that I was referring to what was then called the Informal Composite Negotiating Text, and that in the period July 1977 to the end of the August session of 1980, there were 138 changes made in the sea-bed mining provisions alone — all but seven of which were in favor of the Western industrial countries.[63]

The gap is huge. It could expand and influence many other areas beside the law of the sea. The only chance for improvement in this difficult situation is some softening of the United States' position, which seems unlikely in the immediate future. Of course, the treaty may take years to enter into force, which would provide ample opportunity for many United States administrations to consider the situation. Before that can occur, however, momentum may be lost and the treaty will be doomed.

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61. *Id.*
62. *Id.* at 666.
63. E. Richardson, *supra* note 46, at 15.