UNCLOS III: Last Chance for Landlocked States?

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UNCLOS III: LAST CHANCE FOR LANDLOCKED STATES?

INTRODUCTION

As world population increases and land-based resources continue to diminish, the right to traverse the sea and exploit its resources is becoming economically critical to all nations. Access to the sea and its wealth is at least as important for landlocked States (LLS) as it is for coastal States. Historically, LLS have not been accorded any substantially enforceable rights to traverse or exploit the oceans. However, representatives from these States are mak-


2. In theory, justification for permitting LLS to traverse adjacent

April 1977 Vol. 14 No. 3
ing demands at the Third United Nations Conference on the Law of the Sea (UNCLOS III) which reflect a serious determination to acquire valuable rights through international law. UNCLOS III, with its goal of providing a comprehensive body of law governing the uses of the ocean, is proceeding under the declared policy that the seabed area of the ocean is a "common heritage of mankind." This policy affords LLS an opportunity to attain legally recognized rights not available through bilateral agreements with coastal States.

The Revised Single Negotiating Text (RSNT), a series of draft articles which has grown out of the UNCLOS III sessions and which provides a basis for the current negotiations, includes several provisions beneficial to LLS. Of particular importance are those provisions pertaining to resources of the seabed area. Several proposals giving LLS rights within the exclusive economic zones (EEZ) of coastal nations have also been raised, though not incorporated into the RSNT. The crucial question, however, centers on the prospects for adopting such a body of law. Political and economic concerns may very well block the adoption of many provisions of the RSNT. As UNCLOS III sessions continue...
without agreement,\textsuperscript{12} States are increasingly taking unilateral action to claim expansive EEZ's.\textsuperscript{13}

If LLS do not gain enforceable rights through UNCLOS III, each will have to negotiate with other States on an individual basis for these rights. In the past landlocked States have had to rely on bilateral or regional agreements with neighboring coastal States in order to gain access to the sea.\textsuperscript{14} Such agreements have proved unsatisfactory for the majority of LLS because of their lack of political and economic leverage.\textsuperscript{15}

A determination of whether LLS will share in the wealth of the sea requires an examination of both the provisions of the RSNT and the political climate surrounding UNCLOS III. No matter how desirable certain sections of the RSNT may be, there will be no benefit to LLS unless they are adopted. As economic pressures force more nations to unilaterally adopt expanded EEZ's, the likelihood that the provisions of the RSNT will be adopted decreases. UNCLOS III may be landlocked States' last chance to gain meaningful access to the sea.

**Problems of Landlocked States**

The degree to which landlocked States are disadvantaged with respect to the sea varies greatly. In Europe LLS are developed and have access to the seaports of neighboring coastal States through navigable rivers or joint transportation systems.\textsuperscript{16} In Africa, however, LLS are economically poor, politically new, and lacking developed transportation systems.\textsuperscript{17} Yet to some degree all LLS are disadvantaged because they lack seaports and are unable to claim jurisdiction over the resources of the continental shelf.\textsuperscript{18}

Historically LLS have sought two important objectives: physical access to the sea and the right to extract resources from the sea.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{12} See \textit{L.A. Times}, Sept. 18, 1976, pt. I, at 9, col. 5.
\item \textsuperscript{13} See note 36 infra.
\item \textsuperscript{14} See Note, \textit{supra} note 1, at 703-06.
\item \textsuperscript{15} Id.
\item \textsuperscript{16} Alexander & Hodgson, \textit{supra} note 1, at 575.
\item \textsuperscript{17} Id. at 576. All LLS in Africa gained their independence in the 1960's.
\item \textsuperscript{18} For a detailed discussion of degrees of disadvantage among LLS, see Alexander & Hodgson, \textit{supra} note 1.
\item \textsuperscript{19} Some authorities note that the two objectives are closely linked. One writer has stated that access to the sea derives in one sense from freedom of the seas. Glassner, \textit{supra} note 2, at 482.
\end{itemize}
Because the sea has always been an important avenue of commerce, the first objective received the greatest emphasis prior to UNCLOS III. LLS have faced a dual obstacle in reaching the sea for trading purposes: overland distance, which makes exporting costly and burdensome; and the potential or actual hostility of coastal States. Although cooperative transit agreements are common between LLS and coastal States, LLS have no way to enforce the right of access. From these agreements LLS gain little more than concessions which coastal States are free to rescind or restrict. Customary and codified international law have recognized access rights for LLS but have not required coastal States to respect such rights.

LLS' quest for access to a seaport has not been a major area of controversy at UNCLOS III. The reason for this situation is not the lack of importance of ocean access to LLS, but rather the overriding urgency of the natural resource problem for the rest of the world.

In approaching the subject of resources, UNCLOS III negotiations have distinguished the ocean resources found on and above the continental shelf area from those found in the central or deep-seabed areas of the ocean. This distinction is due partly to the increasing practice of coastal States of claiming exclusive control over resources located within 200 miles from shore. The other basis for distinction is that the mineral resources of the deep seabed have not been exploited commercially. At present, only a handful of

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20. Note, supra note 1, at 704-06.
21. Id. An example of a political barrier arose when Rhodesia unilaterally declared its independence in 1965. Resultant United Nations sanctions produced a severe petroleum shortage for Zambia, which had depended for its imports upon a joint transportation system with Rhodesia.
22. Note, supra note 1, at 703-04.
23. Id.
25. The ambiguity in treaty provisions relating to access rights of LLS drains these provisions of authority. Note, supra note 1, at 710.
27. The continental shelf is defined as the seabed and subsoil of the submarine areas that extend beyond [the coastal State's] territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. RSNT, supra note 4, pt. 2, art. 64.
28. See note 39 and text accompanying notes 83-87 and 92-94 infra. See also RSNT, supra note 4, pt. 2, arts. 44-63.
nations possesses the advanced technological skills necessary to tap such resources. However, the continental shelf and its super-
jacent waters contain hydrocarbons, minerals, most species of fish, and marine mammals, all of which possess present economic value.

LLS are disadvantaged with respect to both the seabed resources and the continental shelf resources (EEZ resources). No LLS presently possesses the technology necessary to tap the assets of the deep seabed. A real threat exists that these minerals, viewed by many as a valuable future supply, will be exploited exclusively by powerful coastal States. Because the economies of some of the LLS depend upon mineral exporting, they could be adversely affected by the future impact of seabed minerals on the world market.

In furtherance of the concept that the seabed area is a "common heritage of mankind," the RSNT contains provisions which would ensure that all States share in the revenues from mineral mining of the seabed. However, these provisions have created the greatest amount of controversy at UNCLOS III because of their restrictive effect upon advanced coastal States. They are not likely to be accepted in their present form.

LLS are totally disadvantaged with respect to the resources within the EEZ's of coastal States. The provisions of the RSNT give each coastal State complete discretion in determining the

30. See provisions of RSNT, supra note 4, pt. 2, arts. 50-57.
31. Id. art. 54.
32. Only European LLS are developed. See Alexander & Hodgson, supra note 1, at 561. European LLS, however, have not developed deep-seabed technology.
33. See generally Glassner, supra note 29.
34. It is difficult to determine the actual future impact of marine mineral resources on the world market. LLS which export minerals may nevertheless find overland transportation cost prohibitive if prices fall. See Economic Implications of Sea-bed Mineral Development in the International Area, Report by The Secretary-General, reprinted in I UNCLOS III, OFFICIAL RECORDS 4, U.N. Doc. A/Conf. 62/25 (1974). See also Note, supra note 1, at 719-22.
35. See text accompanying notes 63-75 infra.
36. See text accompanying notes 119-23 infra.
37. See text accompanying notes 118-23 infra.
disposition of resources within its EEZ.\textsuperscript{38} Further, without waiting for UNCLOS III to reach a settlement, several States have unilaterally claimed control over resources in their EEZ's\textsuperscript{39} with the result that other States are pressured to do the same.\textsuperscript{40} Although the trend toward unilateral action has been denounced as a threat to UNCLOS III negotiations,\textsuperscript{41} there is little question that this trend will continue to gain momentum.\textsuperscript{42}

**Conferences Prior to UNCLOS III**

The existing law of the sea consists chiefly of custom, bilateral and multilateral agreements, and the four conventions of the First United Nations Conference on the Law of the Sea (the Geneva Conference).\textsuperscript{43} Although the 1958 Geneva Conference was the first attempt to create a coherent and codified body of law of the sea, the four Geneva Conventions are mainly a codification of customary law and are based on principles of laissez-faire.\textsuperscript{44} Because customary law had given LLS no actual rights, and because few developing LLS were independent in 1958,\textsuperscript{45} the Geneva Conventions did not enhance the status of LLS.\textsuperscript{46}

\begin{itemize}
  \item \textsuperscript{38} RSNT, supra note 4, pt. 2, arts. 50-52.
  \item \textsuperscript{39} For example, the United States Congress recently passed a bill providing exclusive jurisdiction over all fish, except highly migratory species, within 200 miles of shore. Fishery Conservation and Management Act of 1976, Pub. L. No. 94-265, 90 Stat. 331 (codified at 16 U.S.C. \S\S 1801-82 (Supp. 2, 1976)) (effective Mar. 1, 1977). Under the provisions of this act, foreign vessels may engage in fishing pursuant to international fishery agreements if the vessels have on board a permit issued by the Secretary of State. Norway's decision to establish an economic zone prompted other common market nations to do the same. See L.A. Times, Oct. 17, 1976, pt. IV, at 1, col. 1. Iceland, a developing country with an economy highly dependent upon the fishing industry, also extended its fishery limits to 200 miles. 8 U.N. MONTHLY CHRON., Jan. 1976, at 40.
  \item \textsuperscript{40} See F. Noland, A Case for an International Regime for the Seabeds 51-52 (May 5, 1971) (unpublished M.A. thesis in University of San Diego School of Law Library).
  \item \textsuperscript{41} 8 U.N. MONTHLY CHRON., Jan. 1976, at 40.
  \item \textsuperscript{42} See F. Noland, supra note 40.
  \item \textsuperscript{44} The Trilateral Comm'n, A New Regime for the Oceans 12 (1975).
  \item \textsuperscript{45} See note 17 supra.
  \item \textsuperscript{46} See Neptune, May 1976, at 4, col. 2.
\end{itemize}
The High Seas Convention gave all States the rights of navigation, fishing, laying cables, and overflight on the seas. Although these rights applied to non-coastal States, the Convention placed no duty upon coastal States to provide LLS access to the sea in order to exercise these rights. The Fisheries Convention permitted coastal States to regulate fishing near their shores for conservation purposes. No restriction was placed on fishing on the high seas, except that previously existing regional arrangements were to be honored. The Continental Shelf Convention gave coastal States the exclusive right to explore and exploit the natural resources of the continental shelf. The provisions of this Convention were widely accepted and are similar to present provisions of the RSNT pertaining to the 200-mile EEZ.

Although the Geneva Conference was the first large scale, multilateral conference to recognize free access to the sea for LLS, it

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47. Article 2 of the High Seas Convention provides:

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas . . . comprises, inter alia, both for coastal and non-coastal States:

1) Freedom of navigation;
2) Freedom of fishing;
3) Freedom to lay submarine cables and pipelines;
4) Freedom to fly over the high seas.

48. Id.

49. See note 55 infra.

50. Article 1 of the Fisheries Convention provides:

All States have the right for their nationals to engage in fishing on the high seas, subject . . . to the interests and rights of coastal states as provided for in this convention.

Article 7 of the Fisheries Convention provides:

[ANY] coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation . . . provided that negotiations to that effect with other States have not led to an agreement within six months.

51. Article 6 of the Fisheries Convention provides, however, that the coastal State has a "special interest in the maintenance of productivity of the living resources in any area of the high seas adjacent to its territorial sea." The area referred to here as the high seas would be commonly referred to today as the continental shelf area.

52. Continental Shelf Convention, supra note 43, art. 2.

53. Article 2(1) of the Continental Shelf Convention provides that "the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources." See RSNT, supra note 4, pt. 2, art. 44; note 92 infra.

54. Article 3 of the High Seas Convention provides that "in order to enjoy the freedom of the seas on equal terms with coastal States, States having no seacoast should have free access to the sea."
made no provision for the enforcement of such a right. Article 3 of the High Seas Convention specified only that the transit rights of LLSs would be subject to common agreement between landlocked and coastal States. Therefore, although the Geneva Conventions were an important step in codifying the existing law of the sea, LLS did not derive any internationally recognized and enforceable rights from the codification.

The only other recent multilateral convention affecting the status of LLS is the 1965 Convention on Transit Trade of Land-Locked States. At the time this Convention was created more LLS existed than had in 1958, and their demands were beginning to find expression in international politics. However, the Convention on Transit Trade dealt only with transit issues and made no provisions relating to extraction of resources. Its provisions resemble the Geneva transit provisions in that the rights of LLS were made dependent upon bilateral agreements with coastal States, although one provision did establish arbitration procedures for the settlement of disputes arising from such bilateral agreements. Existing law of the sea, therefore, provides virtually no enforceable rights for LLS because so few restrictions are placed on coastal States and because the rights given LLS in codified law are qualified by wording which subjects these rights to the discretion of coastal States.

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55. Article 3 continues to provide that "to this end States situated between the sea and a State having no seacoast shall by common agreement with the latter and in conformity with existing international conventions accord:

a) to the State having no seacoast, on a basis of reciprocity, free transit through their territory." (emphasis added).

56. LLS were unsuccessful at Geneva despite their efforts in the years preceding the Conference to draw the attention of the international community to their problems and needs. See Principles Enunciated by the Preliminary Conference of Land-Locked States, U.N. Doc. A/Conf. 13/C. 5/L. 1, reprinted in VII UNCLOS I, OFFICIAL RECORDS 67-79 (1958).


59. Article 2, paragraph 2 provides that "the rules governing the use of means of transport, when they pass across part of the whole of the territory of another Contracting State, shall be established by common agreement among the Contracting States concerned, with due regard to the multilateral conventions to which these states are parties." (emphasis added)

60. Article 16 provides that in the case of a dispute between an LLS and the adjoining coastal State, at the request of either, a commission will be established to arbitrate the matter. The commission will be comprised of one representative from each State and a third member acceptable to both parties.
UNCLOS III AND THE RSNT

The LLS at UNCLOS III have voiced two main concerns: first that LLS be given affirmative, enforceable rights of access to the sea and extraction of its resources; and second, that restrictions be placed upon developed coastal States to prevent them from claiming or depleting the existing resources. The LLS have been partially successful. In contrast to the Geneva policy of laissez-faire, UNCLOS III reflects a tendency toward restrictions on high seas freedoms. The Conference is considering proposals pertaining to deep-seabed mining, for example, which place restrictions on coastal States to the benefit of LLS. The position of LLS is also enhanced by the use of the RSNT as the basis for negotiations at UNCLOS III. While earlier UNCLOS III sessions had proceeded upon several alternative texts, later sessions adopted a single text with the expectation that its provisions would be adopted in some form as international law.

RSNT: Part 1

Part 1 of the RSNT proposes the implementation of a regime to manage exploitation of the deep seabed. Although part 1 does not represent the consensus of most UNCLOS III delegates, it is being used as a basis of discussion in Committee I of the Conference. The provisions contained in part 1 are advantageous to LLS because they impose restrictions on developed coastal States with respect to deep-seabed mining. Developed States are presently attaining the level of technology necessary for commercial production of deep-seabed minerals. LLS, however, are unable to undertake exploitation and can receive no benefits from deep-seabed mining unless an internationally supervised system of revenue sharing is adopted.

The basic premise underlying part 1 is that the resources of the seabed area are the common heritage of mankind. It proposes the

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61. See text accompanying notes 64-75 infra.
63. For organizational purposes UNCLOS III is divided into three main Committees. Committee I deals with implementation of the concept that the resources of the international seabed beyond national jurisdiction are to be used for the common benefit of mankind. Committee II covers general aspects of the law of the sea. Committee III deals with environment, research, and technology. Id.
64. RSNT, supra note 4, pt. 1, art. 3.
establishment of an International Sea-bed Authority (ISA) empowered to supervise mining operations on the ocean floor. Part 1 authorizes the ISA to extract resources from the oceans for the benefit of all States, whether developed or developing, land-locked or coastal. This authorization includes the right to contract with nations and private parties for both the extraction of minerals and the conduct of scientific research. The purpose of the ISA is to foster the development of a world economy, a balanced growth of international trade, and international cooperation. These provisions, if adopted, would result in LLS receiving a share of the revenues from seabed mineral extraction. LLS would be further benefitted by a provision giving the ISA the power to control the rate of mineral extraction in order to protect mineral exporting countries.

Part 1 also empowers the ISA to conduct scientific research to

65. Id. art. 20, which also provides that “all States Parties to this Convention are ipso facto members of the Authority.”
66. Id. art. 7.
67. Id. art. 10 provides:
1) Scientific research in the Area shall be carried out exclusively for the benefit of mankind as a whole. The Authority shall promote and encourage the conduct of scientific research.
2) The Authority may itself conduct scientific research in the Area and enter into agreements for that purpose.
Annex I of part I provides that:
Title to the minerals [recovered from the seabed area] shall normally be passed upon recovery of the minerals pursuant to a contract of exploration and exploitation . . . . The Authority shall encourage the conduct of prospecting in the Area. Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with this Part of the Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, the transfer of data to the Authority, [and] the training of personnel designated by the Authority . . . . The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place.
68. Id. art. 9, para. 1.
69. Id. art. 9, para. 6 provides that the Authority will “ensure equitable sharing in and distribution of financial and other economic benefits among States Parties from the activities in the Area, taking into particular consideration the interests and needs of the developing countries . . . .”
70. Id. art. 9, para. 4. This paragraph states that the Authority will facilitate “through existing forums or such new arrangements as may be appropriate . . . the growth, efficiency and stability of markets for those classes of commodities produced from the Area, at prices remunerative to producers and fair to consumers” and that the Authority will limit “in an interim period specified below, total production in the Area so as not to exceed the projected cumulative growth segment of the nickel market during that period” and that the Authority will establish “a compensatory system of economic adjustment assistance in respect of the adverse effects referred to in this paragraph.”
strengthen the technological capabilities of all developing States. The nationals of these developing States would receive training and employment under the auspices of the ISA. The ISA would make the results of research and analysis available to all nations. Part 1 specifically provides that developing LLS be given "effective participation" in the scientific activities sponsored by the ISA, with regard to their needs in "overcoming obstacles arising from their disadvantaged location." Although proceeds from mining would directly benefit developing LLS, it is unlikely that these States would benefit from results of scientific research.

Two proposals have been submitted to Committee I by UNCLOS III delegates for consideration as alternatives to the provisions of the RSNT. One delegate has proposed that certain sectors of the seabed be subject to a separate regime in which States might autonomously extract minerals, with the ISA role relegated to one of general supervision. Another delegate has suggested that applicants for mining contracts propose to the ISA two alternative mining areas of equivalent value. The ISA would select the site for exploitation at its own discretion. This approach would benefit the ISA by providing it with ocean data otherwise too difficult or expensive to obtain.

The representatives of many LLS oppose the proposals, however, because they favor the technologically developed nations with the
present means to undertake independent exploitation. Such developed nations would reap a disproportionate share of the ocean profits. LLS also fear that the ISA might be prevented from freely choosing the most advantageous methods of exploitation.

Both proposals provide some measure of autonomy for developed nations, thus mitigating their concern over mineral dependency. Accordingly, their inclusion would increase the likelihood that the ISA would be adopted as international law. These proposals would, however, make the ISA less beneficial to LLS, for the superpowers would exercise greater control over deep-sea mining operations. At best LLS would receive only technological assistance and allocated funds from limited areas. Additionally, the ISA’s lack of control could lead to pollution and waste.

RSNT: Part 2

The most significant part of the RSNT produced by Committee II establishes the right of coastal States to control designated areas beyond their coastlines. Part 2 represents a distinct disadvantage to LLS because only coastal States are authorized by its provisions to exercise jurisdiction over resources. LLS oppose the provisions which formally establish a 200-mile EEZ. Although the RSNT provides that LLS may participate in the extraction of living resources in the EEZ’s of adjoining coastal States, it does not provide LLS any rights to use the zones of non-adjoining States. Thus, if a LLS adjoins a coastal State with a limited coastline or a small continental shelf, the possibilities for extraction of living resources are limited. Even though LLS have the right to fish within the EEZ of adjoining coastal States, the right is qualified.

80. Id. at 56, para. 10.
81. Id. at 55, para. 8.
82. Developed coastal States are not opposed to sharing revenues from mining with other States. Their chief concern is that the power of the Authority would restrict their supply of minerals. The objective of the United States regarding seabed mining has been expressed as “guaranteed nondiscriminatory access under reasonable conditions to the ocean’s seabed minerals beyond national jurisdiction.” Status Report on Law of the Sea Conference: Hearing Before the Subcomm. on Minerals, Materials and Fuels of the Senate Comm. on Interior and Insular Affairs, 94th Cong., 1st Sess. 1177 (1975). See also text accompanying notes 119-23 infra.
83. The RSNT distinguishes between living resources (fish, plants, and marine mammals) and nonliving resources (oil and hard minerals). See RSNT, supra note 4, pt. 2, art. 44 (1) (a).
84. Id. pt. 2, art. 58(1). This section gives LLS no absolute rights with respect to the exclusive economic zones of coastal States but provides that “the terms and conditions of such participation shall be determined by the States concerned through bilateral, subregional or regional agreements.”

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The RSNT provides LLS access to fish in an adjoining State's EEZ on an "equitable basis."\(^\text{85}\) Representatives of LLS believe that the term *equitable basis* disguises the right of the coastal State to withhold all but the surplus catch of fish from LLS.\(^\text{86}\) Because of the discretion allotted coastal States in determining what shall qualify as "surplus," it appears to LLS that coastal States are authorized to withhold the entire stock of fish within their EEZ.\(^\text{87}\)

LLS have denounced the EEZ and have proposed regional sharing arrangements which would give all States of the region the right to extract EEZ resources on an equal basis.\(^\text{88}\) Although the RSNT provides that LLS may establish rights to EEZ resources independently through bilateral and multilateral agreements,\(^\text{89}\) representatives from LLS believe it would be more valuable to have such rights established by UNCLOS III itself. LLS propose that they be allocated a fixed percentage of the revenues from extraction of living and nonliving resources from the EEZ's of coastal States within a designated region.\(^\text{90}\) Such regional sharing arrangements give LLS the advantage of drawing upon the EEZ resources of several coastal States, not just those with which they adjoin.\(^\text{91}\) Thus, they would be confined neither to an EEZ that may be small or poor in resources nor to fishing an arbitrary surplus.

Part 2 gives LLS no right to exploit nonliving resources\(^\text{92}\) within the EEZ's. The RSNT provides that LLS shall partake in revenue

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85. *Id.*
87. RSNT, supra note 4, pt. 2, arts. 50 and 51, delineate the rights of coastal States with respect to resources in the economic zone. The coastal State "shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation." *Id.* art. 50, para. 2. "The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone." *Id.* art. 51, para. 2. Such provisions appear to give coastal States full discretion.
89. RSNT, supra note 4, pt. 2, arts. 58(3) & 59.
91. *Id.*
92. RSNT, supra note 4, pt. 2, art. 44(a) gives the coastal State "sover-
sharing from extraction of continental shelf resources only beyond 200 miles. This provision is of no benefit to LLS because wellhead oil production beyond 200 miles is undeveloped and may be delayed indefinitely because of political and economic restrictions. The exploitation of other minerals beyond 200 miles is similarly undeveloped.

LLS have proposed that they be given a share of the oil revenues within the 200-mile zone. One proposal provides for revenue sharing from resources located beyond fifty miles from shore. Another proposal provides LLS and other geographically disadvantaged States with a small percentage of all revenues gained from exploitation within the 200-mile EEZ and a larger percentage of the revenues from outside the zone. Such a system assures LLS some revenues even if oil is never extracted from the continental shelf beyond 200 miles from shore.

RSNT: Part 3

From the viewpoint of LLS, the most significant part of the work of Committee III deals with scientific research within the EEZ of coastal States. Although LLS may presently be unable to apply the results of scientific research directly, such research affects them indirectly because of its effects on future uses of the sea.

Part 3 of the RSNT recognizes the right of coastal States to determine the manner in which scientific research is to be

eign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the bed and subsoil and superjacent waters.”

93. Id. art. 70 provides that “the coastal State shall make payments and contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles . . . .” Such payments are to be made to the International Authority. Id. para. 4.

94. Although technological innovations have made drilling for oil at great depths possible, production costs will probably make deep-well drilling unfeasible during this century. F. Noland, A Case for an International Regime for the Seabeds 25 (May 5, 1971) (unpublished M.A. thesis in University of San Diego School of Law Library).

95. In areas where the continental shelf extends beyond 200 miles, mining is presently gaining momentum. See Glassner, The Illusory Treasure of Davy Jones' Locker, 13 SAN DIEGO L. REV. 533, 537 (1976).

96. Neptune, May 1976, at 4, col. 2. This proposal was made informally by a group of landlocked and other geographically disadvantaged States at the third UNCLOS III session.

97. Id. At the fourth session a representative from Singapore suggested sharing 12% of the value of wellhead production within 200 miles from shore and 24% of that produced beyond 200 miles.

98. RSNT, supra note 4, pt. 3, arts. 48-77.
conducted within their EEZ's. Although LLS are provided the right to participate in such research "whenever feasible," part 3 leaves such a determination to the discretion of the coastal State. A coastal State may refuse any proposed project which it believes detrimental to its security or economic interests.

To limit the extent of coastal State control, a proposal submitted to Commitee III by nine socialist nations suggests distinguishing between two types of scientific research: fundamental research, which would be restricted only in the sense that coastal State interests must be respected; and resource-related research, over which coastal States would retain sufficient control to protect their resources. Fundamental research includes all types of research unrelated to the exploration and exploitation of resources. It includes research into natural phenomena and processes occurring at the atmosphere-ocean interface, the study of the earth's crust under the ocean, continental drifts, and vulcanism. Coastal States oppose such a compromise because the distinction between fundamental and applied research is often difficult to define and because the distinction may result in applications which coastal States consider dangerous and fallacious.

99. Id. arts. 57-61 provide:
Coastal States have the sovereign right to conduct and regulate marine scientific research in their territorial sea. States and competent international organizations which intend to undertake scientific research in the economic zone or on the continental shelf of a coastal State shall provide the state with a full description of the research project. States and competent international organizations when undertaking scientific research in the economic zone or on the continental shelf of a coastal State shall comply with the following conditions. They shall ensure the rights of the coastal State to participate or be represented. They shall provide the coastal State, at its request, with preliminary reports and the final results and conclusions. They shall undertake to provide access for the coastal State to all data and samples. The coastal State shall not withhold its consent to the conduct of a marine scientific research project unless that project bears substantially upon the exploration and exploitation of the living or non-living resources. For it unduly interferes with economic activities performed by the coastal State.

100. Id. art. 66(2).
101. Id. art. 60.
103. OFFICIAL RECORDS, supra note 76, at 92, para. 32.
104. Id.
105. Id.
106. Id. at 98, paras. 32 & 40.
107. Id. at 97, para. 27.
RSNT: PROSPECTS FOR ADOPTION

LLS cannot benefit from any provisions of the RSNT until it is adopted in some form by UNCLOS III. Whereas in the past LLS have been primarily dependent upon gratuitous concessions by coastal States, changes in the political climate since 1958 have given LLS more bargaining power in the world arena. Much of the developing LLS' increased bargaining power derives from their present alignment with the Group of 77. The Group of 77 was formed by developing States for the purpose of pursuing a united policy in United Nations negotiations. Approximately two-thirds of the States participating in UNCLOS III are members of the Group of 77. Because conference votes are decided by a two-thirds majority, the Group of 77 has the potential power to determine the outcome on all issues.

Even though most of the developing States which comprise the Group of 77 are coastal, alignment with the group is advantageous to LLS because almost all LLS are undeveloped to some extent. Both LLS and the other members of the Group of 77 share the need to obtain priorities in fund allocation from deep-seabed mining. Both groups have an interest in receiving technological and scientific assistance. As a result of these shared interests, the Group of 77 has the potential to force a number of beneficial concessions for LLS.

However, alignment with the Group of 77 is unlikely to benefit LLS with respect to the issue of establishing EEZ's for coastal States. The right to control resources located within their EEZ's is important to the majority of developing nations comprising the Group of 77. Although some proposals submitted by the Group of 77 have permitted LLS access to fish in the EEZ's of coastal States, these proposals have not included access to the more valuable mineral resources.

There are other nations which, like LLS, are geographically disadvantaged with regard to the sea. These geographically disadvantaged nations include those States which border a small continental shelf (shelf-locked) and States with narrow coastlines and small

109. The Group of 77 contains approximately 108 nations. Id. at 6.
110. Id.
111. Id.
EEZ's. These nations do not share the access problem of LLS, but because of their geographical configurations, they are likely to support LLS on the issue of the establishment of regional economic zones. Approximately one-third of the nations participating in UNCLOS III are considered geographically disadvantaged and thus have the potential power to block the conference vote on any issue.

Despite the strength in numbers which LLS gain through alignment with the Group of 77 and geographically disadvantaged States, the coastal superpowers retain considerable power to control the thrust of UNCLOS III negotiations. Beyond the economic, military, and political leverage possessed by the superpowers exists the threat to abandon UNCLOS III altogether and pursue unilateral policies. Because neither LLS nor other developing States possess the means to compete with the superpowers for ocean resources, such unilateral actions would be disadvantageous for both the Group of 77 and the geographically handicapped States.

The interplay of group politics and national interests produces varying prospects for the adoption of those RSNT provisions which are beneficial to LLS. Part 1 of the RSNT has prompted more controversy in the UNCLOS III negotiations than Parts 2 and 3. As the fifth session of UNCLOS III closed in September 1976, there had been no substantial agreement on the seabed mining issue. Influenced by the oil embargo of 1973 and the subsequent oil price increase by the Organization of Petroleum Exporting Countries, representatives of the developed nations have expressed concern about mineral dependency and want to preserve unrestricted access to mineral supplies. Concern over the restrictive

114. Twenty-five States are listed as shelf-locked, and 32 States have coastlines less than 200 miles in length. In addition to shelf-locked States and States with limited coastlines, other types of geographically disadvantaged States include those with small continental margins and/or economic zones and even States with indications of limited resource potential in their prospective economic zones. All disadvantages are relative, and many nations in the above groups are economically developed. Alexander & Hodgson, supra note 1, at 563–65.


116. Notably the United States and the U.S.S.R.


regulations proposed in Committee I prompted the United States to begin exploitation unilaterally, despite a 1969 General Assembly resolution recommending a moratorium on deep-seabed mining pending international agreement. The proposed Deep Seabed Hard Minerals Act, which provides that the United States may begin to award contracts to private companies starting in 1977 if no international convention is ratified, further reflects United States concern over restricted access to minerals. In 1975, a United States company claimed the right to exploit a 60,000-square kilometer sector of the Pacific Ocean seabed for fifteen years. At least one negotiator at UNCLOS III saw this claim as an attempt to establish a priority right against both a future ISA and any other State or organization which might want to exploit that sector before the ISA is recognized. The representatives of LLS have expressed fear that such unilateral action will put pressure on the negotiations; such pressure could result in compromises unfavorable to LLS or in a termination of the negotiations without settlement.

Part 2 of the RSNT, dealing with the establishment of EEZ's for coastal States, will undoubtedly be adopted with provisions primarily advantageous to coastal States. Although proposals have been made which grant LLS rights within these zones, the proposals have commanded no significant support for several reasons. First, coastal States greatly outnumber LLS. Second, the EEZ is virtually a fait accompli in international law. Third, the trend toward coastal States expanding their EEZ's to 200 miles is likely to gain momentum as more coastal States bow to political pressures. Finally, coastal States are opposed to sharing EEZ resources or the revenues from these resources with politically hostile LLS. Because of these factors, there is little hope that

122. The Act provides that U.S. nationals be required to obtain a license from the Secretary of the Interior before engaging in the exploration and exploitation of manganese nodules on the deep-seabed floor. Id.
124. The Australian delegate, OFFICIAL RECORDS, supra note 76, at 54, para. 25.
125. Id.
126. See note 39 supra.
127. Id.
128. For example, the United States is unwilling to share oil revenues with OPEC nations.
UNCLOS III will accord LLS equal or substantial rights within coastal States’ EEZ’s.

Part 3 of the RSNT, pertaining to scientific research, is likely to follow international convention and grant coastal States the right to restrict scientific operations within their EEZ’s. Although delegates have criticized the degree of coastal State discretion in this area, the majority of States favor coastal State authority. Representatives of developing coastal States have expressed apprehension about research operations which their nations would be powerless to control. The representative of one developing State has even stated that his country views the freedom of scientific research as the freedom of developed nations to implement aggressive policies. For political and military reasons, the majority of developed nations also prefer granting coastal States strong authority in the area.

**CONCLUSION**

UNCLOS III has provided LLS with a unique forum to express their need for enforceable rights to share in the use and exploitation of the ocean. The Conference has declared a policy of treating seabed resources as the heritage of all nations. Nevertheless, it is likely that economic and political pressures will prevent the Conference from adopting any provisions which substantially benefit LLS. Parts 2 and 3 of the RSNT, rather than adding to the rights of LLS, continue to endorse the broad authority of coastal States. In fact, the provisions of the EEZ contained in Part 2 represent a disadvantage to LLS compared to the less restrictive provisions of the Geneva Continental Shelf Convention.

Because of their lack of political, economic, and military leverage, many LLS are dependent upon potential worldwide agreement to attain enforceable rights with respect to the sea. The probable failure of UNCLOS III to accord such rights will foreclose these nations’ last chance to partake in the common heritage of mankind.

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129. See Official Records, supra note 76, at 92.
130. Id. para. 33.
131. Id. at 99, paras. 48, 49. According to an Albanian delegate, “the conduct of scientific research within a coastal state’s area of sovereignty is a matter directly affecting its freedom and independence and should therefore rest exclusively within its jurisdiction.” Id. para. 47.
132. Id. at 111, para. 5.