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A theoretical analysis of the Law of the Sea negotiation in the context of international relations and negotiation theory

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I dedicate this work to my wife: Angela

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Abstract

The Law of the Sea negotiation, which was instigated as a response to increased human activities at sea, was an international law making process. The negotiation has been described as the longest, most technically complex, continuous negotiation attempted in modern times. It was attended by almost all states in the world and contained a series of complex and overlapping issues. It was a remarkably successful process in that it concluded with an agreement, which protagonists with different interests and objectives succeeded in producing after 27 years.

This thesis analyses international relations and negotiation theories that relate to the Law of the Sea negotiation, highlighting the strengths and weaknesses of each body of theory. The work goes on to examine the most important aspects of the Law of the Sea negotiation, including why the negotiation started, the core issues and principal actors of the negotiation, the process up until 1980 when the draft Treaty was devised, the American rejection of the Treaty and the process which led to the final agreement of 1994. The work then looks at these individual aspects of the negotiation in the context of the examination of international relations theory and negotiation theory that relates to the Law of the Sea.

The thesis concludes by proposing a model that explains the Law of the Sea negotiation. The model questions existing theory on the meaning of the state and states' status in international society.

Abbreviations

AALCC	Asian-African Legal Consultative Committee
ACDA	(United States) Arms Control and Disarmament Agency
AMC	American Mining Congress
COCOM	Co-ordinating Committee for Multilateral Export Controls
ECOSOC	(United Nations) Economic and Social Council
EEZ	Exclusive Economic Zone
EFZ	Exclusive Fishery Zone
EU	European Union
FCMA	(United States) Fisheries Conservation and Management Act
ICBM	Intercontinental Ballistic Missile
ICJ	International Court of Justice
IGO	International Governmental Organisation
ILC	International Law Commission
IOC	International Oceanographic Commission
ISA	International Seabed Authority
ISNT	Informal Single Negotiating Text
NAM	Non-Aligned Movement
NGO	Non-governmental Organisation
NIEO	New International Economic Order
NOAA	(United States) National Oceanic and Atmospheric Administration
NSC	(United States) National Security Council

OAPEC	Arab Petroleum Exporting Countries
OAS	Organisation of American States
OAU	Organization of African Unity
PIP	Preparatory Investment Protection
PrepCom	Preparatory Commission for the International Seabed Authority
SALT	Strategic Arms Limitation Talks
SDI	Strategic Defense Initiative
SLBM	Submarine-launched Ballistic Missile
UNCED	United Nations Conference on Environment and Development
UNCTAD	United Nations Conference of Trade and Development

Chapter 1 Introduction and Background to the Theoretical Review

1. Introduction

Historically, human activities at sea were limited and consequently so was the need for rules governing sea use. As human activities at sea dramatically increased however, the effects of these activities became both far reaching and global and could therefore no longer be ignored.

The Law of the Sea negotiation, which was convened as a response to increased human activities at sea, was an international law making process. The negotiation has been described as 'the longest, most technically complex, continuous negotiation attempted in modern times.'[1] It was attended by almost all the states in the world and contained a series of complex and overlapping issues. It was a remarkably successful process in that it concluded with an agreement, which protagonists with different interests and objectives succeeded in producing after 27 years.

In addition to sea use other human activities now have global implications; for example the effect of burning fossil fuels on climate change. As a result, contemporary international society will deal more frequently with the type of international negotiation which produced the Law of the Sea Convention (Treaty) in 1982 along with its amendment in 1994 which allowed the Convention to gain

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[1]Robert L. Friedheim, *Negotiating the New Ocean Regime* (Columbia, South Carolina; University of South Carolina Press, 1993), p. 5. The provisions of the Convention embrace almost all human concerns with the sea use. See also Elliot L. Richardson, 'Preface', in Markus G. Schmidt, *Common*

universal acceptance. International society therefore needs to fully understand the process by which the Law of the Sea negotiation was successfully concluded.

The aim of this thesis is to make a detailed theoretical analysis of the Law of the Sea negotiation process in an attempt to understand the process in the context of international relations and negotiation theory. In order to make this analysis the following steps were taken:

1. International relations theory and negotiation theory that relates to the Law of the Sea negotiation was reviewed.
2. The most important aspects of the Law of the Sea negotiation were reviewed.
3. Each of the aspects of the negotiation were examined in relation to the theory reviewed in stage one.
4. Based on stages one, two, and three a framework for explaining the Law of the Sea negotiation was developed.

Chapters one to three contain the review of the relevant international relations and negotiation theories. Based on this review the Law of the Sea negotiation is examined in detail in chapters four to eight. In chapter nine a framework for explaining the Law of the Sea negotiation is presented. Chapter ten concludes the thesis. More specifically chapter one includes a background to the theoretical review; chapter two examines current attempts and frameworks to explain the Law of the Sea negotiation in international relations theory; chapter three details current attempts and frameworks to explain the Law of the Sea negotiation by negotiation theory; chapter four examines why the negotiation started; chapter five examines major issues, particularly the core issues and principal 'actors' of the negotiation; chapter six outlines the negotiation process up until 1980, when the Draft Convention was devised; chapter seven examines the United States' rejection of the

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Heritage or Common Burden?: The United States Position on the Development of a Regime for Deep Seabed Mining in the Law of the Sea Convention (Oxford: Clarendon Press, 1989), p. v.

Convention in 1982; and chapter eight examines the process that led to the final agreement of 1994. Chapter nine discusses the issues which emerged from the detailed examination of the Law of the Sea negotiation and presents a framework for explanation of the process. Chapter ten concludes the thesis.

Prior to commencing the theoretical review the next section of this chapter contains a brief background to the Law of the Sea negotiation. The purpose of this section is merely to provide the background necessary for understanding the theoretical review that follows and a much more detailed analysis of the Law of the Sea negotiation takes place in chapters four to eight.

2. Background to the theoretical review

The Law of the Sea negotiation was initiated at the United Nations in order to solve problems relating to increased use of the world's seas whose resources, although once considered abundant, were now realised as limited. This changing perception of the sea and the subsequent disputes among states over sea use had intensified after the Second World War. The negotiation, which began in 1967 at the United Nations, lasted for 27 years and within this period there were many political, economic and technological changes in the world which inevitably influenced the negotiation.

Man's use of the sea had developed rapidly after the Second World War. Before that time use of the sea was limited, with activity concentrated on its surface for navigation and fishing. Navigation interests were mainly held by maritime states, such as the United Kingdom and the United States. These maritime states had either strong navies or numerous commercial vessels for foreign transportation, or both, and in order to secure their free movements on the sea had a strong interest in maintaining the existing principles which governed sea use, namely the three-mile

territorial seas[2] and freedom of the high seas. These principles, which had lasted for three centuries, meant that within three miles of their coastlines states had jurisdiction, whereas beyond three miles every vessel was given free navigation.

After the Second World War the *status quo* of sea use was challenged by the Truman Proclamation. The Proclamation declared that the continental shelf of the United States was an extension of its land-mass. This meant extending United States jurisdiction over the continental shelf, which in fact stretched out far beyond three miles. The United States however maintained the three miles territorial seas, meaning that although it claimed jurisdiction to the extent of its continental shelf, it did not claim jurisdiction of the water column above it, except within the three mile limit. The purpose of the Truman Proclamation was to promote investments in exploiting natural resources, mainly oil, on the continental shelf. These resources were intended to replace those which had been used in large quantities for the war effort. After the Truman Proclamation many states followed suit and extended national jurisdiction over their continental shelves. These extensions of national jurisdiction were also a reflection of the fact that technology was undergoing a period of rapid development and exploitation of resources on the continental shelf was becoming feasible.

Just after the Truman Proclamation there was another development in Latin America which also challenged the *status quo* of sea use. Chile, Peru and Ecuador, because of fishing interests, claimed a two-hundred miles maritime zone over their adjacent seas, including the water column of the area. What was meant by a maritime zone was never actually defined but it appeared that what they claimed

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[2]The territorial sea is a marine space over which coastal states exercise sovereignty. This sovereignty extends to an adjacent belt of sea described as the territorial sea, to the airspace over the territorial

was in fact equivalent to a two-hundred miles territorial sea.[3] This was a concerted action by the three states and similar claims spread quite quickly throughout the rest of the South American continent.

It was under these circumstances of challenge to the existing principles and in order to establish new rules of sea use, that in 1958 the First Law of the Sea Conference was held. This 1958 Conference, despite reaching a compromise on national jurisdiction over the continental shelf, failed to reach agreement on the issues of breadth of territorial sea and states' jurisdiction over fisheries. This failure to reach agreement was largely a reflection of the high tension of the Cold War and the difference in capability between the navies of East and West. At the time the Soviet Union was not a maritime state and therefore insisted on twelve miles territorial sea in an attempt to keep other states' navies away from its shorelines. On the other hand, the United States and other western states wanted narrower territorial seas in order to maintain as much navigational freedom as possible for their navies. These unsolved items led to the Second Law of the Sea Conference in 1960, however, once again this failed to reach agreement. Regardless of the absence of a formal agreement, however, an increasing number of states began, in various forms of national jurisdiction seawards, to claim more than three miles territorial seas.

By the early sixties the Soviet Union had itself become a maritime state and as a result its concerns, despite the Cold War, became more aligned with those of the United States, and both states became increasingly concerned with the expanding claims of national jurisdiction seawards, often called 'creeping jurisdiction'. As a

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sea as well as to its bed and subsoil.
[3]Schmidt, *op. cit.*, p. 21.

result, in 1967, the United States and the Soviet Union informally discussed the threat posed to maritime states, namely that 'creeping jurisdiction' would impede their naval and commercial vessels' mobility, especially in international straits. Both states had realised that if the breadth of the territorial sea became wider than three miles many important international straits such as the Strait of Gibraltar, which is only eight miles wide, might be overlapped on both sides by territories of coastal states. Such a situation would not only impede their ships but would also mean that their submarines could not pass through those straits while submerged,[4] or their aircraft fly through without the consent of coastal states. Even if the extension of national jurisdiction was only of the fishing zone, and not an extension of territorial seas, there were still possibilities that coastal states might intervene with the passage of foreign navies in the name of protecting their fisheries. The United States and the Soviet Union therefore tried to stop the extension of coastal states' national jurisdiction, but without success. The problem was that although these two states were anxious about producing agreement on the limits of national jurisdiction, many non-maritime states wanted to keep their national jurisdiction as wide as possible in order to secure resources in their adjacent seas.

There was another issue in the 1960s which impacted on the existing principles of sea use and that was the exploitation of resources on the deep seabed which lay beyond the limits of national jurisdiction. It was the Maltese Ambassador to the United Nations, Arvid Pardo's initiative at the United Nations General Assembly in 1967, that first directed states' attention to this issue. Pardo advocated that the deep seabed, which is the area beyond national jurisdiction, be regarded as the 'Common Heritage of Mankind'. He suggested that the untold mineral resources in the form of

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[4]The Territorial Sea Convention of 1958, Article 14 paragraph 6.

manganese nodules[5] lying on the seabed should be exploited for the benefit of human beings, and particularly developing states. The possibility of deep seabed development was not new and had in fact been first highlighted not by Pardo, but by John Mero who, in 1965, published his influential book *The Mineral Resources of the Sea*. Mero estimated that there were 1.66 trillion tons of nodules in the Pacific alone,[6] that deep seabed mining could start at any time and that it would be a profitable investment since 'there should be no major problems in adapting existing industrial equipment and processing to the mining and processing of manganese nodules'.[7] The existence of manganese nodules on the ocean floor had been known since the 19th century, however, the viability of deep seabed mining had not previously been seriously considered because the technology to exploit them had not been available. Even at the time of the book's publication Mero's idea was still premature because technology for deep seabed mining needed much more development. Nonetheless his idea inspired interest in deep seabed mining and under these circumstances Pardo's speech was 'both timely and well conceived.'[8]

Pardo's proposal received mixed reactions.[9] The developing countries, which had formed the Group of 77 as a vehicle to pit their interests against those of the developed states, generally welcomed it, however in the industrialised states the reaction was less than enthusiastic. In the United States, Pardo's Common Heritage idea was considered to 'handicap US industry and dampen its enthusiasm'.[10] In addition, Latin Americans feared that detailed discussion of Pardo's initiative at the

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[5]More presicely they are called polymetallic nodules. Their commercial exploitation has yet to begin.
[6]John L. Mero, *The Mineral Resources of the Sea* (Amsterdam: Elsevier, 1965), pp. 174-175.
[7]*Ibid.*, p. 277.
[8]Schmidt, *op. cit.*, pp. 23-24.
[9]See, Said Mahmoudi, The Law of Deep Sea-Bed Mining: A Study of the Progressive Development of International Law Concerning the Management of the polymetallic Nodules of the Sea-Bed (Stockholm: Almqvist & Wiksell International, 1987), pp. 121-122.

United Nations might raise the question of the breadth of national jurisdiction and this might adversely affect them. The reason for this was that the breadth of national jurisdiction, as well as the status of the high seas, were closely related to deep seabed mining. In order to define the area of the seabed, which was defined as that lying beyond national jurisdiction, the breadth of national jurisdiction needed to be determined. This logic frightened some Latin American states with two-hundred miles claims, because they feared that they might be forced to compromise to a narrower limit. They were therefore against proposals made at the United Nations for a moratorium on national claims and also against establishing a boundary for the international seabed area. This situation caused a rift among the developing countries of South America and other developing states who hoped for an international seabed area as wide as possible in order to maximise the benefit accrued from the exploitation of it. Consequently the developing countries as a whole were unable to take a unified position on the breadth of national jurisdiction. As a result, the developing countries ignored this problem and insisted on deciding the deep seabed regime, that is the system which would govern deep seabed mining, without having defined the limits of national jurisdiction. The developed countries on the other hand insisted on the need to first define the boundaries of national jurisdiction, since this would provide their vessels with orderly navigation. In addition, the developed states argued that it would be meaningless to discuss the deep seabed regime without first defining the boundaries.

Pardo's speech led to the establishment, in 1968, of the Seabed Committee within the United Nations. In terms of the deep seabed regime, especially of the machinery to control deep seabed mining, the developed states favoured a very weak

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[10]Schmidt, *op. cit.*, pp. 24-25.

machinery, of registry or licensing. Some developing states on the other hand, such as India and Kuwait, insisted on a strong machinery which could directly exploit deep seabed resources. This discussion was a reflection of the difference in capability of deep seabed exploitation, in that the developing states did not have the means of exploitation whereas the developed states did. Around this time it became apparent that the basic structure of the negotiation was one of developing states, in the form of the Group of 77, versus developed states, and when the discussion finally stalled it was along these lines.

In 1970, as an outcome of the discussion in the Seabed Committee, the Conference Resolution[11] was adopted at the United Nations General Assembly and this called for the convening of a conference on the Law of the Sea in 1973. The United States originally favoured a limited item conference such as one discussing only the breadth of territorial sea and navigation rights and objected to convening a comprehensive conference that included discussion on the seabed issues. The United States eventually changed its position, however, and joined the list of sponsors of this Conference Resolution because it judged that this 'package deal' approach would quickly solve its then primary objective of navigational freedom in return for concessions in other areas, particularly that of the deep seabed mining regime.[12]

The Conference began in December 1973 and was immediately influenced by the oil embargo by the Arab Petroleum Exporting Countries (OAPEC). The embargo was triggered by the Arab-Israeli war of October 1973 and caused a rise in the price of commodities such as minerals and food. In addition, it changed the perceptions

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[11]The United Nations General Assembly Resolution 2750C.
[12]There are some opinions that the core trade-off of this package deal was not navigational guarantee and deep seabed mining regime. See, chapter 5 of this study.

that developing countries had about their own solidarity. Since OAPEC's group action resulted in a dramatic rise in oil price, which had previously been controlled by developed states, it enabled members of OAPEC to increase their income from exporting oil. As a result of this developing states came to believe that group action would enable them to change the international system in their favour. The Group of 77 therefore declared national jurisdictions over their resources, without defining the limits of national jurisdiction, and called for a more equitable economic relationship between developing and developed states. This was made clear by the Declaration on the Establishment of a New International Economic Order (NIEO)[13] in May 1974 which was followed by the more detailed Charter of Economic Rights and Duties of States[14] in December 1974. The latter referred to the seabed[15] and as a result the Law of the Sea negotiation was explicitly linked with the NIEO.

As a result when the Law of the Sea Conference began the morale of the developing countries was very high. In terms of the deep seabed regime, the developing countries wanted to control the machinery to govern the deep seabed area and have a strong autonomous machinery in order to prevent developed states from interfering in the exploitation of the deep seabed. The developed countries however objected to this and argued that a strong machinery would be hopelessly inefficient and absorb almost all the profit from the mining operations. In addition, they argued that a strong machinery would discourage mining companies from exploiting the seabed and would hamper technological development.

At the beginning of the Conference it was thought that the Conference would be able to produce a Convention by around 1975, however progress was very slow. By

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[13]The United Nations General Assembly Resolution 3201.
[14]The United Nations General Assembly Resolution 3281.
[15]Article 29 of Chapter III of the Charter.

1975 it was thought almost impossible to conclude the Conference as expected because states' opinions were so diverse and, largely because they were attempting to produce a Convention by consensus, they were unable to produce draft articles. In order to break this impasse, a new method of single negotiation text was adopted.[16] This method aimed to produce, for further discussion, a single text, without alternative drafts of each article. This text was produced by the Committee chairmen who gave an opinion on where the general consensus lay. This approach had the advantage of persuading the participants to move forward from their deadlocked positions.[17] The first draft produced by this method was the Informal Single Negotiating Text (ISNT) in 1975. This draft contained provisions for twelve miles territorial seas and two-hundred miles Exclusive Economic Zone (EEZ) within which coastal states have jurisdiction for economic purposes, such as fishing and the development of the continental shelf.[18] It also included the provisions, favoured by the United States, that coastal states would be obliged to accord free transit through international straits.[19] Although it had not yet become international law, states began to practice these provisions almost immediately and accorded free transit through international straits to passing vessels. In January 1976, the United

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[16]Unlike the First Law of the Sea Conference, there did not exist any agreed-upon text. See Mahmoudi, *op. cit.*, p. 45.

[17]There was some room for manoeuvring by chairmen and the negotiation in Committee I was disrupted several times by this. See Schmidt, *op. cit.*, pp. 113-114. Schmidt stated that '[s]tates which at any given point found their positions reflected in the text were in a distinctly favourable negotiating position. This was mainly because time did not permit any but the most contentious parts of the suggested compromises to be challenged in fact.' *Ibid.*, p. 112.

[18]The 1982 Law of the Sea Convention inscribed the EEZ in it, however, it has not clearly spelt out the relationship between the legal position of the continental shelf and that of the EEZ. The difference between the legal positions of the continental shelf and the EEZ is that EEZ rights need to be declared, however, rights over the continental shelf are not required to be declared. See United Nations Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: National Legislation on the Continental Shelf* (New York: United Nations, 1989), p. 5. The Convention stipulated that where national continental shelf margin extends beyond 200 miles, states can extend their national jurisdiction up to 350 miles. Article 75 para. 5.

[19]See, for example, Evan Luard, *The Control of the Sea-Bed: Who Owns the Resources of the Oceans?*, revised. (London: Heineman, 1977), pp. 196-197.

States established its own two-hundred miles fisheries zone by the Fisheries Conservation and Management Act (FCMA) and many states followed suit.

At this time the negotiation of the seabed regime resulted in a compromise based on a strong International Seabed Authority (ISA) having its discretionary powers circumscribed by detailed Treaty provisions.[20] This came about because in order to bring the negotiation to a successful conclusion the United States changed its stance from one of pursuing a weak machinery to one of allowing a strong machinery.

In September 1980 a Draft Convention was produced after almost all issues had been negotiated and the 1980 session ended in 'an atmosphere of relief',[21] since it was thought that the remaining issues could be solved in the next session scheduled for 1981. The advent of the Reagan Administration in the United States, however, altered this scenario. The Reagan Administration started a lengthy review of the Draft Convention and in 1982, although 130 states were in favour, rejected the Convention in the voting at the Conference. This was mainly because it judged the deep seabed regime in the Convention to be unsatisfactory for the United States. After its rejection a Reciprocating States Agreement for deep seabed mining, which was drafted to enable the United States to engage in deep seabed mining outside of the Convention, was signed between the United States, the United Kingdom, the Federal Republic of Germany and France. The developing countries strongly objected to this and claimed it was an illegal activity. In 1983 President Reagan issued an ocean policy statement which said that the United States would exercise its navigation and overflight rights consistent with the Convention and would not agree to other states' unilateral action which attempted to restrict them. Whether the

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[20]Schmidt, *op. cit.*, p. 105.
[21]*Ibid.*, p. 145.

United States could benefit from the non-seabed provisions, especially straits passage and overflight, was disputed but the United States maintained that this had now become customary international law since states had been exercising these rights for some years. The Group of 77 consistently rejected this view, claiming that the negotiation of the Convention was a package deal and that the navigational provisions of the Convention created new international law and that there had never been any intention that this should be available to non-parties and that the provisions were only binding between signatory states.[22]

This situation, in which both sides refuted the other's position, continued for some time but finally altered due to changes in circumstances. Technology for exploiting the seabed was by now available, but because the demand for seabed minerals had fallen the need for exploitation had diminished and deep seabed mining was not now envisaged for a considerable time. Some developing states, which had already ratified the Convention, started to worry about the prospect that they might have to pay burdensome contributions to the ISA, without having any guarantees of income from exploitation. The ISA, which the Convention established to govern the seabed once the Convention entered into effect, would require financial support and the developing states were worried that they might not be able to afford this without the participation of the developed states. In 1989, the Group of 77 called publicly for re-negotiation of the Law of the Sea Convention 'without any

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[22]This view has some problems because the extension of territorial sea and straits passage have a very close relationship. Without extending territorial sea, the issue of straits passage might not have been an issue. It is logical to consider that when the extension of territorial sea was agreed, in return a new measure for straits passage was agreed. In this sense, a state cannot pick up one right and reject the other. See Mahmoudi, *op. cit.*, p. 249. As of December 1994, out of 151 coastal states, 128 states have adopted limits of territorial sea, up to 12 miles, in conformity with the Convention. United Nations Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, *The Law of the Sea: National Legislation on the Territorial Sea, the Right of Innocent Passage and the Contiguous Zone* (New York: United Nations, 1995), p. iii.

preconditions'[23] and the UN Secretary-General started to hold informal consultations among interested parties the following year. Issues in the Convention relating to the deep seabed regime, which the developed states where unable to accept, were highlighted and these provisions in the Convention were subsequently changed to accommodate most of the United States' demands. At this time the United States, in order to prevent conflict with other states and because it was downsizing its navy, did in fact want to have a universal agreement of sea use, particularly one that secured its navigational rights.

In November 1993, the 1982 Convention was ratified (or acceded to) by a 60th state and because the Convention would therefore enter into effect in November 1994, exactly a year after the 60th ratification (or accession), the negotiation speeded up. Before the entry into force of the Convention, an agreement, 'Implementation on the part of deep seabed regime to the 1982 Convention', was adopted in the United Nations General Assembly and the United States and other developed states signed it.[24] The negotiation therefore ended successfully.

3. Conclusion

This chapter has introduced the thesis and given a background to the theoretical review. It has outlined that the world's sea use intensified because of growing interests in the sea by states and that this instigated the Law of the Sea Conferences in an attempt to determine new rules of use. Developing states and developed states

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[23]Renate Platzöder, *Third United Nations Conference on the Law of the Sea, Vol. X* (Dobbs Ferry, New York: Oceana Publishers 1992), p. 472.

[24]As of September 1998, 127 states including the EU had ratified the Convention, acceded to it or succeeded. The Implementation entered into force on 28 July 1996, and as of 31 December 1996, 71 states had expressed their consent to be bound by the Implementation. Although the United Kingdom ratified the convention in July 1997 and Russia in March 1997, the United States have not yet ratified it. See also United Nations, *The Law of the Sea: Declarations and Statements with respect to the United Nations Convention on the Law of the Sea and to the Agreement relating to the*

had different interests in sea use and they attempted to accommodate their interests in a 'package deal' aimed at trading navigational freedom for concessions in the deep sea bed regime. The advent of the Reagan Administration changed this and the United States rejected the Law of the Sea Convention because it judged that the terms of the deep seabed regime were unfavourable to it. After the Conference the United States and the Group of 77 objected to each other's positions. This situation was eventually altered due to changes in circumstances and both sides finally succeeded in producing an agreement on the deep seabed regime.

Having given a brief overview of the Law of the Sea negotiation the next two chapters contain the theoretical review, with chapter two examining the Law of the Sea in the context of international relations theory and chapter three examining it in the context of negotiation theory.

Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (New York: United Nations, 1997).

Chapter 2 The Law of the Sea Negotiation[25] in International Relations Theory

Despite the fact that there have been many descriptive accounts of the Law of the Sea negotiation,[26] there have only been a few attempts to explain the negotiation within the theoretical framework of international relations theory.[27] This is because the Law of the Sea negotiation lasted for 27 years and was influenced by various domestic and international factors.[28] For example, interests groups in the United States, such as fishermen and the deep seabed mining industry, influenced the United States' Law of the Sea policy during the negotiation, and an administration change significantly altered policy. The fact that these factors influenced states' policy on the law of the sea made the Law of the Sea negotiation difficult to explain in a consistent manner within a theoretical framework, mainly because assumptions of each theory do not cover the many factors which influenced the Law of the Sea negotiation. In this chapter, current attempts to explain the Law of the Sea negotiation in the context of international relations theory are critically reviewed and the lack of a framework which can explain both states' interactions at the negotiation and domestic factors is highlighted. Reflecting this, the relationship between states' actions in the international arena and domestic factors is then

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[25]In this study the Law of the Sea negotiation is the negotiation over sea use, which started in 1967 and ended in 1994, including the Third United Nations Conference on the Law of the Sea which was held between 1973 and 1982.

[26]See, K. J. Holsti, *International Politics: A Framework for Analysis*, 4th ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1983), p. 8.

[27]In international relations theory, the object of analysis is not limited to a negotiation. In terms of the Law of the Sea, states had a long history of interactions between them on sea use. On this point, international relations theory in general treats the Law of the Sea negotiation as part of a process to determine sea use.

[28]Domestic factors include domestic politics, bureaucratic politics and other moves in a state which influence states' actions, including other states' actions. International factors are factors influencing perceptions of individuals or policy-makers, apart from domestic factors.

examined. Finally the level-of-analysis problem in international relations, which investigates which level or unit of analysis can best explain international relations, is examined. It will be argued that although many agree that all the levels are interrelated, a theoretical framework of how to 'put together' the levels or units of analysis is yet to be established.

1. How the Law of the Sea negotiation was explained

There have been some attempts to explain the Law of the Sea negotiation within the context of international relations theory. In this section, the complex interdependence model of Keohane and Nye, the structural (modified) realism of Krasner, along with some other attempts are examined. It is concluded that all the attempts at explanation share the same problem, namely, too great an emphasis on a particular feature of the negotiation. As a result, attempts at explanation have failed to adequately examine or explain other important factors of the negotiation and although each attempt is capable of explaining a certain aspect of the negotiation none can explain the Law of the Sea negotiation in its entirety.

Robert O. Keohane and Joseph S. Nye took the Law of the Sea negotiation to be a feature of a world changing from one described by the conventional realist model to one characterised by complex interdependence. Keohane and Nye's *complex interdependence model*[29] was devised against the conventional realist model. The conventional realist view is that international politics is a struggle for power, dominated by organised violence in the form of war. This view assumes: first, that states are coherent units, namely unitary actors, and that they are the dominant

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[29]Robert O. Keohane and Joseph S. Nye, *Power and Interdependence* (Boston: Little-Brown, 1977) and *Power and Interdependence*, 2nd ed. (Harper Collins, 1989). The 2nd edition contains the original edition.

actors in world politics; second, force is a usable and effective instrument of policy and using or threatening force is the most effective means of wielding power; third, the 'high politics' of military security dominates the 'low politics' of economic and social affairs.[30] This conventional realist model assumes a static world, where states are unitary and rational actors and national interests are constant. Keohane and Nye regarded the conventional realist model as an 'ideal type' since it assumes an extreme set of conditions. They produced another 'ideal type', complex interdependence, reflecting the conditions of a changing world. The three characteristics of complex interdependence are multiple channels of contact, the absence of hierarchy among issues, and the minor role of military force.[31] Multiple channels of contact (communication) means that there are various channels of communication that connect societies, including interstate, transgovernmental and transnational relations. Interstate relations are the relationships between states and are a feature of the conventional realist model. Transgovernmental relations mean various communications between people in states other than the formal communications by governments. Including transgovernmental relations as a channel of communication requires relaxation of the realist assumption that states act coherently as units. Also, inclusion of transnational relations, which mean communication by transnational organisations, including multinational corporations, requires relaxation of the assumption that states are the only units. Multiple channels of contact as a characteristic of complex interdependence particularly highlights the close economic relationship between societies which make

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[30] *Ibid.*, pp. 23-24.

[31] *Ibid.*, pp. 24-29. In another place in their work they described the three characteristics as negligible role of force, lack of hierarchy among issues and multiple channels of contact. *Ibid.*, p. 113. Table 5.3. When considered that the complex interdependence is an analytical concept of 'ideal type', the latter characteristics seem to be more appropriate.

governments' policies more sensitive to each other, since a state's domestic economic policy may influence other states' economies.

The absence of hierarchy among issues means that all foreign policy agendas can no longer be subordinated to military security, since foreign policy agendas have become larger and more diverse. Issues, such as energy and resources for example, have assumed particular importance for many states. In addition, since the overlapping of domestic and foreign policy has become common among developed pluralist states, it has become difficult to say that a hierarchy among issues exists.

The minor role of military force means that particularly among developed pluralist states, fear of attack in general has declined, and fears of attack by one another are virtually non-existent. In addition, it is now recognised that force is often an inappropriate way of achieving other goals, such as economic and ecological objectives.

Keohane and Nye explained the contemporary world as being situated between the two ideal types, transforming from one similar to the conventional realist model, to one similar to the complex interdependence model. The Law of the Sea negotiation was considered by Keohane and Nye to represent this type of transformation of the world and they pointed out that the two main characteristics of complex interdependence, namely the minor role of force and the absence of hierarchy among issues, changed the way of carrying out issue-linkage, and that this was clearly observed during the Law of the Sea negotiation. Issue-linkage means linking one state's policies on some issues to another state's policies on other issues.[32] For example, in the conventional realist model, stronger states in terms of military power are able, through their military power, to coerce weaker states to

accept other issues which the stronger states want. In the world closer to complex interdependence, however, weaker states would be able to extract concessions or side payments from stronger states, since due to the minor role of military force and the lack of hierarchy between issues, stronger states have difficulty in forcing weaker states to accept the issues at stake. At the Law of the Sea negotiation, developing states succeeded in making the negotiation, until 1982, a trade-off between navigational freedom, namely security, and the deep seabed regime.[33] This situation was one that allowed weaker states to extract concessions from stronger states, particularly the United States which wanted navigational freedom, by trading that navigational freedom for favourable terms for deep seabed regime. This situation arose because the developing states wanted to obtain benefits from deep seabed exploitation, which, at the time, only a few industrialised states were considered to be capable of conducting. The built-in trade-off between navigational freedom and the deep seabed regime was considered by Keohane and Nye to be one of the manifestations of complex interdependence.

Although Keohane and Nye's model explained some aspects of the Law of the Sea negotiation, it has some weaknesses and is unable to explain the entire Law of the Sea negotiation. First, the characteristics of complex interdependence were partly a reflection of the time in which the work was published.[34] At that time, many believed that after the success of the OAPEC's oil embargo which highlighted the power of group action by developing states against developed states, international politics would change in favour of developing countries. In reality this did not

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[32]*Ibid.*, pp. 30-32.

[33]See for example, Finn Laursen, 'Security versus Access to Resources: Explaining a Decade of U. S. Ocean Policy', *World Politics*, Vol. 34, (1982), pp. 206-213. This trade-off is called a 'package deal'. See chapter 5 of this study.

happen. Keohane and Nye tried to prove that the shift from a conventional realist model to a complex interdependence model was occurring. They noted that '[a]lthough these conditions are not irreversible, major changes would be needed to reverse them. A strong argument could even be made that complex interdependence will increasingly characterize world politics, because each of the three conditions corresponds to a long-term historical change with deep causes of its own.'[35] Even though the change in international politics could, until 1980, be partly explained by the shift from the realist model to the complex interdependence model, after 1980 the situation changed and in my view reverted further than its original position towards the realist model. This can be illustrated by the fact that at the beginning of the Law of the Sea negotiation the United States attempted to solve the issue of navigational freedom by negotiation, namely co-operative behaviour. In 1983, however, the United States suggested its intention to use force in the case of coastal states' intervention against its Navy's navigational freedom.[36] The United States' announcement could be said to be coercive. In this sense the United States' behaviour, after nearly 15 years of negotiation, changed from co-operative to coercive. This was the opposite of Keohane and Nye's assumption, since they argued that the world was moving away from coercive behaviour, towards co-operative behaviour. Keohane and Nye later admitted, however, that many observers viewed, within the oceans issue area, the process of complex interdependence as shrinking rather than expanding.[37]

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[34]This work was originally published in 1977. See Keohane and Nye, 1989, *op. cit.*, Preface for Second Edition.

[35]Keohane and Nye, 1977, *op. cit.*, p. 227.

[36]Ocean statement by President Reagan on 10th March 1983, United Nations Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: current Developments in State Practice, No. I* (New York: United Nations, 1987), p. 137.

[37]Keohane and Nye, 1989, *op. cit.*, p. 256.

A second problem with Keohane and Nye's model is that contrary to the assumption of the minor role of military force, the United States' primary concern at the beginning of the Law of the Sea negotiation was its security. When the United States judged that its security concern was fulfilled outside of the Convention, it abandoned the negotiation. After its rejection of the Convention in 1982, the United States was ready to use force in order to enforce what it judged to be customary international law[38] and when the United States finally agreed to the 1994 Agreement, its primary concern was still security. At that time, although coastal states' unilateral claims over their adjacent seas, which would potentially interfere with the mobility of the United States Navy, were increasing, the United States was engaging in down-sizing its Navy. The United States judged that making a universal agreement would be less costly in terms of its security than not making an agreement. In this sense, the United States' primary concern was, all along, its security. Markus G. Schmidt has also pointed out the weakness of Keohane and Nye's complex interdependence in explaining the Law of the Sea negotiation in terms of the role of force and hierarchy between issues.[39] The fact that the United States' primary concern was always security and that the United States changed its position according to its judgement of the circumstances surrounding its security, weakens the framework of complex interdependence in explaining the Law of the Sea negotiation.

A further problem with Keohane and Nye's complex interdependence model is that it lacks a 'domestic politics' dimension.[40] Keohane and Nye have not rejected

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[38]The meaning of customary international law will be looked at in chapter 4 of this study.
[39]Markus G. Schmidt, 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 (Oxford: Clarendon, 1989), p. 6.
[40]Keohane and Nye ,1989, *op. cit.*, pp. 260-264.

the realist model,[41] and although they relaxed some assumptions of the conventional realist model by including transgovernmental and transnational relations, they still focused their analysis on states' behaviour, not on factors within a state. This reliance on states' behaviour is problematic in explaining the Law of the Sea negotiation because states' actions were often driven by domestic factors and states' actions therefore cannot be understood unless these domestic factors are also understood. For example, the advent of the Reagan Administration changed the United States' policy on the Law of the Sea, from one of attempting to achieve a universal agreement of sea use by producing a Convention, to one of rejecting the Convention. As such a domestic factor in the form of a change in Administration affected the state's action in relation to the Convention. The complex interdependence model is unable to explain this feature of the Law of the Sea negotiation in that the model does not take domestic factors into consideration. As a result, Keohane and Nye's model does not explain the relationship between states' actions and domestic factors and this is critical to an explanation of the Law of the Sea negotiation.

At the same time, Keohane and Nye emphasised transgovernmental relations, namely communications between societies by people other than governmental officials, and they pointed out that such multiple channels of contact blur the lines between domestic and foreign policy.[42] They suggested that multiple channels of communication are a feature of complex interdependence, however, this in itself does not explain how domestic factors influence an international situation or an international negotiation such as the Law of the Sea. Keohane and Nye clearly

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[41]Charles W. Kegley Jr. and Engene R. Wittkopf, *World Politics: Trend and Transformation*, 5th ed. (New York: St. Martin's Press, 1995), p. 32; Keohane and Nye, 1989, *op. cit.*, p. 250.

recognised the possibility of transgovernmental communication influencing both domestic and international politics but they did not develop their arguments beyond this and explain how the mechanism works by changing states' behaviour. In addition, the idea of transgovernmental communication appears to be too simplistic. For example, if transgovernmental communication between people in different states exists, it would be natural to consider that there would be similar relationships, intentionally or non-intentionally, between governmental officials and non-governmental people in different states. This type of communication influenced the Law of the Sea negotiation. For example, a Chilean whaling company lobbied the governments of other states. When Keohane and Nye mentioned multiple channels of communications they should have considered these cases as well, however, they did not.

The basic problem is that Keohane and Nye's analysis was focused on states' behaviour, since their model assumes that states are the principal actors in world politics.[43] This means that regardless of complex interdependence, which through its assumption of multiple channels of contact relaxed assumptions made by the conventional realist model that states act coherently as units and that states are the only units, Keohane and Nye still regard states as principal actors in world politics. As a result, they examined states' behaviour and it was this, in my view, which prevented them from developing their assumption of multiple channels of contact into an adequate explanation of the inter-relationship between states' actions at the negotiation and domestic factors which is required to adequately explain the Law of

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[42]Keohane and Nye, 1977, *op. cit.*, p. 26.

[43]This is the same as in Keohane's later work *After Hegemony*, in which he described states 'crucial actors' in world politics so that his analysis 'focuses principally on states'. Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, New Jersey: Princeton University Press, 1984), p. 25.

the Sea negotiation. Multiple channels of communication recognise the influence of domestic factors but because of the assumption that states' actions matter, that is that states are treated as 'unitary actors', domestic politics are not examined. For this reason, the complex interdependence model assumes that states' actions influence other states' actions in the international arena, and that domestic factors do not. In addition, the model assumes that domestic politics is not influenced by other states' behaviour.[44] As Keohane and Nye later admitted, their work of 1977 ignored 'domestic politics and the impact of international relations on domestic politics.'[45] As a result, their work of 1977 is incomplete and inadequate[46] in explaining the Law of the Sea negotiation, since that negotiation was influenced by various international and domestic factors. In later work, although Keohane and Nye came to recognise the importance of domestic sources of policy in explaining states' behaviour,[47] they did not develop a framework which could explain the influence and inter-relationship between international and domestic factors.[48] Without this framework an explanation of the Law of the Sea negotiation, such as the policy change by the Reagan Administration, is very difficult.

Stephen D. Krasner attempted to explain the Law of the Sea process using a *structural realism model*.[49] This model assumes that in keeping with the realist

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[44]They said that their explanation was 'at the level of the international system'. Keohane and Nye, 1977, *op. cit.*, Preface to First edition, p. vi.

[45]*Ibid.*, p. 256. Later, Milner and Keohane also pointed out the impact of 'Internationalization' on domestic politics. Helen V. Milner and Robert O. Keohane, 'Internationalization and Domestic Politics: An Introduction', in Robert O. Keohane and Helen V. Milner (eds) *[i]nternationalization and Domestic Politics* (Cambridge, New York: Cambridge University Press, 1996), p. 3.

[46]See, Keohane and Nye, 1989, *op. cit.*., p. 263.

[47]For example, Keohane and Nye, 1989, p. 256. Robert O. Keohane, *International Institutions and State Power: Essays in international Relations Theory* (Boulder: Westview Press, 1989), p. viii.

[48]Keohane and Nye admitted that 'it is terribly difficult to link domestic politics and the international system together theoretically without reducing the analysis to little more than a descriptive hodgepodge.' Keohane and Nye, 1989, *op. cit.*, p. 303, note 24.

[49]Stephen D. Krasner, *Structural Conflict: The Third World Against Global Liberalism* (Berkeley, California: University of California Press, 1985).

assumption states pursue power, but they do this within a set of constraints. In the case of the Law of the Sea negotiation the constraints were provided by the United Nations. Krasner looked at the negotiation as a manifestation of the Third World pursuing power by utilising the United Nations' system in their favour. The realist model assumes that states pursue national interests and power and that states act in their own interests.[50] Further, the model assumes that power is a necessary means to pursue national interests. The conventional realist view assumed that military power dominated other forms, and that states with the greatest military strength controlled world affairs. This view on power was later adapted in order to explain various international events and came to be viewed as the ability of an actor to get others to do something they otherwise would not do. Power is also conceived in terms of control over outcomes.[51]

Krasner's view of the Law of the Sea negotiation is based on the realist model, however, he qualified it by emphasising structural constraints, namely the international regime.[52] The international regime is defined by Krasner as 'sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations.'[53] In Krasner's view, under the rights of sovereignty, the United Nations system in particular represents an international regime, it being the place which guarantees all

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[50]It is difficult to give operational meaning to the concept of national interest. James E. Dougherty and Robert L. Pfaltzgraff Jr., *Contending Theories of International Relations: A Comprehensive Survey*, 3rd. ed. (New York; Harper & Row, 1990.), p. 124. See also Keohane and Nye, *op. cit.*, p. 35.

[51]See *Ibid.*, p. 11. Power is a very elusive concept, and difficult to measure. Dougherty and Pfaltzgraff, *op. cit.*, pp. 125-126.

[52]Krasner, *op. cit.* p. 28. See also Robert L. Rothstein, 'Epitaph for a monument to a failed protest? A North-South retrospective', *International Organization*, Vol. 42, No. 4 (Autumn, 1988), pp. 732-733.

[53]Stephen D. Krasner, 'Structural causes and regime consequences: regimes as intervening variables', in Stephen D. Krasner (ed.) *International Regimes* (Ithaca: Cornell University Press, 1983) p. 2. See also Krasner, 1985, p. 4 and p. 60.

states sovereign equality.[54] Krasner regards states as the basic actors in the international system, however, he relaxes the assumptions of the realist model that states are the only units and that states are coherent units. He relaxes the former by including other actors such as multinational corporations and international organisations, although these, he argues, are conditioned and delimited by state decisions and state power, and he relaxes the latter by saying that states' strategy will be affected by domestic attributes within structural constraints.[55]

The central point of Krasner's model is, however, its inclusion of the structural constraints. Krasner states that under these constraints the 'behaviour of states is determined by their relative power capabilities'[56] and that the Third World sought to maximise stability and control in order to reduce their vulnerability. The realist model assumes international politics as a struggle for power and does not consider such structural constraints. For this reason structural constraints, in terms of the Law of the Sea, were included in Krasner's model since, by itself, the realist model does not explain how states behaved during the Law of the Sea negotiation. The United States for example would never have agreed to join the negotiation or to concessions to the Group of 77 if the realist assumption of power is applied. Krasner considered that as the negotiation was conducted in the framework of the United Nations, the Third World's numerical strength played a significant role in determining the direction of the negotiation. If, therefore, the negotiation had been held outside of the United Nations the Third World would not have had the capability to determine the direction of the negotiation. Krasner stated that '[a]n analysis based on national power capabilities may explain the preferences of the

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[54]*Ibid.*, p. 8.
[55]*Ibid.*, p. 28.

Third World, but not how they were achieved in the oceans issue area.'[57] For this reason Krasner added the structural constraints of the United Nations to the realist model as the 'how' of achieving Third World preferences. The preferences of the Third World were defined in terms of power and control as much as wealth[58] and Krasner emphasised that the principle of the sovereign equality of states in the United Nations enabled Third World states to pursue their objectives.[59]

Krasner argued that the Third World states were 'behaving the way states have always behaved; they are trying to maximise their power—their ability to control their own destinies,'[60] and that the Third World supported 'international regimes based on authoritative, rather than market, principles and norms'[61]. Krasner's structural realist model therefore assumes that states pursue power but within structural constraints. Krasner's model explained that in the case of the Law of the Sea negotiation the structural constraints became the means for the Group of 77 to obtain power.

Krasner's model explains some aspects of the Law of the Sea negotiation. First, the Law of the Sea negotiation was prolonged because the issues of deep seabed mining regime were difficult to solve. The Group of 77 as the representative of the Third World, which placed strong ideological value on a deep seabed regime, did not give in easily to the United States because they were pursuing power to control the deep seabed regime. This complies with Krasner's view that the Third World pursued power. Secondly, the venue of the negotiation was basically within the United Nations and the procedures and precedents of that institution greatly affected

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[56]*Ibid.*, p. 12.
[57]*Ibid.*, p. 241.
[58]*Ibid.*, p. 3.
[59]*Ibid.*, pp. 7-8.

the negotiation. For example, the negotiation was first conducted in the Seabed Committee which was set up by the General Assembly. The Seabed Committee's decisions were taken by consensus among participants, however, Third World states were still able to utilise the General Assembly to make resolutions against the developed states in order to influence the negotiation, since the General Assembly adopts majority rule. In addition, the United Nations Law of the Sea Conference was organised within the framework of the United Nations because it was considered a natural venue, since past Conferences in regard to sea use were organised by the League of Nations and the United Nations. These organisational settings therefore influenced the outcome of the negotiation and these are examples of how structural constraints influenced states' actions. This feature complies with Krasner's view of structural constraints.

On the other hand, Krasner's view does not explain some important points. First, the ideology of the Group of 77 evolved during the negotiation and was not a precondition of it. Krasner's view generally neglects this development within the negotiation and also neglects changes in states' perceptions.[62] The Third World was not consolidated at the beginning of the negotiation, nor was the Group of 77 dominant as a group of Third World states early in the negotiation. Krasner's view that the Group of 77's refusal of Nixon's 1970 Trusteeship proposal was an example of the Third World being willing to trade wealth for control[63] illustrates a lack of understanding of this point. Trading wealth for control means that the Third World pursued power to control the deep seabed regime regardless of how much wealth

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[60]*Ibid.*, p. 12. See also pp. 305-306.
[61]*Ibid.*, p. 30.
[62]This point is closely related to the realist assumption. The conventional realist model assumes static national interests so that this change of interests during the negotiation should not have happened. This point will be considered in chapter 3.

would be accrued from Nixon's proposal, which was in fact very generous. In reality it was not as simple as that. In 1970, the real nature of deep seabed mining was still not clear, however, deep seabed mining was widely being thought of as a 'bonanza'. On this point, the Third World believed that deep seabed mining would bring them enormous wealth. In addition, the Group of 77's refusal of Nixon's Trusteeship proposal was not based on a thorough evaluation of that proposal[64] but was based on ideology as well as their negative feelings for the former suzerain. The Third World did not like the term 'trusteeship' because it smacked of colonialism. This means that the Third World did not refuse Nixon's Trusteeship proposal with a clear intention of trading wealth for control, rather it was the result of mixed feelings relating to a very vague idea of a deep seabed bonanza coupled with hostility towards colonialism. In addition, in 1994 the Group of 77 gave up their ideological objectives on the structure of the International Seabed Authority, which controls deep seabed development, in return for reducing the financial burden the ISA put on them. Without the financial contributions of the developed states each developing state which had ratified the 1982 Convention would have had to pay heavy contributions to support the ISA. In order to avoid this the Group of 77 gave up its long-standing objectives, such as a decision mechanism based on one-nation-one-vote, which would have given control of the ISA to them, in favour of a system which gave a few developed states control of the ISA. Krasner's model does not explain this since it contradicts his assumption of the Third World's trading wealth for control. With regard to the ISA the Third World did in fact trade control for a lesser financial burden.

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[63]*Ibid.*, p. 310.

Furthermore, Krasner's model does not explain the Reagan Administration's rejection of the 1982 Convention. Although Krasner says that it is possible to argue that the rejection 'was grounded in domestic American politics, not in international structures,'[65] he further argues that it is too simple to blame it 'on the vagaries of American politics.'[66] Based on a statement made by James Malone, the head of the United States' delegation to the Law of the Sea Conference at the time of the United States' rejection of the Convention, Krasner explained that economic interests and power and not domestic politics, led to the rejection.[67] Malone's statement explained the reasons for the United States' rejection in terms of deep seabed mining regime, stating that the Law of the Sea Convention's provisions ultimately sought the redistribution of the world's wealth. Malone pointed out that the inability of the United States to control the ISA's activities was the problem that led to the United States rejection. Malone's statement, which mentioned the United States' economic interests and power, could be said to be the manifestation of the realist world, however, the real cause of the United States' rejection was the change in government policy. The rejection of the Convention was commonly attributed to the advent of the Reagan Administration since it was widely believed that the Carter Administration would have signed. The administration change in the United States, namely domestic politics of a state, changed the United States' actions at the negotiation. Even if the United States' domestic politics cannot fully explain why the Conference failed to reach an agreement between the United States and the Group of 77, it can certainly explain some of it. For this reason the domestic politics

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[64]One of those who led the opposition against the Trusteeship proposal was Frank Njenga of Kenya, who later acknowledged that it would have been wiser to accept it. Schmidt, *op. cit.*, p. 28.
[65]*Ibid.*, p. 246.
[66]*Ibid.* p. 248.
[67]*Ibid.*, p. 247.

angle cannot be ignored. In addition, moves in Congress to legislate domestic seabed mining and the technological development in deep seabed mining greatly influenced the negotiation. These facts made the position of the Third World more difficult, since the United States was considered to be starting deep seabed mining without waiting for a universal agreement. Regardless of the fact that there was no direct action on the part of the United States, the Third World was influenced by moves within the United States to start mining. Krasner's model is also unable to explain these events. Furthermore, it is unable to explain the situation whereby states' actions at the negotiation directly influenced moves within the United States. Actions within the General Assembly, such as the Moratorium Resolution, which called for a moratorium on seabed exploitation until agreement was reached, or the Principles Resolution, which declared that the area of the seabed and ocean floor and the subsoil thereof as well as their resources are the common heritage, caused industry with interests in deep seabed mining within America to act to protect those interests. The industry lobbied the government (the administration and relevant agencies) and Congress to change the direction of the negotiation. These interactions between states' actions at the negotiation and domestic factors cannot be explained by Krasner's model, since it attempts to explain international events by states' interactions almost exclusively.

Krasner's structural realism is unable to explain the Law of the Sea negotiation not only because of the model's assumption that the Third World traded wealth for control, but also because of his realist assumption that states are 'unitary' actors. Krasner tried to explain the Law of the Sea negotiation from the view that states pursue national interests and power. In his view states are basic actors in world

politics[68] and how states behave is the primary source of explanation of international events. From this view, what is discussed within a state, or what happens in a state to influence international events is not important. What appears as a state's policy, however, is important, since Krasner suggested only 'examining the final policy decisions of states'.[69] This, in my view, is incorrect since a final policy cannot be divorced from the process by which it was made. Particularly when a policy is changed the process needs to be understood in order to understand that change. Krasner's model does not explain the difference in the decisions of the Reagan and Carter Administrations, which led to the policy change of the United States. In addition, the influences of states' actions at the negotiation on domestic factors and the influence of domestic factors on states actions are not explained, since Krasner assumes they are not important. Krasner's view therefore has the same problem as Keohane and Nye's complex independence model in that he ignores domestic factors and the relationship between domestic factors and states' actions at the negotiation. Keohane and Nye, and Krasner, all focused on states' actions when examining the Law of the Sea negotiation. Since states negotiated to make new rules for sea use, the negotiation appeared to be one by states. Keohane and Nye, and Krasner's' models interpreted the Law of the Sea negotiation from the perspective of state power.

Robert L. Friedheim, however, attempted to explain the Law of the Sea negotiation based on how states negotiated in the United Nations, without the perspective of states' power. Freidheim attempted to explain the Law of the Sea negotiation by focusing on states' behaviour at the negotiation, using a framework

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[68]*Ibid.*, p. 28.
[69]*Ibid.*, p. 306.

called *parliamentary diplomacy.*[70] The concept of parliamentary diplomacy came from the resemblance between the coalition formation of states in international negotiation and the political structure of parliamentary democracies, particularly Sweden, the Netherlands and Italy.[71] Friedheim noted some points of the Law of the Sea negotiation which were similar to a legislature's in parliamentary democracy. First, the number of negotiators was large and their values and interests were heterogeneous. Second, the list of issues to be negotiated was voluminous. Third, interactions were based upon a formal structure. Fourth, formal rules of procedure outlined the decision process to be followed. Fifth, a rich set of informal procedures developed to manage the interactions of states as they sought positive-sum outcomes. Positive-sum means everyone gains something and that the sum of everyone's gain is positive. This is the opposite of zero-sum which means that if someone wins, someone else loses, so that the sum of their gains is zero. Sixth, the nature of the issues themselves played an important role in shaping the negotiations. Finally, players did not change. From the beginning of the negotiation until the end of the Conference many delegates to the negotiation did not change and this is similar to legislatures since legislators are usually the same while they are seated at the parliament.[72] These seven characteristics can be observed in the Law of the Sea negotiation up until the end of the Conference in 1982.

Although there are some similarities between parliamentary diplomacy and the Law of the Sea negotiation, there are also fundamental differences. Whereas

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[70]Robert L. Friedheim, *Negotiating the New Ocean Regime* (Columbia, South Carolina: University of South Carolina Press, 1993)
[71]Daniel Druckman, Human Factors in International Negotiations: Social-Psychological Aspects of International Conflict (Beverly Hills, California: Sage Publications, 1973), pp. 47-48.
[72]Friedheim, *op. cit.*, pp. 47-48.

decision-making in a Parliament is by majority and is legitimatised,[73] in the Law of the Sea negotiation decision-making throughout the Seabed Committee and Conference was by consensus. Even when the majority approved the outcome at the end of the Conference, some states rejected it and the outcome was not automatically legitimatised. As Friedheim admitted, the choice mechanisms used by legislatures do not normally provide positive-sum outcomes to all participants because legislatures tend to pit majority against minority, to create winners and losers and a minority will accept the decisions. On the other hand, in the United Nations or in the world community 'defection, or refusal to accept a decision' is still common.[74] For this reason, there is a fundamental difference between parliamentary democracy and the Law of the Sea negotiation. In addition, parliamentary democracy is unable to explain the negotiation between the Group of 77 and the United States between 1982, when the conference ended, and 1994, when agreement was reached because there was no 'parliamentary' or formal conference discussions after the Law of the Sea Conference ended in 1982. During this period there were no direct negotiations between the United States and the Group of 77 until 1993 when the United States joined the negotiation at the United Nations Secretary-General's informal consultations. For this reason, Friedheim's perspective cannot adequately explain the Law of the Sea negotiation. Furthermore, Friedheim's work almost exclusively concentrated on analysis of states' behaviour at the negotiation, so that Friedheim's work shares the same limitations as Keohane and Nye's complex interdependence model and Krasner's structural realist model, both

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[73]See, Knut Midgaard, and Arild Underdal, 'Multiparty Conferences', in Daniel Druckman (ed.), *Negotiations: Social-Psychological Perspectives* (Beverly Hills, California: Sage Publications, 1977), pp 340-342.
[74]Friedheim, *op. cit.*, p. 45.

of which are unable to explain the relationship between states' actions at the negotiation and domestic factors in explaining the Law of the Sea negotiation.[75]

As outlined above, most attempts at explaining the Law of the Sea negotiation treat states as unitary actors. Some theorists, however, have attempted to look at the Law of the Sea negotiation from different perspectives, such as the bureaucratic politics model and the domestic politics model. The *bureaucratic politics model* looked at the negotiation from the viewpoint of United States foreign policy making. Ann L. Hollick, for example, looked at the policy dispute between coastal and maritime interests within the United States government which determined foreign policy.[76] Within the United States government, coastal interests were represented by economic agencies such as the Treasury Department or Interior Department. They basically wanted wider jurisdiction over adjacent seas in order to acquire larger economic interests from those areas. In terms of deep seabed mining they wanted a system having as few restrictions on its deep seabed miners as possible. Maritime interests were represented by the Department of Defense which originally wanted to have narrow coastal states' jurisdiction so as not to interfere with its Navy's mobility. Their primary concern was to acquire navigational freedom. These interests within the United States government conflicted. Hollick stated that '[o]ne cannot understand the U.S. position on the ocean issues without understanding the pressures and concessions produced by diverse national and commercial interests as they interact with these same kinds of interests in other countries', and she argued that the most fruitful approach to understanding how

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[75]This is the same as Kaufmann's Conference diplomacy. The literature of diplomacy tend to treat states as unitary actors. Johan Kaufmann, *Conference Diplomacy: An Introductory Analysis*, 2nd revised ed. (Dordrecht, The Netherlands: Martinus Nijhoff, 1988).

[76]Ann L. Hollick, 'The Clash of U. S. Interests: How U. S. Policy Evolved', *Marine Technology Society Journal*, Vol. 8, No. 6, (July 1974), pp. 15-28.

ocean policy was formulated was that of bureaucratic politics.[77] In this approach bureaucrats and governmental agencies were engaged in a continuous process of bargaining which was influenced throughout by domestic interests as well as foreign interests. For this reason, Hollick argued that 'the ocean policies that result are a product of contention--within the government and with domestic and foreign interests--and not of a rational centralized decision-making process.'[78]

This view essentially questions the conventional realist assumptions that states' national interests are constant and that states are unitary actors. In terms of national interests, bargaining within the government can result in change. With regard to unitary actors, there are many actors within the government influencing the United States' policies and as a result the state cannot be considered the unitary actor. In addition, this process of bargaining means that the policy outcome is a compromise between agencies within the government and might not be the ideal outcome for any of the agencies. This means that states are unable to be rational actors since the assumption of rational actor means that each state behaves as a cohesive unit trying to maximise its own national interests. Accordingly, the bureaucratic politics model assumes that interactions of bureaucrats and governmental agencies explain state's actions.

Hollick's view explains bureaucratic wrangling in the United States, however, this model does not necessarily explain United States' interactions with other states at the negotiation. Negotiators' choices are difficult to explain because what choices are available at the negotiation and what is to be chosen would depend on the situations at the negotiation, and also on other states' choices. For example, during

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[77] *Ibid.*, p. 16.
[78] *Ibid.*

the Conference the United States allowed the Group of 77 to build up a strong autonomous ISA, with the intention of binding the power of the ISA by devising detailed rules. At earlier stages of the Conference there were two options for the United States: first to deny a strong autonomous ISA outright; second to allow a strong autonomous ISA but to tie the ISA with detailed rules. The United States chose the second option largely due to the circumstances of the negotiation at the time.

At the end of the Conference many in the United States opposed the Convention and claimed there were many defects. This opposition, which originated from the choice taken by the United States, led to the United States' rejection of the Convention. What influences states' actions at the negotiation is difficult to explain by the bureaucratic model since the states' positions or tactics are usually decided after examination of many factors, including their counterparts' positions or tactics during the negotiation. States' actions, therefore, are influenced by states' interactions at the negotiation and this is not explained by the bureaucratic model. Moreover, states' actions sometimes bring unexpected outcomes. When Henry Kissinger, the United States Secretary of State, proposed a parallel system, which was the system to exploit the deep seabed by both the ISA's mining arm, the Enterprise, and private miners, Kissinger intended to end the Law of the Sea Conference as soon as possible by offering this concession to the Group of 77. The Group of 77 however did not take this as a concession, rather it fixed its position based on Kissinger's proposal and demanded further concessions. This situation cannot be explained by Hollick's model.

In addition, there are cases where bureaucratic involvement in policy-making is limited. For example, if interest groups in the United States directly lobby Congress

or the President, the role of bureaucracy would be limited. President Ford's 1976 decision to sign the Fishery Conservation and Management Act which extended the United States' jurisdiction on fisheries to two-hundred miles was an example of this. When coastal fishermen did not receive strong support to prevent foreign distant-water fishermen from catching fish in the United States adjacent seas from the Commerce Department they directly lobbied representatives in Congress and the President's decision was influenced by fishermen and their representatives in the Congress.[79] In this case the President's decision was not influenced by bureaucracy, namely the Commerce Department, and the bureaucratic politics model is unable to explain this. If the bureaucratic politics model is defined as career officials being the central element of policy-making, Finn Laursen judged that the bureaucratic politics model's ability to explain the Law of the Sea negotiation is epiphenomenal,[80] since motivations of bureaucrats are different from the motivations of legislators and presidents. Put another way, it would be insufficient to explain the Law of the Sea negotiation based on the motivations of bureaucrats. In addition, presidents might decide policy without considering policy co-ordination. Laursen also argued that it is necessary to go beyond the bureaucratic agencies and study wider societal forces in order to make predictions of the outcomes of negotiations.[81]

Schmidt also pointed out that the bureaucratic politics model is unable to explain the Department of Defense's change of policy during the above period, from supporting the Law of the Sea negotiation to withdrawing that support. Schmidt however regards the bureaucratic politics model as offering more explanation of the Law of the Sea negotiation than Laursen does. Schmidt has noted that 'if domestic

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[79]Laursen, *op. cit.*, pp. 217-218.
[80]*Ibid.*, p. 227.

political considerations ... account for the sweeping nature of the changes in [Law of the Sea] policy [of the United States] in 1981-2, bureaucratic politics affected the conduct, if not the outcome, of the [Reagan Administration's] policy review.'[82] At the final stage of the negotiation, bureaucratic infighting in Washington brought the reversal of the United States' policy on the Law of the Sea and this in turn affected the negotiation.

Considering the above, the bureaucratic politics influenced the Law of the Sea negotiation to some extent, however, the ability of the model to explain the Law of the Sea negotiation is limited. The bureaucratic politics model is unable to explain fully states' actions at the negotiation or the process that led to states' actions. In other words the bureaucratic politics model needs another theoretical framework to explain states' actions both domestically and internationally.

In terms of the domestic politics model, Laursen, while also looking at other models, examined the extent to which various domestic groups actively lobbied their interests, and the extent to which the interests of constituents influenced members of Congress to become involved in the process of formulating United States' ocean policy. Laursen termed this perspective the *domestic politics model.*[83] This model focuses on the role of Congress, interest groups, and public opinion, in determining state's foreign policy. This view can explain President Ford's 1976 decision to sign the FCMA mentioned above. The enactment of the FCMA was considered to undermine the United States' position, particularly at the Law of the Sea Conference and Ford's foreign and security advisers were against the enactment. Ford signed it, however, in order to secure his re-election. The number of coastal

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[81]*Ibid.*, pp. 213-218.
[82]Schmidt., *op. cit.*, p. 260.

fishermen in the United States is considerably small, about 100,000 people,[84] however, because they received sympathetic press as well as support from the general public and conservation and environmental groups, and because the President faced a tight political race, the coastal fishermen's lobbying influenced the President's decision.[85] This case illustrates how domestic politics influenced the United States' foreign policy without direct interference from either bureaucracy or the international negotiation. In addition, the domestic politics model explains the final stage of the decision making of the Reagan Administration when it decided to reject the Convention. Representatives of industry which had interests in deep seabed mining had a meeting with the President's policy adviser Edwin Meese, who was the 'moving force' on the Law of the Sea in the White House context. The aim was to reverse the instructions given to the United States' delegations to the Conference. This meeting strengthened Meese's belief that he could not recommend acceptance of the Law of the Sea Convention to the President and the choices that became available for the United States were abstention or rejection in the vote for the Convention.[86]

The domestic politics model, despite explaining some aspects, is by no means a comprehensive perspective that explains the entire Law of the Sea negotiation. For example, the domestic politics model is unable to explain actions taken by the United States' Department of State. The State Department wanted the negotiation at the Conference to end successfully, so it tried to accommodate the Group of 77 in its instructions to delegates of the Conference. Its attempts however were

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[83]Laursen, *op. cit.*, p. 218.
[84]*Ibid.*, p. 222.
[85]*Ibid.*, pp. 220-222.
[86]Schmidt, *op. cit.*, pp. 248-249.

overturned by other moves in the United States, such as actions taken by the industry towards Meese. In addition, the State Department, without success, tried to make the United States abstain from voting for the Convention, as opposed to rejecting the Convention. The domestic politics model is unable to explain the action taken by the State Department since, according to Laursen's definition, a government department or bureaucracy is outside the scope of the domestic politics model. Moreover, this model has the same problem as the bureaucratic politics model in that it is unable to explain influences of states' interactions on state's actions at the negotiation. It is therefore unable to explain the Law of the Sea negotiation since states' interactions influenced states' actions. In order to explain the Law of the Sea negotiation, another framework is required.

Based on examination of the five perspectives of the Law of the Sea negotiation, the assumptions of each model are summarised below in Table 2-1.

Table 2-1: Evaluation of the theories

• **Models**	• **Assumptions**	• **Evaluation**
• Complex interdependence	• World is changing from the conventional realist model to complex interdependence model. • Its three conditions are: Multiple channels of contact; Minor role of military force; Absence of hierarchy among issues. • States are principle actors and states' actions are important.	• We cannot definitely say that the World is moving toward complex interdependence model. • Multiple channels can explain some aspects but the concepts of minor role of military force and absence of hierarchy among issues are weak. • The influence of interactions of states on domestic factors, and the influence of domestic factors on the interactions of states are not explained.
• Structural realism	• States' behaviour matters. • Structural constraints restrain states' actions. • The Third World traded wealth for power.	• Can explain the UN system. • Cannot explain the US action during and after 1982. • Cannot explain Third World concessions on the seabed regime.
• Parliamentary diplomacy	• States' behaviour is important. • The Law of the Sea negotiation is similar to parliamentary democracy.	• Until 1982 the Law of the Sea Conference and parliamentary diplomacy are similar but the decision making mechanism is fundamentally different. • Does not explain the negotiation after 1982. • The influences of interactions of states on domestic factors, and domestic factors on the interactions of states are not explained.
• Bureaucratic politics	• Bureaucratic politics defines policy and can explain US actions.	• Does not explain states' actions at the negotiation nor process which led to states' actions.
• Domestic politics	• Domestic politics can explain US actions. • Congress, interest groups' behaviour matters.	• Does not explain states' actions at the negotiation nor all the domestic factors.

As shown above, of the five different views,[87] complex interdependence, structural realist, parliamentary diplomacy, bureaucratic politics and domestic politics models, there is no one model which can explain the Law of the Sea negotiation in a single theoretical framework. There have, however, been some attempts to put together different models in order to explain the Law of the Sea negotiation. After examining four models: realist (statism), complex interdependence (international interdependence), bureaucratic politics and domestic politics model based on rationality,[88] Laursen concluded that each model has some defects in explaining the Law of the Sea negotiation, but that the realist model and domestic politics model can explain most.[89] Laursen pointed out that the realist model was useful for understanding the primacy of security interests through the 1970s, and the importance of access to resources, which were then considered of strategic importance, but that this model was unable to explain changes in policy in the United States.[90] The realist model did not foresee conflict between the President and his foreign policy and security advisers, which occurred with the FCMA. From

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[87]There are many classifications of models. Kegley and Wittkopf classify the theories of international politics into four perspectives: Idealism; Realism; Behaviouralism; and Neoliberal Institutionalism. Kegley and Wittkopf, *op. cit.* James E. Dougherty and Robert L. Pfaltzgraff Jr. introduced different perspectives, such as environmental perspectives and systemic perspectives. James E. Dougherty and Robert L. Pfaltzgraff Jr., *Contending Theories of International Relations: A Comprehensive Survey*, 3rd. ed. (New York; Harper & Row, 1990). In this study, the above five models were chosen after considering four models: the realist (statism), complex interdependence (international interdependence), bureaucratic politics and domestic politics model, which were assessed by Laursen and Schmidt in explaining the Law of the Sea negotiation. These five models were all attempts to explain the Law of the Sea negotiation by adopting each model. Schmidt included the structural realism model in the realist model. As the conventional realist model has difficulties in explaining international events, such as the Law of the Sea negotiation, structural realism and complex interdependence models were devised and adopted to explain them. Therefore in this study the conventional realist model was treated as a basis of these two models. Parliamentary diplomacy model treats states as unitary actors, however, it does not emphasise power which is the basic assumption of the realist model so that it was treated separately.

[88]Laursen defines the rationality as follows: The statist perspective assumes that central decision makers will pursue national interests in a rational manner—i.e., they will try to maximise the values and interests they perceive to be important from the national point of view. The three other models suggest that central decision makers are constrained in their value maximisation by both international and domestic factors. Laursen, *op.cit.*, 225.

Laursen's view, realist and domestic politics models largely compliment each other because realist goals set important parameters for United States' ocean policy and the changes in policy 'may largely be explained by domestic politics'.[91]

Schmidt also examined the four models, and concluded that no single model is able to explain the Law of the Sea negotiation.[92] Schmidt emphasised the role of United States' domestic politics in the Law of the Sea negotiation and stated that it was vital to examine Congressional input into the formation of United States' ocean policy, since domestic forces are channelled into the political system via Congress, and that 'presidents may follow the views of domestic groups and lobbies instead of the imperatives of realism or international interdependence.'[93] This means that presidents may choose their policy according to some domestic opinions, not considering national interests or relationships with other states as primacy. Congress in fact led the moves towards United States' domestic legislation of deep seabed mining. This was considered a threat by the Group of 77 and to be in defiance of the Law of the Sea negotiation, and this greatly influenced the negotiation. Domestic groups in the United States influenced the Presidents' decision, in the case of FCMA, and this, coupled with Congress's moves toward legislation, might not be considered to be in the best interests of the United States in that it damaged its relationships with other states. A similar decision situation was observed in the final stages of the Law of the Sea Conference when domestic interest groups influenced the decision of the President to reject the Law of the Sea Convention. These

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[89]*Ibid.*, p. 198.
[90]*Ibid.*, p. 226.
[91]*Ibid.*, p. 198.
[92]Schmidt, *op. cit.*, pp. 4-9.
[93]*Ibid.*, p. 9.

examples show the reasons why domestic politics needs to be considered as much as any other perspective in explaining the Law of the Sea negotiation.

It might be considered possible to explain the Law of the Sea negotiation using a combination of any of the above models, however, this is difficult since the models are based on different assumptions. For example, the complex interdependence model does not deny the basic realist assumption that states are principal actors in world politics and it emphasises that states' actions are important in explaining international events. This is the same in the case of the structural realist model and parliamentary diplomacy. Complex interdependence, structural realist and parliamentary diplomacy therefore have a common assumption that states' interactions basically determine states' actions. States are therefore considered as 'unitary actors', although the level of cohesiveness of states differs depending on the models. On the other hand, the domestic politics model focuses attention on domestic politics which determines states' policy. The bureaucratic politics model focuses on bureaucrats and governmental agencies. The common assumption of these two models is that domestic factors basically determine states' actions. In other words the former three models focus on states' interactions as the source of states' actions, whereas, the latter two models focus on domestic factors as the source of states' actions. These assumptions are basically opposite. Therefore even if, as Laursen stated, the realist model and domestic politics model could be combined to explain the Law of the Sea negotiation another model to bridge the difference in assumptions between the two models would be required. As a result, another model is needed to set different assumptions which can satisfy the

conditions of the Law of the Sea negotiation. Developing such a model would need a formula to inter-relate states' actions at the negotiation and domestic factors.[94]

Examination of the five models suggests that none of them are able to explain the Law of the Sea negotiation. Each model examined in this section can explain a part of the negotiation but none of them can explain all of it. The first three models, complex interdependence, structural realist and parliamentary diplomacy are limited in their ability to explain how domestic factors influenced the negotiation. The latter two models, bureaucratic politics model and domestic politics model are also limited in their ability to explain what influenced states' actions which ultimately influenced the outcome of the negotiation. The reason why the above models fail to explain the process is ultimately the lack of a framework which explains states' interactions at the negotiation and domestic factors together in a single framework.

2. The relationship between states' actions in the international arena and domestic factors

In terms of the relationship between states' actions in the international arena and domestic factors, there is an international relations theory which attempted to explain this relationship. Peter M. Haas attempted to explain part of the relationship by using the *epistemic communities perspective*.[95] Epistemic communities are networks of 'professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area that transcend national boundaries.'[96] Further, 'what bonds members of

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[94]In relation to this problem, two-level game perspective is assessed in chapter 3.
[95]Peter M. Haas, 'Do regimes matter?: Epistemic communities and Mediterranean pollution control', *International Organization*, Vol. 43, No. 3, (Summer, 1989); Peter M. Haas, 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization*, Vol. 46, No. 1, (Winter, 1992).
[96]*Ibid.*, p. 3.

an epistemic community is their shared belief or faith in the verity and the applicability of particular forms of knowledge or specific truths'.[97] This means that members of epistemic communities may stick to their common beliefs and prefer those beliefs to their own states' national interests. This perspective pointed out the ties between bureaucrats in different states with regard to environmental policy.[98] Haas illustrated that bureaucrats in different states co-operated to persuade their respective politicians to co-ordinate environmental policy. This suggests that state boundaries, even at the level of bureaucracy which is supposed to be most sensitive to them, are not always relevant and that states are not always unitary actors. This perspective is not able to explain the whole Law of the Sea negotiation since this perspective aims to explain the relationship between policy co-ordination among bureaucrats in different states and states' behaviour as a result of that co-ordination. The perspective does not explain the various relationships between states' actions in the international arena and domestic factors, other than the relationship between members of epistemic communities and states' actions. During the Law of the Sea negotiation, for example, there is no evidence that such an epistemic community existed between the Group of 77 and the United States, rather, experts in the delegations of both sides made opposite claims in terms of feasibility of deep seabed mining. In addition, even when the 1994 Agreement was adopted and when most states' representatives understood that deep seabed mining would not start in the foreseeable future, the United States and the Group of 77 did not share beliefs or faith in the verity and the applicability of deep seabed mining. Representatives of the Group of 77 felt financial burdens on the ratified member states were too heavy

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[97]*Ibid.*, p. 3. note 4.
[98]Haas, 1989, *op. cit.*, pp. 388-389.

and so conceded to the United States in order to share the cost of the ISA with the developed states. The epistemic community perspective is not therefore capable of explaining the Law of the Sea negotiation.

This perspective, however, falls 'somewhere between the international and domestic level'[99] and it is significant here because the five models examined are unable to explain this case of policy co-ordination among bureaucrats who belong to an epistemic community in different states. This perspective is able to explain how actions of some bureaucrats in some states influence other states' policies. The problem is that it is unable to explain actions of bureaucrats who do not belong to epistemic communities, nor is it able to explain influences of domestic and international factors on bureaucrats, since the epistemic communities perspective is based on beliefs of a limited group of people who belong to epistemic communities and share an identical belief. In addition, if domestic interest groups which do not belong to epistemic communities influence the political leadership in a state, this is not within the scope of epistemic communities perspective. Likewise if states' interactions influence the outcome of the negotiation this also is not within the scope of the perspective.[100]

The inability of existing theories to explain states' actions in the international arena and domestic factors together in one theoretical framework was also pointed out by Helen Milner. She examined theories of international co-operation and pointed out that the weakness of these theories was the lack of a domestic viewpoint. As the Law of the Sea negotiation was concluded with a universal agreement it can be considered as an example of international co-operation. Milner

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[99]Helen Milner, 'International Theories of Cooperation among Nations: Strengths and Weaknesses', *World Politics*, Vol. 44 (April, 1992), p. 488.

defined international co-operation as occurring 'when actors adjust their behaviour to the actual or anticipated preferences of others, through a process of policy co-ordination.'[101] This definition is applicable to the Law of the Sea negotiation.

Milner stated that one of the great weaknesses of the literature on international co-operation is 'its neglect of domestic politics,'[102] and at the same time, that 'no single theory of domestic politics exists today to explain international co-operation.'[103] This neglect of domestic politics was brought about because of 'the centrality of anarchy as the condition for differentiating between domestic and international politics' and because of 'the use of game theory'.[104] In terms of the former, international politics has been considered separately from domestic politics because whereas a state has a central force to enforce order, there is no central force to make states comply with the rules of international society. This has been considered the key characteristic in distinguishing international politics from domestic politics. With regards to game theory, the premise is that states are unitary and rational actors.[105] When states are considered as such, there is no room for domestic politics to explain international events, since each state is supposed to behave as a unit trying to maximise its own national interests. The assumption of the state as a unitary actor fails to recognise that domestic pressure may force a state into a position where it does not act either rationally or in its own best interests. Taking the above two reasons together, study of international politics has often been

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[100]On this point, Milner stated that Haas 'has no theory about domestic politics that explains why and when an epistemic community can have an impact on the domestic system'. *Ibid.*, pp. 488-489.

[101]*Ibid.*, p. 467

[102]*Ibid.*, p. 481. Domestic politics here seems to include bureaucratic politics as well. The term, domestic factors, in this study, include domestic politics, bureaucratic politics and other moves in a state which influence states' actions, including other states' actions.

[103]*Ibid.*, p. 494.

[104]*Ibid.*, p. 489.

[105]As for game theory, see chapter 3.

considered as the study of how states behave in order to maximise their national interests under the conditions of anarchy. These factors make simultaneous consideration of states' actions in the international arena and domestic factors impossible.

In order to overcome the problem that states' actions are influenced by domestic factors, the differentiation between international politics and domestic politics has been relaxed by the complex interdependence model, which emphasised communication between societies. In addition, the assumption of states as unitary and rational actors has also been relaxed by the complex interdependence model and structural realist model. The complex interdependence model relaxed this assumption by including transgovernmental relations and transnational relations, in addition to interstate relations. The structural realist model also includes structural constraints, that is an international regime, which influences states' choices. This relaxation of assumptions, however, has not overcome the problem that international relations theories face in explaining the Law of the Sea negotiation. The inability of models of international relations theory to explain the Law of the Sea negotiation is highlighted by the problems of differentiating the international arena and domestic factors.

3. The level-of-analysis problem

The examination of international relations theory in sections one and two of this chapter highlighted that the problem in explaining the Law of the Sea negotiation stems from the assumption that the international arena is separate from the domestic domain and because of this assumption what influences states' actions at the negotiation and what influences domestic factors cannot be explained simultaneously in one framework.

This problem directly relates to the level-of-analysis problem which essentially asks whether it is the international system or other factors which causes international events and produces the outcomes. Although previously recognised by Waltz and Kaplan, this problem began to be investigated when J. David Singer, who coined the term 'level-of-analysis problem', asked 'which level [of analysis] offers the most fruitful approach to answering the question: [for example] what are the sources and causes of war?'[106] The levels of analysis are usually considered as individuals, states, the international system, and sometimes the bureaucracy. There are various opinions about these levels,[107] for example, Kenneth N. Waltz considered two levels of analysis: the international system (structure) level and the units (states) level.[108] Waltz argued that, the 'structure [of international system] may determine outcomes aside from changes at the level of the units and aside from the disappearance of some of them [(units)] and the emergence of others'[109] and '[s]tates are the units whose interactions form the structure of international-political systems.'[110] This means that the international system determines international events and the international system is constructed by states' interactions. Accordingly, Waltz's analysis is based on two levels, that is, the international

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[106]J. David Singer, 'International Conflict: Three Levels of Analysis', *World Politics,* Vol. 12, No. 3 (1960), p. 453. See also J. David Singer, 'The Level of Analysis Problem in International Relations', in K. Knorr and S. Verba (eds) *The International System: Theoretical Essays* (Princeton, New Jersey: Princeton University Press, 1961); Barry Buzan, 'The Level of Analysis Problem in International Relations Reconsidered', in Ken Booth and Steve Smith (eds), *International Relations Theory Today* (Cambridge: Polity Press, 1995), pp. 200-201. Kenneth N. Waltz and Morton A. Kaplan's works investigated the problem before Singer, however, Singer's work called academics' attention to this problem.

[107]For example, Jervis referred to two to five perspectives. Robert Jervis, *Perception and Misperception in International Politics* (Princeton, New Jersey: Princeton University Press, 1976), p. 15. Russett and Starr referred to six levels of analysis. Bruce Russett and Harvey Starr, *World Politics: The menu for choice*, 5th ed. (New York: W. H. Freeman and Company, 1996), pp. 13-16.

[108]Kenneth N. Waltz, *Theory of International Politics* (Reading, Mass: Addison-Wesley, 1979). Although Waltz stated that 'in reality, everything is related to everything else, and one domain cannot be separated from others' (*Ibid.*, p. 8.) he indicated these two levels as essential elements.

[109]*Ibid.*, p. 78.

system and states' interactions. In Waltz's analysis the domestic level within each state is irrelevant. As a result, Waltz's framework does not explain the domestic factors which influenced states' actions at the Law of the Sea negotiation.

There have been many attempts to solve the level-of-analysis problem, however, none of these attempts have been conclusive. For example, Martin Hollis and Steve Smith have set out three layers of the level-of-analysis: the relationship between the international system and nation state; the nation state and bureaucracy; and the bureaucracy and individual. 'At each stage the 'unit' of the higher layer becomes the 'system' of the lower layer'.[111] This framework is potentially able to put every layer together if the mechanism of the link between each layer can be identified. This requires an explanation of how changes in the individual level relate to changes in the international system level, however, such an explanation has not been devised. In addition, Hollis and Smith's analysis also has the problem of presenting all levels in sequence from bottom to top. When there are some actions which bypass one of the layers, for example an individual influences a state's action directly, it is outwith the scope of this framework. As a result, this framework is unable to explain the situation when United States President Ford was influenced by coastal fishermen directly, as opposed to via the bureaucracy.[112]

A. Nuri Yurdusev distinguished the 'level of analysis' from the 'units of analysis.'[113] According to him, the levels (of analysis) are the philosophical, the

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[110]*Ibid.*, p. 95.

[111]Martin Hollis and Steve Smith, *Explaining and Understanding International Relations* (Oxford: Clarendon Press, 1990), p. 8.

[112]See section 1 of this chapter.

[113]This position that distinguished the 'level of analysis' from the 'units of analysis was first presented by W. B. Maul, 'The level of analysis problem revisited', *Canadian Journal of Political Science*, Vol. 61, No. 1. (1973).

theoretical and practical levels.[114] The units (of analysis) are the individual as an actor, the society or groups of individuals (agglomeration of actors) and the universe or humanity (the all-inclusive actor).[115] Yurdusev argues that 'level of analysis is inclusive of unit of analysis, in the sense that those operating at any level may choose any of the units, while remaining still at the same level. Therefore, level of analysis and unit of analysis are not identical, but interwoven.'[116] He concludes that 'for analytical precision and because of the interwoven nature of the different units, it might be better to analyse the subject in question from all three points of view.'[117] Yurdusev pointed out the interwoven nature of the different units, but it is doubtful that his proposal, that is analysis of the subject in question from all three points of view, would be able to explain the events any better than others since his analysis may make the process more complicated. If the analysis needs to be conducted at three levels, namely, the philosophical, the theoretical and practical levels, the analysis should start, as Yurdusev pointed out, from identifying these three levels and then analysing an event from each of the level's needs. Such analysis divides the phenomena of events methodologically and makes the whole matter more complicated since there could be three explanations of an event. In addition, there still remains the question, how are the three levels assimilated into one analysis? Yurdusev, however, argues as his conclusion that 'one needs to be clear about both the level and the unit of analysis before undertaking a particular study in order for the context of the subject and the premises under which one is

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[114]A. Nuri Yurdusev, "Level of Analysis' and 'Unit of Analysis': A Case for Distinction', *Millennium: Journal of International Studies*, Vol. 22, No. 1, (1993), p. 78.
[115]*Ibid.*, p. 80.
[116]Ibid.
[117]*Ibid.*, p. 82.

operating to be known.'[118] This conclusion showed that Yurdusev did not attempt to assimilate the three levels of analysis.

Barry Buzan proposed separating the 'units of analysis' from 'sources of explanation'. The five units of analysis, according to him, are system (structure), subsystem, unit (state), bureaucracy and individuals. The sources of explanation are interaction capacity, structure and process.[119] Buzan, like Yurdusev, does not seem to explain international events fully. For example, if a particular event in the international arena is analysed, we can ask, who caused it? The answer might be a certain individual, or a group of people. The next question is then, why did he (they) do it? He (they) might answer that he (they) considered it the best option (or chose it instinctively) under a specific set of conditions. The next question becomes what were those conditions and what caused them? This chain of questions shows that each question is not independent and eventually all the units, that is, Buzan's System, Subsystem, Unit, Bureaucracy and Individuals, can be interrelated. Buzan himself has claimed that '[i]n international relations generally, all the levels are powerfully in play',[120] however, Buzan's concluding question, 'if two or more units and sources of explanation are operating together, how are their different analyses to be assembled into a whole understanding?'[121] shows that this method of segmenting units is limited.

The above arguments suggest that each level or unit, irrespective of the authors' definition of them, are interrelated. Nowadays many agree with this perspective. For example, Kegley and Wittkopf stated that 'common sense suggests that there are

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[118]*Ibid.*, p. 88.
[119]Buzan, *op. cit.*, pp. 210-212.
[120]*Ibid.*, p. 213.
[121]Ibid.

interrelationships across all levels and that trends and transformation in world politics are linked simultaneously to forces operating at each level.'[122] Further, Bruce Russett and Harvey Starr stated that '[a]ny level of analysis ignores something important' because 'everything affects everything else'.[123]

If it is concluded that all units or levels are interrelated, the problem remains how various levels or units can be put together in order to explain an international event such as the Law of the Sea negotiation?

4. Conclusion

Despite many descriptive accounts of the Law of the Sea negotiation, there have been few attempts to explain the Law of the Sea negotiation within the theoretical framework of international relations theory. This is due to the fact that the Law of the Sea negotiation was a long process, lasting for twenty-seven years. Consequently it was influenced by various international and domestic factors and it has been very difficult to explain this within a theoretical framework. By examining attempts to explain the Law of the Sea negotiation, it is concluded that none of the five models examined, nor a combination of them, is able to explain the entire Law of the Sea negotiation.

The reason for this lack of explanation is that most of the theoretical models focus on states' behaviour and therefore ignore domestic factors. When a model does focus on domestic factors, it is unable to explain the interactions between states at an international negotiation such as the Law of the Sea negotiation. The problem with both types of theoretical model is that they clearly differentiate the international arena from domestic factors. In addition, many theories assume the

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[122]Kegley and Wittkopf, *op. cit.*, p. 40.

state is a unitary and rational actor. Models which were examined in this chapter relaxed these assumptions or focused on domestic factors in an attempt to make an adequate explanation of the Law of the Sea negotiation. Nonetheless, they were still unable to explain international relations and domestic factors together in one framework, so that ultimately these models failed to explain the Law of the Sea negotiation in its entirety.

The examination of the level-of-analysis problem, which relates directly to the simultaneous examination of international relations and domestic factors, suggests that all units or levels are interrelated, however, a theoretical framework of how to 'put together' the levels or units of analysis has not yet been successfully achieved. This issue is the central reason why international relations theory cannot explain the Law of the Sea negotiation and this issue will therefore form part of the basis of the detailed examination of the Law of the Sea negotiation carried out in chapters four to eight.

This study aims to examine the process of the Law of the Sea negotiation. Since the Law of the Sea negotiation was a negotiation as well as an international event, it is necessary to understand the theoretical basis of international negotiations as well as international relations. As such, prior to the detailed examination of the Law of the Sea negotiation in chapters four to eight, the next chapter examines the Law of the Sea negotiation in the context of negotiation theories.

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[123]Russett and Starr, *op. cit.*, p. 18.

Chapter 3 The Law of the Sea Negotiation in Negotiation Theory

As the Law of the Sea Convention, including the 1994 Agreement, was produced through negotiation,[124] the process needs to be looked at in the context of negotiation theory. There has not, however, been much analyses in this context because most negotiation theory assumes that a negotiation lasts for a short period of time and that negotiators', or actors,'[125] preferences[126] do not change during a negotiation.[127] The Law of the Sea negotiation lasted for twenty-seven years and it was greatly influenced by various international and domestic factors[128] that arose during that period. As a result, actors' preferences changed significantly during the course of the negotiation. This fact makes analysis difficult. There have been some attempts to overcome this problem, however, most of these attempts do not explain how actors' preferences were defined or how they altered. When a negotiation is of a short duration, the manner in which preferences are defined does not matter since

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[124]The word negotiation is used as the same manner as bargaining. See David A. Lax and James K. Sebenius, *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain* (New York: The Free Press, 1986), p. 6. footnote 1; Jacques Rojot, *Negotiation: From Theory to Practice* (Hampshire: Macmillan, 1991), pp19-21. There are some cases which look like negotiation but are not. See Fred Charles Iklé, *How Nations Negotiate* (New York: Harer & Row, 1964), p. 27.

[125]Actors are usually considered as individuals or entities engaging in negotiation.

[126]Preferences are perceived interests of individuals or entities and they are considered to determine actors' behaviour at the negotiation.

[127]On this point, Spector's view is different and he attempts to explain the circular relationship between negotiators' preferences and the environment of the negotiation, namely the preferences of the negotiators could be changed by the negotiators' perception of the environment of the negotiation. See Bertram I. Spector, 'A Social Psychological Model of Position Modification: Aswan', in I. W. Zartman (ed.) *The 50% Solution* (Garden City, New York: Anchor Press, 1976), pp. 344-347.; Bertram I. Spector, 'Decision Theory: Diagnosing Strategic Alternatives and Outcome Trade-Offs', in I. William Zartman, ed., *International Multilateral Negotiation: Approaches to the Management of Complexity* (San Francisco: Jossey-Bass, 1994), p. 75. This point will be looked at later in this chapter.

[128]Domestic factors here mean anything within a state, which influence an international negotiation. Domestic politics influences the state policy at the negotiation and is part of domestic factors. While domestic politics is considered to influence the state policy within the state, domestic factors could influence other states' actions at the negotiation.

those preferences do not change. Where preferences change, however, understanding how and what defines preferences and preference change becomes critical to understanding the negotiation as a whole.

The aim of this chapter is to examine attempts to explain the Law of the Sea negotiation in the context of negotiation theory. Following on from chapter 2, which examined attempts to explain the Law of the Sea negotiation in the context of international relations theory, problems in explaining the negotiation within the context of negotiation theory are critically examined. In international relations theory, analysis usually focuses on the international system in which an international negotiation is conducted. Negotiation theory, however, focuses on the negotiation itself, so that the scope of negotiation theory is much narrower than that of international relations theory. Reflecting this difference between international relations theory and negotiation theory, the analysis of the Law of the Sea negotiation in negotiation theory is generally fragmented and the number of analyses is few.

1. The Law of the Sea negotiation and negotiation theory

James K. Sebenius has pointed out that many people, particularly diplomats, view the process adopted in negotiating the Law of the Sea as inappropriate for establishing a convention[129] mainly because it absorbed so much time and energy. This type of argument does not attempt to clarify or explain the mechanism of the Law of the Sea negotiation since it only comments on whether the process itself was a suitable one. As a result these arguments, centring on appraisal of the negotiation, have been ignored in this thesis.

There is in fact very little analyses of the Law of the Sea negotiation in the context of negotiation theory. This lack of analyses originates from a discrepancy between the assumptions of negotiation theories and the characteristics of the Law of the Sea negotiation which are not within the assumptions of the negotiation theories. Analysing the Law of the Sea negotiation using these theories is difficult because their scope is limited to negotiations with much narrower and much more limited conditions than those which occurred in the Law of the Sea negotiation.

There are in general two lines of theory of negotiation, game theoretic models and behavioural models.[130] *Game theory* deals with the way in which super-rational people behave in competitive, interactive situations. These people know the 'rules of the game' very well and 'each can think about what the others are thinking about what he is thinking, *ad infinitum*.'[131] This model is useful in clarifying the nature of the choice situation, namely when and how the players (actors or negotiators) best choose from alternate possible moves, and in demonstrating whether a co-operative solution, namely the players co-operating to solve the issues at stake, is likely or not. The problems with game theoretic models are that before these models can operate a number of parameters, such as the probabilities a player will use given 'moves' or a player's preference orderings, must be determined by using non-game theoretic models, such as examining the player's behaviour.[132] In addition, there is no guarantee that a player will, in practice, choose the best possible 'moves'. Choice

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[129]James K. Sebenius, 'Designing Negotiations towards a New Regime: The Case of Global Warming', *International Security*, Vol. 15, No.4 (Spring, 1991), p. 116.
[130]Game theoretic model here includes mathematical analysis. Cf. Haward Raiffa, *The Art and Science of Negotiation* (Cambridge, Massachusetts: Harvard University Press, 1982), pp. 20-21. See also Dean G. Pruitt and Peter J. Carnevale, *Negotiation in Social Conflict* (Buckingham: Open University Press, 1993), pp. 7-8.; I. William Zartman, 'The Analysis of Negotiation', in I. William Zartman (ed.), *The 50 % Solution* (Garden City, New York: Anchor Press, 1976).
[131]Raiffa, *op. cit.*, p. 2.

therefore cannot be determined from the game theoretic model.[133] Also in negotiation in practice, the rules of interaction, for example who can communicate with whom, when and about what, are defined ambiguously, if at all. In practice, the parties do not know each other's preferences and sometimes they are not too sure of their own. Even if these preferences are completely known, there are typically many reasonable solutions available which are individually rational and efficient. The question, in the case of many reasonable solutions being available, is which of the available solutions is the most reasonable?[134] Furthermore, by itself, game theory does not consider how parties interpret and explain the moves of the other side, since it assumes that the other party's motivation can be inferred from its payoffs or what it obtains from the game. If this is the case then, according to Deborah Welch Larson, reciprocity in international negotiations, which means why states co-operate despite the lack of a coercive central authority, cannot be explained.[135] Therefore, game theoretic models in general, despite giving some insight into players' choice at the negotiation, cannot explain the negotiation as a whole.

Behavioural models mainly focus on negotiators' behaviour within a set of conditions. The main stream of behavioural models are based on three assumptions: first, the negotiation is by two unitary parties; second, negotiators are always trying to maximise self-interest; and, third, the negotiation is a one-off and the parties have

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[132]See Morton A. Kaplan, *System and Process in International Politics* (New York: John Wiley & Sons, 1957), pp. 247-250.

[133]*Ibid.*, p. 247. Even the type of task may change the outcomes of negotiation. For example, behaviours of negotiator differ on easy task and difficult task. Jerome D. Frank, 'Recent Studies of the Level of Aspiration', *Psychological Builletin*, Vol. 38, (1941), p. 220.

[134]H. Peyton Young, 'Negotiation Analysis', in H. Peyton Young, ed. *Negotiation Analysis* (Ann Arbor: The University of Michigan Press, 1991), pp. 2-4.

[135]Deborah Welch Larson, 'The Psychology of Reciprocity in International Relations', *Negotiation Journal*, (July, 1988), pp. 297-298.

no past dealings with each other.[136] This type of model assumes that the negotiation happens 'suddenly' and negotiators concentrate their attentions only on the issue of the negotiation and attempt to maximise self-interest without being influenced by other factors, including their past and future dealings. These behavioural theories particularly ignore the social context of negotiation, such as social norms, the relationships between the parties, and the type of parties. With this latter item, behavioural theory does not, for example, consider that parties might be made up of groups of people with common interests. In reality the social context of negotiation influences negotiations and for this reason behavioural models appear to be inadequate in explaining the Law of the Sea negotiation.

Behavioural models also lack a time dimension[137] and do not consider the past or on-going situations and relationships between the parties. Therefore if the negotiation is influenced by changes that occur with time, this type of model is unable to cope.

Both game theoretic models and behavioural models have a narrow context within which they view negotiation. There have, however, been substantial developments in negotiation theories and various factors from real life negotiations have been incorporated in order to adapt the orthodox theories.[138] Such developments have not completely escaped from the assumptions of the orthodox theories[139] but nonetheless these developments are examined below.

The Law of the Sea negotiation was quite different from the type of negotiation which the above theories envisage. The characteristics of the Law of the Sea

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[136]Pruitt and Carnevale, *op. cit.*, pp. 7-8. See also Dean G. Pruitt, *Negotiation Behavior* (New York: Academic Press, 1981).
[137]See Pruitt and Carnevale, *op. cit.*, p. 8.
[138]For behavioural theory, see *Ibid.*, chapters 7-13.
[139]For game theory, see Larson, *op. cit.*

negotiation are follows: 1) participants of the negotiation numbered more than 150 states; 2) the participants had a past history with each other; 3) there were numerous issues; 4) the negotiation lasted for 27 years and participants' preferences changed during that time; in addition, 5) individuals, groups and Congress within the United States' domestic domain[140] not only influenced the United States' Law of the Sea policy but interacted directly with other states at the negotiation.

These characteristics are quite different from the assumptions on which negotiation theories are based and this discrepancy has made the analysis of the Law of the Sea negotiation difficult. Attempts to explain the Law of the Sea negotiation, namely the works of Haward Raiffa and Sebenius are examined below. Following on from this, Sebenius's theoretical development in attempting to overcome the above difficulties is examined.

Raiffa did not analyse the Law of the Sea negotiation itself, but highlighted it as an example of a negotiation involving many parties and many issues.[141] He pointed out two features of the negotiation, the single negotiation text method to converge diverse interests of states and coalition formation which states undertook to pursue their own interests. Raiffa based his analysis on game theory, but attempted to expand his analysis in order to accommodate real life situations. The negotiation of many parties and many issues is often called multi-lateral, multi-issue negotiation. The Law of the Sea negotiation embraced more than 150 states as participants[142] and with regard to the issues there were 'virtually hundreds that [had to] be

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[140]Domestic domain means within a state.

[141]Raiffa, *op. cit.*

[142]There were also many international organisations which participated in the Conference as observers. See United Nations, *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index* (New York: United Nations, 1983), pp. 187-189. Among them, the European Economic Community (EEC) signed the Convention.

resolved.'[143] Raiffa concentrated, among other things, on the usefulness of the single negotiation text method[144] which was used for converging and balancing participants' interests.[145] This method aims to produce a single text, without alternative drafts of each article, for further discussion. In multi-lateral and multi-issue negotiation, such as that of the Law of the Sea, it is very difficult to balance each participant's interests on every issue because each participant has individual interests which are different from others. The single negotiation text method basically highlights where consensus lies on the issue. Although each participant can pursue their argument further on each issue, as well as judge the merits and demerits of the entire text, they tend not to argue too strongly in order to protect interests which are in their favour in the text. This approach also has the particular advantage of persuading the participants to move from their deadlocked positions by indicating a point where consensus could be merged. As a result, this method can converge general consensus on all the issues much more quickly than the traditional method, which requires discussions on each issue and incorporates the outcomes of the discussions into a text. This is because the traditional method has no guarantee that first, participants can reach an agreement on each issue, and second, that the total agreement can achieve each participant's acceptance as a whole.

The method of single negotiation text was used from 1975 in the Law of the Sea Conference in order to break the impasse until 1980. It was a useful method for converging the diverse interests of states and advancing the negotiation. This was despite the fact that the final product of this method, the 1982 Convention, did not

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[143]Raiffa, *op. cit.*, p. 14.
[144]For the reason why the single negotiation text method was introduced, see Barry Buzan, *Seabed Politics* (New York: Praeger Publishers, 1976), pp.245-247.
[145]See chapter 1.

obtain universality because the United States and some other industrialised states refused to sign it. The single negotiation text method is a useful method to deal with multi-lateral and multi-issue international negotiation, however, this method was not used throughout the entire Law of the Sea negotiation. This method was used between 1975 and 1980, during the 27 years period of negotiation.[146] In addition, this method is not a framework in itself for analysing the Law of the Sea negotiation since it is a 'tactic' to converge participants' opinions.

Raiffa also stressed the process of coalition building which occurred among participants of the Law of the Sea negotiation in order to pursue their interests collectively. Raiffa pointed out that there is a vast difference between conflicts involving two disputants and those involving more than two, and that in the latter case disputants may form coalitions and may act 'in concert' against others.[147] In terms of coalitions in the Law of the Sea negotiation, Raiffa stated that there was one comprised primarily of 'most of the developed world' and 'many Third World states',[148] and that the Group of 77 was 'one reasonably stable coalition of players'.[149] It is true that many interest groups formed during the negotiation according to the specific interests of states and therefore largely followed the process described by Raiffa.[150] The majority of these interest groups, however, cut across developing and developed states lines. The coalition of the land-locked states group is one example.

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[146]At the final stage of the negotiation, between 1993 and 1994, a text, which was called 'boat paper', was utilised to help negotiation and to focus negotiating points although it was an unofficial text.
[147]Raiffa, *op. cit.*, p. 11.
[148]*Ibid.*, p. 278.
[149]*Ibid.*, p. 11.
[150]With regard to the interests groups formed during the Law of the Sea negotiation, see William Wertenbaker, 'A Reporter at Large: The Law of the Sea, Part I', *The New Yorker*, (1 August, 1983), p. 50.; Buzan, *op. cit.*

If, as outlined by Raiffa, the negotiation was one between the Third World, namely the Group of 77, and the developed states, then there is a fundamental problem with his analysis because the Group of 77 was in fact formed in 1964, three years before the Law of the Sea negotiation started. Raiffa defined how the coalition is built up as disputants may form coalitions in order to act 'in concert' against others in the negotiation. Raiffa's coalition formation process cannot therefore explain the formation of the Group of 77 in a straightforward manner as the coalition formation which was supposed to occur during the negotiation. In addition, although Raiffa assumed that participants of a negotiation had specific objectives from the beginning of the process, the Group of 77 did not begin the negotiation with firm objectives and it took three to four years to consolidate its position on major issues. It cannot therefore be said that the Group of 77 was formed to pursue specific aspects of the Law of the Sea negotiation.

When a multi-lateral negotiation is conducted the negotiation becomes very complicated since, as Knut Midgaard and Arild Underdal have stated, 'there will be more values, interests, and perceptions to be integrated or accommodated', and, 'there will probably be more *uncertainty* as to the interests and motives of some of the others and as to their perceptions of one's own utilities.'[151] In a bilateral negotiation the situation is already structured by definition, whereas in a multilateral negotiation the initial perception of the participants is often not adversarial because participants do not know who the adversary is.[152] Gilbert. R. Winham noted, in examining the GATT Tokyo Round negotiation, 'the essence of multilateral

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[151]Italics in original. Knut Midgaard and Arild Underdal, 'Multiparty Conferences', in Daniel Druckman (ed.), *Negotiations: Social-Psychological Perspectives* (Beverly Hills, California: Sage Publications, 1977), pp. 331-332.

negotiation is that what other parties do between themselves affects ones' own position with each of them, and hence ultimately affects ones' own interests.'[153] Under these conditions, it is very difficult to determine state's preferences at the outset of the negotiation since these are sometimes developed during the negotiation. Reflecting the complexity of multilateral negotiation, I. William Zartman noted that 'no conceptual work addresses the vast area of multilateral negotiation'[154] and this is a serious omission in the field of negotiation theory.

Multilateral negotiations therefore have often been considered as being between two major coalitions. As Raiffa pointed out above, two major coalitions were a result of coalition building among participants and were therefore part of the negotiation itself. Jeffrey Z. Rubin and Bert R. Brown have stated that the formation of coalitions is a primary characteristic of multiparty bargaining.[155] In addition, Robert Jervis has stated that analysts must reduce multilateral negotiations to their bilateral dimension in order to understand them.[156] In case of the Law of the Sea negotiation, many have stated that the negotiation, particularly with regard to the deep seabed mining regime, was between developing states, in the form of the Group of 77, and developed states.[157] The Group of 77, in that it complies with Rubin and Brown's argument that coalitions are generated when 'self-perceptions of weakness, disadvantage, or insufficiency of resources are needed to obtain an

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[152]I. William Zartman, 'Two's Company and More's a Crowd: The Complexities of Multilateral Negotiation', in I. William Zartman, (ed.), *International Multilateral Negotiation: Approaches to the Management of Complexity* (San Francisco: Jossey-Bass, 1994), p. 1.
[153]Gilbert. R. Winham, *International Trade and the Tokyo Round Negotiations* (Princeton, New Jersey: Princeton University Press, 1986), p. 371.
[154]Zartman, 1994, *op. cit.*, p. xi.
[155]Jeffrey Z. Rubin and Bert R. Brown, *The Social Psychology of Bargaining and Negotiation* (New York: Academic Press, 1975), pp. 64-65.
[156]Cited in Robert L. Friedheim, *Negotiating the New Ocean Regime* (Columbia, South Carolina: University of South Carolina Press, 1993), p. 374, note 23.

outcome,'[158] was a typical case of coalition formation. The formation of the Group of 77, however, was not, as explained above, generated by the Law of the Sea negotiation. It was formed before the negotiation started and the level of coalescence, namely the strength of solidarity, of the Group of 77 was enhanced by various factors. These factors were not only the Law of the Sea negotiation itself, but also negotiations with developed states at the United Nations Conference of Trade and Development (UNCTAD) as well as many international events, such as the oil crisis.[159] This suggests that in the Law of the Sea negotiation, the formation of a coalition and the level of coalescence of the Group of 77 is difficult to explain within the context of existing negotiation theories.

Raiffa's analysis does not concentrate on the process of negotiation within the Law of the Sea, but on how multi-lateral and multi-issue negotiations should be conducted. Using the Law of the Sea negotiation as an example he illustrated how multi-lateral negotiation becomes bilateral. It is, nevertheless, important to examine coalition at the Law of the Sea negotiation. The negotiation can be considered as a bilateral negotiation, however, Raiffa's explanation about coalition building at the Law of the Sea negotiation, particularly the Group of 77, is not a reflection of what actually happened. In order to analyse the actions of the Group of 77, the process of its coalition building and the level of its coalescence should be considered to include the events outside of the Law of the Sea negotiation, however Raiffa did not do this. In addition, since Raiffa's publication was in 1982 his analysis is incomplete since he did not analyse the United States' rejection of the 1982 Law of the Sea

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[157]For example, I. William Zartman, 'Introduction: Explaining North-South Negotiations', in I. William Zartman (ed.), *Positive Sum: Improving North-South Negotiations* (New Brunswick, New Jersey: Transaction Books, 1987), p. 11.
[158]Rubin and Brown, *op. cit.*, p. 65.
[159]See chapter 5.

Convention, nor did he examine the influence of domestic politics on the United States' Law of the Sea policy.

Sebenius presented two different approaches for explaining international negotiations. After examining the Law of the Sea negotiation using assumptions of constant preferences and variable preferences, he developed an analytical framework called *negotiation analysis*. These two approaches are examined here.

His first approach was based on two opposite assumptions, that parties' preferences are constant and that parties' preferences are variable. Sebenius attempted to analyse the Law of the Sea negotiation[160] using the game theoretic model. His primary focus was not on the entire negotiation, but on the negotiation of financial arrangements of deep seabed mining, namely the system of financial payments to the International Seabed Authority. This included fees, royalties and profit shares required for future deep seabed miners, as well as the financing of the first operation of the mining arm of the ISA, which was called the Enterprise. His assumptions in analysing the financial arrangements were that the parties, the issues, and the evaluation of the issues were constant,[161] namely preferences were constant. He assumed these preferences did not change from the beginning of the negotiation until the end, although he did point out that parties, issues, and evaluation of the issues 'may become variable.'[162] Whether preferences are constant or variable is important for analysts since it determines the method of analysis, however, Sebenius used both constant and variable assumptions. In his analysis, Sebenius analysed the negotiation of financial arrangements of deep seabed mining

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[160]James K. Sebenius, *Negotiating the Law of the Sea* (Cambridge, Massachusetts: Harvard University Press, 1984).
[161]*Ibid.*, p. 73.
[162]Ibid.

by assuming preferences were 'constant', however, when he explained the rejection of the 1982 Convention by the United States, he used the 'variable' assumption, since he considered that the Reagan Administration's preferences changed.

Sebenius gave an account of why, in 1982, the United States rejected the Law of the Sea Convention. He pointed out that the 'central trade' or trade-off of the Law of the Sea negotiation between the United States and the developing states (the Group of 77) was one of navigational rights traded for a deep seabed mining regime.[163] The United States originally wanted to acquire navigational rights in return for concessions in deep seabed mining through a universal agreement of sea use. The United States' position changed for two reasons. First, the administration's preferences shifted, in that deep seabed mining became more important than it had been before, due to concerns about strategic minerals. Second, the Reagan Administration judged that the 'alternatives to agreement', of the Law of the Sea Convention, both in terms of navigational rights and deep seabed mining, would be much more favourable than many previous United States' policy-makers had thought.[164] 'Alternatives to agreement' means other ways of achieving no worse results than is provided by producing an agreement, and includes the situation without an agreement. If pursuing agreement is judged no more meaningful than without the agreement there is no reason to stick to the negotiation, since the negotiation is conducted to produce something better than the results that can be obtained without it.[165] The Reagan Administration came about because of political change in the United States. It considered deep seabed mining more important than

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[163]See *Ibid.*, pp. 80-81.
[164]*Ibid.*, p. 82.
[165]See Roger Fisher and William Ury with Bruce Patton, editor, *Getting to Yes: Negotiating Agreement without Giving in* (London: Hutchinson, 1981), p. 104.

before and that navigational rights were generally available without an agreement because of states' practices. As a result, Sebenius stated that '[i]f the price of an agreement appears to rise and the benefits seem largely available without joint action, the bargain looks poor.'[166] Therefore, the United States' policy-makers decided to reject the Convention.

The concept of a shift in preferences outlined above is substantially different from the traditional game theoretic approach that a negotiation starts with a given set of parties, a given set of issues, and fixed preference orderings based on different possible settlements of the issues.[167] According to this traditional approach, parties, which do not change during the negotiation, would be able to decide exactly what to do at the outset of the negotiation and would not change until the end of the negotiation. In addition, it assumes that parties are unitary and rational actors. The term unitary actors means that actors are treated as a cohesive unit and there is no difference in opinion within the actor even if the actor consists of more than one individual. Rationality here means that actors have consistent, ordered preferences, and that they calculate costs and benefits of alternative courses of action in order to maximise their utility in view of those preferences, so that each party plans actions to be taken according to their preferences and has no incentive to change its plans.[168] The shift in the United States' policy was brought about by the change in administration;[169] that is, a change in domestic politics changed state's preferences. Sebenius tried to explain this relationship between domestic politics and state's

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[166]Sebenius, 1984, *op. cit.*, p. 82.

[167]James K. Sebenius, 'Negotiation arithmetic: adding and subtracting issues and parties', *International Organization*, Vol. 37, No. 2 (Spring, 1983), p. 281.

[168]See Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, New Jersey: Princeton University Press, 1984), p. 27. James K. Sebenius, 'Negotiation Analysis: A Characterization and Review', *Management Science*, Vol. 38, No. 1, (January, 1992), p. 18.

behaviour, as a 'negotiation' between 'the different parts of a compartmentalized bureaucracy' or 'domestic pressure groups'[170] in his 1983 article. This meant that some groups in the United States engaged in a 'negotiation' to change the United States' policy. In this 'negotiation' Sebenius's basic assumption is that each of the parts or groups was a unitary and rational actor.[171] On the other hand, when he examined the shift of the United States' policy in his 1984 book, *Negotiating the Law of the Sea*, Sebenius did not refer to the above parts or groups in the United States, he only mentioned domestic politics causing the change of state's preferences,[172] without giving an explanation of how this mechanism works. Sebenius did not mention in his 1984 work whether he considered a state a unitary and rational actor or not.

If the shift in state's preferences and domestic politics are considered together, it can be seen that this is a two stage process. 'Negotiations' within the state, which are synonymous with domestic politics, cause a shift in state's preferences and this in turn results in a change in state's behaviour at the negotiation. As Sebenius takes this approach to explain the United States' rejection of the Convention, states' cannot be unitary actors since it is impossible to have 'two layers' of unitary actors. If domestic pressure groups are considered as unitary and rational actors as outlined by Sebenius, these groups would be able to take actions rationally under the given conditions, however, states would not be able to take actions unitarily and rationally under the given conditions since states' actions would be largely defined by their domestic politics. A unitary actor cannot have another unitary actor inside of it.

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[169]See also chapter 2.
[170]Sebenius, 1983, *op. cit.*, p. 287.
[171]*Ibid.*, p. 287, note 12.
[172]Sebenius, 1984, *op. cit.*, p. 77.

When the United States' rejection, which was caused by 'the shift of preferences', is linked with its domestic change, namely administration change, it is impossible to consider a state as a unitary and rational actor. Sebenius, however, made the assumption that within the negotiation on financial arrangements conducted by states, that the parties, the issues, and the evaluation of the issues, namely preferences, were constant. This means that states were in fact treated as unitary and rational actors. If the shift of preferences caused by domestic politics, which Sebenius used to explain the United States' rejection of the Law of the Sea Convention is accepted, it is very difficult to explain the actions taken by the United States by using the assumption that states are unitary and rational actors. As a result, Sebenius used two approaches, constant preferences for most of his analysis of the Law of the Sea negotiation and variable preferences for the United States' rejection of the Convention. The former is a game theoretic model and the latter is a non-game theoretic model. Sebenius was therefore unable to explain the Law of the Sea negotiation in one analytical framework because of the discrepancy of assumptions.

Sebenius's second approach, in which he attempted to clarify his earlier position, treated all parties as unitary and bounded rational actors. Sebenius called this *negotiation analysis*, saying that, although his basic position in analysing negotiations depends on game theory, it stands on the concept of bounded rationality as against rationality.[173] Bounded rationality means that the negotiators' rationality is limited.[174] Game theory assumes that the game's structure, rules, and

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[173]Sebenius, 'Negotiation Analysis', *op. cit.*; James K. Sebenius, 'Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities', *International Organization*, Vol. 46, No. 1, (Winter, 1992).

[174]This bounded rationality is different from Keohane's. On this point, Keohane stated that '[d]ecisionmakers are in practice subject to limitations on their own cognitive abilities, quite apart from the uncertainties inherent in their environments' (Keohane, *op. cit.*, p. 111.) and they 'economize on information by searching only until they find a course of action that falls above a

possible moves are known by negotiators, however, in reality they are often not common knowledge[175] and for this reason negotiation analysis takes a subjective perspective. In negotiation analysis how negotiators assess the probabilities of different events is up to the parties and the other side's likely behaviour is subjectively assessed in the light of available evidence, although subjective perceptions of the parties' underlying interests are taken as 'sovereign (though not immutable)'.[176] Subjective perceptions of the parties' *underlying interests* are therefore basically assumed not to change.[177] This view can be very flexible in explaining negotiations. Negotiators can in fact change their perceptions about the negotiation as well as their perceptions about other parties' preferences during the negotiation, since these are judged subjectively at the beginning. For this reason, negotiators will be able to 'expand the pie' or locate the 'zone of possible agreement'. The 'zone of possible agreement' means the set of possible agreements that are better for each party than the alternatives to an agreement.[178] For example, when there is only one orange available, and two people want it, they might start a negotiation about the orange. If one of them turns out to want only the zest of the orange and the other the flesh they would be able to obtain exactly what they wanted. Even if there is only one orange it is actually considered as two. Using one orange for two objectives is to 'expand the pie' and to find out what each other wants is to locate the 'zone of possible agreement'. As a result each negotiator can

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satisfactory level...[which is] adjusted from time to time in response to new information about the environment'. *Ibid.*, p. 112. This was extracted from Herbert A. Simon, 'Theories of bounded rationality', in C. B. Radner and R. Radner, *Decision and Organization* (Amsterdam: North-Holland, 1972), p. 168.

[175]Sebenius, 'Negotiation Analysis', *op. cit.*, pp. 23-26.

[176]*Ibid.*, p. 21.

[177]Italics by author.

[178]See Sebenius, 'Challenging Conventional Explanations of International Cooperation', *op. cit.*, p. 333.

understand each other's preferences better through negotiation and can reach a better outcome, since negotiation analysis takes a subjective perspective. Sebenius, however, states that negotiation analysis does not explain how actors come to define their interests and preferences.[179] Although Sebenius argues that '[t]here should be no presumption that a party's interests are fixed',[180] it is very difficult to explain the shift of preferences without knowing how actors came to define their interests and preferences in the first place. For example, in terms of the United States' rejection of the 1982 Convention, unless it is understood how the United States defined its interests and preferences originally, it is very difficult to explain why it rejected the Convention. As a follow on, Sebenius's work does not explain the causes of the shift of preferences which led to the United States' rejection of the Law of the Sea Convention and this is a serious omission. In addition, according to Sebenius's view, in order to analyse a negotiation, all the actors need to be defined at the start of the negotiation. If so, a group which evolves during the negotiation is not within Sebenius's scope. For example in his analysis, bureaucratic wrangling in the United States' government about the Law of the Sea policy could be explained as a negotiation within the government. This wrangling could be seen when some top ranking, politically appointed government officials in the Reagan Administration started objecting to the Law of the Sea Convention. This new group in the government eventually became the dominant power during the decision making that led to the United States' rejection of the Convention, however, this cannot be explained by Sebenius, since the group evolved during the negotiation.

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[179] *Ibid.*, p. 355, p. 333, note 36. Preferences are decided after interests are identified.
[180] *Ibid.*, p. 333.

When Sebenius referred to theories in international relations, he defined actors as states, domestic interests, and transnational groupings of either of these.[181] These possible actors are treated as separate from each other.[182] Although Sebenius's position is that the parties of a negotiation can change during the course of the negotiation by joining or leaving the negotiation, in order to analyse a negotiation, all the actors need to be defined at the start of the negotiation and are treated as unitary actors.[183] If this approach is accepted, each individual or group, whether inside or outside of a state, can be designated as an actor of a negotiation. This approach is very flexible since, even in international negotiation, state's boundaries need not necessarily be the only basis for analysing the negotiation. For example, the role of an epistemic community, which was cross-boundary for the negotiation of environmental policy co-ordination of Med plan[184] could be explained by Sebenius's approach.[185] The problem is, however, that if a state and interests group in the state are treated as unitary actors, the analysis runs into difficulty. This was mentioned earlier, in that unitary actors cannot have another unitary actor inside of them. This means that a state and interest groups in other states could negotiate with each other as unitary actors, however, if interest groups in a state influence their own government, the interests groups and the government cannot both be unitary actors. As a result, Sebenius's negotiation analysis has difficulty in explaining actions of actors at two levels: state's actions and domestic factors in a state. This means, in the Law of the Sea negotiation, that Sebenius's negotiation analysis does

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[181]*Ibid.*, p. 352, note 93.
[182]See *Ibid.*, p. 333.
[183]See, for example, Sebenius, 'Negotiation Analysis', *op. cit.*, p. 33.
[184]See chapter 2.
[185]Sebenius, 'Challenging Conventional Explanations of International Cooperation', *op. cit.*

not explain the shift of preferences of the United States which was caused by 'domestic politics'.

Sebenius states that parties, their preferences, and issues can all be variable. When he analyses a negotiation, however, Sebenius assumes that parties, a set of interests and preferences are given at the outset of the negotiation.[186] In reality, it is very difficult to determine state's preferences at the outset of the negotiation. There is in fact a process of incremental clarification of interests and objectives that takes place before and during the negotiation.[187] Shaping preferences during international negotiation is very important for most states since, as Bertram I. Spector pointed out, international negotiators usually confront their counterparts only with their wits, instructions from their home government and minimal background information, without in-depth analyses of issues, strategies, and outcomes that are required to understand the implications of one negotiation proposal over another.[188] During negotiation, parties often clarify or shape their preferences according to their counterparts' reactions to their demands.

In the Law of the Sea negotiation, the shaping of preferences during the negotiation was done not only by the developing states. The United States, for example, at first wanted to have a very weak licensing agency to control deep seabed development, however, during the course of the negotiation, its position moved to accepting the establishment of a strong ISA. The process of shaping preferences is an important factor in analysing a negotiation and the Law of the Sea

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[186]*Ibid.*, p. 355.

[187]Gunnar Sjöstedt, Bertram I. Spector, and, I. William Zartman, 'The Dynamics of Regime-building Negotiations', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds), *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development* (London: Graham & Trotman, 1994), p.16.

[188]Bertram I. Spector, 'Decision Analysis for Practical Negotiation Application', *Theory and Decision*, Vol. 34, No. 3, (May, 1993), p. 184.

negotiation is no exception. Sebenius's theoretical framework does not recognise this. In the case of both Raiffa and Sebenius, they succeeded in explaining only part of the Law of the Sea negotiation.

The above analysis of the Law of the Sea negotiation was based on the game theoretic model. With regard to the other line of negotiation theory, *behavioural theory*, there is no substantial work on the Law of the Sea negotiation in terms of explanation of the process. Behavioural theory focuses on negotiators' behaviour at the negotiation as well as the impact of behaviour on negotiation outcomes. There is a concentration on the tactics which negotiators deploy to influence the outcomes of the negotiation, and the negotiator's motivation, such as limit, aspiration level and demand level. A limit is the negotiator's ultimate fallback position, which means the level of benefit beyond which the negotiator is unwilling to concede. Aspiration level is the level of benefit sought at any particular time, and is the value to the negotiator of the goal toward which he is striving.[189] Demand level is 'the level of benefit to the self associated with the current offer or demand'.[190] Negotiators often decide how much to demand or concede on the basis of the concessions they expect from the other party. The further the other is expected to concede, the more will be demanded and the less will be conceded.[191] Dean G. Pruitt quoted Gary A. Yukl's work that limit tends to remain constant over time, and aspiration declines toward limit.[192] In addition, Pruitt stated that demand level is ordinarily higher than limit and aspiration level and that it usually diminishes over time.[193] Under these conditions, the negotiation is usually described as the process of concession making,

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[189]Pruitt, *op. cit.*, p. 25.
[190]*Ibid.*, p. 19.
[191]*Ibid.*, p. 21.
[192]*Ibid.*, p. 29.

namely reductions in demand, and of deploying tactics between negotiators towards an agreement.[194]

There are, it can be argued, two fundamental problems in terms of behavioural theories in explaining the Law of the Sea negotiation. First, when negotiations are conducted by states in which diverse interests exist, it is difficult to explain the entire Law of the Sea negotiation or other international negotiation because most international negotiation analyses are based on the assumption that states are unitary actors.[195] Although non-traditional actors, International Governmental Organisations (IGOs) and Non-governmental Organisations (NGOs) have started participating in international negotiations, traditional actors, namely states 'who embody the interests of governments ... are usually the exclusive agents invited to the table to conduct bargaining'.[196] The outlook of international negotiations has been very influential in regarding states as unitary actors in analysing those negotiations. Analysis of negotiation between groups whose members have diverse interests has been carried out, however, this development still has not included the influence of domestic factors on other states' actions at the negotiation or the influence of states' actions on domestic factors. This point is examined in greater detail in Section 2 below.

The second fundamental problem is that the negotiator's limit is assumed to be constant once it has been established. In some cases, as Spector pointed out, negotiators do not have definite ideas about their own interests, rather they form these during the negotiation. The problem is that if a negotiator's limit changes

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[193]*Ibid.*, pp. 30-31. See also Pruitt and Carnevale, *op. cit.*, pp. 50-54.
[194]See Pruitt, *op. cit.*, p. 19 and Pruitt and Carnevale, *op. cit.*, p. 193. This process is often called a 'negotiation dance'.
[195]For example, Iklé, *op. cit.*
[196]Sjostedt et al 1, *op. cit.*, p. 12.

during negotiation, it is difficult to explain the negotiation because of the assumption that limit remains constant. This is particularly the case with the Law of the Sea negotiation and is clearly shown in the case of the United States' rejection of the 1982 Convention. The United States changed its limit, which was originally to acquire a universal agreement in terms of navigational rights, to protecting its interests in deep seabed mining. The assumption that limit is constant, cannot cope with the United States' change in policy. It is clear that a change in the environment or context of the negotiation, either domestic or international, affected the negotiation and for this reason, it is examined with reference to United States' policy in Section 3.

2. Negotiation by groups or states

Dean G. Pruitt and Peter J. Carnevale stated that 'most negotiation theorists draw no clear distinction between interpersonal and intergroup negotiation'.[197] Accordingly, for these theorists, actors were unitary, and they made no distinction between the negotiations by individual actors and by groups of individuals, such as states, when conducting their analysis. This assumption was problematic, since groups or states usually have diverse interests within, such as bureaucratic politics or domestic politics. Groups or states have different decision making mechanisms from individuals who are acting only on their own behalf. When groups or states engage in negotiation, their representatives are chosen, and they negotiate with each other on the groups' or states' behalf. As behavioural theory assumes that two parties negotiate with each other, the negotiation by groups is assumed to be as follows: Two groups negotiate with each other; and each group chooses a negotiator or

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[197]Pruitt and Carnevale, *op. cit.*, p. 152.

negotiators as their representatives and the negotiators negotiate with each other. Based on this assumption, in order to explain the difference between the negotiation between individuals and groups, three models have been developed: the one-way influence model; the mutual-influence model; and the network model.[198] First, *the one-way influence model* assumes that constituents, who are the group members, influence the representatives' behaviour at the negotiation and determine policy which representatives follow. Second, *the mutual-influence model* assumes that negotiators and constituents influence each other before and during a negotiation. Third, *the network model* assumes that there are several levels or 'arenas' where intermediaries try to reconcile various interests, and that the levels or arenas are tied to each other by a network and reconciled interests of constituents are finally brought to the negotiator. Negotiators of both sides then negotiate with each other, and bring outcomes back to the constituents. The internal process then proceeds again through the network and the process of reconciliation of each level or 'arena' is conducted and the outcome put forward to the negotiator again. In this network, the negotiation between the representatives is not necessarily the most important one and the reconciliation process between the group members, which can also be called a 'negotiation' can be the most difficult. Each of the three models can occur respectively depending on the type of negotiation or parties involved. An exception to the model occurs, when the negotiator is a 'dictator' of a state and in this case the negotiation can be conducted by him without being influenced by 'constituents'. As this type of negotiation can be dealt with by the unitary actor assumption model, it is excluded here.

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[198] *Ibid.*, pp. 155-160.

The problem is that the three models outlined above are unable to be applied to the Law of the Sea negotiation since the models all assume that influences on negotiations occur horizontally. The communications are assumed to occur only along the route of constituents of the group to negotiator of the group. From there communications are from the negotiator to the negotiator of the other group and onwards to the constituents of the other group. This means that in case of negotiation by states the negotiation is conducted along the route of constituents of a state to negotiator of the state and from there to the negotiator of the other state to constituents of the other state. Constituents are considered to be people involved in domestic politics, and therefore the process can be described as domestic politics of a state to negotiator of the state and from there to negotiator of the other state to domestic politics of the other state. This type of horizontal analysis is problematic since in reality communication is not along one horizontal route[199] and there exist various communication channels between states, the negotiation itself and domestic politics.

There have, however, been some attempts to explain the relationship between domestic politics and states' actions at international negotiations. Robert D. Putnam attempted to explain the relationship between international negotiation and domestic politics by a *two-level games model.*[200] The two levels are the international level[201] and the domestic level. Putnam focused on the role of 'central decision makers' who are top governmental officials, including the President in the case of the United States, in foreign policy decision making. Putnam stated that these central decision

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[199]Some examples of this case, see James E. Dougherty and Robert L. Pfaltzgraff Jr., *Contending Theories of International Relations: A Comprehensive Survey*, 4th. ed. (New York; Longman, 1997), p. 27.

[200]Robert D. Putnam, 'Diplomacy and Domestic Politics: the Logic of Two-level Games', *International Organization*, Vol. 42, No. 3, (Summer, 1988).

makers 'have a special role in mediating domestic and international pressures precisely because they are directly exposed to both spheres'.[202] Within international negotiations central decision makers are often pressurised by other states and domestic groups because some states may demand concessions from other states. Interests groups within the states may then oppose these concessions. The outcome of a negotiation would therefore be a 'compromise' between the two games because the 'central decision makers' are unable to ignore either of them 'so long as their countries remain interdependent, yet sovereign'.[203] In this model, the 'central decision makers' are not necessarily the negotiators at the negotiation table, however, they are people who decide state's actions at the negotiation. This model attempted to reconcile the influences of domestic politics on states' behaviour at the negotiation and the influence of states' interactions[204] at the negotiation on states' actions at the negotiation. Accordingly, the outcomes of the negotiation would be a mixture of influences of domestic politics and states' interactions at the negotiation. As a result, Putnam's model does not regard states as unitary actors, which are only influenced by external factors, since within his model states' policies are influenced by internal and external factors.

Putnam's view on the role of central decision makers is similar to that of negotiators in Richard E. Walton and Robert B. McKersie's *intra-organisational bargaining* which refers to 'the system of activities which brings the expectations of principles into alignment with those of the chief negotiator.'[205] Walton and

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[201]Putnam described this as diplomacy.
[202]*Ibid.*, p. 432.
[203]*Ibid.*, p. 434.
[204]States' interactions mean here the exchange of words or proposals by states' representatives at negotiation.
[205]Richard E. Walton and Robert B. McKersie, *A Behavioral Theory of Labor Negotiations: An Analysis of a Social Interaction System*, 2nd ed. (Ithaca, New York: ILR Press, 1991), p. 5.

McKersie identified the existence of such a system during labour negotiations. The chief negotiator is 'the recipient of two sets of demands—one from across the table and one from his own organization.'[206] This alignment of positions often happens in negotiations between management and trade unions, because each party usually consists of people who have different interests and different views on their sides' objectives. The role of chief negotiators in Walton and McKersie model could be considered the same as that of chief decision makers in Putnam's model. Although Walton and McKersie treated this process of alignment in each side as a 'sub-process,'[207] P. D. Anthony argued that the internal negotiation is 'an essential part of the negotiation process' and that 'it can probably be explained in precisely the same terms as the external process which takes place between organizations'.[208] Anthony tried to explain both internal and external negotiations equally as the 'main process'. This was the same argument as Putnam since Putnam treated both domestic and international factors equally. Anthony's model, however, clearly differentiated the internal negotiation and the external negotiation and treated them separately, albeit equally, and focused on each negotiation. Putnam's model tried to explain the system which leads to a state's actions at the negotiation and focused on the relationship between states' interactions at the negotiation and domestic politics and the relationship between these and the system. Putnam's model is basically the same as Pruitt and Carnevale's mutual-influence model outlined earlier. The most difficult element in an international negotiation sometimes lies within domestic politics. Winham, in analysing the GATT Tokyo Round negotiation, stated that it 'is usually

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[206]*Ibid.*, p. 6.
[207]*Ibid.*, p. 4.
[208]P. D. Anthony, *The Conduct of Industrial Relations* (London: Institute of Personnel Management, 1977), pp. 227-228.

the case that the greatest difficulties in negotiation arise at home.' He concluded that the particular patterns of constituency pressures on politicians that are related to the substance of the negotiation may be the most important factor in understanding the negotiation process.[209] This case is shown by Pruitt and Carnevale's network model which also points out the possibility that the greatest difficulties in negotiation arise at home.

In the sense that negotiators face pressure from home, their role, or sometimes that of central decision makers, is important in explaining the negotiation. Likewise the two-level games model or the network model are able to explain how and why negotiators define or adjust their preferences at the negotiation. The problem is that these models are not necessarily a framework for explaining international negotiations, such as the Law of the Sea negotiation, since they only explain the 'horizontal' relationship between domestic politics and international negotiation.

'Horizontal' analysis is unable to explain all of the communications which influence the negotiation. As highlighted earlier, the influence of activities of individuals or organisations are not limited within the borders of a state. For example, the development of deep seabed mining technology, such as the construction of a ship for such purposes in the United States, influenced the Group of 77's behaviour at the negotiation. This news alerted the Group of 77, which then considered that the commencement of deep seabed mining was imminent, so that it consolidated its position against the United States. This means that domestic factors in the United States influenced other states' actions at the negotiation. In addition, the United States' negotiator used the attempts at domestic legislation for deep seabed mining in Congress as a tool for manipulating the negotiation. When the

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[209]Winham, *op. cit.*, p. 375.

negotiation with the Group of 77 became stalemated in the late 1970s, the United States' chief negotiator, Elliot L. Richardson, influenced Congress to proceed with the legislation as a means of breaking up the impasse. These moves toward domestic legislation in the United States threatened the Group of 77 with the result that the Group of 77 took an accommodating position. Conversely, when the negotiation moved forward the United States' chief negotiator influenced Congress to slow down legislation to help the negotiation proceed smoothly.[210] This example shows how domestic factors in the United States influenced the progress of the negotiation. The above models do not explain sufficiently the influences of states' actions at the negotiation on domestic factors and the influences of domestic factors on other states' actions.

There is another aspect of international negotiations that the two-level games model and the network model are unable to explain adequately. At the United Nations Conference on Environment and Development (UNCED) negotiation, national delegations from countries with sufficient resources were composed of officials from various relevant ministries and departments. In addition some of the delegates included, as official members, small numbers of NGO representatives, representing important interests within their national populations. As a result, 'the internal composition of official negotiation actors often optimized the multifaceted interests of a wide range of domestic stakeholders—both in and out of government.'[211] In this case, if negotiators are defined as delegations to the negotiation, the domestic and international levels become indistinguishable. This was also the case in the United States delegation during the Law of the Sea

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[210]Markus G. Schmidt, 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 (Oxford:

negotiation.[212] On the other hand, in the case of many developing countries, their delegates were often only learning about the issues themselves and formulating their national interests 'for the first time at the negotiation sessions.'[213] In this case the internal process of a state which is envisaged by the two-level games model and the network model is unlikely to occur, since the issues are not recognised as the domestic politics of these states.

As shown above, when analysis focuses on the relationship between international negotiation and domestic politics, such as Putnam's two-level games model, the analysis only explains part of the negotiation and not the entire process. In Section 2, the relationship between states' actions at the negotiation and domestic factors was examined. The examination suggests that in order to analyse the Law of the Sea negotiation, a review of states' actions at the negotiation is not enough, and that it is necessary to examine factors which influenced the negotiation, including domestic factors. In addition, the communication channels which exist other than the 'horizontal relationship' between constituents and negotiators, or central decision makers, also need to be examined.

3. The context of negotiation

Historically, negotiation theory regarded negotiations as taking place between unitary actors but it was later recognised that domestic factors could influence the negotiation along a horizontal channel of constituent to negotiator. On the other hand, an idea of the context of a negotiation influencing the process was also recognised. These two ideas were further expanded to include both a combination of

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Clarendon, 1989), pp. 73-74.
[211]Sjöstedt *et al*, *op. cit.*, p. 13.
[212]See Schmidt, *op. cit.*, pp. 65-66.

domestic factors and the context of negotiation itself as an influential factor. These ideas are outlined below and it is concluded that none of the theories are capable of explaining the Law of the Sea negotiation.

In his analysis of the Reagan Administration's decision to reject the Convention, Sebenius argues that the Administration judged that the alternatives to the agreement became more favourable because the governments preferences shifted due to the change in circumstances of the negotiation.[214] This explanation is not game theoretic,[215] and is merely an observation. As shown in the previous section, various factors influenced state's behaviour at the negotiation, but for the purpose of analysis this observation is insufficient. The real question is *how* various factors influenced states' behaviour at the negotiation, and *what* the mechanism by which they influenced it was. In addition, if the negotiation is on-going, as in the case of the Law of the Sea, how is this type of change in the circumstances of the negotiation incorporated in the framework for analysis?

Negotiation theories in general have weaknesses in that they assume the stage must be set before the negotiation starts. This means that the actors in a negotiation are supposed to have fixed interests or preferences. As Raiffa pointed out, however, in many cases the parties are not clear about what is in their own interests.[216] In addition, Raiffa,[217] as well as David A. Lax and James K. Sebenius[218] mentioned that, due to new information or a changing situation, the negotiator's preferences might change. This suggests that negotiation is not straightforward, since it may be

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[213]Sjöstedt *et al*, *op. cit.*, p. 13.
[214]Sebenius, 1984, *op. cit.*, pp. 81-84.
[215]See section 1 of this chapter.
[216]Raiffa, *op. cit.*, p. 274.
[217]*Ibid*, p. 127.
[218]Lax and Sebenius, *op. cit.*, p. 50.

influenced by many factors, such as the uncertainty of negotiators' preferences or changes in the circumstances.

Janice Gross Stein has noted that analyses which ignore the context in which a negotiation takes place are inadequate as explanations of international negotiation.[219] Stein emphasised 'the importance of context to analyze the goals, processes, strategic choices, and outcomes of international negotiation.'[220] The context of negotiation has a particular importance as Anselm Strauss stated that

> 'the meaning of negotiation process cannot be grasped unless they are seen within the larger context of ... relations and events. That context is necessarily a changing one. Furthermore, negotiation takes place in specific relationships with other modes of action, in accordance with how the actors perceive current situations.'[221]

On this point, in order to understand the negotiation, it is necessary to look at the process as well as its surrounding circumstances that together produce the outcome. Negotiation process includes why parties negotiate, how they identify their interests and how situational change influences the negotiation. A negotiation like the Law of the Sea negotiation is not single phased, or one proceeded by a straightforward 'negotiation dance'. It is multi-phased, in that the negotiation itself changes its characteristics many times due to the changes in circumstances. In order to understand the Law of the Sea negotiation, changes during that period also need to be examined. This effectively means that not only the negotiation but also its context need to be examined.

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[219]Janice Gross Stein, 'International Negotiation: A Multidisciplinary Perspective', *Negotiation Journal*, (July 1988), p. 230.
[220]Ibid.
[221]Anselm Strauss, *Negotiations: Varieties, Contexts, Processes, and Social Order* (San Francisco: Jossey-Bass Publishers, 1978), p. 23.

There have been some attempts to explain the context of negotiation, one of which is Deborah M. Kolb and Guy-Olivier Faure's *organisation theory.*[222] Kolb and Faure pointed out the need to look at the interface between organisational structures, cultures, and procedures and negotiation, since many negotiations are conducted under the auspices of a particular organisation. This means that organisational settings would be considered as one context of negotiation. This is an important point in understanding the Law of the Sea negotiation because the negotiation was largely conducted in the organisational setting of the United Nations. The structure of the United Nations General Assembly and the Conference influenced the negotiation process a great deal.[223] Within the auspices of the United Nations the negotiation was conducted in several different settings, the Seabed Committee, the Conference, the Preparatory Commission and the United Nations Secretary-General's informal consultations. In this respect, Kolb and Faure's organisation theory can be seen to apply. There are, however, two defects in their approach. They argue that during the GATT Uruguay Round, the negotiating parties went outside the existing structures to increase their leverage and position because '[i]nternational multilateral negotiations require considerable creativity and innovation, and existing structures are generally not appropriate to meet this challenge.'[224] This means that another 'structure', apart from the 'structure' within which a negotiation is conducted, is needed to explain the parties' activities outside the existing structure. In order for Kolb and Faure's work to be conclusive in

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[222]Deborah M. Kolb and Guy-Olivier Faure, 'Organization Theory: The Interface of Structure, Culture, Procedures, and Negotiation Processes', in I. William Zartman (ed.), *International Multilateral Negotiation: Approaches to the Management of Complexity* (San Francisco: Jossey-Bass, 1994).
[223]See chapter 2, and also Stephen D. Krasner, *Structural Conflict: The Third World Against Global Liberalism* (Berkeley, California: University of California Press, 1985).
[224]Kolb and Faure, *op. cit.*, p. 128.

explaining the GATT Uruguay Round it needs to explain how the other 'structure' produced creativity and innovation, because these influenced the negotiation by increasing parties' leverage and position.

In addition, Kolb and Faure concluded that when negotiations occur under the auspices of generally weak convening organisations which do not have stable nor efficient structures, such as the GATT Uruguay Round, the negotiation forum tends to become an arena for open confrontation and 'achieving satisfactory outcomes is unlikely, if not impossible.'[225] Kolb and Faure appear to recommend building up strong (as opposed to weak) organisations, such as the European Union (EU), to negotiate. In the case of the Law of the Sea negotiation, however, a very weak organisation, which lacked participants' long-term commitment, such as is the case with EU members', produced a satisfactory agreement and this is inconsistent with Kolb and Faure's argument. Furthermore, their framework focuses on states' actions at the negotiation, not states' domestic factors. As a result, it does not explain the shift of preferences brought about by domestic factors.

The other attempt to look at the context of negotiation was by Ian E. Morley. He emphasised the need for historical viewpoints, namely why parties negotiate, what they are negotiating and how they do so.[226] Morley saw negotiation as an event within an ongoing relationship in which the parties decide whether, and in what direction, to change their relationship. This view is a rejection of the dominant theoretical paradigm that negotiation can be understood as a sequence of tactics employed by two parties on the road to an agreement.[227] Morley has defined

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[225]*Ibid.*, p. 131.
[226]Ian E. Morley, 'Intra-organizational Bargaining', in J. F. Hartley and G. M. Stephenson (eds), *Employment Relations* (Cambridge, Massachusetts: Blackwell, 1992). p. 206.
[227]See Pruitt and Carnevale, *op. cit.*, p. 202.

negotiation as 'a process of joint decision-making used to handle issues as they arise in particular social contexts,'[228] and he states that negotiation 'functions to define the terms on which persons or parties will do future business. The end point of the process is a set of *rules*. There may also be an agreed *story* about what happened, and why.'[229] According to Morley, the effect of the negotiation is to add some new rules or to change some of the old ones.[230] If it is accepted that the product of international negotiation, such as the Law of the Sea negotiation, is a set of rules which are changed by states, then Morley's framework could be used to analyse international negotiations. Morley has also identified internal and external negotiations and the cyclical relationship between them. Although his view has the potential to explain international negotiation, including the negotiation itself and the relationship between it and domestic politics, his model has the same problem as Anthony and Putnam's, in that it misses the fact that the influence of activities of individuals or organisations is not limited to those within states' borders. According to Morley's model, negotiators who represent states are the 'intermediate' between domestic politics and international negotiation and these negotiators take domestic politics and the other side's actions into considerations when negotiating. As a result, Morley's model also falls into the category of 'horizontal analysis' and excludes the possibility that factors in a state might influence other states' actions directly, which is what happened during the Law of the Sea negotiation. In addition, although he emphasises the context of the negotiation, it is not clear that he recognises the changes in preferences during the negotiation, since he only

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[228]Ian Morley, 'Negotiating and Bargaining', in O. Hargie (ed.), *A Handbook of Communication Skills* (London: Croom Helm, 1986), p. 303.
[229]Italics in original. Morley, *Ibid.*, p. 303.
[230]Morley,1992, *op. cit.*, p. 206.

mentioned that 'negotiation begins when someone sees change, or the possibility of change, in the status quo'.[231] For Morley, it is clear that changes occur between previous negotiations which produced existing *rules* and the next negotiation which will change the rules, and that the end point of a negotiation is to set new rules by joint decision-making. Changes, however, could also happen during the negotiation. Even if a negotiation starts because someone sees change, as a result of changes in preferences during the negotiation, parties might not want new rules any more. Morley has not stated this case. It can therefore be concluded that Morley's model also has limitations in explaining the Law of the Sea negotiation.

In terms of the relationship between the negotiation and its context (which is sometimes called the environment), Spector pointed out that each negotiator's behaviour is a response to the circumstances.[232] Certain circumstances influence a negotiation and the negotiation produces other circumstances. Spector based his view on that '[t]he dynamics between personality and environment account for locomotion toward the achievement of need satisfaction and tension reduction,'[233] and stated that 'the preferences of the negotiator are elicited directly in the immediate negotiation environment'.[234] Spector's view points out the circular relationship between the negotiation and its circumstances and this is an important point in terms of explaining the Law of the Sea negotiation, since his view has the potential to explain the change in preferences. The problem is that his view concentrates primarily on the negotiation itself and its circumstances, namely the negotiator's perception of the circumstances and his opposites' behaviour. As a

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[231] *Ibid.*, p. 205.
[232] Spector, 1976, *op. cit.*, pp 344 347.
[233] *Ibid.*, p. 344.
[234] Spector, 1994, *op. cit.*, p. 75.

result, Spector's model does not appear to account for domestic factors. As shown in Section 2, the internal process of a negotiation, namely domestic factors, is as important as the external process, and it is sometimes more important than the external process in determining a policy before and during the negotiation. It is not clear that Spector considered the context of a negotiation to include the internal process, since he did not define the environment. Even if it did include the internal process, as long as the negotiators are considered to be playing the role of 'intermediaries' between the internal process and the external process, the analysis is a 'horizontal analysis', the problems of which were outlined earlier. It can be concluded that Spector's model, particularly the circular relationship between the negotiation and its circumstances, has the potential to explain the changes in preferences in the case of the United States' rejection of the Law of the Sea Convention, however, it has defects.

In short, negotiation theory cannot fully explain the Law of the Sea negotiation. A summary of the theories is outlined below in Table 3-1. As examined above, the game theoretic model in general, including the specific models of Raiffa and Sebenius, is limited in explaining the Law of the Sea negotiation since it basically considers states as unitary actors. For this reason, the shift in preferences by the United States is not explained. Developed behavioural theory explains the relationship between domestic politics and negotiators' behaviour at the negotiation, however, it considers representatives of states, such as negotiators or chief decision makers, as 'intermediaries' so that domestic factors and the negotiation are linked via them. There are, however, various communication channels that link domestic factors and the negotiation, and these are not covered by behavioural theory. Organisational theory explains influences of organisational settings on states'

behaviour at the negotiation, however, it does not explain influences on the negotiation from outside of the organisational settings, nor the relationships between domestic politics and the negotiation. Morley's model explains the influence of context on the negotiation, and explains the relationship between the internal and external process of the negotiation, however, it has the same problem as behavioural theory in that it does not explain the various communication channels that exist between domestic factors and the negotiation. Finally, the influence of context on negotiation was examined by Spector, however, his view does not explain the internal process nor the influence of circumstances on domestic factors.

Table 3-1. Summary of the theories.

Model	Assumption	Problems in explanation
• Raiffa's model	• Coalition building forms parties. • States are unitary actors.	• The formation of the Group of 77 is difficult to explain. • The change of policy in the US is difficult to explain.
• Sebenius's model for the Law of the Sea negotiation analysis	• Parties, issues, and parties' preferences are constant. • The shift of preferences is explained by variable preference' assumption.	• First and second assumptions are inconsistent so that these cannot be considered the framework of the analysis.
• Sebenius's Negotiation Analysis model	• All parties are unitary actors. • Bounded rationality. • A set of interests are exogenously given.	• State's actions and domestic politics cannot be explained simultaneously. • Shaping outcome is difficult to explain.
• Putman's two-level games model	• Central decision makers mediate domestic pressures and international pressures to produce state's actions at the negotiation.	• The influences of domestic factors on other states' actions is not explained.
• A network model	• A negotiation by groups is the process of reconciliation of interests in each level or 'arena' of each group. The negotiation between negotiators links the reconciliation process of each group.	• The influences of domestic factors on other states actions are not directly explained.
• Organisational theory	• Organisational settings, namely structures, cultures, and procedures, influence states' actions.	• Important states' actions, such as increasing their leverage outside of the negotiation, are not explained. • The shift of preferences caused by domestic factors are not explained.
• Morley's model	• Negotiation is an event within an ongoing relationship and a process of joint decision-making to handle issues is particular social contexts. • Negotiators are the 'intermediate' between domestic politics and international negotiation.	• The influences of domestic factors on other states' actions are not explained.
• Spector's model	• The negotiation is influenced by its circumstances and produces other circumstances.	• It may not explain the internal process nor the influences of context on domestic factors.

As explained above, the models examined in this chapter have two basic problems. First, game theoretic model, organisational theory, and Spector's model have difficulty in explaining the relationship between domestic politics and the state's behaviour. Second, Putnam's two-level games model, network model and Morley's model can explain the relationship between domestic politics and states' behaviour, however, these models do not cover the various communication channels which influenced the negotiation. The context of the negotiation is dealt with by organisational theory, Morley's model and Spector's model, however, organisational theory has limitations in explaining the influence of external organisational settings. The theories can be summarised by 1) to 3) of the Table 3-2.

Table 3-2. Evaluation of the theories.

Model	**1) Relationship between domestic factors and state's behaviour**	**2) Communication channels other than between domestic politics and the state's behaviour**	**3) Context of the negotiation**	**4) Shift (change) in preferences caused by the context of the negotiation including domestic change**
Raiffa's model	X	X	X	X
Sebenius's model	X	X	D	X
Sebenius's negotiation analysis	X	X	X	X
Putman's two-level games model	O	X	X	X
A network model	O	X	X	X
Organisational theory	X	X	D	X
Morley's model	O	X	D	X
Spector's model	X	X	O	X

X: cannot explain; O: Can explain; D: Can explain but not enough.

As shown in the Table 3-2 the difficulties which all the models examined here have is that they are unable to explain the communication channels other than between domestic factors and state's behaviour at the negotiation. In addition, when the shift in preferences is considered as being caused by changes in the context of negotiation including domestic factors, as Sebenius described above, the above models also have difficulty in explaining the shift in preferences. (See, 4) of the Table 3-2.) Considering the above examination, in analysing the Law of the Sea negotiation it would be necessary to examine the various communication channels between the context of the negotiation including domestic factors and states' behaviour at the negotiation.

4. Conclusion

Negotiation theory has problems in explaining the Law of the Sea negotiation. Game theoretic models and behavioural models have static assumptions. Most of these types of model require the setting up of stages of negotiation. Thereafter negotiation analysis can be conducted by analysing the process by which an agreement (or alternatives to agreement) was reached. When these models are used to analyse the Law of the Sea negotiation, these static assumptions create particular difficulty in explaining change in negotiators' preferences during the negotiation as well as the influences on the negotiation, made, for example, by various individuals or groups within the domestic domain. These influences not only affected the United States' Law of the Sea policy but interacted directly with states' behaviour at the negotiation. Negotiation theory cannot explain this fact. In addition, due to the length of the Law of the Sea negotiation, the circumstances or environment of the negotiation changed dramatically and this change also influenced the negotiation. It is also difficult to explain this using most negotiation theory.

The problems of negotiation theory in explaining the Law of the Sea negotiation are largely characterised by the following two unanswered questions. First, how domestic changes, the process of the negotiation and the outcomes of the negotiation can be reconciled in one framework. As shown in section 2 of this chapter, various factors in the domestic domain which influence states' actions are confined to the relationship between international negotiation and domestic factors through decision-makers or negotiators. During the Law of the Sea negotiation the influences of these various factors were not confined to this relationship and factors present in the domestic domain directly influenced states' actions at the negotiation without being channelled through an intermediary. Second, how the influence of the context of negotiation including the influence of domestic factors can be explained. Solving both of these problems has been attempted but no theory has achieved success on both counts. In order to investigate these questions, the negotiation process is examined in further detail in chapters four to eight.

Chapter 4 Why the negotiation started

In the previous three chapters, the inability of theories to explain the Law of the Sea negotiation was highlighted. In chapters 4 to 8 the Law of the Sea negotiation process is examined in further detail. Chapters 4 and 5 examine the causes and important features of the negotiation and chapters 6 to 8 examine the process of the negotiation from 1967 to 1994.

This chapter examines why the negotiation started. This is relevant to the context of the negotiation and as a result to the formation and alteration of preferences. These preferences in turn dictated the actions of states at the negotiation. For these reasons, the question of why the negotiation started needs to be examined. Causes of the negotiation include specifically, changing perceptions of sea use, Arvid Pardo's initiative of 1967, and the actions by three Latin American states.

1. 1967 Pardo's initiative and changing perceptions of issues of sea use

The direct cause of the Law of the Sea negotiation was Maltese Ambassador Pardo's initiative at the United Nations General Assembly in 1967. Pardo proposed the creation of a new ocean regime in order to develop or use the ocean and its floor orderly and peacefully. The main element of his proposal was the concept of 'Common Heritage of Mankind', which aimed to recognise the deep seabed as belonging to all of mankind. Pardo also emphasised the need for establishing a new international agency or organisation to regulate ocean activities and deep seabed mining beyond the clearly delineated national boundaries. The First Committee of the United Nations General Assembly discussed Pardo's proposal, and, in order to discuss it further, went on to establish an Ad Hoc Seabed Committee (which

became a standing committee in the following year) and which was followed by the Law of the Sea Conference in 1973.

Pardo's proposal came on the back of several other developments. First, John Mero's book *The Mineral Resources of the Sea* (1965)[235] highlighted the possibility of deep seabed development, thus intensifying discussion about it. Many people realised that development of deep seabed mining in the foreseeable future was now possible and, indeed, some American companies had already started a R & D programme in the early to mid-1960s.[236] The Economic and Social Council (ECOSOC) of the United Nations put forward a resolution in 1966 to request the Secretary-General to survey the knowledge of, and technology for, seabed resources.[237] In the same year, at the first annual conference of the Law of the Sea Institute at the University of Rhode Island, legal debate about deep seabed mining started and the United States President Lyndon B. Johnson emphasised that 'the deep seas and the ocean bottom are ... the legacy of all human beings.'[238] The possibility of deep seabed exploitation had been highlighted and under these circumstances, Pardo's speech was both timely and well conceived.

Deep seabed mining was not the only reason for the Law of the Sea negotiation, there were many other contentious issues with regard to sea use. The perceptions of sea use had changed rapidly, particularly after the Second World War. The United States had identified the need for unilateral action to protect its interests in its adjacent seas and acted accordingly. In 1945 the United States issued the Truman

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[235]Mero started to proclaim the manganese nodule a potential resource in 1952. Jack N. Barkenbus, *Deep Seabed Resources: Politics and Technology* (New York: The Free Press, 1979), p. 7.
[236]Markus G. Schmidt, Common Heritage or Common Burden?: The United States Position on the Development of a Regime for Deep Seabed Mining in the Law of the Sea Convention (Oxford: Clarendon Press, 1989), p. 19.
[237]*Ibid.*, p. 66.

Proclamation which declared its ownership of its continental shelf. Before the Second World War man's use of the sea was considerably limited, concentrating activity on its surface for navigation and for fishing. Navigation interests were mainly held by maritime states, such as the United Kingdom and the United States,[239] which had either strong navies or numerous commercial vessels for foreign transportation, or both. In order to secure their free movements on the sea, these states had a strong interest in maintaining the principles of both the three-mile territorial seas and freedom of the high seas. These principles were advocated in the 17th Century by Hugo Grotius, widely considered the founder of international law. The principles worked to encourage international trade by sea because before that time some states, such as Spain and Portugal, claimed ownership of the sea throughout the world. Three miles was said to be the firing range of a canon, thus the principle of the territorial sea was implemented for security reasons, and beyond three miles every vessel was given free navigation.[240] This framework of three mile territorial sea and freedom of the high seas lasted for three centuries. Despite these principles, some states had claimed their national jurisdiction beyond the three miles limit. They had various reasons for doing this, *inter alia*, for their fisheries interests. These claims were, however, not an important problem at that time because the areas claimed were limited and the number of states making such claims was minimal.

The United States made an influential challenge to the principles of the three-mile territorial sea and freedom of the high seas in 1945. The Truman Proclamation

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[238]Address given by President Johnson at the commissioning of the Ship Oceanographer, July 13, 1966, cited in Barkenbus, *op. cit.*, p. 40.

[239]This 'maritime state' excludes some states, whose registration are called flags of convenience, such as Panama and Liberia, which have many registered vessels because of their lenient regulations.

[240]These principles were accepted only during peace time and not during wars.

of 1945 separated the adjacent sea into three parts: the territorial sea; the continental shelf; and the water column above the continental shelf. The concept of the continental shelf was new, and the United States claimed that its continental shelf was an extension of the land-mass of coastal states, and that no one was allowed to exploit it without the United States government's consent. The United States aimed to promote domestic investment in offshore mining by assuring domestic industry security of tenure.[241] The Proclamation implied that the water column above its continental shelf was still in the area belonging to the high seas, namely the area in which free navigation was guaranteed. This concept was quite a complicated one, produced through long internal discussions in the United States government. The discussions started in 1937, mainly because of adjacent fishing interests.[242] The United States government's intention was to protect its fishing resources at that time, however, during the course of the discussions two important points were realised. First, the continental shelf had resources which could replace those which had been used in large quantities for the war effort. With regard to mineral resources, especially oil, the technology for exploiting offshore oil existed before the Second World War. The technology was used only in the shallow sea of 'not much more than a dozen feet' although it was used more than a mile from the shore.[243] This exploitation capability strongly suggested wider and further exploitation of the continental shelf was possible. The second point was that if the United States claimed a fishing zone over its adjacent sea other states would follow suit and this would damage United States' navigational freedom, especially for navy

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[241]See Barkenbus, *op. cit.*, p. 30. Ross D. Eckert, *The Enclosure of Ocean Resources: Economics and the Law of the Sea* (Stanford: Hoover Institutions Press, 1979.), p. 33. The press release which accompanied the proclamation stated the outer limit of the United States claim was two hundred metre isobath line.

[242]Barry Buzan, *Seabed Politics* (New York: Praeger Publishers, 1976), p. 7.

vessels, because it would give coastal states power of intervention against passing vessels. This was a strategically important question when considered in the light of strait passages for navy vessels, especially in international straits. If the breadth of territorial sea became wider than three miles, many important international straits, such as the Strait of Gibraltar, which is only eight miles wide,[244] might be overlapped on both sides by coastal states.

At the time the Truman Proclamation was made, therefore, the major concerns of the United States' policy-makers were threefold: navigational interests, the ownership of the resources of the continental shelf and fishing interests. After the internal discussions of the United States' government, the first two items were separated from the third. At the same time as the Truman Proclamation, Truman issued a Fisheries Proclamation to establish conservation zones to cover the third issue. This Fisheries Proclamation was mainly targeted at Japanese fishing vessels which were thought to be entering the Alaskan salmon fisheries.[245] This Proclamation did not assert United States' jurisdiction or their exclusive use of the area, which was far beyond three miles, rather it tried to establish the United States authority over the fisheries resources.[246] The United States' adjacent seas then consisted of three parts: three miles territorial seas, continental shelves beyond three miles and water column beyond three miles. Territorial seas were the area within three miles, which were traditionally recognised, and they included the continental shelf and the water column. The area beyond three miles were high seas and within

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[243]*Ibid.*, p. 35.

[244]Spain had historically claimed its six mile territorial sea although other states did not recognise it.

[245]Eckert, *op. cit.* pp. 128-129.

[246]During the Law of the Sea negotiation, the United States tried to convince other states to accept this idea, however, it was not supported and a simple two hundred mile Exclusive Economic Zone was preferred. In the 1982 Law of the Sea Convention, fishing in the high seas is in principle open to

that area freedom of the high seas were recognised. According to the concept of freedom of the high seas, the continental shelf beyond three miles could not be claimed as the area of national jurisdiction, however, the United States made this claim. In addition, the United States declared that the water column beyond three miles, and within their claimed continental shelf was in principle the area of high seas, however, it also claimed authority over fisheries resources beyond three miles. When the Truman Proclamation was made, there were virtually no objections to it.[247] This was significant. The fact that there is no objection against a state's claim, is one of the most favourable factors in supporting the claim to become legally effective in international law.[248]

After the Truman Proclamation many states followed suit and extended their national jurisdiction over their continental shelf beyond the three-mile territorial sea.[249] This trend caused conflicts between states in many places, especially in relation to oil resources. Although the Abu Dhabi Oil Arbitration, which started in 1949 and ended in 1951,[250] concluded that the continental shelf right was not yet an

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all states (Article 87), although in the Convention some rules relating to particular species were incorporated (Article 116).

[247]Eckert, *op. cit.* p. 3.

[248]International law is (a) international conventions, or treaties or agreement by states, (b) international custom, (c) the general principles of law, and (d) judicial decisions and others. See Statute of the International Court of Justice, Article 38. Treaties are binding only on states which are party to them, however, the provisions of treaties may become binding on other non-party states when they pass into customary law. Statute of the International Court of Justice refers to international custom as evidence of a general practice accepted as law. There usually needs to be two factors for something to be judged as international customary law. These are first a general and consistent practice adopted by states; second, *opinio juris*, the conviction that such a practice is required or allowed by international customary law. If a state persistently objects to a practice, it will not be bound by the practice if it becomes customary law. This means that even if a state has not specifically assented to the practice, unless it represents its objection to it, it may be bound by the customary law. See R. R. Churchill and A. V. Lowe, *The Law of the Sea*, revised. (Manchester: Manchester University Press, 1988), pp. 5-10.

[249]The nature of claims varied. Some states claimed jurisdiction and control over the resources of the shelf, others claimed sovereignty over the shelf.

[250]See Buzan, op. cit., p. 10; Said Mahmoudi, The Law of Deep Sea-Bed Mining: A Study of the Progressive Development of International Law Concerning the Management of the polymetallic Nodules of the Sea-Bed (Stockholm: Almqvist & Wiksell International, 1987), p. 58.

established rule of international law, the trend of enlarging the national jurisdiction over the continental shelf continued. For example, Australia claimed its continental shelf in 1953, to which Japan protested. The First Law of the Sea Conference in 1958 eventually confirmed coastal states' jurisdiction over their continental shelf.

A change in the circumstances surrounding fishing was the most common and the strongest motivation for coastal states extending their national jurisdiction. This was caused mainly by foreign distant water fleets catching fish in other coastal states' adjacent seas. Coastal states were worried about the depletion of their fish stocks by the overcatch of other states' vessels. The catch of fish increased dramatically, especially after the Second World War, in accordance with technological development of fishing, such as sophisticated fish-finding equipment. The total catch of fish world-wide in 1967 showed a 300 per cent rise from 1950. The Soviet Union began energetic distant-water fishing in 1956 to provide its nation with sufficient protein and soon extended its operations world-wide. In the early seventies, Russian ships had more than half the total tonnage of all the fishing fleets in the world. Japan was second in tonnage with ten per cent.[251] The dispute about fishing became a serious matter in some quarters, with Britain and Iceland starting a cod war.[252] In 1953, Iceland extended its fishing zone to four miles and in 1958, to twelve miles. The United Kingdom retaliated and closed its ports temporarily to Icelandic fish imports.[253]

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[251]William Wertenbaker, 'A Reporter at Large: The Law of the Sea, Part I', *The New Yorker*, (1 August, 1983), pp. 46-47. One reasoned this the persistent failure of the Russian wheat crop. *Ibid.*

[252]The cod war started in 1958 and ended in 1976. See Churchill and Lowe, *op. cit.*, p. 310. Eckert, *op. cit.*, p. 130, p. 151, note 48.

[253]In 1973, Iceland again extended to fifty miles and in 1975 to two hundred miles. On the last occasion, both states employed some force and Iceland broke its diplomatic ties with the United Kingdom.

By 1968 the number of states which claimed fishing zones to twelve miles or more was more than sixty.[254] The more states extended national jurisdiction unilaterally, the more states followed suit. Russian distant water ships catching fish world-wide was the result of national policy, however, other states' distant water fishing, particularly in pluralist states, were conducted by private entities. States tried to accommodate fishermen's demands as much as possible so that states acted to protect their fishermen's interests. This was particularly true for the states whose fishermen were being threatened by foreign distant water fishing boats. Local fishermen lobbied their governments to protect fishing stocks.

Interests in the continental shelf also changed and these changes were mainly brought about by the development of the offshore oil industry. Although technology existed before the Second World War, development after it was rapid. The first oil well beyond the three mile territorial sea limit was drilled in 1947 in the sea adjacent to the United States.[255] The United States had been an exporter of oil until that year, however, as a result of increasing domestic oil consumption it began to import oil. This spurred the rapid development of the offshore oil industry. By 1953, drilling rigs were extended up to twenty five miles from the shore. Technological development went further from the shore and deeper into the sea. M. W. Mouton's report, which was submitted to the First Law of the Sea Conference in 1958, stated that a consensus within the industry was that commercial drilling would be possible in depths up to 600 feet within a decade.[256] This potential for offshore oil exploitation prompted some states to attempt to make an agreement delimiting the boundaries with neighbouring states; Saudi Arabia and Bahrain in 1957 are one

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[254]Buzan, *op. cit.*, p. 60, p. 64 note 7.
[255]It was only 17 feet deep. *Ibid.*, p. 35.

example. After the First Law of the Sea Conference in 1958, coastal state's jurisdiction over the natural resources of the continental shelf was formally recognised, however, the boundary disputes on the sea among neighbouring states became a very serious problem. This was particularly true for the offshore oil industry when it came to obtaining exploration and exploitation permits from coastal governments.

By 1968 the development of offshore oil had spread to over twenty states and oil and gas exploration was undertaken by more than fifty states. By 1970 oil and gas had been discovered off the coasts of twenty-eight states, and prospecting activity was under way on the shelves of seventy-five states.[257] Around this time offshore oil development was enthusiastically conducted. Barry Buzan has stated that '[b]y the mid-1960s offshore oil was well on the way to rivalling fishing as a[n] interest of coastal states.'[258]

During the 1960s, some serious accidents and incidents occurred at sea. The increase in world shipping, especially oil transport, was rapid and it coincided with an increase in the number of accidents. The *Torrey Canyon* wreckage in the English Channel in 1967 opened a new phase of ocean accidents. Torrey Canyon was a super tanker transporting bulk oil and the accident caused massive pollution. The *Santa Barbara Spill* from an offshore oil well off California in 1969 also created concern about pollution, as well as the coastal state's control of the water column. These accidents were harbingers of massive environmental problems. Before this stage, there were many minor environmental problems on the sea, such as the dumping of oil from boats. These however could have been ignored since awareness

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[256]*Ibid.*, p. 62.
[257]*Ibid.*, p. 125.

of environmental problems was still low and the problems individually did not seem to cause serious destruction of the environment. The incidents of the *Torrey Canyon* wreckage and the *Santa Barbara Spill* were quite different from past incidents. First, they were notable for their huge size. In addition, given the rapid increase of oil consumption, the expeditious technological development and the rapidly spreading offshore oil development, these types of accident were bound to happen more frequently and cause even greater environmental damage. Along with the development of ocean research, which brought more information about environmental problems caused by human activities at sea, came an enhanced awareness of the effects on the environment of sea use. Given the possibility of this type of incident happening on their adjacent seas, people and particularly environmental activists, demanded that governments control activities in the adjacent seas.

The changes in perceptions of sea use were mirrored by action taking place in the international arena. Before the First Law of the Sea Conference, the International Law Commission (ILC) discussed issues related to sea use and it proposed to hold the First Law of the Sea Conference which was eventually held in 1958. The ILC prepared the draft convention for the Conference. During this discussion the decisions of the ILC on the continental shelf drifted. In 1951 the ILC accepted exploitability criterion, which meant that coastal states' jurisdiction would cover the continental shelf to the point of capability of exploitation. On the contrary, in 1953, it abandoned the exploitability criterion and adopted the two hundred metre isobath criterion[259] which meant that coastal states' jurisdiction could reach up to the point

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[258]*Ibid.*, p. 61.

[259]It is on average forty miles from the shoreline.

where the depth of seas is 200 metres. This change occurred because it was considered to be more certain if the limit of national jurisdiction on the continental shelf was numerically decided as opposed to being based on exploitability criterion. Exploitability criterion could, and was expected to, change due to technological development, since the technology for exploiting offshore resources was developing rapidly. In the end, the ILC produced an article of compromise for the Conference on the limit of coastal state jurisdiction over the continental shelf, which contained both criteria, exploitability and 200 metre isobath.[260]

Some developed states thought that the flexible limit, exploitability criterion, would avoid the problem of obsolescence of the agreement, and would prevent the fixed limit, the 200 metre isobath criterion, becoming the framework of 'creeping jurisdiction' into the water column. Creeping jurisdiction was coastal states' actions to extend their national jurisdiction gradually seawards beyond three miles. The developed states were afraid that if the limit over the continental shelf was fixed, coastal states might extend their national jurisdiction over the water column up to the point where coastal states would have jurisdiction over the continental shelf, namely 200 metre isobath line. On the other hand, the Latin Americans, some of whom had claimed 200 miles national jurisdiction, wanted a definition of the limit of the continental shelf which did not conflict with their national legislation and preferred the exploitability criterion.[261] At the time when the above discussion was taking place, technological development over the continental shelf was still limited.

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[260]The article stated that the area is 'to a depth of 200 metres or, beyond that limit, to where the depth of the superadjacent waters admits of the exploitation of the natural resources of the said area'. Article 1 of Convention on the Continental Shelf, 1958.

[261]Especially for states situated on the west coast of South America, which have only a narrow continental shelf, the two-hundred metres isobath criterion had serious implications: the area over which they would have jurisdiction would have been very narrow. On the other hand, the east cost of South America has a shallow broad continental shelf.

Nevertheless, the extension of the coastal states jurisdiction over the continental shelf beyond three-mile territorial sea already had substantial support and it was formally implemented in the First Law of the Sea Conference by the Continental Shelf Convention of 1958. Many states which had not ratified the Convention also claimed the same. In the end, in February 1969, the decision of the International Court of Justice (ICJ) for the North Sea Continental Shelf case decided that Articles 1 and 2 of the Continental Shelf Convention[262] were customary international law and said that 'the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land ... There is here an inherent right.' This decision helped states which had claimed their jurisdiction up to the continental shelf margin to retain that jurisdiction.[263]

Contrary to the compromise reached on the continental shelf, the ILC was unable to reach an agreement on the breadth of the territorial sea. The breadth of the territorial sea was a more serious issue than the continental shelf. Most maritime states opposed an extension to the breadth of territorial sea because it would damage the navigational freedom of their commercial and navies' vessels.

Eighty-six states attended the First Law of the Sea Conference in 1958. Western states accounted for twenty nine; the Soviet Group, ten; Latin American, twenty; Arab, nine; Asian, sixteen; and African, two.[264] Reflecting the distribution of attendants, the negotiation of the Conference was, in reality, among developed

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[262]Article 2 states sovereign rights of the coastal states over the area of continental shelf for exploration and exploitation of natural resources.

[263]By the end of 1967, the North Sea continental shelf was completely divided up among six countries by the median line principles, although a small part of it still needed to be decided by the ICJ. This delimitation was motivated by the offshore oil exploitation. The United Kingdom and Norway acquired a large area of the continental shelf and the border between them was up to one hundred seventy miles from the coast. See Buzan, *op. cit.*, p. 121.

states and some developing states which had strong interests in fishing. The interests of the developing countries were at that time often tied to the interests of the developed countries. Accordingly, the interests of the developing countries were vulnerable to pressure from the developed countries. There was also a division of the Western states and Eastern states, reflecting the difference in the maritime capabilities of the United States and the Soviet Union under the atmosphere of the Cold War. The Soviet Union was not a maritime state at that time,[265] although it had already started to build up its maritime capacity. The Western maritime states generally supported three-mile up to six-mile territorial sea. The Soviet Union and its allies, on the other hand, supported the twelve mile territorial sea.[266] The positions of developing states were far from unified and among them there were largely four different positions: two hundred miles supporters; twelve miles supporters; middle range expansionists, who used distance or depth or exploitability criteria further than three miles territorial sea; and non-or weak position states which could not, or were not willing to, state their own position.

The 1958 Conference produced four Conventions on the territorial sea; the continental shelf; fishing; and the high seas.[267] Two of the most important issues, however, the breadth of the territorial sea and the coastal states' jurisdiction over fisheries were unresolved. These important items led to the Second Law of the Sea Conference in 1960. As a result of the discussion held at the First Law of the Sea

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[264]*Ibid.*, pp. 37-38.

[265]The Soviet Union's navy had remained weak since its defeat by Japan in 1905. See Keohane and Nye, *op. cit.*, p. 133. The Japanese Navy 'annihilate[d]' the Russian Baltic fleet. Esmond Wright (ed.), *History of the World: The Last Five Hundred Years* (Feltam, Middlesex: Newness Books, 1984), p. 551.

[266]Buzan, *op. cit.*, p. 49. Russia extended its jurisdiction to twelve miles in 1909 mainly for fishing. *Ibid.*, p. 4.

Conference, the choices which the participants had to decide between were focused on two options. A twelve mile territorial sea or a combination of six mile territorial sea plus six mile fishing zone. The former was supported by the Soviet Union, the latter was sponsored by the United States and Canada. Both failed to be adopted.[268] In the end, there was no agreement about the breadth of the territorial sea or fishing. As they could not adopt a new agreement, the traditional three mile territorial sea was supposed to be still in effect.[269] In 1962, Canada tried to persuade the United States to re-negotiate the outstanding issues. It did this by showing the United States the supporters' list of the combination proposal of six mile territorial sea plus six mile fishing zone, which had been sponsored by the United States in the Second Law of the Sea Conference but the United States rejected the idea of a combined limit.[270] Regardless of the absence of formal agreement many states unilaterally claimed various zones beyond three miles.

Before the First and Second Law of the Sea Conferences, concerns about sea use were still limited to a relatively small number of states. This situation changed substantially because of the Conferences. Attending an international conference is an opportunity to examine participants' own interests in the topic in detail.[271] Of the fifty-one territorial sea claims made by states between 1960 and 1970, thirty six

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[267]The four Conventions were carefully separated. This was highlighted by the fact that many participating states did not ratify all of them. The four Conventions were careful to preserve the doctrine of the high seas. See Schmidt, *op. cit.*, p. 21.

[268]The latter combination proposal collected fifty-four votes in favour in the plenary and it had twenty eight opposing votes and five abstained. If the opposing votes had been twenty seven it would have been adopted because the Conference procedure required two-thirds majority votes.

[269]In this respect, Churchill and Lowe have suggested that if the number of supporters of the new rules, such as the two hundred mile zone, increases, then legality may shift because of the shift of the general rule. Churchill and Lowe, *op. cit.*, p. 8.

[270]Buzan, *op. cit.*, p. 59.

[271]Gunnar Sjöstedt, Bertram I. Spector, and, I. William Zartman, 'The Dynamics of Regime-building Negotiations', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds), *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development* (London: Graham & Trotman, 1994), p. 13.

states claimed a twelve mile limit. Of the seventy-seven states which had claimed more than three miles, fifty states claimed twelve.[272] Eleven states claimed more than twelve miles.[273] Twelve mile territorial sea claims were therefore gaining support. The width of twelve miles was not agreed international law, however, it was the width of the territorial sea which many states felt they could claim because of the negotiation at the First and Second Law of the Sea Conferences.

Maritime states, especially the United States and the Soviet Union, which had by now become a maritime state, were worried about these expanding claims. This trend threatened maritime states because it would impede their naval and commercial vessels' mobility, especially in international straits. In addition, it meant that submarines could not pass through those straits while submerged and aircraft could not fly through straits without consent. Maritime states, especially the United States which had global naval capabilities, tried to stop the extension of coastal states jurisdiction, but without success. In 1965, the Soviet Union made tentative overtures to several maritime states, aimed at containing expansive claims to broad territorial seas. In the United States, Defense Department officials argued that the United States should discuss 'creeping jurisdiction' and the straits issue, preferably on a bilateral basis with the Soviet Union. In 1967, the United States and the Soviet Union informally discussed at a technical level the creation of a High Seas Corridor through all international straits which would otherwise be overlapped by the territorial seas. The United States also discussed this with its allies.[274]

The Cold War between the Soviet Union and the United States led to another development in the sea. The two superpowers were competing in space and also on

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[272]Buzan, *op.cit.*, p. 118 Table 6.1.
[273]*Ibid.*, p. 117.

the ocean. The Soviet Union and the United States were committed to ocean research. The Soviet Union started its ocean research programmes enthusiastically in the 1950s, equalling United States levels by the mid-1960s.[275] This brought a rapid expansion in fishing capability, especially distant water fishing, and the expansion of naval and commercial capability followed in the 1960s. Similarly, the United States built the first nuclear-powered submarine in the 1950s. This brought additional importance to the sea because of the development of submarine-launched ballistic missiles as secure second strike strategic weapons. One of the notable events during this time was the loss of the United States' nuclear submarine *Thresher*, which sank in deep waters, in April 1963. The United States realised that the technology to salvage wrecked submarines in deep waters was limited and in the following year it began a new programme to develop relevant technology for retrieval. This had a significant impact on the technological development of deep seabed exploitation. Subsequent accidents involving American submarines in 1966 and 1968[276] added to the momentum of technological development. In addition, 'Sealab', a research project into the feasibility of human dwelling underwater, also commenced in 1964. This created fears that the United States was planning to build permanent military bases on the seabed because the United States Navy was involved in and funded the Sealab project.[277] This undoubtedly spurred the Soviet Union's ocean development and the Sealab project itself helped to develop the ocean technology of the companies involved. The United States also energetically

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[274]Schmidt, *op. cit.*, p. 22.
[275]Buzan, *op. cit.*, p. 55.
[276]*Ibid.*, p. 57.
[277]*Ibid.*, p. 57, p. 63 note 3.

encouraged ocean research by the Marine Resources and Engineering Development Act and the National Sea Grant Colleges and Programs Act, both in 1966.

2. The actions of three Latin American states

Just after the 1945 Truman Proclamation had been issued, there was a further development in Latin America. Chile and some other states claimed a two hundred miles maritime zone over their adjacent seas. These claims, made by states situated on the west coast of the continent, were made because of fishing interests. This move was concerted and spread quite quickly throughout the continent. Chile's claim of a two-hundred miles zone in 1947 was brought about in order to protect its infant whaling industry. The whaling industry which had been mainly situated in Europe and operating in Antarctic waters, had ceased to function because of the Second World War. This led to shortages of soap and cooking oil in Chile, and in order to produce these goods themselves, Chileans began their own whaling industry. There was little threat of war to Chilean whaling vessels because Chile's adjacent sea was far from the war zone. After the Second World War the European whaling industry revived and threatened the Chilean whaling industry. In addition, there was then some prospect that the Chilean government might become a party to an international agreement which would regulate whaling in the offshore zone beyond territorial seas.[278] A Chilean whaling company consulted Jermán Fischer, an international legal expert, and he advised that the company should lobby the government to implement a two-hundred miles maritime zone according to a 'precedent'. The Chilean company consequently lobbied the Chilean, Peruvian and

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[278]Ann L. Hollick, 'The Origins of 200-mile offshore zones', *American Journal of International Law* Vol. 71, (1977), pp. 494-500. In the 1982 Law of the Sea Convention, coastal states or international organisations may limit or prohibit exploitation of marine mammals, such as whales, seals and sirenians, in the EEZ. See Article 65.

Ecuadorian governments. In order to protect its whaling industry, Chile, in fact, needed just a fifty miles zone, however, the Chilean government in June 1947 made the larger claim, based on a mistaken interpretation by Fischer of a 'supposed precedent'. The precedent was the security zone adopted in the 1939 Declaration of Panama, which in fact had delineated about a three-hundred miles security zone off the Chilean coast. The zone had been established at the United States' initiative on the outbreak of war in Europe in order to serve as a neutral or safety zone, which had not in fact worked.[279] The account of the Declaration which Fischer had, was accompanied with a rough sketch of the security zone. The rough sketch indicated to Fischer that the extent of the zone was somewhat less than three-hundred miles. These interpretations made Fischer advise the whaling company that the two-hundred miles zone was a precedent and persuaded the reluctant company of the necessity of a precedent in order to take international action.[280]

Peru followed the Chilean claim shortly afterwards in August 1947, and Ecuador, in February 1951, also took formal steps. Their reasons for doing so were slightly different from those of Chile. Neither Peru nor Ecuador engaged in fishing more than twenty five miles from their coastline, but Peru was interested in developing an anchovy industry and both states wanted other states' fishing vessels away from

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[279]Hollick noted that '[w]ithin the limits of this zone, belligerents were to be prohibited from engaging in hostilities. The security zone ... ceased to be relevant when the United States became a belligerent. Even before then, it was apparent that the zone served as a hiding place for belligerent vessels and that its neutrality was not in fact observed.' Hollick, *op. cit.*, p. 498.

[280]*Ibid.*, pp. 498-499. See also Churchill and Lowe, *op. cit.*, p. 135. In international law precedents are very important. When the 1994 Implementation to the 1982 Law of the Sea Convention was adopted, Sohn noted that, because the negotiation by all nations was proved to provide new international law, '[t]he law of the international community need no longer be discarded by searching through archives for state practice or be dependent on submission to the International Court of Justice of the cases that would crystallise a few rules of international law.' Louis B. Sohn, 'International Law Implications of the 1994 Agreement', *American Journal of International Law*, No. 88, (1994), p. 701. This shows that international lawyers tend to search for precedents in all cases.

their adjacent seas because of the prospect of American tuna fishing in the area.[281] For these states, Chile's idea seemed to succeed in protecting their own interests and the reasoning shown by Chile was persuasive, especially on the point of whether they should follow the precedent.

The Truman Proclamation also encouraged these three Latin American states to extend their national jurisdiction seawards, even though they were not particularly interested in their very narrow continental shelves at that time.[282] Contrary to the United States' argument about the status of the continental shelf, which was very sophisticated since the adjacent seas were separated into three parts, the Latin Americans' argument was quite straightforward because their claims were not much different from the extension of territorial seas. Their action was an apparent breach of existing international law since it hampered the principle of freedom of the high seas and it invited a great deal of opposition from maritime states, such as the United States and the United Kingdom. Despite the objections, other coastal states in South America followed the actions taken by the above Latin American states. By 1950, 15 of 17 Latin American states claimed more than three miles jurisdiction over their adjacent seas in various different ways.[283] Buzan has pointed out five reasons for this. First, the tradition of nationalism gave a highly positive value to sovereignty. Second, the geographical character of the area meant that most states' borders are on the open ocean and do not have delimitation problems with bordering

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[281]Hollick, *op. cit.*, p. 499.

[282]These three states were not considering the breadth of their continental shelf, especially when Chile claimed a two-hundred mile zone. The reason for this was firstly because these states were not particularly interested in resources on the continental shelf. The continental shelf was a major concern for prospective or existing oil producing states who had potential wells in their continental shelf, but other states were not particularly interested in the continental shelf at that time. Peru, for example, later legislated petroleum law on the continental shelf in March 1952. See United Nations, *National Legislation and Treaties Relating to the Law of the Sea* (New York: United Nations, 1974), p. 163.

states. Third, was the fact that these states were less preoccupied with recovering from the war. Fourth, and particularly for Chile, Ecuador, and Peru whose continental shelf was narrow, the new continental shelf idea, which was provided by the Truman Proclamation, was not attractive. Fifth was the fact that the Truman Proclamation worked as an incentive to extend national jurisdiction seawards.[284] As Latin America was isolated from the Second World War, 'old' Latin American states (as many of them who became independent in the 19th century were called) were ready to seize the opportunity of developing their own interests.

Against much opposition to their extending national jurisdiction, the Latin American states were dauntless in keeping their unilateral position and continuously insisted on maintaining their position in the Organisation of American States (OAS),[285] the ILC and other places. Chile, Ecuador, and Peru sought to strengthen their common stand on the maritime zone, which covered the whole sea area and the seabed within two-hundred miles, by the Santiago Declaration in 1952.[286] These states then began to seize United States tuna boats that continued to fish in the zone. The United States tried to stop their seizure by diplomatic means although there were opinions in the United States that the government should send its navy to the area to protect its tuna boats. The Latin American states would not change their position. When the United States stopped its aid to Peru to force it to stop its seizure of American fishing boats, the Peruvian government expelled United States military attachés from Peru.[287] In the end, the United States reacted to this situation by passing the Reimbursement of Fines Act in 1954. This Act provided United States

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[283]Buzan, *op. cit.*, p. 10.
[284]*Ibid.*, p. 11.
[285]The OAS was founded in 1948.
[286]Schmidt noted, it 'seemed like to indicate that what they claimed was equivalent to a 200-mile territorial sea.' Schmidt, *op. cit.*, p. 21.

fishermen, who were arrested in the area which the three governments declared as their jurisdiction, with repayment of the fines. Since the United States did not recognise the area it could not prevent its fishermen from entering it. This reaction by the United States was significant. Although the area was not important for naval activities,[288] the decision of the United States government appeared to cause further unilateral claims by other states because it gave other states the impression that the United States might possibly allow them to do so.[289]

There were, it can be argued, reasons for the United States allowing the Latin Americans to claim two-hundred miles national jurisdiction. First, during the Second World War the Latin American states were supportive of the United States and the United States did not want to damage these relationships. On the other hand, the three Latin American states must have thought that they deserved some reward from the United States for the support they had given it during the Second World War and that compared with European states, which were supported by the Marshall plan, the United States had not given them the assistance they deserved. For example, when in 1948 United States Secretary of State George Marshall attended the Conference of Bogota, which established the OAS, Latin American leaders told him that the Marshall Plan would be better applied to Latin America than to Europe because they were poorer than European states and they were supportive of the United States during the War. Robert A. Pastor stated that 'Latin Americans felt that they deserved help and that the United States owed it to them'.[290] This feeling must

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[287]See Wertenbaker, Part I, *op. cit.*, p. 47.
[288]See Eckert, 1979, *op. cit.*, p. 324.
[289]If a state claims wider jurisdiction over its adjacent seas, it also owes more responsibilities on the widened area. This means that it needs more funds to sustain its claims. This fact put many developing countries off declaring wider jurisdictions.
[290]Robert A. Pastor, *Whirlpool: U.S. Foreign Policy Toward Latin America and the Caribbean* (Princeton, New Jersey: Princeton University Press, 1992), p. 173.

have been part of the justification for the seizure of United States fishing boats in their maritime zones. Under these circumstances, it was not easy for the United States to react with force. In addition to this, the period was one in which the Cold War was at its most virulent. The United States did not want to antagonise this area because of their unilateral actions. Pastor stated that '[a]fter World War II, the United States feared that a Latin American nation would align with the Soviet Union' and, when the United States' fear came true, the United States feared that other states would align with Cuba.[291] The United States did not want to push any Latin American states towards the Soviet group. Moreover, the United States had a declared interest in Latin America since the Monroe Doctrine of 1823. At that time the United States warned the European powers not to intervene in the Americas and in return the United States would likewise refrain from interference in Europe.[292] Adding to the above three reasons, two other reasons are also possible. The Truman Proclamation itself was a United States' unilateral claim. If the United States had used force against those Latin American states which made unilateral claims, it would have been very difficult to justify its own conduct. Luard has pointed out that for the Latin Americans the basic principle in both the Truman Proclamation and their own two-hundred miles zone was the right of a coastal state to the resources in its immediate vicinity.[293] Chile, Peru, and Ecuador in fact have very narrow continental shelves, so the Truman Proclamation which was related to the width of continental shelf, was not in their interest. In addition, the United States itself was also interested in its fisheries conservation albeit in a different manner. The United

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[291]*Ibid.*, p. 20.

[292]In addition to this there was a precedent in Latin America. Although Ecuador levied fines on a United States ship in 1935 the United States did not react by using force. See Robert O. Keohane and Joseph S. Nye, *Power and Interdependence*, 2nd ed. (HarperCollins Publishers, 1989.), p. 101.

States probably did not want to deny all the rights of coastal states in terms of fisheries in their adjacent seas. As a result, the unilateral claims of Latin Americans went untouched. This had two important consequences. First, the unilateral actions by those states triggered other states' unilateral claims, initially in Latin America and then in other continents. Secondly, after the Law of the Sea negotiation started in 1967, and particularly at its early stages, the Latin American states attempted to turn the discussions to their advantage and finally they succeeded in turning other states' opinions to support the idea of 200 miles national jurisdiction.

The states' actions highlighted above were brought about by the changing perceptions of policy-makers. Before the Second World War the perceptions of policy-makers on sea use were limited to surface transportation and fishing. After the Second World War perceptions on fishing, resources of the sea, and environmental impact of sea use brought about changes in the traditional rules of sea use, namely three miles territorial seas and freedom of the high seas. Policy-makers' concerns about the sea also brought about further development of technology for sea use and prompted its further development. This need to change the rules of sea use promoted states' actions in the international arena—both in the form of unilateral action and also in the convening of conferences.

3. Discussion

The perceptions of policy-makers of each state in terms of sea use changed dramatically due to technological development, increased information and other factors. As a result, states' policy on sea use changed and coastal states started to enclose their adjacent seas in order to protect their own interests in the area. Many

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[293]Evan Luard, The Control of the Sea-Bed: Who Owns the Resources of the Oceans?, revised.

coastal states wanted to enlarge their national jurisdiction seawards, however, maritime states wanted to restrict the area of coastal states' jurisdiction to be as narrow as possible since extension of coastal states' jurisdiction would hamper their navigational freedom. This situation, coupled with interests in deep seabed mining, finally led to the Law of the Sea negotiation.

With regard to negotiation theory, neither game theoretic models or behavioural models, generally consider why the negotiation started and analysis begins when a set of issues, parties and evaluation of issues are defined and then concentrates on the process of actual negotiation. This may be a satisfactory approach when preferences of the parties do not change but the above shows that before the Law of the Sea negotiation started preferences of the parties were changing and continued to do so during the negotiation. States altered their preferences on the width of national jurisdiction for example, according to the situation (context) prevalent at the time. In the case of the Law of the Sea negotiation what began as a need to delineate national boundaries based on the firing range of a canon became an array of complex and overlapping factors ranging from the views of individuals, such as a Chilean lawyer, to the current status of the Cold War. With regard to these types of models it can therefore be concluded that their inability to consider preference change makes their application to the Law of the Sea negotiation difficult.

In terms of negotiation theory Morley's model seems to illustrate an understanding of the importance of preference change. Morley states that a negotiation starts when someone sees change, therefore suggesting that change is an important factor in a negotiation. In addition, and unlike the above models, Morley's model also examines why parties negotiate. Morley states that in order to devise a

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(London: Heineman, 1977), p. 145.

new set of rules parties need to identify what happened and establish a unified 'story'. Morley's model focuses on negotiation as being the transformation of rules, from one set of rules to another and this process is considered to be a alteration of the parties' relationships. This idea of negotiation being the transformation from one set of rules to another, appears to be much more applicable to the Law of the Sea negotiation. Morley's model, however, has problems in identifying who the 'parties' who undergo a shift in rules and change in their relationship are. For example, the principles of three miles territorial seas and freedom of the high seas were established before the independence of the United States or Latin American states. Although these states accepted such principles after their independence, these principles were established by 'old' states. In addition, parties are difficult to define in other ways. States who at first did not consider the ocean issues as relevant later became heavily involved in the negotiation. Morley's model does not appear to include the fact that the parties may change and that there may be many of them. In addition, many states, for many different reasons, were making unilateral claims of national jurisdiction without having agreed new rules first and it is not clear whether this type of 'transition of rules' is within the locus of his model. Although Morley's model seems to be capable of embracing some elements of the negotiation it is still far short of a comprehensive model which can be applied to the Law of the Sea negotiation.

With regard to international relations theories an examination of the causes of the Law of the Sea negotiation reinforces the view that they have difficulties to adequately explain the process. In terms of the change in sea use, although the conventional realist model views the world as static, Keohane and Nye's complex interdependence model clearly states that the world is changing from a realist model

to one of complex interdependence.[294] Accordingly, the complex interdependence model may explain the change of perceptions of sea use. Keohane and Nye stated that issue area which is relevant to public policy is subjectively judged by policy-makers.[295] As a result change in perceptions of sea use brings about policy change. On this point, the changing perceptions of sea use can be explained by the complex interdependence model. In addition, the unwillingness of the United States to deploy force against the three Latin American states seizing its tuna boats could be said to be one manifestation of the minor role of military force which was characteristic of complex interdependence. There are, however, some problems with the complex interdependence model. Firstly, although the United States did not employ military force against the three Latin American states which infringed the United States' economic interests, the primary objective of the United States at this stage was securing its naval mobilities through international straits and building up its military capabilities at the sea. The minor role of military force therefore does not hold true. In addition, the influence of the Chilean whaling company's lobbying of three governments is not within the model's scope. The Chilean whaling company lobbied the three governments to support its interests, and this suggests that communications between individuals and policy-makers of states may not be limited to within a state's boundary. This is very difficult to explain by the complex interdependence model since this type of communication is not included in the model's assumption.

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[294]Krasner's international regime is also based on perception that regime can change. Stephen D. Krasner, 'Structural causes and regime consequences: regimes as intervening variables', in Stephen D. Krasner (ed.), *International Regimes* (Ithaca: Cornell University Press, 1983), pp. 3-4. See also Ernst B. Haas, 'Words can hurt you; or, who said what to whom about regimes', in Krasner, *Ibid.*, p. 57.

[295]Keohane and Nye, *op. cit.*, pp. 64-65.

In terms of the level-of-analysis problem, this chapter showed that various factors brought about the Law of the Sea negotiation. These factors include individual levels, states' levels and international levels. These levels were interwoven. For example, Mero's idea of deep seabed mining, coupled with, among others, the United States' interests in the deep sea bed, led to Pardo's initiative at the United Nations General Assembly. Consequently states set up a seabed committee in the United Nations, which was the beginning of the negotiation. A Chilean lawyer's advice to a Chilean whaling company led to the company's lobbying three Latin American governments. These governments extended their national jurisdiction seawards. They were not forced to abandon their unilateral claims because of the relationship that existed between these states and the United States. As outlined in chapter 2, although the level-of-analysis problem recognises that this may indeed be the case, how the mechanism of these inter-relationships operates has yet to be established.

4. Conclusion

An examination of the causes behind the Law of the Sea negotiation shows that the overwhelming features were change and complexity. Change occurred not only in the 'context of the negotiation', but in states' actions. Complexity is shown in the way that factors caused other factors to occur and they in turn had an influence on other factors. With regard to international relations theory and negotiation theory, an examination of the causes of the Law of the Sea negotiation has shown that in this area negotiation theory is inadequate in explaining this element of the process. The work of Morley goes some way to incorporating the process of change but even this model is not fully developed. In the sphere of international relations theory the most significant factors are the inability of theories to explain the complexity of the

communication network and the inability of the level-of-analysis problem, despite recognising the interrelationship between factors, to offer an explanation of the mechanism by which these interrelationships operate.

Chapter 5 Major Issues of the Negotiation: The Basic Structure for the Analysis of the Negotiation Process

In this chapter major issues of the negotiation are examined. This includes the core issues of the negotiation, the Group of 77, and the implicit coalition between the United States and the Soviet Union.

The main issues, as outlined in chapters 1 and 4, had come to light before the negotiation had even started. For the maritime states navigational freedom was of primary importance and the United States and the Soviet Union were particularly concerned about 'creeping jurisdiction' which was hampering their navies' mobility. On the other hand, coastal states wished to extend their national jurisdiction seawards in order to protect their interests in their adjacent seas. Despite the issue of deep seabed mining being new, it was considered a 'bonanza' at the time the negotiation started, and almost all states were concerned about the economic benefits which might be derived from the development of deep seabed mining. These three issues, navigational freedom, national jurisdiction seawards, and deep seabed mining, were eventually compounded and became the core issues of the negotiation. The 'antagonists' of the negotiation were constructed according to their preferences on these issues.

The Group of 77 was the driving force behind the developing states and aimed to establish a new international system in their favour. Although the Group of 77 was not consolidated at the beginning of the negotiation, they gradually became so through activities inside and outside of the negotiation.

Finally, the relationship between the United States and the Soviet Union is examined. The objectives of the Soviet Union in terms of core issues were, up until

the Reagan Administration rejected the Law of the Sea Convention, the same as the United States and it is argued that these two superpowers formed an 'implicit coalition' against the Group of 77.

1. The core issues of the negotiation

The Law of the Sea negotiation started following Pardo's initiative at the United Nations General Assembly. Pardo advocated a new ocean regime, particularly concerning the deep seabed, by introducing a new concept of Common Heritage of Mankind. Deep seabed mining was considered to be a 'bonanza' so that almost all states were concerned about the economic benefits which might be derived from its development. Developing states particularly favoured the concept of a Common Heritage of Mankind since it suggested that disproportionate benefit might be given to the poorer states. On the other hand, developed states, particularly states with potential technology and financial capability to conduct deep seabed mining, did not necessarily favour the concept since if the benefit from deep seabed mining went to developing states it would be to their detriment. In addition, developed states wanted to avoid any restrictions on deep seabed mining which might be imposed by a Common Heritage principle.

Apart from the issue of deep seabed mining, maritime states, such as the United States and the Soviet Union, were particularly concerned about 'creeping jurisdiction' which was hampering maritime states' navigational freedom, and particularly that of their navies. As a result, the United States and the Soviet Union attempted to organise a conference to establish new rules of the breadth of national jurisdiction and navigation, particularly for international straits, but they failed to do so.

These three issues, navigational freedom, national jurisdiction seawards, and deep seabed mining became the core issues of the Law of the Sea negotiation. As Pardo stressed in his speech at the United Nations General Assembly, states needed to clearly delineate the national jurisdictional boundary in order to establish the deep seabed area. If the exploitability criterion which was established in the 1958 Continental Shelf Convention was used as a basis for the boundary, national jurisdiction could extend to the middle of oceans,[296] and consequently there might not exist any deep seabed areas outside national jurisdiction. This suggested that solving the issue of the area of deep seabed, which was proposed to become the Common Heritage of Mankind, would also solve the issue of the breadth of national jurisdiction. As a consequence this would also solve the problem of navigational freedom and particularly strait passage, since without resolving the issue of strait passage the breadth of national jurisdiction seawards would not be able to be agreed. As a result, the deep seabed issue and navigational freedom were combined as a 'package deal' in the 1970 Conference Resolution which decided to convene the Third Law of the Sea Conference in 1973. A package deal meant that in order to get a part of the package, the whole package would need to be agreed.

The actual trade-off in the package deal, although widely accepted, was however never explicit and there were some arguments about what constituted the trade-off. Friedheim stated that the package deal in the Law of the Sea negotiation was a trade-off between navigational rights and twelve-mile territorial sea in return for the two-hundred miles Exclusive Economic Zone. The EEZ is the area in which coastal states have jurisdiction over living and non-living resources. The subject of what

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[296]See Said Mahmoudi, The Law of Deep Sea-Bed Mining: A Study of the Progressive Development of International Law Concerning the Management of the Polymetallic Nodules of the

constituted the trade-off became a focal point when the United States rejected the Law of the Sea Convention in 1982. Friedheim argued that 'territorial sea, straits transit, and EEZ' were the core of the package,[297] because '[n]ot even in the most optimistic days of US participation in the negotiation was [trade-off between 'navigational right' and 'seabed mining regime'] ever publicly conceded'.[298] Similarly, Schmidt argued that there was no internal United States government agreement to approve such a trade-off, although he says that 'the assumption of the intention to enter into such a trade-off existed, especially in Congressional and industry circles.'[299] On the other hand, Sebenius stated that the 'central trade' was navigational rights and seabed mining regime. He argued that coastal, straits, and archipelagic developing states generally do not have the means for exploiting the deep seabed. In addition, developed maritime nations perceived that these states had been restricting, and could continue to limit, valuable navigational freedom by extending their national jurisdiction. Given these twin conditions, that is, developing states without the means for exploiting the deep seabed, but with the capability to restrict developed states' navigational freedom, coupled with developed states with the means for exploiting the seabed, but without having succeeded in stopping developing states restricting their navigational freedom, navigational freedom and seabed exploitation became inseparably linked. Preventing creeping jurisdiction and achieving legal guarantees of navigational freedom, particularly in

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Deep Sea-Bed (Stockholm: Almqvist & Wiksell International, 1987), p. 61.

[297]Robert L. Friedheim, *Negotiating the New Ocean Regime* (Columbia, South Carolina: University of South Carolina Press, 1993), p. 334. See also pp. 222-224.

[298]Robert L. Friedheim, 'The Third United Nations Conference of the Law of the Sea: North-South Bargaining on Ocean Issues', in I. William Zartman (ed.), *Positive Sum: Improving North-south Negotiations* (New Brunswick, New Jersey: Transaction Books, 1987), pp. 91-92.

[299]Markus G. Schmidt, 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 (Oxford: Clarendon, 1989), pp. 116-118.

the strait passage, were predominant in United States policymaking and virtually non-negotiable in the Law of the Sea conference as far as they were concerned.[300] The conditions on navigational freedom and the deep seabed mining were, for the United States, the combination of an absolute requirement on one condition and a flexible position on the other.[301] This meant developing countries could allow developed countries their navigational rights and in return developed countries would concede the deep seabed mining regime in the developing countries' favour.

The difference between the views outlined above is that one requires explicit accession of a trade-off of the negotiation, whereas the other observes general conditions of the negotiation. Schmidt noted that his interviewees would admit that, 'if it is implied that ambiguities in the navigational provisions were traded off against ambiguities in the sea-bed provisions, then trade-offs did occur—a process that is in the nature of international negotiations in general'.[302] Even if there was not a precise agreement about this trade-off, there was, as Schmidt suggested, a cognitive understanding about the trade-off between navigational rights and deep seabed regime between the developed states and the Group of 77. Moritaka Hayashi added that participants of the negotiation gradually perceived, and became convinced, that the core issues for trade-off were the seabed regime and strait passage, even if participants had not mentioned them explicitly.[303] This was why the United States engaged in the painstaking negotiation and conceded to the extent that

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[300]James K. Sebenius, *Negotiating the Law of the Sea* (Cambridge, Massachusetts: Harvard University Press, 1984), pp. 80-81. See also James K. Sebenius, 'Designing Negotiations Towards a New Regime: The Case of Global Warming', *International Security* Vol. 15, No. 4 (Spring 1991). Mahmoudi, *op. cit.*, pp. 248-250. Booth's view, particularly before the Reagan Administration, seems to support this view. Ken Booth, *Law, Forth and Diplomacy at Sea (London: George Allen & Unwin*, 1985), pp. 61-62.

[301]Sebenius, 1984, *op. cit.*

[302]Schmidt, *op. cit.*, p. 117.

their traditional values, free market, were compromised by accepting, up to 1980, production control or technology transfer. This was shown in the 1982 Convention text, namely the production control of seabed mining by the International Seabed Authority and its mandatory technology transfer, which were contrary to the United States' traditional values of a free market. Based on the history and process of the negotiation it can be concluded that there was cognition of the trade-off between navigational rights and deep seabed regime.

2. The Group of 77 and its objectives

The Group of 77[304] as a group of developing states had two functions. First, it formed and pursued the objectives of the group, and second, it was an association aimed at mutual help. The resources of the member states, in financial and human terms, were limited, particularly for the purpose of international negotiations. In international negotiations, it is usual for committees or sub-committees to be held simultaneously. When a state was unable to send a group of experts to negotiations in which it had interests, the Group of 77 supported those states by arranging different member states to attend these meetings in order to represent them, or in order to prevent them missing important information.[305] At the Law of the Sea

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[303]Interview with the author in Rome on 23rd September 1997. Moritaka Hayashi was a former Director of the Office of Ocean affairs and the Law of the Sea, the United Nations.

[304]When it was formed the number of participant countries was 77. Not all the developing countries participated in it. There are some exceptions. For example, China (People's Republic of China) is not a member, on the contrary, Rumania (UNCTAD's category: Eastern European group) and Malta (UNCTAD's category: Western developed countries group) are members. During the Law of the Sea negotiation, although China was not a member of the Group of 77, it supported the position of the Group. That is why in this analysis China's position is not considered specifically, only the position of the Group of 77 is examined.

[305]Oscar A. Avalle, 'The Decision-making Process from a Developing Country Perspective', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds), *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development* (London: Graham & Trotman, 1994), pp. 135-147.

Conference, the Group of 77 had its own officials and working methods to pursue its objectives.[306]

The Group of 77 had been formed before the negotiation started and the Law of the Sea negotiation became a part of its activities. Due to the fact that it was formed prior to the negotiation, the Group of 77 had meetings outside the negotiation and it was through these meetings that it consolidated its position. This consolidation, which was not present before the negotiation started, greatly influenced the Law of the Sea negotiation. For this reason the activities of the Group of 77 outside the negotiation need to be examined as well as its activities within it.

The Group of 77 was formed in 1964 when the United Nations Conference on Trade and Development was established. After the Second World War the number of independent developing states drastically increased and this changed the political landscape of the world. The Group of 77 evolved from the discussion of the 'Non-Aligned Movement' (NAM) which started in 1955, to demonstrate the possibility of a bloc action independent of either the United States or the Soviet Union. Reflecting NAM's themes, neutrality and anti-colonialism, the Group of 77 distanced itself from the two superpowers and tried to establish a bargaining power by its numerical superiority in the United Nations. In the United Nations states are, in principle, given sovereign equality regardless of their size or capabilities. All states have equal voting power[307] and as a result the United Nations system provided a major forum at which developing states could present their demands.[308] The precedents of the Hague Conference of 1930, the First Law of the Sea Conference of 1958 and the

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[306]Mahmoudi, *op. cit.*, p. 126 note 34.
[307]The United Nations Security council and international financial institutions are exceptions.
[308]See Stephen D. Krasner, *Structural Conflict: The Third World Against Global Liberalism* (Berkeley, California: University of California Press, 1985), p. 8.

Second Law of the Sea Conference of 1960 made the United Nations the natural venue for a meeting to discuss issues on the ocean.[309] By acting together during the Law of the Sea negotiation, especially in the Seabed Committee, which lasted from 1968 to 1973, the Group of 77 acquired common objectives on issues in the negotiation. For example, coastal developing countries wanted to secure their sovereign right over their adjacent sea, and mineral producers (including potential mineral producers) wanted to establish their sovereign right to their resources in order to prevent the intervention of developed countries or multinational corporations. There were many landlocked and geographically disadvantaged states in the Group of 77, however, and they did not want coastal states to extend their national jurisdiction seawards, since this meant the area of Common Heritage of Mankind would become smaller. The Landlocked and Geographically Disadvantaged States group however consisted of developing as well as developed states and this group was unable to consolidate its position because developing states' rights over their natural resources were translated into extending their national jurisdiction to prevent developed states' intervention. Therefore, despite the fact that there were differences in opinions about the breadth of national jurisdiction, above all, the Group of 77 wanted to obtain more funds to develop their countries. In order to protect the Common Heritage of Mankind from developed states' exploitation and acquire funds, the Group of 77 needed to consolidate its position. As a result, the position of the Group of 77 was gradually consolidated.

When a New International Economic Order was advocated in a number of United Nations General Assembly resolutions, the Group of 77's position became very strong and the NIEO subsequently influenced the Law of the Sea negotiation.

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[309]*Ibid.*, p. 249.

The Group of 77 saw the Law of the Sea as an issue between developed and developing states, mainly because one of the main issues of the negotiation was the deep seabed mining regime. Some developed states had the capability to exploit the deep seabed. The developing states, however, did not have such capability in technology and finance and as a result there was hardly any conflict of interests among member states of the Group of 77 because none of them had either the relevant capabilities. The Group of 77 therefore attempted to establish an international system in their favour to obtain benefit from deep seabed mining. Contrary to this, developed states generally supported the existing international economic system. The deep seabed mining issue was essentially between developed states benefiting from the current international system and developing states trying to change the international system in their favour.

The fact that there was hardly any conflict of interest among member states on the deep seabed regime made it easier for the Group of 77 to take a firm position. In order to pursue their objectives in terms of deep seabed mining the Group of 77 considered that they would need a strong independent seabed authority to prevent the developed countries' intervention in the authority's decisions. The United States and some other developed countries tried to weaken the solidarity of the Group of 77 by offering aid to some states in return for withdrawing support for the Group of 77. These tactics, however, did not work.

As mentioned above, the Group of 77 attempted to change the international system in its favour. It claimed that the existing international economic system was established by developed countries. They claimed that as a result the system benefited developed countries and increased the economic gap between developing countries and developed countries, and that this system needed to be changed in

order to make the gap smaller. The oil crisis, which occurred in 1973, bolstered the solidarity of the Group of 77. The oil crisis was caused by the Arab Petroleum Exporting Countries' oil embargo and it showed the power of group action of developing states against developed states. In 1974, two resolutions of the United Nations General Assembly which expressed NIEO principles were linked to the Law of the Sea Conference. Former UNCTAD officer Weiss described the atmosphere in UNCTAD at the time as, '[b]uoyed by the energy crisis and the boom in the prices of raw materials, the Group of 77 was confident of its ability to utilize the UN system to foster the establishment of a more just international order'.[310]

The Group of 77 also considered that existing international law had been made by the Western States and most developing countries had not taken part in its formation. Anand noted that existing international law is 'a product of the European or Western Christian civilisation' and that Asian and African countries could not play any role in its formation in the most creative period of its history—the last two or three centuries.[311] It was for this reason that the Group of 77 insisted on making new international laws to accommodate their demands. This was partially influenced by the Soviet Union's opinion, which 'tended to limit the law to what has been expressly accepted by States'[312] This was the Soviet Union's way of avoiding international law when it was convenient and also seemed a good reason for most developing states to denounce existing international law. Reflecting on these views, Paul Berthoud emphasised the need to establish new international law to help the development of developing states and he advocated an International Development

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[310]Thomas G. Weiss, Multilateral Development Diplomacy in UNCTAD: The Lessons of Group Negotiation, 1964-84 (Hampshire: Macmillan Press, 1986), p. xiv.
[311]R. P. Anand, *Origin and Development of the Law of the Sea* (The Hague: Martinus Nijhoff, 1982), pp. 1-2.

Law as a new international economic system.[313] Berthoud argued that the three legal pillars of the current international economic order, equality, reciprocity, and non-discrimination, were unfair and unjust to developing states and that they were three obstacles to development. He argued that

> 'equal treatment among unequals is inequitable towards the weaker partner; reciprocity among unequals breeds injustice; non-discrimination among unequals is in effect discrimination in favour of the stronger partner. ...real equality of opportunity implied the acceptance of unequal treatment to correct inequalities in real terms.'[314]

These ideas influenced the process of the Law of the Sea negotiation until the mid-eighties because the Group of 77 attempted to implement and secure these ideas in the Law of the Sea Convention. These ideas were not accommodated by developed states and the negotiations between the Group of 77 and developed states became very difficult, not only at the Law of the Sea negotiation but at other international negotiations. Weiss has pointed out that since the mid-seventies, 'international negotiations have stagnated and come to a complete halt.'[315] Later, in the 1990s, Michael P. Todaro stated '[a] 'new world order' was being proclaimed. But poor nations began to sense that it might not be a hospitable place in which to reside. They feared that the end of the cold war would redirect foreign investment and aid away from them and toward the emerging new democracies of Eastern Europe and the former USSR'.[316] When the Implementation to the 1982 Law of the

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[312]C. Wilfred, Jenks, A New World of Law?: A Study of the Creative Imagination in International Law (London: Longmans, 1969), p. 141.
[313]Paul Berthoud, 'UNCTAD and the Emergence of International Development Law', in Michael Zammit Cutajar (ed.), *UNCTAD and the South-North Dialogue: The First Twenty Years* (Oxford: Pergamon Press, 1985), pp. 72-73.
[314]*Ibid.*, pp. 72-73.
[315]Weiss, *op. cit.*, p. xiv.
[316]Michael P. Todaro, *Economic Development*. 5th ed. (New York: Longman, 1994), p. xxi. Todaro advocated a New International Economic Order in his book until its 1989 fourth edition. Michael P. Todaro, *Economic Development in the Third World*. 4th ed. (New York: Longman, 1989).

Sea Convention was adopted in 1994, in order to accommodate the United States' demands, most of the ideas of the NIEO had in fact evaporated.

In summary, the Group of 77 was formed separately from the Law of the Sea negotiation, however, it worked as the vehicle to convey developing states' demands in the negotiation. This was because the Law of the Sea negotiation included, as issues, the rights of coastal developing states over their adjacent seas as well as the deep seabed mining regime, both of which were considered as issues between developed states and developing states. The Group of 77 considered that all its member states had the right to protect their natural resources from the developed states' intervention and in order to do this the Group of 77 allowed its coastal states to extend their national jurisdiction. The Group of 77 consolidated its position in the negotiation both inside and outside of the negotiation and the oil crisis and NIEO particularly bolstered the solidarity of the Group of 77 in the 1970s.

3. Implicit Coalition between the United States and the Soviet Union

Said Mahmoudi stated that, up to 1974, the Soviet Union and Eastern European states had the 'same standing' in the negotiation as the Western industrialised states, and later that they shifted their position so as to be in harmony with the developing states.[317] Friedheim also stated that although East-West factors were not as important at the Law of the Sea Conference as they had been at the previous Conferences of 1958 and 1960 they played a 'measurable' role in preventing consensus on the ocean regime issue.[318] In my view, however, the relationship between the United States and the Soviet Union can be described as an 'implicit

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[317]Mahmoudi, *op. cit.*, p. 21.

[318]Robert Friedheim and Tsuneo Akaha, 'Japan and the Ocean', in Robert L. Friedhiem *et al.*(eds) *Japan and the New Ocean Regime* (Boulder, Colorado: Westview Press, 1984), p. 13.

coalition' in that in terms of the two core issues of the negotiation, navigational rights and the deep seabed regime, their positions were identical until 1980. Considering the fact that the United States was the most visible and influential actor,[319] therefore, the negotiation can be considered as the negotiation between the United States and the Group of 77. The implicit coalition between the United States and the Soviet Union is examined below in greater detail.

In the mid-sixties the United States and the Soviet Union were bipolar military powers on the sea.[320] The Soviet Union was determined to achieve parity with the United States in all aspects of power and influence.[321] If its naval power equalled that of the United States, the mere existence of it could well be the most effective way of checking American use of its own navy, which was hitherto an unchallenged sea power aimed at furthering global interests.[322] The concept of peaceful coexistence with capitalist states had been legitimatised by Nikita S. Khrushchev, who was First Secretary of the Soviet Communist Party from 1953 to 1964, although he had simultaneously sought to weaken capitalist states by all means short of war.[323] As a result of Khrushchev's concept, the Soviet Union felt relatively secure in a bipolar world.[324]

As the maritime capabilities of the United States and the Soviet Union became bi-polarised, their interests in freedom of navigation at sea became almost identical. The Soviet Union was worried about the creeping jurisdiction by coastal states, as was the United States, because of the possibility of it hampering its navy's freedom

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[319]Schmidt, *op. cit.*, p. 1.
[320]Robert O. Keohane and Joseph S. Nye, *Power and Interdependence* (Boston: Little, Brown and Co., 1977), pp. 144-145.
[321]Bryan Ranft and Geoffrey Till, *The Sea in Soviet Strategy,* 2nd ed. (Hampshire: The MacMillan Press, 1989), p.53.
[322]*Ibid.*, p. 48.
[323]*Ibid.*, pp. 42-45.

of navigation. This was coupled with the fact that the Soviet Union also intended to protect its distant-water fishing. These situations enabled the Soviet Union, in 1965, to make tentative overtures to several maritime states aimed at containing expansive claims to broad territorial seas. In 1966, the Soviet Union and the United States agreed to consult all nations on the question of whether they would agree to a new global conference on the law of the sea. The aim of the conference was to fix the limit of the territorial sea at twelve miles and to provide for freedom of navigation through and over international straits overlapped by the new twelve miles limit.[325] If the breadth of the territorial seas became twelve miles, it meant that up to 114 key straits would be overlapped by territorial seas.[326] This would hamper not only the activities of their surface vessels, but also those of their submarines and aeroplanes. The 'innocent passage' through international straits to ships of all states, including warships,[327] which was given in the Territorial Sea Convention in 1958, required submarines to navigate on the surface of the sea and to show their flags.[328] This in fact restricts the submarines' movement since they are visible to others. In addition, there was a possibility that if a coastal state judged that the passage of a foreign vessel was not innocent, the coastal state might interfere. Moreover, if the territorial sea of a coastal state or the territorial seas of both sides of a strait entirely covers the strait, the overflight of it would become very difficult. Overflight is not covered by the 1958 Convention and, therefore, it would be treated the same as overflight of coastal states' territory. This means that permission of overflight from the coastal

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[324]*Ibid.*, p. 50.
[325]Leigh S. Ratiner, 'The Cost of American Rigidity', in Bernard H. Oxman *et al.* (eds), *Law of the Sea: U. S. Policy Dilemma* (San Francisco, California: Institute for Contemporary Studies Press, 1983), p. 28.
[326]See Schmidt, *op. cit.*, p. 22.
[327]The Convention on the Territorial Sea and the Contiguous Zone of 1958, *op. cit.*, Article 14, para 1 and Article 16, para. 4.

state would be required. The United States and the Soviet Union therefore hoped to make a new agreement in order to obtain free passage, including overflight, of international straits. This meant no interference by coastal states, a right which had not been given under the provision of innocent passage in the 1958 Convention. In 1967, the United States and the Soviet Union informally discussed the creation of a High Seas Corridor through all international straits which would otherwise be overlapped by the territorial seas.[329] Booth noted that the United States and the Soviet Union shared interests of limiting the expansion of the territorial sea and acquiring free passage through straits.[330]

In terms of navigational rights, in 1971 in the Seabed Committee the twelve miles territorial sea was supported 'overwhelmingly'.[331] The United States stated that if free navigation through and over the international straits was guaranteed, they could accept twelve miles territorial sea. The United States had the 'full collaboration'[332] of the Soviet Union on this demand. Some states bordering important international straits, however, insisted that a right of innocent passage in the territorial sea sufficed for the passage of merchant ships and that because the United States and the Soviet Union intended to secure free navigation for military purposes, they could not accept it from a security standpoint. These states also thought that they should have powers to control navigation, mainly because of the potential danger of nuclear-powered ships and oil-tankers. Many developing

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[328]*Ibid.*, Article 14, para. 6.
[329]Schmidt, *op. cit.*, p. 22.
[330]Ken Booth, *Law, Force and Diplomacy at Sea* (London: George Allen & Unwin, 1985), pp. 63-67.
[331]Shigeru Oda, The Law of the Sea in our Time—II: The United Nations Seabed Committee 1968-1973 (Leyden: Sijthoff, 1977), p. 175.
[332]*Ibid.*, p. 176.

countries supported 'innocent passage' as well as other restrictions on passage, but they did not support free passage.[333]

The argument about the status of international straits continued and in 1973 eight strait states presented a proposal in which traditional innocent passage of ships was guaranteed. The United States and the Soviet Union, however, wanted to have free passage and overflight through straits, not 'innocent passage'. At the same time, the idea of the two-hundred miles EEZ was gaining support, not only from developing countries but also from some developed countries. This situation made the Soviet Union and the United States nervous because there was, at this stage, a possibility that the negotiation might result only in the extension of coastal states' national jurisdiction as a form of EEZ, without solving their primary concern, strait passage. The idea of the EEZ had very serious implications for both the United States and the Soviet Union because it included the entire water column of adjacent seas. In 1968 at the Ad Hoc Seabed Committee, in a discussion of delineating the international area from national jurisdiction, there was an argument about whether the water column was included. The United States, the Soviet Union and some other maritime states strongly opposed this. This question of the status of the water column had two meanings. First, if the water column of the high seas were included in the new international regime of sea use, the freedom of the high seas, namely free navigation, might be restricted. This could possibly hamper the movement of navy and non-military vessels. In addition, if the water column of adjacent seas was included in the discussion as part of the national jurisdiction, this would also hamper navigational freedom. The United States' 1945 Truman Proclamation carefully separated the continental shelf from the water column over the continental

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[333]Ibid.

shelf because the United States was worried about the possibilities of interference with its vessels by coastal states. In addition, the idea of EEZ meant for the Soviet Union that the activities of their distant-water fleets, which were at that time an important provider of protein for its nation, would be substantially restricted.[334]

When the Law of the Sea Conference started, the two-hundred miles EEZ was supported by nearly all, apart from the Landlocked and Geographically Disadvantaged states, although the nature of rights within the zone was still under dispute. The United States accepted EEZ in exchange for 'unimpeded transit of straits used for international navigation'.[335] The intention of the United States was to focus the discussion on the issue of strait passage and it used the discussion of the EEZ to do this. At the same time it hedged its position so that if the issue of strait passage could not be solved, it would not recognise the two-hundred miles EEZ.

The military use of the seabed was also one of the United States and the Soviet Union's concerns. There were some fears that these two superpowers might start military development on the seabed. This fear was one of the primary reasons that Pardo took the initiative at the United Nations General Assembly in 1967 and the reason why the issue was first discussed in the Seabed Committee. Military development of the seabed was in fact too costly for either of them to engage in. Eventually in 1971 the two states concluded a negotiation outside the Law of the Sea negotiation and made the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof. This treaty prohibited the emplacement of

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[334]When the idea of control of the high seas fisheries by an international regime surfaced, the United States and the Soviet Union strongly opposed it. This idea was supported by the Organisation of African Unity (OAU) in 1973 and 1974. The United States and the Soviet Union were afraid that the controlling power of ISA might be extended to the water column of the high seas.

[335]*Department of State Bulletin*, 5 Aug. 1974, p. 233. cited in Schmidt, *op. cit.*, p. 117.

weapons in the area beyond twelve miles from the coast.[336] The relationship between the two states was, at this time, backed up by an atmosphere of détente. After the severe Cold War, détente, a concept denoting a relaxation of tensions, was developed and its peak was between 1969 and 1976.[337] One of the symbolic events of détente was the Nixon-Brezhnev summit in June 1973, in which the United States and the Soviet Union agreed to broaden their co-operation on oceanographic matters. Trade between them enlarged significantly during the 1970s.[338]

With regard to the deep seabed regime, when Pardo's initiative was made at the United Nations General Assembly in 1967, the Soviet Union responded cautiously. Pardo advocated the Common Heritage of Mankind concept for the deep seabed and the creation of an international machinery to govern seabed activities. The Soviet Union rejected the Common Heritage proposal as a notion which lacked clarity and precision from the standpoint of international law. The Soviet Union stated that, those who interpreted seabed under the concept of Common Heritage of Mankind as common property, failed to take into consideration the realities of the contemporary world. In the following year, the Soviet Union stated at the General Assembly that thinking of the Common Heritage in terms of collective ownership was just an illusion and the whole idea was utopian.[339] This statement was backed-up by the Soviet Union's ideological theory that the present world was divided into three socio-economic systems: Capitalist, where ownership was concentrated in the hands

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[336]See Schmidt, *op. cit.*, p. 25. Due to the fact that negotiation for this treaty was conducted outside the Law of the Sea negotiation, the issue of seabed disarmament is not examined here, however, in my view, the negotiation leading to this treaty itself fostered a better relationship between them. For a discussion of the process of the negotiation, see, Evan Luard, *The Control of the Sea-bed: Who owns the resources of the oceans?* revised.(London: Heinemann, 1977), pp. 97-112. See also United Nation, *Sea-Bed—A Frontier of Disarmament* (New York: United Nations, 1972).

[337]Mohammed Abid Ishaq, *U. S.-Soviet Relations 1980-88: The Politics of Trade Pressure*. PhD Thesis, 1994, Glasgow University, p. 11.

[338]*Ibid.*, p. 10.

of monopolies; Socialist, which was the system of national ownership; and the Third World, where the majority of states were in the process of shaping their national economic structures.[340] This meant that as long as capitalist states existed there would be no chance that collective ownership would happen, so that there was no common ground on which to agree. The Soviet Union's position did not change on this until 1971.

In addition to the Soviet Union's argument on the Common Heritage of Mankind, the Soviet Union and its group had a long-standing aversion to the establishment of new United Nations committees or bodies of any kind, particularly those which might eventually acquire substantial authority in particular fields. On this point Roderick Ogley argued that the logic of the Soviet Union was as follows. To establish a powerful international authority controlled by developing states, most of which are still dominated by their economic relations with the capitalist world, and can therefore hardly be called 'socialist', is to create an instrument which could be used against socialism, as the United Nations had been in Korea.[341] Instead of forming new bodies or committees the Soviet Union called for further detailed studies by existing United Nations bodies, such as the International Oceanographic Commission (IOC).[342] It therefore opposed founding a committee to study Pardo's initiative. Eventually, the United Nations General Assembly set up an Ad Hoc Seabed Committee as a compromise, since many other states, including the United States, supported the establishment of a permanent committee.

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[339]Mahmoudi, *op. cit.*, p. 125.

[340]*Ibid.*, note 27. With regard to this theory, Roderick Ogley made reference to a book published in 1977. Roderick Ogley, *Internationalizing the Seabed* (Aldershot, Hampshire: Gower, 1984), p. 35. It is not certain that the Soviet Union clearly had this theory at the beginning of the Law of the Sea negotiation. The Soviet Union stated at the General Assembly in 1968 that there coexisted States with different social structures and different systems of ownership. Mahmoudi, *op. cit.*, p. 125.

[341]Ogley, *op. cit.*, p. 34.

At the Ad Hoc Seabed Committee the Soviet Union opposed the Common Heritage concept and argued that the question of international machinery be excluded from the agenda of the Committee. The United States did not support the concept of Common Heritage, nor machinery, although the developing states generally did support these. At this stage, the positions of the United States and the Soviet Union were the same, although the reasoning behind their positions was quite different. They rejected *a priori* the concept of Common Heritage. The alternative for the Socialist States to the Common Heritage concept was the same as that of the technologically advanced countries of the West. Both argued to adopt the principle of freedom of the high seas and legal norms established by the High Seas Convention of 1958,[343] since freedom of the high seas meant states could use the seas freely, including exploitation of the deep seabed. The United States and the western industrialised states argued from the beginning that the concept of Common Heritage was contrary to existing norms and principles of international law, meaning the principle of freedom of the high seas. In addition they insisted on freedom of access to, and use of the resources of the seabed, without any discrimination.[344] When, in December 1968, the United Nations General Assembly decided to make the Ad Hoc Committee a permanent committee,[345] the Soviet Union and some of its Eastern European allies abstained from voting. The Soviet Union and the United States however on the same day, opposed, without success, another General Assembly resolution requesting the Secretary-General to undertake

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[342]Luard, *op. cit.*, p. 88.
[343]Mahmoudi, *op. cit.*, pp. 125-126. Cf. *Ibid.*, p. 152.
[344]*Ibid.*, pp. 124-125.
[345]General Assembly Resolution 2467 A on 21st December 1968.

a study on the question of establishing appropriate international machinery for control of the seabed.[346]

After the ad hoc committee became a standing committee in December 1968, the United States participated in it actively. In the committee, the question of machinery now became one of type, as opposed to whether to have it at all, even though the Soviet Union still opposed the Common Heritage concept and international machinery. The activity of the United States in the committee showed that it had, in order to get a quick solution to the breadth of the territorial sea and navigational freedom, changed its stance from opposing the concepts of Common Heritage and machinery, to accommodating them to some extent. In addition to the United States' activity in the committee, the United States considered that collaboration with the Soviet Union was essential in terms of the breadth of territorial seas and navigational freedom. As a result, the Soviet Union joined the Western states in favour of establishing a boundary for the international seabed area.

The question of convening a new conference on the ocean was also controversial. The developing countries insisted on holding a comprehensive conference whereas the United States, the Soviet Union and some other industrialised states favoured convening a new conference for *only* the breadth of the territorial sea and related straits passage. In 1969 the discussion was moved from the Seabed Committee to the General Assembly, where decisions are made by the majority, and not by consensus as in the case of the Seabed Committee. The General Assembly adopted the Resolution[347] requesting the Secretary-General to consult states on an early convening of a *comprehensive* conference on the law of the sea. The United States

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[346]General Assembly Resolution 2467C on 21st December 1968.
[347]The United Nations General Assembly Resolution 2574A, December 1969.

and the Soviet Union voted against this resolution. They understood that once this resolution was adopted, holding a comprehensive conference could become a *fait accompli*. The United States was convinced that considering all marine legal issues at one conference would multiply the difficulties of making progress on any.[348] The Soviet Union did not want to discuss issues of the Common Heritage and machinery. In discussions concerning another resolution requesting the Secretary-General to undertake 'a further study on various types of international machinery'[349] that included the exploiting machinery which the developing countries favoured,[350] the Soviet Union opposed the whole idea of machinery. The Soviet Union repeated its position that international co-operation in ocean research should be primary and that expectations about exploiting the seabed were premature. The Western states also opposed the idea of exploiting machinery. In the vote, however, no state opposed it and the Soviet group abstained[351] since developed states did not want to be seen to be uncompromising. There was also a heated discussion at the United Nations General Assembly on the 'Moratorium Resolution',[352] which created a moratorium on all activities of exploitation of the resources of the international seabed area until the establishment of the international regime.[353] This resolution was supported by the developing states. The United States and the Soviet Union voted against this. Buzan pointed out that during this period, '[t]he Soviet Union was still bearing the brunt of the opposition to the developing countries, with the

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[348]See Schmidt, *op. cit.*, p. 26.
[349]The United Nations General Assembly Resolution 2574C.
[350]Barry Buzan, *Seabed Politics* (New York: Praeger Publishers, 1976), p. 98.
[351]*Ibid.*, p. 115 note 7.
[352]The General Assembly Resolution 2574D.
[353]Lay S. Houston, *et al.* (Compiled and eds), *New Directions in the Law of the Sea: Documents Vol. II* (New York, Oceana Publications, 1973), p. 737.

United States in close second place'.[354] The United States vigorously opposed the resolution because it ran directly counter to the *res nullius*[355] principle (a thing or land belonging to no one and open to effective occupation and claims to exclusive right) espoused by many industrial states.[356]

In the following year, in the discussion of the Declaration of Principles,[357] the Soviet Union continued to oppose the inclusion of the concept of the Common Heritage of Mankind into the declaration. The Common Heritage and the international machinery were, irrespective of the Soviet Union's disagreement, put into the Declaration in 1970. The United States voted for it, however, the Soviet Union and most of the Soviet group abstained. At the same time the Soviet Union also opposed another resolution.[358] This resolution requested a study of, and proposals for a solution to, the problem of price fluctuations for the mineral exporters, which might be caused by the exploitation of seabed minerals. The Soviet Union disagreed with this because it implied a strong machinery to control prices. It once again, however, abstained in the vote. In the voting for the 'Conference Resolution,'[359] which decided to convene a conference on the law of the sea in 1973, seven states opposed and six abstained. The conference would deal with the establishment of an international regime, including an international machinery, the regimes of the high seas, the continental shelf, the territorial sea, including its

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[354]Buzan, *op. cit.*, p. 94.

[355]There had been an argument about the status of the deep seabed. There were two principles which were argued. They were *res nullius* and *res communis*. *Res nullius* means a thing or land belonging to no one and open to effective occupation and claims to exclusive right. *Res communis* means a thing owned by everyone in common and unsusceptible of unilateral appropriation. See Schmidt, *op. cit.*, p. 31; Mahmoudi, *op. cit.*, pp. 85-86.

[356]Jack N. Barkenbus, *Deep Seabed Resources: Politics and Technology* (New York: The Free Press, 1979), p. 34.

[357]The United Nations General Assembly Resolution 2749.

[358]The United Nations General Assembly Resolution 2750A.

[359]The United Nations General Assembly Resolution 2750C.

breadth and international straits.[360] All the oppositions and half the abstentions were made by the Soviet Union and its allies. The Soviet Union opposed a comprehensive conference and favoured a limited item conference, which was to discuss only the territorial sea and continental shelf limits, straits navigation and coastal state fishing rights.[361] The United States changed its position and joined the list of sponsors of this Resolution. It did this because a comprehensive conference would give it an opportunity to establish new rules of navigational freedom.

Despite early opposition, the position of the Soviet Union was changing gradually since it did not wish to oppose explicitly proposals made by developing states in the voting at the General Assembly. The Soviet Union was afraid of being isolated from developing states. Since Khrushchev became leader of the Soviet Union, it aimed to take advantage of the emergence of a great number of newly independent states and the struggles for freedom from colonialism. By backing these developing states, the Soviet Union intended to weaken the economic and political influence of capitalist-imperialism. This was in order to establish its own leadership of a global movement of progressive states and to increase its world influence.[362] This would mean that the position of the Soviet Union in the world would change from one of being permanently on the losing side, due to the limited number of its allies, to one of being on the winning side, aided by the numerical superiority of the developing states. It was for this reason that the Soviet Union, even though it objected to the concept of Common Heritage of Mankind which was supported by developing states, did not vote against it.

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[360]Lay S. Houston, et al., *op. cit.*, p. 738.
[361]Buzan, *op. cit.*, p. 113.
[362]Ranft and Till, *op. cit.*, p. 42.

After the 1970 Conference Resolution, the Soviet Union changed its position from one of brunt opposition to the concepts of the Common Heritage and international machinery, to one of accommodating some aspects of them. The Soviet Union realised that a comprehensive conference was inevitable and it attempted to find some way of getting what it wanted, namely navigational freedom, by using the Conference which was a 'package deal'. This attitude was illustrated in July 1971 in its proposal for an international regime and machinery. The Soviet Union's proposal supported the establishment of a machinery for seabed regime, however, the detail of it was 'extremely vague'.[363] After this proposal the Soviet Union generally avoided committing itself too much on the issues of deep seabed regime. Instead, the United States led the discussions with the Group of 77 and the Soviet Union generally did not disagree too strongly with the Group of 77, apart from issues where it felt its interests were at stake.

When the United States accepted, as a basis for negotiation, the Group of 77's idea that all activities were to be conducted by the ISA, the Soviet Union disagreed,[364] since the Soviet Union objected to the idea of such a controlling ISA. The Soviet Union's position, however, finally became the same as the United States in 1975. In that year, the Soviet Union submitted a proposal, which although containing minor differences was generally in line with those of the other developed states.[365]

As the Soviet Union and some of the Eastern European states had substantial land sources of seabed minerals, they would not need to mine the seabed in the

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[363]Buzan, *op. cit.*, p. 164.
[364]*Ibid.*, p. 225.
[365]*Ibid.*, p. 250. The differences basically came from a lack of enthusiasm for any future Soviet venture into deep seabed mining, and a lack of concern for the capitalist sensitivities of Western mining companies.

immediate future. This was reflected in their attitudes towards deep seabed mining[366] and the Soviet Union and the Eastern European states acted in a somewhat generous manner with the financial conditions in order to gain favour with developing states, however, they did not wish to be saddled with onerous terms in the future.[367]

The Soviet Union started its research activities in deep seabed mining in the seventies and formed the state enterprise Yuzhmorgeologiya. From 1977 it carried out research programmes in the Pacific and Indian Oceans, but even so its technology was not well enough developed to engage in actual exploitation. The Soviet Union was reported to have directly and indirectly approached some of the multinational deep seabed mining consortia to purchase the necessary technology.[368] In reality, the technology of the Soviet Union was behind the western industrialised states. For example, after the Conference, when the prospective mining states held discussions about the overlapping claims made by their deep seabed miners in the Preparatory Commission, it was revealed that the Soviet Union's claims overlapped with others, even though the Soviet Union had done no prospecting. The Soviet Union seemed to have learned about the most promising areas prospected by other states through satellites.[369] These facts showed that the Soviet Union was not as interested in deep seabed mining as the United States.

Contrary to the self-sufficient Soviet Union, the United States was importing deep seabed minerals.[370] If deep seabed mining started, the reliance on imports of

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[366]The Soviet Union did later enact domestic legislation for deep seabed mining in 1982, following the United States' domestic legislation for deep seabed mining in 1980.
[367]Sebenius, 1984, *op. cit.*, p. 17.
[368]Mahmoudi, *op. cit.*, p. 34 and p. 34 note 54.
[369]Schmidt, *op. cit.*, p. 298 note 155.
[370]In 1976, the United States imported one-hundred percent of its manganese, which is critical to steelmaking; one-hundred percent of cobalt, which is used in powerful magnets, aviation alloys and

those minerals would have been lessened and it would have helped to reduce international payment for them. Moreover, it would create more jobs for United States' citizens. It was for this reason that the United States wanted reasonable conditions of exploitation of the deep seabed for its prospective miners.

There was, therefore, a difference in both the need for deep seabed mining and also in deep seabed mining capability between the United States and the Soviet Union. This fact, however, did not prevent them from attempting to establish the deep seabed mining regime based on as favourable conditions for them as possible.

When the Informal Single Negotiation Text was issued at the end of the 1975 session, the United states and the Soviet Union found that it contained articles concerning the twelve miles territorial sea, the two-hundred miles EEZ and most importantly free passage of international straits. The fact that the text included the provision of free passage of international straits encouraged both the Soviet Union and the United States to continue the negotiation, although the provisions relating to the deep seabed regime were still unsatisfactory to both of them. At this point, the Soviet Union's objectives in participating in the negotiation were to maintain the favourable provision on free passage until the end of the negotiation and to conclude the negotiation successfully, since the negotiation was a package deal.

As shown above, although there were some differences in their positions in terms of deep seabed mining due to the varying degree of need for minerals, the United States and the Soviet Union had the same interests in terms of navigational rights. In addition, neither of them wanted onerous conditions for deep seabed mining and on these points the United States and the Soviet Union collaborated. When in 1975, as

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electronics; ninety-one percent of nickel, which is used for stainless and high-performance steels; and twenty-four percent of copper, which is used for wire and electrical apparatus. Sebenius, 1984, *op. cit.*, p. 16.

a compromise between the Group of 77 and the United States and other industrialised states, the ISNT included the allocation of twelve out of the total thirty-six seats on the Council to states with special interests, the Soviet Union suddenly invoked the principle of the parity of East and West. Before this stage the Soviet Union generally supported the position of the Group of 77 with respect to the composition of the Council,[371] however, it changed its position and 'insisted that [the East] should have special representation in the Council, and be accorded the same protection desired by the West since they represented one of the major socio-economic systems of the world.'[372] In addition, the Soviet Union argued that in terms of the decisions of the Council of the ISA, the formula of voting should be one in which the East could protect their vital interests. In this sense, the Soviet Union and the United States had the same common goal, that is to forestall the developing countries from imposing their demands at will in the Council.[373]

The relationship between the Soviet Union and the United States became considerably worse in 1977. This deterioration in the relationship meant that the United States lost a lot in terms of the negotiation of scientific research in the adjacent seas, since the Soviet Union, which had been in agreement with the United States on the issue, changed its position to support the Group of 77. This change by the Soviet Union was caused by the fact that American President Ford signed the bill of the two-hundred miles fisheries zone, the FMCA.[374] This caused problems because up until this time the United States and the Soviet Union had both refused to agree to the two-hundred miles EEZ until the rights of navigation were firmly

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[371]Mahmoudi, *op. cit.*, p. 263.
[372]E. L. Evriviades, 'The Third World's Approach to the Deep Seabed' in *Ocean Development and International Law*, (1982), p. 233, quoted in Mahmoudi, *op. cit.*
[373]*Ibid.*, p. 265.
[374]See chapter 1.

protected in the Convention. The United States legislation on fisheries damaged both states' position on this point, since the negotiation was still continuing and they had not acquired firm assurance of the navigational rights. In addition, the Soviet fleets that had fished off the east coast of the United States for a quarter of a century were warned by the United States to leave and a few ships were seized.[375] This event changed the Soviet Union's attitudes towards the United States, however, its attitude towards the core issues of the negotiation, namely, navigational rights and the seabed regime, remained the same.

After the advent of Reagan Administration, however, the United States changed its policy on the Law of the Sea and wanted to redress part of the seabed regime. The Soviet Union warned the United States repeatedly that reopening the negotiation of the seabed regime was dangerous and tantamount to undermining them[376] because reopening the negotiation might unravel the section dealing with navigational freedom. The Soviet Union wanted to finish the negotiation as soon as possible because some strait and coastal states still wanted to restrict navigational freedom in the territorial seas and international straits. In January of 1981 at a Group of five[377] meeting, the Soviet Union demanded the United States complete the negotiation at the 1981 spring session.[378]

The Soviet Union and the United States delegations met before each session to discuss any differences they might have, although they tried not to show that they

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[375]William Wertenbaker, 'A Reporter at Large: The Law of the Sea, Part I', *The New Yorker*, (Aug. 1, 1983), p. 56.

[376]Schmidt, *op. cit.*, pp. 234-5.

[377]During the negotiation the Soviet Union had regular meetings with the United States, France, Japan and the United Kingdom. This was called the Group of Five whose existence was never openly admitted by its participants. The Group met regularly before Conference sessions and intersessional meetings, both at head-of-delegation and working-group level. This group was created because, for example, Elliot L. Richardson, American ambassador-at-large to UNCLOS from 1977 to 1980,

were meeting. At the final stage of the negotiation, however, the Soviet Union and the United States stopped meeting each other. This was because the Soviet Union strongly disapproved of the Reagan Administration's negative views on the Conference.[379]

At the final voting for the Convention the Soviet Union abstained[380] and the United States voted against. The Soviet Union however soon changed its position and signed the Convention in 1982. The Soviet Union was not only the first important state to sign the Convention, but also the very first to embody its main provisions in domestic law, from which they made good propaganda by denouncing the United States.[381]

The United States and the Soviet Union's concerns on navigational freedom were identical and their interests in most items of the seabed regime also became similar. This was due to the fact that the role of the ISA became significant. The United States and the Soviet Union shared the same basic interests in objecting to the controlling of the ISA by the developing countries. In terms of the technology transfer obligation, when the Group of 77 presented a proposal for the transfer of technology in 1975 from the industrialised states to the Enterprise, the operating arm of the ISA, the United States and the Soviet Union both opposed it.[382] This issue was finally incorporated into the Convention, however, the Soviet Union and

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sought to increase consultation and co-operation with United States' allies and the Soviet Union. *Ibid.*, p. 62.

[378]*Ibid.*, p. 220.

[379]Wertenbaker, Part I, *op. cit.*, p. 50.

[380]The Soviet Union claimed that its state enterprise for seabed mining was discriminated against. To the ISA, Western consortia qualified as pioneers if one of their member companies' states was a signatory to the Convention. On the other hand, the Soviet Union had to be signatory before its state enterprises qualified as pioneers. It viewed this as discrimination. See Schmidt, *op. cit.*, pp. 174-175.

[381]Ranft and Till, *op. cit.*, p. 60. This was despite the fact that some of the provisions of domestic law were contradicted by what the Soviet Union had insisted on during the Conference. For example, domestic law required foreign warships entering or departing from its territorial seas to have prior authorisation. See Butler, *op. cit.*, pp. 334-339.

other industrialised states hoped the obligation would be as light as possible. Financial undertakings, namely, charges imposed by the ISA, relating to deep seabed mining were also a problem. With regard to this and without specific reference to it, the Western states' efforts to secure better conditions for their corporations was automatically beneficial to the Soviet Union. Ken Booth also pointed out that the Soviet Union's involvement in the Law of the Sea Conference, like its involvement in most international organisations, had been for 'damage limitation purposes and propaganda rather than as a result of a commitment to common principles about the development of international society' and the Soviet Union sensibly adopted 'the low profile' policy.[383] This was why, 'to a lesser degree even than most Western states, the Soviet Union has not identified with the evolution of a 'New International Economic Order'. This played no part in its policy' [at the negotiation].[384] The Soviet Union seemed to have voiced its view only when it had to and when it was convenient for it to do so. In 1980 the Group of 77, with regard to the composition of the Council of the ISA, decided to negotiate only with the United States and the Soviet Union was irate over its exclusion. The Soviet Union always insisted on equal status with the United States in all things.[385] Wertenbaker reported what one Third World delegate said that 'the Soviets didn't count. They weren't important in the negotiation. But it may have been a mistake to leave them out, because they were so angry they had to be pacified later.'[386]

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[382]Buzan, *op. cit.*, p. 259.
[383]Booth, *op. cit.*, pp. 67-68.
[384]*Ibid.*, p. 67.
[385]William Wertenbaker, 'A Reporter at Large: The Law of the Sea, Part II', *The New Yorker*, (Aug. 8, 1983), p. 65. The Soviet Union was reported to have said 'all sorts of things' to one of the leaders of the Group of 77 for its exclusion. *Ibid.*, p. 67.
[386]*Ibid.*, p. 65.

It is concluded therefore that there was an 'implicit coalition' between the United States and the Soviet Union in terms of the two core issues of the negotiation and the United States was dominant in deciding the direction of the negotiation and in determining the outcome of the negotiation. Towards the end of the Conference, the Group of 77 negotiated only with the United States. After the Conference the United States held the key to the final outcome of the Law of the Sea negotiation. Therefore in chapters six to eight of this study the negotiation is analysed as one between the United States and the Group of 77 in terms of two core issues.

4. Conclusion

This chapter has looked at the core issues of the negotiation, the Group of 77 and the implicit coalition between the United States and the Soviet Union. Although the core issues of the negotiation were not explicitly agreed by participating parties at the Law of the Sea negotiation, trading the seabed regime for navigational rights was a common understanding among the participating states.

The Group of 77 was formed to represent opinions of developing states in the international arena. The Group of 77 was not a group formed only within the Law of the Sea negotiation, however, in the Law of the Sea negotiation the Group of 77 was used to align positions of developing states. On the other hand, the United States and the Soviet Union had a relationship which can be described as an 'implicit coalition' because of their almost identical interests on the two core issues. Both states, due to their global naval power, shared a strong interest in navigational freedom. In addition, the United States had interests in deep seabed mining. Although the Soviet Union was self-sufficient in seabed minerals and it was much less interested in seabed mining, it was more concerned about the implications of creating the seabed regime. Both of these superpowers, nevertheless, wished to

avoid onerous obligations with regard to the deep seabed regime. They both attempted to establish the deep seabed mining regime based on as favourable conditions for them as possible. While the Soviet Union adopted a low profile policy, the United States was the most visible actor and was dominant in deciding the direction of the negotiation and in determining the outcome. Chapters 6 to 8 of this study therefore examines the negotiation process between the United States and the Group of 77 in terms of the core issues of the negotiation.

Chapter 6 The Negotiation and its Changing Context

This chapter examines the process and context of the negotiation until 1980. As argued in Chapter 5, the Law of the Sea negotiation can be considered as a negotiation between two parties, the Group of 77 and the United States, and as being a trade-off between the core issues of the deep seabed mining regime and navigational rights. For this reason this relationship and these core issues are concentrated upon. In addition, as previous chapters have demonstrated, a number of domestic and international factors, which are 'the context of the negotiation', influenced the negotiation and as such the changing context from 1967 to 1980 is also examined.

1. Pre-negotiation stage: Before 1967

At this stage, the Group of 77 did not have a consolidated position in terms of the Law of the Sea issues. Established three years earlier, it was not yet accustomed to working as a group. The Latin American states group was the most radical on the issue of the breadth of national jurisdiction seawards and other developing states were not in agreement with them on this issue. It took some time for member states of the Group of 77 to co-operate with each other to pursue common objectives. In addition, at this stage most developing states did not have much interest in the potentiality of deep seabed mining: an issue which later consolidated the Group of 77.

There were three basic factors in the context of the negotiation which existed at this stage: the Cold War; rapid technological development; and the fact that the number of developing states had increased. These affected both sides of the negotiation. The position of the developing states will be examined first.

The Cold War clearly influenced the attitudes of developing states towards the superpowers. Many developing states chose independence from the two superpowers, and their attitudes led to the establishment of the Group of 77. The rapid development of technology in fishing and the exploitation of minerals after the Second World War also influenced the position of the developing states. After the First Law of the Sea Conference in 1958, technological development accelerated and this raised suspicion among developing states that technologically advanced states might exploit their resources. In addition, especially after the First and Second Law of the Sea Conferences (1958 and 1960), the number of newly independent states soared and they collectively tried to develop a standpoint for their own problems and needs.

The concerns of developing states about sea use were limited to fishing and offshore oil in their adjacent seas at this stage.[387] Many coastal states began to realise their stakes in their adjacent seas, and many developing states started making unilateral claims to extend national jurisdiction seawards beyond the existing rule of three miles territorial sea. Most coastal states with interests in fisheries, wanted to avoid foreign fleets catching fish in their adjacent seas and the prospect of the exploitation of oil on their continental shelf worked as an incentive for coastal states to enclose the potentially exploitable area by extending national jurisdiction. The reason the developing states felt able to do this was because during the First and Second Law of the Sea Conferences, the maritime states, led by the United States, proposed a six-mile territorial sea plus six-mile fishing zone as a compromise between states hoping for wider national jurisdiction to protect resources in the

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[387]Later, political considerations, such as the control of the machinery (International Seabed Authority), was added.

adjacent seas, and states hoping for the breadth of territorial sea as narrow as possible. This six-mile plus six-mile figure was only an idea, not an expression of their final position. The non-maritime states with some interests in their adjacent seas took this proposal to imply that the United States and other maritime states would allow them to extend their jurisdiction (not necessarily sovereignty) seawards up to twelve miles. This was obviously not what the United States and other maritime states intended, however, irrespective of their intentions, the general perception of non-maritime states was formed in this way. The Soviet Union's support of the twelve-mile territorial sea strengthened this perception. In fact, in 1960 the Soviet Union legislated domestically for twelve miles territorial sea. By 1968 the number of states which claimed fishing zones to twelve miles or more was more than sixty.[388]

Contrary to the position of the developing states, the policy-makers of the United States perceived the above three factors differently. The relationship between the United States and the Soviet Union was worsening. In addition technological development enabled the United States to employ nuclear-submarines which were used to secure second strike capability by their submarine-launched ballistic missiles. These developments made free navigation for its navy more important than it had previously been. Technological development also advanced the possibilities of exploiting resources in the sea, which would help the United States' economic development. In addition, the increase in the number of newly independent states changed the political situation in the international arena substantially, especially in the United Nations. In the First and Second Law of the Sea Conferences, the

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[388]Barry Buzan, *Seabed Politics* (New York: Praeger Publishers, 1976), p. 60, p. 64 note 7.

maritime states still had a large influence, partly because of the small number of independent developing states. The influence of the maritime states, however, was decreasing substantially because of this political change. Not only did the number of developing states increase but also the newly independent states often made unilateral claims to extend national jurisdiction without taking into consideration their former suzerain.

The Truman Proclamation in 1945 was a compound of balanced strategic and economic interests.[389] The strategic view of the United States' policy-makers was based on the need to keep freedom of navigation for their navy. Their economic view was to obtain financial and other benefit from the seas. When a number of states started extending their national jurisdiction the policy-makers of the United States perceived the rampant unilateral claims to extend national jurisdiction seawards by coastal states (most of whom were developing states) as damaging their navy's free movement. Although there were some considerations of fishing interests at this stage, their main concern was their strategic interests in the sea, since continental shelves had already been recognised as belonging to a state's national jurisdiction in the Continental Shelf Convention of 1958.

The pre-1967 stage can therefore be considered as the period in which policy-makers of states started identifying their interests in the sea. In addition the stage was defined by three factors in the context of the negotiation, namely the Cold War, rapid technological development, and increased number of developing states, influenced states' actions.

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[389]See in chapter 4.

2. Pre-Conference Negotiation Stage I : 1967-70

At this stage, responding to Pardo's 1967 initiative, the United Nations General Assembly set up the Seabed Committee within which the negotiation was conducted. The Group of 77 had already formed, however, at this stage, it did not have an established position, particularly on the adjacent sea issues. At this stage, the relationship between developing states and the United States changed substantially. At the pre-negotiation stage, before 1967, states' interaction was still limited and their contention in relation to sea use was considerably vague, however, at this stage, the Seabed Committee was set up in the United Nations, and the problems between the Group of 77 and the United States were gradually clarified.

Within the United States, Pardo's initiative was received negatively and industry lobbied Congress and the Administration to act against the initiative. Over twenty resolutions were introduced in Congress, almost all directed against the idea of vesting control of seabed resources in an international body. Pardo's concept of Common Heritage of Mankind was considered to handicap US industry and dampen its enthusiasm. Some United States' mining companies had already started a R & D programme in the early to mid-1960s. Technological development in deep seabed mining was under way, and such developments along with industrial moves towards deep seabed mining was reported publicly, so that interest in deep seabed mining increased. In 1968, the American Mining Congress (AMC), an association of four-hundred companies operating in mining and engineering, passed a resolution recognising that 'deep ocean mining can proceed in reasonable fashion without benefit of new legal arrangements by recognising that accepted principles of

international law governing high seas activity extend to ocean mining.'[390] This resolution declared that the traditional principle of freedom of the high seas would be enough to carry out deep seabed mining.

Soon after this resolution, United States President Nixon issued a policy statement on the ocean and stressed the need for ocean research and that international co-operation should only take place when it was in the best interests of the United States.[391] These moves within the United States made developing states worry about the prospect of deep seabed mining carried out by United States companies without international agreement on the deep seabed development. They reacted by adopting the Moratorium Resolution[392] in 1969. This was despite the United States' opposition to the resolution which was as an attempt to prevent unilateral exploitation by companies of technologically advanced states. The worries of the developing states were further spurred by the moves of Summa Corporation. Howard Hughes' Summa Corporation began exploration and equipment testing in 1969.[393] Since Summa Corporation was considered to be financially capable of conducting deep seabed mining at any time when the technology was ready, it looked for a time as if it was going to mine the deep seabed in direct opposition to the Moratorium Resolution.[394] Other companies needed huge investments to begin mining, and in order to acquire investments they in fact needed legally and politically secure circumstances, either domestically or internationally.

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[390]US Congress (1969-70), 281, cited in Markus G. Schmidt, 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 (Oxford: Clarendon Press, 1989), p.83 In terms of the status of high seas, which is called freedom of high seas, see chapter 5 of this study.

[391]Buzan, *op. cit.*, pp. 78-79.

[392]See chapter 5.

[393]*Ibid.*, p. 80.

[394]Jack N. Barkenbus, *Deep Seabed Resources: Politics and Technology* (New York: The Free Press, 1979), p. 34.

The *res nullius* principle[395] was not strong enough for those companies, although the AMC's resolution claimed that it was enough to exploit the deep seabed. The news of technological development in deep seabed mining was frequently reported. Companies were competing with each other and deep seabed mining companies, especially United States companies, were the prime source of information on deep seabed mining, and they optimistically advocated the prospect of deep seabed mining in order to attract investments and governmental support.

In the Seabed Committee, despite the mining companies' optimism, the United States government emphasised the pessimistic aspects of deep seabed mining in order to discourage the idea of an international body to control the deep seabed development. This discrepancy in the prospects of deep seabed mining between the United States government and its industry meant that in the Seabed Committee the delegates of developing states were reluctant to believe any of the information on deep seabed mining that came from the delegates of the United States. Accordingly the delegates of developing states thought that deep seabed mining would start soon. The attempts by the delegates of developing states in the United Nations to forestall deep seabed mining prompted the United States industry to act to protect their interests and industry lobbied Congress and the government. Lobbying by industry was particularly strong against the Moratorium Resolution of 1969, and, against the Principles Resolution of 1970, in which the term of Common Heritage of Mankind was inscribed. Overall United States' industry was generally pessimistic about the outcome of the negotiation.

Examining the actions taken by the developing states the issue of deep seabed mining inspired them to act collectively for two reasons. First, the area for deep

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[395]See, chapter 5.

seabed mining was beyond the national jurisdiction of coastal states. This meant that the issue of deep seabed mining could be considered separately from the interests of the coastal states. Secondly, developing states did not have a direct interest in engaging in deep seabed mining. In order to commence deep seabed mining, highly sophisticated technology and financial capabilities were required.[396] No developing states had both of these. For this reason developing states were worried about the possibility that the industrialised states might monopolise the seabed and its 'fortune'. These two reasons provided the impetus for developing states to pursue, as a group, the establishment of an international regime which would enable them to derive benefit from deep seabed development. Later some developing states, which were producing the same minerals as those on the deep seabed, became worried about the prospect that their income from exporting those minerals would be reduced. The Group of 77 then attempted to solve this problem by devising a new proposal for the production and marketing control of deep seabed minerals, coupled with a compensation scheme for the loss incurred as a result of deep seabed mining.

The above shows that the developing states at the negotiation and a United States domestic factor, the mining industry, directly influenced the actions of each other. In terms of technological development of deep seabed mining the developing states were more interested in the moves of United States industry, than in the delegation of the United States at the negotiation. The developing states reacted to the moves of the industry by adopting resolutions. On the other hand, industry in the United

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[396]To extract manganese nodules from the deep seabed requires sophisticated equipment. For example, the seabed is not generally flat, it contains peaks which measured from the bottom are taller than Mt. Everest. Changeable weather at sea, erosion by sea water also need to be considered. In addition, processing also needs sophisticated technology because the composition of elements within

States was looking at the negotiation and reacting to actions taken at the negotiation by the developing states and then lobbying Congress and the government. The reactions of developing states and United States industry were not directly linked since only states can negotiate at the negotiation. Nonetheless they influenced each other. The information sources of the representatives of developing states were not limited to their counterparts at the negotiation. They had access to a much wider network including United States industry. When industry in the United States realised the actions of developing states, it lobbied Congress and the government in order to influence the United States policy on the Law of the Sea, since only the state can negotiate with other states.

The United States' position was gradually moving towards accepting the developing states' positions. The Nixon Trusteeship Proposal[397] of 1970 was evidence that the United States would concede to the developing countries on the issue of the deep seabed mining regime. The United States hoped to establish an adjacent regime as quickly as possible and it, along with other developed states, wished to improve the atmosphere of the committee. The Principles Resolution of 1970 was an example of their efforts to do this. The Principles Resolution was vague and considered largely meaningless, but nonetheless it was adopted without objection or abstention. Developing states interpreted this as meaning that the concept of Common Heritage of Mankind was recognised and that they could proceed with their argument on this concept. When the Conference Resolution of 1970 to convene the conference in 1973 was adopted, the United States joined the sponsors of the resolution.

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manganese nodules varies considerably from one seabed site to another and even the variability within regions is significant.

At the beginning of the pre-Conference stage a number of developing states were doubtful of the outcome of the negotiation, and they did not necessarily want a strong international machinery. At the end of this stage, however, more developing states considered that having a strong machinery to be a better option.[398]

At this stage, most developing countries were interested in making a new ocean regime, especially for deep seabed mining, however, they were not so keen on making a new adjacent sea regime, such as the breadth of territorial sea or national jurisdiction, because unilateral claims by coastal states were sufficient to satisfy their needs at that time. The Continental Shelf Convention of 1958 basically guaranteed their jurisdiction over the natural resources on the continental shelf and the entire continental shelf was gradually acknowledged as within the coastal states' jurisdiction.[399] In addition, the possible extension of national jurisdiction to twelve miles to protect their living resources from foreign fleets, eased the need for many coastal states to make further unilateral claims. Even if coastal states had unilaterally extended national jurisdiction in the adjacent seas and received objections from other states, the objections themselves would not directly harm them. Some developing states, mainly Latin American, were anxious to make a new rule which would allow coastal states to extend their national jurisdiction up to two-hundred miles. They had been insisting on this since 1947 although many developing states were not interested in such an idea. The Landlocked states

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[397]See chapter 2.

[398]See Johan Ludvik Lyvald, 'In search of an ocean regime: The negotiations in the General Assembly's Seabed Committee 1968-1970', *International Organization*, Vol. 29, No. 3, (Summer, 1975).

[399]The Continental Shelf Convention of 1958 articulated as the limit of national jurisdiction two-hundred metre isobath or the limit of exploitability. As a result of the International Court of Justice's decision of the North Sea case in 1969, the entire continental shelf was generally considered to belong to the coastal states although the limit of the continental shelf was not clearly defined at the time.

especially opposed the idea of wider national jurisdiction because it did not benefit them at all, and moreover, it meant that the area of the Common Heritage of Mankind became much smaller. The Latin Americans, which belonged to the Group of 77, saw Pardo's initiative as dangerous because they thought it might lay down the limits of national jurisdiction quite narrowly. Other developing states viewed Pardo's ideas positively.[400] The Latin Americans in fact implored Pardo, both privately and in the Assembly, to withdraw his initiative before it was made public. Among various reactions to Pardo's initiative, the Latin Americans were 'profoundly hostile'.[401] They were hostile to any attempt to raise the question of the limits of national jurisdiction because their two-hundred miles position was hardly supported by other states outside of their own Latin American group. The Latin Americans' attitude on the issue of the limits of national jurisdiction caused a rift among the developing countries.[402] The Latin Americans' actions prevented the Group of 77 from taking a more consolidated position. As a result, the Group of 77 ignored the problem of the limits of national jurisdiction and insisted that deciding the deep seabed regime would be the first thing to do, while the United States and other developed countries insisted on the need to define the boundaries of national jurisdiction first.

The above summarises the discussions between developing states and the United States at the negotiation and it is clear that the perceptions of developing states and the United States on the negotiation were quite different. The United States was not ready to concede substantially at this stage in terms of the deep seabed regime,

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[400]Ross D. Eckert, *The Enclosure of Ocean Resources: Economics and the Law of the Sea* (Stanford: Hoover Institutions Press, 1979.), p. 41.
[401]Evan Luard, The Control of the Sea-Bed: Who Owns the Resources of the Oceans?, revised. (London: Heineman, 1977)pp. 88-89.
[402]Buzan., *op. cit.*, p. 73.

although the United States showed its willingness to negotiate. The United States avoided creating hostility between itself and the developing states. The reason it did so was that it wanted to establish navigational rights by clarifying the adjacent sea regime. The United States was ready to use the negotiation of deep seabed mining regime as a bargaining chip. As a result the United States supported convening a conference with a wide-ranging agenda in order to secure navigational rights. The developing states did not have a common position on the issue of the breadth of territorial sea, however, they wanted to prevent the deep seabed from being monopolised by the United States and other technologically developed states. When the Group of 77 ignored the issue of the breadth of national jurisdiction and concentrated on the issue of the deep seabed regime the Group of 77 started to consolidate. At this stage, not only did the developing states interact with the United States at the negotiation but were directly interacted by domestic factors of the United States, such as the deep seabed mining industry.

3. Pre-Conference Negotiation Stage II: 1971-1973

In December 1970 it was decided that the Law of the Sea Conference would take place in 1973 and as a result, the negotiation at this stage was one of preparation for the Conference. At this stage, issues were gradually discussed in increasing detail, and the understanding by participating delegates of the issues became deeper and broader. Developing states had various meetings outside the United Nations and eventually consolidated their position within the Group of 77. In the United States, the mining industry continuously lobbied Congress and the government, and Congress started considering domestic legislation for deep seabed mining. This

influenced states' actions at the negotiation.[403] At the end of this stage, the combination of the twelve miles territorial sea and the two-hundred miles Exclusive Economic Zone took shape, although the United States still disagreed with the main body of opinion.

Developing states had many meetings outside of the United Nations. These meetings influenced the negotiation which was being held inside of the United Nations. These meetings bolstered the Group of 77's position in the negotiation. Some of the meetings of developing states were attempts to unify participants' positions in the negotiation. These were meetings of the Asian-African Legal Consultative Committee (AALCC), meetings of the Organization of African Unity (OAU) and the ministerial meeting of the Group of 77. These meetings were particularly effective because policy-makers of participating states learned what the issues meant for them or for their region and how policy-makers of other states considered issues. These meetings were one of the information sources. In addition, policy-makers of participating states learned through these meetings, that they had to align their objectives and act together in order to strengthen their position at the negotiation. The negotiation was held in the United Nations whose system is based on the principle of all states being equal, namely a one-state-one-vote system.

The attempts of representatives of the Latin American states to inspire an anti-developed states' feeling among representatives of developing countries were especially successful and this eventually formed the basic tone of the negotiation. The Latin American states attempted to get support from other developing states by

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[403]The discussion in the Seabed Committee was conducted in the three Sub-Committees. They were respectively assigned deep seabed regime, traditional issues such as breadth of territorial sea, and environment and some other issues. These Sub-Committees conducted discussions at the same time so that they could produce separate outcomes. This system was kept in the Conference as well.

creating a clear rift between the developing states and the developed states. In August 1971 in the Seabed Committee, with regard to the deep seabed regime, thirteen Latin American states proposed a strong autonomous machinery with exploiting power. This proposal gave virtually all powers of initiative to the International Seabed Authority. This proposal was at the extreme end of the proposals submitted to the Seabed Committee between 1970 and 1971.[404] The Latin American states intended to strengthen their two-hundred miles zone position by using this proposal as a bargaining chip to secure the acceptance of the two-hundred miles zone.[405] Buzan reported that some delegates' view on this Latin American proposal was that it was a mere adjunct to their coastal state campaign. He said that 'by creating Group of 77 support for a strong regime, the Latin American coastal states would be able to make it sufficiently distasteful to the developed states, particularly the United States, to force them to adopt wide coastal state jurisdiction in self-defence.'[406] The view that making it distasteful to the United States by inducing adoption of wider jurisdiction might have been the case, however, in my view, this proposal was also intended to produce a rallying point for the Group of 77. The Latin American states took this proposal to the ministerial meeting of the Group of 77, which was held in Lima, in November of 1971. The Latin American states inspired in the Group of 77 a 'feeling of anti-developed states' by saying that the developed states were exploiting the developing states and that the developing countries had to protect their own interests against the developed states. The thinking of Latin American states was that, in my view, by making a unified front

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Regardless of this separation of issues, the attention of participants changed from time to time depending on the topics or the surrounding situation.

[404]See Buzan, *op. cit.*, pp. 162-170.

[405]Schmidt, *op. cit.*, pp. 104-5.

[406]Buzan, *op. cit.*, p. 178, note. 22.

against the developed states they could argue other issues, such as their primary issue of the two-hundred miles maritime zone, from a position of the Group of 77. The number of supporters of the two-hundred miles zone was still small and the Latin American states were therefore unable to pursue this cause further. They therefore tried to build up a perception that the negotiation was one of developing states against the developed states.

As a result, the Group of 77 affirmed the coastal states rights over the resources in the adjacent seas *within the national jurisdiction*, without defining the limits of national jurisdiction. This was a compromise in the Group of 77 between states wishing wider national jurisdiction and states wishing narrow national jurisdiction, however, it was an achievement for the Latin Americans. The assurance of the coastal states rights within national jurisdiction strongly suggested that the idea of two-hundred miles zone could survive in the Group of 77, since it was very difficult to overturn a decision or limit the meaning of the decision within the Group of 77 once it was agreed. By creating an anti-developed states feeling, coupled with the encouragement of a strong international machinery, the Latin American states made explicit the split between the developing countries and the developed countries. As a result, wider national jurisdiction and the strong international machinery could form a common ground against the developed states, and this would help the Latin Americans to secure their two-hundred miles zones. This in fact happened and the split between the developing countries and the developed states became clear. Schmidt pointed out with regard to the machinery issue, whether a strong machinery with exploiting power or a weak machinery without exploiting power, '[t]he

protagonists of the different systems quickly split along a North-South line.'[407] The developing states started to interpret many issues from this viewpoint.

With regard to technological development of deep seabed mining American companies took an early lead and organisations for deep seabed mining spread in other industrialised countries, such as Japan, West Germany and France. Summa Corporation in the United States was the front runner and in mid-1971 Summa began construction of what was thought at the time to be a 36,000 ton ocean mining ship and a dredge-head launching barge. The start of deep seabed mining was therefore thought to be imminent.[408] (In 1975 it was reported that Summa Corporation actually intended to salvage a wrecked Soviet nuclear-submarine from the deep seabed with the 'mining ship'. It appeared then that deep seabed mining was only a cover to carry out other activities.[409]) These activities were particularly visible. In addition, in the United States some bills on domestic legislation for deep seabed mining were introduced. These were initiated by the mining industry in the United States.

These events within the United States made the position of the Group of 77 firmer at the negotiation. The Group of 77 wanted to benefit from deep seabed mining. Once the problem of the land-producer members was solved by a proposal of production and marketing control by the machinery, the Group of 77 was able to concentrate on the debate of the deep seabed regime. At the negotiation, the positions of the Group of 77 and the United States became firmer and polarised. For the Group of 77 the benefits of the international seabed should be used for their

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[407]Schmidt, *op. cit.*, p104

[408]Barkenbus, *op. cit.*, p. 18; *Science* Vol. 183, (15 February 1974), pp. 644-645.; Buzan, *op. cit.*, p. 151.

[409]See Barkenbus, *op. cit.*, p. 18.

development under the Common Heritage of Mankind concept. The Group of 77 flatly opposed the idea of deep seabed mining being carried out before a treaty was made. They were afraid that if deep seabed mining started without an internationally agreed regime, the United States and other developed states would take advantage of it and eventually control the entire area. In order to prevent them from starting deep seabed mining the Group of 77 strongly opposed starting any mining at all without a treaty. The visible activities of Summa Corporation helped the Group of 77 to form a more coherent group. The Group of 77 argued that a strong machinery with exploiting powers should be established and that the developed countries should be satisfied with service contracts or joint ventures with the machinery. The developing states believed the developed states and their companies were trying to loot their treasures. This was particularly felt when the developing countries were given the Secretary-General's report on recent research on the deep seabed deposits. The report stated that the manganese nodule did not exist evenly on the seabed, but existed unevenly, and that there were some prime sites in the Pacific. Developing states thought that if the developed states started deep seabed mining they would grab the prime sites and this was unacceptable to them.

The United States and other industrialised states opposed a strong machinery. They thought that existing international law guaranteed them the right to exploit the deep seabed. The Common Heritage of Mankind was, to them, legally meaningless and the demands of the developing countries were unreasonable. This difference in basic perceptions between the Group of 77 and the United States was reflected in the negotiation. In order to control the machinery the Group of 77 wanted the Assembly to be the real decision-making organ in the machinery, as within that they had numerical superiority. For the United States, in order to engage in deep seabed

mining effectively, control of the machinery was critical. They preferred that the Council of the machinery, which is the executive organ, rather than the Assembly where all the member states attend, be the real decision making organ. The nature of the controlling power of the machinery was a more important matter than the distribution of the benefits at this stage.

On the issue of the adjacent sea regime, at this stage almost all coastal states, including the United States agreed to extend their national jurisdiction seawards. The concerns of the United States centred around two issues, strait passage[410] and fisheries. The issue of strait passage divided states' opinions generally along the line of developed states and the developing states, since vessels of developed states frequently used international straits. Strait passage was the primary concern for major naval powers, that is the United States and the Soviet Union. Due to the actions of coastal states in extending their national jurisdiction seawards, the status of many important international straits had become unstable. Contrary to the view of the United States, strait coastal states insisted that innocent passage was sufficient for the needs of navigation[411] and opinion on this issue became polarised. The United States was still struggling to acquire free navigation.

At this stage, deep seabed mining was considered imminent, which was clearly visible due to the activities of Summa Corporation. Within the United States, Congress started to discuss domestic legislation for deep seabed mining and this influenced states' actions at the negotiation. The Group of 77, in turn, objected to

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[410]No discussion was held on the question of straits used for international navigation in the Seabed Committee until 1971. Discussion began after the United Nations General Assembly decided to convene a conference on the Law of the Sea and assigned the preparatory work to the Seabed Committee. United Nations Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: Straits Used for International Navigation: Legislative history of Part III of the United Nations Convention on the Law of the Sea, Vol. I* (New York: United Nations, 1992), p. 21.

[411]See chapter 5.

the actions of Congress. As shown in the previous section domestic factors within the United States and the Group of 77 at the negotiation were directly influencing each other. The actions of the Summa Corporation clearly show how actions by group or individuals directly influenced the negotiation. At the same time, the Group of 77 tried to consolidate its position outside of the negotiation. This was intended to utilise fully their numerical strength at the United Nations and the United Nations' system.

4. Conference Stage I: 1973-75

At this stage, the perceptions of policy-makers of states changed substantially. The oil crisis in 1973 brought about speculation about the shortage of minerals. In addition, the success of the oil embargo by the Arab Petroleum Exporting Countries bolstered the confidence of the Group of 77 and brought about hopes for developing states that they could change the international system in their favour. This hope produced a New International Economic Order which greatly influenced the negotiation. At the same time, in the United States, the importance of strategic minerals was recognised and as a result deep seabed mining was treated more importantly than before.

The Law of the Sea Conference therefore started amid an atmosphere of oil crisis and fears of depletion of natural resources. The preceding Seabed Committee was supposed to produce a draft treaty, but it only succeeded in making lists for discussion. The discussion in the Seabed Committee also produced a general framework for the adjacent sea regime. This framework was reinforced by the events surrounding the oil crisis, which caused the participants of the negotiation to pay more attention to their continental shelves and economic zones, since these areas contain natural resources. Under these circumstances, and coupled with the

introduction of the concept of a NIEO,[412] the Group of 77's solidarity was further strengthened. With regard to the NIEO, the United Nations special session on raw materials and development was held in April 1974 at which the principles of NIEO were adopted. The Group of 77 attempted to employ their commodity power, namely the position as suppliers of natural resources including food products, to acquire a more equitable economic relationship between developing and developed states and the NIEO represented their basic principles. This new wave of thinking by the developing countries immediately influenced the Law of the Sea negotiation, especially in the discussion of adjacent sea regime and more specifically with regard to the continental shelf and the economic zone which was later called the EEZ. With regard to the deep seabed regime the influence of the new wave of thinking of the NIEO was still limited[413] since states' primary concern was their own national resources and adjacent seas regime.

The oil crisis also made the United States and other developed states recognise the importance of resource independence. This was compounded by the publication of *The Limit of Growth* by the Club of Rome in 1972, which warned about the depletion of natural resources. (The claims made in it were later found to be largely groundless.) The United States and other developed states therefore moved towards securing their continental shelves and economic zones as well as a favourable framework for deep seabed mining. The turning of attention to the adjacent seas ensured that the negotiation of the adjacent seas regime would include the 200 miles

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[412]See chapter 5.

[413]Schmidt, *op. cit.*, pp. 107-108. Michael A. Morris, 'The New International Economic Order and the New Law of the Sea', in Karl P Sanvant and Hajo Hassenpflung (eds), *The New International Economic Order: Confrontation or Co-operation between North and South?* (London: Wilton House Publications, 1977), pp. 178-179.

EEZ.[414] As a result the internal conflicts relating to the adjacent seas regime between coastal states, and the Landlocked and Geographically Disadvantaged states group in the Group of 77 became less important and the Group of 77 became ready to concentrate on the deep seabed regime negotiation. At this time, the Group of 77 became the dominant power for the developing states in the international arena and it held meetings, such as the conference on raw materials, in Dakar in February 1975. As the issues to be discussed in the Law of the Sea Conference became more technical and detailed, the role of regional groups in the Group of 77 became smaller, since individual member states were unable to cope with broad ranged technical and detailed discussions. Instead, the Group of 77 which had its own officials at the Conference, dealt with such matters.

Speculation about mineral shortage or depletion also influenced the United States. The United States attempted to acquire favourable conditions in deep seabed mining to satisfy its emerging concerns about resource independence. Congress was particularly keen to establish resource independence. On the other hand, although the Group of 77 tried to acquire favourable conditions in deep seabed mining by its numerical supremacy, it conceded in adopting the consensus method in the Conference. This was due to the Group of 77's realisation that without developed states' technology it would not be able to develop the deep seabed at all.

The relationship between the Group of 77 and the United States was built on a series of assumptions. First, as far as the Group of 77 was concerned, deep seabed mining was ready to commence. In reality, however, the technology needed further development, despite claims by mining companies that they were ready to be used. In addition, in order to start deep seabed mining, a huge investment was required,

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[414]Although at this stage, the issue of strait passage had not been solved.

however, the then current investment environment was not secure enough without establishing a universal agreement of deep seabed development or having United States government's guarantee. The delegations of the United States appeared to have used the Group of 77's perception of imminent commencement of deep seabed mining as a leverage to negotiate other issues, namely adjacent sea regime, and especially strait passage. In the negotiation, the relationship between the United States and the Group of 77 became hostile. This was particularly the case with reference to the issue of deep seabed mining and other areas related to technology transfer and investments. The United States would not concede anything easily, and early in the negotiation of this stage, the United States wanted 'everything and to give away nothing.'[415] The Group of 77 stuck to their position which was bolstered by the NIEO principles. The objective of the Group of 77 was to control the ISA by a one state one vote system. There was not, therefore, much room to make a deal. As for the issues of the twelve miles territorial sea and the two-hundred miles EEZ there was not much difference between the two sides at this stage, apart from the issue of strait passage. With regard to strait passage, the Informal Single Negotiating Text, which was produced in 1975, incorporated free passage in international straits, although strait coastal states still opposed this and therefore it was still unstable.[416]

The context of the negotiation in the form of the oil crisis and speculation of minerals shortage influenced states' actions at the negotiation. These events also produced the NIEO principles which strengthened the solidarity of the Group of 77 and further influenced states' actions at the negotiation.

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[415]Schmidt, *op. cit.*, p. 125.

5. Conference Stage II: 1975-80

In response to the outcome of the negotiation conducted in the previous stage, states started to enact the agreed twelve miles territorial sea and the two-hundred miles EEZ[417] without waiting for the negotiation to be completed. The United States was one of the states which domestically legislated two-hundred miles fisheries zone.[418] At the same time, the belief in the deep seabed as a bonanza gradually faded. Before this stage, member states in the Group of 77 often held meetings outside of the Conference, however, at this stage, the activities of the Group of 77 were concentrated within the Conference. On the other hand, in the United States domestic legislation for deep seabed mining became imminent, largely reflecting the resource independence arguments.

At this stage, in order to secure navigational freedom, which was incorporated in the ISNT, the United States engaged in tough negotiations on the issue of the seabed regime. At the first part of this stage, negotiations reached an impasse. The influences of the NIEO became very strong at the negotiation in 1976, since member states of the Group of 77 recognised the importance of incorporating the NIEO principles into the Law of the Sea negotiation. The Group of 77 and the United States thought each other intransigent. As the negotiation went on, the issues were negotiated in more and more detail and new issues were added.

At the previous stage, the negotiation on the deep seabed regime became hostile and neither side would concede. This was basically the same at this stage, although

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[416]See United Nations Office for Ocean Affairs and the Law of the Sea, The Law of the Sea: Straits Used for International Navigation: Legislative history of Part III of the United Nations Convention on the Law of the Sea, Vol. II. (New York: United Nations, 1992), pp. 79-80.

[417]Legislations of these were basically based on the Informal Single Negotiation Text, which was in fact provided as a basis of negotiation. See United Nations Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, *The Law of the Sea: National Legislation on the Exclusive Economic Zone* (New York: United Nations, 1993), p. iii.

in 1976 United States Secretary of State Henry Kissinger made a significant concession on the 'parallel system', which was the system to exploit the deep seabed by both the ISA's mining arm, the Enterprise, and private miners.[419] As a result, the most important and contentious issues of the ISA's structure and voting system, especially the Council's structure and its voting system, were not negotiated seriously for quite a long time. These very important questions, which would decide the whole power balance in the ISA, only reverted to serious negotiation in 1980. Before 1980, negotiators concentrated on other issues. This meant that negotiations were developed on two tracks, on one track was the discussion of detailed terms of deep seabed mining in order to eliminate the possibility of abuse of power by the ISA, and on the other were fundamental questions, such as the structure of the Council and its voting system. The two track negotiation produced very complicated negotiating texts. At one time, in 1978, the United States delegation sought to simplify the provisions of the texts,[420] however, its attempt was opposed by others. The Group of 77 interpreted the suggestion to simplify the text by the United States as an intention to introduce a preferential voting system, such as weighted votes. The preferential voting system was against the Group of 77's basic principle of one-state-one-vote, and for other developed countries such a suggestion would open the way for the abuse of power of the ISA. Behind these attitudes lay the serious distrust that both sides had for each other and this negative relationship did not change at this stage. At the last part of this stage, in 1980, the issues of the Council's structure and its voting system had to be resolved in order to go onto the final stage which would conclude the Conference. The gap in positions between both sides was

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[418]See chapters 1, 2 and 5.
[419]See chapter 2.

considerably narrower than it had been before 1980 and fine tuning of interests was made. In the end, on the issue of the Council's structure and its voting system, both sides were dissatisfied with the outcome of the negotiation, however, they reached an agreement on the issues.

Behind the scenes there was manoeuvring by the United States chief negotiator. The United States Congress was discussing the bills of unilateral legislation for deep seabed mining. At this stage, the attempt by Congress became much more serious than before. The Group of 77 feared United States' unilateral legislation most of all because it would encourage deep seabed mining without internationally agreed rules for it. Before this stage, the bills had not mustered much support in Congress because the issues were considered minor. After the oil crisis, however, members of Congress gradually saw deep seabed mining as important in supplying essential minerals to the United States. Whenever a bill was introduced into Congress the Group of 77 became nervous and criticised the United States openly. On the contrary, in the United States, in accordance with the progress of the negotiation in the Conference, industry became nervous. It objected particularly to the deep seabed regime in the ISNT. Industry lobbied the government to influence the negotiation and tried to persuade politicians to legislate domestically to protect their deep seabed interests. Before October 1977 the United States Administrations' position was opposed to enactment of legislation, however, the Administration did not try to stop the discussion in Congress. The Administration considered that discussions in Congress were a threat to the Group of 77 and it might be able to obtain some concessions from it. The United States chief negotiator did, in fact, exploit the fear of the Group of 77 and manoeuvred the progress of those bills in

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[420]Schmidt, *op. cit.*, pp. 140-141.

Congress according to the progress of negotiation in the Conference. Whenever the negotiation was deadlocked this type of manoeuvring was carried out to move the negotiation forward. This meant that Congress and the Group of 77 directly influenced each other, that is there was an interrelationship between a domestic factor and states' actions at the negotiation. This was evident because the United States chief negotiator's manoeuvring was so successful that he used it repeatedly. In the end, although in 1980 the United States had introduced domestic legislation for deep seabed mining, participants of the negotiation agreed to produce the 1980 Draft Convention on the Law of the Sea.

The perceptions about the prospects of deep seabed mining also changed significantly at this stage. The negotiation started based on the assumption that the commencement of commercial deep seabed mining was imminent. At this stage, negotiators gradually realised that the future of seabed mining was not as bright as originally thought. When the Conference started, immediately after the oil crisis, deep seabed mining was thought of as profitable because of the sudden increase in minerals prices.[421] On top of that, deep seabed minerals were considered strategically important since the United States, for example, was importing minerals. The high price of minerals, however, other than oil, did not last long, and expectations about deep seabed mining decreased.[422] The developed countries, in order to achieve better conditions for their miners, emphasised that profitability of deep seabed mining was expected to be quite low. On the other hand, mining companies advocated its high profitability in order to attract investments. For the developing states, reliable information sources were therefore limited and as such

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[421]The Secretary-General's reports on the prospect of deep seabed mining had shown dim pictures for the prospect of deep seabed mining.

they were reluctant to believe that the deep seabed mining might not be profitable. This situation changed when MIT's model of economics of deep seabed mining was introduced to the Conference. It revealed that the profitability of deep seabed mining might be limited.[423] At the end of this stage, the developing states eventually understood the possibility of low profitability. This change in perception of profitability brought about a deal between the Group of 77 and the United States in terms of financial arrangements of seabed mining.

In summary, at this stage the context of the negotiation changed in that the belief in a deep seabed mining 'bonanza' faded and the negotiation was, as a result, conducted in a more accommodating manner at the end of this stage. There was also another factor in the surrounding context which influenced the negotiation and that was that the twelve miles territorial sea and two-hundred miles EEZ were now being enacted by many states. As states had concentrated on the negotiation of the deep seabed mining regime and other unresolved issues, they did not realise the meaning of states' enacting these. At this stage, states' actions at the negotiation and factors within the United States influenced each other and the whole negotiation was greatly influenced by changes in its surrounding context. So powerfully in fact were United States domestic factors able to influence the Group of 77 that this was deliberately manipulated by the United States chief negotiator.

6. Discussion

In negotiation theory, the context of the negotiation is regarded as an important factor in analysing negotiations, however, the means by which the context of

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[422]Whenever mineral prices went up, the enthusiasm for deep seabed mining in general came back.
[423]See James K. Sebenius, *Negotiating the Law of the Sea* (Cambridge, Massachusetts: Harvard University Press, 1984).

negotiation is to be analysed is not fully documented. In this chapter, the negotiation process was described and the chapter shows that the Law of the Sea negotiation was greatly influenced by its context both before and during the negotiation.

Negotiation theory sets the preferences of negotiating parties at the beginning of analysis and these preferences are assumed not to change during the negotiation. This study however has illustrated that this is not the case. The problem that remains is that if the context is recognised as influencing the negotiation how can the factors that exist within the context be assessed.

In international relations theory, the 'context of negotiation' can be understood to mean the given conditions which define the issues at a certain point in time. Issues are, as Keohane and Nye defined, 'problems about which policymakers are concerned, and which they believe are relevant to public policy.'[424] Issues are therefore defined subjectively,[425] as are given conditions. This could cause a problem in analysing the negotiation, since as Jervis pointed out 'rational or not, people interpret incoming information in terms of what is of concern to them at the time the information arrives.'[426] In other words it is not easy to understand what the policy-makers actually perceived. To overcome this, international relations theorists tend to investigate states' actual actions as 'proof' of what policy-makers perceived. For example, Krasner has suggested that only examining the final policy decisions of states, namely states' actual actions, will suffice.[427] When this position of examining only states' actual actions is felt unsatisfactory other theorists, for example, might analyse the foreign policy-making process. Even if this reveals the

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[424]Robert O. Keohane and Joseph S. Nye, *Power and Interdependence* (Boston: Little-Brown, 1977), pp. 64-65.
[425]*Ibid.*, p. 65.
[426]Robert Jervis, *Perception and Misperception in International Politics* (Princeton, New Jersey: Princeton University Press, 1976), p. 204.

wrangling within a government, however, issues are still defined subjectively, as are given conditions. As a result it is still not easy to quantify the degree of influence that the context of the negotiation has.

In addition, if the context of the negotiation is considered to be given conditions which define what are issues at a specific point in time, the context need not be limited to outside of the negotiation or outside of the state to which the policy-makers belong. It could include anything which influences the decisions of policy-makers (or negotiators). Negotiators of developing states perceived what was happening in the United States, and reacted to it. Policy-makers of the United States were lobbied by people who saw what was happening at the negotiation and reacted to it. This means that policy-makers of the United States were influenced by the negotiation, domestic factors and international factors. The domestic factors of the United States were influencing the actions of the developing states at the negotiation and domestic factors of the United States were being influenced by developing states' actions at the negotiation and international factors. These relationships were very complicated. Therefore although the context of negotiation is considered to be important in analysing the negotiation, it is not easy to quantify or theorise the judgement of policy-makers, since that is decided subjectively.

7. Conclusion

Various factors in the context of the negotiation, along with United States domestic factors, influenced the Law of the Sea negotiation in the period 1967 to 1980. At the same time, the negotiation influenced domestic factors within the

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[427]See chapter 2 of this study.

United States and there was also a relationship between international factors in the context of the negotiation and domestic factors of the United States.

This complexity of relationships is not recognised by either negotiation theory or international relations theory. It is clear from the examination of the changing context of the negotiation that context, namely domestic factors and international factors, and the negotiation itself, influence each other continuously and produce outcomes which further influence context and the negotiation. Still further, the way in which these influences occur is difficult to assess, since the judgement of policy-makers may be subjective.

Chapter 7. The Rejection of the Convention by the United States

The Law of the Sea negotiation continued to progress and the Draft Convention was produced in 1980. There were few outstanding issues at this stage[428] and it was thought these could be solved in the next session scheduled for 1981. The negotiation had developed and although the issues had once been vague, they were now identified and detailed, and almost all were by now resolved.

At this time, when the participants of the negotiation felt that it was reaching the final stage and had agreed to produce the Draft Convention, a political change in the United States occurred. The new Reagan Administration started to review the negotiation and finally, in 1982 rejected the Convention. There were several factors in the context of the negotiation which influenced the United States' decision to do this. First, the demise of détente changed the political climate in the United States. Second, the Reagan Administration's ideology, particularly the policy of free enterprise, was tied to the concerns about strategic minerals, property rights and other strategic concerns. Third, the Reagan Administration judged that navigational freedom, which past United States administrations had been most concerned about, was in fact practically achieved by states' practices world-wide. The above factors resulted in the United States' rejection of the Convention and in this chapter these factors are examined in detail. In addition, the relationship between the changing context of the negotiation and actions taken by the United States are examined.

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[428]See William Wertenbaker, 'A Reporter at Large: The Law of the Sea, Part II', *The New Yorker*, (Aug. 8, 1983), p. 67.
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1. Changes in the context of the negotiation and domestic factors

Two factors in the context of the negotiation influenced the decision of the United States to reject the Convention. They were the demise of détente and the states' practice of navigational rights world-wide. With regard to the demise of détente the relationship between the United States and the Soviet Union became problematic and in 1979 there were several events which finally marked the end of détente. These were: United States accusations in September concerning the construction of a Soviet combat bridge in Cuba; Nato's approval of the two-track plan for deployment of United States medium range missiles in Europe made at the same time as arms control with the Soviet Union; and, the Soviet invasion of Afghanistan.[429] With regard to the Soviet invasion of Afghanistan, United States President Carter made a package of economic sanctions against the Soviet Union and eventually pulled the United States out of the 1980 Olympics games which were held in Moscow. In addition' the Strategic Arms Limitation Talks (SALT) II Treaty signed by Carter and Brezhnev in June 1979 was not ratified in the Senate. Moreover, the United States Congress, for the first time in thirteen years, increased the defence budget in keeping with the Carter Administration's suggestion. The problem for the United States was that by the late 1970s, when the Soviet Union claimed military parity with the United States, many of the proposed American weapons systems had either been delayed or cancelled.[430] On the other hand, during the 1970s, the Soviet Union substantially improved the quality and quantity of its Intercontinental Ballistic Missiles (ICBMs) and Submarine-launched Ballistic

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[429]See Mohammed Abid Ishaq, *U.S.-Soviet Relations 1980-88: The Politics of Trade Pressure*. PhD Thesis, Glasgow University, 1994, p. 14.

[430]David L. Speare, *Soviet Perceptions of the First Reagan Administration* (Soviet Industry and Technology Series SITS 2, Centre for Russian and East European Studies, University of Birmingham, Discussion papers, 1985), pp. 10-11.

Missiles (SLBMs) and in particular the number of ICBMs had exceeded those of the United States.[431] Many people in the United States had a sense that they had been betrayed by the Soviet Union. They saw that the Soviet Union had exploited the period of détente for its own ends[432] and this feeling influenced the result of the 1980 elections. The voters opted for 'politicians whose chief foreign policy prescriptions were more defence spending and a tougher stance against the Soviets',[433] and the Republicans achieved the majority in the Senate for the first time in twenty-six years. This feeling also affected the result of the United States Presidential election in 1980 and the Republican candidate Ronald Reagan won the election.[434] In the Reagan Administration that took office, the Law of the Sea negotiation was part of a total reassessment of foreign policies.

When the Reagan Administration came to power top officials in the government were changed. This changed the thinking of the Department of Defense and the Navy on the strategic importance of navigational freedom which had been the primary issue for the United States in the Law of the Sea negotiation. They viewed that the Convention's navigational provisions reflected customary international law because of states' practice and thus a treaty repeating those rights was not essential to United States' security interests. As shown in Chapter 6, the navigational rights,

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[431]*Ibid.*, p. 35.

[432]Ishaq, *op. cit.*, p. 20.

[433]Congressional Quarterly Almanac 1980, p. 309, cited in Ibid.

[434]The reasons why Carter was defeated have been argued from many different perspectives. The energy crisis and the failure to get back the hostages from the United States embassy in Iran have, for example, been given as reasons for his defeat. Cf. Austin Ranney (ed.) *The American Elections of 1980* (Washington D.C.: American Enterprise Institute for Public Policy Research, 1981). If Carter had been re-elected would the Law of the Sea Convention have been signed by the United States and ratified by the United States Senate? Due to the personal influence of the chief negotiator of the United States, Elliot L. Richardson, the United States would probably have signed it even though he had resigned from the position in October 1980. The Senate, however, might not have ratified the Convention because many senators considered that the provisions of the deep seabed mining were objectionable to the United States interests. See Markus G. Schmidt, *Common Heritage or Common*

particularly rights of strait passage and overflight of it, twelve miles territorial sea and two-hundred miles Exclusive Economic Zone were incorporated in the Informal Single Negotiation Text in 1975. After the United States enacted the two-hundred miles Fisheries Zone in 1976, many states followed suit and two-hundred miles jurisdiction became widely accepted. As a result the navigational rights, particularly straits passage, were also practised by passing vessels. Given these states' practices, coupled with the confidence that had developed due to Navy vessels sailing in newly claimed waters without disturbances, Navy vessels were ordered by the Carter Administration in the spring of 1979 to sail in newly claimed waters whenever possible.[435] Navy vessels had avoided entering disputed areas in order to make the United States appear as a good negotiating party,[436] however, this now changed and the new practice hardly caused any problems. Under these circumstances, by the summer of 1981, officials of the Department of Defense and the Navy came to view the Convention's navigational provisions as reflecting customary international law and that a treaty repeating those rights was not essential to United States' security interests.[437]

The possible change in evaluation of the strategic importance of the Law of the Sea Convention was first suggested by Richard G. Darman, Vice Chairman of the United States Delegation to the 1977 session of the Conference. Darman argued in his 1978 article[438] in *Foreign Affairs,* which was written after he resigned from the position, that transit through straits was no longer necessary to assure strategic

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Burden?: The United States Position on the Development of a Regime for Deep Sea-Bed Mining in the Law of the Sea Convention (Oxford: Clarendon Press, 1989), pp. 146-147, and p. 147 note 142.

[435]See William Wertenbaker, 'A Reporter at Large: The Law of the Sea, Part I', *The New Yorker,* (Aug. 1, 1983), p. 47.

[436]Schmidt, *op. cit.*, p. 144.

[437]*Ibid.*, pp. 223-224.

deterrence due to the increased range and sophistication of the United States' missiles and missile-launching submarines. He argued that the legal status of coastal states waters would not be a determinative constraint, mainly because there were neither straits nor third-party economic zones separating the United States from its allies.[439] When the United States sought free navigation a decade previously, the reach of submarine-launched strategic missiles was limited and the United States sought maximum mobility for its Navy.[440] Darman claimed that the situation had now changed. He also argued that serious interference to commercial navigation, such as oil transportation, would be unlikely, since major powers and the global community would not tolerate such abuses.[441] As a result, Darman argued that the United States would not need to stick to the internationally agreed Treaty in order to obtain navigational freedom. In addition, the implications of the Law of the Sea Treaty, in terms of deep seabed mining regime, becoming a precedent would be far too great, since the strong autonomous International Seabed Authority would jeopardise the United States interests. For this reason, Darman argued it would suffice to make a Mini-Treaty to conduct deep seabed mining among interested states. His article 'persuaded some people in the Pentagon and Congress' and 'many people in the United States were very impressed with it' but it did not persuade anybody in the Group of 77[442] nor did it impress the Soviet Union.[443] The article did not influence the negotiation in the Conference, however, it influenced people in the United States and a situation developed, which changed the thinking of officials in

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[438]Richard G. Darman, 'The Law of the Sea: Rethinking U.S. Interests', *Foreign Affairs*, Vol. 56, (1978).
[439]*Ibid.*, pp. 376-377.
[440]*Ibid.*, p. 375.
[441]*Ibid.*, pp. 381-382.
[442]Schmidt, *op. cit.*, pp. 137-138.
[443]*Ibid.*, p. 138, note 110.

the Pentagon. The belief that the provisions of navigation and overflight in the Convention had already become customary international law, coupled with the relative decrease of strategic importance of the seas, made officials in the Navy and the Department of Defense look at the Law of the Sea Convention differently.

The advent of the Reagan Administration was partly a consequence of the worsening relationship between the United States and the Soviet Union. One analyst has stated that the Soviet invasion of Afghanistan 'drastically affected the international climate of the 1980s, deepening fears that the Soviet Union was embarked on a course of expansion through force of arms'.[444] In addition, several conservative leaders claimed that the SALT process had failed to produce adequate restrictions on the Soviet Union's offensive strategic forces and that in the early 1980s the Soviet Union was on the verge of achieving a first strike capability against the United States' ICBMs. There was a plan in the United States to promote the development of the MX missile which would, supposedly, offset gains in the Soviet Union's offensive power. The MX missile was developed in response to the vulnerability of the concrete underground silos in which other ICBMs were housed. It was however very difficult to find a secure and politically acceptable basing mode for the MX missile. President Carter decided the location of the MX missiles, however, he was unable to start building them because of strong opposition from states where they would be located and also from many national citizens organisations. When Reagan came to office, the MX missile issue had become a particularly difficult one in Congress. At the end of 1981 the Reagan Administration faced a situation in Congress which was 'Byzantine'. Some conservatives doubted

the system's capability to reduce the United States' strategic vulnerability. In addition, there were disagreements between members of the Department of Defense and elements in the Arms Control and Disarmament Agency (ACDA) and the State Department. National support for strategic modernisation was tenuous and the influence of the freeze movement, which was opposing any new weapon in the nuclear arsenal, was increasing. As a result it was becoming difficult to start building up major strategic modernisation. Opposition to the MX programmes also came from people who usually supported a strong defence programme because there was some doubt about the capabilities of the MX missile system. In addition, in March 1982, the Senate Armed Services Committee voted to withhold all funding for the MX deployment until the Reagan administration decided on a permanent basing mode.[445] It was a very difficult situation for the Reagan Administration because the Administration was unable to take action against the growing vulnerability of the United States even though it knew that the Soviet Union's strategic capacity was growing. This was a serious 'strategic crisis'.

Under these circumstances, the Reagan Administration could have secured navigational freedom by signing the Convention and this would have eliminated the possibilities of interference by coastal states with its Navy's mobility. Despite the fact that the United States claimed that navigational rights were customary international law, the provisions in the internationally agreed Treaty were stronger than those of quickly built-up customary international law. If the Soviet Union became party to the Convention it would benefit by enjoying mobility for its Navy which was articulated in the Convention. If, therefore, the decision by the United

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[444]Don Oberdorfer, *The Turn: From the Cold War to a New Era—The United States and the Soviet Union, 1983-1990* (New York: Poseidon Press, 1991), p. 235, cited in Donald R. Baucom, *The*

States to reject the Convention was taken in isolation from any other strategic considerations, it might have added even greater vulnerability to the United States strategic defence.

There was, however, another development in terms of the United States strategic policy. It was the Strategic Defense Initiative (SDI). The objective of SDI was to find technologies which would make it possible to intercept missiles soon after they were launched, and to have many different intercept opportunities throughout the missile's flight.[446] If SDI was achieved in practice, it would virtually eliminate the worries of the United States in terms of Soviet first strike and would drastically lessen the strategic importance of the seas, which was supported by the submarine-launched missiles as a second strike strategy. By claiming that the SDI was aimed at defence, namely, a policy shift from mutual assured destruction to mutual assured survival, the ideas of SDI could ultimately overcome problems. SDI did not need to find its location on earth. It did not need to build up new weapons in the nuclear arsenal. It therefore seemed an ideal solution and as a result the SDI was publicly presented on television by President Reagan on 23rd March 1983.

The decision making process that led to Reagan's SDI decision was in fact linked through Edwin Meese, the President's domestic policy adviser, to the final decision of the United States to reject the Law of the Sea Convention. Meese was not only the moving force in the White House on Law of the Sea matters but also the driving force behind SDI. The SDI in the Reagan Administration started in spring 1981.[447]

Origins of SDI, 1944-1983 (Lawrence, Kansas: University Press of Kansas, 1992), p. 217 note 17.

[445]*Ibid.*, pp. 171-178.

[446]Simon Peter Worden, 'A Global Defence Against Ballistic Missiles', in Hans Günter Brauch (ed.) *Star Wars and European Defence: Implications for Europe: Perceptions and Assessments* (Hampshire: MacMillan Press, 1987), p. 12.

[447]The Joint Chiefs of Staff proposed the SDI to the President in February 1983. See Baucony, *op cit.*, pp. 181-192.

Daniel O. Graham, a former director of the Defence Intelligence Agency, believed that the United States should take a new national strategy at the heart of which should be the development of space-based missile defences.[448] Graham met President Reagan in February 1981 through Meese and explained to the President his ideas. Graham also met Secretary of Defense Casper Weinberger.[449] Graham's idea was not novel. For example, Senator Malcolm Wallop, from 1980 onwards, repeatedly called for the progress of the Air Force programme for space-based high-energy lasers for missile defences, however, the Air Force were reluctant to proceed with this because it considered that space weaponry would be very expensive[450] and would consume resources from other more important services.[451] At the time there was no overarching vision to direct the strategic initiative.

In order to conduct a detailed technical study of the strategy, which was conducted secretly, Meese was given a list of potential donors to the project by Graham's group. Meese agreed to approach the donors and the project became known as the High Frontier Project.[452] In September 1981 the High Frontier Panel members met Meese and other White House advisers in Meese's office at the White House.[453] In January 1982, some members of the Panel met President Reagan with Meese, White House Chief of Staff, James Baker, National Security Adviser, William Clark, and the President's Science Adviser, George Keyworth.[454] After the meeting President Reagan wrote to the chairman of the Panel saying that he had spoken to Meese, Weinberger and Keyworth about following up on the Panel's

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[448]*Ibid.*, p. 144.
[449]*Ibid.*, p. 141.
[450]Defense Department seemed to have later calculated the cost as US $300 billion. This was shown in an article published in February 1982. *Ibid.*, p. 161.
[451]*Ibid.*, pp. 135-137.
[452]*Ibid.*, pp 145-149.
[453]*Ibid.*, p. 150.

recommendations and the President assured the chairman that 'we will be moving ahead rapidly with the next phase of this effort'.[455] On 3rd May, Keyworth wrote to the Panel, saying that a panel of the White House Science Council had been established 'to urgently examine the issue of new military technology' and the first focus of the panel was 'non-conventional weapons, including potential space-based ballistic missile defense systems.'[456]

In terms of the Law of the Sea Conference, the United States voted against the Convention on 30th April. These events were overlapped by the development of the SDI in the White House and Meese appears to have become convinced that he could not recommend the Treaty to the President.[457] At the point he had to decide whether he should recommend the Law of the Sea Convention to the President, he must have considered the strategic implication of rejecting the Convention. If SDI was achieved, however, it would lessen the strategic importance of the seas. The problem was that it might take some time to develop the technology of the SDI and deploy it. On this point, Graham's publication of the High Frontier project in March 1982, a copy of which was handed to the White House in February,[458] claimed that the defence missile system was multi-tiered and that the first stage of the missile defence system, which was to destroy an attacking warhead at a range of about 4,000 feet, could be completed within two to three years. At the second stage of the defence, a global ballistic missile defence system which would attack Soviet ICBMs during their boost, post-boost, and late mid-course phases, could be deployed in five

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[454]*Ibid.*, p. 153.
[455]*Ibid.*, p. 166.
[456]*Ibid.*, pp. 167-168.
[457]Schmidt, *op. cit.*, pp. 248-249.
[458]Baucom, *op. cit.* p. 162.

to six years. Further improvements would follow.[459] This statement made it appear that the new defence system could be deployed soon, although the United States has not yet developed such capabilities[460] and in the end SDI was never achieved. Nevertheless, Meese believed that the SDI could be deployed in the near future and once it was achieved, there would be no strategic defence concerns about the Soviet Union signing the Convention. Meese's thinking was probably that the United States would manage without the Law of the Sea Convention for the intervening period since SDI would come soon. Meese reportedly remarked that he would 'not support a Treaty with the words 'Common Heritage' in it'.[461] Although he was a conservative and he personally felt strongly, his remarks were made possible only when he became convinced that the United States would not need the assured free navigation of the seas, since denying the words Common Heritage meant, in effect, that there was no room for the Law of the Sea negotiation to be agreed.[462] The more conservative he was, the more he would have been aware of the danger of the Soviet Union and he would never have allowed it to gain an advantage by signing the Treaty when the United States did not.

The negotiation was therefore influenced by various factors. The advent of the Reagan Administration was brought about by the demise of détente which could be said to form part of the context of the negotiation. The Reagan Administration assessed the Law of the Sea Convention and judged that the navigational rights in the Convention had already become customary international law because of states' practice. States' practice also could be said to be within the context of the

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[459]*Ibid.*, p.164.
[460]See also *Ibid.*, p. 199.
[461]New York Times, 21 Feb. 1983, A17, col. 1. cited in Schmidt, *op. cit.*, p. 249 note 131.
[462]The words 'Common Heritage of Mankind' remain in the 1994 Implementation of the Law of the Sea Convention which the United States signed.

negotiation. The development of SDI was not in the public knowledge, however, it influenced the Law of the Sea negotiation. Therefore this could also be included in the context of the negotiation, since SDI itself was not an issue at the negotiation. Given these factors it can be concluded that at this stage the negotiation was greatly influenced by its context.

2. The Reagan Administration and domestic factors

President Reagan was sworn into office in January 1981. In March, before the Conference session for the year started, his Administration made a statement announcing its policy review of the Draft Convention. It replaced the head and other members of the delegation and sent a much smaller delegation to the Conference than had previously been the case.[463] The United States delegation under the Carter Administration generally believed that the Law of the Sea negotiation had to be completed successfully since this would benefit the United States by establishing an internationally agreed regime of sea use. They believed that if this did not happen the navigational freedom of the navy would not be guaranteed. This belief made the delegation engage in very tough and serious negotiation for many years. As a result, the provisions of the deep seabed regime were constructed on a subtle balance of interests between the United States and the Group of 77. This situation, however, did not satisfy the mining industry in the United States. People in industry, some politicians and others who were not satisfied with the negotiation, attempted to alter its direction. Conservative critics of the negotiation stated that in the 1980 Draft Convention on the .Law of the Sea 'the articles governing the exploitation of

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[463]This reorganisation of the delegation was unprecedented. See *Ibid.*, p. 225.

minerals in the deep seabed were hostile [to the United States]'.[464] This, coupled with Republican ideology, conservatism and free enterprise, meant that the force against the Law of the Sea negotiation gained ground and influenced the new Administration's review of the 1980 Draft Convention.[465]

The ideological values of the Reagan Administration were not born when the Administration began. As early as 1978 Reagan himself made a tough stance against the deep seabed mining regime negotiation based on the importance of strategic minerals.[466] Republican policy on ocean policies and assured access to the seabed minerals was built up before the election. Industry was particularly frustrated with the Law of the Sea negotiation from 1977 to 1980 and was dissatisfied with the compromises the United States had made. Shortly before the election, Reagan set up a Task Force for strategic minerals, which highlighted the strategic importance of seabed mining. The Task Force submitted a report in December 1980 which stated that the Draft Convention gave major political and strategic advantage to the Soviet Union, to the direct disadvantage of the United States, and that immediate steps had to be taken to re-examine United States' goals at the Conference.[467] This report reflected the ideological opposition to both the Convention and the Common Heritage of Mankind concept since these were incompatible with the free enterprise philosophy of the Republicans.[468]

The perceptions surrounding the importance of certain issues, which were bolstered by the Reagan Administration's ideological values, changed the prospects

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[464]Ross D. Eckert, 'US Policy and the Law of the Sea Conference, 1969-1982: A Case Study of Multilateral Negotiations', in Roland Vaubel and Thomas D Willett (eds), *The Political Economy of International Organizations: A Public Choice Approach* (Boulder: Westview Press, 1991), p 186.
[465]See Wertenbaker, Part II, *op. cit.*, pp. 67-68.
[466]Schmidt, *op. cit.*, p. 217.
[467]*Ibid.*, p. 218.
[468]Ibid.

for the Law of the Sea negotiation. In reality many allegations made by the conservative critics against the Convention were largely groundless.[469] For example, 'burdensome obligation', such as royalties and technology transfer, imposed on prospective deep seabed mining companies by the Convention were in fact no more than the obligations imposed on United States based mining companies involved in exploitation in developing states. Strategic mineral arguments were also not practical because the United States in fact had most of the resources derived from manganese nodules and if the resources of its allies were taken into account, there was no shortage in the supply of seabed minerals. Perceptions of critics coloured by superficial arguments prevailed however and influenced United States' policy.

A further problem in the Draft Convention concerned technology transfer. Technology essential to national security was excluded from transfer obligations in the Convention, however, it still did not protect sensitive technology transfer. For example, high security sensitive devices similar to the acoustic technologies used by the Navy in its Anti-Submarine Warfare programme were required for deep ocean floor mapping. If the Co-ordinating Committee for Multilateral Export Controls (COCOM) rules or other relevant regulations were applied, an operator would have been prohibited from using technology that he could not transfer to the Enterprise, that is the mining arm of the ISA. Eventually, 'technology transfer became the *bête noire* of influential Reagan Administration officials.'[470] Another problem was that the United States was not given a guaranteed seat on the Council of the ISA. In addition, the Reagan Administration was strongly against the supreme policy-making powers of the ISA and the Council's composition. The Eastern European

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[469]See Wertenbaker, Part II, *op. cit.*, pp. 68

[470]Schmidt., *op. cit.*, pp. 168-9.

states group was given three seats and this in fact meant that the Soviet Union would be automatically given a seat in the Council. The United States, on the other hand, had to compete with other western industrialised states for a seat out of a total of between six to nine seats.[471] For conservatives, a guaranteed seat for the Soviet Union made the regime look like a regime controlled by the Soviet Union and the developing countries.

At the beginning of this stage of the negotiation , the head of the United States delegation believed that 'the Conference was beyond the point where it was possible or even desirable to negotiate significant amendments to the Draft Convention'.[472] This judgement was also supported by the attitude of the Soviet Union. In their meeting of January 1981 the Soviet Union urged the United States to complete the Treaty in the spring.[473] With regard to the policy change of the United States, many states, including the Soviet Union, warned that reopening the negotiation of the seabed regime was dangerous. The Reagan Administration, however, held a senior meeting in early March and decided that the United States should look very closely at the Draft Convention and decide whether it was in its best interest and that if it was not, it ought to abandon the negotiations.[474] It then announced the policy review. This surprised the Group of 77 since they were unaware of the Republican policies on the Law of the Sea[475] which had been adopted in July 1980.

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[471]See Wertenbaker, Part II, *op. cit.* Depending on the categorisation of states, the number of seats for which the United States could be a candidate for Council membership, differed.
[472]Letter from G. Aldrich to J. Barnes and A. Yurchyshyn, 15 Dec. 1980. cited in Schmidt, *op. cit.*, p. 220.
[473]Ibid.
[474]*Ibid.*, pp. 222-3.
[475]*Ibid.*, p. 216.

Without the United States it was almost impossible for the Group of 77 to negotiate even though the other states were still ready to do so[476] and the spring 1981 session of the negotiation was held under these circumstances. Although the United States had indicated in the previous year that a satisfactory Convention provision on the protection of investment made by miners[477] was a prerequisite for its acceptance of the deep seabed regime, the United States withdrew this proposal in order 'not to convey to the Group of 77 the impression that the United states could be bought off.'[478] Instead the United States made a different proposal upon which the Preparatory Commission (PrepCom)[479] would deal with the protection of investment. The Group of 77, however, refused to discuss this until the United States completed its policy review. At the same time, some developing countries' delegations expressed an alternative to a provision concerning the navigation of warships through the territorial sea. They wanted to impose on warships the need for prior notification and authorisation by the coastal state. This might have been a threat from the Group of 77 to force the United States to get back to the negotiation. All the maritime states, including the Soviet Union, resisted any attempt to change the provision,[480] however, the United States had already begun to shift its position because it considered the navigational provisions of the Convention to be less important than before.

In the following summer session, the Group of 77 recognised that the United States wanted to re-negotiate fundamental issues. This made the Group of 77 reunite

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[476]See chapter 5. See also Wertenbaker, Part II, *op. cit.*, pp. 68.
[477]This is called the Preparatory Investment Protection (PIP).
[478]Schmidt, *op. cit.*, p. 171.
[479]This was then to be established for discussions of rules and regulations for deep seabed mining regime.
[480]Schmidt, *Ibid.*, p. 229.

and it became determined to finalise negotiations in the spring of 1982.[481] As a result, in this session, delegates decided to formalise the existing texts as an 'Official Draft Convention' and the Convention became subject to voting in the next session. The United States agreed to the normalisation[482] and the Conference decided to convene a final session in March-April 1982. After the session, United States Secretary of State Alexander Haig, testified to Congress the government's intention to bring the Conference to a successful conclusion.[483] At this point in time the United States was still considering its position on the Convention.

When a cabinet meeting was held in the United States to discuss the Law of the Sea only two options were discussed. They were to reject the Conference altogether, or return to negotiate. President Reagan was reported to have said that the United States should return to negotiate.[484] At this stage, Reagan favoured trying to get the Treaty made more favourable. President Reagan finally announced the return of the delegation to the Conference with six objectives. The six objectives were: 1) no deterrent for the development of deep seabed resources, 2) assured national access to the resources, 3) a decision making system which reflects the political, economic interests and financial contribution of participating states, 4) no amendments without participating countries' approval, 5) no undesirable precedents for international organisations (to the United States), 6) the provisions to be ones the Senate, which has the role of examining treaties in the United States, would be likely to ratify. No mandatory technology transfer and no funding for national liberation movements. These objectives were considered to be the United States'

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[481]*Ibid.*, p. 239.
[482]*Ibid.*, p. 237.
[483]*Ibid.*, p. 240.
[484]Wertenbaker, Part II, *op. cit.*, p. 70.

'bottom-line' position by its delegates.[485] Late in January a Reciprocating States Agreement between the states capable of deep seabed mining was ready to be signed, however, signing was deterred for the time being because the final session of the Conference was fast approaching.[486] A Reciprocating States Agreement meant a Mini-treaty whereby states with seabed legislation[487] would mutually recognise licences issued to their deep seabed mining companies. Negotiation of the Reciprocating States Agreement between the United States, the United Kingdom, France and the Federal Republic of Germany had started after the United States enactment of domestic legislation for seabed mining in 1980.[488]

In March 1982, the United States produced a document with specific proposals for amendment to the Draft Convention. This document proposed sweeping changes in the texts on technology transfer, production control, decision-making, contract approval and the review conference. These proposals were called 'trickle down Common Heritage'[489] by a leading developing country delegate and the Group of 77 then rejected it as a basis for further negotiation. After further negotiation some compromises were made, however, it was not enough for the United States to agree to the Convention. The United States was particularly concerned about its representation in the Council of the ISA, since the United States had not been given a guaranteed seat. In the end, it was decided that the world's largest consumer of seabed minerals be guaranteed a seat. This provision was aimed at guaranteeing the

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[485]Schmidt., *op. cit.*, p. 241.
[486]*Ibid.*, pp. 241-242.
[487]Domestic legislation for deep seabed mining was made in the United States and the Federal Republic of Germany in 1980, the United Kingdom and France in 1981, Japan and the Soviet Union in 1982 and Italy in 1985. See Said Mahmoudi, *The Law of Deep Sea-Bed Mining: A Study of the Progressive Development of International Law Concerning the Management of the Polymetallic Nodules of the Deep Sea-Bed* (Stockholm: Almqvist & Wiksell International, 1987), p. 226.
[488]Schmidt, *op. cit.*, p. 238.
[489]*Ibid.*, pp. 244-5.

United States a seat because naming it explicitly would have been unacceptable to the African states. This provision, however, appeared to have a flaw in that in terms of tonnage the Soviet Union was the world's largest consumer, although in terms of the value of the metals the United States would be largest.[490]

On the issue of Preparatory Investment Protection (PIP), many delegates thought that PIP could play a key role in reducing the ideological objections of the Reagan Administration to the provisions of the seabed regime in the Draft Convention and the negotiation of this continued during this session. PIP was the system of assuring mining companies that invested in the deep seabed that they could continue their operations in the invested sites. In the end, the final provisions relating to PIP provided some improvements for the United States, such as exclusive mining rights for pioneer operators that would not be affected by the implementation of site allocation procedures by the ISA[491], but they still did not fully satisfy the United States. The United States judged that the provisions of PIP were not enough to protect their pioneers and in the United States most of the deep seabed mining consortia opposed the provision. They believed that if the United States' delegation had secured acceptable terms for technology transfer, production control, automatic access, and ISA decision-making in the Treaty itself, then there would have been no need for PIP in the first place.[492] The provisions of PIP were changed to the extent that the African Group particularly felt frustrated. Some of them said that PIP provisions 'were a betrayal of what we had fought for for many years', and 'it created what almost amounted to a new treaty under which pioneer operators could

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[490]*Ibid.*, pp. 185-186.
[491]*Ibid.*, p. 175.
[492]*Ibid.*, pp. 175-6.

mine the sea-bed virtually unchecked, and paid little more than lip-service to the [Common Heritage of Mankind].'[493]

The United States Administration's Law of the Sea policy was not straightforward and there were some moves aimed at reversing policies even in the final stage of the negotiation. In the final session at the beginning of April, the United States dropped its insistence on the elimination of production limitations and on affirmative voting powers, that is, a veto. Secretary of State Haig was more favourably disposed towards the Convention than any other official in a position of power in the Administration.[494] Haig telephoned the President of the Law of the Sea Conference and agreed to moderate the negotiating instructions for the American delegation. Changes were approved at a Senior Interagency Group meeting.[495] The changes in the instructions alerted the conservatives in the United States since they might have allowed the government to agree to the Convention without acquiring required provisions for meeting its objectives. Many Congressmen, White House and National Security Council officials and the economic agencies disliked Haig's instructions and tried to overturn them.[496] A meeting between the President's domestic policy adviser Meese and industry representatives was held on 19th April at the White House. The meeting was aimed at overturning Haig's instructions. Darman, who advocated that the United States did not need to adhere to the internationally agreed Treaty in his *Foreign Affairs* article in 1978, also attended the meeting as a Presidential assistant. Although one of the company representatives urged the United States to sign the Convention, the others were against it. Meese

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[493]*Ibid.*, p. 175.
[494]*Ibid.*, p. 247.
[495]Ibid.
[496]*Ibid.*, pp. 247-248.

was 'strengthened in his belief that he could not recommend the Treaty to the President.'[497] This meeting was a strong push towards the United States' rejection. News of the Meese meeting spread throughout the Conference within a day.[498] Although no formal decision was taken at the time, some days later Meese, James L. Malone, who was Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs and Special Representative of the President to the Law of the Sea Conference, and a National Security Council (NSC) official, discussed whether the United States should abstain if it came to a vote on the treaty or whether it should vote against it.[499] At this stage, the United States probably would not have voted for the Convention under any circumstances. In the State Department there was a strong current of opinion that the United States should abstain in the vote,[500] finally, however, the decision to vote against the Convention at the Conference was taken.

On 30th April, on the final day of the session, voting on the Convention was taken. 130 were in favour, the United States was against[501] and 17 states abstained. Abstention mainly came from the Western and Eastern European states. The signing of the Convention was scheduled for December. In the United States some pro-Treaty advocates tried to reverse the decision before December because the Administration had not announced its decision officially. Finally on 29th June, at a

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[497]Ibid.

[498]Wertenbaker, Part II, *op. cit.*, p. 74.

[499]Schmidt, *op. cit.*, p. 249.

[500]*Ibid.*, p. 252.

[501]Three other states voted against. Turkey had boundary problems. Israel was against a provision that could be regarded as making the PLO eligible for ISA revenues. Venezuela had a dispute with Columbia over delimitation. 'All three would probably have accepted a consensus' if there was no voting. Wertenbaker, Part II, *op. cit.*, p. 78.

National Security Council chaired by Meese, it was decided that the United States would reject the Convention and would not sign it.[502]

The United States rejected the Convention even though it included the provisions of navigation and overflight which the United States wanted most at the beginning of the negotiation because they decided that the deep seabed regime which was inscribed in the Convention was against the interests of the United States. With regard to the provisions relating to the deep seabed regime, Malone stated that the deep seabed mining regime section of the Convention had fundamental problems for the United States. He argued that;

> 'the Law of the Sea Treaty's provisions establishing the deep seabed mining regime were intentionally designed to promote a new world order—a form of global collectivism known as the new international economic order (NIEO)—that seeks ultimately the redistribution of the world's wealth through a complex system of manipulative central economic planning and bureaucratic coercion'.[503]

He argued that the Third World now hoped to apply the NIEO to other international arrangements. This was unacceptable to the United States since it would mean that the management of the resources of the oceans and other areas would be turned over to new international bureaucracies controlled by the Third World and Soviet bloc countries. This would seriously jeopardise the United States interests.[504] Malone pointed out six issues which the United States could not accept. The issues within the Convention, which were about the deep seabed mining regime, were as follows: 1) There was a provision regarding a review conference which in future could modify the provisions in the Convention. The numerical superiority of developing states within this review conference could ultimately

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[502]Schmidt, *op. cit.*, p. 257.
[503]James L. Malone, 'Who Needs the Sea Treaty?', *Foreign Policy,* Vol. 54 (Spring, 1984), p 45.
[504]*Ibid.*, p. 46.

change the provisions to the United States' disadvantage. In addition, the review conference would deny the United States Senate a role in the treaty process. 2) The provisions of the parallel system of exploitation which meant that the Enterprise, that is the operational arm of the ISA, and state or private operations would exploit the seabed simultaneously, might discriminate against state or private operation. This might restrict the United States access to minerals of strategic importance. 3) Production and marketing control by the ISA would hamper the production of mineral resources. 4) The financial and regulatory burdens on the United States industry and government would be huge. The state party would have the financial responsibility of supporting the Enterprise and the ISA. For the United States government this would amount to around $1 billion. The financial responsibilities on the United States were too great. 5) Mandatory technology transfer would be enjoined to the developing states and the Soviet bloc states. 6) The ISA might fund institutions, such as national liberation organisations, which were hostile to the United States, by using the profits from deep seabed mining.[505]

The prime reason for the United States' objection was its lack of control over the ISA, although if the United States and some other western industrialised states had co-operated, they could have avoided almost all decisions made by the ISA. The United States rejected the Convention basically because the preferences of the United States shifted from navigation freedom to the deep seabed regime, and the United States made a decision to reject the Convention from the view point of the deep seabed regime.

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[505]*Ibid.* pp. 46-47.

3. Discussion

Changes in the context of the negotiation changed the meaning of the Law of the Sea negotiation for the United States. The states' practice of extending national jurisdiction and the giving and enjoying of navigational freedom were in fact only a provisional outcome of the Law of the Sea negotiation and they were yet to be finalised. Nonetheless they became a factor in the context of the negotiation. This influenced thinking in the United States government and led to its rejection of the Convention. In terms of negotiation theory, a provisional agreement being activated and determining the final outcome of the negotiation, is outside its scope. This is because negotiation theory assumes that issues are set at the beginning of the negotiation and that they do not change during it.

Other factors in the context of the negotiation, such as the breakdown of détente, influenced people in the United States as well as its policy-makers. When people felt the demise of détente in the United States, they chose Reagan as their President. Policy-makers in the Reagan Administration formed a view that navigational rights in the Law of the Sea Convention had already become customary international law, so they did not need to stick to the Convention in order to obtain those rights. In terms of SDI, policy-makers of the Reagan Administration, including the President himself, believed that SDI would solve the problem of military vulnerability of the United States. The background to the rejection was therefore that the United States changed its position on navigational matters and also changed its evaluation of the deep seabed mining regime. They came to believe that navigational matters had become less important in relation to the deep seabed mining regime than they had been in the past. The balance of the two core issues had in effect shifted and they shifted because the context of the negotiation changed. At the final stage, the 'real'

negotiation by the United States was not actually conducted at the Conference but between the pro-Treaty and anti-Treaty groups within the United States itself.

In international relations theory, when the analysis is concentrated only on states' actions it becomes very difficult to explain this type of political change and its influence on states' policy. One of the problems is that in international relations theory, the international arena is clearly separated from the domestic domain, so that it is not easy to analyse both domains simultaneously.[506] In addition, a further problem, also considered in chapter 6, is how to assess the subjective perceptions of policy-makers. What made the top policy-makers believe that the United States did not need the Convention in terms of navigational freedom was their belief that strait passage was already customary international law and that SDI would overcome all the problems with regard to sea use. In reality SDI was only an idea that so far has not been achieved. The judgement of policy-makers could be said to have been based on subjective interpretation of an idea. The problem is how such a subjective interpretation can be explained theoretically.

The above examination suggests that in order to analyse the United States' rejection of the Law of the Sea Convention in 1982 many factors need to be examined. International factors, state's actions by the United States at the negotiation, domestic moves in the United States and perceptions of policy-makers which exist in the context of the negotiation, as well as forming part of the process itself, interacted with the negotiation and each other to influence the direction the negotiation took. In addition, an outcome produced by the negotiation became part of its context and further interacted with other factors to influence the negotiation

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[506]See chapter 2.

further. Factors both inside and outside the negotiation were continually interacting and could be said to be almost inseparable.

4. Conclusion

Changes in the context of the negotiation changed states' actions and this led to the rejection of the Convention by the United States. The context of the negotiation led to a change of government in the United States. In addition, people dissatisfied with the Convention lobbied the government to alter the negotiation in their favour. Policy-makers of the new Administration assessed the Convention and its implications based on the Administration's policies, including SDI, and decided to reject the Convention.

This process shows that the context of the negotiation, including political change in the United States, influenced the negotiation greatly. It is difficult to explain this process however, since the mechanism by which these factors influence the outcome has not been established.

Chapter 8 The 1994 agreement: 1982-1994

The Law of the Sea Conference ended in 1982 with the production of the Convention, which the United States had rejected. In 1994, however, the United States and the Group of 77 agreed to alter the provisions of the Convention in terms of the seabed mining regime and this finally produced an agreement between them on sea use. This chapter therefore examines the thirteen year period from 1982 to 1994. At the end of this stage the Implementation to the Law of the Sea Convention was adopted by the United Nations General Assembly, and the Law of the Sea negotiation ended successfully. The most important factors at this stage were said to be the 'changing circumstances,'[507] that is the huge political and economic changes[508] which occurred and which influenced the negotiation.

Annick de Marffy-Mantuano stated five factors which spurred the United Nations Secretary-General's informal consultations during this period. They were: 1) the disintegration of the Soviet Union and the end of the Cold War, 2) the Group of 77 ceasing to exercise any substantial influence, 3) the recognition by developed and developing states that free markets were the key to economic success, 4) the prospect of the entry into force of the Convention and fears of developing states which had ratified the Convention, 5) the establishment of the transitional regime

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[507]Kenneth Rattray, 'Resolution and Agreement Relating to the Implementation of Part XI of the UN Convention of the Law of the Sea: A General Assessment—Comment', *Zeitschrift für ansländisches öffentliches Recht und Völkerrecht (ZaöRV): Symposium on The Entry into Force of the Convention on the Law of the sea: A Redistribution of Competencies Between States and International Organisations in Relation to the Management of the International Commons?*, Heidelberg, January 26-28, 1995 (Gesamtherstellung: W. Kohlhammer GmbH, 1995), p. 207.

[508]See, for example, D. H. Anderson, 'Efforts to ensure universal participation in the United Nations Convention on the Law of the Sea'. *International and Comparative Law Quarterly*, Vol. 42, (July, 1993).

for deep seabed mining by PrepCom.[509] In my view, de Marffy-Mantuano's work mixes up factors which had been recognised before the Secretary-General's informal consultations, and factors which were only recognised after the informal consultations begun. Factors 4) and 5) particularly were clearly recognised before the informal consultations, but factor 1) occurred after it in 1991 and factor 3) was also recognised after it. These factors need to be considered separately because the factors which originated the Secretary-General's consultations and the factors which enabled the negotiation to reach an agreement through the consultations were different.

In my view, one of the most important influences during this period was the Law of the Sea Convention itself. Both parties miscalculated the effects of the 1982 Convention, in that the Group of 77 expected that the very existence of the Convention would eventually force the United States to accept it. The United States on the other hand considered that it would be able to utilise the navigational rights which were articulated in the Convention and that its industry would be able to engage in deep seabed mining without interference, despite its decision not to accept the Convention as a whole. The calculation of both sides turned out to be wrong and both of them realised that without a universal agreement the cost to continue the present situation would be much higher than originally expected.

After the Conference the negotiation between the United States and the Group of 77 was not held formally. Despite the lack of a formal forum however the 'negotiation'[510] between the two parties continued. At this stage changes in the

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[509]Annick de Marffy-Mantuano, 'The Procedural Framework of the Agreement Implementing the 1982 United Nations Convention on the Law of the Sea', *American Journal of International Law*, Vol. 89, (1995), pp. 815-816.

[510]If the Law of the Sea negotiation is examined from the perspective of international relations theory, whether states are engaging in a negotiation directly or not is not a critical issue. In

context of the negotiation changed the preferences of both sides with regard to seabed mining and navigational rights. These changes brought both sides back to the 'negotiation table', this time not at the Conference, but at informal talks under the aegis of the UN Secretary-General. In this chapter, what happened after the Law of the Sea Conference is reviewed first. Second, factors in the context of the negotiation which led to the UN Secretary-General's informal consultations are examined. Finally, the negotiation which brought about the 1994 Agreement is reviewed.

1. The situation after the Conference

In December 1982, the Law of the Sea Convention was opened for signature and when it closed in December 1984, 155 states had signed it.[511] The United States and only two other states in the group of western industrialised states, the United Kingdom and the Federal Republic of Germany, did not sign it. After its rejection of the Law of the Sea Convention in 1982 the United States made strenuous efforts to consolidate its camp. Its camp consisted of the group of states with deep seabed

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negotiation theory, however, whether states are engaging in a negotiation or not is a critical issue, since negotiation theories usually only consider visible negotiations at the negotiating table to be negotiations. Sebenius has attempted to link both international relations theory and negotiation theory by expanding the concept of negotiation. Sebenius stated that, '[e]vidently, international negotiations need not be discrete, explicit, or acknowledged by all the players, nor need they take place around a table in accordance with diplomatic protocol and with the shared expectation of reaching a formalized agreement'. James K. Sebenius, 'Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities', *International Organization*, Vol. 46, No. 1, (Winter, 1992), pp. 351-352. It can be argued then that even if states do not meet at the negotiation table, for example, the period between two parts of negotiations at the negotiation table, providing they continuously make efforts on the same issues to turn the situations to their advantage, can be considered as part of a continuous negotiation. Therefore the period between 1982 and 1993 of the negotiation, when the Group of 77 and the United States did not formally negotiate at the 'negotiation table', but both sides were making efforts to turn the situation to their advantage on the same issues, would be recognised as a 'negotiation'. For this reason, the Law of the Sea negotiation can be considered as a continuous negotiation lasting 27 years.

[511]E. D. Brown (ed.), *Sea-Bed Energy and Mineral Resources and the Law of the Sea*, Vol. III. (London: Graham & Trotman, 1986), 4. 10. In addition, four other subjects of international law, including the European Community (EC), signed it.

mining capability within the group of western industrialised states and these states advanced an 'Agreement Concerning Interim Arrangements Relating To Polymetallic Nodules Of The Deep Seabed' (Reciprocating States Agreement) in order to enable them to engage in deep seabed mining outside the Convention. The Group of 77 strongly objected to the Reciprocating States Agreement and claimed it was an illegal activity. At this stage the negotiation between the Group of 77 and the industrialised states, apart from the United States, was continuing in Preparatory Commission. The purpose of PrepCom was to make rules or regulations, including preparatory investments,[512] for the International Seabed Authority and for the International Tribunal for the Law of the Sea, both of which were established by the Convention. PrepCom's work started in March 1983 but was not very fruitful because firstly, the United States was not participating in it and secondly, because the role of PrepCom was to make rules or regulations according to the Convention, not to negotiate the texts of it.

As mentioned above, the United States made considerable efforts to buttress its position after its rejection of the Convention, which was officially announced in July 1982.[513] The Reagan Administration sent a mission to its allies, Western Europe and Japan, to persuade them to support its position and to prevent them from signing the Convention. There was a sense of urgency in the United States because in September 1982 the United Kingdom and the Federal Republic of Germany

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[512]Provisions for preparatory investments were written in Resolution II of the Law of the Sea Conference. See Said Mahmoudi, The Law of Deep Sea-Bed Mining: A Study of the Progressive Development of International Law Concerning the Management of the Polymetallic Nodules of the Deep Sea-Bed (Stickholm: Almqvist & Wiksell International, 1987), pp. 310-1.

[513]In April of that year, the United States voted against the Convention, however, its official announcement came after the decision taken at its National Security Council meeting held on 29th June. There was still an opinion favoured further negotiations at the meeting. See Markus G. Schmidt, *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* (Oxford: Clarendon Press, 1989), p. 257.

approached the Group of 11[514] to ask them to try again to negotiate improvements in the seabed provisions of the Convention.[515] Regardless of the mission from the United States, however, France signed it in December 1982, and Japan in 1983. Before the signature to the Convention was closed in 1984, the United States lobbied the governments of the Federal Republic of Germany, Italy, Belgium, and the United Kingdom against signing the Convention, however, Italy and Belgium signed it in that year.[516]

The United States did not participate in PrepCom even though it was entitled to do so as an observer.[517] The United States claimed that the Convention was 'fatally flawed and PrepCom lack[ed] the authority to change the text [of the Convention].'[518] In December 1982, President Reagan decided to withhold 1 million dollars from the American contribution to the United Nations budget.[519] This was a firm signal by the United States that it would not allow the ISA to control deep seabed mining. The United Kingdom and the Federal Republic of Germany did not follow suit and neither did other non-signatories, continuing to pay their contributions and participate in PrepCom's work.[520]

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[514]The Group of 11, also known as the 'Good Samaritans', was a group of eleven developed states, including Canada, Australia, Holland, the Scandinavian countries, and Austria, formed at the final stage of the Conference to work out a compromise between the United States and the Group of 77. See *Ibid.*, p. 245.

[515]*Ibid.*, pp. 278-279.: William Wertenbaker, 'A Reporter at Large: The Law of the Sea, Part II', *The New Yorker*, (Aug. 8, 1983), p. 80.

[516]In December 1982 the United Kingdom expressed its view on the Convention in the House of Commons and it stated that the provisions relating to deep seabed mining, including the transfer of technology, were not acceptable because they were based on undesirable regulatory principles that could constitute unsatisfactory precedents. H. C. Debs., Vol. 33, Col. 404. cited in Anderson, *op. cit.*, p. 654 note 4. It was rumoured that the Ministry of Defence and the Foreign Office favoured signing, however, economic agencies opposed it. See Schmidt, *op. cit.*, pp. 279-280.

[517]*Ibid.*, p. 310. The United States had singed the Final Act of the Conference although it did not sign the Convention. This gave the United States the right to participate in PrepCom.

[518]Kronmiller, in US Congress (1982d), p. 8. cited in Schmidt, *op. cit.*, p. 288.

[519]*Ibid.*, p. 289.

[520]These states participated in PrepCom as observers, however, they were treated as the same as members and they participated in the discussions actively.

In 1982 a Reciprocating States Agreement was made between the United States and the United Kingdom, the Federal Republic of Germany and France in order to establish a system for deep seabed mining. This was not a treaty and its main purpose was to facilitate the identification and resolution of conflicts among pioneer mining consortia by voluntary means.[521] This system was not in fact strong enough for mining consortia to engage in deep seabed mining since 'the option of mining under the [Reciprocating State Agreement was] fraught with uncertainties of a legal, political, and economic nature' although 'uncertainties also exist[ed] under the Convention regime'.[522] The United States furthered its efforts to establish a securer system and four United States-based deep seabed mining consortia, a French consortium and a Japanese consortium, engaged in negotiation on voluntary conflict settlement, reaching an agreement of site allocation in December 1983. In addition, a Provisional Understanding Regarding Deep Sea-bed Matters was agreed among eight seabed mining states (the United States, the United Kingdom, France, the Federal Republic of Germany, Japan, Italy, Belgium, and the Netherlands) in August 1984. This Understanding was aimed at co-ordinating and authorising mining activities in the seabed areas[523] and in the same year the United States National Oceanic and Atmospheric Administration (NOAA) issued mining licences to four United States based consortia.[524] The 1984 Understanding however did not erase the uncertainty surrounding deep seabed mining, since there was no agreement with other potential miners, such as the Soviet Union.[525] As a result, overlapping claims of mining sites between the Soviet Union and some of the United States

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[521]See Mahmoudi, *op. cit.*, pp. 226-227.
[522]Schmidt, *op. cit.*, p. 288.
[523]See Mahmoudi, *op. cit.*, p. 227; Schmidt, *op. cit.*, p. 281.
[524]United Nations Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: current Developments in State Practice, No. I* (New York: United Nations, 1987), pp. 111-123.

based mining consortia, which had already been granted licenses for sites from the NOAA, became a problem in PrepCom in 1985. Overlapping site problems also existed between the Soviet Union, Japan and France.

The Group of 77 strongly objected to domestic legislation for deep seabed mining and the Reciprocating States Agreement. It repeatedly declared that activities undertaken under these would be considered to be without international legal validity[526] and would lead other states to adopt necessary measures to protect their interests. The Group of 77 described the 1984 Understanding as 'wholly illegal' and contrary to the letter and spirit of the Convention. The Eastern European group also supported this argument. PrepCom subsequently adopted a resolution designating as illegal all mining undertaken outside the Convention.[527]

PrepCom's tasks included reconciling conflicting claims among the pioneer investors and also allocating areas to pioneers. During PrepCom's work the developing countries, on the whole, displayed more flexibility in negotiating rules and regulations for the ISA and the Enterprise than they had shown during the Conference.[528] Nevertheless the Group of 77 formally continued to affirm that changes in the Convention text were beyond the mandate of PrepCom.[529]

The negotiation about overlapping sites was therefore conducted on two separate tracks. One was the negotiation in PrepCom by participating states, whilst the other was through individual negotiations by the United States. While PrepCom was

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[525]The Soviet Union established domestic legislation for deep seabed mining in 1982.

[526]See Article 137 para. 3 of the Law of the Sea Convention. It says that '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 [the provisions of the Convention]'.

[527]Doc. LOS/PCN/5 (11 Apr. 1983), .Doc. LOS/PCN/72 (2 Sept. 1985), the United Kingdom protested against the legality of the adoption of this Resolution. Doc. LOS/PCN/74 (9 Jun. 1986). See Schmidt., *op. cit.*, p. 287 note 109. See also Mahmoudi, *op. cit.*, pp. 319-320.

[528]Schmidt, *op. cit.*, p. 303. Mahmoudi, *op. cit.*, p. 321.

[529]Schmidt, *op. cit.*, pp. 303-304.

working on the issue of overlapping claims, the United States engaged in negotiations with other states on the same issue and participated in a series of intergovernmental agreements. Through the exchange of Norte Verbales, the United States acceded to the agreement of the confidentiality of data on deep seabed of December 1986 between the potential applicants (Belgium, Canada, Italy, and the Netherlands) and the Soviet Union. Those potential applicants were states that had companies belonging to the four United States based consortia. The potential applicants were entitled to negotiate on behalf of the four United States based consortia to avoid overlapping mine sites at PrepCom. As a result, although the United States did not officially participate in the PrepCom negotiation, potential applicants were able to negotiate with the Soviet Union both inside and outside of PrepCom. This in effect meant that the United States was able to confirm sites for its four mining consortia by making agreements with related states. The United States also adhered to the agreement of deep seabed mining sites of 14 August 1987, which implemented the settlements of the mine site overlap conflicts between the Soviet Union and the United States based mining consortia. The United Kingdom and the Federal Republic of Germany did the same.[530] Similar notes were exchanged with the Foreign Ministries of Belgium, Canada, Italy, and the Netherlands.[531] Although these arrangements were made, they were not as strong as a universal agreement such as the Convention, since, for example, there was no Tribunal to resolve conflicts between states. After solving the problems of overlapping sites, including potential applicants, India, France, Japan, and the

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[530]They had already issued licenses to mining consortia. The United Kingdom did so in 1984, the Federal Republic of Germany in 1985.
[531]*Ibid.*, p. 301, p. 301 note 167.

Soviet Union were, in 1987, registered as pioneer investors by PrepCom.[532] In order to accommodate states' claims PrepCom had needed to substantially change the provisions laid down in Resolution II of the Conference, about the pioneer investors,[533] even though this had originally been thought to have been outside of its remit.

In terms of navigational rights, the situation developed differently from what the United States had anticipated. When in 1982 President Reagan officially announced that the United States would not sign the Convention, he also stated that the United States would take up the non-seabed provisions of the Convention, particularly the provisions which related to navigational rights. Immediately after the rejection, verbal accusations by the Group of 77 and the United States against each other started. The Group of 77 repeated that the United States could not 'pick and choose' the provisions of the Convention because the Convention was a 'package deal.'[534] On the other hand, the United States maintained its position that the non-seabed regime provisions of the Convention had become customary international law and it could therefore enjoy them without being party to the Convention. In 1983, President Reagan proclaimed a United States Exclusive Economic Zone of two-hundred miles and he also issued an ocean policy statement saying that the United States would exercise its navigation and overflight rights consistent with the Convention and would not agree to other states' unilateral action that attempted to restrict them. Two-hundred miles Exclusive Fishery Zones (EFZs), which only

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[532]In addition, China and a group of Eastern European states (including Cuba) were later registered. It also registered South Korea as a pioneer investor. After the 1994 Agreement which altered the international seabed regime was adopted, PrepCom in August 1994 held its final meeting and adopted its final report.

[533]This resolution was adopted together with the Law of the Sea Convention in 1982. See also Schmidt, *op. cit.*, pp. 298-300. Mahmoudi, *op. cit.*, pp. 318-321.

[534]In terms of package deal, see chapter 3.

covered fisheries, had become wide-spread by 1976, and more than ninety states had already established EFZs, more than fifty of them as part of EEZs.[535] These facts supported America's claims that setting up the EEZ was customary international law. Whether the United States could benefit from the non-seabed provisions, especially straits passage and its overflight, was disputed. The Group of 77 rejected the United States' view consistently, claiming that the navigational provisions of the Convention created new international law and that there had been never any intention that this should be available to non-parties. They insisted that provisions therefore bound only signatory states.[536] Nevertheless, open challenges to the United States' position were rare, and serious challenges came only from Libya and Iran.[537]

The objections of the Group of 77 to the United States' position were expressed in the UN General Assembly Resolutions in 1983, 1984, 1986.[538] At this stage some coastal states unilaterally enlarged their rights over straits or territorial waters, for example by claiming innocent passage as opposed to the transit passage provided in the Convention.[539] Four key straits states, Spain, Morocco, Oman, and Iran declared upon signature of the Convention that they recognised 'innocent passage,'[540] not transit passage, through Gibraltar and Hormuz.[541] Transit passage, which basically means free navigation and overflight, was articulated in the Convention.[542] Some states, such as Indonesia, insisted that only signatories of the Convention enjoy the

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[535]Schmidt, *op. cit.*, p. 269.

[536]There are problems with this argument because the extension of territorial sea and straits passage have a very close relationship. See chapter 1.

[537]*Ibid.*, p. 266 note 19.

[538]GA Resolutions 38/59 (14 dec. 1983); 39/73 (13 Dec. 1984.); 40/63 (25 Feb. 1986).

[539]Schmidt, *op. cit.*, pp. 266-274.

[540]See chapter 5.

[541]Schmidt, *op. cit.*, p. 267.

[542]Article 38 of the Law of the Sea Convention.

right of transit passage through straits and innocent passage through archipelagic sea-lanes, even though those rights had been practised prior to the Law of the Sea Conference. When the Philippines ratified the Convention in 1984, it did not provide the innocent passage for foreign vessels which was guaranteed in archipelagic waters by the Convention.[543]

2. Factors which led to the Secretary-General's informal consultations

There was a development which the United States and the Group of 77 had not anticipated. This was that the prospects of deep seabed mining had decreased and as a result the prospect of harsh financial burdens on the developing states, especially states which had already ratified or acceded to the Convention, appeared. Given the commercial potential of deep seabed mining, early mining for minerals became unlikely, since mineral prices were low and the cost of deep seabed mining was very high. Deep seabed mining was shown to be an extremely costly and capital intensive industry, requiring a large investment; more than US $1.5 billion.[544] The price of the main minerals that constitute manganese nodules was by this time low. In addition, conservation, recycling, land exploration, the introduction of mineral saving technologies and use of substitutes also had an effect on the demands for these minerals. Previous concerns that high population growth and expanding consumption would cause a global shortage of key minerals by the end of the 20th

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[543]See Schmidt, *op. cit.*, pp. 267-8, p. 268 note 27. The Philippines, in 1988, confirmed that it would abide by the provisions of the Convention. See United Nations Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, *The Law of the Sea: Annual Review of Ocean Affairs: Law and Policy, Main Documents 1989* (New York: United Nations, 1993), p. 6.

[544]Schmidt, *op. cit.*, pp. 13-15. Schmidt got this figure from several studies published in 1982 and 1984. In addition, he pointed out an Australian study estimated the cost at approximately 2.1 billion dollars (at Mar. 1985 US dollar rates.) Schmidt later stated in his work that the amount was 'up to 2.5 billion United States dollars'. *Ibid.*, p. 285.

century also proved largely unfounded and demand could easily be met by existing economic or sub-economic land based sources of metals.[545]

For the Group of 77, the situation with the United States was a stalemate and it hoped that the Convention would enter into force as soon as possible, believing that the pressure of that would change the United States' position. In the late 1980s the Group of 77, however, realised that deep seabed mining was unlikely to happen in the foreseeable future. As the problem of overlapping claims of mining sites was solved, at least for the time being, the prospect of the United States returning to the Convention became unlikely. This led to worries that other industrialised states, which had been allocated mining sites, might not ratify[546] the Convention for a long time because there was no need to ratify it without commercial viability of deep seabed mining. If a state ratified the Convention, it became liable to contribute to the ISA in accordance with the scale used for the regular budget of the United Nations, until the ISA became financially independent.[547] In addition, it would also be required to financially support the Enterprise, the mining arm of the ISA. Without the United States accepting the Convention, other industrialised states were reluctant to bear those financial burdens, especially given the pessimistic prospects for deep seabed mining.

At the same time, the fact that some of the developing countries had ratified the Convention, meant those states had to financially support the new ISA when the Convention came into force. They would, as a result, suffer financial hardship.

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[545]Porter Hoagland, 'Manganese nodule price trends: Dim prospects for the commercialization of deep seabed mining', *Resource Policy,* Vol. 19, No. 4 (December 1993), pp. 295-297; Jonathan I. Charney, 'U. S. Provisional Application of the 1994 Deep Seabed Agreement', *American Journal of International Law,* Vol. 88, (1994), p. 712 note 29.

[546]Ratification means a formal consent of the highest authority, such as Parliament in the United Kingdom, in many states, and this is required to make a treaty valid after the government signs the treaty. In the United States, the Senate is responsible for ratification.

When the structure of the ISA had been discussed in the Seabed Committee and the Conference, the Group of 77 had favoured a strong autonomous machinery to prevent the United States' intervention in the ISA's decisions. During the negotiations in the Conference, the United States agreed to a strong machinery, although it attempted to trim the ISA's discretionary power as much as possible. The ISA's functions were wide and if the Convention came into force the expenditure of the ISA would be substantial. Without commercially profitable exploitation of the deep seabed the ISA could not expect any income except from contributions from states which had ratified the Convention. Under these circumstances studies of how much it would cost to establish and run the ISA were carried out. Under a very modest undertaking, the cost of establishment and running the ISA as envisaged by the Convention would, for the first five years, amount to some US$50 million per annum.[548] Another study showed that the minimum cost would be US$10.5 million in the case of a self-administrated ISA and Tribunal and US$9 million in the case of the United Nations linked Authority and Tribunal.[549] In either case, without any income from seabed mining, the cost would have to be borne by states which had ratified and which had no hope of income.[550] It was therefore almost impossible for developing states to support the ISA. Under these circumstances, in 1988, the Soviet Union stated at the United Nations General Assembly that it hoped that all the states would participate in the Law of the Sea Convention by adopting a 'practical approach'. Italy also mentioned that in order to make the Convention universally accepted, states should consider that the current circumstances were fundamentally

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[547]Article 160, paragraph 2 (e) of the Convention.
[548]Doc. AALCC/XXX/CAIDO/91/7, August 1990, pp. 16-7.
[549]*Ibid.*, pp. 18-9.
[550]See *Ibid.*, pp. 16-7.

different from the ones that existed before the Convention was made.[551] The Group of 77 tried to initiate a new negotiation with the United States since most of the ratifiers were its members. The spokesman for the Group of 77 made a statement at PrepCom in August 1989, stating that:

> 'the developing countries continue to be ready to hold discussions, without any preconditions, with any delegation or group of delegations—whether signatories or non-signatories to the Convention—on any issues related to the Convention and work of the Preparatory Commission.'[552]

This statement was apparently aimed at the United States even though the United States had not participated in PrepCom. The statement expressed the Group of 77's intention to talk to the United States about possible changes in the deep seabed mining regime. Other groups of states at PrepCom welcomed the statement and a resolution outlining that every effort should be made to make the Convention universally accepted was adopted at the United Nations General Assembly in 1989.[553] Responding to these moves by states, the Secretary-General of the United Nations, Javier Pèrez de Cuèllar,[554] decided to start informal consultations on the outstanding issues.

At the same time, the United States also started to feel that a universal agreement of sea use would be a better option than no formal agreement although at the time it was not revealed. George Galdorisi, a Captain of the United States Navy, wrote an article in 1995 saying that the United States was confronted with increasingly diverse claims by coastal and island states which were inconsistent with the terms of the 1982 Convention. Although the lack of an established global regime had not yet

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[551]Moritaka Hayashi, Kokuren Kaiyouhou Jyoyaku Dai Jyuichibu ni Kansuru Jimusocho Kyogi to Jisshi Kyotei, *Kokusaihou Gaikou Zasshi*, Vol. 93, No. 5 (December, 1994), p. 59.
[552]R. Platzöder, *Third United Nations Conference on the Law of the Sea*, Vol. X (Dobbs Ferry, New York: Oceana Publishers, 1992), p. 472.
[553]Hayashi, *op. cit.*, p. 60.

resulted in any overt denial of United States' transit rights through critical straits or archipelagic waters, the United States' financial and diplomatic costs, as well as the overall risks associated with the use of its forces, became considerably higher due to the absence of a binding treaty. He pointed out more than fifty countries had already made claims inconsistent with the 1982 Convention over their adjacent seas.[555] Many states were claiming their national jurisdiction differently from provisions of the Convention, since the Convention was not universally agreed. The United States realised that it would need a lot of effort and funds in order to maintain its insistence that navigational provisions of the Convention were customary international law and in order to keep objecting to the unilateral claims which were contrary to the provisions of the Convention. As a result, the United States started to feel that in order to reduce the costs and risks, a universal agreement of sea use would be the better option.[556]

In summary, the prospects of deep seabed mining decreased and as a result the Law of the Sea Convention became a heavy financial burden on the Group of 77. This changed the attitude of the Group of 77. This means that the existence of the Convention brought about the change. The United States also started to feel that it needed a universal agreement of sea use to reduce the costs and risks in relation to navigation rights. Although at this stage both sides did not engage in negotiation directly, these factors fostered further negotiation between them in order to resolve

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[554]He was succeeded by Boutros Boutros-Ghali in 1992 and the new Secretary-General continued the informal consultations.

[555]George Galdorisi, 'The United Nations Convention on the Law of the Sea: A National Security Perspective', *American Journal of International Law*, Vol. 89. No. 1 (January, 1995), p. 209.

[556]Some evidence of this is the Joint Statement of 23 September 1989 of the Soviet Union and the United States on Uniform Interpretation of Norms of International Law Governing Innocent Passage. UN doc. A/ 44/ 578, Annex. United Nations Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, *The Law of the Sea: Annual Review of Ocean Affairs: Law and Policy, Main Documents 1989* (New York: United Nations, 1993), pp. 66-67.

the differences. Changes in the context of the negotiation, such as deep seabed mining prospects as well as changes generated by the outcome of the Conference and inconsistent unilateral claims of coastal states, eventually altered the attitudes of both the Group of 77 and the United States.

3. 1994 Agreement

The United Nations Secretary-General's informal consultations started in 1990. During the informal consultations, many political and economic changes occurred and they were recognised by the participants. The major ideological conflict between the United States and the Soviet Union ended and the relationship between them moved from confrontation to co-operation. At PrepCom, co-operation between Eastern European states and the Group of 77 weakened and the Eastern European states started to co-operate ,with the western industrialised states.[557] The ideology of the New International Economic Order was fading by the middle of the eighties[558] and the market economy was more accommodated world-wide. In addition, privatisation was a popular policy especially among the developed countries. The system which had been adopted for the ISA was influenced by the ideas of central economic planning and were shown, for example, in production control of deep seabed minerals and technology transfer obligation. This system was therefore felt to have become inappropriate. No state wanted a huge bureaucracy to conduct the ISA since it would depend on member states' contributions for at least the foreseeable future. The developing countries' gradual acceptance of the market economy considerably changed their thinking and this was reflected during the negotiation.

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[557]Hayashi, *op. cit.*, p. 58.

In December 1991, the United Nations General Assembly adopted the Law of the Sea Resolution, which recognised that

> 'political and economic changes, including particularly a growing reliance on market principles, underscore the need to re-evaluate, in light of the issues of concern to some states, matters in the regime to be applied to the [international seabed area] and its resources and that a productive dialogue on such issues involving all interested parties would facilitate the prospect of universal participation in the Convention, for the benefit of mankind as a whole.'[559]

Given the above circumstances which further developed during the informal consultations, there existed room for negotiation of a new agreement between the Group of 77 and the United States. The core issues of the negotiation, the deep seabed mining regime and the navigational rights were once again the stakes of the parties. The practical significance of the deep seabed mining regime within the Convention had much diminished, but its significance in ideological terms as a precedent for the United States remained.[560]

The method of the informal consultations was adopted because the United States was not a member of PrepCom and therefore the negotiation between the Group of 77 and the United States could not be held in that forum. Before the first meeting the United States Ambassador to the UN had informal bilateral talks with leaders of the Group of 77[561] to do a preliminary investigation on how serious they were. When the Secretary-General's consultations started, the United States Ambassador to the UN participated in them in his capacity as the Ambassador to the United Nations, with no authority to enter into negotiations on behalf of the United

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[558]See chapter 5.

[559]GA Res. 46/78. At the same time it urged states to ratify the Convention and to bring it into force at the earliest possible date. This caused the United States to abstain.

[560]Anderson, *op. cit.*, p. 657.

[561]The number of developing states with which the United States had talks was about ten. Hayashi, *op. cit.*, pp. 61-62.

States.[562] His role was to determine whether the developing countries were flexible enough to produce acceptable results for the United States. When the Secretary-General's consultations started, there was not much support within the bureaucracy in the United States for participation in the negotiations or for becoming a party to the Convention.[563] Bureaucrats generally believed that those parts other than the seabed regime of the Convention, such as EEZ and navigation, represented customary international law and that state practice had been consistent with those norms. In addition, bureaucrats believed that 'entry into force [would] further solidify the customary law status of the non-deep seabed portions of the Convention and that the deficient [deep seabed regime] [would] have no practical effect.'[564]

The developing countries were ready to negotiate, however, within the Group of 77 there were two opinions. First was the view that the Group of 77 could accept substantial modifications to find some accommodation with the United States on the deep seabed regime. Second was the more hard-line position which hoped to push the Convention into force and to pressurise the United States to accept it. The 1990 Asian-African Legal Consultative Committee document, for example, stated that 'efforts have been made in some quarters to amend the Convention even before it comes into force. Those who have advocated and lobbied for such premature amendment of the [Law of the Sea] Convention have ignored the feelings and aspirations of the people of the developing countries'.[565] The United States recognised that the Group of 77 was not ready to make substantial concessions and as a result, the United States merely sat in on the consultations as an observer and

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[562]Jonathan I. Charney, 'The United States and the Revision of the 1982 Convention on the Law of the Sea', *Ocean Development and International Law,* Vol. 23, (1992), p. 280.
[563]*Ibid.*
[564]*Ibid.*, p. 281.

did not engage in the negotiation directly with the Group of 77 at that stage. This was firstly because if the United States did not participate in the consultations at all, there was hardly any point having them. Secondly, this meant that the United States could withdraw its 'sitting' in the consultations at any time when it judged that there would be no hope of improvement in the Convention. Its position was one of exploring the possibility of participating in the negotiation. This was a considerable threat to the Group of 77 because unless it made substantial concessions to the industrialised states, the United States might leave the consultations altogether. Even though it did not participate, other industrialised states did so on its behalf. Industrialised states, including the United States, considered that if the United States joined the negotiation actively from the beginning, developing states might interpret this to mean that it was willing to accept some minor improvements in the deep seabed regime. Other industrialised states supported the position of the United States in order to obtain more favourable conditions for deep seabed mining.[566]

In addition, the Group of 77 did not recognise that the United States' stake in the Convention was navigational rights, since at the time this was not clearly visible to them. As a result the negotiation proceeded on the deep seabed regime with the aim of accommodating the United States' claims as much as possible. This was to the United States' distinct advantage.

At the Secretary-General's informal consultations eight obstacles to the international seabed regime, were put forward by the United Kingdom, Germany and the Soviet Union.[567] Topics were as follows: 1) costs to state parties, 2) the

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[565]Doc. AALCC/XXX/CAIDO/91/7, August 1990, in Kenneth R. Simmonds (ed.), *New Directions in the Law of the Sea* (London: Oceana Publications), U: 11, paragraph 22.
[566]This type of logic was said to have existed during the PrepCom negotiation. Schmidt, *op. cit.*, pp. 303-304.
[567]Anderson, *op. cit.*, p. 657.

Enterprise, 3) decision-making, 4) the review conference, 5) transfer of technology, 6) production limitation, 7) compensation fund for land producers, and 8) financial terms of contracts.[568] These were in fact consistent with the United States' official reasons for rejecting the Convention in 1982. The industrialised states argued as follows: 1) the cost of the ISA and the Tribunal would be too high; 2) the cost of funding the Enterprise and its first mine site would be enormous. The advantages given to the Enterprise over private sector consortia were a problem. In an era of privatisation, creating the equivalent of a nationalised industry on the international level, for purely commercial operations, was a problem; 3) the decisions, especially on financial questions, should not be taken by a majority which did not include the major industrialised countries and contributors to the ISA and the Tribunal; 4) as a review conference might adopt amendments which could bind all parties, this could cause conflicts between the amendments and states' constitutional obligations; 5) as technology could be acquired through normal commercial means and governments had no means of compelling private corporations to transfer technology to the ISA, obligatory technology transfer was not needed; 6) the limitation of production was contrary to the principle of free competition and the market; 7) the compensation fund was not necessary. If a developing land-based producer were to be affected it should be provided with economic aid and assistance by the international financial organisation; 8) The financial terms of contracts were too onerous on corporations, to the point where investment might be chilled.[569] The developing states were

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[568]D. H. Anderson, 'Further Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea'. *International and Comparative Law Quarterly*, Vol. 43 (1994), p.886. Environmental problem was also included but was later deferred.

[569]Anderson,1993, *op. cit.*, pp. 658-9. D. H. Anderson, 'Resolution and Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea: A General Assessment', in *ZaöRV, op. cit.*, pp. 285-288.

generally receptive to the above ideas because the NIEO principles were fading because of changes in the circumstances.

In April 1993, the Clinton Administration, which came to power in January, decided to participate actively in the consultations.[570] Before this, the consultations had already produced general agreements about what was going to be changed and how to change the deep seabed regime of the 1982 Convention. The question of the form in which any agreement was to be set out was also discussed. In general, participants were reluctant to convene the Fourth United Nations Conference on the Law of the Sea,[571] lest issues settled at the Third Conference were re-opened.[572] In addition, some of the developing countries, especially those who had ratified the Convention, were opposed to a re-negotiation of the deep seabed regime because it was difficult for them to change so quickly the treaty which they had just ratified.[573] An informal group of developing and industrialised countries, including the United States, the so-called 'Boat Group', was formed in August 1993 to discuss the issues in detail and this became the main forum for negotiations on key issues.[574] In November, the 60th instrument of ratification (including accession) was deposited by Guyana. The Convention was therefore to enter into force 12 months later.[575] Before the 60th ratification had been made, some individuals tried to persuade heads of considerable numbers of states to ratify or accede to the Convention in

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[570]Anderson,1993, *op. cit.*, p. 662. Galdorisi pointed out that the United States Navy was undergoing a historic and significant downsizing. Less than a decade previously a six hundred ship Navy was the goal of the Navy and Department of Defense. In 1994 the United States Navy was decommissioning ships at an accelerated pace and was rapidly approaching 450 ships, a figure planned by the Bush Government. The Clinton administration's Future Years Defense Plan called for a navy of just over three hundred ships by the end of the century. The United States Navy would therefore have smaller forces to deal with growing confrontations over its use of the oceans. Galdorisi, *op. cit.*, pp. 209-210.

[571]Anderson, *op. cit.*, pp. 661-662.

[572]Anderson,1995, *op. cit.*, p. 277.

[573]*Ibid.*, pp. 277-278.

[574]Anderson, 1994, *op. cit.*, pp. 887-888. See, also Hayashi, *op. cit.*, p. 62.

[575]Article. 308 of the Convention.

order to make the Convention enter into force[576] and some of the heads of states agreed and these states ratified the Convention.[577] The actions of individuals prompted the entry into force of the Convention. The 60th ratification prompted the negotiation to be conducted more rapidly in order to amend the Convention before it came into force. In June 1994, it was declared that consultations had concluded with agreement on the texts of a draft Resolution of the General Assembly. The Resolution[578] was adopted on 28 July 1994 with 121 in favour, none against and 7 abstentions.[579] The United States became a sponsor of the Resolution and signed it. The eight problems were solved as follows,[580]

1) Costs should be minimised. All the institutions established by the Convention were to be cost-effective.

2) The obligations to private miners are the same as the Enterprise. Operations of the Enterprise are to be conducted through joint ventures. States are under no obligation to finance any of the operations of the Enterprise.

3) In terms of decision-making in the ISA, the overall power of Assembly was denied. Matters which both the Assembly and the Council have competence, and administrative, budgetary and financial matters need to be based on the

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[576]Interview with Moritaka Hayashi in Rome on 23rd September 1997. Mr Hayashi suggested that a United Nations officer and his wife were particularly influential.

[577]Between 1990 and 1993 and before Guyana, 17 states ratified or acceded the Convention. They were Botswana, Uganda, Angola, Grenada, Federal States of Micronesia, Marshall Islands, Seychells, Djibouti, Dominica, Costa Rica, Uruguay, Saint Kitts-Nevis, Zimbabwe, Malta, Saint Vincent and the Grenadines, Honduras, and Barbados. See David L. Larson (et al), 'An Analysis of the Ratification of the UN Convention on the Law of the Sea', *Ocean Development and International Law*, Vol. 26, No. 3 (1995), p. 298.

[578]GA Res. 48/263 (28 July 1994).

[579]Russia abstained because, it claimed, its cost reducing proposals to the ISA were not accepted. Hayashi, *op. cit.*, p. 63.

[580]See, Bernard H. Oxman, 'Law of the Sea Forum: The 1994 Agreement on Implementation of the Seabed Provisions of the Convention on the Law of the Sea: The 1994 Agreement and the Convention', *American Journal of International Law*, Vol. 88 (1994), Jonathan I. Charney(1994), 'U.S. Provisional Application of the 1994 Deep Seabed Agreement', *American Journal of International Law*, Vol. 88 (1994), E. D. Brown, 'The 1994 Agreement on the Implementation of

recommendations of the Council. The Assembly may either approve the recommendations or return them to the Council. The United States was guaranteed a seat on the Council by a provision saying that 'the State, on the day of entry into force of the Convention [16 November, 1994], having the largest economy in terms of gross domestic product' shall be given a seat. Four chambers of states with particular interests were established within the Council. They represented seabed mineral consumers, investors in seabed mining, major exporters of mineral derived from the Area, and developing countries. Two, four-member chambers were to be controlled by major industrialised states. Any three states in either four-member chambers could block a substantive decision for which consensus is not required. Furthermore, decisions by the Assembly or the Council on financial or budgetary matters would need to be based on the recommendations of the Finance Committee. Major contributors to the administrative budget, including the United States, are guaranteed seats on the Finance Committee and the Committee's decisions are made by consensus. As a result, it would be impossible to fund institutions such as national liberation organisations without the United States' consent.[581]

4) The provisions of the review conference were dropped.

5) The provisions on mandatory transfer of technology 'shall not apply'. Technology was to be obtained on commercial terms on the open market or through joint ventures.

6) The provisions regarding the production ceiling, production limitations, participation in commodity agreements, production authorisations and selection among applicants 'shall not apply'. The market-oriented GATT restrictions on

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Part XI of the UN Convention on the Law of the Sea: Breakthrough to Universality?' *Marine Policy*, Vol. 19 No. 1 (January 1995).

subsidy were incorporated. There was to be no discrimination between minerals from the deep seabed and those from other sources.

7) Economic assistance would be provided, not compensation, in case developing land based producers' economies were affected by seabed mining. Assistance would be made from the proceeds of mining and would be made in conjunction with assistance from international financial organisations.

8) The rates of payments by mining organisations would be within the range of those prevailing in respect of land-based mining of the same or similar minerals and would prohibit discrimination or rate increases for existing contracts. Application fees were halved and the detailed financial obligations of mining organisations including annual fees were eliminated. Financial details would be supplied when needed by the Council by consensus.

The 1994 Agreement denied the main objectives which the Group of 77 had long fought for. These were the one-nation-one-vote system and a strong autonomous ISA. These objectives were supported by the NIEO principles and the Group of 77 had consistently claimed them as their bottom-line. The Group of 77 hoped to have the Assembly given primacy power since it was there that the developing states had numerical superiority. The new system effectively denied the one-nation-one-vote system since some industrialised states have 'privileged' power to be represented in the Council of the ISA and they could individually block any financial decisions in the Finance Committee. The strong autonomous ISA was also denied. The Group of 77 originally wanted to have a strong autonomous ISA to avoid intervention by the industrialised states. Now the industrialised states substantially controlled the ISA and the ISA had a smaller function than anticipated. On the other hand, the Group

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[581]See also chapter 7 on the United States six objections to the 1982 Convention.

of 77 still managed to keep some basic principles; namely the concept of Common Heritage of Mankind[582] and the Enterprise. As a result, the preamble of the 1994 Agreement reaffirms that the international seabed area and its resources are the Common Heritage of Mankind. It was clear from the beginning of the consultations that any solution would have to respect the approach of the Common Heritage. This principle was not for re-negotiation, and it was not seriously questioned during the consultations.[583] In the consultations, the need for an Enterprise was questioned. The Group of 77 wanted to have a direct involvement in deep seabed mining and it maintained the Enterprise was the only way of achieving this. In the end, the Enterprise was left in the Agreement, however, the terms of its operation were changed.[584] These two items were symbolic for the Group of 77. On the other hand, the United States did not obtain complete control but now had substantial power within the ISA.

When the United States signed the Agreement in 1994 the Department of Defense and the NOAA were very much in favour of ratifying it. Secretary of Defense, William J. Perry stated, '[w]e support the convention because it confirms traditional high-seas freedoms of navigation and over flight, it details passage rights through international straits, and it reduces prospects for disagreements with coastal nations during [Navy] operations.'[585] In submitting the Agreement to the United States Senate for consent, President Clinton stated that the 'deep seabed mining regime ... was in need of reform ... Such reform has now been achieved. The

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[582]When the words 'Common Heritage of Mankind' were introduced by Arvid Pardo in 1967, the United States and other industrialised states opposed the words as meaningless. When the Principles Resolution, which contained the above words, was adopted in 1970, the United States and many other industrialised states voted for it.

[583]Anderson, 1995, *op. cit.*, p. 278.

[584]*Ibid.*, p. 285.

Agreement ... fundamentally changes the ... regime of the Convention'.[586] The 1994 Agreement also stabilised the deep seabed mining regime since conflicts between states would be solved within the framework of the amended Convention.

4. Discussion

At this stage the context surrounding the Law of the Sea negotiation changed and as a result so did the preferences of the parties. Dim prospects of deep seabed mining, unilateral claims of sea use, weakening of the NIEO principles, breakdown of the Soviet Union and acceptance of the principles of the free market all played a part in altering the preferences of the parties. This changing context of the parties and shift in preferences has been highlighted in the previous chapter and this stage of the negotiation reinforces the view that factors in the context of the negotiation, including its outcomes, alter the preferences of the parties which in turn alter the context of the negotiation.

This chapter also highlighted how actions of individuals can influence states' actions. As outlined earlier, before the 60th ratification (or accession) of the Convention was made, some individuals tried to persuade heads or leaders of states to ratify or accede to the Convention in order to make the Convention enter into force.[587] Regardless of the size of states, states' status is equal in counting the number of ratifications and individuals attempted to utilise this to pursue their interests. When individuals, regardless of their nationality, talked to heads of states about the ratification of the Convention and when they agreed and the Convention

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[585]Bette Hileman, 'U.S. Signs controversial Law of Sea Treaty', *Chemical & Engineering News*, Vol. 72 (August 15, 1994), p. 32.
[586]Treaty Document 103-39 of Oct. 1994. cited in D. H. Anderson, 'Legal Implication of the Entry into Force of the UN Convention on the Law of the Sea', *International and Comparative Law Quarterly*, Vol. 44, (1995), p. 315.
[587]Interview with Moritaka Hayashi, *op. cit.*

was ratified in those states, it meant that individuals were clearly influencing policy-makers and, by extension, international society. This means that even if persuasion is 'personal' and crosses the boundaries of states, individuals are capable of influencing states' actions. Influences which lead to states' actions are not necessarily from within the states nor from other states. They can be 'personal' and crossboundary.

In addition, although the companies within the deep seabed mining consortia based in the United States wanted to have the support of the government and although the US government attempted to establish more secure systems for its miners, those companies succeeded in securing mining sites at the PrepCom negotiation by using the status of other states, namely potential applicants, to pursue their interests. Even though the United States did not participate in PrepCom, potential applicants, that is states to which one of the consortia's constituting member belongs, could negotiate at PrepCom on the consortia's behalf. For those American based multinational consortia, which state they belong to was not vitally important because they were able to utilise the rights of other states to negotiate at PrepCom.

5. Conclusion

The context of the negotiation changed and this not only changed the perceptions of the parties but also brought them back to the negotiating table and brought about an agreement between them. The context of the negotiation is therefore an essential part of the analysis of the negotiation. .

Influences of individuals in one state on another states' actions, as well as the actions of multinational consortia, show that if the analysis of the Law of the Sea negotiation is conducted by examining only states' actions at the negotiation, as in

the cases of most negotiation theory, or states' actions at the international arena, as in the case of most international relations theory, the analysis is not able to explain the whole process. A broader perspective which can explain the relationships between individuals (within and outside of states) and states' actions is needed. This is discussed further in chapter 9.

Chapter 9 Discussion of the Negotiation Process and a New Model

The Law of the Sea negotiation was, as shown in chapters 4 to 8, influenced by various international and domestic factors. This makes theoretical analysis difficult since existing theoretical models are incapable of explaining the whole process of the negotiation in one framework. This is largely because existing theory regards the state as a unitary actor. This raises two issues which need to be examined further. First is the issue of the status of states and second is the issue of communication networks in international society. This chapter examines these two issues and then presents a model for the analysis of the Law of the Sea negotiation.

1. Problems in the analysis of the negotiation and the status of states.

As demonstrated in chapters 2 to 8, international relations theory is of limited utility in explaining the Law of the Sea negotiation because it differentiates the international arena from the domestic domain too rigidly. Some behavioural theories within negotiation theory can explain communications between the domestic domain and states' behaviour at the negotiation but these have difficulty in explaining communication channels other than those of a 'horizontal' nature. Further, the influence which the context, including domestic factors, has on the change or shift of preferences during a negotiation is also difficult to explain.

International relations and negotiation theories, in most cases, treat states as unitary actors, but this emphasis on states as the units of analysis creates problems in explaining the Law of the Sea negotiation. When states' actions in the international arena, such as the Law of the Sea negotiations are examined, domestic factors which influence the way states act, are ignored. Likewise when domestic

factors are examined, states' interactions at the negotiation tend to be ignored. Furthermore, the influence of domestic factors within a state on other states' actions at the negotiation, or the influence of states' actions at the negotiation on domestic factors of other states, are also overlooked. The above problems of international relations theory and negotiation theory are related to the level-of-analysis problem which investigates which level or unit of analysis can best explain international events. Although within this area of study it is generally concluded that all units or levels are interrelated, how these can be put together in order to explain the whole Law of the Sea negotiation process is still left unanswered.

These issues lead to a questioning of the status of states in international society, since all the above problems are related to the meaning of states. In addition, as the Law of the Sea negotiation was an international law making process, it is assumed to be a negotiation conducted only by states. This however does not correspond with the conclusion of the level-of-analysis problem that all units or levels are interrelated. Therefore the meaning of states, particularly the status of states in international society, is examined below.

International law making is still characterised by the consent of states, although the time of absolute and exclusive sovereignty has passed.[588] States are considered to have a special status in international society, and this is a given assumption in international relations. In the 19th century, states were considered as the only legal personality in the world.[589] This has changed over the last 100 years, and international organisations, companies and individuals have acquired some legal

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[588]Nicholas Bostow, "Who decides' and World Public Order', *Journal of International Law and Politics*. Vol. 27, No. 3 (Spring, 1995), p. 579, p. 582.
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personality. The status of states, however, is still far different from others in that only a state meeting specific conditions and gaining recognition from other states can be recognised as such.[590]

The most important element in the status of states in international society is sovereignty. The principle of sovereignty was established firmly in the Peace of Westphalia of 1648, which held that only sovereign states could enter into treaty relations with each other.[591] This principle, however, 'was little more than a legal doctrine expressing a situation that prevailed politically throughout large portions of Europe by the end of the seventeenth century'.[592] From this historical perspective, states' special status in international society can be said to stem from their 'legitimacy' in international society. This means that each state has its own 'legitimacy' as a sovereign state.[593] When states agree to confer some of their legitimacy to, for example, a particular international organisation[594] through treaty or agreement, those states become subject to the international organisation to the extent of the given legitimacy. As mentioned above, international organisations, companies and individuals have acquired some legal status. The International Bank of Reconstruction and Development has set up an international arbitral tribunal to hear investment disputes that arise between states and nationals of states. Similarly,

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[589]Michael Akehurst, *A Modern Introduction to International Law*, 6th ed. (London: Allen and Unwin, 1987), p. 70.; Gerhard von Glahm, *Law Among Nations: An Introduction to Public International Law* 7th ed. (Boston: Allyn and Bacon, 1996), p. 31.

[590]Basic conditions for a state are as follows: (1) it must have territory; (2) a state must have a population; (3) A state must have a government capable of maintaining effective control over its territory. See Akehurst, *op. cit.*, p. 53.

[591]K. J. Holsti, *International Politics: A Framework for Analysis*, 4th ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1983), pp. 83-84.

[592]*Ibid.*, p. 83.

[593]Akehurst noted that the meaning of the term 'sovereign' is just 'independent'. Akehurst, *op.cit.*, p. 16. In this thesis, however, 'sovereignty' is used to identify total control over its territories in order to differentiate jurisdiction from sovereignty in relation to the legal status of adjacent seas of coastal states.

individuals and companies in the European Union can bring claims before the Court of Justice of the European Union.[595] These rights have not arisen because these entities or individuals acquired the rights themselves, but because states conferred the rights on them as a form of treaty or agreement between states. Alternatively, they may have acquired these rights through the United Nations General Assembly resolutions or because states' practices became international customary law. In this sense, the legitimacy that belongs to these entities or individuals originates from states. This legitimacy, conferred to them, may be withdrawn by a state if the state so wishes, providing the conferred legitimacy has not become international law. This argument shows that, in international society, each state has special status, namely legitimacy, and this demarcates its activities from others. The fact that states have special status in international society suggests that the most important thing in international society in terms of states is states' legitimacy. This legitimacy of states is the key to understanding the meaning of states in international society.

As mentioned earlier the Law of the Sea negotiation is assumed to be a negotiation between states. The above argument suggests that states' legitimacy in international society can be considered to be the instrument for international law making. In addition states' legitimacy is the instrument of states' formal communications in international society. The formal communication is that which shows 'the will of the state', such as the expressed policy of a decision-maker, the remarks of a representative, or the employment of force by the state, et cetera. The formal communication by states brings about international law.[596]

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[594]The term 'international organisation' is used to describe an organisation set up by agreement between two or more states. See Akehurst *op.cit.*, p. 70.
[595]*Ibid.*, pp. 73-74.
[596]As for the meaning of international law, see chapter 4.

In terms of the communication which influences states' actions, Keohane and Nye argued that one of the three characteristics of complex interdependence is multiple channels of contact (communications) which includes interstate, transgovernmental and transnational relations. They suggested that the communication network, which influences states' policies in international society is not just a communication between states. The communication network is much wider and includes transgovernmental and transnational communications. Examination of the Law of the Sea negotiation however has shown that communications between societies are in reality much wider and more complicated than Keohane and Nye have suggested. The communication network does in fact include both intentional and unintentional communications between individuals or groups of individuals in different states. For example, an action by an individual in a state may influence the decision of a decision-maker in another state, which may either alter or cause actions by that state. Put another way, the actions of an individual may alter the formal communication of a state. Extending the point further it can be argued that a decision-maker might be influenced in deciding his state's policy by reading a book or newspaper article, watching television, listening to the radio, reading Internet messages, or talking to people irrespective of the source of information or nationality. People in a state might take actions to influence their own state's policy when they are influenced by the mass media or other communication networks. In addition, a private company in a state may lobby another state's government to extend the state's national jurisdiction seawards in order to exploit offshore-oil in the extended area. If the lobbying is successful it could be said that actions of individuals or groups outside the boundaries of a state have influenced the state's actions. Therefore the formal communication channels of

states are only part of a much larger communication network. Within these communication networks states are not necessarily functioning as units, rather they are adding legitimacy to the communication network that exists in international society.

This view questions the concept that states are unitary actors, and that only domestic factors in a state influence the state's actions. It can be further argued that there is, in theory, no barrier between the communication inside and outside of states. In practice, however, there are usually language, cultural, and political barriers which restrict the flow of communications. When different languages are used in different states, or within a state, it is difficult to communicate freely. When cultures are different there are additional difficulties. With regard to political barriers, if the flow of information or freedom of speech is restricted, people in the state might not know what is happening in the outside world. In this case, although the domestic political process of pluralist states may not be operating, decision-makers still might know what is happening in other states and as a result might take actions, which are portrayed as their formal communications in international society. Language, cultural and political barriers do restrict the flow of communications, however, these barriers are becoming smaller due to the rapid development of communications world-wide. When communication is examined, it therefore becomes apparent that the boundaries of states are not particularly important.

2. A model for analysis

International politics is defined as 'the effort of one state, or other international actor, to influence in some way another state, or other international actor'.[597] Within this definition states have often been considered as primary actors in world politics since this view regards a state as a unit. What matters in international society is what actions states take. If the communication network is considered to be basically free, however, then the boundaries of states, at least in terms of communication, do not have much meaning. The combination of these two observations: that states' actions are important in international society and that the boundaries of states are largely irrelevant in terms of communication, suggests that wherever a communication comes from, in order for it to become formal in international society, it needs to be expressed as a communication of a state. In other words, in order to add legitimacy to communications, the communications need to be passed through a state mechanism, and the communication needs to be expressed by states, in most cases by states' representatives or decision-makers. Therefore the state system could be considered as the system of legitimacy in the international society and the mechanism by which states give legitimacy to communications.

In terms of the Law of the Sea negotiation, when states are considered as giving legitimacy to communications, be it of individuals or groups, the negotiation process can be explained. Examination of the Law of the Sea negotiation in the context of negotiation and international relations theory found three major problems. First that distinctions between the international arena and domestic domain are too rigid, second that the communication network is not fully

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[597]James E. Dougherty and Robert L. Pfaltzgraff Jr., *Contending Theories of International Relations: A Comprehensive Survey*, 3rd. ed. (New York; Harper & Row, 1990.), p. 14.

understood, and, finally, that the influence of the context of the negotiation is also not fully understood. If states are considered as providing legitimacy to communications the first two problems are overcome, since where communications come from, whether within a state or outside, is not important. In terms of the context of negotiation, the study has highlighted that this is judged subjectively by people who are concerned about the negotiation. In addition, the context of the negotiation changes frequently, reflecting new incoming information from various communication networks. It is therefore difficult to determine the exact context of the negotiation at any one time. On the other hand, if it is assumed that the communication network is operating freely, the context of the negotiation need not be considered as being divided into sections, such those of the as international arena or domestic domains. In this case the context can be regarded as being more like air, surrounding both domestic and international factors and the communication networks, regardless of whether they are inside or outside of states. Although the people who are concerned with the negotiation, regardless of their nationalities, may attempt to make states express their views because states provide legitimacy in international society, such attempts will not necessarily determine the outcome of the negotiation. Various other factors, springing from the domestic or international factors or the communication network, might influence the outcome intentionally or non-intentionally. This therefore forms the model presented by this thesis:

That states give legitimacy to a world-wide communication network and formalise communication. The communication network operates freely. An international negotiation is influenced by the changing context of it. That context is made up of domestic and international factors, the communication network and the interaction between them. The negotiation, in turn, influences its context.

Within this model the Law of the Sea negotiation process is explained as follows. An individual who believed that the resources of the seas should become the Common Heritage of Mankind used the legitimacy of the state of Malta to bring his personal idea into the international arena. The concept of the Common Heritage of Mankind was one catalyst for the instigation of the negotiation. This idea of polarised the negotiation along North-South lines and this divide in the negotiation influenced not only states actions, but also the context of the negotiation from its beginning to end.

Although rapid changes in sea use had made the existing circumstances of sea use unstable and were also responsible for bringing about the negotiation, actions of individuals had a huge impact on the negotiation of the Law of the Sea. Throughout the entire course of the negotiation, individuals and groups of individuals used the legitimacy of states to lobby their own interests. What is important about this is not only that lobbying of governments by individuals and groups influenced states' actions but that these groups and individuals were able to lobby policy-makers who were not their own. As far as their interests were concerned the boundaries of states were irrelevant and the important item was the utilisation of the system of legitimacy to achieve their objectives in the international arena. Policy-makers themselves also utilised the legitimacy of states to express their views on the issues.

Changes in the context of the negotiation influenced the negotiation enormously. Prevailing domestic and international factors altered the perceptions of groups and individuals. The changing context also directly affected states' actions via policy-makers, and these states' actions then in turn influenced the context of the negotiation and the perceptions of individuals and states (policy-makers).

The system that operated can be likened to a funnel, surrounded by air which makes up the context of the negotiation. Within the air lies not only the domestic and international factors but also the communication network of individuals and groups. The communication network and context of the negotiation are constantly interacting and pushing towards the funnel, namely the legitimacy of states. Once actions pass through the funnel they are then considered as the states' formal communication in the international arena. Groups and individuals utilise the funnel to achieve their aims and out of the other side of the funnel comes states' actions. Since the funnel is surrounded by air which makes up the context, the output of the funnel immediately influences this and as a result further influences states' actions. This model can be called the state funnel model.

3. Conclusion

International relations theory and negotiation theory do not adequately explain the Law of the Sea negotiation for three main reasons. They differentiate the international arena from the domestic domain too rigidly, they are unable to explain communications between the two and they cannot explain the influence of the changing context surrounding the negotiation on it. These factors largely occur because the theories consider the state as a unitary actor. Arguably this is not the case and in international negotiation the state is a mechanism for providing legitimacy to a world-wide communication network. If this view is accepted then the differentiation of the international arena and domestic domain is less important since international and domestic factors are constantly interacting with each other, and the communication network, to influence the actions that states take. The communication network is considered to operate freely, thereby allowing individuals or groups to interact with each other and possibly influence states'

actions. This further blurs the distinction between the international arena and domestic domain.

With regard to context this is likened to air surrounding the funnel. The funnel is the state, adding legitimacy to communications, which are part of a world-wide communication network.

What this model means in terms of international relations theory is that the actions of states cannot be judged to be solely based on either domestic factors or the international system, they are influenced by a far greater range of factors. It illustrates that there is a mechanism by which individuals or groups can alter the actions of states, even those which are not their own, in the international arena. The model raises many issues in terms of the abilities of interests groups, such as Greenpeace, or large corporations, to influence what happens in international society. It also raises questions about the ethics of this, since in the case of large corporations their motives may be purely financial. The issues of dividing states into smaller states or merging states into larger ones would also be relevant to the state funnel model. The ramifications of the state funnel model are large and outside the scope of this thesis. At this point it is sufficent to question the assumption that the state is a unitary actor, since the work of this thesis has shown that in the case of the Law of the Sea negotiation this was not the case.

Chapter 10 Conclusion

The Law of the Sea negotiation produced the Law of the Sea Convention, including the 1994 Agreement, and is often described as one of the greatest achievements in modern history brought about through international negotiations. If the mechanism of the negotiation process can therefore be identified it could possibly help future international negotiations. The aim of this thesis was to conduct a theoretical examination of the Law of the Sea negotiation process in an attempt to understand the process in the context of international relations and negotiation theory. In pursuing this aim the thesis examined international relations theory, negotiation theory and the negotiation process itself.

The Law of the Sea negotiation was brought about because on intensified sea use. The negotiation was a package deal and due to the principle of Common Heritage of Mankind was polarised along North-South lines. It was finally concluded after 27 years. Despite its importance there have in fact been few attempts to explain the Law of the Sea negotiation in international relations theory and those attempts that have been made largely fail to understand the relationship between domestic and international factors and in addition assume that the state is a unitary actor. The level-of-analysis problem particularly addressed the problem of the state as the unit of analysis but failed to explain the mechanism by which the state relates to other levels of analysis.

Similarly negotiation theory has problems in explaining the Law of the Sea. In particular there is difficulty in explaining how the context of the negotiation influences it and how factors present in the domestic domain influence states' actions.

It was largely against this patchy theoretical background that a study of the Law of the Sea negotiation was made. In examining why the negotiation started, the overriding features were that of change and complexity. It was apparent that the communication network, that is the ability of individuals, groups to influence each other was much more complex than the theoretical base envisaged. In addition technological development, change of sea use and a broader understanding of the issues relating to the sea, changed the perceptions of policy-makers and as a result changed states' policy. Prior to the negotiations states had begun to take unilateral action and this destabilised sea use. This action by states was also a driving force in starting the Law of the Sea negotiation. It was not only the actions of states that created a need for a new Law of the Sea, individuals with various interests also played crucial role in bringing the issue of sea use into the international arena.

With regard to the major issues of the negotiation and examination of these also reinforced the view that existing theory is inadequate to explain the Law of the Sea negotiation. What is particularly obvious in that negotiation theory cannot explain the fact that in the Law of the Sea negotiation the parties and their interests were not defined at the start of the negotiation, rather they evolved over time. In addition negotiation theory had failed to recognise that part of the negotiation, as in the case of the Group of 77, may be carried out informally and away from the negotiating table.

Examination of the development of the negotiation highlighted dramatically how the negotiation was influenced by its changing context, a factor which cannot be explained by existing theory. Changes in the context where multi-faceted and changed the perceptions of states' policymakers. These then influenced states' actions and this further influenced the context of the negotiation. This cyclical

nature of international negotiations could not be explained by existing theory and it was from this basis that the state funnel model was constructed. What is particularly interesting about this cyclical process is that within it there is an information exchange for communication network that allows individuals and groups to influence states' actions. This communication network led to a questioning of the view that the state is a unitary actor and at this point it was possible to introduce the idea that the state in international negotiation is not a unitary actor but is a mechanism which gives legitimacy to communications. That is, individuals and groups must force their ideas through a state mechanism in order to legitimise them in international society.

At this point the thesis was therefore able to draw to its major conclusion. Not only was it able to conclude that international relations theory and negotiation theory are inadequate in explaining the Law of the Sea negotiation but it was also able to present an original model. The model, termed the state funnel model, closes the gaps in existing theory and is able to explain the factors which existing theory cannot.

The central assumptions of the state funnel model are that there is a free communication network that interacts with both domestic and international factors to give the negotiation context. From this context comes interests which must pass through a state 'funnel' in order to have legitimacy in international society. The thesis therefore questions the assumption that the state is a unitary actor. The state funnel model also addresses the level of analysis problem, and provides a mechanism by which all units of analysis can be inter-related. In addition to the main finding of the thesis other findings that were relevant to the actual Law of the Sea negotiation process were also made. These include: recognition of the influence

of the Latin American states on deciding the direction of the negotiation and the reason why they were able to do this; the existence of the implicit coalition between the United States and the Soviet Union; the influence of SDI on the Reagan Administration's rejection of the Law of the Sea Convention; the impact of the provisional agreement on the outcome of the negotiation; and the fact that the actual existence of the Law of the Sea Convention of 1982 was a contributory factor that led to the successful conclusion of the negotiation.

In terms of negotiation theory additional findings of the work include that preferences of parties may change during the course of negotiation. This means firstly, that negotiators should not set their minds on the preferences of their counterparts at the outset of the negotiation since these are subject to change. Secondly, negotiators should consider that a provisional agreement might begin to operate before the end of negotiation, and negotiators should be aware that this provisional agreement might influence the future course of the negotiation. This point is particularly important when parties are negotiating a 'package deal' because if a provisional agreement is made the package deal might cease to exist. Thirdly negotiators should recognise that the context of negotiation can change the preferences of parties. Negotiators should therefore pay attention to such changes both inside and outside of their own and their counterparts' states. In addition to the above, negotiators should be aware of what norms or rules they are using. If negotiating parties are using different norms or rules it would be very difficult to come to an agreement. In the case of the Law of the Sea negotiation, there was conflict over whether the norms of the United Nations or of international law applied, and this was a large influence on the negotiation. Finally, within the state funnel model, it needs to be recognised that negotiators are able to manoeuvre the

negotiation by using their own domestic factors or by influencing the domestic factors of their counterparts.

1. Future research

The state funnel model can possibly be used to explain many international events, for example, the reason why many states are at present being divided into smaller states. People living in certain areas are hoping to become independent in order to represent themselves in international society and what is important for these people is to acquire the status of a state. Acquiring 'independence' can be done by taking control of an area but in order to become a state the people need recognition from other states. It can be said, therefore, that people establish a state in order to utilise the state's legitimacy as a vehicle to represent their views in international society. Contrary to this, there is also a movement of states in the world towards integration, such as the European Union (EU). Although states who belong to the EU preserve their legitimacy, citizens of member states of the EU are now able to represent their views directly in the international arena without going via a state. This is because states have conferred their legitimacy to another organisation, in this case to the EU. Even within the EU, negotiations are basically conducted by states and the mechanism of the negotiation process follows the state funnel model. Even if the EU achieves complete integration and becomes like a single state, when the EU negotiates with other states the mechanism of the negotiation process still follows the state funnel model. Nevertheless the problems of dividing states and integrating states in terms of the state funnel model needs to be investigated further.

In addition, the concept of the state funnel model is related to the *international regime*. Krasner defined international regime as 'sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors'

expectations converge in a given area of international relations'. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.[598] States' legitimacy is therefore 'explicit principles, norms, rules and decision-making procedures' because the status of states', namely legitimacy in international society, coincides with all these factors. The relationship between the international regime and the state funnel model therefore needs to be examined further.

Finally, it is recommended that the state funnel model be tested by examining other international negotiations. Negotiations which have conflicts as their central issue, such as the Oslo Accord or the Northern Ireland Peace Agreement would make particularly relevant research when it is assumed that all the relevant parties have a 'state-like' legitimacy. Likewise the state funnel model in the context of theories on nationalism is a recommended course of study.

2. Final Comment

John A. Vasquez has argued that the perception or image of the world created the current world and he stated, in terms of the role of theory in creating the notion of the world, that:

> 'I assume that any theory of world politics that has an impact on practice is not only a tool for understanding, but also helps construct a world. ... The theory and practices of power politics helped in constructing the modern world of nation-states not only in terms of conceptualizing this world and thereby providing a mental construct, but more materially in global institution-building and culture-

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[598]Stephen D. Krasner, 'Structural causes and regime consequences: regimes as intervening variables', in Stephen D. Krasner (ed.) *International Regimes* (Ithaca: Cornell University Press, 1983), p. 2.
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making. It helped provide both formal and informal structures that shaped behavior among the collectivities of the modern global system through the creation of customs.'[599]

In terms of the nation-state, Kenneth E. Boulding also stated that 'the symbolic image of the nation has important dimensions of security and insecurity',[600] however, he pointed out that nations are the creation of their historians and their enemies.[601] Boulding views the nation as only an image.[602] If the current world is therefore constructed based on an image, the current world might change if that image is changed. The state funnel model questions this existing image in that it offers an alternative view of the state as one of a mental construct which is utilised by individuals and groups to pursue their interests.

The Law of the Sea negotiation was a long and complicated process, however, there are still many problems which human beings are facing and will need to solve collectively. By providing an explanation of how the mechanism of international negotiation works, namely the state funnel model, the thesis has achieved its aim

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[599]John A. Vasquez, *The War Puzzle* (Cambridge: Cambridge University, 1993), p. 87. In terms of explaining international events, David Easton stated that 'what we chose to put inside our system, to consider within its boundaries, will depend upon what we wish to examine in detail.' (David Easton, *A Framework for Political Analysis* (Englewood Cliffs, N. J.: Prentice-Hall, 1965), p. 66.), namely it is the 'products of analytic selection'. *Ibid.*, p. 65.

[600]Kenneth E. Boulding, *The Image: Knowledge in Life and Society* (Ann Arbor: University of Michigan, 1956), p. 112. See also James E. Dougherty and Robert L. Pfaltzgraff Jr., *Contending Theories of International Relations: A Comprehensive Survey*, 3rd. ed. (New York; Harper & Row, 1990.), p. 142-143.

[601]*Ibid.*, p. 114.

[602]These statements are the same as constructivism. Philosophers of science now uniformly believe that facts are facts only within some theoretical framework. Egon G. Guba, 'The Alternative Paradigm Dialog', in Egon G. Guba (ed.), *The Paradigm Dialog*, (Newbury Park, California: Sage Publications, 1990), p. 25. See also Yvonna S. Lincoln, 'The Making of a Constructivist: A Remembrance of Transformations Past', in *Ibid.*, p. 79. D. C. Phillips states 'by and large human knowledge, and the criteria and methods we use in our inquiries, are all *constructed*.' D. C. Phillips, 'The Good, the Bad, and the Ugly: The Many Faces of Constructivism', *Educational Researcher*, Vol. 24, No. 7. (October 1995), p. 5. In this sense, 'Our world has never been a reflection of a 'real' world, but a mental construction'. Clemens Murath, 'Introduction' in Clemens Murath and Susan Price (eds), *The World, The Image and Aesthetic Experience: Interdisciplinary Perspectives on Perception and Understanding* (Bradford, West Yorkshire: Department of Modern Languages, University of Bradford, 1996), p. 2. This is explained by the mechanism of human brain. Gerhard Manteuffel, 'How the Brain Constructs Significance and Meaning', in *Ibid.*, pp. 27-46.

and it is hoped that the work can make a small contribution to more effective future international negotiations.

BIBLIOGRAPHY

AKEHURST, Michael, *A Modern Introduction to International Law*, 6th ed. (London: Allen and Unwin, 1987)

ALBIN, Cecilia, 'The Role of Fairness in Negotiation', *Negotiation Journal* Vol. 9, No.3 (July 1993), pp. 223-244.

ANAND, R. P., *Legal Regime of the Sea- Bed and the Developing Countries.* (Delhi: Thomson Press (India), 1975).

ANAND, R. P., *Origin and Development of the Law of the Sea.* (The Hague: Martinus Nijhoff, 1982).

ANDERSON, H., 'Efforts to ensure universal participation in the United Nations Convention on the Law of the Sea', *International and Comparative Law Quarterly*, Vol. 42 (July, 1993), pp. 654-664.

ANDERSON, H., 'Further Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea', *International and Comparative Law Quarterly.* Vol. 43, (1994), pp. 886-893.

ANDERSON, H., 'Legal Implication of the Entry into Force of the UN Convention on the Law of the Sea', *International and Comparative Law Quarterly,* Vol. 44. (1995), pp. 313-326.

ANDERSON, H., 'Resolution and Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea: A General Assessment', *Zeitschrift für ansländisches öffentliches Recht und Völkerrecht (ZaöRV): Symposium on The Entry into Force of the Convention on the Law of the sea: A Redistribution of Competencies Between States and International Organisations in Relation to the Management of the International Commons?*, Heidelberg, January 26-28, 1995 (Gesamtherstellung: W. Kohlhammer GmbH, 1995), pp. 275-289.

ANTHONY, D., *The Conduct of Industrial Relations.* (London: Institute of Personnel Management, 1977)

ANTRIM, Lance N., 'Dynamics of Leadership in UNCED', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds), *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development.* (London: Graham & Trotman, 1994), pp. 149-163.

AVALLE, Oscar A., 'The Decision-making Process from a Developing Country Perspective', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds), *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development.* (London: Graham & Trotman, 1994), pp. 135-147.

AXELROD, Robert, *The Evolution of Cooperation.* (London: Penguin Books, 1990). (First Published, New York: Basic Books,1984)

BARKENBUS, Jack N., *Deep Seabed Resources: Politics and Technology.* (New York: The Free Press, 1979).

BARTOS, Otomar, Jr., 'Simple Model of Negotiation: A Sociological Point of View', in I. William Zartman, ed., *The Negotiation Process, Theories and Applications.* (Beverly Hills, CA: Saga Publications, 1978) pp. 13-27.

BAUCOM, Donald R., *The Origins of SDI, 1944-1983.* (Lawrence, Kansas: University Press of Kansas, 1992)

BAZERMAN, Max H. and NEALE, Margaret A., 'Negotiator Rationality and Negotiator Cognition: The Interactive Roles of Prescriptive and Descriptive Research', in H. Peyton Young (ed.), *Negotiation Analysis.* (Ann Arbor: The University of Michigan Press, 1991), pp. 109-129.

BECHARA, Antoine, *et al.* 'Deciding Advantageously Before Knowing the Advantageous Strategy', *Science,* Vol. 275, (28 February, 1997), pp. 1293-1295.

BENALI, Tayebi, *The evolution of international law on peaceful cooperation.* PhD thesis, Faculty of Law, The Queen's University of Belfast, 1991.

BERNAERTS, Arnd, *Bernaerts' Guide to the Law of the Sea: The 1982 United Nations Convention.* (Coulsdon: Surrey, Fairplay Publications, 1988).

BERTHOUD, Paul, 'UNCTAD and the Emergence of International Development Law', in Michael Zammit Cutajar (ed.) *UNCTAD and the South-North Dialogue: The First Twenty Years.* (Oxford: Pergamon Press, 1985), pp. 71-98.

BOOTH, Ken, *Law, Force and Diplomacy at Sea.* (London: George Allen & Unwin, 1985).

BOSTOW, Nicholas, "Who decides' and World Public Order', *Journal of International Law and Politics,* Vol. 27, No. 3 (Spring, 1995), pp. 577-583.

BOULDING, Kenneth E., *Ecodynamics: A New Theory of Societal Evolution.* (Beverly Hills: Saga Publications, 1978)

BOULDING, Kenneth E., *The Image: Knowledge in Life and Society.* (Ann Arbor: University of Michigan, 1956)

BOWEN, Robert E., 'Preparatory Commission of the International Sea-Bed Authority: Introduction'. *Ocean & Shoreline Management* Vol. 14, No. 4 (1990), pp. 239-243.

BROOKE, Robert L., 'The Current Status of Deep Seabed Mining', *Virginia Journal of International Law* Vol. 24, No.2 (1984), pp. 361-417.

BROWN, E. D. (ed.), *Sea-Bed Energy and Mineral Resources and the Law of the Sea,* Vol. II and III. (London: Graham & Trotman, 1986)

BROWN, E. D., 'The 1994 Agreement on the Implementation of Part XI of the UN Convention on the Law of the Sea: breakthrough to universality?', *Marine Policy* Vol. 19, No.1 (January 1995), pp. 5-20.

BUTLER, William E., 'Innocent Passage and the 1982 Convention: The Influence of Soviet Law and Policy', *American Journal of International Law*, Vol. 81, (1987), pp. 331-347.

BUTLER, William E., (comp. trans. ed.) *The USSR, Eastern Europe and the Development of the Law of the Sea.* (London: Oceana Publications, 1983)

BUZAN, Barry, 'Naval power, the law of the sea, and the Indian Ocean as a Zone of Peace', *Marine Policy*, Vol. 5 (July 1981), pp. 194-204.

BUZAN, Barry, 'The Level of Analysis Problem in International Relations Reconsidered', in Ken Booth and Steve Smith (eds), *International Relations Theory Today* (Cambridge: Polity Press, 1995), pp. 198-216.

BUZAN, Barry, *Seabed Politics.* (New York: Praeger Publishers, 1976).

CAMINOS, Hugo, 'Latin America and the law of the sea: Past, Present and Future', in Edward L. Miles and Tullio Treves (eds) *The Law of the Sea: New Worlds, New Discoveries*, Proceedings, The Law of the Sea Institute Twenty- sixth Annual Conference, Genoa, Italy, June 22-25,1992. (Honolulu,University of Hawaii, 1993), pp. 79-90.

CARON, David D., 'Reconciling Domestic Principles and International Cooperation', in Bernard H. Oxman, *et al.* (eds) *Law of the Sea: U.S. Policy Dilemma.* (San Francisco, Institute for Contemporary Studies, 1983).

CHARNEY, Jonathan'I., 'Entry into force of the 1982 Convention on the Law of the Sea', *Virginia Journal of International Law*, Vol. 35, No. 2, (Winter 1995), pp. 381-404.

CHARNEY, Jonathan I., 'The United States and the Revision of the 1982 Convention on the Law of the Sea', *Ocean Development and International Law,* Vol. 23. (1992), pp. 279-303.

CHARNEY, Jonathan I., 'U.S. Provisioal Application of the 1994 Deep Seabed Agreement', *American Journal of International Law* Vol. 88 (1994), pp. 705-714.

CHURCHILL, R. R. and LOWE, A. V., *The Law of the Sea,* revised. (Manchester: Manchester University Press, 1988).

CORBIN, Jane, *Gaza First: The Secret Norway Channel to Peace between Israel and the PLO.* (London: Bloomsbury, 1994)

CROSS, John G., 'Negotiation as a Learning Process', in I. William Zartman, ed., *The Negotiation Process, Theories and Applications.* (Beverly Hills, CA: Saga Publications, 1978), pp. 29-54.

DARMAN, Richard G., 'The Law of the Sea: Rethinking U.S. Interests', *Foreign Affairs,* Vol. 56, (1978)

DE MARFFY-MANTUANO, Annick, 'The Procedural Framework of the Agreement Implementing the 1982 United Nations Convention on the Law of the Sea', *American Journal of International Law,* Vol. 89, (1995), pp. 814-824.

DJONOVICH, Dusan J.(ed.) *United Nations Resolutions, Series 1: Resolution Adopted by the General Assembly Vol. XII 1968-1969.* (New York; Oceana Publications, 1975)

DOUGHERTY, James E. and PFALTZGRAFF, Robert L. Jr., *Contending Theories of International Relations: A Comprehensive Survey,* 3rd. ed. (New York; Harper & Row, 1990.)

DOUGHERTY, James E. and PFALTZGRAFF, Robert L. Jr., *Contending Theories of International Relations: A Comprehensive Survey*, 4th. ed. (New York; Longman, 1997.)

DRUCKMAN, Daniel and MITCHELL, Christopher, 'Preface', *The Annals of the American Academy of Political and Social Science*, Vol. 542, (November 1995), pp. 8-9.

DRUCKMAN, Daniel, *Human Factors in International Negotiations: Social-Psychological Aspects of International Conflict.* (Beverly Hills, California: Sage Publications, 1973)

EASTON, David, *A Framework for Political Analysis.* (Englewood Cliffs, N. J.: Prentice-Hall, 1965)

ECKERT, Ross D., 'US Policy and the Law of the Sea Conference, 1969-1982: A Case Study of Multilateral Negotiations', in Roland Vaubel and Thomas D Willett (eds) *The Political Economy of International Organisations: A Public Choice Approach.*(Boulder: Westview Press, 1991), pp. 181-203.

ECKERT, Ross D., *The Enclosure of Ocean Resources: Economics and the Law of the Sea.* (Stanford: Hoover Institutions Press, 1979).

EHTAMO, Harri and RUUSUNEN, Jukka, 'Contracting in Dynamic Games', *Group Decisons and Negotiation* Vol. 4, (1995), pp. 59-69.

EL-BAGHDADI, Mahdi, 'The Seabed's Mineral Resources and the Conditions Affecting the Regime to Regulate their Exploitation', *Journal of World Trade* Vol. 26, No.3 (June 1992), pp. 85-97.

FISHER, Roger and URY, William with PATTON, Bruce, editor, *Getting to Yes: Negotiating Agreement without Giving in.* (London: Hutchinson, 1981).

FRANCK, Thomas M. and MUNANSANGU, Mark M., *The New International Economic Order: International Law in the Making?.* (New York: UNITAR, 1982).

FRANK, Andre Gunder, *Crisis in the World Economy.* (London, Heinemann, 1980).

FRANK, Jerome D., 'Recent Studies of the Level of Aspiration', *Psychological Builletin* Vol. 38, (1941), pp. 218-226.

FREI, Daniel, 'International Relations', in R. Bernhardt (ed.) *Encyclopedia of Public International Law, Vol. II* (Amsterdam: Elsevier, 1995)

FRIEDHEIM, Robert and AKAHA, Tsuneo, 'Japan and the Ocean', in Robert L. Friedhiem *et al.*(eds) *Japan and the New Ocean Regime.* (Boulder, Colorado: Wesview Press, 1984), pp. 1-20.

FRIEDHEIM, Robert L., 'A Law of the Sea Conference- Who Needs it?' in Rober G. Wirsing (ed.) *International Relations and the Future of Ocean Space.* (Columbia, South Carolina: University of South Carolina Press, 1974).

FRIEDHEIM, Robert L., 'Japan's Ocean Policy: An Assessment', in Robert L. Friedheim et al (eds), *Japan and the New Ocean Regime* (Boulder, Colorado: Wesview Press, 1984), pp. 353-373.

FRIEDHEIM, Robert L., 'The Third United Nations Conference on the Law of the Sea: North-South Bargaining on Ocean Issues', in I. William Zartman (ed.), *Positive Sum: Improving North-South Negotiations.* (New Brunswick, New Jersey: Transaction Books, 1987), pp. 73-114.

FRIEDHEIM, Robert L., *Negotiating the New Ocean Regime.* (Columbia, South Carolina: University of South Carolina Press, 1993).

FUKUI, Haruhiro, 'How Japan handled UNCLOS issues: Does Japan have an ocean policy?' in Robert L. Friedheim et al (eds), *Japan and the New Ocean Regime* (Boulder, Colorado: Wesview Press, 1984), pp. 21-74.

GALDORISI, George, 'An Operational Perspective on the Law of the Sea', *Ocean Development and International Law*, Vol. 29, No. 1, (1998), pp. 73-84.

GALDORISI, George, 'The United Nations Convention on the Law of the Sea: A National Security Perspective', *American Journal of International Law* Vol. 89, No. 1 (January 1995), pp. 208-213.

GALDORISI, George, and STAVRIDIS, Jim, 'Time to revisit the Law of the Sea?' *Ocean Development and International Law*, Vol. 24, 1993, pp. 301-315.

GOERTZ, Gary and DIEHL, Paul F., 'Toward a theory of international norms: some conceptual and measurement issues', *Journal of Conflict Resolution*, Vol. 36, No. 4, (December, 1992), pp. 634-664.

GOLD, Edgar, 'The Rise of the Coastal State in the Law of the Sea', in Douglas M. Johnston (ed.) *Marine Policy and the Coastal Community*. (London: Groom Helm, 1976), pp. 13-33.

GUBA, Egon G., 'The Alternative Paradigm Dialog', in Egon G. Guba (ed.), *The Paradigm Dialog*. (Newbury Park, California: Sage Publications, 1990), pp. 17-27.

GUDYKUNST, William B., 'Diplomacy: A Special Case of Intergroup Communidation', in Felipe Korzenny and Stella Ting-Toomey (eds) *Communicating for Peace: Diplomacy and Negotiation*. (Newbury Park, California: Sage Publications, 1990), pp. 19-39.

HAAS, Ernst B., 'Why Collaborate?: Issue-linkage and international regimes', *World Politics*, Vol. 32, No. 3 (April 1980), pp. 357-405.

HAAS, Ernst B., 'Words can hurt you; or, who said what to whom about regimes', in Stephen D. Krasner (ed.) *International Regimes.* (Ithaca: Cornell University Press, 1983).

HAAS, Peter M., 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization*, Vol. 46, No. 1, (Winter, 1992), pp. 1-35.

HAAS, Peter, 'Do regimes matter?: Epistemic communities and Mediterranean pollution control', *International Organization*, Vol. 43, No. 3, (Summer, 1989), pp. 337-403.

HAGGARD, Stephan, and SIMMONS, Beth A., 'Theories of international regimes', *International Organization*, Vol. 41, No. 3., (Summer, 1987), pp. 491-517.

HAMMOND, Allen L., 'Manganese Nodules (II): Prospects for Deep Sea Mining', *Science,* Vol. 183. pp. 644-646.

HAYASHI, Moritaka, 'Effect of the Entry into Force of the United Nations Convention on the Law of the Sea on the Ocean and Coastal Areas', in K. L. Koh *et al.* (eds) *SEAPOL Singapore Conference on Sustainable Development of Coastal and Ocean Areas in Southeast Asia: Post-Rio Perspectives*, 26-28 May 1994, The Regent, Singapore. (Singapore: National University of Singapore, 1995), pp. 59-85.

HAYASHI, Moritaka, 'Kokuren Kaiyouhou Jyoyaku Dai Jyuichibu ni Kansuru Jimusocho Kyogi to Jisshi Kyotei', *Kokusaihou Gaikou Zasshi,* Vol. 93, No. 5 (December, 1994)

HAYASHI, Moritaka, 'Registration of the First Group of Pioneer Investors by the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea', *Ocean Development and International Law*, Vol. 20, (1989), pp. 1-33.

HAYASHI, Moritaka, 'The 1994 Agreement for the Universalization of the Law of the Sea Convention', *Ocean Development and International Law*, Vol. 27, (1996), pp. 31-39.

HILEMAN, Bette, 'US Signs Controversial Law of Sea Treaty', *Chemical & Engineering News* Vol. 72 (August 15 1994), p. 32.

HOAGLAND, Porter, 'Manganese nodule price trends: Dim prospects for the commercialization of deep seabed mining', *Resource Policy* Vol. 19, No. 4 (December 1993), pp. 287-298.

HOLLICK, Ann L., 'The Clash of U.S. Interests: How U.S. Policy Evolved', *Marine Technology Society Journal* Vol. 8, No.6 (July 1974), pp. 15-28.

HOLLICK, Ann L., 'The origins of 200-mile offshore zones', *American Journal of International Law* Vol. 71 (1977), pp. 494-500.

HOLLIS, Martin and SMITH, Steve, *Explaining and Understanding International Relations*. (Oxford: Clarendon Press, 1990)

HOLSTI, J., *International Politics: A Framework for Analysis*, 4th ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1983)

HOSSAIN, Kamal (ed.), *Legal Aspects of the New International Economic Order.* (London: Frances Pinter,1980).

HULL, E. W. Seabrook and KOERS, Albert W., 'A Regime for World Ocean Pollution Control', in Robert G. Wirsing (ed.) *International Relations and the Future of Ocean Space*. (Columbia, South Carolina: University of South Carolina Press, 1974), pp. 83-116.

HYDER, Masood and WALLACE, Helen, *The UN Conference on the Law of the Sea: A Negotiating Exercise*. (Ascot, Berkshire: Civil ServiceCollege, 1982).

IKLÉ, Fred Charles, 'Negotiation', in David L. sills (ed.) *International Encyclopaedia of the Social Sciences*, Vol. 11. (Macmilian and Free Press, 1968), pp. 117-120.

IKLÉ, Fred Charles, *How Nations Negotiate*. (New York, Harer & Row, 1964).

IMBERI, Mark, 'International Institutions and the Common Heritage of Mankind: Sea, Space and Polar Regions', in Paul Taylor and A J R Groom (eds) *International Institutions at Work*. (London: Pinter Publishers, 1988), pp. 150-166.

ISHAQ, Mohammed Abid, *U. S.-Soviet Relations 1980-88: The Politics of Trade Pressure*. PhD Thesis, Glasgow University, 1994.

JENKS, C. Wilfred, *A New World of Law?: A Study of the Creative Imagination in International Law*. (London: Longmans, 1969).

JENNINGS, Robert, and WATTS, Arthur (eds), *Oppenheim's International Law, 9th ed. Vol. 1*. (Harlow, Essex: Longman, 1992)

JERVIS, Robert, 'Models and Cases in the Study of International Conflict', *Journal of International Affairs*, Vol. 44, No. 1, (1990), pp. 81-101.

JERVIS, Robert, 'Realism, Game theory ,and Cooperation', *World Politics* Vol. 40, No.3 (April 1988), pp. 317-349.

JERVIS, Robert, *Perception and Misperception in International Politics*. (Princeton, New Jersey: Princeton University Press, 1976)

JESUS, Jose Luis, 'The Completion of the work of the Preparatory Commission and the Universality of the Convention', in Tadao Kuribayashi and Edward L. Miles (eds) *The Law of the Sea in the 1990s: A Framework for Further International Cooperation*, Proceedings of the Law of the Sea Institute Twenty- fourth Annual Conference, July 24-27 1990, Tokyo. (Honolulu: The Law of the Sea Institute, University of Hawaii,1992), pp. 497-510.

JOHNSTON, Douglas M., 'Equity and efficiency in marine law and policy', in Douglas M. Johnston (ed.) *Marine Policy and the Coastal Community.* (London: Groom Helm, 1976), pp. 297-327.

JOHNSTON, James L., 'Petroleum Revenue Sharing From Seabeds Beyond 200 Miles Offshore', *Marine Technology Society Journal* Vol. 14, No.5 (1980), pp. 28-30.

JOYNER, Christopher C. and MARTELL, Elizabeth A., 'Looking Back to See Ahead: UNCLOS III and Lessons for Global Commos Law', *Ocean Development and International Law*, Vol. 27, No. 1 & 2, (1996), pp. 73-95.

JOYNER, Christopher C., 'Legal implications of the concept of the common heritage of mankind', *International and Comparative Law Quarterly* Vol. 35 (January 1986) pp. 190-199.

JOYNER, Christopher C., 'The United States and the New Law of the Sea', *Ocean Development and International Law*, Vol. 27, No. 1 & 2, (1996), pp. 41-58.

KAPLAN, Morton A., *System and Process in International Politics* (New York: John Wiley & Sons, 1957)

KAUFMANN, Johan, *Conference Diplomacy: An Introductory Analysis*, 2nd revised. (Dordrecht, The Netherlands: Martinus Nijhoff, 1988).

KEENEY, Ralph L. and RAIFFA, Howard, 'Structuring and Analyzing Values for Multiple-Issue Negotiations', in H. Peyton Young (ed.), *Negotiation Analysis.* (Ann Arbor: The University of Michigan Press, 1991), pp. 131-151.

KEGLEY, Charles W. Jr. and WITTKOPF, Engene R., *World Politics: Trend and Transformation*, 5th ed. (New York: St. Martin's Press, 1995)

KEOHANE, Robert O. and NYE, Joseph S., *Power and Interdependence* (Boston: Little-Brown, 1977)

KEOHANE, Robert O. and NYE, Joseph S., *Power and Interdependence*, 2nd ed. (Harper Collins, 1989)

KEOHANE, Robert O., *After Hegemony: Cooperation and Discord in the World Political Economy*, (Princeton, New Jersey: Princeton University Press, 1984)

KEOHANE, Robert O., *International Institutions and State Power: Essays in International Relations Theory*. (Boulder: Westview Press, 1989).

KOH, Tommy Thong-Bee, 'UNCED Leadership: A Personal Perspective', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds) *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development*. (London: Graham & Trotman, 1994), pp. 165-169.

KOLB, Deborah M. and FAURE, Guy-Olivier, 'Organization Theory: The Interface of Structure, Culture, Procedures, and Negotiation Processes', in I. William Zartman (ed.), *International Multilateral Negotiation: Approaches to the Management of Complexity* (San Francisco: Jossey-Bass, 1994), pp. 113-131.

KOLOSSOVSKIY, Igor K., 'Prospects for universality of the UN Convention on the Law of the Sea', *Marine Policy* Vol. 17, No. 1 (January 1993), pp. 4-10.

KORZENNY, Felipe and RYAN, Susan Douglas, 'Communicating for Peace: Hope and Perspective', in Felipe Korzenny and Stella Ting-Toomey (eds) *Communicating for Peace: Diplomacy and Negotiation*. (Newbury Park, California: Sage Publications, 1990), pp. 9-15.

KRASNER, Stephen D., 'Structural causes and regime consequences: regimes as intervening variables', in Stephen D. Krasner (ed.) *International Regimes*. (Ithaca: Cornell University Press, 1983)

KRASNER, Stephen D., *Structural Conflict: The Third World Against Global Liberalism*. (Berkeley, California: University of California Press, 1985)

KWIATKOWSKA, Barbara, 'A Regional Approach Towards the Management of Marine Activities: Some Reflections on the African Perspective', *Zeitschrift für ansländisches öffentliches Recht und Völkerrecht (ZaöRV): Symposium on The Entry into Force of the Convention on the Law of the sea: A Redistribution of Competencies Between States and International Organisations in Relation to the Management of the International Commons?*, Heidelberg, January 26-28, 1995 (Gesamtherstellung: W. Kohlhammer GmbH, 1995), pp. 479-519.

KWIATKOWSKA, Barbara, 'Ocean affairs and the law of the sea in Africa: Towards the 21st century', *Marine Policy* Vol. 17, No. 1 (January 1993), pp. 11-43.

LARSON, David L., ROTH, Michael W. and SELIG, Todd I., 'An Analysis of the Ratification of the UN Convention on the Law of the Sea', *Ocean Development and International Law* Vol. 26, No. 3 (1995), pp. 287-303.

LARSON, Deborah Welch, 'The Psychology of Reciprocity in International Relations', *Negotiation Journal*, (July, 1988), pp. 281-301.

LAURSEN, Finn, 'Security versus Access to Resources: Explaining a Decade of U. S. Ocean Policy', *World Politics*, Vol. 34, (1982), pp. 197-229.

LAX, David A. and SEBENIUS, James K., 'Thinking Coalitionally: Party Arithmetic, Process Opportunism, and Strategic Sequencing', in H. Peyton Young (ed.), *Negotiation Analysis.* (Ann Arbor: The University of Michigan Press, 1991), pp. 153-193.

LAX, David A. and SEBENIUS, James K., *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain.* (New York: The Free Press, 1986)

LAY, S. Houston, CHURCHILL, Robin and NORDGUIST, Myron (eds), *New Directions in the Law of the Sea, II.* (Dobbs Ferry, New York: Oceana Publications, 1973).

LINCOLN, Yvonna S., 'The Making of a Constructivist: A Remembrance of Transformations Past', in Egon G. Guba (ed.), *The Paradigm Dialog.* (Newbury Park, California: Sage Publications, 1990), pp. 67-87.

LØVALD, Johan Ludvik, 'In search of an ocean regime: The negotiations in the General Assembly's Seabed Committee 1968-1970', *International Organization,* Vol. 29, No. 3 (Summer, 1975), pp. 681-709.

LUARD, Evan, *The Control of the Sea-Bed: Who Owns the Resources of the Oceans?*, revised. (London: Heineman, 1977)

MAHMOUDI, Said, *The Law of Deep Sea-Bed Mining: A Study of the Progressive Development of International Law Concerning the Management of the Polymetallic Nodules of the Deep Sea-Bed.* (Stockholm: Almqvist & Wiksell International, 1987).

MALONE, James L., 'Who Needs the Sea Treaty', *Foreign Policy* Vol. 54 (Spring 1984), pp. 44-63.

MANGONE, Gerard, J., *Law for the World Ocean.* (London: Stevens, 1981).

MANNING, Bayless, 'The Congress, the Exective and Intermestic Affairs: Three Proposals', *Foreign Affairs,* Vol. 55, (1977), pp. 306-324.

MANTEUFFEL, Gerhard, 'How the Brain Constructs Significance and Meaning', in Clemens Murath and Susan Price (eds) *The World, The Image and Aesthetic Experience: Interdisciplinary Perspectives on Perception and Understanding.* (Bradford, West Yorkshire: Department of Modern Languages, University of Bradford, 1996), pp. 27-46.

MAUL, B., 'The level of analysis problem revisited', *Canadian Journal of Political Science*, Vol. 61, No. 1 (1973), pp. 494-513.

McDADE, Paul V., 'The Interim obligation between signature and ratification of a treaty', *Netherlands International Law Review* Vol. 32 (1985), pp. 5-47.

MERO, John L., *The Mineral Resources of the Sea.* (Amsterdam: Elsevier, 1965)

MERRILLS, John, *Anatomy of International Law: a study of the role of international law in the contemporary world.* 2nd ed. (London: Sweet and Maxwell, 1981).

MIDGAARD, Knut and UNDERDAL, Arild, 'Multiparty Conferences', in Daniel Druckman (ed.), *Negotiations: Social-Psychological Perspectives.* (Beverly Hills, California: Sage Publications, 1977), pp. 329-345.

MILES, Edward, 'The dynamics of global ocean politics', in Douglas M. Johnston (ed.) *Marine Policy and the Coastal Community.* (London: Groom Helm, 1976), pp. 147-181.

MILES, Edward, 'The Structure and Effects of the Decision Process in the Seabed Committee and the Third United Nations Conference on the Law of the Sea', *International Organization* Vol. 31, (Spring 1977), pp. 159-234.

MILNER, Helen V. and KEOHANE, Robert O., 'Internationalization and Domestic Politics: An Introduction', in Robert O. Keohane and Helen V. Milner (eds) *Internationalization and Domestic Politics.* (Cambridge, New York: Cambridge University Press, 1996)

MILNER, Helen, 'International Theories of Cooperation among Nations: Strengths and Weaknesses', *World Politics* Vol. 44 (April 1992), pp. 466-496.

MORLEY, Ian E., 'Intra-organizational Bargaining', in Jean F. Hartley and Geoffrey M. Stephenson (eds), *Employment Relations: The Psychology of Influence and Control at Work.* (Oxford: Blackwell, 1992), pp. 203-224.

MORLEY, Ian, 'Negotiating and Bargaining,' in O. Hargie (ed.) *A Handbook of Communication Skills* (London: Croom Helm, 1986), pp. 303-324.

MORRIS, Michael A., 'The New International Economic Order and the New Law of the Sea', in Karl P Sanvant and Hajo Hassenpflung (eds) *The New International Economic Order: Confrontation or Co-operation between North and South?.* (London: Wilton House Publications, 1977).

MOSS, Alfred George and WINTON, Harry N. M., (Comp.), *A New International Economic Order: Selected Documents 1945-1975.* (New York: UNITAR).

MURATH, Clemens, 'Introduction', in Clemens Murath and Susan Price (eds) *The World, The Image and Aesthetic Experience: Interdisciplinary Perspectives on Perception and Understanding.* (Bradford, West Yorkshire: Department of Modern Languages, University of Bradford, 1996), pp. 1-6.

MURPHY, Craig, *The Emergence of the NIEO Ideology.* (Epping, Essex: Bowker Publishing, 1984).

MURRAY, Roger, 'Deep sea mining: a blessing or a curse?', *African Business.* No. 193 (November 1994), pp. 16-17.

NASH, John F. Jr., 'The Bargaining Problem', *Econometrica,* Vol. 18, (1950), pp 155-162.

O'CONNEL, D. P., *The International Law of the Sea,* (Oxford: Clarendon Press, 1982).

ODA, Shigeru, *The Law of the Sea in our Time—II: The United Nations Seabed Committee 1968-1973.* (Leyden: Sijthoff, 1977)

OGLEY, Roderick, *Internationalizing the Seabed* (Aldershot, Hampshire: Gower, 1984)

OXMAN, Bernard H., 'Law of the Sea Forum: The 1994 Agreement on Implementation of the Seabed Provisions of the Convention on the Law of the Sea: The 1994 Agreement and the Convention', *American Journal of International Law* Vol. 88 (1994), pp. 687-696.

OXMAN, Bernard H., 'Law of the Sea Forum: The 1994 Agreement on Implementation of the Seabed Provisions of the Convention on the Law of the Sea: The 1994 Agreement and the Convention', *American Journal of International Law* Vol. 88 (1994), pp. 687-696.

OXMAN, Bernard H., 'The Third United Nations Conference on the Law of the Sea: The 1976 New York Sessions', *American Journal of International Law* Vol. 71 (1977), pp. 247-269.

PANEL ON THE LAW OF OCEAN USES (Bernard H. Oxman, Rapporteur), 'United States Interests in the Law of the Sea Convention', *American Journal of International Law* Vol. 88 (1994), pp. 167-178.

PARDO, Arvid, 'An Opportunity Lost', in Bernard H. Oxman, *et al.* (eds) *Law of the Sea: U.S. Policy Dilemma.* (San Francisco, Institute for Contemporary Studies, 1983), pp. 13-25.

PARKER, David and STACEY, Ralph, *Chaos, Management and Economics: The Implications of Non-Linear Thinking.* (London: Institute of Economic Affairs, 1994)

PASTOR, Robert A., *Whirlpool: U.S. Foreign Policy Toward Latin America and the Caribbean.* (Princeton, New Jersey: Princeton University Press, 1992)

PHILLIPS, C., 'The Good, the Bad, and the Ugly: The Many Faces of Constructivism', *Educational Researcher*, Vol. 24, No. 7. (October 1995), pp. 5-12.

PLATZÖDER, Renate, *Third United Nations Conference on the Law of the Sea, Vol. X.* (Dobbs Ferry, New York: Oceana Publishers, 1992)

POHL, Reynaldo Galindo, 'Latin America's Influence and Role in the Third Conference on the Law of the Sea', *Ocean Development and International Law*, Vol. 7, No. 1 & 2, (1979), pp. 65-87.

POSSES, Frederick, *The Art of International Negotiation.* (London: Business Books, 1978)

PRUITT, Dean G. and CARNEVALE, Peter J., *Negotiation in Social Conflict.* (Buckingham: Open University Press, 1993).

PRUITT, Dean G. and LEWIS, Steven A., 'The Psychology of Integrative Bargaining', in Daniel Druckman (ed.) *Negotiations: Social-psychological perspectives.* (Beverly Hills: Sage Publications, 1977), pp. 161-192.

PRUITT, Dean G., *Negotiation Behavior.* (New York: Academic Press, 1981).

PUTNAM, Robert D., 'Diplomacy and Domestic Politics: the Logic of Two-level Games', *International Organization*, Vol. 42, No. 3, (Summer, 1988)

RADDING, Charles M., *A World Made by Men: Cognition and Society, 400-1200.* (Chapel Hill: The University of North Caroline Press, 1985)

RAIFFA, Haward, *The Art and Science of Negotiation.* (Cambridge, Massachusetts: Harvard University Press, 1982).

RANFT, Bryan and TILL, Geoffrey, *The Sea in Soviet Strategy*, 2nd ed. (Hampshire: The MacMillan Press, 1989)

RANNEY, Austin (ed.), *The American Elections of 1980.* (Washington D.C.: American Enterprise Institute for Public Policy Research, 1981).

RATINER, Leigh S., 'The Cost of American Rigidity', in Bernard H. Oxman *et al.* (eds) *Law of the Sea: U. S. Policy Dilemma.* (San Francisco, California: Institute for Contemporary Studies Press, 1983)

RATTRAY, Kenneth, 'Resolution and Agreement Relating to the Implementation of Part XI of the UN Convention of the Law of the Sea: A General Assessment—Comment', *Zeitschrift für ansländisches öffentliches Recht und Völkerrecht (ZaöRV): Symposium on The Entry into Force of the Convention on the Law of the sea: A Redistribution of Competencies Between States and International Organisations in Relation to the Management of the International Commons?*, Heidelberg, January 26-28, 1995 (Gesamtherstellung: W. Kohlhammer GmbH, 1995), pp. 298-309.

ROJOT, Jacques, *Negotiation: From Theory to Practice.* (Hampshire: Macmillan, 1991).

ROTH, Alvin E., 'Toward a focal-point theory of bargaining', in Alvin E. Roth (ed.) *Game-theoretic models of bargaining.* (Cambridge: Cambridge University Press, 1985), pp. 259-268.

ROTHSTEIN, Robert L., 'Epitaph for a monument to a failed protest? A North-South retrospective', *International Organization*, Vol. 42, No. 4 (Autumn, 1988), pp. 725-748.

RUBIN, Jeffrey Z. and BROWN, Bert R., *The Social Psychology of Bargaining and Negotiation.* (New York: Academic Press, 1975)

RUSSETT, Bruce and STARR, Harvey, *World Politics: The menu for choice*, 5th ed. (New York: W. H. Freeman and Company, 1996)

SCHACHTE, William, Jr., 'International Straits and Navigational Freedoms', *Ocean Development and International Law*, Vol. 24, (1993), pp. 179-195.

SCHMIDT, Markus G., *Common Heritage or Common Burden?: The United States Position on the Development of a Regime for Deep Seabed Mining in the Law of the Sea Convention.* (Oxford: Clarendon Press, 1989).

SCHWARZENBERGER, Georg, *A manual of International Law*, 6th ed. (Milton: Oxon Professional Books, 1976).

SEBENIUS, James K., 'Challenging conventional explanations of international cooperation: negotiation analysis and the case of epistemic communities', *International Organization* Vol. 46, No.1 (Winter 1992) pp. 323-365.

SEBENIUS, James K., 'Designing Negotiations Toward a New Regime: The Case of Global Warming', *International Security* Vol. 15, No.4 (Spring 1991) pp. 110-148.

SEBENIUS, James K., 'Negotiation Analysis: A Characterization and Review', *Management Science*, Vol. 38, No. 1, (January, 1992), pp. 18-38.

SEBENIUS, James K., 'Negotiation arithmetic: adding and subtracting issues and parties', *International Organization* Vol. 37, No.2 (Spring 1983), pp. 281-316.

SEBENIUS, James K., *Negotiating the Law of the Sea.* (Cambridge, Massachusetts: Harvard University Press, 1984).

SIMMONDS, Kenneth R. (ed.), *New Directions in the Law of the Sea* (London: Oceana Publications)

SINGER, David, 'International Conflict: Three Levels of Analysis', *World Politics* Vol. 12, No. 3 (1960), pp. 453-461.

SINGER, David, 'The Level of Analysis Problem in International Relations', in K. Knorr and S. Verba (eds) *The International System: Theoretical Essays.* (Princeton, New Jersey: Princeton University Press, 1961)

SJÖSTEDT, Gunnar, SPECTOR, Bertram I., and ZARTMAN, I. William, 'Looking Ahead', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds) *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development.* (London: Graham & Trotman, 1994), pp. 233-249.

SJÖSTEDT, Gunnar, SPECTOR, Bertram I., and ZARTMAN, I. William, 'The Dynamics of Regime-building Negotiations', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds) *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development.* (London: Graham & Trotman, 1994), pp. 3-19.

SKINNER, Quentin, *Machiavelli.* (Oxford: Oxford University Press, 1981).

SOHN, Louis B., 'International Law Implications of the 1994 Agreement', *American Journal of International Law* Vol. 88, (1994), pp. 696-705.

SPEARE, David L., *Soviet Perceptions of the First Reagan Administration.* (Soviet Industry and Technology Series SITS 2, Centre for Russian and East European Studies, University of Birmingham, Discussion papers, 1985).

SPECTOR, Bertram I., 'A Social-Psychological Model of Position Modification: Aswan', in I. W. Zartman (ed.) *The 50% Solution* (Garden City, New York: Anchor Press, 1976), pp. 343-371.

SPECTOR, Bertram I., 'Decision Analysis for Practical Negotiation Application', *Theory and Decision*, Vol. 34, No. 3, (May, 1993), pp. 183-199.

SPECTOR, Bertram I., 'Decision Theory: Diagnosing Strategic Alternatives and Outcome Trade-Offs', in I. William Zartman, (ed.), *International Multilateral Negotiation: Approaches to the Management of Complexity.* (San Francisco: Jossey-Bass, 1994), pp. 73-94.

SPECTOR, Bertram I., 'The Search for Flexibility on Financial Issues at UNCED: An Analysis of Preference Adjustment', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds) *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development.* (London: Graham & Trotman, 1994), pp. 87-103.

SPROUT, Harold and SPROUT, Margaret, *The Ecological Perspective on Human Affairs: with special reference to international politics.* (Rahway, N. J., Quinn & Boden, 1965)

STÅHL, Ingolf, *Bargaining Theory.* (Stockholm: The Economic Research Institute, 1972).

STARKE, J. G., *Introduction to International Law*, 8th ed. (London: Butterworth,1977).

STEIN, Janice Gross, 'International Negotiation: A Multidisciplinary Perspective', *Negotiation Journal* (July 1988), pp. 221-231.

STEVENSON, John R. and OXMAN, Bernard H., 'The Future of the United Nations Convention on the Law of the Sea', *American Journal of International Law* Vol. 88 (1994), pp. 488-499.

STOLL, Peter-Tobias, 'The Entry into Force of the Convention on the Law of the Sea: A redistribution of Competences in Relation to the Management of the International Commons? The Transfer of Technology under the Implementation Agreement', *Zeitschrift für ansländisches öffentliches Recht und Völkerrecht (ZaöRV): Symposium on The Entry into Force of the Convention on the Law of the sea: A Redistribution of Competencies Between States and International Organisations in Relation to the Management of the International Commons?*,

Heidelberg, January 26-28, 1995 (Gesamtherstellung: W. Kohlhammer GmbH, 1995), pp. 391-420.

STRAUSS, Anselm, *Negotiations: Varieties, Contexts, Processes, and Social Order.* (San Francisco: Jossey-Bass Publishers, 1978).

SUSSKIND, Lawrence E., 'What Will It Take to Ensure Effective Global Environmental Management? A Reassessment of Regime-Building Accomplishments', in Bertram I. Spector, Gunnar Sjöstedt and I. William Zartman (eds) *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development.* (London: Graham & Trotman, 1994), pp. 221-232.

TODARO, Michael P., *Economic Development in the Third World,* 4th ed. (New York: Longman, 1989).

TODARO, Michael P., *Economic Development,* 5th ed. (New York: Longman, 1994).

TWINING, David T. 'The Nuclear Equation', in George Ginsburgs *et al.* (eds) *Russia and America: From Rivalry to Reconciliation.* (Armonk, New York: M. E. Sharpe, 1993), pp. 201-216.

UNITED NATIONS DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA OFFICE OF LEGAL AFFAIRS, *The Law of the Sea: National Legislation on the Territorial Sea, the Right of Innocent Passage and the Contiguous Zone.* (New York: United Nations, 1995)

UNITED NATIONS DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA OFFICE OF LEGAL AFFAIRS, *The Law of the Sea: National Legislation on the Exclusive Economic Zone.* (New York: United Nations, 1993)

UNITED NATIONS DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA OFFICE OF LEGAL AFFAIRS, *The Law of the Sea: Official Texts of the United Nations Convention on the Law of the Sea of 10 December 1982 and of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.* (New York: United Nations, 1997)

UNITED NATIONS DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA OFFICE OF LEGAL AFFAIRS, *The Law of the Sea: Annual Review of Ocean Affairs: Law and Policy, Main Documents 1989.* (New York: United Nations, 1993)

UNITED NATIONS OFFICE FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, *The Law of the Sea: Straits Used for International Navigation: Legislative history of Part III of the United Nations Convention on the Law of the Sea, Vol. I, II.* (New York: United Nations, 1992)

UNITED NATIONS OFFICE FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, *The Law of the Sea: current Developments in State Practice, No. I.* (New York: United Nations, 1987), *No. II* (New York: United Nations, 1989)

UNITED NATIONS OFFICE FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, *The Law of the Sea: National Legislation on the Continental Shelf.* (New York: United Nations, 1989)

UNITED NATIONS, *National Legislation and Treaties Relating to the Law of the Sea.* (New York: United Nations, 1974)

UNITED NATIONS, *Sea-Bed—A Frontier of Disarmament.* (New York: United Nations, 1972)

UNITED NATIONS, *The Law of the Sea official text of the United Nations Convention on the Law of the Sea with annexes and index, final Act of the Third United Nations Conference on the Law of the Sea introductory material on the Convention and the Conference.* (London: Croom Helm, 1983).

UNITED NATIONS, *The Law of the Sea: Declarations and Statements with respect to the United Nations Convention on the Law of the Sea and to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.* (New York: United Nations, 1997)

UNITED NATIONS, *Third United Nations Conference on the Law of the Sea: Rules of Procedure (A/CONF.62/30 Rev. 1).* (New York: United Nations, 1974)

UNITED NATIONS OCEAN ECONOMICS AND TECHNOLOGY BRANCH, *Analysis of Exploration and Mining Technology for Manganese Nodules.* (London: Graham & Trotman, 1984).

UNITED NATIONS OCEAN ECONOMICS AND TECHNOLOGY BRANCH, *Analysis of Processing Technology for Manganese Nodules.* (London: Graham & Trotman, 1986).

United Nations Ocean Economics and Technology Branch, *Assessment of Manganese Nodule Resources, the Data and the methodologies.* (London: Graham & Trotman, 1982).

VASCIANNIE, S. C., *Land-Locked and Geographically Disadvantaged States in the International Law of the Sea.* (Oxford, Clarendon Press, 1990).

VASQUEZ, John A., *The War Puzzle.* (Cambridge: Cambridge University, 1993)

VICUÑA, Francisco Òrrego, 'Towards an Effective Management of High Seas Fisheries and the Settlement of the Pending Issues of the Law of the Sea: The View of Developing Countries Ten Years after the Signature of the Law of the Sea

Convention', in Edward L. Miles and Tullio Treves (eds) *The Law of the Sea: New Worlds, New Discoveries*, Proceedings, The Law of the Sea Institute Twenty-sixth Annual Conference, Genoa, Italy, June 22-25,1992. (Honolulu,University of Hawaii, 1993), pp. 415-430.

VICUÑA, Francisco Orrego, 'Trends and Issues in the Law of the Sea as Applied in Latin America', *Ocean Development and International Law*, Vol. 26, (1995), pp. 93-103.

Von Glahm, Gerhard, *Law Among Nations: An Introduction to Public International Law*, 7th ed. (Boston: Allyn and Bacon, 1996)

Von Glahn, Gerhard, *Law Among Nations*. 4th ed. (New York: Macmillan, 1981).

WALKER, Gregg B., 'Cultural Orientations of Argument in International Disputes: Negotiating the Law of the Sea', in Felipe Korzenny and Stella Ting-Toomey (eds) *Communicating for Peace: Diplomacy and Negotiation*. (Newbury Park, California: Sage Publications, 1990), pp. 96-117.

WALL, James A. Jr., *Negotiation: Theory and Practice*. (Glenview, Illinois: Scott, Foreman and Company, 1985).

WALTON, Richard E. and MCKERSIE, Robert B., *A Behavioral Theory of Labor Negotiations: An Analysis of a Social Interaction System*, 2nd ed., (Ithaca, New York: ILR Press, 1991)

WALTZ, Kenneth N., *Theory of International Politics*. (Reading, Mass: Addison-Wesley, 1979)

WEISS, Thomas G., *Multilateral Development Diplomacy in UNCTAD: The Lessons of Group Negotiation, 1964-84*. (Hampshire: Macmillan Press, 1986).

WERTENBAKER, William, 'A Reporter at Large: The Law of the Sea', *The New Yorker*, Part I (1 August, 1983), pp. 38-65, Part II (8 August, 1983), pp. 56-83.

WILLIAMS, Marc, *Third World Cooperation: The Group of 77 in UNCTAD.* (London: Pinter Publishers, 1991).

WINHAM, Gilbert R., *International Trade and the Tokyo Round Negotiations*, (Princeton, New Jersey: Princeton University Press, 1986)

WOLFRUM, Rüdiger, 'The Decision-Making Process According to sec. 3 of the Annex to the Implementation Agreement: A Model to be followed for Other International Economic Organisations?' *Zeitschrift für ansländisches öffentliches Recht und Völkerrecht (ZaöRV): Symposium on The Entry into Force of the Convention on the Law of the sea: A Redistribution of Competencies Between States and International Organisations in Relation to the Management of the International Commons?*, Heidelberg, January 26-28, 1995 (Gesamtherstellung: W. Kohlhammer GmbH, 1995), pp. 310-328.

WORDEN, Simon Peter, 'A Global Defence Against Ballistic Missiles', in Hans Günter Brauch (ed.) *Star Wars and European Defence: Implications for Europe: Perceptions and Assessments.* (Hampshire: MacMillan Press, 1987)

WRIGHT, Esmond (ed.), *History of the World: The Last Five Hundred Years* (Feltam, Middlesex: Newness Books, 1984)

YAMAMOTO, Soji, *International Law*, revised. (Tokyo: Yuhikaku, 1994).

YOUNG, H. Peyton, 'Fair Division', in H. Peyton Young (ed.), *Negotiation Analysis.* (Ann Arbor: The University of Michigan Press, 1991), pp. 25-45.

YOUNG, H. Peyton, 'Negotiation Analysis', in H. Peyton Young (ed.), *Negotiation Analysis.* (Ann Arbor: The University of Michigan Press, 1991), pp. 1-22.

YOUNG, Oran R., 'System and society in world affairs: implications for international organizations', *International Social Science Journal,* No. 144 (June 1995) pp. 197-212.

YOUNG, Oran R., *International Cooperation: Building Regimes for Natural Resources and the Environment.* (Ithaca: Cornell University Press, 1989).

YOUNG, Oran R., *Resource Regimes: Natural Resources and Social Institutions.* (Barkley: University of California Press, 1982).

YOUNG, Richard, 'The legal regime of the deep-sea floor', *American Journal of International Law* Vol. 62 (1968), pp. 641-653.

YUKL, Gary A., 'Effects of Situational Variables and Opponent concessions on a Bargainer's Perception, Aspirations, and Concessions', *Journal of Personality and Social Psychology* Vol. 29, No.2 (1974), pp. 227-236.

YUKL, Gary A., 'Effects of the Opponent's Initial Offer, Concession Magnitude, and Concession Frequency on Bargaining Behavior', *Journal of Personality and Social Psychology* Vol. 30, No.3, (1974), pp. 323-335.

YURDUSEV, Nuri, "Level of Analysis' and 'Unit of Analysis': A Case for Distinction', *Millennium: Journal of International Studies,* Vol. 22, No. 1, (1993)

ZAKARIA, 'Fareed, Realism and Domestic Politics', *International Security* Vol. 17, No.1 (Summer 1992), pp. 177-198.

ZARTMAN, I. William, 'Introduction', in I. William Zartman, ed., *The Negotiation Process, Theories and Applications.* (Beverly Hills, CA: Saga Publications, 1978) pp. 7-12.

ZARTMAN, I. William, 'Introduction: Explaining North-South Negotiations', in I. William Zartman (ed.), *Positive Sum: Improving North-South Negotiations.* (New Brunswick, New Jersey: Transaction Books, 1987), pp. 1-14.

ZARTMAN, William, 'The Analysis of Negotiation', in I. William Zartman (ed.) *The 50 % Solution.* (Garden City, New York: Anchor Press, 1976), pp. 1-41.

ZARTMAN, William, 'Two's Company and More's a Crowd: The Complexities of Multilateral Negotiation', in I. William Zartman (ed.), *International Multilateral Negotiation: Approaches to the Management of Complexity*, (San Francisco: Jossey-Bass, 1994)