# from Cooperation to CONFLICT



## The Soviet Union & the United States at the Third U.N. Conference on Law of the Sea

Bernard H. Oxman

the McKERNAN lectures

Donald L. McKernan Lectures in Marine Affairs

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# Acknowledgment

It is a great professional and personal honor to be invited to deliver this lecture.

It is a professional honor because of the high esteem in which the Institute for Marine Studies and the University of Washington are held in this field around the world.

It is a personal honor because of my highly valued relationship with the man for whom the lectures are named. When I came to the Department of State from the Navy in 1968, he was my first "client." What I soon discovered is that I was back at school, with Donald McKernan as my teacher. I think he relished every minute of it, as I did.

Imagine the task of a then still young lawyer trying to keep him within even the elastic limits of the law whenever he boomed, "You lawyers!" Over the years, I learned that while Don locked me in eternal combat, he sometimes spoke not uncritically of me to others. But the most I ever heard directly from him was, "You're learning." From the master teacher, that was a supreme compliment.

Donald McKernan was larger than life in all respects. Nothing I could say here would be a fitting tribute to this giant of a man. Were he here today, I am sure that what I am about to say would have been greeted with forthright corrections from him. But I do hope he would have respected my willingness to say something more definite than the lawyer's eternal hedge, "maybe," and for addressing in (I trust) clinical fashion a subject that, for some, is charged with emotion.

# Preface

In discussing my preparations for this lecture with Professors Burke, Miles and Wooster, I told them that my greatest problem was what not to say. Let me explain why.

A fifteen-year experience is necessarily filled with amusing human anecdotes. The temptation to entertain is hard to resist.

Moreover, it is necessary to understand the general history of the law of the sea negotiations and the substantive issues involved in detail in order to appreciate the nature of the U.S.-Soviet relationship in the negotiations. I believe it is appropriate to assume that my audience on this occasion is well informed in this regard.

My contacts with the Third U.N. Conference on the Law of the Sea and the preparatory negotiations were as an official participant. This requires some keen ethical choices about what is and is not private. In large measure, this is not a matter of national security or negotiating secrets: the Conference is over. It is a matter of respecting the privacy and trust that I believe are essential to effective human communication, and balancing that against my belief, as an American and an academic, in the right to information of the public in general, and scholars in particular.

We must also bear in mind that there were many other countries at the Conference. A full picture would not concentrate only on the relationship between the Soviet Union and the United States. But that is my topic: I trust you will understand that it necessarily circumscribes what I say about other important and interesting relationships.

# The Soviet Union and International Law

Speaking about the Soviet Union is at best a difficult undertaking. In my case, there are additional obstacles that affect the utility of what I am about to say. I am an American, a lawyer, and a participant in the events that I am about to describe. Much as I may try to be objective, I am neither a disinterested observer nor an expert in Soviet politics, the Russian language and culture, or, more generally, economics, history, oceanography or political science. What you will hear is one opinion from one perspective: in some sense a first word but by no means the last word.

I believe there is no inconsistency between regarding the Soviet government as an opponent of certain basic values, as many do, and regarding it as a major maritime power facing the same kinds of problems with the law of the sea that beset other such powers. Whatever its ultimate objectives, it has accepted—at least tactically, at least for the moment, and at least in many places outside its immediate sphere of influence—an international system of well over 100 separate, legally equal, and legally independent states as the formal structure governing its public behavior and rhetoric.

The Soviet government has come to understand the basic dilemma of the law of the sea facing any major maritime power. That dilemma has little to do with the organized group of smaller and weaker countries at multilateral conferences about which we hear so much. Rather it stems from the fact that the coastlines of the world are controlled by numerous separate states, most of which fear or resent the appearance of foreigners off their coasts and few of which share the global interests or perspectives of the maritime powers.

A global maritime power feels a substantial—although not always controlling—need for coherence and consistency in its formal relationships with others. It cannot easily make concessions to one coastal state and then refuse them to another without implying that the former is more important than the latter, an implication major powers frequently try to avoid. Smaller countries do not have to worry about such problems as often. They can more easily enjoy the luxury of inconsistency and ad hoc decisions.

Neutral principle—reduced to legal rights if you wish—is the bastion not only of the weak but of the strong. It defines what the strong can demand without seeming to behave like mere bullies and without exposing themselves to counter-demands for payment. Neutral principle is what protects the powerful and rich from the slogan, "From each according to his ability, to each according to his need." Sovereign equality is the antidote for *noblesse oblige*. The Soviet Union seems to understand this quite well. Would that some of our political economists understood it half as well!

## Uses and Interests

The uses affected by the law of the sea include military navigation, overflight and other military and intelligence activities; commercial navigation and overflight; communication by cable and pipeline; exploitation of fisheries, hydrocarbons and minerals; marine scientific research; waste disposal; weather and environmental monitoring (and perhaps modification); recreation; potential exploitation of tides, currents and winds as a source of energy for non-navigational purposes; and use of offshore areas for other activities previously conducted only on land.

The range of interests affected by these uses is impressive. They include strategic or military, political and ideological, economic, environmental, and scientific interests.

Negotiations regarding each use of the oceans engaged one or more of these interests to a substantial degree. The underlying question was whether, and to what extent, one favored freedom, international restrictions, or coastal state control with respect to each use. For example, the environmental interest spans all potential uses of the oceans and generally implies certain restrictions on those uses so as to minimize adverse environmental effects. Commercial navigation and overflight and marine scientific research are uses that affect virtually all of the interests in the legal regime of the oceans to some degree.

Not only did each of the uses identified affect more than one interest. With respect to each interest, there was debate and competition within each government on the extent to which that interest was favored by freedom, international restraints or coastal state control regarding a particular use and on the priority to be accorded that interest with respect to other interests in the same use and in other uses. Over a fifteen-year period, one should expect changes in position that reflect not only perceptions of negotiability but continuing struggles within governments over these issues.

## Background of the Relationship

Given this extreme complexity, how were the United States and the Soviet Union supposed to regard each other in the negotiations? Friend or foe? As with most things, the answer depends on the question.

The basic political, ideological, and military orientation of the two powers has been one of rivalry, at least since the end of World War II. This was never forgotten. The question was not whether cooperation in the law of the sea negotiations would overcome this basic rivalry, but whether the two governments could work together in pursuit of common interests despite that rivalry and narrow the extent to which it made all cooperative endeavor difficult.

As major powers in a world of almost 200 states, the two governments clearly shared some similar perspectives. Each felt embattled by

the problem of challenges to its interests by unilateral actions of smaller countries and by the organized influence of the developing countries in multilateral fora. Each recognized that "zero sum" analysis of its interests vis-a-vis the other put it at the mercy of manipulation by third states. Narrow agreements not to compete on "zero sum" terms on certain issues were essential to liberate each government not so much vis-a-vis the other as vis-a-vis third states. Indeed, in many respects it was the "tyranny of the weak"—not in multilateral fora but in the context of unilateral claims—that brought the two together to seek a solution through the United Nations framework.

These conflicting perceptions lay at the heart of the basic tension in the relationship from the outset. Was the major rival the other superpower or was it the third states that were manipulating the competition between the superpowers to their own ends? The same question troubled the third states. Was superpower rivalry an obstacle to meaningful progress in multilateral negotiations that should be minimized in the common interest, or did superpower cooperation threaten to overwhelm the efforts of other countries to protect their interests? One searches in vain for consistent and unambiguous answers to these questions.

The relationship between the United States and the Soviet Union regarding the Third U.N. Conference on the Law of the Sea spans the period between 1966 and 1982. This is a substantial period of time during which many events occurred. While the question of the extent to which the relationship regarding the law of the sea negotiations was influenced by the vicissitudes in the overall relationship between the two governments merits close examination, there can be no doubt that the general political relationship had an impact.

The law of the sea relationship began only a few years after the world was at the brink of nuclear war in the Cuba Missile Crisis. One effect of the successful naval "quarantine" of Cuba by the United States during that crisis appears to have been an enhanced Soviet determination to become a global maritime power.

The time period spanned the presidencies of Lyndon Johnson, Richard Nixon, Gerald Ford, Jimmy Carter and Ronald Reagan in the United States. During the same period, we witnessed the rise and consolidation of power by Leonid Brezhnev, his physical decline, ultimate death, and eventual replacement by an ailing chief of the KGB, Yuri Andropov.

The period began before the advent of the superpower "detente" fashioned by Richard Nixon and Henry Kissinger and continued past the end of that "detente." It spanned the invasion of Czechoslovakia; the intensification and conclusion of the war in Vietnam; the 1967 and 1973 wars in the Middle East; the establishment of relations between the United States and the People's Republic of China; the emergence of OPEC and stunning increases in the cost of energy; basic changes in Spain, Portugal, and Iran; the final end of Western political colonialism; the emer-

gence of developing countries as an organized force in multilateral diplomacy; the appearance of the environmental movement as a powerful force in the West and elsewhere; the Soviet invasion of Afghanistan; and the rise and fall of the Solidarity trade union in Poland. During that period there were shifts in emphasis in U.S. foreign policy from anti-Communist ideology to *realpolitik* to human rights ideology to free market ideology. The Conference ended during the most serious world recession since World War II.

Reviewing this list of only some of the events that occurred during this period, no one would be surprised to discover that the relationship between the United States and the Soviet Union regarding the law of the sea was subject to change. Indeed, what is surprising is the degree of stability that was maintained against such an extended and tumultuous background.

The various stages of the relationship between the two governments in the law of the sea negotiations can best be examined by looking at different time periods. Of course, just as no bell rings in a new era at the end of every decade or century, so the stages described merely serve to highlight, rather than define, the precise stages.

## The Initial Steps

The Third U.N. Conference on the Law of the Sea was an outgrowth of two unrelated initiatives.

The first was a series of communications in 1966 and 1967 from the Soviet government to some 60 other governments regarding the possibility of convening a new conference on the law of the sea to agree on 12 nautical miles as the maximum permissible breadth of the territorial sea. At least at the start, the Soviet initiative was designed to "complete" the 1958 codification. It dealt explicitly only with the limited issue of the breadth of the territorial sea. That issue was not resolved in the 1958 Convention on the Territorial Sea and the Contiguous Zone and was addressed again without success at the Second Conference on the Law of the Sea in 1960. Even if its implications went beyond that issue alone, the Soviet initiative related exclusively to the traditional law of the sea addressed in traditional terms.

The second initiative was taken by Ambassador Pardo of Malta in his now famous speech before the U.N. General Assembly in 1967. Ambassador Pardo sought the establishment of a global international system of governance for the seabed beyond the present limits of national jurisdiction, later expanded to embrace other ocean activities as well. This approach rejected both of the basic approaches of the traditional law of the sea, namely essentially discretionary coastal state jurisdiction over some activities and flag state jurisdiction over others, each regulated by voluntary ad hoc functional agreements.

While the two initiatives occurred almost simultaneously, they

tended to engage different parts of governmental bureaucracies at the outset. In the United States, the Soviet initiative engaged those concerned with defense, shipping, and fishing, as well as high levels of the Department of State concerned with U.S.-Soviet and U.S.-Latin American relations. This group tended to include individuals entrenched in the bureaucracy, oriented toward classical bilateral diplomacy, or expert in the law of the sea.

The Pardo initiative engaged those concerned with the United Nations and other international organizations, institution-building from a world order perspective, funding of international programs, and disarmament. (The fact that the Pardo initiative may have been inspired by a speech of James Roosevelt a year earlier is some evidence of this.) This group tended to include individuals who operated at the political levels of the Johnson administration, many (not all) of whom neither knew nor cared much about the traditional uses or traditional law of the sea. (A similar point could be made regarding those who took up arms against the endeavor years later.)

Obviously, there was some overlap between the two groups. As in all things American, there were lawyers on all sides. While the extent to which a particular "legal culture" influences the substance of the law is unclear, the perspective of the lawyers doubtlessly had some substantial influence in this case—indeed far too much influence in the opinion of some economists.

Most of the lawyers tended to take a conservative approach to the possibilities for human perfectibility that reinforced their passion for imposing order on the world. Thus, to some extent, and to varying degrees, their peculiar perspective tended to bridge the gap between both groups, sometimes in a negative way. The lawyers were suspicious of the tendency of the substantive experts to assume that things had to be messy as well as the tendency of the system builders to assume that cooperative institutions, in and of themselves, solved problems. In practical terms, they forced a bridge between the two initiatives by emphasizing that a key issue was the dividing line between coastal state jurisdiction and any international area, and then by using the Pardo initiative as a tool for achieving their own—more traditional—goals of fixing clearer jurisdictional boundaries and rules.

On the surface, the Soviet note was little more than a proposal to repeat the 1960 conference with agreement in advance on the outcome preferred by the Soviets in 1960, namely a 12-mile territorial sea. An analysis of Soviet motives, while inevitably speculative, must penetrate more deeply. In 1960, the Soviets were advocating the *widest* limit for the breadth of the territorial sea that could command widespread support. As a result of a rash of unilateral claims, by 1966, while the number "12" had not changed, the Soviet Union was advocating agreement on the *narrowest* limit for the breadth of the territorial sea that could command widespread support. What happened in the interim is that the So-

viet Union had greatly expanded its naval, commercial, and fishing fleets: it had become maritime power.

Thus, the Soviet motive can be seen as conservative: to stop the trend of coastal state assertions of control over ever-broadening areas of the sea. The specific Soviet interests prejudiced by such a trend would be the mobility of its naval and perhaps air forces, commercial navigation, and fishing off foreign coasts.

At the time the Soviet note to the United States was delivered, I was in the Navy. The note stimulated a half-year study by the Departments of State and Defense and the Bureau of Commercial Fisheries. The substantive conclusion of the Department of Defense was that a 12-mile maximum limit for the territorial sea would be tolerable if included in a widely accepted agreement that also made special provision to protect transit of straits from the uncertainties and limitations of the innocent passage regime. The substantive conclusion of the Department of State and the Bureau of Commercial Fisheries was that protection of coastal state interests in fisheries beyond the territorial sea would be necessary to achieve widespread (implicitly including U.S.) agreement on a 12-mile limit for the territorial sea.

For its part, the Department of Defense was also concerned that the process not get out of control. It had doubts about a multilateral conference that was not well prepared, since failure could delegitimate the existing law without substituting an acceptable replacement, thereby stimulating more unilateral claims.

The Department of Defense was also skeptical about the influence of the fisheries office within the Department of State and of those in the government who were keen on using the Pardo initiative as an exercise in building world order institutions. Accordingly, its agreement to proceed was based on an understanding that those concerned with the Pardo initiative within the international organizations bureaucracy of the Department of State and the United States Mission to the United Nations would have no control over this matter, that arms control issues would be dealt with separately, and that the Department of State office supervising the matter would be substantively neutral with respect to the competing U.S. interests involved. Enter the lawyers!

There was high level interest in the Department of State, which transcended the law of the sea, in proposing that we meet with the Soviets to discuss their initiative and see if we could find in this subject a basis for mutual cooperation. The first meetings between U.S. and Soviet delegations resulted in rapid agreement on a 12-mile maximum limit for the territorial sea (drafted as article 1) qualified by a high seas corridor through straits (drafted as article 2). The results were more ambiguous with respect to coastal state preferential rights with respect to fisheries seaward of the territorial sea (drafted as article 3). Nothing was done regarding the continental shelf or deep seabed. Nothing was done to begin setting up a formal procedure for consideration of the matter within the United Nations. The Soviet Union circulated draft articles 1 and 2 to

other governments for comment, while the United States circulated all three articles.

Both sides of the table revealed the same bureaucratic influence: lawyers, the traditional foreign policy bureaucracy, the defense establishment, and fisheries experts. Global strategic interests were dominant on both sides. Both perceived of those interests in similar terms.

The perception of similar interests was not as great with respect to fisheries. Nevertheless, fisheries was an important factor in cementing the relationship. The fisheries experts on both sides had been developing close contact in the context of other negotiations. While the interests of the two states were frequently competing, there was a solid track record of mutual dealing and a growing degree of mutual understanding, if not sympathy.

There was accordingly a bureaucratic parallelism that made a substantial contribution to furthering the possibilities for a strong working relationship.

Both sides were represented by the Legal Adviser of the foreign ministry as head of delegation. This was to change some years later, and that change was accompanied by some destabilization of the relationship at that level.

Foreign ministry lawyers and defense personnel played a major role on both sides. They perceived a significant interest in entrenching the freedoms of the high seas globally against coastal state encroachment, particularly to facilitate global mobility of military forces. This was a sharp break for the U.S.S.R. from its perspective in 1958 and 1960, which was far more coastal and xenophobic on such issues.

Many in the U.S.S.R. continued to favor a territorial sea of no *less* than 12 miles for substantive reasons, although some would tell us privately that the U.S.S.R. would have been better off today if it had supported the U.S. compromise proposal in 1960 of a 6-mile territorial sea and a 6-mile fisheries zone beyond. Thus the confluence of perspective was not absolute. U.S. experts almost unanimously accepted the idea of a 12-mile limit only because it was the price for stabilizing the limit by universal agreement at the narrowest practicable point, while many in the U.S.S.R. continued to like the 12-mile limit from a coastal perspective as well. In essence, the U.S.S.R. entrenched its xenophobic and coastal orientation in its insistence that the territorial sea could not be less than 12 miles, while giving expression to its new maritime orientation by insisting on the high seas nature of the regime beyond 12 miles and, at U.S. suggestion, within straits used for international navigation. A similar conflict regarding so-called historic waters was averted by avoiding discussion of the matter.

The fisheries experts on both sides perceived a common interest in working together to fix the rules of the game, albeit with some different objectives. The U.S. interest in its tuna and shrimp fisheries off Latin America, and its reaction to seizure of its tuna boats, led it to share the Soviet aversion to comprehensive and uncontrolled claims of broad

coastal state jurisdiction. At the same time, as states of origin, both shared an aversion to high seas fishing for salmon. The U.S. nevertheless wanted greater control over foreign (including Soviet) fishing off its own coast.

The U.S. importance as a *coastal* state was far greater in the case of fishing than navigation. While few states in the world were dependent upon navigation off the U.S. for communication with third states, a great deal of the major distant water fishing of other states included the rich fishing grounds off the United States. Thus, even to the extent that U.S. and Soviet substantive interests differed with respect to fishing, this difference related to an important degree to a bilateral fishing relationship between them with which they would have to deal in any event. This synergistic effect can be seen in the manner in which annual U.S.-Soviet bilateral fishing agreements and regulations of the International Commission for Northwest Atlantic Fisheries tended to apply ideas regarding coastal state interests that emerged in the continuing evolution of article 3.

From these factors, one can glean the nature of the common objectives that lay at the heart of U.S.-U.S.S.R. cooperation in planning and negotiating at the Conference. They were a widely accepted treaty that established:

1. a 12-mile maximum breadth for the territorial sea;
2. free transit of straits used for international navigation;
3. freedom for navigation, overflight, and military activities beyond 12 miles; and
4. an accommodation of coastal state interests in fisheries beyond 12 miles (with the U.S. more sympathetic to coastal state rights).

## 1967 to 1970

The first period of multilateral activity began in 1967 and extended to 1970, when the U.N. General Assembly decided to convene a comprehensive conference in 1973 and to entrust its Seabed Committee with preparations for the conference.

During that period, the U.S. and U.S.S.R. separately engaged others bilaterally in an attempt to organize a conference with a limited agenda around articles 1, 2, and 3, namely the breadth of the territorial sea, straits, and coastal state fishing rights seaward of the territorial sea. The two states consulted with each other as this process evolved.

At the same time, the U.N. Seabed Committee was discussing the question of an international regime for the seabeds beyond the limits of national jurisdiction. That endeavor was not engaged in the U.S.-Soviet efforts at the time.

During this period, one could discern a drift toward the idea of a comprehensive conference on the law of the sea among some Latin

American and other developing country delegates. It is difficult to say whether the primary Latin American motive was to refashion the law of the sea in a manner more to its liking than the 1958 regimes or to so complicate the endeavor that the most likely result, after a substantial delay during which more coastal state claims would occur, would be the delegitimation of the 1958 regimes with no ratifiable agreement on a replacement. For Africans and others who had recently gained independence, there was a strong ideological desire to lay out a comprehensive regime in whose formation they had participated fully.

This trend was viewed with alarm in Soviet and many American quarters. However, some Americans were of the view that this trend could be used to advantage. If the U.S.-Soviet and Pardo initiatives were merged, this would mean adding two main issues to those already raised by articles 1, 2, and 3, namely the seaward limits of the continental shelf and the nature of the seabed regime seaward of the continental shelf. While much depended on the negotiation of those five issues, and particularly the questions of straits and the limits of coastal state rights, it was felt that the regimes of the territorial sea, the high seas, and the continental shelf would probably emerge largely unchanged in other respects and thus, in effect, would be relegitimated by a community of states twice as large as that which attended the 1958 Conference.

In 1970, President Nixon announced a comprehensive oceans policy which treated all five issues. At the same time, the U.S. urged that they be negotiated separately, in "manageable packages." That was also the Soviet preference. This view did not prevail. In 1970, the U.N. General Assembly decided to call a comprehensive conference on the law of the sea to review all the regimes of the law of the sea and adopted a declaration of principles to guide the negotiation of a regime for the seabeds beyond the limits of national jurisdiction. The Soviet reaction to this "revolutionary" approach to the law of the sea is perhaps best evidenced by its abstention on the declaration of principles, based in part on the declaration's failure to include a strong cross-reference to international law, presumably meaning existing high seas law.

## 1970 to 1974

The next period extends from the 1970 decision of the U.N. General Assembly to call the Conference through the first two sessions of the Conference in 1973 and 1974. Most of this period was occupied by preparations for the Conference in the U.N. Seabed Committee and at the organizational session of the Conference in late 1973.

As the focus of negotiations shifted to a multilateral forum, the substantive cooperation of the U.S. and U.S.S.R. was supplemented by cooperation on procedural issues. The industrialized states of both East and West pressed for a requirement of consensus for decisions in the Seabed Committee, a similar requirement in the Gentleman's Agree-

ment adopted by the U.N. General Assembly with respect to Conference procedures, and more stringent requirements regarding such voting as might nevertheless occur at the Conference than had traditionally been followed at multilateral law-making conferences.

The rise of the Group of 77 as an organized negotiating force of developing countries encouraged closer coordination between the U.S., U.S.S.R., and other major maritime powers such as France, Japan, and the United Kingdom. Since the Group of 77 itself was most united on deep seabed mining issues, it is not surprising to find that close coordination among these maritime powers initially concentrated on deep seabed mining issues, rather than the "traditional" issues that originally brought the U.S. and the U.S.S.R. together. However, the coordination gradually expanded to embrace virtually all other issues.

This coordination was not as neat procedurally as some have imagined. Other maritime states had to be consulted separately on a regular basis. The member states of the European Communities met more and more regularly with each other. The Soviet Union resisted West German participation while Canada resisted any identification with the industrialized maritime powers. Both France and the Soviet Union were sensitive to charges of big-power collusion.

The most important substantive development during this period was the gradual accommodation of the Soviet Union and the United States to the idea of a 200-mile economic zone. Throughout the preparatory negotiations, and until the eve of the Conference, both regarded proposals for a 200-mile zone as inconsistent with these objectives for two main reasons.

First, the 200-mile limit was historically associated with territorial sea claims that affected navigation and overflight. Even if this result were expressly excluded, any distance limit may evoke a psychological sense of territory that could gradually expand into a functional territorial sea.

Second, a 200-mile zone tended to prejudice the Soviet objective of maximizing freedom of fishing and the U.S. objective of differentiating tuna from other species of fish and keeping the tuna fishery free of coastal state control. A 200-mile limit also tended to prejudice the desire of both states to control "their" salmon well beyond 200 miles from their respective coasts.

While often portrayed as the strongest reason for opposing any 200-mile zone, which it may have been in substance, the first reason was in fact less influential. Both Soviet and American strategic planners were willing at an early stage to trade a 200-mile resource limit for entrenched non-economic freedoms in the zone and a balanced arrangement on fisheries management and allocation. It was the fisheries experts—including Ambassador McKernan at the time—who felt it would be a mistake to do this at least until a satisfactory fisheries regime had been negotiated.

Oddly enough, the Soviet fisheries experts apparently lost the battle first. In one of their rare surprise moves, the Soviets dispatched Ambassador Kolossovsky to several Latin American capitals in 1974 to indicate that the Soviet Union could accept a 200-mile zone in principle. We learned about it quickly because, as fate would have it, I was visiting some of the same capitals for the Department of State at about the same time.

It is difficult to explain precisely why the Soviets made this move at the time without consulting the United States, even if the concession was ultimately inevitable. It is possible that Soviet experts felt that a "pre-emptive concession" of a 200-mile zone would strengthen their ability to negotiate a satisfactory fisheries regime in the zone. They certainly continued to fight hard for such a result in the Evensen Group negotiations in 1975. One must take into account the fact that Ambassador Kolossovsky had served in Mexico, was something of a specialist in Latin American affairs, and unveiled the new Soviet position on a Latin American tour. It is also possible that the Soviets resented the American tendency to play the role of senior partner in the relationship. At the same time, there is little evidence in 1974 that the Soviets were in a rush to complete the Conference; this was to come later. Thus the Soviet move can be explained most plausibly as a negotiating maneuver related to the Conference, or a political move designed to stake out a position independent of the United States and curry favor in Latin America, or both.

## 1975

The next period of significance—and in many respects the watershed period—was the year 1975. That was a year of remarkable productivity, in part as a reaction to the chaos experienced at the 1974 session that resulted from the lack of any basic text from which to negotiate.

The three most significant developments that year were the formation of the so-called Evensen Group by Minister Jens Evensen of Norway which assembled selected delegates both between and during the Conference sessions to work on the economic zone, the formation of the so-called UK-Fiji Group of selected moderate delegations to work on straits, and the decision to entrust the chairmen of the conference committees with the authority to issue single negotiating texts at the end of the session.

The Single Negotiating Text issued by the Chairman of the Second Committee largely incorporated the results of the informal negotiations in the Evensen and Uk-Fiji groups. Suddenly, by the end of 1975 the United States and the Soviet Union found themselves with a basic text that generally satisfied their objectives with respect to the traditional maritime issues that originally brought them together. The main exception, which was to preoccupy them for the next two years, was the exclu-

sion of the economic zone from the definition of the high seas.

At the same time, the Single Negotiating Text issued by the Chairman of the First Committee on deep seabed mining fell far short of both Western and Soviet objectives. The Western reaction was furious. The Soviets were not happy either, but were less concerned.

It is easy to see—if only in retrospect—that this situation would alter the nature of the relationship between the U.S. and the U.S.S.R. at the Conference. The major obstacle to achievement of the objectives that the two governments had pursued jointly for almost a decade was the impasse between the West and the Third World over deep seabed mining. That impasse was increasingly being characterized by both sides as a confrontation between free market economies and centralized political control.

The Soviet delegation never took comfort from the fact that the Third World plans for the deep seabeds seemed to be inspired by socialist ideology. One Soviet delegate remarked that only intergovernmental organizations of socialist states could properly apply socialist collectivist models. The Soviet Union nevertheless faced a complex problem in reacting to this situation. To the extent it was interested in projecting its new image as a global maritime power, the Soviet Union could not leave the deep seabed negotiations to the United States and its Western allies alone. Moreover, the Soviet Union found it difficult to associate itself with Western positions on an issue defined by the Third World as the need to control unrestrained Western capitalism. On the other hand, if it complicated the deep seabed mining negotiations, the Soviet Union would adversely affect the prospects for early and successful conclusion of the Conference with the adoption of a treaty by consensus.

## 1976 to 1977

### Cooperative Efforts

During 1976 and 1977, despite the general acceptability of the Second Committee negotiating text, there remained some important outstanding issues regarding the traditional law of the sea that evoked concerns that lay at the heart of the original basis for U.S.-Soviet cooperation in the negotiations.

*Status of the economic zone*: The question of the status of the exclusive economic zone and the rights of all states to use the zone was not finally resolved until 1977. Both the U.S. and the U.S.S.R. participated actively in support of similar "high seas" oriented positions in the negotiations in the informal "Castaneda-Vindeness Group" that finally resolved this issue, although the U.S., like most other participants, was represented at a higher level than the U.S.S.R. (The Soviets made some efforts to disavow the result the next year. Whether or not there was a relationship, it is interesting that their negotiator in the Castaneda-Vindeness Group, the skilled and knowledgeable if at times mercurial Dr. Valentin

Romanov, was assigned a short time later to a post in the United Nations Secretariat unrelated to law of the sea matters. This further depleted the small group that had worked closely with the U.S. in the 1960's.)

*Archipelagos*: The question of archipelagic waters posed many of the same issues as the questions of the breadth of the territorial sea and straits. While the U.S. coordinated its efforts closely with the Soviet Union and other maritime states, it was far more active than the U.S.S.R. on the issue, dealing primarily with Indonesia and Fiji, which in turn coordinated with other archipelagic claimants and aspirants. At times the Soviets seemed more preoccupied with denying continental states (perhaps Greece) the right to apply the archipelagic principle than with other aspects of the problem.

*Pollution from ships*: The question of coastal state jurisdiction to control pollution from ships struck at the heart of the basic issue of navigational rights and freedoms. In the context of this Third Committee issue, the U.S. and U.S.S.R. participated in a much larger group of shipping states. The increasing environmentalist pressures in the U.S. did cause some strains in the relationship as positions diverged; this became more pronounced when President Carter ran on a strong environmental platform and was elected. Nevertheless, the relationship remained fairly cooperative throughout, in part because the Soviet government was experiencing (or wished to project the image that it was experiencing) internal environmentalist pressures as well.

*Compulsory settlement of disputes*: The cooperative relationship with respect to compulsory settlement of disputes was in many respects the most interesting and the most productive. The key issue with respect to dispute settlement was not the prolonged deliberations over detail, but the basic question of whether arbitration or adjudication would be mandatory for all treaty parties.

The traditional Soviet position on compulsory third-party settlement of disputes in virtually all negotiations was negative since the Soviet government came to power. In this case, beginning in the more limited context of the 1973 London Marine Pollution Conference, the United States was able to persuade the Soviet Union that compulsory settlement of disputes was an important mechanism for preventing further coastal state encroachment on navigation and other uses. Of course, if this was correct, then support for compulsory dispute settlement was in Soviet interests. Nevertheless, I believe it is less likely that a major policy theme of the Soviet government would have been reversed were it not for the confidence that the two sides had developed in their respective analysis of mutual interests.

Interestingly, once persuaded of this point of view, the Soviets took a stronger position in favor of compulsory settlement of fisheries disputes than did the U.S.; this of course reflected the difference in their respective underlying fisheries interests. The key condition for Soviet willingness to accept compulsory settlement was exclusion of military

activities and boundary disputes.

*Human rights*: A further area of cooperation—surprisingly enough—could be called "human rights." Both the U.S. and the U.S.S.R. were concerned about abuses of coastal state enforcement powers with respect to fisheries and vessel-source pollution. This included concerns about the fate of arrested vessels and crew members.

Particularly in light of Soviet reactions to the human rights positions of the Carter Administration, the key to cooperation in this area was to avoid all reference to the term "human rights." However, an examination of the "safeguards" written into the fisheries and especially the pollution texts readily reveals a remarkable human rights content coupled, even more remarkably, with compulsory settlement of disputes. Ironically, the cost of U.S. willingness to approach the issue in a way that did not create gratuitous political problems for the Soviet delegation was not a failure to achieve sound substantive results in the human rights field that make great progress over other treaties, but an ignorance by the Western human rights lobby and by Western labor unions that persists to this day of the extraordinary advances in human rights contained in the treaty and coupled with compulsory settlement of disputes.

## Emerging Strains

While the foregoing issues continued to provide a basis for close cooperation, the 1976–77 period was also one of emerging strains between the two delegations.

*Deep seabed mining*: The U.S.S.R. was increasingly unhappy about the U.S. tendency to negotiate with developing countries on deep seabed mining in its absence. Thus, the developing (and indeed Western) countries excluded from critical private negotiations were not alone in reacting negatively to the way in which the Revised Single Negotiating Text was drafted. The appearance of Secretary of State Kissinger at the negotiations tended to confirm Soviet suspicions that the United States was seeking to dominate the deep seabed mining system.

*General bilateral relations*: U.S.-Soviet relations in general were beginning to deteriorate in response to the U.S. human rights campaign.

*Personnel*: By the time President Carter took office, both delegations were headed by individuals with political backgrounds: U.S. Ambassador Elliot Richardson and Soviet Deputy Foreign Minister Semyon Kozyrev. It was neither plausible nor possible to maintain an atmosphere of detached legal professionalism at that level. One is tempted to suspect that the high personal regard in which Ambassador Richardson was held by most governments must have irked the Soviets even if it facilitated the achievement of some objectives that the Soviets shared.

*The Arctic*: The United States had long recognized that the basis of any settlement with Canada on marine pollution issues generally—where Canada was actively inspiring coastal state demands for extensive controls—would have to give Canada much of what it wanted in the

Arctic in exchange for Canadian cooperation on protection of navigation outside the Arctic in the economic zone and straits regimes generally. Any such arrangement would require the cooperation of the U.S.S.R.

The U.S. and U.S.S.R. had studiously avoided any discussion of the Arctic prior to this time. The Soviets breathed not a word of the "closed seas" and "historic waters" doctrines popular with some Soviet writers. We knew they did not wish to regard Arctic passages off the Soviet coast as straits used for international navigation; they knew that we did. In part, both opposed reopening the definition of straits at the Conference—which Canada at one point suggested—because this would raise the issue in the open, in all probability to no end other than creating a major irritant in U.S.-Soviet relations at the Conference.

The need to deal with Canada of course meant the Arctic had to be discussed, if only privately. At first, the U.S.S.R. refused to address the matter at all. Then, a bizarre minuet of talks between two of the three states at a time began.

It quickly became apparent that the pro-navigation attitudes that the U.S.S.R. manifested at the Conference had not modified its traditional attitudes in the Arctic: coastal xenophobia still reigned supreme. This of course did not come as a surprise. At the same time that the U.S. and U.S.S.R. had been trying to sell free transit of straits to the world, the Soviets turned back a U.S. Coast Guard cutter in the Vilkitsky Straits.

It is fair to say that before the process ended, the Soviets were intimating even more extreme (or at least less subtle) coastal positions regarding environmental controls in the Arctic than Canada, while maintaining a far less coastal position on vessel-source pollution generally (that is, outside the specific context of the Arctic) than the United States, not to mention Canada. Everyone involved of course understood that the underlying issue in the Arctic was at least as much strategic as environmental. The only other participant in what was emerging as a major strategic confrontation between the superpowers, Canada found itself in the awkward position of seeming to side with the Soviets.

The United States finally felt compelled to make it clear to the Soviets that the political basis for their cooperative relationship at the Conference had been the promotion of navigation and the avoidance of competition on bilateral strategic issues. It insisted on, and achieved agreement to, the application of the warship exclusion to the provisions regarding coastal state environmental rights in the Arctic. On this basis, agreement was reached on a text according coastal states special environmental powers over commercial navigation in certain ice-covered areas of the territorial sea, straits, and the exclusive economic zone.

*The U.S. 200-mile fisheries claim*: The Soviets seemed shocked at and betrayed by the enactment of the U.S. 200-mile fisheries zone in 1976. They felt—not without reason—that the substantive basis for U.S.-Soviet cooperation in the law of the sea negotiations had been opposition to unilateral claims by coastal states. Albeit with dour wit, Secretary Kis-

singer alone suffered a 25-minute harangue from Minister Kozyrev on the issue. (It is unclear whether the Soviets subsequently associated Ambassador Richardson, who was then Secretary of Commerce, with President Ford's decision to endorse legislation establishing a 200-mile fisheries zone during the New Hampshire primary campaign in early 1976.)

*Marine scientific research*: One of the most dramatic shifts in Soviet positions at the Conference concerned marine scientific research. In the past, both the U.S. and the U.S.S.R. had advocated maximum freedom of scientific research, although the Soviet attitude regarding research on the continental shelf was a bit ambiguous. During this period, the Soviets made a sharp swing in the direction of coastal state control, deliberately frustrating U.S. attempts to work out a moderate solution regarding research in the economic zone.

It is difficult to give a definitive explanation of the reasons for this shift, particularly in light of the prestige generally associated with the scientific community in the U.S.S.R.

One possible reason is substantive. Perhaps yielding to the assumption that others act as they do, the Soviets may have seen freedom of marine scientific research as a cover for U.S. intelligence activities off their coast. It is interesting to note that this shift in position represented, for the Soviets, a return to their older coastal perspective from the newer global maritime perspective that formed the basis of U.S.-Soviet cooperation. From this, one may plausibly deduce that the Arctic—where the coastal perspective remained predominant—was a principal motivating factor.

Another possible reason was retaliation for the U.S. unilateral claim of a 200-mile fisheries zone.

A third possible reason was a desire to conclude the Conference quickly by yielding to the demands of other coastal states for control over marine scientific research. The Soviets may have considered this result inevitable in any event, in part because the U.S. 200-mile fisheries claim in effect gave the coastal states—without any quid pro quo—what they wanted most from the 200-mile zone in the first place. This motivation may have been enhanced by a Soviet desire to promote the early success of the Third Committee because it was chaired by the representative of Bulgaria.

It is rare that a bureaucracy ever has only one reason for adopting a position. One may assume that all three factors played some part in the decision. My own view is that the factors presented above are in ascending order of influence.

## 1978 to 1980

The next relevant period is from 1978 to 1980. The most salient characteristic of this period is that most of the issues that had originally brought the United States and the Soviet Union together were either

solved or close to being solved.

At the same time, the Soviet invasion of Afghanistan introduced a significant chill into U.S.-Soviet relations from which the Conference was not immune. Proceeding on a "business as usual" basis at the Conference would have been incompatible with the overall policy of the Carter administration. For their part, the Soviets made some efforts to introduce the issue of "salvage of vessels" into the negotiations, although they stopped short of identifying the reason explicitly as a reaction to the efforts of the United States to recover a sunken Soviet submarine, and eventually dropped the matter in the face of a U.S. statement in Committee that this was an attempt to introduce a bilateral issue into the negotiations.

Increasingly, the Conference focused on selected outstanding issues, of which the most important were deep seabed mining, the definition of the continental shelf beyond 200-miles, access of landlocked and so-called geographically disadvantaged states to fisheries in the economic zones of their neighbors, and delimitation of the economic zone and continental shelf between neighboring states.

*Deep seabed mining*: With respect to deep seabed mining, the primary Soviet preoccupation was resistance to Western domination of the system, while the primary U.S. preoccupation was resistance to Third World domination of the system. This led to complex three-way stalemates on a number of issues, particularly the crucial issue of decision-making procedures in the Council of the Seabed Authority. Whatever the perspective from the outside, the notion that the U.S. and the U.S.S.R. were in general working for similar objectives could not be sustained. The U.S. increasingly struck out on its own in the difficult task of negotiating changes with the developing countries in the myriad provisions of the deep seabed mining provisions of the Informal Composite Negotiating Text that were unacceptable, coordinating its efforts only with its Western European and Japanese allies.

*The continental shelf*: The Soviet Union had been strangely quiet on the issue of the outer limit of the continental shelf for many years while the Conference worked toward an accommodation of the broad margin states (mainly but not exclusively Western) that combined broad limits embracing the continental margin with some sharing of revenues from mineral production beyond 200 miles. As this process neared completion, the Soviets made it clear that they wished to confine the limits of coastal state jurisdiction over the continental margin by precise criteria, preferably some maximum distance limit. Moreover, one may speculate that some in the Soviet Union never much liked the idea of revenue sharing, particularly if translated into an expenditure of hard currency or its equivalent in hydrocarbons, and especially because revenue sharing was primarily a technique for achieving very broad limits for certain Western states that the Soviet Union preferred to confine in any event.

Because it shared some of the Soviet strategic concerns about the definition of the continental margin, while sharing the general economic perspective of the broad margin states, the United States was able to play a reasonably credible role of honest broker on the issue. However, Soviet responsiveness to U.S. analysis was nowhere near the levels of earlier years when, for example, the U.S.—arguably the most interested party—mediated a dispute between the Soviet Union and Japan over the precise wording of the provisions dealing with anadromous species. In particular, the U.S. never succeeded in persuading the Soviets that yet another distance limit was an undesirable invitation to future assertions of jurisdiction over the water column. While the U.S. and U.S.S.R. shared some similar perspectives on the question of ridges, U.S. negotiators found it impossible to "get through" to the Soviets; the result was an unnecessarily complex set of provisions on the issue that nearly triggered a direct bilateral dispute.

*Landlocked and geographically disadvantaged states*: For different reasons, the U.S. and U.S.S.R. maintained a low profile on the issue of the access of landlocked and so-called geographically disadvantaged states to fisheries in the economic zones of other countries in the region, and rarely discussed the issue. The United States did not want to add further complications to its relations with Latin American coastal states that were strongly opposed to granting significant access rights. The Soviet Union did not particularly relish the idea of reducing its potential access to surplus fisheries off foreign coasts by according a strong priority of access to the landlocked and geographically disadvantaged states, although it did not oppose the efforts of its landlocked and geographically disadvantaged allies to obtain preferential rights of access.

*Delimitation between neighboring states*: Both the U.S. and the U.S.S.R. attempted to defuse and maintain a low profile on the delimitation issue, generally attending the negotiations between the "equidistance" and "equitable principles" groups as silent observers and discussing only the procedural aspects of the matter with each other. The situation took a sensational turn when the chairman of the relevant negotiating group, under pressure from delegates who may have miscalculated the effect, required all present at future sessions to declare themselves. China, the Soviet Union and the United States indicated their preference for equitable principles.

## 1981 to 1982: Conclusion of the Conference

The final stage of the Conference embraces the years 1981 and 1982. By the time President Reagan took office, U.S.-Soviet cooperation was more formal than substantive, except for the common desire to protect Second and Third Committee texts from change or erosion. Those on the two delegations who had cooperated most actively with each other in years past now had little more to do than stand their ground.

The U.S. demand for a delay in further Conference proceedings while the new Administration reviewed the text was seen by the Soviets as an overt bid for domination of both the Conference and deep seabed

mining as well as a threat (even if unintended) to the survival of the Second and Third Committee texts. The Soviets were thrown off balance by what they perceived as further evidence of instability in U.S. foreign policy. Extensive shifts in personnel also made them uncomfortable. They wanted the Conference to end quickly, even to the point of suggesting an early vote on the Convention as a whole if consensus proved impossible, an unusual position for an arch supporter of decision-making by consensus.

At this point, political—but not ideological—competition with the United States emerged as a basic theme in Soviet behavior at the Conference. This motivation was so strong that the Soviets missed a golden opportunity from their perspective to emphasize the isolation of the United States on the final vote in April 1982 on the Convention as a whole by their decision to abstain on the petty grounds that U.S. companies had a theoretical advantage under the Conference Resolution on protection of pioneer investors in deep seabed mining. Apparently a more sober appraisal of Soviet interests and opportunities took hold in the ensuing months leading to the Soviet decision to sign the Convention in December of that year.

It is difficult to say whether it would have been possible to revise the deep seabed mining text in a manner acceptable to the Reagan administration if the Soviets had been cooperative, or at least quiescent. It is clear that Soviet opposition—with constant harangues against U.S. attempts to dictate terms—made the task far more difficult.

This of course may have suited Soviet political objectives in terms of U.S.-Soviet rivalry in general, and its reactions to the foreign policies of the Reagan administration in particular. It did not serve Soviet (or U.S.) substantive interests in producing a widely ratified treaty that stabilized the traditional law of the sea. It also did not serve the broader interests of the U.S.S.R. (or the U.S.)—transcending the law of the sea—in the principle of negotiation by consensus. The very basis of the U.S.-Soviet cooperation begun over a decade earlier, which muted political rivalry in the negotiations for the sake of attaining common substantive objectives in a consensual procedural framework, had been reversed.

## Some Observations

How does one assess this long period of association that, in at least some respects, may be unique in U.S.-Soviet relations? How are we to understand the relationship with the benefit of some (although as yet brief) hindsight?

The basis of U.S.-Soviet cooperation was the essence of the freedom of the seas settlement reached centuries earlier by other maritime powers: no maritime power would seek to tie up the peacetime mobility of another, and none would force another to pay for its navigation rights with either carrots or sticks. This did not mean neither would get into

position to interdict the other in the event of hostilities: quite the contrary. There is extraordinary confusion on these points in the literature of the subject, particularly among some British commentators.

The effect of the "freedom of the seas" approach is to reduce the need for each power to have decisive influence over a state along an important navigation route in order to protect its own navigation rights. It has no effect on the temptation to influence states along navigation routes in order to have a strategic advantage in the event of hostilities. Its net effect, however, is to reduce—but not eliminate—the competition for influence over states lying astride strategic navigation routes, and also to reduce the leverage of those states over the major maritime powers. Franco understood this well; that is why he mistakenly thought he might be able to get the Rock of Gibraltar in exchange for conceding free transit of the Strait of Gibraltar.

Both governments shared a generally unarticulated concern about the behavior of U.S. allies bordering major straits. For the Soviets, this was a relatively obvious problem: they feared direct harassment. For the U.S., the problem was more subtle. The U.S. did not want to be forced into a position of either backing a coastal state right to interfere with navigation and overflight in principle or allowing a Western ally to suffer a political defeat at the hands of the Soviets.

Even if some Western coastal states asserting jurisdiction might be expected to adopt reasonable regulations that did not interfere with U.S. warships, other coastal states would use the assertion of control in principle as precedent for interference. Thus Lord Kennett, the British Tory, would probably be surprised to learn that his writings in favor of a policy of coastal state harassment of the Soviet fleet simply reinforced the U.S. desire to secure a clear right of free transit for all states in writing. The U.S. did not wish to encourage the Soviets to step up political or subversive activities in countries bordering important navigational routes, including Spain, Morocco, Malaysia, and Indonesia. Lord Kennett was thinking about North Europe, the Pentagon about the world.

The strength of U.S.-Soviet cooperation rested on two premises. First, there would have to be a combined coordinated effort to achieve a result satisfactory to both. This remained true until 1975 or 1977 at the latest. Then, success itself eliminated the need for such close coordination. Second, more profoundly, both would have to be committed to keeping their global military and political competition from getting too expensive or too dangerous. This was certainly the mood in the late 1960's and early 1970's. As time passed, however, an increasing number of Americans concluded that the Soviet vision of detente was one-sided. Thus, by the end of the Conference, the U.S. was not heavily influenced by the fact that a Law of the Sea Convention was one means to regulate its competitive relationship with the U.S.S.R.

When they first met in 1967, the U.S. and U.S.S.R. delegations discovered rapidly that they shared the same basic navigational perspec-

tives as maritime powers. Despite considerable successes, they never really developed techniques for husbanding truly common perspectives on other issues. Both generally understood that open competition on any issue would weaken each and increase the leverage of others. That kept the relationship at least civil on other issues until close to the end of the Conference. But this was not enough, in and of itself, to promote an accommodation.

In a real sense, the U.S. and U.S.S.R. rarely bargained with each other over important substantive differences as opposed to tactics: either they swept their differences under the rug—no mean achievement in itself—or they fought about them with reasonable civility until settled in a larger multilateral context. (This of course suited U.S. substantive objectives perfectly on fisheries and continental shelf resources, but not on deep seabed mining.) A memorable exception—after years of public haggling on the issue—was the agreement to Soviet demands for an "anti-monopoly" provision in the deep seabed mining text, but in terms that U.S. experts perceived to have no real economic effect.

The U.S. and U.S.S.R. rarely had a common view of the relationship between their joint navigation objectives and the question of deep seabed mining. From 1970 until the oil shock of 1973, many in the U.S. largely viewed an accommodation with the developing countries on deep seabed mining as a bargaining chip for achievement of navigation, fisheries, and hydrocarbon objectives. From 1977 on, the U.S.S.R. held the same view, but in the meantime the U.S. had shifted most of its negotiating efforts to the achievement of a satisfactory deep seabed mining regime.

Both the U.S. and the U.S.S.R. kept oscillating between a desire to use their cooperative relationship to resist Third World demands and their desire to curry favor with other countries. Only on military and navigation issues did they unequivocally choose the former position. Thus, while there is some reason to believe that the Soviets were less certain about the right to overfly straits than the U.S. because some of their friends understood that this issue was linked to the U.S. capacity to maintain an independent strategic and logistical posture in the Mediterranean, the Soviets remained loyal to the principle with a minimum of prodding. The U.S., for its part, proved to the Soviets that it would have none of Lord Kennett; one example is the odd exclusion from the archipelagic waters principle of areas where the land-to-water ratio is greater than 1:1.

On the other hand, as the U.S. increasingly staked out a position as the chief obstacle to Third World objectives on deep seabed mining, the Soviets increasingly became unhelpful meddlers (from the U.S. perspective). This meddling nevertheless may have been prompted less by a desire to "score points" at U.S. expense than by a desire to assert a coequal status as a major maritime power.

Different styles of negotiation occasionally led to friction between

the two delegations. U.S. negotiators tended to favor gradual accommodation and narrowing of differences, with measured doses of flexibility and retrenchment. Soviet negotiators tended to resist any change in position for a long time, and then suddenly present a package of major (sometimes seemingly open-ended) concessions in a effort to strike a quick deal on a subject. Each side tended to feel that the other's style resulted in too many concessions. It is noteworthy that Secretary of State Kissinger at times seemed to echo the Soviet criticism of the style of U.S. negotiators in the way he approached his appearances at the Conference: on the other hand, the Soviets and Western Europeans were critical of the package he offered on deep seabed mining as excessively accommodating.

My own view is that the Soviet style is better suited to negotiations with a very limited number of participants and issues than to global negotiations on a very large number of issues. This is because that style is based on a clear identification of "sides" that is not attainable (and arguably not desirable) in a complex multilateral negotiation engaging many different interests of many different states.

It does appear that the Soviet Union was more confident than the United States in the efficacy of concerted action by the two powers in the negotiations. I believe there were strategic, political, tactical, and ideological reasons for this difference in perspective.

*Strategic*: It is perhaps a truism that the Soviet Union prefers to think of the world, and have others think of the world, in terms of spheres of influence. There may be many reasons for this. Perhaps a major one is its desire to discourage unrest and Western competition for influence in what it regards as the Soviet sphere of influence, particularly in Eastern Europe. Whether the Soviet Union regards this as a two-way street is open to doubt, and depends in part on how one would define the Western sphere of influence under such a world view.

*Political*: It would appear that the Soviet Union was slow to appreciate the degree to which the complex relationships between the United States and its allies in Western Europe, Asia and the Western Hemisphere were a restraint on U.S. policy. The relationship with Latin America is of particular importance in dealing with any question of rivalry between big powers and smaller countries.

*Tactical*: For substantive reasons, it was not to the tactical advantage of the United States to underestimate the importance of Third World positions on many issues. On the two resource issues of greatest economic importance—fisheries and hydrocarbons—the United States was drifting steadily in the direction of the coastal state solutions preferred by the countries of Latin America. Indeed, this drift was so evident in Congressional statements that the U.S. ability to treat its policy on these issues as one of concession to Third World demands lost credibility. In the end, the major U.S. bargaining chip on coastal state rights was its ability to influence the Soviet Union to make those concessions,

not in order to settle U.S.-Soviet differences, but in order to achieve agreement with the Third World on navigation and other issues on which the United States and Soviet Union agreed. (The irony is that a tactical posture that ultimately delivered enormous fisheries and hydrocarbons resources to the United States would keep the United States out of the treaty because of its Third-World-oriented treatment of manganese nodules that, according to some economists, still have no present economic value to speak of.)

*Ideological*: The Soviet Union never fully appreciated or sympathized with the extent to which global order considerations were factors that influenced U.S. domestic and foreign policy. At least four major tendencies in the thinking of some Americans can be identified in this regard:

- a desire to experiment in ordering the world by global legal and institutional means;
- a desire to tackle environmental problems on a global basis;
- a deeply held confidence that free access to knowledge (in this case marine science) was a key to global progress; and
- by the end of the Conference, a revived interest in free markets as a solution to domestic and global ills that began to take hold in the Ford and Carter administrations, and reached full bloom in the Reagan administration.

An important underlying consideration is that the U.S. and U.S.S.R. did not, at least at the outset, share the same degree of interest in global institution building. In the early years, the U.S. was effective in bringing the Soviet Union to pay more attention to its responsibilities and perspectives as a major world power, if only because the Soviets saw such concerns as an outward manifestation of major power status. However, as the Soviet interest in global institution building grew, the U.S. interest declined. By 1982, U.S. interest may have been at a point not far removed from where the Soviets began in 1967, while the Soviets also seemed to have slipped back.

The U.S.S.R. rarely understood the increasing frustration with the Third World, not by U.S. conservatives—who (perhaps like the Soviets) neither wanted nor expected much in terms of institution-building beyond third-party dispute settlement—but by U.S. liberals who were shocked and dismayed by the chauvinism and knee-jerk militance of many developing countries and some others.

Neither the U.S. nor the U.S.S.R. began the effort as an exercise in ideological politics. Indeed, the Soviets were as hostile to socialist-type experiments with deep seabed mining as the U.S. By the end, however, the U.S. had gone far beyond a mere demand that the deep seabed mining regime be hospitable to private companies operating out of market economies: it wanted the deep seabed mining regime itself to be a model of free market organization. This was not easily digested in Moscow, al-

though ideological objections as such were rarely raised.

In brief, the United States and the Soviet Union had a lot to learn about each other when their law of the sea relationship began, did learn a great deal, but in the end remained very much in the dark about their respective systems for ordering and changing priorities. It is fair to say that when the process began, the U.S.S.R. regarded itself as more stable—which translated into English as rigid—while the U.S. regarded itself as more flexible—which translated into Russian as unpredictable. When it was all over, each side felt the experience had largely confirmed its perceptions of the other, and all but said so.

In some ways they were both wrong. Each consistently refused to make basic concessions except when it concluded that the result without a treaty would clearly be worse than the result obtainable in the treaty: it is that which explains the U.S. "concessions" on marine scientific research and the Soviet "concessions" on fisheries.

In the end, both states lost sight of what they wanted from the Law of the Sea Conference in the first place. The Soviets ended up doing nothing to further, and some things to obstruct, the possibility that the United States could become a party to the Convention, thus sacrificing their goal of entrenched universal treaty law—a very important goal for a maritime state with strict consensual views regarding the content of customary international law. The U.S. ended up believing it could rely on the influence of "favorable" treaty texts on customary international law without accepting what it did not like in the treaty and without formally circumscribing the customary law processes by which an increasingly coastal law of the sea was rapidly evolving in the 20th century.

## Conclusions

I would draw a few general lessons from this experience that may be relevant for future multilateral undertakings.

1. It is possible for the U.S. and U.S.S.R. to work closely together with a minimum of mutual suspicion when goals are clearly defined, priorities remain reasonably constant, and the underlying issue is a question of the role of the major powers in world affairs. Ideological, political and military rivalry need not be a major impediment to a cooperative relationship with respect to such goals.
2. The biggest problem in sustaining a cooperative relationship is shifting positions or priorities on one side or the other. This is perceived as unreliability at best and untrustworthiness at worst. The mutual suspicions that underlie the basic U.S.-Soviet relationship place a premium on keeping faith in form and in fact to a degree that substantially limits flexibility, including the flexibility of a new government or leadership to rethink the policies of its predecessors.

3. Both governments are prone to paranoia in large multilateral settings. By cooperating with each other, they tend to reinforce their confidence in their ability to achieve their objectives in such settings, which makes them more flexible in dealing with the rest of the world—not less so, as many superficial analyses would suggest. Thus, for example, the developing country negotiators made a mistake in encouraging a U.S.-Soviet split on deep seabed mining. The split made each harder to deal with.
4. The U.S.S.R. has difficulty accepting the fact that when the issues shift from political or military questions to economic questions such as international trade and investment, it usually has a substantially less important role to play than the U.S. in particular, and the industrial states of the West in general. Soviet political insistence on co-equal treatment is a complicating factor that renders a cooperative relationship on economic questions more difficult to sustain.
5. Romanticism may be the strongest enemy of any cooperative relationship between the two governments. Throughout the negotiations, neither the U.S. nor the U.S.S.R. was prepared to make major substantive concessions to the other solely for the sake of maintaining mutual cooperation.

From these points, it should be clear that I believe that to the extent that the Law of the Sea Conference succeeded, it did so in large measure because of the cooperative U.S.-Soviet relationship forged prior to the Conference and the general absence of rivalry throughout most of the Conference. By this I do not mean that the two states imposed their will on the rest of the world, but that they negotiated effectively. Similarly, I believe the Conference did not succeed on deep seabed mining because the United States and some of its Western allies got backed into a corner on their own. If both the big powers and other states take a close look, they will discover that each gained far more of what it wanted on issues where the U.S. and U.S.S.R. were cooperating than on other issues.

This is not to support the cynical thesis that the United States and the Soviet Union are just two interchangeable big powers, equally good and equally bad. Anyone who forgets that there are basic values to which the United States at least tries to adhere that are not shared by the Soviet government is indulging in dangerous self-delusion.

The fact nevertheless remains that global multilateral negotiating fora are usually organized on the basis of the principle of sovereign equality of states. This approach inherently minimizes the influence and stakes of the most powerful states. In such fora, a militant and organized group of Third World countries, particularly when coupled with an uncertain or inward-looking West European Common Market and opportunistic behavior by other countries, stimulates feelings of isolation and frustration in both Washington and Moscow. In that setting, if the

U.S. and U.S.S.R. cannot deal confidently with each other, they may have difficulty dealing with anyone at all.

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