

CONSENSUS AND CONFRONTATION: THE UNITED STATES AND THE LAW OF THE SEA CONVENTION. Edited by JON M. VAN DYKE. [Honolulu: The Law of the Sea Institute, University of Hawaii. 1985. x + 576 pp.]

THE 1982 United Nations Convention on the Law of the Sea was opened for signature in Jamaica on December 10, 1982. It was the result of eight years of negotiations of the Third United Nations Conference on the Law of the Sea. The conference negotiations began in 1974 in Caracas, Venezuela, and continued at various sessions in New York and Geneva. 119 States signed the Convention in Jamaica in 1982. States have now begun to ratify the Convention.

The United States, however, was not among the 119 States which signed the Convention in Jamaica in December. After failing to secure the changes it deemed necessary in the deep-sea mining provisions, President Reagan announced in 1982 that the United States would refuse to sign the Convention and would not seek its ratification. The United States then announced a new Ocean Policy outside the strict terms of the Convention. The United States has been roundly criticized both within and outside the United States for its decision not to sign the Convention. Critics claimed that the pullout of the U.S. at such a late date amounted to an act of bad faith. They also alleged that the new U.S. Oceans Policy was an attempt by the United States to obtain the advantages of the Convention in terms of navigation rights and jurisdictional zones, without the disadvantages of the deep-sea mining provisions.

In January 1984, the Law of the Sea Institute located at the University of Hawaii, together with several co-sponsors, held a Workshop to examine the decision of the United States and its impact on the future of the 1982 Convention and the international regime governing the law of the sea. The group of experts at the Workshop, most of whom were either scholars or diplomats, represented all of the competing interest groups which were present in the Law of the Sea Conference itself. Professor Tommy Koh of Singapore, the President of the Law of the Sea Conference at the time of its conclusion, headed the list. Former conference delegates and scholars from Indonesia, Fiji, India and Malaysia represented the diverse interests of the developing countries. American representatives included academics, government officials and lawyers, and a representative of the U.S. oceans mining industry. Scholars from the Soviet Union and China were also present.

This book contains a report of the papers and discussions of this group of scholars and diplomats at the Workshop. Each chapter in the book is devoted to one of the major areas of controversy. They include the following: The Current Status of the Convention, Customary International Law and the Convention, Deep-Sea Mining, Freedom of Navigation, Fishing Issues, Environmental Protection, Enforcement and Dispute Resolution, and Costs and Benefits of Not Joining the Convention. Each Chapter includes an introduction by the editor, the papers presented, and the discussion by the participants. The papers and discussions were edited and re-organized for the publication, in order to group the materials by topics. In addition

to the introductions, the editor included several features to aid the reader in following the discussions. Sub-headings are inserted in the papers and discussions to enable the reader to see at a glance the title of the topic under discussion. The reader is also aided by footnotes and cross-references to other places in the book where the same points are discussed. Finally, the book contains a comprehensive index at the back which contains page references to every topic and subtopic, page references to the comments of each participant on each topic and subtopic, etc. These features enable the reader to easily locate all of the materials in the book on a particular topic.

The book will be of interest to students of public international law and to government officials and other persons interested in the legal and policy issues relating to the future of the 1982 Convention and the legal regime governing the use of the oceans in the coming years. Students of Public International Law should find the chapter on Customary International Law and the Convention especially interesting. One of the major issues addressed is the extent to which nations like the United States can take advantage of the Convention because many of its provisions can be regarded as customary international law, setting out rights and obligations for all States, not just parties to the Convention. Of special interest to readers in this region will be the discussions relating to rights of navigation and overflight in and over archipelagic waters and international straits, including the Straits of Malacca and the Straits of Singapore.

The discussions in the book make several things clear. Because of the failure of the United States and perhaps other Western powers to ratify the Convention, the legal regime governing the use of the oceans in the next decades will be less certain than it was hoped, but the long years of negotiation were not completely in vain. Deep-sea mining will remain an area of controversy, and will continue to be a source of controversy between the United States and most Third World countries. It will be much more difficult to fully implement many of the provisions of the Convention protecting the ocean environment if major powers like the U.S. fail to ratify the Convention. Whether the United States will be able to gain most of what it wants in the areas of navigation and overflight without becoming a Party to the Convention will remain to be seen.

It is also clear from the discussions in the book that by failing to ratify the Convention the United States will be less well off in at least four respects. First, there is a general feeling among the participants at the Conference that the decision of the United States at such a late date amounted to an act of bad faith. This feeling is reinforced by the belief that the United States decision was made not on legal grounds but for ideological reasons. Second, if the United States takes action to mine in the deep sea-bed outside the Convention, the United States will not only pay a political cost because of the views of Third World countries, but the legality of its action may be brought before the International Court of Justice for an Advisory Opinion. Third, the rights of the United States in areas such as freedom of navigation and freedom of overflight will not be as well-defined and certain as they would be if the United States were to ratify the Convention. Fourth, by remaining outside the Convention

the United States will not be able to use the dispute resolution provisions of the Convention to assist in enforcing its rights under the Convention.

While the participants at the Workshop failed to reach agreement on many of the important issues, anyone reading the book will have a much clearer understanding of the areas of controversy and the legal and policy arguments supporting the various positions. The answers will only be worked out over time by observing the actual conduct of states. The insights provided by a careful analysis of this book will enable the reader to be an informed observer of this process.

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