U.S. Readies for Confrontation on Sea Law

Ambassador Malone seeks broad rewrite of seabed mining rights, U.S. voting power; developing nations want few changes

As the members of the Law of the Sea Conference gather in New York this month to consider a final text of the treaty they have been writing and rewriting since 1974, they will confront for the first time the objections raised by the Reagan Administration. The U.S. Ambassador, James Malone, will ask the Conference to reopen the negotiations,

James Malone

which were all but complete in early 1981, and to reach an accommodation on six broad points of disagreement. If this proves impossible, Malone has said, the United States will not support the treaty. A final vote on the text is scheduled for the end of April, with signing to follow later in the year.

The Reagan Administration decided to drop out of these talks exactly 1 year ago, saying that it had some strong objections to points in the treaty already negotiated by Elliot Richardson, the ambassador of the preceding administration. Many of the objections have to do with limits to be imposed on companies mining the rich metallic ores of the deep-sea floor. U.S. companies are the leaders in deepsea mining technology, and therefore resent the new rules most keenly.

Other complaints are ideological. For example, the treaty would create an international Seabed Authority to govern mining and other ventures taking place in international waters. The Authority would have an adjunct called the Enterprise which would itself engage in commercial ventures. Some members of the Administration object to the very idea of an international bureaucracy which would both make the rules for competition and be a competitor itself. "An OPEC of the oceans," it has been called. Likewise, some object to the fact that the Authority would be run on a one-nation, one-vote basis, with the assured outcome of ideological bloc-voting that so often plagues the United Nations. In the Seabed Authority, however, the United States would have no guaranteed veto.

The Reagan Administration first asked for half a year, then a full year, to review its position. Now the review is over and Malone is presenting amendments to the Conference.

Meanwhile, other members of the Conference are trying to step up pressure on the United States to accept the existing text. A Peruvian delegate to the talks, Alvaro de Soto, speaks for the Group of 77 developing nations that frequently oppose the U.S. position. He says that he and his fellow delegates are "adamant" in their determination to end the talks this spring and adopt a treaty as scheduled on 30 April. "The prevailing feeling is, enough is enough, hold the line." De Soto says that Conference members are eager to hear what the United States will propose, but not to make fundamental changes or postpone the timetable, which allows only 3 weeks for negotiations before the vote.

De Soto believes the United States is negotiating in good faith, but he is concerned by the fact that the United States is simultaneously pushing to completion what he calls a "minitreaty" on seabed mining among the big industrial nations. State Department officials will not disclose the specifics, other than to say that this "reciprocating states agreement" is an interim document, designed to permit exploration for seabed minerals pending adoption of the treaty. If an agreement on the minitreaty is reached in March, as seems likely, the only nations prepared to sign at this time are the United States, Britain, and West Germany. De Soto says, "I have no reason to question the United States' good faith, but, on the other hand, the combination of this incredible delay and the decision to proceed headlong with minitreaty negotiations makes it really difficult to continue believing in good faith."

If a treaty is adopted and the United States refuses to sign, two significant penalties are foreseen. One is that American companies may find themselves in limbo. Banks would probably refuse to lend money on ventures that could not establish a clear legal claim to the minerals they hoped to exploit. Second, there is a concern that U.S. vessels would not be granted the same free passage that vessels of treaty signers would enjoy. This might entangle American ships and aircraft in a web of legal obstructions. On the other hand, as U.S. officials like to point out, a maritime agreement that does not include the greatest maritime power is not worth much.

Ambassador Malone has not made public the details of the Law of the Sea amendments he is proposing, but he outlined the general points of disagreement at a hearing before the House Merchant Marine and Fisheries Committee on 23 February. None of the changes would affect sections of the treaty dealing with navigation rights, scientific research, or environmental protection.

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- The Administration objects to a "protectionist bias" in the treaty which would "deter the development of deep seabed mineral resources," including manganese nodules and polymetallic sulfide deposits occurring near the recently discovered hot vents in the ocean floor. Less-developed nations are not alone in hoping to control metal production from

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the sea; Canada also would like to shield its mining industries against a flood of seabed metals. Malone objected to sections of the text that limit the number of mining operations from any single country, limit the volume of minerals produced, and grant the Seabed Authority broad powers to restrict mining.

- The United States wants the treaty to state clearly that companies meeting objective standards will be guaranteed a license to mine. It is feared that some companies might be excluded or constrained simply because their sponsoring nation was out of political favor.

In addition, Malone said that the section creating the Enterprise sets up "a system of privileges" which discriminate so strongly against private companies that most would be forced to obtain licenses by going into joint ventures with the Enterprise or with developing nations. Malone said there should be no bias against private, independent mining companies. The United States also would like to "grandfather-in" some protection for the companies that ventured into deepsea mining before the treaty was written.

- The United States is not enamored of the one-nation, one-vote rule for governing the Seabed Authority. Malone said the arrangement should be more realistic, reflecting the actual economic power and interests of the nations involved. In short, U.S. companies do not want to be prevented from mining the seabed by a filibuster of lesser nations in the Authority.

- The United States objects to the provision that two-thirds of the nations participating in the review conference could adopt amendments to the mining regime that would be binding on all parties. "This proposal," Malone said, "is obviously not acceptable when dealing with major economic interests of countries which have invested significant capital in the development of deepsea mining."

- The United States will not bargain on principles which it wishes to maintain in other areas of international law. For example, Malone said, the Administration will not give up its opposition to technology transfer in order to gain freedom from production controls.

- Lastly, the treaty must be likely to win Senate approval. According to Malone, this means for example, that the treaty should not commit the Enterprise, as it does now, to funding movements of national liberation, such as the Palestine Liberation Organization.

Some of the new American terms clearly would require fundamental changes in the text of the treaty. What will happen if a treaty is adopted without U.S. concurrence? De Soto says the effect will be "nothing definite, nothing unrecoverable." The United States may always join later, when circumstances are favorable. However, he adds, "The climate for U.S. investment in seabed mining outside the legitimately adopted convention, I think, would not be very propitious. That is what we call free market forces in operation."

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Clinch River Hits New Snag

The long-delayed breeder reactor project on the Clinch River in Tennessee was hit with a new setback on 5 March. The Nuclear Regulatory Commission (NRC) voted not to grant a procedural waiver that would have accelerated construction. Managers at the Department of Energy (DOE) had asked for the waiver in order to begin clearing the worksite this spring before the environmental impact review is completed. As a result of the NRC's denial, work will not begin until mid-1983 at the earliest. This delay could kill the project, which escaped a Senate hanging last year by a margin of only two votes.

The DOE's lawyers petitioned for special treatment last November, arguing that the breeder project met all the NRC's criteria for accelerated construction, as set out in rule 10 CFR 50.12. Bulldozing the site would do no irreparable damage to the environment, they said. The President and Congress had endorsed the breeder, satisfying the requirement that the waiver be in the public interest. Finally, the DOE lawyers said that following normal licensing procedures would work an unbearable financial hardship. The last point was the one on which the case fell apart.

Lawyers from the Natural Resources Defense Council and the Sierra Club challenged the claim that it would cost an extra $120 million to $240 million to follow the normal rules. Summoning an expert in utility finances, they pointed out that in the current financial climate, the DOE could probably come out ahead by postponing construction. After this argument was presented, the DOE shifted the basis of its calculations, but came up with the same result: delay would cost $120 to $240 million.

The DOE did its case no good by shifting the rationale in mid-argument. The two commissioners who have opposed the breeder for some time (Victor Gilinsky and Peter Bradford) were joined by a third, John Ahearne, who has not opposed it. This tipped the balance against the waiver.

Ahearne said the chief reason for voting as he did was that the DOE had done a "poor job" in presenting its case. DOE's petition, he said, "raised real doubts as to whether the applicant (DOE) understands what licensing means." Had a private utility given such a performance, Ahearne said during a preliminary meeting, the NRC would have considered "taking some action against the utility."

The DOE's case was hurt as well by letters from the attorney general of Tennessee and from three former members of the President's Oversight Committee on Nuclear Power—John Deutch, Bruce Babbitt, and Harold Lewis. They wrote that the NRC would undermine public confidence in the breeder if it granted a special exemption from licensing procedures.

NRC Chairman, Nunzio Palladino, and Commissioner Thomas Roberts voted for the waiver, saying that the dispute over economics is not as important as the fact that quick construction of the breeder would be in the national interest.

What will happen now? DOE Deputy Assistant Secretary for the Nuclear Reactor Program, Gordon Chipman, said after the vote that the denial of a waiver will make the breeder $150 million more expensive. Congress may view this as an intolerable new cost and simply vote to end the project. Another DOE official told the NRC last fall that if the wavier were denied, the project would be "dead in the water in March." It remains to be seen whether the impact will in fact be as severe as the DOE predicted.

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