THE LAW OF THE SEA AND THE NEW INTERNATIONAL ECONOMIC ORDER

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It is appropriate that a Conference on the New International Economic Order (NIEO) consider the Law of the Sea. At this time, the Third United Nations Conference on the Law of the Sea (UNCLOS III) is meeting in Jamaica for its final session. The United States has made it clear that absent important changes on the seabed mining text it will not sign the Law of the Sea Treaty. Most of the seabed mining problems that our Nation has with the Treaty reflect NIEO efforts in the negotiations. Great Britain has indicated that it will go along with the United States in not signing and it is likely that a number of other developed nations will also not sign because of a failure to resolve satisfactorily many of the major issues in the seabed mining negotiations that relate to the NIEO.

In trying to give a little of the background and appraise that background on the Law of the Sea in relation to the NIEO, I would like to divide my remarks into three different parts. First, I will give you a bit of an overview of the Law of the Sea negotiations. Second, I will focus on the problems and issues in the NIEO and look at how they have affected the Law of the Sea negotiation. And third, I would like to provide a generalized appraisal of the NIEO and make a series of recommendations for United States policy, looking generally at how to deal with these NIEO issues and more specifically at how to deal with the problems of the NIEO in the Law of the Sea negotiation.

Let me turn first to a brief history of the Law of the Sea negotiations. In 1958 the United Nations held its first Conference

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on the Law of the Sea which produced four Conventions: The
Convention on the Territorial Sea and the Contiguous Zone, The
Convention on the Continental Shelf, The Convention on the High
Seas, and a fourth convention that did not have as much legal
effect because it was not as widely adopted, the Convention on
Conservation of the Living Resources of the High Seas.

One of the issues not resolved in 1958 was the question of
the maximum breadth of the territorial sea. It could be inferred
from the Territorial Sea Convention, which set the maximum
breadth of the contiguous zone at twelve miles, that the territorial
sea could not go beyond twelve nautical miles. No explicit agree-
ment, however, was reached on the breadth of the territorial sea
in 1958. Because of this failure a Second United Nations Con-
ference on the Law of the Sea was held in 1960. The principal
issues at this Second Conference were the breadth of the territorial
sea and the area of coastal state jurisdiction over fisheries. The
Conference came close to adopting something called a “Six Plus
Six” approach: A six-mile territorial sea followed by a six-mile
fishery/contiguous zone. The United States, in pressing for a vote,
believed that it had the requisite two-thirds vote. However, it is
said that one delegate disregarded his governmental instruction
and the two-thirds vote was lost by one vote. As a result, there
was no successful outcome in 1960 and the question of the maxi-
mum breadth of the territorial sea remained undetermined except
by inference from the 1958 Conference.

Between 1960 and the beginning of the preparatory work for
UNCLOS III in 1967 and the formal beginning of the Conference
itself in 1973, a number of different strands came together to push
toward a Third Conference on the Law of the Sea. The first of
these strands was the lack of agreement over the breadth of the
territorial sea. The Soviet Union was particularly concerned about
this question as they made a shift from a small coastally-oriented
navy to a major blue water navy—the kind that we see all too
strongly today on the oceans of the world. As they made that
shift, they sought transit rights through straits used for interna-
tional navigation and further sought to freeze the maximum
breadth of the territorial sea at twelve nautical miles. That position
was also supported by the United States. In the 1960s there were
a series of initiatives on these issues beginning with a Soviet ini-
tiative in the General Assembly later joined by a United States
initiative.

A second strand was an electrifying speech by Ambassador
Arvid Pardo of Malta who, on the floor of the General Assembly,
called for the acceptance of a new principle, the common heritage of mankind, and urged that the resources of the deep sea bed should be distributed based on this principle. He argued rather strongly that this would aid substantially in the development hopes of developing countries. This issue stimulated the General Assembly and it almost immediately passed a series of resolutions. First, it endorsed this principle of the common heritage of mankind for the resources in area beyond national jurisdiction. Second, it called for a moratorium on the exploitation of such resources until a Third United Nations Conference on the Law of the Sea had been concluded. This moratorium resolution was opposed in general by the developed nations, including the United States. Lastly the General Assembly sought to establish a conference and begin preparatory work for such a conference.

An additional strand leading to UNCLOS III was the major change in the composition of the United Nations. There was a substantial increase in members of the United Nations that began about 1960. These new states had not participated in either the First or Second United Nations Conferences. But now these developing countries wanted an opportunity to participate in the formation of the law of the sea.

The final strand was the environment movement. The first United Nations Conference on the Law of the Sea, which occurred before the environmental movement, made very little mention of the environment and it was soon realized that the problems required study and solution. It was hoped that UNCLOS III would address the problems of the environment.

The preparatory work began in the Sea Bed Committee and for six years it operated at a fairly high level of representation. In 1973 the Law of the Sea Conference itself formally began. By 1975, after two substantive sessions of the Conference, there was a rather substantial consensus on most areas of the Law of the Sea and the Single Negotiating Text (SNT) was produced. Included in this work, for example, was a resolution on the breadth of the territorial sea, and a strong chapter protecting navigation through, over, and under straits used for international navigation. There was also a resolution of the problem of mid-ocean archipelagic states such as Indonesia, the Bahamas, and the Philippines, which grants their aspirations for "oceans political unity" while maintaining the freedom of navigation through broad sea lanes in archipelagic waters.

One of the most significant contributions to the law of the sea made by the 1975 Law of the Sea Text was the resolution
of the question of coastal state resource jurisdiction with a concept of a 200-mile economic zone. The Text resolved the issues of protection of the marine environment, particularly the difficult vessel-source pollution issue which resulted in an understanding that there would be a single set of international standards for dealing with vessel-source pollution. Any other outcome would have seriously crippled international shipping regardless of the reasonableness of the standards, by allowing 140 plus different coastal states to establish a multitude of differing standards for ship construction. This would be similar to placing a house on a railroad flatcar and sending it from New York to California and asking that it comply with all building codes enroute. Thankfully, this issue was resolved rather well. However, from the United States’ standpoint, the question of the degree of coastal state control over marine scientific research was not resolved well, although perhaps as well as would have resulted from a pattern of unilateral claims, absent a treaty.

The difficult problem of deep sea bed mining remained unresolved—along with a few other issues—and its resolution required all of the time from 1975 until 1982. The debate centered on the type of regime and machinery that would be established for the area beyond national jurisdiction—the deep sea bed—in order to implement the Common Heritage concept. The difficulty in reaching a common solution reflected a wide difference in the starting positions of the negotiating sides in the discussions.

On the one hand, the Group of 77 developing states sought a single operating monopoly that would directly mine the deep sea bed on behalf of the international community. On the other hand, the developed nations sought a licensing system that would provide revenues to developing countries based on a revenue sharing system from the companies engaged in deep sea bed mining. The eventual result was a compromise that is now known as “the parallel system” or “the balanced development system.” This was an effort to say that half of the deep sea bed area would be mined by an international enterprise and half by private companies or state enterprises under a licensing system. In the real world, however, it was understood that most of those operations on the enterprise side would be freely negotiated joint ventures between the enterprise itself and private entities or state run companies. On the other side of the system, there was to be an assured access system in which all nations or all companies sponsored by nations would have a right directly to mine the resources of the deep sea bed.
As this negotiation on deep sea bed mining was played out from 1979 to about 1981, there developed in the United States a very strong reaction against the negotiations. There was a feeling that the text which the delegation under the Carter Administration had accepted ought not be accepted by the United States, and that this text would not, in any event, get by any United States Senate. While the degree of criticism of the text varies with the commentator, there are nevertheless a few common concerns. One is a feeling that the enterprise side of the system was developed fully but that there was no assured access side of the system since there was really a great deal of discretion on the part of the centralized international authority in which land-based producers would have a substantial voice. As a result, there was really no assurance that there would be access to the resources of the deep sea bed.

A second problem was the balance in the decision-making machinery in the international authority that was created. The power of the Council of the Authority was not clear and it was unknown if its decisions would prevail over that of the Assembly. The best interpretation is that the decisions of the Council would prevail. But there is significant ambiguity under the text as to whether the one-nation, one-vote assembly would not have its policies control those of the Council. This would, of course, be a reversal of the system we are familiar with in the United Nations in which Security Council decisions are paramount. Additionally, unlike the Security Council which has a veto for major powers, the Council of the Authority had no such veto system, nor even a chambered voting system. Instead, the Council had thirty-six members determined by a series of functional categories. Half of these were simply a reflection of regional groups as used in the United Nations caucing arrangements in general: that is, The West European group, and the so-called Socialist Group, which is really the Soviet Union and Eastern Europe, the Asian group, the Latin American group and the African group. While it was clear that the United States and other developed nations would not alone be able to take affirmative action, it was unclear whether they would be able to take blocking action which was the practice in the Security Council. While there were a few provisions on which consensus was required in the Council, the range of such issues was fairly limited. Moreover, one was dealing with a system which, to work effectively, required affirmative action. It was not a system in which a negative vote would have been workable, even if we clearly had it.
The provision which caused the greatest political concern in the United States was a provision that the Soviet Union would have virtual control over three seats through time on this Council by representation of the "Socialist group" in a variety of places where they did not functionally fit. Unlike any other group, they were simply added specially. In contrast, the United States would have no guaranteed seat and under the principle of "rotation off," might at some time in the future be denied a seat. It appeared highly likely that most of the time, particularly in the early stages, the United States would, however, be represented on the Council. But the institutional concern of creating three seats for the Soviet Union to one that might be rotated off for the United States was a defect that created much domestic concern.

In addition to the question of continued representation, there was ambiguity as to whether the P.L.O. was going to share in the revenues from deep sea bed mining generated from American firms. One can easily imagine the enthusiasm with which that issue would be greeted on Capitol Hill and the debate in the Senate where a two-thirds vote is required.

There was also ambiguity as to whether at the end of the review period, the side of the system that had assured access, such as it was, might be phased-out altogether. The U.S. Delegation had accepted a provision that said at the end of that twenty-year test period the system could be revised by a two-thirds vote, which would easily be controlled by the Group of 77. Ultimately, that was raised to a three-quarters vote, but that still did not help developed nations, since the Group of 77 could easily control a three-quarters vote as well and at that point the vote would become binding on the United States. Any change at that point would be binding on all the signatories of the treaty whether or not they subsequently accepted the amendment. That, of course, is not the normal amendment process in international law for multilateral treaties as, for example, reflected in the provisions of the Vienna Convention on the Law of Treaties.

While there were several other problems, these were the core issues. They generated major national debate. As the Reagan Administration came into office, there were letters from the outgoing Democratic Senate, as well as the incoming Republican Senate, which strongly indicated that there would be no Senate acceptance of the Law of the Sea Treaty until these provisions on deep sea bed mining could be cured. It seems reasonably obvious to anyone who has been observing the Congress over prior years that the
Senate simply would not ratify the Treaty without changes on sea bed mining.

The Reagan Administration also had a review team looking at this issue. They were strongly advised that because of the virtual certainty of rejection by the United States Senate it would be necessary to go back to the negotiating table to try to get changes on these deep sea bed mining provisions. The negotiations continued for another two years, though one of those years was consumed in the effort to arrive at a new position within the United States. At the end of that period, the United States went back to the negotiations and unfortunately the needed changes could not be obtained in the time remaining. One of the great tragedies that occurred was that while the United States was not really the active party in seeking a vote on the text, we did not actively seek to block the vote. Others actively sought to promote finalization of the Treaty. That was a severe miscalculation on the part of Conference leadership. Apparently they were receiving advice that the United States really had no choice, that it was going to come into this Law of the Sea Treaty and the changes were, therefore, unnecessary. But that advice was simply out of touch with the domestic reality in the United States and the seriousness of the problems remaining to be resolved. In any event, the Treaty was voted through. The United States, Israel, Venezuela and Turkey voted against its passage while the Soviet block abstained and most developing countries voted for the Treaty. After the vote, the Conference completed the work of the Drafting Committee and now the process is being officially completed in Jamaica with a signing ceremony taking place virtually simultaneously with this discussion.

Let us now shift to the second area, that of efforts to examine the NIEO and to examine with particularity how it has impacted the law of the sea. There are three areas of focus about the NIEO which should be identified as of relevance. One is the matter of timing. This NIEO movement originated sometime in the period after 1967. The most identifiable starting point was the Group of 77 Charter of Algiers in 1967, followed again by an Algiers meeting in 1973 and, of course, by the Sixth Special Session of the General Assembly. Interestingly, this interval coincides almost precisely, though perhaps coincidentally, with the negotiating period of the Third United Nations Conference on the Law of the Sea. It began in 1967 with the beginning of the preparatory work and is now pending as the treaty is concluded. That coin-
cidence has had a rather significant impact on the deep sea bed mining area.

The second area of focus is the functional range of issues that are at stake under the NIEO. The range is actually quite broad. Within this range is the question of certain kinds of preferential trade treatment for developing countries, including the question of commodity stabilization agreements and the issue of so-called fair pricing of commodities, and the indexation of natural resources for exchange of manufactured goods and so forth. Also included are issues involved in investment by transnational corporations, particularly the demand for control over sovereign resources which began as the principal centerpiece of the NIEO. This demand constituted a broad attack on those principles of international law which were recognized by the West with respect to the prompt, effective and adequate payment of compensation for nationalization and challenged the principle of maintenance of the integrity of agreement. Also considered in the NIEO is the monetary system, particularly such questions as development financing. How should development financing take place? What kinds of obligations are there for development, and so forth. Also of concern are industrialization policies. Should there be mandatory transfer of technology to developing countries to increase the manufacturing and technology sectors to prevent their dependence on raw materials? And there is, of course, the question of the use of the common areas basically for the benefit of developing countries. This latter question is really the principle of the common heritage of mankind that we see in the negotiations on law of the sea and space. There has been, around the edges, some discussion about trying to apply the common heritage of mankind that we see in the negotiations on law of the sea and space. There has been, around the edges, some discussion about trying to apply the common heritage concept to the Antarctic area, but this appears unlikely because of the strongly held national claims.

The third area of the NIEO to bring into focus is the range of underlying philosophical assumptions about economic development that are reflected in the general debate. It is true that some of the arguments for the NIEO come from people who are quite moderate, from groups which basically share an orientation to a market approach but nevertheless feel that a variety of provisions in the interest of developing countries are strongly needed. At the other extreme there is a very substantial group which fundamentally opposes market economies and is in favor of strong
centralization of economic development—that is, support for state centrist approaches in general. This group is not necessarily sympathetic to the notion of maintenance of integrity of agreement or of private ownership of property. For example, consider the comment of a proponent of this particular viewpoint, a Mr. Samuel Asante who wrote the following:

Concepts such as ownership, contracts, corporate personality which appear quite innocuous within the context of a municipal legal system may have grave implications when transplanted into the sphere of transnational transaction. It is an established legal tradition in Europe, and to some extent America, to refer to these legal concepts as the colorless tools of the legal system but any perceptive observer will concede that these concepts connote discrete value systems of a distinct individualistic bias which are often manifestly opposed to the aspirations and development goals of new nations. They should therefore not be accorded the status of universal postulates.

This observation, certainly not new to the developing world, questions the very notion of property and ownership, which is a starting point for economic development and for stability of expectations in capital flow. Mr. Asante’s comment is cited not merely to paint everything in the NIEO with that particular hue, but rather to indicate that from first-hand experience in the law of the sea negotiations, I feel there was, in much of the underlying debate on deep sea bed mining, a widely shared view on the part of developing countries that supported state centered models and opposed a free market model in general. That, again, is not a unanimous view at all, although it is one that seriously complicates efforts at discussing the NIEO and working out a reasonable solution.

What have been the specific issues of the NIEO that have influenced the law of the sea? Before the answer there must be a caveat. Though the Conference seems to have floundered on the rocks of the NIEO, happily most of the issues at stake in the negotiations, except for deep sea bed mining, were not significantly affected by the NIEO. Deep sea bed mining was the major area where there was a strong Group of 77 position that seemed generally adverse to that of the developed nations. On most other issues, such as the navigational issue and the question of access to fishery resources within 200 miles of coastal states, there was a general division between land-locked states and states having access to the seas and also between other groupings of states. For the most part those issues were resolved fairly early.
Let me now turn to some of the issues of the NIEO which were affected in deep sea bed mining. First was the notion of the common heritage of mankind and the principle that we will develop the commons with revenue sharing for the purpose of aiding developing countries. Second, though never really stated anywhere as an underpinning of the NIEO was the strong bias, which has just been described, in favor of a state centrist model. This led to the demand for a single operating monopoly that would directly mine the deep sea bed on behalf of the international community to the exclusion of private companies and even state run mining entities. Third, if there was any one issue that was the most important to the developing countries in general, it was the push for production limitation and commodity stabilization. This is a core of the NIEO. Land based producers were concerned that any new production from the deep sea bed might harm their foreign exchange earnings from existing land based mining facilities. Finally, there was the issue of whether or not the decision making machinery should be under the control of the one-state, one-vote principle without a chambered voting system and with no consideration given the “principle of differential affect.” There was a strong NIEO push simply for a one-nation, one-vote, control in the basic organization itself. Moreover, according to the review clause, a simple three-quarters vote by the developing countries would force the developed nations to adhere to whatever changes were made at the end of the review period. There was even a reluctance to have a system of effective dispute settlement applied to the deep sea bed mining area, though it had been accepted elsewhere, since the Group of 77 was concerned that such a system might curtail the power of their centralized control.

The final point I would like to make concerns a more generalized appraisal of the NIEO. Following my own admonition this morning that we be candid for appraisal by others, here I am certain to tread on sensitive ground. In doing so, I will venture to suggest what United States policy ought to be with respect to the New International Economic Order and Law of the Sea related issues.

With respect to the general issue, it does seem to me that all of us, and particularly the Western countries, should be sensitive to the underlying problem. Fifty percent of the world population, excluding the People’s Republic of China, has one-eighth of the income, and lest we forget, there are basically two camps of developing countries with radical differences between them. Thirty
percent of the population of the world has three percent of the world income. That latter group averages $120 per capita annual income, which is approximately one-fifth of the per capita income of other developing nations and approximately three percent of that of the developed market economies. The general question is what is the best way to deal with that problem, a problem which is important for the West to address, among other reasons, because of our shared Judeo-Christian ethical traditions. How best to address this question is a matter of immense concern, and we ought not to let the strength of the underlying basic moral premise get in the way of very careful appraisal of the effects of individual prescriptions to deal with development.

The single most important factor in dealing with the problem is the health of the global economy and the strength of the network of trade and investment around the world. There are other important factors, but universal economic strength is essential and it is important that we focus upon it. Consider one fairly representative year for the United States, in this case, 1980. A fairly representative country in this connection, the United States gave seven billion dollars in direct aid to developing countries in 1980. We, however, purchased one hundred and eighteen billion dollars of imports from developing countries in 1980. In that year, 38 percent of United States exports went to developing countries. Of that total, 8 percent went to OPEC nations and 30 percent went to other nations. In the same year, the amount of foreign direct investment was about fifty two billion dollars. Further evidencing this importance of the world economy as a whole is the luck the world has had with the global agenda and the NIEO, particularly the consequences for developing countries, in a time of severe oil induced recession in the world economy during the 1970s. With respect to efforts contemporaneous with both oil stocks, virtually every effort to move forward with the global agenda and the NIEO collapsed when there was a substantial global downturn. The first time it happened, virtually all discussion ended on NIEO issues. The second recession has had almost the same effect though there is a greater realization now of the debt recycling problems and the liquidity problems because the difficulties have been more acute at the end of the second downturn than they were at the end of the first.

The factors which underlie this linkage with general global economic health are fairly obvious. First, when you get the kind of downturn that we have had, a premium is placed on every
nation increasing its exports. They tend to do that by doing whatever is necessary, including the increase of subsidies to raise exports which then will compete more with developing country exports. There is also a temptation to establish and practice protectionist measures. If one is to control inflation in the aftermath of the first and second oil shock there must be more stringent monetary policies which increase the interest burden very dramatically at all levels of foreign debt. And then there is the problem of a decreased ability to provide real aid to developing countries with respect to the overall GNP, as well as the political problems one typically has at home which militate against more generous aid policies. In short, the overall global economic downturns are particularly devastating for developing countries. One additional reason why the breakdown of the economic system is so devastating for developing countries is dependence on raw materials whose prices frequently fluctuate and thus lose a great deal of their general value in periods of major economic downturn.

All of this suggests two of the principle criteria that we ought to use in appraising the NIEO. First, to what extent is this a useful technique in trying to improve overall global economic health? Second, does it have harmful effects with respect to enhanced economic efficiency and overall global GNP? Are we doing something to inhibit the flow of investment, to inhibit the flow of trade, or are we doing something to enhance the flow of trade and investment, vital for the hopes of developing countries? In order to fully understand the NIEO in this regard, one must have a realistic understanding of the national interest of developed nations, as well as a familiarity with purely economic forces. Developed nations are unlikely to accept extreme measures. There is a need for realism for democratic political acceptance. At no time is that more important than at a time of a severe economic crunch. Even more importantly there are examples of situations in which the actual push for a NIEO will directly harm the development aspirations of developing countries. One of those that was the initial centerpiece of the NIEO was the call for sovereignty over natural resources. No one would quarrel if this took the form of an insistence on fair contracts or on full disclosure or on complete opportunity to understand all of the issues on both sides and have fair representation in dealing with the issues. But when it takes the form of an attack on the integrity of investment and contract, then any economist can tell you that the affect is going to be to increase the cost of investment in foreign developing
countries, to decrease the amount of direct foreign investment and to decrease the potential economic return for the developing countries.

It is sad, but to the extent that the developing countries succeed in this major effort to prevent full payment of compensation and to weaken protection of the integrity of agreement, they will have harmed their own development aspirations. If we move away from that and take one of the issues with which I am familiar, that of the code of conduct for liner systems, which was negotiated in UNCTAD, we find that developing countries rightly had a complaint about the liner conference system. It was, in essence, a cartel system that did not give them a fair opportunity to compete. That is exactly the complaint that the United States and Great Britain had at the turn of the century about the liner conference system. We responded by telling cartel nations that they could have an open liner conference and that we were going to regulate them if they had the conference. But the developing nation NIEO response took the form of an out-and-out non-tariff barrier, something called a 40-40-20 system in which 40 percent of the trade between two countries would be carried in the flag vessels of each of the countries and 20 percent would be open to cross traders. That is precisely the proposal that the United States had rejected domestically over and over again for one simple reason: it costs the consumer more by causing a more inefficient shipping sector (although if all others practice this we may be driven to it defensively). What will be the cost for developing countries? The answer is that unless they luck-out with some extraordinary economy of scale that happens to be created by this, it is highly likely that they will simply contribute to their own impoverishment and harm the development aspirations of developing countries.

When we look at the question of commodity stabilization agreements, we find more sadness because, for the most part, they are going to achieve little of value for developing nations. One can, of course, be sympathetic with the underlying problem of the extreme volatility of fundamental commodity prices. If there were a way to damp it out of the process, it would be helpful to everyone, developed and developing nations alike. The problem is that virtually every single scheme for commodity stabilization that has been tried simply does not work. The system is extremely complex in terms of the operation of the overall marketplace and to place as a major centerpiece the notion of commodity stabiliza-
tion agreements has in fact been to pin our hope on something that economically has not produced any particularly useful results, except at the margin. Moreover, commodity stabilization has never been achieved in the oil market—the one area where we could have had some commodity stabilization success, because there you have a quasi-monopolization with one or two surplus producers controlling a huge segment of the surplus oil production, Saudia Arabia in particular. It might have been possible to have had a commodity stabilization agreement to dampen the shocks in the world oil market that have been so harmful, particularly to developing countries. And yet because that was the paradigm case of the success for the developing countries of producer cartels, there was no effective move to have a commodity stabilization agreement in oil. The most devastating economic effect of the changes in the world oil market on developing countries has been the enormous transfers of wealth following the first and second OPEC oil shocks. I estimate that this was the largest transfer of wealth that has ever taken place in the history of the world and the burden has fallen primarily on developing countries which produce no oil. And, as we have seen, even some oil producer-developing countries, such as Mexico and Venezuela, have not altogether escaped the problem.

If we were to look at all of this with consideration of its relevance for the Law of the Sea Conference and the deep sea mining negotiations, it seems to me that in working out a compromise, it is a question of trying to separate those things that are particularly harmful from those things that are simply required. We do live in a real world and we do have to make some accommodations. The parallel system is a reasonable compromise provided there is a real assured access system for one-half of the deep sea mining operations. It would seem to me that the kind of decision making structure—particularly the differential between the Soviet guaranteed seats and those for the United States, which is certainly not a NIEO issue—is institutionally unsound and ought not to be accepted by the United States. I would predict that it will not be accepted by any Senate. My guess is that a pragmatic commodity stabilization provision could be worked out which, on the one hand, would basically leave undisturbed the free market place, while eliminating the worst possible scenarios that concern the land-based producers. I do not think that in the current provisions we are all that far from resolution of that issue. The review clause is absolutely unsound, not only for the United States and the law of the sea negotiation, but in principle. It is generally
not a good idea for the West to accept a fundamentally new kind of multilateral treaty amendment process that says that at the end of a 15 to 20 year period we can simply be phased out of participation by a three-quarters vote.

Finally, let me make several general comments. On the NIEO, we need to recognize that we are in a struggle for law. It is a very important struggle for the kind of normative system we will have in international economic affairs. It should be taken seriously, and I think it has been the tendency of realists to say that this is just a lot of rhetoric, that we do not need to debate the issue, that we can just abstain on this or that resolution, for to speak out will be "divisive." I believe that this is not only a disservice to ourselves, but also a great disservice to the NIEO and the effort to reach real agreement on real problems between developing countries and the developed states. One of the reasons nothing has happened after all this rhetoric is that it has been this approach in general which has been adopted. I believe that John Shepherd is absolutely right when he indicated in his opening remarks to us that we ought not to accept neutrality. These are issues that are important on the merits and I do not believe that a call for intellectual integrity is something that we should assume is a license for what I would call the intellectual cop-out or the "even-handed" cop-out. We can no longer go about saying on the one hand "here's this" and on the other hand "here's that," and we need not make any judgments about it and we need not take a value stand and make an argument one way or another. I may be absolutely wrong on these issues, but if I am right, then what we have, in some of the more extreme rhetoric in the NIEO at least, is something that is profoundly harmful for developing countries and something that has no realistic chance of acceptance in the international system. If that is the case, then we need to admit it so that we can move forward to a more realistic debate.

Finally, with respect to law of the sea itself, I would hope very much that we would pursue a dual track policy in the United States. Clearly, when the rest of the world signs the Law of the Sea Treaty and we, along with some other developed nations, are unable to accept, it is incumbent upon us to effectively protect our interests and to work out non-treaty alternatives. It seems clear to me that this approach is going to be pursued and would be pursued under any American administration. I would urge, however, that we simultaneously seek to open a negotiating track on the law of the sea. My own feeling is that the issues remaining are not impossible to negotiate, though they may be very difficult.