

LAW OF THE SEA: U.S. POLICY DILEMMA. Edited by Bernard H. Oxman, David D. Caron, and Charles L.O. Buderer. San Francisco, California: Institute for Contemporary Studies Press, 1983. Pp. 184.

A new book, edited by Bernard H. Oxman, David D. Caron, and Charles L.O. Buderer, *Law of the Sea: U.S. Policy Dilemma*,¹ records the most recent chapter in the saga of the bureaucratic and political battles that have worn thin the now almost invisible fabric of United States law of the sea policy. As a record, Oxman-Caron-Buderer is a useful supplement to Ann L. Hollick's outstanding book, *U.S. Foreign Policy and the Law of the Sea*,² that elaborates the development of United States law of the sea policy from 1935 to the end of the Carter administration in 1981. The new book more or less presumes the background provided in Hollick and goes on to expose the development of policy in the first two years of the Reagan administration. The Oxman-Caron-Buderer book is, unfortunately, rather slanted to the recent positions of the Reagan administration and does not give fair play to those ideas that animated U.S. policy makers before 1981.

The book is composed of nine essays and a "Summary of the Law of the Sea Convention"³ written by Oxman that might profitably be read first by anyone without a good working knowledge of the new Treaty and its background. The short first essay ("Reconciling Domestic Principles and International Cooperation")⁴ by Caron introduces each of the eight essays that follows. This is a United States view of the law of the sea that surprisingly concludes that, although more than 120 nations signed the 1982 Convention, the Conference is a "failure" because the United States refused to sign.⁵ Caron acknowledges that there were "institutional problems in the formation of American policy,"⁶ a fair understatement.

Only one foreign author is included. Arvid Pardo, the Maltese initiator of the United Nations seabed debate in 1967, laments

¹ *LAW OF THE SEA: U.S. POLICY DILEMMA* (B.H. Oxman, D.D. Caron, C.L.O. Buderer, eds. 1983) [hereinafter cited as Oxman-Caron-Buderer].

² A.L. HOLLICK, *U.S. FOREIGN POLICY AND THE LAW OF THE SEA* (1981).

³ Oxman-Caron-Buderer, *supra* note 1, at 147-61.

⁴ *Id.* at 3-10.

⁵ *Id.* at 10.

⁶ *Id.*

("An Opportunity Lost")⁷ that "[m]ankind has lost a truly historic opportunity" by permitting the international seas to be carved up into national realms.⁸ To all those who say the Treaty goes too far in creating an international oceans regime, Pardo says we have already given up too much to national ambitions.

Leigh S. Ratiner ("The Costs of American Rigidity"),⁹ W. Scott Burke and Frank S. Brokaw ("Ideology and the Law of the Sea"),¹⁰ and Robert A. Goldwin ("Common Sense vs. 'The Common Heritage'")¹¹ contribute the core of what the Preface calls the book's "controversy."¹² Each of these three pieces attempts to be more hard-nosed and "realistic" than the next. All four authors take a more or less narrow nationalistic point of view in judging the Treaty. Only Ratiner believes that the Treaty, on balance, serves United States national interest. What this "controversy" misses are the voices of "internationalists" like Elliot Richardson, who, however despised by the "realists," were so very influential in the formation of United States law of the sea policy in the Johnson, Nixon, Ford, and Carter administrations. The book's "controversy" too often merely reflects the controversy within the Reagan administration itself.

Two unsurprising essays on ocean mining follow: Lance N. Antrim and James K. Sebenius ("Incentives for Ocean Mining under the Convention")¹³ and Lewis I. Cohen ("International Cooperation on Seabed Mining").¹⁴ The first concludes that "[f]or straightforward economic reasons, deep ocean mining is not likely to commence for several years."¹⁵ The second says that most seabed mining countries disapprove of the mining aspects of the Treaty.¹⁶ The book has no in-depth look at any of the other important issues addressed by the Treaty (e.g., straits, fishing, security, pollution) and thus implicitly adopts the present official United States attitude that these other oceans issues should give way to mining in-

⁷ *Id.* at 13-25.

⁸ *Id.* at 25.

⁹ *Id.* at 27-42.

¹⁰ *Id.* at 43-58.

¹¹ *Id.* at 59-75.

¹² *Id.* at ix.

¹³ *Id.* at 79-99.

¹⁴ *Id.* at 101-09.

¹⁵ *Id.* at 98.

¹⁶ *Id.* at 109.

terests or to ideological concerns or to a combination of mining and ideology.

Finally come two general pieces, one naive, one sophisticated. Joseph S. Nye, Jr. ("Political Lessons of the New Law of the Sea Regime")¹⁷ writes that "[p]erhaps the most important lesson from our experience with the Third Law of the Sea Conference is that we need to prepare ourselves much better before we enter multilateral negotiations."¹⁸ This seems wide of the mark; if anything, the United States and the Conference were over-prepared—look at the result! Oxman's "The Two Conferences"¹⁹ is balanced and insightful. His lessons are those of the diplomat:

If the law of the sea teaches any lesson, it is that in daily encounters with coastal nations around the globe the United States must be prepared to deal effectively and unromantically with the few who wish us ill and the many who have priorities that differ from and may conflict with our own.²⁰

As mentioned above, the book is a helpful supplement to the recent record of the development of United States law of the sea policy. Although the book does not give a good picture of the issues in a broad way, it does help us see what has been happening in Washington policy-making in the last few years. The articles reach some important points of agreement. First, it appeared to many that it was unlikely that the Law of the Sea Treaty could have been approved in the Senate. Thus, it may be that a string of Presidents (Johnson, Nixon, Ford, Carter) were negotiating a treaty that they were ready to sign but which they might have had difficulty in ratifying. Second, there was some hope at the outset of the Reagan presidency that by taking a "tough" stand at the negotiating table, the new United States administration could change enough of the Treaty (or appear to change enough of the Treaty) to make the Convention palatable to the Senate. Third, the Reagan administration was not, however, ultimately interested in "saving" the Treaty in this way; rather the administration chose to use the law of the sea negotiations as a vehicle for demonstrating how different this administration was from previous administrations and for showing that the United States would not be pushed around by the Third World and its demands for a New Interna-

¹⁷ *Id.* at 113-26.

¹⁸ *Id.* at 125.

¹⁹ *Id.* at 127-44.

²⁰ *Id.* at 144.

tional Economic Order. Fourth, the real controversy in the United States today about the Law of the Sea Treaty is not really about deep sea mining or about any other specific issue. Rather it is an ideological debate about the role the United States should play in international relations in general and in international organizations in particular.

This is an old and very interesting debate. Americans have long been torn between isolationist and interventionist views about international politics. On the one hand, we are tempted to leave to others the strife and the give and take of world politics and to steer clear of the unclean compromises that are so often part and parcel of the game of international diplomacy. On the other hand, we are tempted to take a role in world events, knowing that foreign developments can and do affect us, and to try to influence and amend the positions of other states even if that means compromising some of our own positions in return.

The Oxman-Caron-Buderi book does not really help us in illuminating or resolving this conflict, either in general or with particular reference to the law of the sea negotiations. Excepting Oxman's balanced piece and Pardo's lament about opportunities lost, the book is composed of variants on the isolationist theme. There is no good clear expression of the interventionist opinion that argues for active United States involvement in international organizations and for compromising some issues, e.g. ocean mining, for gains on other issues, e.g. passage through straits. Since this interventionist viewpoint was so influential in United States policy-making before the Reagan administration, it was a mistake to give it such short shrift in what was meant to be a presentation of the law of the sea controversy. Furthermore, it was a mistake to give so little attention to foreign points of view. The book thus has a useful, though narrow, focus on policy-making of a certain sort.

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