pipeline was not the result of a eastern consensus. COCOM however is still active. In November a West German appeals court reversed a refusal by a Hamburg judge for a search warrant of the Swedish container ship Elgaren due to berth in Hamburg on its way to the USSR. The search produced U.S. computer equipment for guiding vessels and tracking troops valued at US$2.5 million: Time 28 November 1983, 17. Action under the boycott in the U.S., U K. and Sweden, as well as disagreement in COCOM is noted in The Economist 17 December, 1983, at 43.

GATT SUBSIDIES CODE

Nearly all industrial countries are committed to the 1960 Declaration Giving Effect to the Provisions of Article XVI: 4 of the GATT whereby export subsidies on industrialized products are prohibited. Non signatories, especially developing countries are free to use export subsidies provided these are notified. Subsidies of agricultural products are subject to a different regime - they are not subject to remedy unless they garner "more than an equitable share of world trade" based on a "previous representative period" GATT Article XVI: B - a difficult provision to interpret as seen in the sugar dispute between Australia and the EEC. Under U.S. law, countervailing duties could be imposed on any subsidized imports. Under the U.S. Tariff Act, 1930 proof of "material injury" was not a prerequisite for the imposition of countervailing duties In the Tokyo Round, the U.S. accepted the insertion of this prerequisite in the new Code in return for EEC acknowledgement that subsidies ostensibly for domestic purposes, as well as export subsidies, are subject to the new regime. (GATT Code on subsidies and countervailing Duties). Most developed countries including Australia are signatories to the code.

Singapore is now reported to be considering acceding to the code to forestall the imposition of countervailing duties by the U.S. on the import of certain refrigerators manufactured in Singapore. These duties may be presently imposed without the proof of "material injury". Signing the code will ensure that "material injury" must be proved; however, signing the code will leave open the potential examination by the U.S. authorities of all manner of domestic subsidies e.g. tax holidays, investment allowances etc. This will be of interest to Australian companies which have been attracted to invest in Singapore for these reasons. The question also illustrates the maturing of the Singapore economy and the effect this may have on its status in international economic law. In a number of areas - trade, export credits, finance - special regimes apply to those who have the status of a developing country.

D.F.

THE LAW OF THE SEA

The refusal of the United States to sign the UN Convention on the Law of the Sea, and her earlier enactment of sea bed mining legislation followed by that of other technologically advanced powers have set the theme for a major argument in international law which at some future time may be the subject of a request for an advisory opinion of the International Court of Justice. The economic importance of sea bed mining cannot be underestimated. Four metals of major commercial interest are found in the manganese modules which have been discovered on the sediment surface of the sea at depths greater than 6,000 feet. The most valuable deposits are believed to lie in the low latitude areas of the eastern and central Pacific. All nodules of economic interest are found in areas beyond the limits of national jurisdiction. All of the four metals are of considerable importance to the U.S. Manganese is essential in the production of steel, and nickel is essential in the production of stainless steel and high performance alloys. Present reserves on land will expire in 51 years. Cobalt is used for the production of sophisticated electro magnetic devices used in communications and control systems; known land reserves will

expire in 55 years. Known land reserves of copper will expire in 22 years. The U.S. imports 70 per cent of its domestic consumption of nickel, 98 per cent of its domestic consumption of cobalt and maganese and 15 to 20 per cent of its consumption of copper. Substantial reserves of manganese are located primarily in South Africa and the Soviet Union.

The dispute may be expressed simply in these terms. The nodules are either res nullius and therefore capable of acquisition or they have become res communis, and therefore their exploitation is a matter for the international community. Exploration may therefore only be undertaken under a regime such as that of established by the United Nations Convention on the Law of the Sea, signed at Montego Bay in 1982 by a number of countries including Australia, but excluding the United States.

The United States has not only adopted unilateral legislation, that legislation provides for what may be termed a reciprocating states regime where by other states unilateral legislation which complies with U.S. requirements which are:-

1. The other state must regulate the conduct of persons engaged in the exploration or commercial recovery in the sea bed in a manner "compatible" with U.S. regulation.

2. The State must recognise licences and permits issued under the U.S. legislation by prohibiting any person from engaging in exploration or commercial recovery that conflicts with such licences or permits.

3. The State must recognise priority of right for applications for licences and permits.

4. The State must provide an interim legal framework for exploration and commercial recovery that does not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas.

Already, international interim arrangements have been made between the technologically advanced states. This is probably the precursor of a rival "mimi-law of the sea regime" for the technologically advanced western countries. The Soviet Union also has its own unilateral legislation but continues to argue that manganese nodules are res communis.

In a detailed study of the U.S. legislation, Arrow (1980) 21 Harvard International Law Journal 337 argues that unilateral exploitation is not contrary to international law. He examines international historical international doctrine relying heavily on the principle expounded in the Lotus case that restrictions upon the independence of states cannot be presumed. By analogy with other objects in the oceans and on land such as fish etc. he concludes that the nodules are, historically speaking, res nullius. He denies however that it is possible to acquire title to the deep sea bed as effective control is not possible. The 1958 Conventions, in his view, do not alter this position. In his opinion the U.N. General Assembly Moratorium Resolution (G A Res 2574 1979 ILM 422) and the Declaration of Principles Governing the Sea Bed and the Ocean Floor and the Subsoil Thereof beyond the Limits of National Jurisdiction (G.A. Res 2749) are not he believes legally binding as legislation or other customary international law. In particular, the opposition of those states specially affected indicates that they have not become binding norms of international law. Nor, he argues, has the United States acquiesced in the emergence of such norms. Further, in his view the principles of the New International economic Order have not changed this, nor has the res communis principle, which applies in other areas become, in relation to the sea, a peremptory norm or jus cogens.

The issues are of course of special interest to Australia given our support to the UNCLOS. Further, the two preceeding Australian Governments and presumably the present are particularly sympathetic to the arguments of the third world The weakest point in the American case seems to be the participation of the Carter Administration in the formulation of an acceptable package, which could be argued to be tacit acceptance at least of the *res communis* principle. A further difficulty might be that notwithstanding the role of the U.S. as a "persistent objector" those resources may have become *res communis* under customary international law. An Advisory Opinion of the International Court would, of course, be most interesting.

The various pieces of unilateral legislation may be found as follows: U.S. 19 *ILM* 1003 (1980) UK 20 *ILM* 1219 (1981); FRG ibid at 393; France 21 *ILM* 808; USSR ibid at 551; Japan 22 *ILM* 102 (1981); see also the "mini-treaty" 21 *ILM* 950 (1982); Mark S. Bergman, The Regulation of Sea Bed Mining under the Reciprocating States Regime, 1981 30 *American University Law Review* 479; L.M. Macrea, Customary International Law of the U.N. Law of the Sea Treaty, 1983 13 *California Western International Law Journal* 181. *Law of the Sea*, Ed. B.H. Oxman et al., I.C.S. Press, 260 California Street, San Francisco California 94111. (Paperback US$7.95, Cloth $21.95); G. Apollis, La loi française sur les fonds marins internationaux 86 *Revue générale de droit international public* 105 (1983); G. de Lacharrière, La loi française sur l'exploration et l'exploitation des ressources minérales des grands fonds marins 27 *Annuaire français de droit international* 665 (1981)

Readers might also note the publication edited by Professor Ivan Shearer, *Martin Place Paper No.2* Sydney, published by The New South Wales Institute of Technology for the International Law Association (Australian Branch), 1983. Pp.iii, 97, Appendix 93. Aus. $6. This is reviewed in our "Publications" section.

Finally, it is of interest to note that Arvid Pardo has been awarded the 1983 Third World Prize as a recognition for his role in initiating and developing the argument in the UN that the wealth of the seabed be the common heritage of mankind when he was Malteze ambassador to the UN He is now a professor of political science and international law in California: South, December 1983 at 55.

D F

EXTERNAL AFFAIRS POWER

The Tasmanian Independent, Senator Brian Harradine, has indicated (Sydney Morning Herald, 29 July 1983 p.4) that he will introduce a bill in response to the High Court decision upholding Commonwealth legislation aimed at stopping construction of the Franklin dam. Such a bill would require parliamentary approval of international treaties before they are signed by the Government will be introduced to the next session of Federal parliament.

Senator Harradine said the High Court decision had broad implications in legislative areas traditionally falling within State responsibilities.

He would also move for the establishment of a Senate standing committee for the scrutiny of treaties.

D.F.

BILL OF RIGHTS AND EXTERNAL AFFAIRS POWER

The action in Commonwealth v. National Times May 1983 (No.10 of 1983) which was subsequently settled raises interesting questions. As a result of the Franklin Dam decision (Commonwealth v. Tasmania (1983) 57 ALJR 450), it has been announced that the government will introduce a Bill of Rights based on the external affairs powers.

A Bill of Rights could be of considerable importance in the development of human rights. For example, if Australia were to enjoy a constitutional guarantee of freedom of speech or a prevailing right in a Bill of Right it might well be that the High Court would take a similar position to that adopted by the United States Supreme Court in U.S. v. New York Times 403 US 713 (1971). This was the famous Pentagon Papers Case where the Supreme Court refused an injunction to restrain their publication. Justice Black observed that in the first amendment the Founding Fathers gave the press the protection it must have to fulfill its essential role in our democracy. "... The government's power to censor the press was abolished so that the press would remain forever free to censure the governmemt. ... the word "security" is a broad, vague generality whose contours should not be invoked to obligate the fundamental law established in the first amendment. The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our republic ...". It should not be thought, however, that prior restraint is absolutely prohibited in the U.S. In a fascinating comparative study between the situation prevailing in the United Kingdom and the United States, Evan J. Wallach indicates that there is no absolute right of free speech, even in the United States: 1983 32 I & CLQ Rev.424. The United States appears to be freer than the United Kingdom in this regard although there "the harsh reality is that the last word is clearly the government's. ...It speaks well for Britain's claim that executive powers are often restrained by notions of fair-play that prior restraint is not more widespread". It will be recalled that in contrast to Vietnam, and along the lines of the policy adopted by the UK in the Falklands/Malvinas War, the U.S. was slow to admit the press to view its operations in Grenada.

The creation of some guarantee of freedom of speech by way of legislation under the external affairs power in Australia would provide a fascinating interplay of international and comparative law. On human rights generally, the paper by