The Great Environmental Disaster Comes Closer

Barring serious complications between now and the conclusion of the meeting, it appears that the Convention has been agreed. ECO's views on the necessity of the Convention are well known, and it will not serve any purpose to labour them further. However, it is still useful to review some of the specific features of the Convention that are objectionable from ECO's point of view.

In particular, ECO is upset that a small number of states seeking to ensure easy access to mineral resources have been able to weaken the Article which required a consensus for the opening of an area. Now, if there is any formal objection to the opening of an area, the Chairman of the Commission is to institute a process which can only be intended to bludgeon a state which was adamantly in opposition into submission. Bearing in mind the severe pressures which states came under in the final stages of these negotiations in order to achieve consensus, in spite of widespread dissatisfaction in many quarters, it is highly unlikely that a request to open an area could be prevented except by a concerted effort on the part of several states. That is not consensus, in reality.

ANTI-SUBSIDY

It is also very disappointing that there is no anti-subsidy provision in the Convention. This is tantamount to encouraging subsidies and accepting that subsidised mining activities will occur. What happened to the protection of the Antarctic environment? ECO understands that there are technical difficulties in enforcing such a provision, but fails to see why there could not have been a general principle included which would have at least formally stated the opposition of states to such procedures. It is somewhat ironic that several states which proselytise free market economics were amongst those which most vehemently opposed the inclusion of the provision. It is absolutely scandalous that states could not even accept the inclusion of the principle of following "orderly mining practices" and acting "in an economically rational manner". ECO urges Australia, the one remaining state which is unhappy with this, to have the courage to hold out for at least the reinstatement of this provision.

ECO's views on other key Articles are well known. However, it should be re-emphasised that the liability provisions are particularly abhorrent, allowing defences and the possibility of limits to liability. The Convention, as it now stands, is considerably more slanted in favour of the possible mining states - it has become more like a mining code, and offers much more certainty to an operator as it passes through the "hoops" toward eventual development activities. For instance, exclusive rights to development are granted at the approval of an exploration permit. This automatic right to develop may be rescinded if major
unforeseen environmental hazards arise, or if the operator fails to comply with the Convention.

WHO WON, WHO LOST?

So what have the various interest groups gained and lost from the Convention? Clearly, the winners are the major developed nations - Japan, Germany, the United States, the United Kingdom and France - the states most likely to undertake minerals activities.

The claimant states have lost most heavily. They have no revenue share and have effectively lost any special managerial role. Worse, there will be heavy pressure on a claimant if it seeks to oppose the opening of an area for minerals activity. Furthermore, once the area is open, a claimant could be overruled within the relevant Regulatory Committee. In essence, it will become possible for mineral activity to occur in claimed territory with the specific objection of the relevant claimant overridden. It is hard to understand how the stronger claimants could have agreed to this.

Those claimants which are also developing states may have gained some solace from the privileges given to developing states in general. With a guaranteed role on the Regulatory Committee, participation rights through joint ventures and the possibility of future revision of the structure of the Committee to take account of possible higher numbers of such states foreshadowed in the Final Act, developing states should be well pleased. However, they do not have the power, at present, to block a Regulatory Committee decision without getting the support of at least one other state.

Eco is especially disappointed that New Zealand, a state which previously played a major role in promoting environmental provisions, played a low-key role in the negotiations during the final stages. Despite the denials of the Foreign Minister, Russell Marshall, that New Zealand had not "backed off" on environmental protection, it was widely perceived around the meeting that New Zealand was more interested in a successful conclusion of the negotiations, regardless of the cost.

DECISION MAKING

Eco understands that decision making in the Convention's most powerful institutions, the Regulatory Committees, is now two-thirds, including a simple majority of both the claimant group and the non-claimant group, when it comes to the key decisions of the approval of a Management Scheme and the issue of a development permit. This means that there will need to be three of the four claimant members and four of the six non-claimant members in agreement in making up the seven out of ten required for a decision.

To summarise, Eco congratulates those few states which were prepared to hold out for more environmentally sensitive provisions. However, this in no way absolves the Treaty states collectively for what will eventually be seen as one of the great environmental blunders of all time. The first round is over, but there will be more to follow...