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## THE OCEANS

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### LAW OF THE SEA CONFERENCE (LOS)

At the December 3-14, 1973 organizational session of the LOS in New York a number of pre-conference procedural issues concerning membership and voting were resolved; also, the conference agenda was crystallized. U.N. General Assembly President, Ambassador Amerasinghe of Sri Lanka, was elected president of the Conference to be convened June 20, 1974 in Caracas, Venezuela.

The structure of the Conference will include one forty-eight member general committee and a twenty-three member drafting committee. The General Committee will consist of the Conference President, thirty-one Vice Presidents, fifteen members from the bureaus of the main committees and the Conference *Rapporteur General*. The Drafting Committee will include members from each geographic region by prescribed formula. Corresponding to the three subcommittees of the Seabed Committee whose legal existence expired in September, 1973, there will be three main committees at the Conference; one on peaceful uses of the seabed, another on the territorial sea, continental shelf, economic resources zones and high seas, and a third on marine pollution and scientific research.

Each main committee will have a five-member bureau comprising the chairman, three vice-chairmen and rapporteur, on which each regional group will be represented. Chairmanship of the first main committee will go to Africa, of the second to Latin America and of the third to Eastern Europe. Chairmanship of the Drafting Committee will go to Western Europe.

The agenda of the Conference includes the following:

1. Opening of the Conference by the Secretary General

2. Election of the President
3. Adoption of the Agenda of the Conference
4. Adoption of the Rules of Procedure
5. Election of the Chairmen of the Main Committees
6. Election of the Chairman of the Drafting Committee
7. Election of the Vice President
8. Appointment of the Credentials Committee
9. Appointment of other members of the Drafting Committee
10. Organization of Work
11. Consideration of the subject matter referred to in paragraph 3 of General Assembly Resolution 3067 (XXVIII) of December, 1973.
12. Consideration of a decision, if necessary, to convene a further session or sessions of the Conference, to be submitted to the General Assembly for approval pursuant to paragraph 4 of General Assembly Resolution 3067 (XXVIII) of December, 1973.
13. Adoption of a convention dealing with all matters relating to the Law of the Sea, pursuant to paragraph 3 of General Assembly Resolution 3067 (XXVIII) of December, 1973, and of the final act of the Conference.
14. Signature of the convention and the final act.

## CARACAS MEETING

The original issue before the U.N. General Assembly in 1968 on the seabed leading to the adoption of Resolution 2467 (XXIII) (1968) has blossomed into no less than twenty-five major questions to be considered. Most of these questions can be grouped into five principal areas: (1) Navigation (2) Fishing (3) Seabed Mining (4) Marine Pollution and (5) Scientific Research.

Perhaps the most important single issue to be decided by the Conference in the navigation area is the breadth of the territorial sea. Twice before, in 1958 and 1960, international conferences failed to reach a consensus on a uniform width for the territorial sea, even though the

1960 conference fell one vote shy of adopting a joint U.S.-Canadian proposal for a six mile territorial sea and a six mile contiguous zone. In all probability the Caracas Conference will adopt and codify the twelve mile territorial sea.

The international straits issue is of major concern to the world's large maritime nations, for military or economic reasons. Interposed with this issue is the collateral one of archipelago status for such areas as Indonesia, the Philippines, Malaysia, among others. Whether or not these water areas constitute high seas or a free transit regime only with adequate assurances to the coastal states and some degree of compliance with coastal state regulation on matters such as pollution and innocent passage, among others, will be a major point of interest at the conference. The future of the contiguous zone, high seas and general remaining questions of freedom of navigation also remain to be resolved.

The living resources of the high seas presents a different and variegated question in that conflicting uses of fisheries by coastal and distant water fishing nations have to be made compatible within a general solution to the overriding problem of conserving the world's fisheries to prevent depletion, yet insure development of additional food for the sea as a protein source to meet the demands of a burgeoning world population. Two schools of thought have emerged: that of the species and the zonal approach. The first relies on the assumption of the migratory characteristics of fish and would allow management and conservation of stocks to a coastal state. The zonal approach, whether in the form of an exclusive fisheries zone, economic zone, patrimonial sea or any other form, would allocate all of the living resources within a specific area, most frequently delineated as a 200 mile zone measured from the boundaries of the territorial use, to the coastal state for exclusive exploitation. As the most prolific fishing areas of the world lie within the projected boundaries of the zone, the issue is clearly a major one for the Conference.

The non-living resources comprising the original seabed question, the sine qua non of the conference, had its genesis in the need for a regime to govern the extraction of seabed and subsoil minerals from the sea floor beyond the limits of natural jurisdiction. The mines can be further subdivided into: (1) the seaward extent of natural jurisdiction, and (2) the regime to govern the exploration of these resources beyond natural jurisdictions. The economic resources zone as it has come to be called would allocate exclusive exploitation and exploration rights to the coastal state out to some arbitrary limit, most usually discussed at two

hundred miles. Beyond that boundary limit some form of international seabed authority would govern extraction of these resources under a common heritage of mankind scheme. Various suggestions ranging from the gamut between international licensing by the seabed authority to the enterprise approach, whereby the authority would itself exploit or direct the exploitation of such resources for the benefit of the world community, have been proposed. Whether the treaty would grant constitutive or substantive authority to such a regime is an open question to be decided.

Marine pollution is a relatively recently recognized world wide problem. The problems here center around (1) seabed source pollution from the extraction of non-living resources from the seabed and subsoil, and (2) vessel source pollution.

A host of proposals dealing with the vehicle for setting uniform standards of water quality, adjudication, enforcement, taxing of clean-up costs and overall regulation have been proffered. Each one of these require careful consideration by the Conference.

Another perplexing issue of pressing importance to the developed countries and of sensitive nature to the developing countries is that of freedom of scientific research. Whether coastal states consent will be necessary to conduct such research within the extended resource zone or whether permission will be automatically granted upon compliance with certain specified pre-conditions is an issue whose resolution is vital to the continuance of research into the complex processes which characterize the world's oceans.

In addition to the abundance of substantive issues before the Conference, two additional problems seek solutions. How will disputes arising under the treaty be resolved, and will the treaty enter into force provisionally prior to its formal adoption by the requisite number of signatories. The issues then are legion, intricate, and all must be confronted and hopefully solved by consensus of the 150 odd votes represented at the Conference. At the opening session in New York on December 3, 1973, President Amerasinghe labelled the Conference, in terms of importance and subject matter, as one of the most important in the capsulized history of the U.N. in the longer span of international relations. In view of the variety and complexity of the issues to be decided his assessment is accurate. The future of the uses of the world's oceans is at stake, the last exploitable frontier on earth.

On the eve of the Caracas Conference it may be useful to present the views of John R. Stevenson, Esq., former Legal Adviser of the U.S. Department of State, as these appeared in the OAS WEEKLY NEWS-LETTER of January 28, 1974.

"At the present time," Mr. Stevenson said, "of the 120 coastal states, the vast majority claim a territorial sea of 12 miles or less. Only a few states claim a territorial sea broader than 12 miles, and in most cases even these claims were made primarily for resource reasons. The U. S. Government believes the 12-mile figure to be the only figure on which the possibility of general agreement on the breadth of the territorial sea exists . . . The United States . . . is willing to accept a 12-mile limit IF—and it is a very important *if*—the right of free transit through and over international straits where territorial seas overlap is recognized . . . [Many] states claiming 200 miles have indicated their willingness to recognize freedom of transit beyond 12 miles as part of a general law-of-the-sea settlement if their jurisdiction over resources up to 200 miles is recognized. For these reasons, 12 miles seem to be the most practical solution."

Mr. Stevenson further stated that the United States is insisting on this point because, with a 12-mile limit, international straits between 6 and 24 miles wide would be overlapped by territorial seas where foreign ships would have only a right of innocent passage. Since both the U. S. Navy and merchant marine depend on transit through those straits, "the right of innocent passage, as it stands, would no longer a satisfactory guarantee of free transit," Stevenson said. The problem is further complicated by the "subjective interpretation" some coastal states give to the right of innocent passage, and their announced determination of barring vessels such as supertankers or nuclear-powered ships, "or because of the nature of the cargo or destination of the vessel."

A second point made by the jurist was that while the United States feels that "coastal states should be given fishing jurisdiction beyond 12 miles," two opposing schools of thought campaign vigorously for their theses. "On the one hand, many U.S. coastal fishermen are interested in protection from highly mobile foreign distant-water fishermen. On the other, U. S. distant-water fishermen, particularly those in the tuna and shrimp industries, want to continue to fish off the coast of other nations, especially certain of our Latin American neighbors."

The U. S. proposal, therefore, would be "to give coastal states regulatory jurisdiction and preferential economic rights, based on their ca-

capacity to catch, to the coastal species of fish adjacent to their coasts, as over 75 percent of the world's fishing catch—while “highly migratory fish, such as tuna, would be under international and regional, rather than coastal state, control.”

Touching on offshore oil and gas, Mr. Stevenson stated that “most coastal states appear to favor a limit of 200 miles alone or in combination with an alternative limit that would embrace the continental margin where it extends beyond 200 miles.” The U. S. position is that coastal state jurisdiction over seabed resources would be “virtually exclusive,” but subject to international treaty standards to protect the interest of other states and the international community. “There is probably as much petroleum potential under the oceans as on land, with offshore production already constituting 17 percent of the total U. S. production and commercial exploitation moving out to the 200-meter water depth and beyond,” he added. Likewise, it is now known that “manganese nodules lying in large quantities on the deep ocean floor are rich in nickel, copper and cobalt . . . Commercial production is expected by the end of the decade.”

Ownership of seabed mineral riches is another topic that will have to be considered at the UN meeting. Do they belong to any nation with the capability to exploit them? (This would mean that only the advanced countries could benefit.) Or would coastal states enlarge their jurisdiction, reserving such wealth for themselves and shutting out completely the noncoastal states? However, if these resources were to be internationalized and exploited under a multinational specialized agency, how would the financing, the work and the proceeds be pro-rated?

Scientific and technological advances, which permit a better exploitation of the oceans, also have resulted in overfishing and polluting, in compromising marine animal and plant life, and the spoiling of the marine environment quite remote from where an activity takes place. Mr. Stevenson noted that “seabed drilling and mining may interfere with navigation and fishing, spills from tankers with recreation on beaches, and pollution control measures with maritime trade. Unless a new set of legal rules for the sea can be agreed upon, there is bound to be increasing conflict over the uses of the oceans.

Mr. Stevenson also made the comment that although there are many key unresolved issues, the UN conference may be successful if “govern-

ments don't get bogged down in procedural and technical wrangles, and they begin to take the hard political decisions on which agreement may be based.

#### CUBA-GUYANA PACT

A bilateral agreement concerning one of the key issues before the upcoming Law of the Sea Conference at Caracas, that of the extent of coastal state jurisdiction over offshore fishing areas and the technological capability of the coastal states to export their resources, was signed by Cuban and Guyana in 1974.

Cuba recognizes Guyanese ownership of the living resources within certain limits but bartered for and was granted exclusive authority to exploit the resources in exchange for a percentage of the catch in the nature of a royalty, mainly on the shrimp resources with estimated value of \$500,000 per year going to Guyana. Additionally, in a technology transfer in exchange for operating out of Georgetown, Cuban vessels will train Guyanese on board Cuban vessels, and Cuba will assist generally in the development of the Guyanese fishing industry. Besides the royalty in the form of percentage of catch, Cuba agreed to pay an export tax on the bulk of the catch exported to Cuba.

#### PERUVIAN ACHOVETA

At a meeting in Paris, the Inter-Governmental Oceanographic Commission (IOC) under UNESCO called for a joint study along with the FAO and the WMO of the Peruvian anchoveta fishery failure. Until 1972 with the latest recurrence of the condition known as El Niño (The Child) the fishery had been the most productive in the world, 10 million tons of the tiny anchoveta having been landed in 1971. The study would be part of the International Decade of Ocean Exploration (IDOE) sponsored by the United Nations. The IOC decision called for a scientific workshop to be convened somewhere in the region within a year.

Failure of the fishery to recover from the 1972 decline in catch despite an early closing of the fishery in 1971 raises the spectre of recruitment failure cause by a variety of environmental factors. The study, it is hoped, will determine those factors and lead to measures that will result in the reestablishment of this vital world fishery. Rising world



demand for protein, both plant and animal, have driven up world soybean prices as the sole alternative to fish protein as a bulk animal feed. This has led to severe international political economic and social repercussions.

### DEEP SEA DRILLING

The R/V *Glomar Challenger*, heir to the ill-fated Mohole project of the 1960's, will add another dimension to the already successful deep sea drilling project by drilling at several sites along the west coast of Peru and Chile. The project will test the hypothesis that the rich copper, gold and iron over Peru and Chile derive from processes at work beneath the oceans off these coasts. The project may lead eventually to deep sea mining of these minerals either under coastal state control or under a new international seabeds authority, one of the projected outcomes of the Caracas Law of the Sea Conference. The project is supported by a consortium of American Oceanographic Institutions plus an annual grant of \$1 million in funds and resources by the Soviet Academy of Science. Various projected drilling sites lie along the metal rich sediments along the East Pacific Rise. The holes will be drilled up to 1000 feet deep in waters over a mile in depth. In addition, the project seeks additional data on the widely held theory of sea floor spreading and its effect on sub-sea mineral deposits carried from deep in the earth to the sea floor. The *Glomar Challenger* is the only ship afloat capable of drilling miles at sea into the deep sea floor.

### U.S. OFF-SHORE DRILLING

The U. S. Government's Council on Environmental Quality has recommended extensive offshore drilling along the Atlantic Coast and the Gulf of Alaska. The Council admits the risk of serious environmental consequences to commercial fishing and to the tourist trade in the event of oil spills and other accidents, but citing economic reasons and the nation's need for energy self sufficiency it recommends leasing in twenty three untouched areas in the Atlantic and the Gulf of Alaska. Potential drilling sites include one in the Gulf of Alaska, four in the New England area, five in the Baltimore Canyon Trough off the Middle Atlantic states, and five off southeast Georgia on the Atlantic Coast from northern Florida to South Carolina. The Council, in assessing the potential oil

producing areas, classified each drilling site according to the risk involved. Two areas along Georges Bank, one of the most productive New England commercial fishing areas, were considered to pose the least risk, while the Alaska sites were considered to have the greatest risk factor.

The Council's recommendations have met with opposition. Specifically, a committee of the National Academy of Sciences labelled the report "a useful first step" but "inadequate and incomplete." Particularly singled out for criticism was the Council's ranking of risks which, according to the scientists, was based on too limited criteria and inadequate data. The committee also criticized the Council's report for accepting "without analysis the advisability and practicality of Project Independence, the Federal program to achieve energy self-sufficiency by 1980. Most energy experts believe such a program will entail immense disruptions and environmental costs and may not be even technically possible," the critique said.

#### COLOMBIA-VENEZUELA

A minor step to resume the Colombian-Venezuelan negotiations concerning the Gulf of Venezuela was taken in April with the visit of the new Venezuelan Foreign Minister to Bogota for an exchange of views with his Colombian counterpart. Negotiations on the subject, which were carried out over the past three years without concrete results, were temporarily halted during Venezuela's recent presidential campaign. Informed observers hold little hope that anything meaningful would result from the meeting of the Foreign Ministers in Bogota, pointing out that a new government will take over in Colombia in August, 1974 and that it is unlikely that the present administrations will find a solution in the relatively short time before the change of government takes place in Colombia. The problem of the Gulf of Venezuela remains a thorny issue in Venezuelan-Colombian relations.

#### DUMPING

At a U.S. Environmental Protection Agency Hearing in New Orleans late in March, Louisiana State officials urged that the du Pont Company be stopped from dumping chemical wastes manufactured in West Virginia into the Gulf of Mexico. Alleging that the waste was a threat to marine life important to Louisiana's economy, and highlighting the

inequity of shipping the waste hundreds of miles from another state to be dumped in "Louisiana's backyard", Louisiana officials took the position that ocean dumping can no longer be justified. Spokesmen for du Pont denied the waste was harmful to the Gulf's marine life and also stated the practice would end in about a year with the opening of a treatment facility in West Virginia. Before the hearing, a representative from EPA, pointed out that ocean dumping was one of three alternatives (others - dump on land or burn), and that the first should not be totally foreclosed. Dumping waste in the ocean was not regulated until the Marine Pollution, Research and Sanctuaries Act of 1972, which became effective in April, 1973.

In a related development, Delaware's Coastal Zone Act of 1971 is facing strong opposition by business, the building trades and oil interests. Legislation backed by these groups has been introduced in the State Senate to eliminate two of the act's strongest and most controversial provisions—an absolute prohibition against heavy industry and offshore unloading facilities, and the definition of the coastal zone as a two-mile-wide strip along the 115-mile coastline. Under the proposed legislation, the state would essentially return to its pre-1971 procedures for coastline industrial development. Any industrial development proposal for the coastal zone would be considered on its own merits while still subject to "strict assurances of environmental compatibility." Delaware's Coastal Zone Act, used as a model by other states, holds that oil refineries, steel plants, petrochemical plants, paper mills and superports are incompatible with the coastal environment.

## POLLUTION EFFECTS

A project called Controlled Ecosystem Pollution Experiment (CEPEX) will be carried out as part of the International Decade of Ocean Exploration to gain information about the effect of pollutants on plant and animal life in the world's oceans. Specifically, CEPEX will seek to learn what sub-lethal effects chemical pollutants have on plankton communities. Chemical pollutants present in the oceans in small concentrations may be taken up by the plankton and become concentrated in fishes feeding on plankton, thus entering the marine ecosystem and presenting a potential danger to man. They may also disrupt the ecology of these sensitive creatures and thus disturb the source of food for the larger commercial species. The projected study will allow scientists to assess the impact of pollutants

on marine communities, and to develop ways of predicting dangerous levels of pollution for good management and regulation of ocean resources in the future.

Four U. S. institutions, including the University of Miami, will participate in the research with funds approximating \$1.3 million from the U. S. National Science Foundation. Canadian and British institutions will also join the project which is expected to last six years.

#### MARITIME MATTERS

Japan has made available to Costa Rica \$14 million to open a new port at Caldera on the Pacific coast.

Guatemala has announced that a new port will be built at Sipicate on the Pacific coast. Japan will lend \$29 million of the \$80 million required for the project which will take four years to complete. Partial use of the port is to begin within 12 months from start of construction.

The possibility of creating a Central American Merchant Fleet has been raised in the area by some of the Ministers of Economy. This expression of interest was followed by an informal approach to the Inter-American Development Bank.