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THE OCEANS

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SEABEDS COMMITTEE MEETS IN NEW YORK

The March/April meeting of the United Nations Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction (Seabeds Committee) concluded a five-week working session at the United Nations in New York on April 6, 1973. The next session of the Committee is presently scheduled for July/August at Geneva. This eight-week working session is the last scheduled meeting of the Seabeds Committee prior to the organizational session of the Conference on the Law of the Sea to take place in New York next fall. The first substantive work of the Conference will begin in the spring of 1974 in Santiago, provided that sufficient preliminary work can be completed prior to that time.

During the immediate past session, the work of the three subcommittees of the Seabeds Committee proceeded at varying rates. Subcommittee I, dealing with problems of the seabeds beyond national jurisdiction, through its working group of thirty-three nations, proceeded with the task of attempting to hammer out major areas of agreement and disagreement. Most of its working time was spent on a second reading of draft articles embodying the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof Beyond the Limits of National Jurisdiction, of 28 January, 1972 [A/RES/2749(XXV)]. Working Group I of Subcommittee I utilized three basic devices to illustrate areas of basic disagreement: (1) bracketed phrases, (2) footnotes, and (3) alternate texts. Upon completion of the second reading, the working group began a discussion of articles based upon an anonymous draft concerning machinery for a deep-seabed regime. While some progress was made during the five weeks of work, much remains for the summer session.

Subcommittee II, dealing with the Territorial Seas and Straits, provided the forum for general debate on these subjects, and, toward the

end of the session, a working group of the whole was established to begin substantive work in these areas. It was clear, however, that the working group, chaired by Mr. Kedati of Tunisia, was not prepared to start the arduous task of setting down areas of agreement and disagreement until the summer session. While it first appeared that the working group might begin by attacking the "List of Subjects and Issues Relating to the Law of the Sea" adopted as a general work programme last summer, taking each issue in order, it was finally agreed that the group would first consider items 1 through 7 of the list as a unit, with participants free to discuss any item within that unit, without reference to priority. This list includes:

1. International Regime for the Sea-Bed and the Ocean Floor Beyond National Jurisdiction.
2. Territorial Sea.
3. Contiguous Zone.
4. Straits Used for International Navigation.
5. Continental Shelf.
6. Exclusive Economic Zone Beyond the Territorial Sea.
7. Coastal State Preferential Rights or other Non-Exclusive Jurisdiction Over Resources Beyond the Territorial Seas.

It was agreed that the remainder of the issues would be considered as a second work bloc. Several major interventions were made in Subcommittee II, to be discussed below, that will be of help to the working group in identifying areas of agreement and disagreement this summer.

Subcommittee III proceeded with its work through the establishment of two working groups. Working Group I is concerned with the subject of Marine Pollution. For part of its time, this working group seemed to concentrate on draft articles submitted by Canada, but, following an intervention by the United States, the discussion was broadened. A second working group was established, chaired by Poland, to deal with the subject of Scientific Research. This working group had no time to address itself to the substance of the problem, and deferred its work until this summer. It is of note, however, that while Subcommittee III is formally charged with the issues concerning freedom of scientific research in the oceans, all subcommittees are free to discuss the subject, and considerable discussion on the subject was heard in all three subcommittees during this session.

Major Interventions

During the work of the Seabeds Committee, there were several major interventions and initiatives of note. These will be briefly described. On the part of the United States, speeches were made concerning fisheries, marine pollution, scientific research, straits, and a provisional regime for deep sea mineral exploitation.

On April 2, 1973, John Norton Moore, U.S. Chief Delegate, intervened on the subject of international straits. This intervention was in partial response to a seven-nation draft, introduced by the Philippines, proposing a more or less restrictive approach to the passage of vessels through straits used for international navigation. It was their position that regulation of navigation in straits is appropriate to achieve a satisfactory balance between the interests of coastal states and the general interests of international maritime navigation. These interests, they asserted, were best protected by the principle of innocent passage. The principle of innocent passage is more carefully delimited in the seven-power draft, containing specific restrictions concerning vessels with special characteristics, such as nuclear powered ships and warships, and suggesting that the coastal state has the right to be compensated for works to be undertaken to facilitate passage. All of these restrictions, and more of like kind, were found to be inconsistent with the right of free transit claimed to be the appropriate regime for international straits by the United States. In response to the fear of some that unhampered traverse of international straits by vessels and aircraft would pose an unreasonable threat to the coastal state, particularly in terms of pollution, the U.S. intervention of April 2 proposed that all surface ships "transiting straits comply with applicable IMCO regulations and procedures intended to promote the safety of navigation and that state aircraft normally comply with similar ICAO regulations and procedures." The U.S. also proposed that strict liability be established for all vessels, including warships, and state aircraft, for accidents caused by deviation from relevant IMCO and ICAO regulations. After thus offering to give up certain high seas rights previously thought to be a part of the U.S. position on international straits, Mr. Moore went on to reemphasize the fundamental premise of that position: "As reiterated in our August 10, 1972 statement, the United States and others have made it clear that their vital interests require that agreement on a 12-mile territorial sea be coupled with agreement on free transit of straits used for international navigation and these remain among the basic elements of our national policy which we will not sacrifice."

One of the major new interventions on the part of the United States dealt with the problem of an interim or provisional regime for the exploitation of mineral resources of the oceans. This issue has been a difficult one for several years. As it may be recalled, Resolution 2574 of the 24th General Assembly declared that pending the establishment of an international regime, States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the ocean floor beyond the limits of national jurisdiction. This declaration was opposed by several nations, including the U.S. In response to a need to clarify its position on the issue, the U.S. proposed that States agree to a provisional regime to explore and exploit the natural resources of the seabed in accordance with those terms to be agreed upon at the forthcoming conference prior to the effective date of the convention, but consistent with its terms. Mr. Moore of the United States referred to precedent for agreeing to implement the terms of an agreement prior to its effective date on a voluntary basis. The proposal was received with interest by many States, who agreed to study it carefully before the summer session.

In the general area of marine pollution, the basic areas of disagreement appeared in interventions by Canada and the United States. The Canadian intervention, by Mr. J. A. Beesley, submitted to Subcommittee III on March 14, placed heavy emphasis on the role of the coastal State in setting standards with regard to marine pollution. This emphasis was spelled out in the Canadian draft articles on marine pollution of March 9 [A/AC.138/SC.III/L.28], which places upon State the basic obligation to protect and preserve the marine environment. The United States intervention of April 2, on the Competence to Establish Standards for the Control of Vessel Source Pollution, however, listed as a fundamental objective of the Law of the Sea Conference the protection of the freedom of navigation, and declared that in pursuit of that "only a system of exclusively international standards will provide an effective means to control vessel source pollution while protecting the community interest in both of these fundamental objectives." This difference in approach, coastal v. international standards, provided a focus for substantial debate on the pollution issue which will carry over to the summer session.

With regard to marine resources, two major interventions should be noted. First, in a major paper discussing anadromous and highly migratory fish species, the United States reaffirmed and amplified its fisheries position. This position favors a species approach of fisheries management.

On a broader plane, Ambassador Aguilar of Venezuela introduced draft articles sponsored by Colombia, Mexico, and Venezuela, putting into proposed treaty language the substance of the Declaration of Santo Domingo (4 *Law. Am.* 576-580, 1972). The language of this draft is included as an appendix to this report.

Scientific research commanded the attention of several nations. The USSR submitted a draft article for discussion in the working group of Subcommittee I, as a part of the work on general principles, calling for essentially uncontrolled access to a wide band of waters for the purpose of scientific research. The Chinese delegation, however, doubted that research by private institutions within the developed countries could ever be "pure" or "open," and suggested instead, that either the coastal State (in waters near its shore or in an economic resource zone) or an international regime (beyond those limits) have the right to regulate the conduct of scientific research. The U.S. position on scientific research remained unchanged from that stated last summer. While submitting no draft articles, the U.S. advocated unrestricted research in the high seas beyond the limits of national jurisdiction. Within the territorial seas, consent of the coastal State in whose waters the research is to be conducted would be required. The U.S. last August advocated that in these waters, a vessel seeking to perform open research should guarantee participation by scientists and others from the coastal state, data sharing, open publication of results, and non-interference with other uses and protection of the environment. At the spring session, the U.S. made two interventions on the subject of science. The first was a speech explaining the workings of the theory of plate tectonics, and the value of this study to the world community, given by Mr. John Albers of the Geological Survey. The second was an address by Dr. Philip Handler, President of the National Academy of Sciences, before Subcommittee III. This speech reemphasized the need for freedom of scientific research on a global scale. In addition to showing the relationship between research and resource discovery, research and global natural phenomena, and research and pollution, Dr. Handler gave the opinion that "Free intellectual inquiry about the oceans should be encouraged not only because of its importance in understanding our world but also because of its importance to the human spirit." The Handler and Albers speeches were reinforced by an exhibit showing the international nature of the Deep Sea Drilling Project, and a visit to the research vessel Knorr, from the Woods Hole Oceanographic Institution. The latter was heavily attended by delegates from around the globe.

COLOMBO-VENEZUELAN TALKS

Negotiations between Colombia and Venezuela on the delimitation of the marine and submarine areas of each country came to a close in Rome in April, 1973 without an agreement having been reached on the subject. Colombian observers were of the opinion that the matter ought to be referred to the International Court of Justice at The Hague, in accordance with the treaty signed by both countries in 1939. The negotiations, which extended over a period of three years and were held first in Caracas and later in Rome, were characterized by a spirit of friendliness and mutual understanding and both sides were of the opinion that the fact that an agreement had not been reached in Rome did not preclude the possibility of one being concluded at some time in the future.

U.S./USSR ENVIRONMENTAL PROTECTION COOPERATION

On September 23, 1972, the United States and the Soviet Union completed a memorandum of implementation on cooperation in the field of environmental protection. Agreement was reached upon specific cooperative projects in eleven different subject areas.

In the area of water pollution, it was agreed that projects would be undertaken concerning studies and modeling of river basin pollution; protection and management of lakes and estuaries; effects of pollutants upon aquatic ecological systems and permissible levels of pollution; and, prevention or treatment of discharges.

Groups will also be assigned to work on the prevention and clean-up of oil pollution in the marine environment and the effect of pollutants on marine organisms. With respect to the first subject, the two sides agreed to exchange visits and information on technologies and techniques for the prevention and clean-up of oil discharges in the marine environment. Vessel design, traffic control, shore facilities and offshore oil drilling safeguards will be discussed. With regard to effects of pollutants, visits and information will be exchanged concerning the chemical aspects of marine pollution and their effects, including the chemical and biological analyses of fish and the rehabilitation of sea life following major pollution incidents.

OCEAN DUMPING CONVENTION

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters was drawn up at the Inter-Governmental

Conference on the Dumping of Wastes at Sea, in London last November. In broad outline, the Convention divides the ocean dumping problem into two parts. Dumping of certain substances, considered as highly toxic, is prohibited, except that a special permit for dumping may be issued by a contracting party when the alternative would pose an "unacceptable risk relating to human health and admitting no other feasible solution." Even in such case, the party seeking to dump must consult other countries likely to be affected, and such international organizations as appropriate. Such materials include, among others, organohalogen compounds, mercury and mercury compounds, cadmium and cadmium compounds, persistent plastics, crude oil, high level radioactive wastes, and materials produced for biological and chemical warfare.

Other than the above, materials may be dumped after issuance of a permit by the coastal State having appropriate jurisdiction. Each contracting party is required to apply the measures required to implement the Convention to vessels and aircraft registered in its territory, vessels and aircraft loading in its territory matter which is to be dumped, and vessels and aircraft and fixed or floating platforms under its jurisdiction believed to be engaged in dumping. In issuing permits, parties must consider the characteristics and composition of the matter, the proposed dumping site and method of deposit, and general considerations and conditions affecting amenities, marine life, and other uses of the sea. An exception to the requirement for a permit is allowed where dumping is necessary to secure the safety of human life or of vessels.

HAZARDS OF MARITIME TRANSIT

A workshop on the subject of Hazards of Maritime Transit will be held jointly by the Law of the Sea Institute of the University of Rhode Island, the University of Miami Law School, and the Government of the Bahamas, at Nassau, N.P., on May 7-10, 1973. This workshop, to be attended by individuals from several nations, including Canada, Spain, Venezuela, Trinidad and Tobago, Fiji, the Philippines, Japan, Peru, and the United States, will be hosted by the government of the Bahamas. The meeting, by invitation only, is designed to explore in an informal atmosphere, the problems rising from intensified carriage of certain cargoes through areas of limited access.

Among the specific topics to be discussed are the nature and intensity of maritime commerce in areas of high congestion, the authority of coastal

states in international straits as opposed to the world need to maximize vessel mobility, pollution of the sea by oil and other hazardous substances, and the problems surrounding the construction of "superports" and other forms of floating or fixed offshore platforms.

In addition, there will be panel discussions on pollution and on national positions regarding the hazards of maritime transit before and during the third Law of the Sea Conference. Mr. John Norton Moore, Chief Delegate of the United States to the Seabeds Committee, will make a report to the participants concerning recent developments in the Committee with respect to marine pollution.

The major papers and a rapporteur's summary of the meeting will be published at a later date, and will be available from the Director, Law of the Sea Institute, University of Rhode Island, Kingston, R.I.

EXPO '75—JAPAN

The Japanese Association for the International Ocean Exposition plans to hold "Expo '75" focusing upon the theme "The Sea We Would Like to See." The purpose of the exhibition is to explore the ramifications of the relations between man and the sea, and make projections for the future. Highlights of the exposition, as it is now planned, will include "Aquapolis"—the world's first "city" on the ocean floor; fisheries display, including ocean farming; shipping displays; and a "deep sea travel simulator." The organizers are stressing the need for mutual cooperation in the oceans, rather than nationalistic or commercial competition; thus, they say, the prime focus of the event must be on the beauty and magnificence of the sea, and exhibits should allow visitors to experience the nature of the sea directly.

MISCELLANEOUS

According to a recent news service publication, Kennecott Copper Company is sponsoring seabed manganese nodule planning for international cooperation. Negotiations have been held in Tokyo with executives of Sumitomo Shoji, Mitsubishi Corporation, and Mistui & Company Ocean Development Corporation. The service further reported that Kennecott was seeking to obtain information concerning the Japanese continuous line bucket dredging system which could operate to bring ore up from depths up to 12,000 feet.

The legislation pending before the U.S. Congress at the end of the last legislative session with regard to licensing of U.S. citizens on a non-interference basis to remove minerals from the deep seabed (S. 2801), has been reintroduced in the new session in the form of H.R. 9. The U.S. State Department has testified before the Congress in opposition to the bill, preferring instead support for the U.S. initiative before the United Nations' seabed committee for a provisional regime. The legislation would offer protection to citizens of reciprocating foreign nations as well as those from the U.S., thus, some claim, encouraging unilateral action of nations to mine the seabeds prior to international agreement.

The National Oceanic and Atmospheric Administration has announced that it plans to hold a major national planning conference to take a fresh look at the oceans' potential for meeting national economic and social needs between now and the end of the century. The conference, titled "The Oceans and National Economic Development," will be held in Seattle, Washington, on July 17-19, 1973. It will deal with the ocean's energy and mineral resources, the ocean's living resources, the oceans as a recreational resource, coastal zone management, regional organizations and economic development of marine resources, and marine transportation's role in meeting energy needs.

A new approach has been taken by the International Center for Marine Resource Development of the University of Rhode Island, Kingston, R.I., with regard to planning of marine programs. The Center's program provides for the establishment of advisory teams which would travel to various countries upon request, holding planning workshops to aid decision makers responsible for government and national educational planning. The team would make an advanced study of a country or region to develop an integrated university marine program on marine resources. A pilot study has been prepared for a workshop in Tanzania. Information on this project can be obtained from Nelson Marshall, Director of the Center.

APPENDIX

April 2, 1973
U.N. Doc. A/AC.138/SC.II/L.21

COLOMBIA, MEXICO AND VENEZUELA: DRAFT OF TREATY

Territorial Sea

Section I. General Provisions

Article 1. 1. The coastal State has sovereignty over an area of the sea immediately contiguous to its territory and inland waters designated as the territorial sea.

2. The sovereignty of a coastal State extends to the sea-bed and subsoil and the superjacent air space of the territorial sea.

3. The sovereignty of the coastal State is exercised in accordance with the provisions of these articles and other rules of international law.

Article 2. The breadth of the territorial sea shall not exceed 12 nautical miles to be measured from the applicable baselines.

Article 3. Without prejudice to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

Section II. Limits (Applicable baselines and delimitation between States)

. . . .

Section III. Right of Innocent Passage

. . . .

Patrimonial Sea

Article 4. The coastal State has sovereign rights over the renewable and non-renewable resources which are found in the waters, in the sea-bed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.

Article 5. The coastal State has the right to adopt the necessary measures to ensure its sovereignty over the resources and prevent marine pollution of its patrimonial sea.

Article 6. The coastal State has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea.

Article 7. The coastal State shall authorize and regulate the emplacement and use of artificial islands and any kind of facilities on the surface of the sea, in the water column and on the sea-bed and subsoil of the patrimonial sea.

Article 8. The outer limit of the patrimonial sea shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea.

Article 9. In the patrimonial sea, ships and aircraft of all States, whether coastal or not, shall enjoy the right of freedom of navigation and overflight with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area.

Article 10. Subject only to the limitations established in the preceding article, the coastal State shall respect the freedom to lay submarine cables and pipelines.

Article 11. 1. The coastal State shall exercise jurisdiction and supervision over the exploration and exploitation of the renewable and non-renewable resources of the patrimonial sea and over allied activities.

2. In exercising such powers, the coastal State shall take appropriate measures to ensure that such activities are carried out with due consideration for other legitimate uses of the sea by other States.

Article 12. In exercising the freedoms and rights this Convention confers on other States, the latter shall not interfere in the activities referred to in the preceding articles.

Continental Shelf

Article 13. The term "continental shelf" means:

- a. The sea-bed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to the outer limits of the continental rise bordering on the ocean basin or abyssal floor;

- b. The sea-bed and subsoil of analogous submarine regions adjacent to the coasts of islands.

Article 14. The coastal State exercises sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources.

Article 15. In that part of the continental shelf covered by the patrimonial sea, the legal regime provided for the latter shall apply.

With respect to the part beyond the patrimonial sea, the regime established by international law for the continental shelf shall apply.

High Seas

Article 16. Freedom of navigation, overflight and the laying of submarine cables and pipelines shall exist in the high seas. Fishing in this zone shall be neither unrestricted nor indiscriminate.

Article 17. The coastal State has a special interest in maintaining the productivity of the living resources of the sea in an area adjacent to the patrimonial sea.

Regional Agreements

Article 18. No provision of this Treaty shall be interpreted as preventing or restricting the right of any State to conclude regional or sub-regional agreements to regulate exploitation or distribution of the living resources of the sea, preservation of the marine environment or scientific research, or as affecting the legal validity of existing agreements.