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D. M. O'Connor

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THE OCEANS

D. M. O'CONNOR

*Professor of Law and Marine Sciences
University of Miami*

The oceans, which cover nearly two-thirds of the surface of our planet and are its last great frontier for natural resources, received increased attention in 1968 from statesmen and lawyers. Problems ranging from the major policies of a legal regime for the future exploitation of ocean mineral resources to long existing controversies over fishing and commerce were considered during the year.

The United States' proposal to designate the 1970's as the International Decade of Ocean Exploration in order to stimulate investigation of seabed resources, foster the cooperation necessary to explore and develop these resources, and make available for the people of all nations the knowledge which is prerequisite to resource exploitation and use, met with welcome and general support in the United Nations *Ad Hoc* Committee studying the uses of the ocean floor beyond national jurisdiction. These recommendations for expanded international cooperation in marine research were commended to the 23rd General Assembly.

RESOURCES OF THE DEEP OCEAN FLOOR

Following the introduction of a proposal in August, 1967 by the Permanent Representative of Malta to the United Nations for a declaration and treaty concerning the deep ocean floor, and extensive debates in the First (Political) Committee, the 22nd General Assembly adopted a resolution creating an *Ad Hoc* Committee to Study the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction. Membership in the *Ad Hoc* Committee comprised thirty five countries and included — Argentina, Brazil, Canada, Chile, Ecuador, El Salvador, Peru, and the United States. Three working sessions were held: March 18-27 and June 17-July 9 in New York, and August 19-30 in Rio de Janeiro. During its first session the *Ad Hoc* Committee elected officers, organized its work, and established two working groups of the whole, one to deal with legal and the other with economic and technical matters. The second session was devoted primarily to detailed examination by the

two working groups of the legal, economic and technical aspects of the subject. At the third session, the two working groups finalized their respective reports and reached agreement on several specific recommendations to the 23rd General Assembly.

The Economic and Technical Group discussed five major problems:

1. Assessment of the extent of the mineral resources of the ocean floor and their geographical distribution.
2. Present state and foreseeable development of technology in the field of exploration, evaluation and exploitation of mineral resources.
3. Possibility of exploiting mineral resources from the standpoint of technological progress and the profitability and soundness of investment.
4. Possible consequences of the exploitation of mineral resources.
5. Prospects for international cooperation in the development and exploitation of the resources of the ocean floor.

The records of the Economic and Technical Group contain much useful information on these topics. Many distinguished scientists and experts served on the various national delegations and contributed to its deliberations. Not unexpectedly, however, there were conflicting views regarding the urgency of the need to establish new law to deal with the anticipated problems as man exploits the resources of the deep ocean floor. In view of the scientists' forecasts, sufficient time will be available for study of all aspects related to the development of these resources, though it would be unwise to delay their consideration. A balanced view suggests "cautious optimism" concerning future technical achievements, and a regard for those factors which, absent accelerated technical advances, will influence the prospects for early exploitation of ocean floor resources. Concern for possible repercussions of such exploitation on other uses of the sea, including navigation, fishing and research led to the suggestion that conflicting interests be reconciled in a new regulatory framework. There was substantial measure of agreement in the Group regarding the importance of furthering international cooperation in scientific research, and acceptance, in principle, of the proposal for an International Decade of Ocean Exploration. The forms which such international cooperation might take, and the international regime ultimately to govern ocean floor resources were, however, the subjects of considerable debate. The six delegations from Latin America on the Economic and Technical Group

reserved their position with respect to the implications of its report, particularly regarding the legal aspects of the problems.

The Legal Group met only during the second session of the *Ad Hoc* Committee and discussed the following major subjects:

1. Legal status of the seabed and ocean floor.
2. Reservation of the seabed "exclusively for peaceful purposes".
3. Use of seabed resources "for the benefit and in the interests of mankind".
4. Freedom of scientific research and exploration.
5. Problems of pollution and other hazards.
6. Definition of boundaries of the seabed and ocean floor.
7. A moratorium on national claims to the seabed beyond the limits of present national jurisdiction.
8. A declaration of legal principles concerning the peaceful use of the seabed and ocean floor.

Due to the complexity of the problems and the limited time available to the Group, its program of work was not completed. There was no consensus on any of the issues listed above. The Group, however, prepared a report of the discussions which contains particular viewpoints and indicates the extent of support for each of these.

In the *Ad Hoc* Committee's final session lengthy and sometimes vigorous discussions were mirrored in the reports of the two working groups and the parent committee. Besides endorsement of the proposal for an International Decade of Ocean Cooperation, the major results were:

1. **Peaceful Purposes and Ocean Floor Use.** The issue of reservation of the ocean floor exclusively for peaceful purposes proved troublesome. Several delegations, including that of the Soviet Union, favored adoption of a declaration simply stating that the seabeds were reserved for peaceful purposes. Other nations, including the United States, suggested that prevention of spread of the armaments race to the seabeds would be best accomplished by urging the eighteen nation Disarmament Committee to explore the possibility of working out a verifiable international agreement to prevent the emplacement of nuclear weapons. There was controversy too, over what activities would be considered "peaceful," with some states indicating that all military uses should be excluded, and the United States and others asserting that the term does not exclude

military activities in pursuit of peaceful aims consistent with the Charter and the obligations of international law. The report of the *Ad Hoc* Committee was neutral on the question of urging the Disarmament Committee to concern itself with the military aspects of the seabeds, noting merely that some nations favored this course while others opposed it. However, since the Disarmament Committee now has this item on its agenda, it seems likely that future discussions on this subject will be concentrated in that forum.

2. Declaration of Legal Principles. Complex and controversial issues were debated in the *Ad Hoc* Committee in an effort to formulate legal principles to guide exploration and use of the seabeds. The limits of the territorial sea, the boundaries of the continental shelf, the regime for the deep ocean floor, and numerous other issues arose during this discussion. The *Ad Hoc* Committee failed to arrive at a consensus regarding any principles and included in its report two considerably different formulations: (1) a "draft declaration of general principles" reflecting the views of delegations representing six Latin American and nine Afro-Asian countries, and (2) a "draft declaration of agreed principles," based largely upon suggestions advanced by the United States and supported by many other countries.

The *Ad Hoc* Committee reported general endorsement of a recommendation that the 23rd General Assembly create a standing committee on the seabeds. This was achieved despite differences of opinion on the mandate and frame of reference of such a committee, and concern lest it infringe upon the activities of certain of the specialized agencies of the United Nations. The proposed moratorium on seabed exploitation activities beyond the limits of narrowly defined continental shelves, which was advanced by a number of delegations, did not receive the support either of the maritime powers, or of a majority of the members of the *Ad Hoc* Committee.

In sum, the deliberations of the *Ad Hoc* Committee drew attention to many legal problems which ultimately must be resolved as man makes use of advanced technology to capitalize on the deep ocean resources. The discussions accumulated information and also served an educational purpose by highlighting scientific knowledge of the environment and creating an awareness of the positions of the various countries. By striving for consensus, and rejecting demands to reach decisions prematurely, the Committee employed a reasoned approach which can facilitate internation-

al cooperation and can assist in resolving the complex and often controversial issues of the extent of coastal state jurisdiction and the international law of exploitation of ocean floor resources.

FISHERY RESOURCES

Mid-1968 witnessed a continuation of the intensive controversy which has developed over claims for exclusive national control over offshore fishery resources. The claims of several Latin American states to authority up to 200 miles from the coast, in contrast to the generally accepted principle of free access beyond a relatively narrow territorial sea except as limited by international agreement, have resulted in several significant interactions.

Argentina's recently proclaimed 200 mile territorial sea for purposes of regulation of fishing led to increased vigilance of patrol forces. In June, two Soviet fishing boats were seized off the Plate River estuary and taken to the port of Mar del Plata. The ships were actually fishing in an area slightly north of a median line dividing jurisdiction over the sea beyond the estuary between Argentina and Uruguay. Uruguay claims a twelve mile territorial sea, but under Article 12 of the Geneva Convention on the Territorial Sea and Contiguous Zone, where the coasts of two states are opposite or adjacent neither state, absent agreement, may extend its territorial sea beyond the median line. The ships were released by Argentina after paying a token fine.

There were several other incidents and seizures during this period, but the major developments concerned the response of the United States to these extensive claims.

The U. S. Congress approved the Fishermen's Protective Act Amendment to assist U. S. fishermen in obtaining restitution for seizures by foreign states occurring more than twelve miles offshore. The legislation was sent to the White House on August 7, 1968. This legislation requires the Secretary of State to present claims to foreign governments for amounts expended in connection with the seizures of U. S. fishing vessels on the high seas. If the claim is not paid within 120 days after notice is received by the foreign government, the law provides for deduction of the amounts expended from the aid funds programmed for the current fiscal year under the Foreign Assistance Act of 1961. The scope of indemnity to U. S. shipowners is broader than in previous legislation, and now includes other costs in addition to the fines levied. Deduction of unpaid claims from the current programmed aid funds was also added, to ensure a direct and immediate impact of the U. S. response. On August 8, Ecuador seized four U. S. tuna fishing ships 22-27 miles offshore,

and levied fines totalling more than \$202,000. These fines were approximately equal to the cumulative total of all fines previously paid to Ecuador by U. S. fishermen. On August 12, President Lyndon Johnson signed the Fishermen's Protective Act Amendment into law. Criticism was voiced in several South American countries in response.

In view of Argentina's decision to join the three countries which have long claimed a 200 mile fishing zone—Ecuador, Peru, and Chile, and the possibility of a similar extension by other South American countries this year, controversy over the lawfulness of these zones is bound to intensify as substantial areas of the ocean are involved. Only portions of these areas are productive fishing grounds, but the impact on fishing interests of the United States and other countries, and the supplementary threats to freedom of navigation posed by national exercise of jurisdiction in extensive areas, appear to justify the need for protective legislation by the United States if these controversies are not resolved by international agreement. The United States has a treaty with Japan dealing with Alaskan fishing grounds; Japan recognizes a three mile and the U. S. a twelve mile fishing zone. The United States also has an agreement with the Soviet Union regarding areas and seasons for fishing certain species, both within and outside the U. S. twelve mile zone.

After the seizures by Ecuador in August, 1968, the United States proposed official talks with Ecuador, Peru and Chile, beginning in October to settle the long-standing controversy. Informal discussions had been held by the four countries in April in Santiago, Chile, and there were signs that progress was possible. This appeal by the U. S. for official negotiations was rejected.

On September 18, 1968, the U. S. fishing ship named, ironically, Ecuador, was seized by Peru reportedly thirty one miles offshore. The ship was released without being subjected to fines or fees, but the U. S. Department of State made a formal protest following the seizure.

Mexico, in execution of its law extending the zone of exclusive fishing from nine to twelve miles, negotiated arrangements with the U. S. and Japan regarding termination of the fishing which has been traditionally engaged in by the nationals of those countries in the area covered by the three mile extension. Fishing practice was recognized by Mexico, and terms for the continuance of such foreign fishing up to the end of 1972 were agreed upon.

The President of Mexico, in his State of the Union message in September, announced that his state claims the straight baseline method to enclose as internal waters the portion of the Gulf of California north of the islands of Tiburon, San Esteban, and San Lorenzo. Article 4 of

the Geneva Convention on the Territorial Sea and Contiguous Zone provides that straight baselines joining appropriate points of a coastline may be used if there is a fringe of islands along the coast in its immediate vicinity, providing that the lines do not depart to any appreciable extent from the general direction of the coast and that the enclosed sea areas are so closely linked to the land domain as to be subject to the regime of internal waters. Mexico's claim, it was indicated, would be defended by reason and law if challenged by other states.

In a move related to the dispute over approximately 50,000 square miles of territory, Venezuela claimed as its territorial sea a ribbon of sea between three and twelve miles offshore along a 150 mile portion of the Guyana coast between the Essequibo River and the current boundary of Venezuela. Guyana made a formal protest, and several major maritime powers reportedly have informed Venezuela they will not recognize the claim. The Venezuelan claim does not extend to Guyana's three mile territorial sea, and apparently is intended to relate solely to resource exploitation, and not navigation, in the claimed area. It should be recalled that a boundary dispute between Britain and Venezuela in the last century was submitted to arbitration and decided in favor of Britain. Venezuela accepted the decision, but later claimed it was unfair. Guyana, formerly British Guiana, became independent last year and claims a three mile territorial sea. Attempts by a Venezuela-Guyana Commission to resolve the boundary problem have been unsuccessful. About 200 foreign shrimp trawlers operate near the area, most of them based in Georgetown, Guyana. Mineral resources of the continental shelf are relevant to this claim, and at least one oil company has not renewed an exploration lease for a tract partly within the area.

NAVIGATION

In June, the United States deposited its acceptance to the International Convention for the Safety of Life at Sea which was adopted at London in October, 1967. The convention entered into force in 1965, but the amendments are not yet in force.

LOAD LINES CONVENTION

The international Convention on Load Lines, concluded at London in 1966, entered into force on July 21, 1968.

FISHERIES CONFERENCE

Delegates from the fifteen Caribbean and Latin American countries, who participated in the Third U.N. Fisheries Liason Officers Conference

in October, 1968 in Barbados, reviewed the progress of the Caribbean Fisheries Development project and voted to extend it for an additional two years after August, 1969. This would permit expansion of the exploratory fishing, marketing and training programs, and permit further development of state institutions and plans during the life of the project.

ECUADOR'S FISHING INDUSTRY

Ecuador will modernize its fishing industry with a \$5.3 million World Bank loan approved in September 1968 for the first stage of a ten year project. The five-year first stage calls for construction of twelve purse-seine type tuna fishing vessels, location and feasibility studies for two fishing ports, and construction of port facilities in the Manta fishing port. The United States voted in favor of granting the loan, despite the controversy over fishing rights with Ecuador and the anticipation of domestic criticism.