

MINING THE DEEP SEABED: A RANGE OF PERSPECTIVES

*Proceedings of the Sixteenth Annual Regional Meeting of the American Society of International Law**

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CHANCELLOR MELVIN A. EGGERS: Distinguished guests, faculty of the student colleges. I'm pleased to greet you at the opening of this Sixteenth Annual Regional Meeting of the American Society of International Law of which issues in deep sea mining will be consid-

* The Symposium was held in Syracuse, N.Y., on February 24, 1979 at Syracuse University College of Law. The views expressed by the participants do not reflect their official capacities or that of their organizations. Subsequent to the Symposium, ongoing U.N. negotiations have given rise to a new Informal Composite Negotiating Text, whose contents are not necessarily reflected in these proceedings.

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ered. It may seem that an inland city such as Syracuse and the university which bears its city's name would be an unlikely site for an international conference, but in fact this University has perhaps a greater international outlook than any other university in New York State and certainly a deeper interest in public policy issues, therefore, an appropriate site for a public policy issue on an international matter. The University is pleased to host this program and trusts that you will find your experience enjoyable as well as worthwhile. We're glad you're here.

INTRODUCTION

Roger H. Hull*

Syracuse is really very fortunate to host this meeting. We're fortunate mainly because of the high caliber of people here today. We're also fortunate because this rather unique setting affords us an opportunity to advance a very important issue one step closer to resolution. This conference is unique in that, although the law of the sea has been discussed for a long time, there has never been a setting in which congressional, international, and industrial representatives have had an opportunity to debate formally the issues of the law of the sea. Today, these gentlemen will have an opportunity to present positions on different topics dealing with the question of deep seabed mining and then, through the interchange that will take place after each presentation, to have a free-flow discussion which, we hope, will advance this issue one step closer to resolution.

One thing which I would like to point out is that, although the deep seabed mining issue is a technical one, we really have before us an area of law which has far-reaching ramifications. When one discussed the issue of fishing in the waters off Iceland a few years ago, he did not realize that it would erupt into the cold war between Iceland and the United Kingdom. Similarly, when one spoke about the question of tuna, he did not realize that we would shortly have problems between the United States and Ecuador. Accordingly, although we are ostensibly talking about deep seabed mining, we are really discussing questions of energy, economics, politics, and, unfortunately, potential military confrontation.

The participants before you are some of the key figures in the law of the sea negotiations: Richard Young, an attorney from Van Hornesville, New York, who will be presenting the industry viewpoint; L.F.E. Goldie, a professor at the Syracuse University College of Law; Roy Lee, a member of the UN Secretariat, who very graciously accepted at the last moment to substitute for Ambassador Nabil Elaraby who was called to the Middle East peace talks at Camp David; Ambassador George Aldrich, United States Ambassador and the key United States representative on the deep seabed issues; Congressman Paul "Pete" McCloskey, Jr., of California, an individual who has always taken lead roles on issues of tremendous

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import to the United States; and L.L. Herman of Canada, advisor to the Canadian Delegation on the Law of the Sea and member of the Department of Justice, who has been Canada's representative to the deep seabed negotiations. Later, we will be joined by Mati Pal of the UN Secretariat, who also graciously agreed to be a last minute substitution, in this case for Ambassador Tommy Koh of Singapore, who was called to the meeting of the United Nations Security Council on China's invasion of Vietnam.

The format which we will follow today is designed to enable the people before you to debate the deep seabed issue as advantageously as possible. We will have presentations of approximately fifteen to twenty minutes by each person on the topic which he has agreed to cover. The participants will then debate the individual's presentation among themselves. To the extent possible, we will also address questions from the audience.

In that vein, I would like to point out three distinguished gentlemen in the audience: Vincent McKelvey, Syracuse graduate, chief scientific advisor to the United States Delegation on the Law of the Sea, and former head of the United States Geological Survey; Louis Alexander, Chairman of the Department of Geography at the University of Rhode Island and member of the Advisory Committee of the NSC Interagency Task Force on the Law of the Sea; and Ron Losch, Deputy Minority Counsel to the House Merchant Marine and Fisheries Committee.

To briefly put in context what we will be discussing today, let me say simply that the law of the sea is not a new issue. It has been an issue since the days of the Greek and Roman Empires, for since those days we have had laws and disagreements regarding those laws. What is relatively new is the attempt to codify the law of the sea to reduce the likelihood of disputes or, at the very least, the threat of conflict resulting from those disputes.

—In 1958, the First United Nations Conference on the Law of the Sea, the first formal attempt to codify the law of the sea, produced four conventions dealing respectively with the high seas,¹ fishing,² the continental shelf,³ and the territorial sea and contig-

1. Convention on the High Seas, *done* April 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (entered into force September 30, 1962).

2. Convention on Fishing and Conservation of Living Resources of the High Sea, *done* April 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285 (entered into force March 20, 1966).

3. Convention on the Continental Shelf, *done* April 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 (entered into force June 10, 1964).

uous zone.⁴

—In 1960, the Second United Nations Conference on the Law of the Sea⁵ was called to deal with the question of territorial sea which had not been resolved in 1958 and which, unfortunately, remained incapable of resolution at this Conference as well.

—In 1965, Ambassador Pardo of Malta made an impassioned plea on the floor of the General Assembly to have the United Nations deal with the question of what he called the “common heritage of mankind.”⁶

—In 1967, the General Assembly inscribed the law of the sea on its agenda.⁷

—In 1969, the General Assembly, by a vote of 62-28-28, passed the Moratorium Resolution⁸ which called on persons and states to refrain from activities of exploitation of the resources of the area of the seabed beyond national jurisdiction.

—In 1970, the General Assembly declared the seabed beyond national jurisdiction to be the “common heritage of mankind” by a unanimous vote in the Declaration of Principles Resolution.⁹

—In 1972, the General Assembly called for a third United Nations conference on the law of the sea.¹⁰

—In 1974, the Third United Nations Conference on the Law of the Sea was formally convened in Caracas, Venezuela.¹¹ Although it was the third United Nations conference, it was the first time that all areas of the law of the sea were discussed and that there was an attempt to come up with what was to be a convention for two-thirds of the world’s surface.

The attempt, in the Third United Nations Conference on the Law of the Sea, to create a widely recognized and comprehensive treaty for the oceans involved 156 countries and some 91 issues. To deal with these issues, three committees were set up: Committee I deals with the question of the deep seabed which we will discuss; Committee II deals with traditional areas of the law of the sea, such as navigation and fishing, and the status of what has come to be

4. Convention on the Territorial Sea and Contiguous Zone *done* April 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 (entered into force September 10, 1964).

5. See Second U.N. Conference on the Law of the Sea, Official Records, 1960.

6. Permanent Mission of Malta to the United Nations Secretary General: Note Verbale, 22 Gen. Ass. Plenary, U.N. Doc. A/6695 (1967).

7. G.A. Res. 2340, 22 U.N. GAOR, Supp. (No. 16) 14, U.N. Doc. A/6716 (1967).

8. G.A. Res. 2574D, 24 U.N. GAOR, Supp. (No. 30) 11, U.N. Doc. A/7630 (1970).

9. G.A. Res. 2749, 25 U.N. GAOR, Supp. (No. 28) 24, U.N. Doc. A/8028 (1970).

10. G.A. Res. 3067, 28 U.N. GAOR, Supp. (No. 21), U.N. Doc. A/9278 and Corr. 1.

11. See Third United Nations Conference on the Law of the Sea, Official Records, 1974.

known as the economic zone; and Committee III deals with questions of maritime scientific research, pollution, and the transfer of technology. Eventually a fourth committee was established to deal with questions involving disputes that were to arise out of the convention.

Despite much adverse criticism, the Law of the Sea Conference has largely attained its objective: a comprehensive and widely accepted convention for the oceans. As a result of many public and still more private meetings, the delegates have indeed made monumental progress. While areas of disagreement remain, a final convention is within reach—if a solution can be found for the deep seabed stalemate.

The stalemate revolves around manganese nodules, potato-like clusters of cobalt, copper, manganese, and nickel which lie on the ocean floor. But the issue involves more than just manganese nodules. Developing countries view the negotiations as one which impacts upon the proposed new international economic order. Developed countries, reacting to their recent experiences with oil producing nations, want to ensure both their access to these precious metals and their rights with respect to other, as yet unknown, riches of the deep seabed. Developing and developed countries alike, because of the immense importance that they attach to this issue for practical and theoretical purposes, may well find themselves drawn into a conflict situation which neither wants and which neither ultimately can avoid.

More specifically, the unresolved hard core issues involve the system of exploration and exploitation for the deep seabed resource policy, financial arrangements, and the structure of the Authority, which all parties agree will play a major role in the development of the deep seabed. Although these issues will be resolved at the Law of the Sea Conference, the fact remains that the more the disparate viewpoints can be discussed, the better the chances for an early resolution.

That is our purpose today. Through the presentations and the panel discussion following each presentation, we hope to air the differences and to bring the deep seabed issue one step closer to resolution.