THE LEGAL STRUCTURE OF THE

PROPOSED INTERNATIONAL SEABED AUTHORITY

by

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To:

My parents,
My friend the sea,
My country.

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SUMMARY

The continuing international dispute over the seabed area beyond the limits of national jurisdiction is a phenomenon of a special and important kind. The conflict concerned the ownership of the seabed area and its substantial amount of wealth.

There is a wide range of contentious questions to be decided; those questions are related to problems of economic, legal, military and scientific kinds. This is one of the most important issues in history which will crucially determine the distribution of wealth and welfare in the world for years to come.

So, we are praying for a successful solution, based on international control of the area and its resources so as to share the benefits, and to close the existing inequalities among nations which divide them and to increase their division for ever.

This thesis is an attempt to deal with the problem in the light of the UN Conferences on the Law of the Sea. It consists of an introductory chapter (The importance of the seabed area and the material therein).

The importance of the historical review - cause of conflict, its effect on present time (a historical development for establishing the proposed International Seabed Authority since 1967 until the present time) have been dealt with in

six chapters.

The first chapter is devoted to describing the beginning of the problem, the Maltese move in UN, and the Ad Hoc Committee work.

Chapter two is concerned with the Seabed Committee work for the period 1969.

The seabed politics and the Law of the Sea, 1970 - 73, is the subject of Chapter three. In this chapter the problem concerning the elaboration of a regime for the international seabed area: proposals and positions in the seabed committee and the state of seabed politics.

At the end of the seabed meetings Chapter four has dealt with the Third United Nations Conference on the Law of the Sea, 1973-74, Caracas session.

Geneva session 1974-75 is the matter of Chapter five, while the sixth chapter is concerned with New York session 1977.

The research has sought to analyse the different aspects of the problem concluding our study in considering what type of international seabed authority might best be able to resolve some of the basic difficulties, best reconcile the various conflicting interests involved, and best serve the needs of the international community as a whole.

INTRODUCTION

THE IMPORTANCE OF THE SEABED AREA AND THE MATERIAL THEREIN

The sea, which covers approximately three quarters of this planet, is the locale of the origin of life upon it. Humanity has long realised its indispensable importance in terms of shipping and fishing and its use for naval protection. In recent years, the development of off-shore petroleum and natural gas deposits have necessitated the construction of structures which must be towed to their oceanic locations before exploitation can commence. In addition, many states directed their attention to the usage of the sea for military purposes. A vast amount of potential wealth has recently been discovered in the seabed of the oceans which has attracted the interest of many nations towards the utilising of such resources for their own benefit, especially after the increasing world demand for raw materials. Therefore, the economic factors, at least regarding some substances in some locations, will become attractive enough for their exploitation.

It is the inexhaustibility of this storehouse of rich material of sea deposits, suitable for use by civilisation which directed our attention to consider it in this study. To support our idea we must first of all define the 'seabed' area in order to understand its nature and legal status and to try to resolve the problems which the use of such resources by various interested countries will raise.

We must first define the geological terms of the zones of the ocean floor which comprise the continental shelf, the continental slope, the continental rise and the deepocean floor.[1]

(1) Evan Luard,"The Control of the Seabed", rev.ed. (London: Heinemann, 1977), at pp.4 - 5.

The continental shelf : it is that area of the sea which is closer to the shore; it is an extension of the land mass beneath the water. This area slopes down gradually at about one-eigth of one degree, from the low-water line of the coast to a point where the inclination becomes, quite suddenly, perceptibly greater: more than 3 degrees. Usually it occurs at a depth of from 130 to 200 metres, but in some cases at a point as shallow as 50 metres or as deep as 500 metres. The breadth of the shelf varies according to the gradient. Usually it may range from one to 800 miles.

The continental slope: this lies beyond the continental shelf. It inclines from between 3 degrees to sometimes over 45 degrees but, in general, it is around 25 degrees. The depth is of about 1,500 - 2,500 metres. The breadth of the slope averages between 10 to 20 miles.

The continental rise: this area is slightly more inclined than the area of the continental slope, it sloping down to a point between 3,500 and 5,000 metres in depth; there the bed flattens out. The width of the rise is between 100 and 1,000 miles. This smooth area is covered with broken rocks of an older geological age. From a geological point of view, its basic subsoil is part of the deep ocean floor. In some cases, it is sliced by very deep trenches.

The deep ocean floor: It is the last area of the four. It is also called the abyssal plain which lies between 3,500 and 6,000 metres below the surface, the average depth being under 4,000 metres. It is covered with seamounts, large mountain

ranges and deep trenches.(1)

Sometimes, the term 'the continental margin' is used to describe the shelf, the slope, and the rise areas together.(2) According to some views including the geological view, the rise area should be regarded as part of the deep ocean floor.

Various geological divisions of the seabed have been suggested. One such division considered the fact of the existence of different kinds of useful minerals in two different areas of the ocean as a basis for its division. Therefore a distinction was drawn between the continental terrace (which includes the coastal plain, continental shelf and slope) on the one hand, and the ocean floor on the other hand.(3)

Another geological division classified the seabed as follows:

(1) The continental margin includes (a) the continental shelf which slopes down to water depths of 50 to 550 metres, at which point there is an abrupt descent, (b) the continental slope, that steep portion of the ocean floor extending downward from the outer edge of the continental shelf, and (c) the continental rise, overlapping the submerged edge of the continental block.

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(1) Id.

(2) For a discussion on the continental margin see K.O. Emery, "Geological Aspects of Sea-floor Sovereignty", in L.M. Alexander (Ed.) The Law of the Sea: offshore boundaries and zones (Kingston, R.I., University of Rhode Island, 1967),pp.139-160.

(3) F.M. Auburn, The International Seabed Area, I.C.L.Q. Vol.20, 1971, p.173.

(2) The ocean floor.[1]

Also there are other definitions of the seabed which are based on different considerations, beyond the scope of this study.

One more point is that of the determination of the limits of the international seabed area about which the Declaration of Principles 1970 speaks of the area "beyond the limits of national jurisdiction". The question is what are the limits of national jurisdiction? We are of the opinion that the international seabed area demarcations should be precisely set before the proposed International Seabed Authority is established.

The only UN document in which the term"seabed" is defined is that of the Geneva Convention Of 1958 dealing with the subject of the continental shelf. This convention used the term "seabed and subsoil of submarine areas", and, 12 years later, the UN made reference to the "area of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction..." without differentiating between "seabed" and "ocean floor". So far, there is no clear or meaningful distinction between the two terms.

The Geneva Convention of 1958 opened the door for a wide range of questions and discussions on the legal status of the seabed and of whether, like the high seas, it is free to the use of all nations and whether it may be gradually subject to appropriation by coastal states on the basis of the exploitability criterion.[2]

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(2)For a concise summary of the current status of the seabed and subsoil of the deep sea, see E.D. Brown,"the Legal Regime of Hydrospace"(London: STevens & Sons, 1971) Chap.3, pp.81-130.

(1) Id.

After the 1958 Convention there was much discussion concerning the possible effects of the exploitability clause of the continental shelf convention[1] so far as jurisdiction over the outer continental margin (i.e. beyond the 200 metre isobath) was concerned; but until 1967 when Dr. Pardo first brought the seabed issue before the General Assembly of UN, little discussion took place regarding any types of regime for the seabed beyond national limits.

One criticism regarding the criterion of the exploitability as provided in the convention was that the developed countries which can extend seaward of national limits would be the primary beneficiaries. Flexibility of this criterion lies in its apparent limitlessness to those nations benefitting by it. Consequently, the geographic limits of the international seabed area will continue to be in doubt.[2]

Therefore, such a criterion is not proper test in again deciding the boundaries of the outer limits of national jurisdiction and it should be replaced.

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(1) Art.1 of the Convention on the Continental Shelf (UN Doc. A/CONF. 13/L.55) which states that the term "continental shelf" is used as referring..."(a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas...".

(2) On the other hand, the International Court of Justice, in the North Sea Continental Shelf cases, ruled that Art.1 of the 1958 Continental Shelf Convention (which contains the exploitability principle) has the status of customary international law. See North Sea Continental Shelf Judgment, (1969) I.C.J. Rep.3.

The resources of the sea floor belong to three categories.[1] The first category contains the original natural materials of the floor, in the continental crust and beyond, including sand and gravel; these are important for many purposes, especially building. Shells, iron-sands and heavy mineral sands; these materials are dredged every year to a high value.[2]

The second category contains the placer deposits, which have been washed from rivers and elsewhere and settled on the seabed; tin, which has been mined from the bottom of the sea off the coasts of Malaysia, Thailand and Indonesia; diamonds, which have been dredged from the sea floor off south-west Africa.

The third category contains the precipitates, which have been formed gradually within the sea water or on the seabed

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(1) Miller B. Spangler, New Technology and Marine Resource Development (New York:Praeger, 1970); Brenda Horsfield and Peter Stone, The Great Ocean Business (London:Hodder and Stoughton, 1972); Feng-Hui Wang, Mineral Resources of the Sea, UN Doc. ST/ECA/125, 1970; John L. Mero, The Mineral Resources of the Sea (New York: Elsevier, 1965); Lewis M. Alexander (ed.) The Law of the Sea: The future of the Sea's Resources (Kingston:University of Rhode Island, 1968); T. Saunders English (ed.) Ocean Resources and Public Policy (Seattle:University of Washington, 1973); National Petroleum Council, Petroleum Resources Under the Ocean Floor (Washington, 1969); Vincent E. McKelvey and Frank F. Wang, World Subsea Mineral Resources: Preliminary Maps, U.S. Geological Survey Department of the Interior, 1969; David R. Horn (ed.), Ferromanganese Deposits on the Ocean Floor, International Decade of Ocean Exploration (IDOE), National Science Foundation, Washington, 1972; and UN Docs. A/AC. 138/36, 73, 87 and 90, and A/CONF. 62/25 and 37.

(2) Marine Science Affairs - selecting priority programmes, Annual Report of the President to the Congress on Marine Resources and Engineering Development, U.S. Government Printing Office, April, 1970 (UN Doc. E/ 4973 of April 26, 1971) p.12. Also G.M. Fye et al. Ocean Science and Marine Resources, in E.A. Gullion ed., The Resources of the Sea (Englewood Cliffs, N.J.:Prentice-Hall, 1968) p.33 .

itself; these deposits are very important commercially. Among this kind of deposit is the phosphorite which has been found occasionally on the deep ocean floor and exploited economically. It consists of decayed animal and plant matter.(1)

The precipitates differ in their nature. Small nodules of metal have been found on the bottom of the Pacific, Atlantic and Indian Oceans; they are predominantly composed of manganese, but they may also contain other metals including nickel, copper, cobalt, molybdenum, aluminium and iron in different concentrations.(2) These potato-sized nodules were first discovered in 1872 by the British survey ship Challenger. On a dry weight basis the nodules of economic interest will contain about 28% manganese, 1.4% nickel, 1.2% copper and 0.25% cobalt, these being the metals of commercial significance. On the average, the nodules are about 5 centimetres in diameter but can vary from one to 20 centimetres. Their concentration in some areas reaches about 100,000 tons per square mile.(3)

Nodules which are high in cobalt are most common in the mid Pacific rise area, a region of about 10 million Km which lies west of Hawaii and includes the Society Islands of the South Pacific. Assuming a concentration of 4.8 Kg/m^2 (1lb/sq.ft), this region could contain about 57,000 million tons of nodules.

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(1) Supra, note 1. on page 9.

(2) For a more detailed analysis see Mero, op. cit.

(3) Report of the UN Secretary-General, Mineral Resources, January 13, 1971 (E/CM. 20 DD5).

These high-cobalt varieties are apparently associated with topopraphic highs in mid ocean rise where the water depth is less than 850 fathoms, the average depth of the remainder of the Pacific being 2,300 fathoms.(1)

In the central portion of the south-eastern Pacific, the nodules tend to be high in nickel and copper. On the basis of photographs of the sea floor, this region is estimated to have a nodule concentration of 14 to 33 Kg/m^2 (3 to 7 lb/sq.ft). Even taking distribution as only 4.8 Kg/m^2 (1 lb/sq.ft), about 200,000 million tons of nodules may be calculated for the 36 million Km^2 involved. Nodules taken from the ocean floor in the south-eastern corner of the Pacific also appear to be of poor grade. A belt in which the nodules are especially rich in manganese, but typically poorer in other metals, is located about 500 to 800 Km off the Pacific coasts of North and South America. The potential amount is about 26,000 million tons of nodules.

Direct comparison shows that Pacific nodules contain more manganese, cobalt, copper, molybdenum and titanium.

Nodules from the Atlantic are less variable: with one notable exception to the low-grade nature of Atlantic nodules there is from an area 600 Km south-east of Bermuda manganese content of some nodules up to 44%. From an economic view point, the typical composition of nodules from the Pacific Ocean appears more interesting than that from the Atlantic.

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(1) Ibid.

Nodules from the Indian Ocean show some similarity in composition to those from the Pacific, but the average contents of manganese, nickel, cobalt and copper are slightly lower. The nodules taken from the western Indian Ocean are of lower grade.(1)

The nodules are typically found at depths of 10,000 to 20,000 feet in areas with low sedimentation rates. An interesting fact about the nodules is that they are a renewable resource;(2) roughly 1.5 trillion tons are estimated to exist, and 10 million tons are estimated to be forming annually. In general, they exist on the surface of the seabed while some exist in the sediment column. Many elements in the manganese nodules now forming on the Pacific Ocean floor are accumulating faster than they are being consumed; three times as fast in the case of manganese, twice for cobalt, and equally fast in the case of nickel.

The economic value of the nodules depends on their quality, concentration, size, distribution, physical characteristics of sediments, water depth... It has been estimated that some areas contain about 300,000 tons of nodules per square mile, and more commonly observed concentrations, on the order of 30,000 to 75,000 tons per square mile, are still economically interesting.

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(1) Ibid.

(2) Mero emphasises this point of view in op. cit.,p.18.

Deposits of the nodules in the Atlantic and Indian Oceans do not appear to be as widespread as in the Pacific Ocean.

In 1958, H.W. Menard and C.J. Shipek published an article in Nature on surface concentrations of manganese nodules. They estimated that there is up to a total of 100 million tons in the south west Pacific alone. From 1958 to 1959, scientists from the University of California estimated the total volume of nodules in the entire Pacific Ocean, based on the concentrations revealed by undersea photography,(1) at about 1,700 billion (i.e. thousand million) tons. Again in 1961, two Soviet scientists gave estimates for the Pacific at about a twentieth of the American figure. This still represents an enormous quantity. Other studies give still smaller estimates. It is important to realise that whatever the true figure, the wealth potential in the nodules is vast.

According to a recent UN study, the nodules may contain 16.4 billion tons of nickel, 8 billion tons of copper and 8.8 billion tons of cobalt.(2)

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(1) Mero, The Finding and Processing of Deep-Sea Manganese Nodules (The University of California Press, Berkeley, Cal., 1959).

(2) Report of the UN Secretary-General, Mineral Resources, January 13, 1971 (E/CM.20DD5).

Comparison of Seabed Minerals with Those of Land-Based Reserves

To appreciate the importance of these resources, we should compare them with the amounts of the same resources known to exist on land. Suppose the estimates of the Californian study were confirmed, it would mean that the nodules of the Pacific Ocean alone would contain about 358 billion tons of manganese, equivalent to reserves for 400,000 years at the 1960 world rate of consumption, compared to known land reserves for only 100 years; 43 billion tons of aluminium equal to reserves for 20,000 years, compared to known land reserves for 100 years only; 14.7 billion tons of nickel, equivalent to reserves for 150,000 years, compared to reserves to last 100 years on land; 7.9 billion tons of copper, equivalent to reserves for 6,000 years, compared to reserves of 40 years only on land; 5.2 billion tons of cobalt, equal to reserves for 200,000 years, compared to reserves for 40 years on land. The nodules may contain 207 billion tons of iron; 10 billion tons of titanium; 25 billion tons of magnesium; 1.3 billion tons of lead, and so on. With the amount of metals in the nodules in the Atlantic and Indian Oceans, all these figures, of course, become still larger.(1)

(1) It is of course not the total quantity of nodules but the amount that are of a quality and location to be fairly readily exploitable which most matters in the immediate future. According to a recent report, several industrial corporations in the USA and Japan have reportedly taken several thousand samples and have used under-way real time television to investigate vast areas of the abyssal floor. Exploration to date has shown that surficial nodules of exceptionally high content of copper, cobalt, nickel, manganese and other metals are likely to be present in sufficient quantities at depths over 3,600 metres (UN Doc. E/4973 of April 26, 1971, Mineral Resources of the Sea.)

Another estimate concludes that world reserves on land for potash, columbium, phosphorus, magnesium, chromium, feldspar, vanadium, and iron in order of abundance are sufficient to meet requirements for a century or more. Reserves of cobalt, manganese, nickel, molybdenum, asbestos, titanium, antimony, bauxite and sulphur should last for thirty to sixty years. Reserves of copper, tungsten, barite, bismuth, lead, zinc, tin, fluorspar, silver and mercury may be adequate to meet demand for up to thirty years.(1)

Competition of Seabed Minerals with Those Produced on Land

One of the vital issues related to future seabed exploitation is its possible impact on existing commodity production patterns, especially those involving the minerals anticipated from manganese nodule production - i.e. manganese, cobalt, copper and nickel. Several proposals have referred to the need for machinery to handle this situation. The question is what really are the probable dimensions of the issue?

The UN Secretariat in 1971 produced a report called possible impact of seabed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment (UN Doc. A/AC.138/36). This report was followed in May, 1972 by additional notes on the possible economic implication of mineral production from the international seabed

(1) Rex Bosson and Bensiln Varon, The Mining Industry and the Developing Countries (A World Bank Research Publication, Washington. 1977) at pp.58,59.

area (UN Doc. A/AC 138/73). The latter report supposed that annual production from a one million ton/year operation of manganese nodules might be approximately 16,000 tons of nickel, 13,000 tons of copper, 2,800 tons of cobalt, and 270,000 tons of manganese. It was expected that the cobalt market might be the first to be affected by seabed production, since the quantity obtained from the one million ton/year operation would be about 8 per cent. of total world requirements by 1980. The African state of Zaire generally produces more than half the world's cobalt, followed by Morocco, Finland, Canada and Zambia at much lower percentages. The demand for cobalt might grow steadily if prices were lowered.

Nickel was envisaged as being the mainstay of the nodule industry, accounting for over half the gross revenues. The demand for this metal - even at the present high prices - is expected to expand rapidly over the coming decades. Canada already produces over half the world's nickel, and the Soviet Union about 20 per cent. of the total.

Manganese may not be recovered, as expected at least in the foreseeable future, because the processes now being considered are not commercially attractive. If commercial production is made, then seabed resources could have an impact on prices, since the demand for manganese is quite inelastic, and no new uses are foreseen which would absorb any increased supplies. The Soviet Union produces about half the world's manganese, India, South Africa, Brazil and Gabon each account

for less than 10 per cent of the supply.

The production of copper from seabed nodules is expected to have little immediate effect on the world commodity market. The demand for copper is about 10 times that for nickel. If rates of production of nodules are geared to the demand for nickel, the real percentage of total copper demand which is produced from the seabed would be minimal. The United States produces about a quarter of the world's copper, while the Soviet Union, Zambia and Chile each produce about one eighth.

We can conclude from the above that an adverse economic impact on developing countries would result from the commercial mining of seabed nodules and would fall most heavily on Zaire (cobalt) and to a much lesser degree on Morocco (cobalt); Zambia (cobalt, copper); India, Brazil and Gabon (manganese); and Chile (copper). Provided effects of seabed production in the areas of copper and manganese over the next few decades are not serious, those countries producing these metals will be unaffected. Zaire, Morocco and Zambia will be among the seriously affected developing countries.(1)

There is a need for a permanent and specific organisation to undertake whatever action is required in order to avoid disruption of the markets of traditional producers and to secure that orderly marketing is instituted. In addition, some regulation might be necessary. There should be some kind of generous compensatory arrangement for affected land producers financed either direct

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(1) Also the developed states of Canada, U.S.S.R., Finland and France.

from the revenue of the International Authority or from a levy on consumers benefitting from the lower prices of seabed products, to where the livelihood of hundreds of thousands may be at stake, the foreign exchange earnings and revenues of a number of developing countries could be badly affected.

The Technology of the Seabed

With todays technology, is it possible to exploit the resources of the seabed? The answer to this question will depend on the continuing advance of technology to an extent which will offer the possibility of the exploitation of the seabed resources. That day could be not too far distant. If we look back even to comparatively recent times when no-one conjectured that the advance of technology in the oil industry could reach such a level as it has today. It would seem that in the near future the technology of the seabed could rapidly advance to the extent that full exploitation of the seabed will be possible.

Firstly, in regard to the methods of surveying the seabed, improvement has enabled development of this system to be achieved. Efficient echo sounders send acoustic signals to the sea bottom which resound, and are amplified and converted by a recorder to give a visual profile of the sea floor. The importance of this kind of sounding is that the depth of the bottom is recorded as well as its nature - whether it is rocky, sandy or muddy.

Lately, those methods have been improved by seismic and sonic profiling of the rocks and composition of the seabed. It has been found that it is possible to indicate the stratification of the seabed by the sonic pulses which penetrate into the mud of the seabed for short distances. In this regard, many kinds of sophisticated machines have been developed, some of which can produce sub-bottom penetration down to 6 or 7,000 metres below the seabed. These kinds of techniques are important for underwater surveying because in discovering new sources of oil, it is necessary to know the geological structure at the said level. Other techniques have accomplished these methods. It is possible to measure the configuration of rock structures by recording the travel time, and the distances of the shock waves from a high explosive or seismic refraction and reflection. The method of core-drilling offers the possibility of taking large samples from considerable depths in the seabed. Nowadays technology permits drilling to take place in depths of up to 9,000 metres, in water which is deeper several times than the reached depth. The Glomar Challenger has drilled to nearly 1,000 metres in waters 6,000 metres deep.

Improvements have been made in the construction of drilling rigs and platforms. Years ago, the off-shore rigs were similar to those used on land, being placed on a platform fixed to the sea floor, normally by steel piles. Recently improved floating platforms have been used by which this platform is able to move about on the water, and is sometimes semi-submersible. On some of these the drilling takes place through a well in the middle

of the vessel. A U.S. firm has constructed a drilling platform for production in over 200 metres of water. This kind of equipment usually costs an enormous amount of money, and some of them cost about £50 million each.

Powerful diesel-electric engines are used in the drilling of multi-directional wells. Nowadays, there is no problem in securing re-entry to the same hole once the bit is removed. Techniques of drilling at angles of 65 degrees have been developed, making it possible to tap reservoir a mile from the well head. Drill-testing equipment using microwave systems has been developed, which transmits the data received from the well to head-quarters on shore.

Automatic systems using acoustic signals and electro-hydraulic systems, operate the wells by remote control.(1)

An under-water vehicle is also used in this field. In 1970 the United Kingdom constructed a seabed vehicle which was

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(1) UN Doc. E/4973, Mineral Resources of the Sea. This report describes a system in which each wellhead has two miniaturised long-duration radioistape generators which power the electromechanically actuated valves without interruption. Production controls for these wells are actuated and precisely regulated by coded acoustic signals sent out from a central production console located on a fixed platform about 1.5 kilometres from the wells. The two-way acoustic telemetry system transmits operational status reports upon request from the production console and automatically transmits any unscheduled operational changes or malfunctions. Most sub-sea equipment used is designed to be set up from the sea-surface without diver assistance.

capable of supporting two operators and three divers on the seabed to a depth of 182 metres (600 feet) and of performing such work as pile-driving, pipeline inspection, trenching, pipeline burying, salvage, and maintenance.

In addition, there is an improvement in under-water vessels. The French balloonist, Auguste Piccard, was the first to develop a large-scale submersible vehicle, later taken over by the U.S. Navy. His son then designed the Bathyscaph Trieste which, in 1960, dived down to the deepest part of the ocean, 11,000 metres beneath the surface. The problem with this vehicle was that it required a surface support and could not be easily manoeuvred. In 1964, the U.S. Oceanographic Institute developed the Alvin, which was much more advanced than the previous vehicles, and was able to operate at 2,000 metres. The Aluminaut, another U.S. vehicle, made of aluminium, was designed to operate at 5,000 metres and was successful in transporting six men for 100 miles at a depth of around 2,000 metres. Afterwards, considerable advances were made through the use of glass to provide hulls capable of withstanding the heavy pressures of deep water. An American corporation (Westinghouse) put out a submersible, the Deepstar 20,000 which is capable of exploring more than 98 per cent of the ocean bed with forward - and side - looking sonar, low-light-level television cameras, radar transponder, movie camera, telecommunication equipment and two manipulators, for exploration, salvage construction and rescue.

Advance has been achieved in the technology of dredging, which is important in nodule exploitation. In 1970, a successful test for a pilot-scale airlift hydraulic dredge system in the Blake Plateau off Georgia in depths of 800 to 900 metres was made. This method was later supplemented by a television camera which helps in eliminating unwanted sea-floor material and in directing the nodules into the dredge pipe. Units along the pipe are used to move the fluid-solid mixture upwards. The separation of the nodules from the water and other deposits is achieved on the ship itself, which then distributes them by a conveyor to the ship's storage compartment. The pipe can withstand pressures and the dredge itself has sufficient power to lift several hundred tons of nodules through the dredge pipe. According to that test, an operational mining rig was constructed which could mine 4,000 tons of nodules a day from 6,000 metres.(1)

Lastly, men are now able to live below the surface of the sea for remarkably long periods. The development of the aqualung during the Second World War enabled the diver to descend to remarkable depths without any support from the surface. It however remained impossible for the diver to descend below approximately 70 metres, because of the physiological changes then occurring in the human body and which endanger human life. Lately, the technique of saturation diving (developed by the U.S. and British Navies) has made it possible for men to descend to

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(1) The Japanese Ministry of Transportation has announced plans to design and build a manganese nodule mining ship.

depths of 500 metres.[1] The diver is placed in an artificial atmosphere at depths well below the surface, so that his physiology becomes sufficiently acclimatised. It is then possible for him to descend to greater depths. It is possible to place permanently manned stations on the seabed at depths of 600 or even 1,000 feet.[2]

Research and studies are being made to improve the technology of under-sea mining to which enormous amounts of money are devoted for this purpose, whether by governments or private companies. It is now known that more than $5 billion a year is spent on research appertaining to undersea technology, either by the U.S. government or by U.S. companies. Hopefully, some time during this decade the economic separation of the metals of the manganese nodules may be possible which perhaps will allow the production of a large amount of metals and at a far lower cost than presently is derived from land sources.

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(1) In 1970 volunteer members of the Royal Naval Scientific Services, United Kingdom, stayed 10 hours at a world record simulated 'dry' diving depth of 457 metres (1,500 feet). In November, 1970, two divers from the French Oceanographic Agency (COMEX) broke this record in a simulated 'dry' dive to 520 metres (1,706 feet). UN Doc. E/4973, Mineral Resources of the Sea.

(2) Fye et al., op. cit., in Gullion, (ed), Uses of the Seas (Englewood Cliffs, N.J.:Prentice-Hall, 1967), p.28.

CHAPTER I

THE BEGINNING

THE UN, THE PARDO PROPOSAL, AND THE AD HOC SEABED COMMITTEE

The Problem

By the late sixties economic, legal, military and environmental problems began to arise concerning the seabed.

In the United States, a number of private organisations realised the importance of these problems and called for confrontation with them. The semi-official Committee on Conservation and Development of National Resources recommended to the White House Conference on International Co-operation called by President Johnson in November, 1965 that ... if rights are to be granted for resources that are the common property of the world community, then decisions on the allocations of these rights or on the methods of acquisition must be made within the framework of international law. A specialised Agency of the United Nations would be the most appropriate body for administering the distribution of exclusive mining rights.(1) In 1966 the Commission to Study the Organisation of the Peace, a liberal and internationalist U.S. organisation had suggested the internationalisation of the seabed. During 1967,the World Peace Through Law Organisation (an association of international lawyers) proposed the'issuance of a proclamation (by the General Assembly) to declare the appertaining of the non-fishery resources of the high seas, outside the territorial waters of any state, and the bed of the sea beyond the continental shelf, to the United

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(1) Luard, p.83.

Nations and under its jurisdiction and control.' In the same year, also, the Pugwash Conference of International Scientists, the American scientist, Alexander Rich, and a Soviet scientist, Academician V.A. Englehards, both proposed that the mineral resources of the seabed should be administered by the United Nations to supply financial support for economic development.(1)

Among many others, the super-powers realised the danger of the competition involved in possible national unilateral actions in order to gain the most possible revenue from exploiting the resources of the seabed. In July, 1966, President Johnson declared: "Under no circumstances, we believe, must we ever allow the prospects of a rich harvest of mineral wealth to create a new form of colonial competition among the maritime nations. We must be careful to avoid a race to grab and hold the lands under the high seas. We must ensure that the deep seas and the ocean bottom are and remain the legacy of all human beings."(2) During the following years, the content of this declaration had a more important echo within United Nations debates than its author might have expected. The Soviet Union which is well known to oppose the vesting of any authority to the United Nations which increases its power in any field, in February, 1967 proposed in the Consultative Council of the Intergovernmental Oceanographic Commission (IOC)

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(1) Ibid.,p.84.

(2) Quoted in Louis Henkin, "Changing Law for the Changing Seas", in Gullion, Uses of the Seas, op. cit., p.82. Also, the New York Times, July 14, 1966, p.10.

that it was urgent to establish a working group to draft conventions on the exploration and exploitation of the mineral resources of the sea (such conventions would not, of course, have been absolutely binding but would have depended upon the agreement of each state). Therefore, it is clear that the Soviets, aware that pressures for internationalisation were starting to build up, endeavoured to strengthen the role of the IOC, as being the least dangerous and supernational of international institutions.(1)

The United Nations itself began to realise the same kind of danger and on March 7, 1966, the Economic and Social Council (ECOSOC) passed a resolution (1112) requesting the Secretary-General to make a survey of the non-agricultural resources of the sea beyond the continental shelf and of the techniques for exploiting them and to identify those resources now considered to be capable of economic exploitation, especially for the benefit of the developing countries. On October 31, 1967 and after the rise of the seabed issue within the United Nations General Assembly, the Secretary-General said that he would examine various options, including the advisability and feasibility of entrusting the deep-sea resources to an international body.(2)

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(1) UN Monthly Chronicle 5, No.1 (January, 1968), pp.29-30; and William E. Butler, The Soviet Union and the Law of the Sea (Baltimore : Johns Hopkins Press, 1971), p.156.

(2) Note by the Secretary-General, A/CI/952 of October 31, 1967.

On 17th August, 1967, Dr. Arvid Pardo, Malta's representative to the United Nations, took the initiative on behalf of his country[1] of requesting the inclusion of the following item on the agenda of the twenty-second session of the General Assembly: "Declaration and Treaty concerning the Reservation Exclusively for peaceful purposes of the seabed and of the ocean floor, underlying the seas beyond the limits of present National Jurisdiction, and the use of their Resources in the Interests of mankind.[2] Dr. Pardo intended to set out principles governing the exploitation of the seabed and the establishment of a supervisory international authority. Through the United Nations, Malta wanted to stimulate the attention of other nations to take action which would result in the internationalisation of the seabed area before the advance of technology permitted the exploitation of this area by the developed countries, thus entailing increasing national claims.[3] Nevertheless, although he did not succeed in achieving his aim at that time, Pardo's proposal was the basis for succeeding discussions on the matter which have continued up to the present.

Dr. Pardo commenced by pinpointing the conflict between the interests of the developed and developing countries. He stated:

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(1) UN Monthly Chronicle 5, No.1 (January 1968), p.29.

(2) UN Doc. A/6695 XXII, August 18, 1967.

(3) Barry Buzan, Seabed Politics (Praeger Publishers : New York, 1976), p.67.

"In view of rapid progress in the development of new techniques by technologically advanced countries, it is feared ... that the seabed and the ocean floor, underlying the seas beyond present national jurisdiction, will become progressively and competitively subject to national appropriation and use. This is likely to result in the militarisation of the accessible ocean floor through the establishment of fixed military installations and in the exploitation and depletion of resources of immense potential benefit to the world for the national advantage of technologically developed countries."(1)

The accompanying memorandum (A/6695) revealed the Maltese fear behind Dr. Pardo's proposal as expressed in the facts that: the seabed and ocean floor covered approximately five-sevenths of the earth's surface. Rapid progress of developed countries in marine technology and existing international law could offer only the probability of competition, national appropriation and use of the seabed and ocean floor, thus risking the exhaustion of the vast resources of the area by a few states, in addition to the danger of using the seabed area for military purposes. Another problem was that of marine pollution as a result of the dumping of radioactive and other wastes due to the lack of internationally binding rules and of an effective international system to control activities in this field. Malta's view was that the time had come to conclude a treaty

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(1) UN Doc. A/6695 XXII, op. cit.

which would contain the following principles:

(1) The seabed and ocean floor lying beyond the limits of national jurisdiction should not be subject to national appropriation in any manner;

(2) The exploitation of the area should be carried out in a manner consistent with the principles and purposes of the United Nations charter;

(3) The exploitation of the area should be carried out in the interests of mankind, using the net financial revenues primarily to promote the development of poor countries;

(4) The area should be reserved exclusively for peaceful purposes. Malta suggested the creation of an international agency to assume jurisdiction over the seabed area beyond national jurisdiction, acting as trustee on behalf of all states and supervising and regulating all functions thereon. In other words, to transform the provisions of the treaty into reality.(1)

It has been said that Malta's proposals were introduced into a legal vacuum as the exact status at international law concerning areas outside national jurisdiction was unclear.(2)

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(1) Ibid.

(2) Current Problems of International Law, Essays on U.N. Law and on the Law of Armed Conflict, edited by Antonio Cassese (Milano - Dott. A. Giuffre, 1975), p.117.

Malta's proposal had the effect that it was successful in isolating the seabed area as a vital issue among other more general issues of the ocean. It also linked the principle of the common heritage of mankind with the needs and interests of the developing countries, giving meaning to the idea.

A balance between the developing and developed countries in the vital issue of the ocean seabeds would become a possibility with the creation of an innovative international organisation which would result in economic benefit for the developing countries.

On 18th December, 1967 the General Assembly[1] unanimously adopted Resolution 2340 (XXII), "Examination of the question of the reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind." This resolution was passed by 99 votes to 0 against with 0 abstention. It established an ad hoc committee of thirty-five states to study the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction (referred to

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(1) The Maltese proposal was placed on the Assembly's agenda and sent to the First Committee for consideration, which is the General Assembly's principal committee for political and security problems. The fact that the proposal was sent to the First Committee, as opposed to the Second Committee, which normally considers economic problems, and did, in fact, consider the resolution on the "Resources of the Sea", indicates the perceived importance of this problem.

hereafter as the AHSBC) and to report to the General Assembly on the following topics:

(a) a survey of the past and present activities of the United Nations, the specialised agencies, the International Atomic Energy Agency and other intergovernmental bodies with regard to the seabed and the ocean floor and of existing international agreements concerning these areas;

(b) an account of scientific, technical, economic, legal and other aspects of this item;

(c) an indication regarding practical means to promote international co-operation in the exploitation, conservation and use of the seabed and the ocean floor, and the subsoil thereof, as contemplated in the title of the item, and of their resources, having regard to the views expressed and the suggestions put forward by member states during the consideration of this item at the twenty-second Session of the General Assembly.

The resolution also requested the Secretary-General to render all appropriate assistance to the Ad hoc committee, including the submission of the results of the studies previously noted, and of such other documentation as may be provided by the various intergovernmental bodies and specialised agencies that had been invited to co-operate.

The preamble of the resolution mentioned the principle points of interest in the handling of the problems concerned: maintaining international peace and security, exploitation and use of the respective areas for the benefit of all mankind, prohibition of actions and uses which might be detrimental to the common interest of mankind, international co-operation and co-ordination in the further peaceful exploration and use.

The title of Resolution 2340 (Examination of the question of) was not what Dr. Pardo proposed should be called "Declaration and Treaty concerning" and most of Pardo's proposals were not mentioned, the reason being a compromise which was reached in the debate of the First Committee of the General Assembly. This stipulated that the United States and certain other countries favoured the establishment of a permanent committee on the oceans, while the Soviet Union opposed the foundation of a committee at all. The above formula of the Resolution was necessary in order to keep the support of both Latin American states and the United States due to their fear that this item would raise further questions regarding the limits of national jurisdiction and their own maritime powers, and also the concern of the United States in the development of seabed mining in particular.(1)

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(1) UN Monthly Chronicle 5, No.1 (January, 1968), pp29-32; and Luard, 1974, pp83-90.

The Ad Hoc Committee

The AHSBC began its work with only the two reports of the Secretary-General which were the result of the 1966 Resolutions of ECOSOC and the General Assembly.(1) These two reports became available in February and April, 1968 respectively, covering questions of marine science, technology and resources. They were not intended to cover economic, legal and military aspects of the question. We see that the AHSBC started its work without sufficient information and in order to fix a foundation on which to base its work, it had to acquire more information on the subject in order to prepare virtual studies. The committee therefore, absorbed more information when the secretariat produced a major report on the legal aspects of the question (A/AC.135/19 and adds. 1 and 2), in addition to many short reports on such aspects as international agreements concerning the area (135/10), relevant national legislation (135/11), economic implications of seabed mineral exploitation (135/14), effects of seabed mining on other uses of the ocean (135/15), and military uses of the ocean floor (135/28). Moreover, IMCO and the IOC submitted reports upon the request of the AHSBC (135/4, 17 and 23).

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(1) ECOSOC Resolution (1112) of March and General Assembly Resolution (2172) of December.

The AHSBC held three sessions during the year 1968. The first two were held at United Nations Headquarters, New York, the first from 18 to 27 March and the second from 17 June to 9 July. The third session was held at the invitation of the Brazilian Government at Rio de Janeiro from 19 to 30 August.

At its first session, the AHSBC established two working groups in order to organise its work, one to deal with economic and technical aspects of the subject, and the other to deal with legal issues, while the AHSBC kept for itself the discussion on the scientific aspects and on recommendations for promoting international co-operation.(1) It also decided to adopt the consensus rule in its work rather than the voting procedure. This decision was taken after considering the issue and the objection of developed countries on the voting system.(2) A comment on this point is that, it was hard for the committee to adopt items unanimously, simply because of the conflict of interests between the developed countries and the developing countries within the committee which resulted in the slowing down of the committee's process.

The common heritage principle was one of the AHSBC themes which was debated in the meetings. We know that Dr. Pardo was the first to propose that the seabed beyond national jurisdiction

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(1) United Nations Yearbook, 1968, pp.69-70.

(2) Buzan, op. cit., p.70.

should be declared a common heritage of mankind. The developing countries presented before the committee drafts distinguished by their reference to this principle as a first demand, while the U.S. and the U.K. drafts ignored utterly the reference to this principle. No attempt at all had been made to define its practical meaning and it was mostly challenged on its meaninglessness from a legal point of view.

The AHSBC was unsuccessful in solving the dispute over the question of the peaceful uses of the area. The developed countries here also defended their right to use submarines and detection devices, while the developing countries in general, were fighting for the de-militarisation of the area.

The committe devoted a lot of its time to discussing the question of international machinery, it being of special importance for the developing countries in the sense of translating the common heritage principle to reality. The idea of international machinery emerged firstly through Pardo's proposal. The committee faced a wild debate over the matter which resulted in a hard clash between different countries. The Soviet Union was still hostile to create any kind of new international organisation and wanted to delete the item on the question from the committee's agenda. While Tanzania, supported by the developing countries fought for it in the consideration that the question of international machinery is an essential prerequisite to the realisation of the common heritage principle. By the end of the committee's meeting it was unable to solve the

problem and close the gap on the matter between the disputing states.(1)

As we know, one of the main demands of Malta was the formulation of a set of principles to govern the exploitation of the seabed in the future. The AHSBC devoted itself to this purpose as a theme to achieve the prescriptive part of its mandate. The said committee faced the obstacle created by the conflict between the interests of the developing countries and of the developed countries, which prevented the committee from fulfilling its goal. The developed countries wanted a general set of principles of the kind that could be accepted by everyone with little difficulty, while the developing countries wanted a set of principles which are controversial with specific content of the kind that might not be accepted by all. In other words, the developed countries wanted a general level of agreement which obliges them to very little other than the traditional obligations to preserve existing uses of the seas, and leaving the future system of exploitation and legal rights largely open and undecided. The developing countries wanted a set of principles which would change the existing status; which would set up the principle of international ownership of the

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(1) On the AHSBC's work generally during 1968, see GAOR (General Assembly, Official Records) XXIII, A/7230, September, 1968 (Report of the AHSBC) and AHSBC Summary Records A/AC.135/SR. 1-26, A/AC.135/WG.1/SR.1-14, and A/AC.135/WG.2/SR.1-15.

seabed resources, and at least the need for some system of international control over their exploitation. India first raised the matter early in the committee's second session, and Tanzania, Libya supported it. Drafts of declarations were submitted before the committee by India, the United States and a group of developing countries numbering 12, which are members on the committee in addition to Senegal, Somalia, and Yugoslavia. The United States tabled a draft declaration which presented the first mentioned view while the developing countries' draft presented the latter mentioned view. The rivalry between those two declarations was compromised by another set of principles which were proposed by the United Kingdom and afterwards supported by the developed countries.(1) This draft went beyond the uncommitted position of the Soviet Union and of its allies and also that of the United States which represented the extreme private enterprise situation, and not so far as the developing countries position of extreme internationalism. The proposed principles were the following: There is an area of the seabed which lies beyond the limits of national jurisdiction; a precise boundary should be agreed for this area; an international regime governing the exploitation of resources of this area should be agreed upon; no state may claim or exercise sovereign rights over any part

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(1) GAOR XXIII, A/7230, 1968 (Report of the AHSBC), pp.17-19.

of this area and no part is subject to national appropriation; exploitation of the area shall be carried on for the benefit of all mankind, especially the developing countries; the area shall be reserved exclusively for peaceful purposes; and activities in this area shall be conducted in accordance with international law, including the United Nations Charter.

Criticism

It is notable that these principles were relatively vague. Although stating the need for a regime, nevertheless, the question is to which kind of regime it was referring? Also no mention was made as to when or how to draw those precise boundaries which were mentioned. What was meant by the statement that no state could claim sovereign rights over the seabed; did it mean that the exploitation of the area was to be free to anyone or that it should be controlled under the authority of an international body? What about the principle that exploitation of the area should be for the benefit of all mankind? It could be interpreted as meaning a need for maximum production as quickly as possible or that exploitation should be under strict control and against the payment of large international royalties. In addition, it did not describe which kind of activities would be beyond the scope of peaceful purposes. Lastly, it did not define the precise rules which would govern the activities in the area. A few developed

countries, jointly with the communist countries, thought that the statement went too far.

Because of the differences between the desires and interests of the states, according to their geographical situation, the AHSBC had led to deadlock and was unable to reach an agreement between the conflicting countries to draw up a draft of principles.

Comments

The AHSBC was not successful in fulfilling the task which was given to it by Resolution 2340 (XXII) for many reasons. Firstly, the shortage of enough information on which to base recommendations was one of the committee's problems. When the committee started its work, it had only the two reports of the Secretary-General resulting from the 1966 ECOSOC and General Assembly Resolutions. These two reports were issued in February and April 1968 and while they were thorough on questions of marine science, technology, and resources, they were not intended to cover economic, legal, and military aspects of the question. Secondly, the mandate which was given to the AHSBC by the General Assembly as stated in the resolution was quite open-ended, besides which the committee had not had any precedents or proposals apart from that of Pardo which could guide it in its work. Thirdly, there was not any existing state practice in the area, and the Continental

Shelf Convention and the High Seas Convention were an insufficient aid towards solving the problem. It can now be understood the kind of difficulties with which the committee was faced.

However, the committee's meetings were useful. It educated the less well-informed members of delegations, it also helped to define many key issues and to give purpose and direction to the whole seabed debate.

What is important about the AHSBC was that it opened the door towards other law of the sea questions supposedly closed by the Geneva Conventions. The discussion on boundaries for the area revived the question of continental shelf limits, and in some cases threatened to clash embarrassingly with territorial sea limits. Also, discussion of activities relating to the area raised questions about the suitability of existing high seas doctrines. Libya and Iceland called for a new conference on the subject. Although the proposal was premature, it was also prophetic.

The General Assembly

The last meeting of the AHSBC was held on 30th August, 1968, thereafter the debate on the seabed issue being transferred to the General Assembly of the United Nations. The First Committee of the General Assembly extensively considered the matter at its twenty-third session and discussed the question

of the peaceful uses of the seabed and ocean floor, and spent much time on the report of the AHSBC which contained the result of the committee's work on the subject.(1)

The First Committee of the General Assembly held eight meetings from 28 October to 11 November(2) and four meetings from 18 to 20 December, 1968 to discuss the various aspects of the matter.(3) Several proposals were submitted to the First Committee relating to the following aspects of the matter:

(1) proposals concerning the establishment and terms of reference of a standing committee to succeed the Ad hoc committee and appropriate international machinery for the promotion of the exploration and use of the resources of the area;

(2) proposals concerning the suggested International Decade of Ocean Exploration;

(3) proposals concerning pollution and

(4) proposals concerning a statement or declaration of principles.

It is remarkable that the First Committee was no more fortunate than the AHSBC in its efforts to reach an agreement in setting out a declaration of principles,(4) and for the same

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(1) A/7230

(2) A/C.1/pv.1588-1605.

(3) A/C.1/pv.1646-1649.

(4) A/AC.138/7 and corrs. 1-4 (March, 1969), pp.15-25.

reason, that being the conflicting interests of the developing and developed countries. A total of more than thirty western, African and Asian states favoured the adoption of a set of principles during the session of 1968, but the Soviet Union and most of its allied states resisted this on the basis that the subject needed more study to ensure its wide support since there had yet been no sufficient agreement on the subject.

Within the First Committee meetings it was agreed that a Standing Committee should be established to carry on the work of the AHSBC on the subject as long as the latter had not reached any conclusive agreement on a declaration of principles. On 21 December, 1968, the General Assembly established a committee composed of forty-two members, on the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction. This was done by Resolution 2467A which was passed by 112 votes to 0 against, with 7 abstentions (the Soviet Union, the Ukranian Republic, the Byelorussian Republic, Hungary, Cuba, Cambodia and Equatorial Guinea).

The membership of the new committee was similar to its predecessor except that three developing countries had been dropped (Ecuador, Senegal, Somalia) and ten new developing countries contributed in the committee. The developed countries remained the same (sixteen states). In addition, there were eight African, five Asian, four Arab, seven Latin American states plus Malta and Yugoslavia.

The land locked, shelf locked countries and those of

marginal maritime coast agreed to remain under-represented with only eight members. Also represented were two-thirds of the states having major interests in importing the four metals existing in manganese nodules (nickel, copper, cobalt and manganese). In addition, there were those states with commitments towards creating a deep sea mining capability with the exception of Western Germany which was not yet a members of the United Nations. Also, of those states with major interests in the export of the four metals, they were under-represented by one-third.

The Resolution pointed out that the exploitation of the area should be carried out for the benefit of mankind as a whole, with special regard to the interests and needs of the developing countries. The Resolution established the mandate of the new committee work as follows:

> "study the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and to ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a regime should satisfy in order to meet the interests of humanity as a whole."

Another three resolutions were adopted:

Resolution 2467B was uncontroversially adopted by 119 votes to 0 against, with no abstention. This Resolution requested the

Secretary-General to prepare a study of measures that may be taken against possible pollution arising from exploration and exploitation of the area.

Resolution 2467C was very controversially adopted by 85 votes to 9 against with 25 abstentions. The resolution requested the Secretary-General to prepare a study on establishing international machinery for the promotion of the exploration and exploitation of the resources of the area for the benefit of mankind as a whole, taking into special consideration, the interests and needs of the developing countries.

Also requested the Secretary-General to undertake a study on the question of establishing in due time appropriate international machinery ... and to submit a report on the matter to the Seabed Committee for consideration during one of its sessions in 1969.

Resolution C was actually important for the growing dispute on the seabed issue. 39 developing countries sponsored this resolution, the 9 states who opposed it were members of the Soviet Group and of the 25 states which abstained, 13 of them were western, including the biggest powers except Japan, and the developing countries totalled 12. Those who sponsored the Resolution were:

10 western states, 9 small European states and Japan. It is remarkable to say that none of the four resolutions in 2467 mentioned the common heritage principle, but all of them emphasised the 'needs and interests' of the developing countries

more than Resolution 2340 had done. The inclusion of international machinery in the debate was a move towards that principle although common heritage was not mentioned directly.

Resolution D was adopted without objection. This Resolution welcomed the concept of an International Decade of Ocean Exploration and invited the member states, the International Oceanographic Commission, and the Secretary-General to co-operate with each other in this respect.

CHAPTER 2

THE SEABED DEBATES 1969

THE SEABED COMMITTEE

The scheme of the Seabed Committee (referred to hereafter as the SBC) work was very much the same as the AHSBC. From 1969 to 1970 the SBC followed the pattern and mandate given to it by Resolutions 2467A and 2467C. It re-established the legal, economic and technical working groups into sub-committees. It carried on the method of working by consensus and the whole framework of discussion which followed the AHSBC. It achieved its work by acquiring information, negotiating a declaration of principles and defining areas of disagreement.(1)

It is remarkable that there was a trend over these years for the law of the sea issues to begin to take a broader space in the discussions within the United Nations, with special emphasis on the international seabed regime and machinery.

The SBC held only three sessions during 1969 at United Nations Headquarters, New York, on 6 to 7 February, from 10 to 28 March and from 11 to 29 August, with additional meetings in November 1969. Seventeen United Nations member states attended the committee's sessions as observers, and representatives of the International Atomic Energy Agency and the specialised agencies.(2)

At the second session of the main committee, it was agreed to allocate the subjects and functions among the main committee and the two sub-committees.

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(1) Buzan, p.90.

(2) UN Yearbook, 1969, p.57.

The legal sub-committee devoted most of its efforts to set out agreed formulation of a declaration of principles. The SBC had before it a draft resolution which was submitted to the General Assembly's First Committee in 1968 which then had been transmitted to the SBC. Informal consultations after general discussion in the March session, were considered by the sub-committee between the second and third sessions with the object of reaching an agreement. The sub-committee took into consideration the report which was prepared by its informal drafting group.

After further consideration of the issue, the legal sub-committee was unable to overcome the points of conflict between the developing countries and the developed countries. No new formal proposals were submitted, and in its report, it pointed out that a general level of agreement existed on the following points:(1)

(1) That an area did exist beyond the limits of national jurisdiction;

(2) That the area should not be subject to national appropriation by any means;

(3) That principles and norms of international law existed that applied to the area;

(4) That the area should be reserved for peaceful purposes;

(5) That a regime for the area should be established, and that it should ensure the use of the resources

(1) GAOR XXIV, Suppl.22, A/7622, 1969 (Report of the SBC) pp.29-31.

of the area for the benefit of mankind, taking into account the interests and needs of the developing countries;

(6) That there should be freedom of scientific research in the area; and

(7) That use of the area should be subject to safeguards regarding pollution, living resources, and the other uses of the high seas.

There was little agreement on definitions.

Meanwhile, the legal sub-committee could not settle the dispute over points such as to which law applied to the area, how peaceful purposes should be defined, what constituted national appropriation and whether there should be a freeze on further seabed claims and mining activities, what kind of regime should be devised and whether it should cover the area itself or only the resources, and how scientific research could be distinguished from commercial research.

The principle of the common heritage of mankind was discussed and in respect of which the committee was not able to close the gap between the developing countries and the developed countries in regard to this principle. On the one hand, the Soviet Union and its allies continued to oppose the principle, and on the other hand, there were Kenya, Malta and Tanzania fighting for the principle as being an essential one. Some small progress was achieved when the developed countries started during 1969 to associate the principle with the idea of

using the resources of the area for the benefit of mankind, taking into account the needs and interests of the developing countries.

In regard to the question of establishing a boundary for the area, it became increasingly obvious that at that time there were no means by which an agreement over it could be reached. From the outset, as we know, the developed countries favoured establishing a boundary for the area. The Soviet Union agreed with the developed countries in this respect. Malta's view was that a 200 metre/200 mile depth/distance formula could be a possible solution. Chile, Argentina and Brazil were angry with the draft seabed demilitarisation treaty which was considered by the committee in November for its reference to a 12 mile limit. The committee also faced the problem of whether to define the area before establishing the international machinery or vice versa, but managed to achieve very little progress towards resolving them.

The question of the peaceful uses of the area was perhaps the less disputed matter. All states were in agreement with this principle but without any further agreement on its implementation. The reason for the question losing its importance within the committee's debate was the treaty negotiations, in the Eighteen Nation Disarmament Committee (ENDC) and the General Assembly, on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the seabed. In November, the SBC considered the draft treaty

presented to the Conference of the Committee on Disarmament by the United States and the Soviet Union, the latter delegation repeatedly emphasising the issue, but within the seabed committee there was the intention to accept the principle without making any attempt to elaborate its implications.(1)

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(1) The chronology of this matter was as follows:
June, 1968, United States and Soviet Union present draft resolution to the AHSBC; July, 1968, discussions begin in ENDC and move to CCD; March and May, 1969, Soviet Union and United States draft treaties; October, 1969, U.S./Soviet joint draft submitted to CCD; November, 1969, SBC considers the joint draft; April, 1970, United States and Soviet Union present revised draft to CCD, further negotiations and consultations over summer, 1970; December, 1970, UNGA accepts treaty in Resolution 2660 (104 to 2 to 2); February, 1971, open for signature. The treaty provided that "The states parties... undertake not to emplant or emplace on the seabed and ocean floor and in the subsoil thereof, beyond the outer limit of a seabed zone (of 12 nautical miles)... any nuclear weapons or any other types of weapons of mass destruction as well as structure, launching installations, or any other facilities specifically designed for storing, testing, or using such weapons."
Brown, Arms Control in Hydrospace: Legal Aspects (Washington : Woodrow Wilson International Center for Scholars, 1971);
Luard, 1974, pp.97-112;
Louis Henkin, "The Seabed Arms Treaty - one small step more", Columbia Journal of Transnational Law 10, No.1 (1971) pp.61-65.
Lay et al, New Directions in the Law of the Sea (Dobbs Ferry : Oceana, 1973), pp.288-291;
Butler, op. cit., pp.158-60;
UN Doc. A/AC.135/28, July, 1968;
W.W. Kreiger, "The UN Treaty Banning Nuclear Weapons and Other Weapons of Mass Destruction on the Ocean Floor", Journal of Maritime Law and Commerce 3, (October, 1971), pp.107-28;
and
S.M. Selzer, "The Seabed Arms Limitation Treaty", Journal of Law and Economics 6, (June, 1971), pp.157-74.

The seabed committee faced the deepest dispute over international machinery. Many suggestions were presented before the committee on the structures, powers and functions of the machinery. Also, the Secretary-General's report followed Resolution 2467C of the General Assembly on the subject.

The report of the SBC which contained the results of its work on the subject[1] was considered at the twenty-fourth session of the General Assembly. It held 17 meetings which opened on 16 September 1969 in the First Committee between 31 October and 9 December and at a major meeting on 15 December, 1969. During this period, five draft resolutions with amendments were submitted to the First Committee which discussed questions relating to:

(1) The definition of the limits of the area involved;

(2) the principles for a regime to apply to the area;

(3) the further study of machinery which should be established to give effect to such a regime; and

(4) the desirability of a 'freeze' on activities in the area pending the establishment of such a regime.

The General Assembly passed two resolutions on 13 December, 1969. They were uncontroversial; Resolution 2560 supporting a long-range programme of ocean exploration with United Nations involvement; Resolution 2566 requesting a study on marine pollution.

As a result of the ample discussion of the subject in the

(1) On the SBC's work generally in 1969 see its report, and A/AC.138/SR.1-16; A/AC.138/SC.1/SR.1-29; and A/AC.138/SC.II/SR.1-25.

General Assembly's First Committee, four resolutions were adopted, these being 2574A, B, C and D (XXIV) dealing with different aspects of the issue.

Resolution 2574A, passed by 65 votes to 12 against with 30 abstentions on 15 December, 1969, in which the General Assembly stated that"there exists an area of the seabed and ocean floor and the subsoil thereof which lies beyond the limits of national jurisdiction; that this area should be used exclusively for peaceful purposes and its resources utilised for the benefit of all mankind; that it must be preserved from encroachment or appropriation by any state; and that the establishment of an equitable regime for this area would facilitate the task of determining the limits of the area to which that regime is to apply. Therefore, the General Assembly requested the Secretary-General to ascertain the views of member states on the desirability of convening at an early date a conference on the law of the sea to review the regimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and conservation of the living resources of the high seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the seabed and ocean floor which lies beyond the limits of national jurisdiction, in the light of the international regime to be established for that area." A report on the result of these consultations was requested for submission to the General Assembly at its twenty-fifth session.

The Resolution gave effect to Malta's proposal that a new conference on the seabed aspects of the law of the sea should be convened. This was proposed by Malta in the SBC and again in the First Committee, but the resolution favoured the proposal of a large group of developing countries, headed by Brazil, Jamaica and Trinidad and Tobago, that the new conference should cover all aspects of the law of the sea and not just the continental shelf boundary and international seabed area agenda as Malta and most of the Western states wanted. The developing countries justified their proposal on the basis that the ocean issues are essentially united, which negated the possibility of isolating one aspect from the others, and their voting majority outmanoeuvred Malta's proposal. The resolution also showed the awareness of the General Assembly of the inadequacies of the flexible limit provided in the Continental Shelf Convention, in addition to which, it favoured the trend of Latin American states in establishing an international regime for the area before defining the area itself.

The scope of Resolution 2574B was the renewal of the SBC's mandate, by inviting the committee to continue its work, especially on a draft declaration of principle for the next year's session of the General Assembly. This resolution was passed by 109 votes to 0 against, with one abstention. Also, the committee was requested to formulate recommendations regarding the economic and technical conditions of the rules for the exploitation of the resources of the envisaged area.

Resolution 2574C, passed by 100 votes to 0 against, with 11 abstentions. In this resolution the Secretary-General was requested to prepare a further study on various types of international machinery, particularly a study covering in depth the status, structure, functions and powers of an international machinery having jurisdiction over the peaceful uses of the seabed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, including the power to regulate, co-ordinate, supervise and control all activities relating to the exploration and exploitation of their resources for the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries, whether land-locked or coastal.

This preamble appears to be a request to study strong machinery with power to exploit the resources, which is what the developing countries wanted.

The Soviet Union and its allies retained their position - that the whole question was premature, but the United States, the United Kingdom, France, Japan, and others opposed the idea of creating any machinery with power to exploit.

Eighteen African countries sponsored this resolution, eleven Asian, thirteen Latin American, five Arab and Yugoslavia. All of them were members of the group of 77.* Comparing the votes on this resolution with those for Resolution 2467C, we

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* Infra.

realise to what extent the idea of the machinery was given acceptance among the developed countries apart from the disagreement on its desirable form.(1)

Resolution 2574D passed by 62 votes to 28 against, with 28 abstentions. It was the most controversial of the four and it is known as "the Moratorium Resolution". This resolution showed the width of the gap between the developing countries and the developed countries.

The Resolution stated:

"that pending the establishment of the international regime:

(a) states and persons, physical and juridical, are bound to refrain from all activities of exploitation of the resources of the area of the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;

(b) no claim to any part of that area or its resources shall be recognised."

The aim behind this resolution was to be realised by clearing up the objectives and capabilities of the supporters; Chile, Ecuador, Peru and Brazil. These countries were demanding (and still demand) national claims of 200 miles. It seems improbable that those states which sponsored the resolution will ever abandon their long and increasingly successful campaign to encourage other states to make wide coastal zone claims. They

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(1) Most of the abstentions were Soviet group states.

had not changed their policies at all, and it is remarkable that Chile, Ecuador and Peru opposed a claims moratorium when the matter was discussed during the 1968 AHSBC session. It was not acceptable that a coastal state be allowed to claim an adjacent zone or an extended territorial sea to the middle of the ocean, to an area which falls within the area that all states agreed was beyond the limit of national jurisdiction in the conventional sense (of adjacency). It is difficult to justify it under the resolution. Therefore, this resolution intended to restrict the developed states from nodule exploitation but not to restrict the coastal developing countries from claiming coastal jurisdiction.(1) This resolution was successful in slowing down the nodule mining. It was the first attempt in which the developing countries used their voting majority to bear on a situation which was out of General Assembly control. Their struggle could undermine the technological advantage of the developed states by placing more uncertainty on the legal situation in which nodule mining would have to take place.

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(1) Support for this interpretation can be found in testimony by Professor L.F.E. Goldie, who noted that:

> "One of that Resolution's promoters has recently conceded, in a statement for which no ascription can be given, that the moratorium Resolution was internationally and specifically directed against the private enterprise interests of the United States and other private enterprises of developed countries. It was framed to have a "chilling" effect on investors."

See: U.S. Senate, Mineral Resources of the Deep Seabed, 93rd Congress, First Session on S.1134, p.517.

CHAPTER 3

THE SEABED DEBATES

1970 - 1973

In December 1970 and three years after the seabed issue had been discussed at the General Assembly for the first time, the United Nations adopted almost unanimously a 'Declaration of principles governing the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction." This declaration was passed by 108 votes to 0 against, with 14 abstentions (including the Soviet Union).

Was this declaration one of significant progress or was it merely an inconsequential piece of paper? The declaration stated that the seabed and subsoil beyond the limit of national jurisdiction, as well as the resources thereof, are the common heritage of mankind; that the area shall not be subject to appropriation or the exercise of sovereignty by states, and that an international regime shall be established to govern all activities related to the exploration and exploitation of the area's resources.

The declaration raised important questions:

(1) the practical application of the principles;

(2) the determination of the limits of national jurisdiction beyond which an international seabed regime applies;

(3) the composition of the international regime which shall be applied for the seabed area to satisfy the interests of all states, whether developed or developing, land-locked or shelf-locked.

For those states which had strongly opposed the idea of

the common heritage of mankind and accepted it at last, this principle has no significance or legal meaning. In regard to the idea that the area should be used "exclusively for peaceful purposes", all the states were in agreement, but they differed in interpreting its meaning. They all agreed that the area should be used "in accordance with the regime to be established" but they disputed what the regime should be. Also, all agreed that exploitation should be carried out for the benefit of mankind as a whole but still conflicted on what this meant and how it should be achieved. Furthermore, when the matter was first raised in the United Nations, there was a real fear among states that there was a possibility of extending a state's claim to exploit the ocean to indefinite limits. The universal acknowledgement which was written down in the preamble of the declaration was important, for it showed a change in the existing situation. No state could unilaterally claim what the declaration explicitly prohibited. In reference to the use of the seabed for peaceful purposes, there is now much strong political opinion which opposes the militarisation of the seabed. Although they disputed the nature of the regime, which is still undecided, it was a public recognition that there should exist some kind of international regulation. It is difficult for any state to attempt unilaterally a claim to rights which violated an agreed system of exploitation. The international public opinion had changed. A form of international regulation was to be established by general agreement. Although

the details of the system were still unknown, there was almost an obligation to create it. Similarly with the common heritage of mankind, it is for the international community to assert its property rights in seabed resources within the international area.

All of the terms of the declaration were important and relevant. It was for the international community to determine the nature of the regime and how the area was to be used. The extent of its importance depends on the agreements to be reached at a later stage: i.e. how the declaration will be implemented in the treaty finally drawn up for the area. However, it was very important to determine the extent of national rights and to define the beginning of the international zone.

In 1970-71, many alternative proposals[1] were presented before the Seabed Committee, suggesting the possibility of types of operating systems: a registry (France, Poland); a weak licensing system (Britain, United States, Japan, Poland, Soviet Union); a mixed licensing/authority operating system (Malta, Canada, the seven land-locked and shelf-locked states, Tanzania); and a pure authority operating system (the 13 Latin American

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(1) GAOR XXV, Suppl.21, A/8021, 1970 (Report of the SBC), pp.130-76. All of these proposals, except that of Japan, were reprinted either in this report or in the one for the following year: GAOR XXVI, Suppl.21, A/8421, 1971. Japan's is reprinted in oda, The International Law of the Ocean Development (Leiden : Sijthoff, 1972).

states). In this respect, the discussion within the committee was a conflict of directions towards two sides, a licensing versus an operating authority which divided states into developed countries against developing countries. The developed countries were worried about their participation in the obtaining of the minerals of the seabed while the developing countries were worried about the taking away of the common heritage to the benefit of the developed states. Most of the developed countries thought that the creation of an international authority with wide power would be economically inadequate and would differentiate against their interests in the area, besides taking the revenues obtained from the common heritage. The developing countries believed in, and were looking forward to, the proposed machinery that would prevent the developed countries from utilising their technological advantage, and which would keep the balance between them and the developed countries. By 1973, the conflict between the two sides was desparately extreme.

The first sub-committee (hereafter SC.I) of the Seabed Committee was concerned with an international regime and an international organisation for the seabed beyond the limits of national jurisdiction: it established one working group to deal with these issues.

Sub-committee II had the broadest and most complex mandate of all; it was concerned with most of the traditional law of the sea issue, including the territorial sea, straits, the high seas,

and fisheries, as well as the seabed within national jurisdiction; it established one working group of the whole. Sub-committee III was concerned with pollution and scientific research; it established one working group on pollution and one on scientific research and transfer of technology.(1)

Draft articles and working papers were introduced by the United States, the United Kingdom, France, Tanzania, the Soviet Union, Poland, certain Latin American states, certain land-locked and shelf-locked countries, Canada and Italy.

The scientific research on the international seabed area issue also considered at the debate in SC.I. The discussion concentrated on whether research in that area should be opened to all countries as it used to be, or whether it should be regulated or controlled by the Seabed Authority.

Towards the end of the SBC's task a new trend appeared in the discussion, introduced by the developed states, to move the fruitless debate on licensing versus operating machinery towards useful discussion on specific points such as the rights and duties of both of the operators and international machinery concerning matters such as fees, financial risks, areas to be allocated, work requirements, integrity of investments, operating standards, and duration of contracts, but not very successfully.

Furthermore, a discussion arose as to whether the Assembly or the Council should be the dominant body of the Seabed

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(1) GAOR XXVI, Suppl.21, A/8421, September, 1971 (Report of the SBC), p.5.

Authority. Here again, there were two opinions, which drew a line between the developing nations and developed nations. The former wanted to allocate the power of initiative to the Assembly, by which, through their votes, they could protect themselves against the advance of technological states. The latter required the vesting of power of initiative to the Council to guarantee a protection against the developing countries as a majority bloc. Canada took a more or less middle road approach.(1)

The result of the SC.I's work was, however, its failure to reach a substantial agreement on the set of draft articles produced. By 1973, not a single agreed draft article could be devised. Meanwhile, progress on the issue of limits was achieved in SC.II.

The problem is that every country, and every group of countries, had a different and sometimes conflicting range of interests within the ocean space: either on the surface of the sea, on the bottom, or both. Agreement was to be concluded if and only if, all these differing interests could be brought together. The concluded treaty was to be a compromise.

The SBC was unable to achieve any remarkable progress towards reaching agreement on the issue because of the strength of the positions of the conflicting parties in the negotiations and also the difficulties over the devising of solutions.

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(1) Buzan, pp.72-73.

The committee concluded its work with 115 pages of alternative texts, covering nearly 100 items.(1) The title of the SBC's final paper on the issue covering six years of work was "Texts Illustrating Areas of Agreement and Disagreement." It is quite fair to say that the Committee made some progress, but the work was not completed. Its main progress was in defining the subject. However, the question of conditions of exploitation was not covered in the list of texts and therefore some states did not accept the paper. In any case, the Committee contributed to the definition, clarification and elaboration of areas of difference. That was the first step towards the level of agreement necessary for a draft convention.

One of the committee's principal failures was that it could not define the area to which the regime was to apply. By the end of 1973, SC.II was absolutely paralysed in its efforts to reach an agreement in this respect, so the resources belonging to the international regime remained undefined and the issues remained unresolved.

The widespread dissatisfaction with the existing legal regime - or lack of it - in the oceans was the most important reason to push forward with a conference covering all aspects of the law of the sea. Some countries were concerned that consideration for certain aspects of the traditional law of the sea might be ruined. Therefore, the interests protected by that traditional law were in danger. The unilateral

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(1) GAOR XXVIII, Suppl.21, A/9021, 1973 (Report of the SBC) Vol.II, pp.141-166.

extensions of the territorial sea and other forms of coastal state jurisdiction are examples of that reaction. According to some states, the traditional law is inadequate to protect existing or anticipated interests. Some states reacted in that respect regarding the conservation and economic problems created by the development of large and highly mobile distant-water fishing fleets. Others realised that the non-existence of sufficient precise legal rules to deal with new problems and uses, such as pollution of the marine environment and the development of technology to exploit the deep seabeds, could harm their interests.

The defenders of each of these perspectives presented a great deal of political and legal debate to support their opinions. On the one hand, it has been said that centuries of legal development cannot be disregarded and on the other hand, they argued that a large number of countries were unable to participate fully in that development and should not be compelled to live with the results. Few delegations believed that at the conference all of the existing laws should either be retained or discarded.

The hope of many delegations on the third conference on the law of the sea was very ambitious regarding the expectation of concluding a new comprehensive multilateral treaty on the law of the sea as an on the spot solution.

There is law, but states do not agree on many significant aspects of that law. Also, they do not agree, to a lesser

degree of importance, on what the law should be in the future which discount the probability of chaos in the oceans. The states usually interpret "international law" as best suits their interests. Law of the sea conference must succeed in reaching agreement to sign a treaty which should be widely accepted by all segments of the international community, as well as providing for the peaceful and compulsory settlement of disputes arising under the treaty must be ensured.

CHAPTER 4

THE THIRD UN CONFERENCE ON THE LAW OF THE SEA, 1973 - 74

PART 1 : CARACAS

It is quite fair to say that the Caracas session was fruitful compared with the progress achieved by the SCI of the SBC, in which the situation had not improved after that conference.

The Secretary-General submitted a 92-page report to the session on the subject,[1] involving the assumption of steady improvement in the technology of mining and processing and endeavouring to give solutions via alternatives in disputed matters such as the likely impact of nodule mining, the determination of revenues for the international machinery, and the question of how to prevent adverse effects from nodule exploitation on existing producers.

Moreover, the report mentioned that many of the companies interested in nodule mining had commenced to pool their resources in large multinational consortiums.[2] The American companies work under the flag of any particular country which has shown willingness to consider unilateral legislation to protect nodule miners. A vast amount of money was necessary to finance these companies in order that they would achieve the required research and development, to reach the desired level of technology for operation. This factor caused tension at the conference in the negotiations between the developing countries and developed countries.

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(1) A/CONF. 62/25.

(2) Ibid, p.17.

Furthermore, at Caracas, wide discussion was held on whether the authority should be accorded powers to control the volume and pricing of seabed mineral production. The developing countries favoured such powers, while the United States rejected the idea.(1)

The basis of the conflict between the developed nations and the developing nations is in their vital interest in the various aspects of the problem. The developed countries, being advanced technologically, emphasised an extreme approach to the harvesting of the seabed resources, and the text of their draft articles concentrated on the rights and duties of the entities (whether states or companies) which were going to be engaged in the activity of exploitation in the area and the role of the authority as a supervisory body.

The developing countries focused on the rights and powers of the authority. They gave all the initiative and power to the authority, leaving the door open for the authority to decide on the details of the conditions of exploitation. They were also concerned with preserving the developing countries, already exporting the same minerals of the seabed by two means:

(1) by cutting down the accessibility of the developed countries to such resource areas and

(2) by promising to give the authority the power to regulate seabed mineral production.

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(1) A summary in A/CONF. 62/C.1/L.2. Chile Also submitted a paper which reflected the Group of 77's line of argument: A/CONF. 62/C.1/L.11 and Corr. 1.

Let us examine two basic issues which were considered in each of the four alternative proposals:

(a) whether there should be a single system of exploration and exploitation of the seabed area or a multiple system, and

(b) the role to be played by the proposed international seabed authority in the activities of exploration and exploitation of the seabed area beyond the limits of national jurisdiction - the area which the United Nations General Assembly in 1970 had characterised as constituting together with its national resources, the "common heritage of mankind" in the Declaration of principles governing the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction.(1)

Alternative A (2)

"All exploration and exploitation activities in the area shall be conducted by a contracting party or group of contracting parties or natural or juridical persons under its or their authority or sponsorship, subject to regulation by the Authority and in accordance with the rules regarding exploration and exploitation set out in these Articles."

This alternative adopts a single system for exploitation of the area, in which all activities of exploration and

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(1) UN DOC. A/RES/2749 (XXV) (1970).

(2) Report of the Committee on the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction. 28 UN GAOR Suppl.21, Vol.II at 57-58, UN DOC. A/9021 (1973).

exploitation are to be conducted by either a contracting party, a group of contracting parties, or natural or juridical persons under the sponsorship of a contracting party or a group of contracting parties. Under this system the Seabed Authority would be a weak body controlled by states and would be only confined to the giving and administering of licenses in accordance with the rules and regulations set out in advance in the convention which guaranteed the right of the entities mentioned in the text to the exploitation of the area. Such a system is accepted by many developed countries.

Alternative B

"All activities of scientific research and exploration of the area and exploitation of its resources and other related activities shall be conducted by the Authority directly or, if the Authority so determines, through service contracts or in association with persons natural or juridical." This text envisages a multiple system of exploitation. According to this system, the International Seabed Authority would have the essential right of exploration and exploitation of the area, which would conduct those activities directly. In addition, it would give the authority the permission to enter into service contracts with natural or juridical persons to conduct the activities of exploration and exploitation of the area. This system clearly favoured a strong International Seabed Authority

which many developing countries supported.

Alternative C

"All exploration and exploitation activities in the area shall be conducted by the Authority either directly or in such other manner as it may from time to time determine. If it considers it appropriate and subject to such terms and conditions as it may determine, the Authority may decide to grant licenses for such activities to a contracting party or group of contracting parties or through them to natural or juridical persons under its or their authority or sponsorship, including multinational corporations or associations. Licenses may also be issued for this purpose to international organisations active in the field at the discretion of the Authority."

The alternative is a variant of Alternative B above. Like Alternative B, it adopts a parallel system in which the Authority would have the ultimate right to conduct the activities of exploration and exploitation of the area, but it allows the Authority to issue licenses which other entities to conduct such activities. It has a wider option to enter into contracts with entities other than those stipulated by Alternative B. This system gives preference to service contracts and joint ventures between the Authority and natural or juridical persons.

Alternative D

"All exploration and exploitation activities in the area shall be conducted by a contracting party or group of contracting parties or natural or juridical persons under its or their authority or sponsorship, subject to regulation by the Authority and in accordance with the rules regarding exploration and exploitation set out in these Articles. The Authority may decide, within the limits of its financial and technological resources, to conduct such activities."

A variant of A and B. It is a variant of A in the sense that it supports the idea of assigning the right of a contracting party or group of contracting parties and their sponsored natural or juridical persons to conduct all the exploration and exploitation of the area; while the last sentence in Alternative D prevents supporters of variant A from accepting D, because by virtue of the sentence, variant D recognises the parallel system of exploitation adopted in both B and C.

The four alternatives mentioned above were followed by a Note, prepared by the Seabed Committee which reads as follows:

> These could include, inter alia, according to the type of administration adopted as regards exploration and exploitation rules on: notice to mariners and other safety procedures, areas to be allotted, work requirements, work plans, inspection service contracts, licensing, joint ventures, fees payable, revocation of service contracts, revocations of licenses and integrity of investments.(1)

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(1) A.O. Adede, "The System for Exploitation of the Common Heritage of Mankind" at the Caracas Conference, American Journal of International Law 69, No.1 (January, 1975): 31-49.

The First Committee of the Law of the Sea Conference devoted its time to negotiations aimed to reduce the four Alternatives to Article 9 to a single compromised text accepted by all for the Convention.

During the discussions in the informal meeting of the First Committee on the report of the Seabed Committee, it decided to focus its debate on draft Article 9, attempting to compromise through a new text.

At the beginning of the discussion there was a general agreement to change the title of draft Article 9 from "who may exploit the area" to "how is the area to be exploited?".

The first attempt to introduce a new text came from the United States, which tried to re-formulate Alternatives A and D as follows:

1. All activities of exploration and exploitation and other related activities shall be conducted (by the Authority) (in accordance with legal arrangements with the Authority) pursuant to regulations promulgated by the Authority and those included in this Convention.
2. Contracting parties, groups of contracting parties and natural and juridical persons shall have the right to enter into legal arrangements with the Authority without discrimination, subject to compliance with this Convention and regulation promulgated by the Authority in accordance with the Convention(emphasis added)[1]

(1) Circulated as an informal working paper No. C.1/CRPI, July, 22, 1974.

Many developing countries did not accept this draft on the grounds that in the first paragraph, there is an assertion to include regulations in the Convention itself which is likely to weaken the power of the Authority and is against the interests of the developing countries. Also, the idea of creating an Authority with dominant power over the activities of exploitation of the area which was desired by the developing countries, was not clearly adopted by the proposal. The second paragraph of the text would appear to force the Authority to enter into legal adjustments with the entities mentioned therein. It has been said that the phrase "without discrimination" mentioned in the same paragraph was not guaranteed. At last, the United States temporarily withdrew its proposal due to criticisms.

Another proposal was introduced but was rejected by Turkey.(1) Kuwait also proposed a draft which reads as follows:

> The Authority shall act as the administrator of a trust for the benefit of mankind as a whole. Its powers shall be co-existensive with the regime and shall form an integral part of it.(2)

A turning point was reached by the informal group of the Committee which discussed three issues, namely: (a) who may explore and exploit the area; (b) conditions of exploration and exploitation of the area; (c) economic aspects of exploration

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(1) Circulated as an informal working paper, No.C.1/CRPI, July 22, 1974. Second proposal in the document.

(2) Ibid.

and exploitation of the area.[1]

The developing countries then supported the idea of discussing the three issues above separately. But the developed countries favoured the discussion of the issue as a single whole on the basis that these issues were interrelated.

A compromised solution, that of discussing the three issues separately and permitting the delegation while debating one issue to refer to the other two issues, was at last reached.

Eventually, the Group of 77[2] prepared a single text to combine both Alternative B and C of the Seabed Committee draft:

> All activities of exploration of the area and of the exploitation of its resources and all other related activities including those of scientific research shall be conducted directly by the Authority.
>
> The Authority may, if it considers it appropriate, and within the limits it may determine, confer certain tasks to juridical or natural persons, through service contracts, or association or through any other such means it may determine, which ensure its direct and effective control at all times over such activities.[3]

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(1) The fundamental issue "System of Exploration and Exploitation of the Area", and the three subissues arising therefrom were suggested by the Chairman of the informal working group, Dr. C.W. Pinto of Sri Lanka.

(2) The name "Group of 77" refers to the original 77 countries from the developing world which got together and decided to pursue their interests together within the United Nations system. Except for Yugoslavia, the members of this group come from Africa, Asia and Latin America. They are now 103 countries, but the name has been retained.

(3) Circulated as working paper C.1/CRP.4, July 26, 1974 reproduced in A/CONF.62/C.1/L.3, at 6.

Let us consider this proposal. The first paragraph recalls that all activities related to the area shall be conducted directly by the authority. The second paragraph allows the authority to enter into legal adjustments with juridical or natural persons as it may determine and to achieve the tasks on which the authority decides. This text leaned more towards Alternative B than C, although it was a compromise with those who supported Alternative C, but it failed to refer to the licenses system which was accepted in Alternative C. In addition, according to this proposal, the entities which the authority permits to enter into legal adjustment with are juridical or natural persons only, while Alternative C contained contracting parties, groups of contracting parties, multinational corporations or associations and international organisations active in the field.

The Group of 77 explained the general philosophy underlying the draft proposal as a whole as follows:

> "The Group of 77 realized that it would be necessary to have the support and assistance of those States and enterprises that had the financial and technical capacity for efficient exploitation of the resources of the international area. The text proposed by the Group was clear, balanced and flexible.
> The wording of the first paragraph meant that the authority, with a view to its conducting exploration and exploitation of the resources, would be given adequate powers to protect the interests of the international community, in accordance with the spirit of the Declaration of Principles, giving

special consideration to the interests and needs of the developing countries, both coastal and - more especially - land-locked. The authority would not - as had been claimed - be a supranational body: it would have jurisdiction only in the international area and a legal status similar to that of the other specialized agencies of the United Nations. The supreme organ of the authority would be the assembly, in which all States would be represented on an equal footing. Membership in the council would be based on the most equitable possible geographical distribution, without any conditions for voting, so that decisions would be democratic.

The operational organ of the authority, which would directly control all exploitation of the resources beyond the limits of national jurisdiction, would function with the same impartiality.

The second paragraph provided a way of meeting the concerns of the developed countries, within the concept of the common heritage.

A mechanism of the kind proposed by the Group of 77 could allow for the inclusion in service contracts of conditions that would attract the capital and technology from industrialized States and their companies which were needed to carry out scientific research, exploration and exploitation, and which the authority in its early stages would obviously lack. One could not doubt that States - which were the juridical persons par excellence contemplated by international law - had the capacity to enter into service contracts with the authority which would be in conformity with the modalities and characteristics of their respective economic systems and their ideologies. A service contract was a legal agreement under which one party performed a task of remuneration, which could take the form of a share in

the production. Such contracts were based on the principle that exploitation should be carried out during a period long enough to cover investment risks.

The concept of association could allow for the establishment of joint enterprises by developed and developing countries and the authority, always keeping in mind the aim of speeding up the transfer of technology. The words "any other means" implied a wide range of possibilities with the exception of licensing.

It should be clearly understood that the developing countries totally rejected the idea of licensing. They did not believe the claims that equitable distribution of the profits derived from exploitation of the common heritage could be effected through the use of a method which was typical of the era of paternalism and dependence. Even less acceptable was the attempt to divide the Group of 77 by the fallacious argument that the revenue derived from licensing would benefit particularly the least developed among the developing countries and the geographically disadvantaged countries.

The developing countries had strengthened their solidarity and were sufficiently mature to understand that the only way to ensure the transfer of technology was by active participation in exploration and exploitation of the common heritage. That was the path towards the objective of economic independence. The third world could not accept the licensing system because it would greatly widen the financial and technical gap which separated them from the developed countries. The vast resources of the seas should be administered directly by the authority in a joint international co-operative effort for the benefit

of all mankind."[1]

By the end of the first week in August, the United States[2] took the initiative to move the discussion on the issue to the more specific points concerning the conditions of exploitation. It then presented a formal document containing its proposals for conditions of exploitation. Further proposals followed the American one on the subject, introduced by eight of the EEC states, Japan and the Group of 77. The Group of 77's text was welcomed by many states including China, Albania, Norway, Sweden, Spain and Roumania. At this conference the Soviet Union did not make a proposal on the conditions of exploitation but it recognised the right of states themselves to exploit seabed resources on the same level which the other advanced technological countries, particularly the EEC Group[3] did.

In regard to the conditions of exploration and exploitation of the area three approaches were introduced before the committee.[4] Firstly, the opinion which supported

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(1) A/CONF.62/C.1/SR.11, at 11-13.

(2) Another attempt at a compromise text. The U.S. submitted another text A/CONF.62/C.1/L.6. The text of this proposal should be compared with the earlier U.S.proposal.

(3) A/CONF.62/C.1/SR.8, pp. 7-10. See also M.I. Lazarev (Trans. T. Sulikowski), "Scientific - Technological Progress and the Search for Legal Regulation of Possible Seabed Uses" Ocean Development and International Law 3, No.1 (1975): 69 - 86.

(4) The three basic approaches were first identified by Jamaica and later referred to by the Chairman of the informal meeting of the committee. A/CONF.62/C.1/SR.14 at 4.

the idea of the inclusion within the convention itself of the rules and regulations which would guide the Authority in its activities in the area. According to this, the Authority would be confined to these rules and regulations.(1) Secondly, the opinion which tended toward the non-inclusion in the convention of any rules and regulations at all and leaving the Authority to determine them as necessary and appropriate according to the circumstances of each individual case.(2) Thirdly, this approach favoured the inclusion in the convention of certain basic rules which would guide the Authority in relation to the exploration and exploitation in the area, and leaving an open-door for the Authority to establish the detailed conditions within that basic framework.(3)

The attitude of the developing countries was essentially not to mention the conditions of the exploration and exploitation of the area. They then changed their position and advocated the

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(1) Reference is made here to the paper submitted by the United States. A/CONF.62/C.1/L.6. Other papers containing comparable technical details on the basic conditions were submitted by Japan (A/CONF.62/C.1/L.9) and by the European Common Market Group (A/CONF.62/C.1/L.8).

(2) This was the position originally taken by a majority of the developing countries.

(3) This view was first championed by Jamaica as reflected in its proposal. (See text of the informal working paper No. C.1/CRP.3, July 25, 1974; reproduced in part, in First Committee Draft Articles considerd by the committee at its informal meetings (Articles 1-21), A/CONF.62/C.1/L.3 at 19.) This approach was later adopted by the Group of 77 which submitted a paper containing 17 paragraphs which do not constitute as detailed technical conditions as those cited supra note1. Text prepared by the Group of 77 and circulated in accordance with the decision taken by the committee at its informal meeting on 16 August, 1974: basic conditions A/CONF.62/C.1/L.7. Norway, Sweden, China, Canada and Albania supported this paper.

third approach mentioned above. They presented a draft called "Basic Conditions". Thus a new opportunity was offered to reach agreement on Article 9. This draft indicated how much control the Group of 77 wanted to give the Authority and also the kind of discretionary powers it should enjoy.

It was of great importance that basic principles should be included in the convention in order to guide the Authority to achieve its aims. These were principles which would ensure that activities would be carried out in a proper manner and without unjustified discrimination or interference and that the contracts which related to the activities in the area would be faithfully executed and observed. A more difficult matter was of how to reflect those ultimate principles in the convention together with the interests they would be protecting.

Generally, the most important points of disagreement between the two sides as appeared in their texts were the following:(1)

(1) The Group of 77 decided to vest the area and its resources in the authority, but this idea was rejected by the Americans on the basis of unnecessity. They wanted to give the Authority simple rights representing a supervisory form.

(2) The Group of 77 wanted to give the Authority control over scientific research, processing and marketing

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(1) A comparative table of the four documents was prepared for the Geneva Session as C.1/CP/ working paper No.2, March 18, 1975.

activities and also exploration and exploitation; while the developed states wanted to limit the jurisdiction of the Authority to exploration and exploitation.

(3) The Group of 77 wanted to give the Authority discretionary power to explore the area and to exploit its resources, while the developed states wanted a free right to explore the area and allocation of exploitation rights automatically to those who fulfilled certain conditions. They also wanted the operators to enjoy the right to choose mine sites within the permitted limits of the convention.

(4) The Group of 77 wanted the Authority to enjoy discretionary powers in transfering rights from one operator to another. The developed countries wanted an originally free right of transfering, consistent only with the achievement of certain conditions.

(5) The Group of 77 wanted the Authority to have financial and administrative control of all operations without assuming any of the financial risks. The developed countries, on the other hand, refused this idea, and wanted to limit the financial responsibilities of the operators to specified schedules of work (to avoid speculation in mine sites) and to payments to the Authority on grounds related to activity and production.

(6) The Group of 77 wanted to give the Authority the right to change the terms of a contract, including suspension or termination, in cases of "a radical change in circumstances". At the same time, the developed countries rejected this on the basis of security to tenure and investment.

(7) The 77's Group wanted to give the Authority the power to impose production controls which the United States refused at all.

(8) The 77's Group wanted extensive information transfers from operators to Authority as well as commitments on training programmes for, and employment of, personnel from the developing countries. The developed states wanted to release the proprietary information, and, except for Japan, made no suggestions on training and employment.

Further problems emerging within the Caracas Session were those relating to issues such as: high seas fishing, the regime of islands, and the transfer of technology. A number of developing countries, totalling fourteen, supported the idea of increasing the international control over high seas fishing, even some of them claiming that this task should be vested in the international authority itself. Meanwhile, declarations of the OAU of 1973 and 1974 contained a tendency toward the establishment of an international sea fisheries regime. This did not pass without objections and the United States and the Soviet Union,

in addition to five other states which all have fishing interests, refuted any attempt towards extending the power of the international authority to the water column. It is notable that the superpower countries of U.S. and USSR have huge naval fleets and they wished to retain the freedom of the high seas, in general, in order to assure their dominant naval interests.(1)

The problem of the regime of islands, arising from the negotiation on coastal state jurisdiction. At the Caracas Session, it became clear that the application of a 200 mile zone to every rock and reef in the oceans of the world would entail the covering of areas of seabed and superjacent waters by island and island-owing states. This problem largely prevailed after the progress achieved on the economic zone at the conference. Confusion arose over whether archipelagos belonging to coastal state should have the same right as oceanic archipelagos, and, in particular, over whether all islands should be given full maritime zones, or whether and how restrictions should be applied to rocks, reefs and uninhabited islands. Division of agreement was mostly centred along geographical lines, except for the hotly contested issue of the large number of strategically placed islands under colonial control, where divisions were predictably ideological.(2)

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(1) A/CONF.62/C.1/SR.6, p.2: SR.7, p.6. SR.8, p.8.

(2) A/CONF.62/C.2/SR.36-40. For a fascinating study of this problem in relation to the Pacific Ocean, F.M. Auburn, "Some Legal Problems of the Commercial Exploitation of Manganese Nodules in the Pacific Ocean", Ocean Development and International Law Journal 1, No.2 (Summer, 1973):185-200.

The problem, so far as the committee was concerned, was that, if the island and island-owning states, including colonial powers, should win their case (whether within negotiations or by taking unilateral action) this would result in the falling of some of the seabed areas within their control, especially with regard to the Pacific area which contains quality ore manganese nodules. That would prevent the seabed authority from complete control over nodule materials and the desire that it compete with other resource holders to attract investment from entities capable of deep sea mining. Such a result would not have been in accord with the type of proposal for an international seabed authority as emphasised by the Group of 77.

The problem of transfer of technology has been alluded to in the discussion on disputes over conditions of exploitation in C.I., but in fact the main activity on this issue took place in C.III. A number of states, totalling 18, representing a cross section of the Group of 77, made a demand that "all blueprints and patents of the equipment, machinery, devices and processes used in the exploration of the international area, the exploitation of its resources and related activities be made available to all developing states upon request."(1) The problem was that if the exploiting entities were to be mostly western mining companies as seemed likely then they would be exceedingly

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(1) A/CONF.62/C.3/L.12. An earlier proposal by Nigeria (A/CONF.62/C.3/L.8) expressed similar demands.

reluctant to make proprietary information of that kind public. They would view a requirement along such lines as a breach of their investment security.

The truth is there was a perceptible advance on many points. Agreement was reached on the question of procedure. A decision was taken to reaffirm the voting procedure followed at the previous Assembly by which decisions at the conference should be made were possible by consensus. In situations when agreement proved absolutely impossible, the recourse to voting would be the possible solution for which two-thirds majority of those present and voting would be required so long as that majority consisted of at least a simple majority of those participating in that session. Agreement also was reached to conduct further negotiations whenever necessary.

In the issue of the maritime boundaries a measure of agreement was apparent. In general, acceptance of a 12-mile territorial sea limit was concluded. The idea of an economic zone of 200-miles received considerable support among many states.(1)

A point of disagreement emerged over the precise rights a coastal state would enjoy in the economic zone. The developed countries complained that the zone was being used by some states (Latin American countries) in such a way as to exercise full sovereignty in the area. Therefore, the rich

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(1) Luard, p.193.

countries demanded that coastal states should enjoy certain defined rights, mainly over economic resources. Starting from this point, efforts were made to define what exact rights coastal states should enjoy in such a zone, and what obligations it would impose on a coastal state to consider the rights of other states, especially in vital issues such as navigation. These obligations would perhaps contain duties to land-locked states, such as giving them rights of fishing and exploitation, or even of sharing some of the revenues gained from the area within the international system.(1)

Some coastal states at the conference commenced claiming rights beyond the 200 mile limit. Many states, including Britain, Australia, Canada claimed economic rights beyond that distance to the edge of the continental margin (to depths of 3,000 metres or more). It would appear that the judgement of the International Court of Justice in 1969 concerning the idea of prolongation of the land mass prompted these states to make such a claim. So far as the only clear limit to the prolongation of the land area is that which emerges at the edge of the shelf (usually below 200 metres in depth) the judgement appeared to hint that this should be the limits of jurisdiction. In most

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(1) Many countries of Latin America and Africa accepted the idea that land-locked states could share in fishing activities in the zone of neighbouring coastal states- an inexpensive offer since the land-locked states had neither fishermen, fishing vessels or ports - but rejected their right to share in exploitation of mineral resources there.

this would be the bottom of the slope.

On the question of passage through straits especially as it affected naval vessels, the views were contracted and accepted and thereafter were in less dispute.[1]

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(1) Luard, p.194.

CHAPTER 5

THE THIRD UN CONFERENCE ON THE LAW OF THE SEA 1974 - 75

PART II - GENEVA

The second session of the conference took place in Geneva in March - May, 1975. Here again, no final agreement was reached. But again substantial progress was made on some points. The aim of the conference was to negotiate certain agreed draft articles covering the mandates of the three committees to form a single negotiating text in order to reduce the number of alternative texts yet left from the Caracas Session.

In C.I, the working group [1] focussed its attention on Article 9 and the conditions of exploitation, constructing its work on the four papers on the matters concerned which were submitted at Caracas, plus another paper submitted by the Soviet Union just before the beginning of the Geneva Session.

The Soviet paper was generally in rhythm with those of the other developed countries except for a few points of difference.[2]

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(1) For the African Group: Algeria, Egypt, Ghana, Lesotho, Madagascar, Mali, Morocco, Nigeria, and the United Republic of Tanzania; for the Asian Group: Afghanistan, (alternating with Nepal), China, India, Iran, Kuwait, Pakistan, Philippines (alternating with Indonesia), Singapore amd Yugoslavia; for the Latin American countries: Bolivia, Brazil, Chile, Honduras, Jamaica, Mexico, Peru, Trinidad and Tobago, and Venezuela; for the Western European and others group: Austria, Canada, Federal Republic of Germany, Italy, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom; for the Eastern European Group: Bulgaria, Byelorussion SSR, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Roumania, the Ukranian SSR, and the USSR; and one sponsor of each proposal submitted to the committee: Australia, Colombia, France, Japan, and the United States.

(2) A/CONF.62/C.1/L.12. This paper was added to the comparative table of the other four in C.1/CP/ working paper No.2/Add.1

At the Geneva Session there was much more discussion on the question of exploitation in the international area in which some advance was achieved. There was considerable optimism about reaching a compromise between the developing countries who held the view that all exploitation should be undertaken directly by the Authority (or rather its enterprise) and the opposite view including that of the U.S., that the private firms should be given wide scope apart from their duty to pay royalties on their profits. The concept of "joint ventures"(1) received increasing concentration. An alternative proposal, named the banking system, was suggested which depended on the idea that the exploiting company should propose exploitation in two separate blocks of roughly equal value. The role of the Authority would be to allocate one to the company and the other to a developing country for international exploitation. The advantage of this system would reduce the odds of the initiative to developed states. Thus, the Authority could secure controlling sites of some value.

The question of scientific research was not successfully solved. There was considerable conflict as to how far a coastal state had the right to control all research within its economic zone (as demanded by many poor coastal states) or whether only research that was resource oriented should occur (as claimed by the rich states, quoting in particular that the convention on the Continental Shelf 1958 provided for the

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(1) C.1/ working paper No.5.

freedom of research in the Continental Shelf). An attempt at a compromise was made. Four developing states proposed that any group or person applying to research in the economic zone of another state would indicate whether the research was fundamental or resource-oriented. In the case of the latter, then the coastal state could refuse to give the required permission. In other cases, it could indicate its willingness to participate itself or receive the results. In situations when the coastal state did not reply, the research could nevertheless take place. However, pure research should not be prevented.(1)

A sign of progress was made in the working group when during the fourth week of the session, the Chairman submitted a single negotiating text (CP/Cab.12) on the conditions of exploitation which used the joint venture idea. This attempt was successful in gathering considerable support for many compromised topics in the single text. The text provided for the division of the international seabed area into two separate regimes, one to be exploited by state contractors and the other by the authority using its own discretion. The idea on which this text was based was unacceptable to the Group of 77. Therefore, and after further discussion on the matter, the Group refused to accept the paper, especially the theme of dividing the area into state and authority

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(1) Luard, pp.195 - 196.

areas.(1)

Further consultation, aimed at producing a revised version of Cab.12 meanwhile, the Chairman published a draft text on the structure, function and powers of the international machinery and commenced consultations in order to produce a draft on this issue which would be submitted to the Chairman of C.I.(2)

In C.I. useless debate was held on such points as the structure, functions, and powers of the machinery.(3)

The attempt which was made by the Chairman of the working group to prepare revisions of both his texts based on the consultations upon the matter. By the last week of the session, he submitted both of them to the committee chairman. It is remarkable that the two texts did not satisfy all parties to the negotiations, but nonetheless, they were used as a basis for further debates.(4)

In the final week of the session, the committee chairman P.B. Engo, made some alterations of his own in many places which appeared in the single negotiating text (WP.8/Part I.) This text reflected the outcome of discussions so far. The

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(1) For a more detailed discussion of the Group of 77's reactions to Cab.12, see E. Miles, "An Interpretation of the Geneva Proceedings, Part I", Ocean Development and International Law Journal forthcoming in Vol.3, No.2 (July/August, 1975).

(2) Ibid.

(3) Ibid.

(4) Ibid.

revisions were totally in favour of the developing countries.[1] Its importance lay in its provision for a basis for discussion around which the negotiations at the next session could be concentrated. It was obvious that further negotiations and revision were necessary before reaching an accepted single text.

This document permitted a 'parallel system': half of the area to be exploited by private companies under license to the authority in return for a royalty, and the second half by the international enterprise. However, in the same year and in a later session in New York, this system was refuted by some developing countries on the basis that it gave too many privileges to the rich countries from which the private companies came; and also because the enterprise might not be sufficiently capable in finance and technological terms. This latter point encouraged Dr. Kissinger, on behalf of the U.S., to offer financial and technical support to the Enterprise so that it could operate at the equivalent desired standards as the private companies. He also suggested a review of the entire system after 20 or 25 years, to enable the developing countries to take a wider role in the operations at which point their technical level would be more developed.[2]

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(1) For details of the alterations, see E. Miles, "An Interpretation of the Geneva Proceedings - Part I" Ocean Development and International Law Journal, forthcoming in Vol.3, No.2 (July/August, 1975).

(2) Luard, p.198.

The text favoured the view of the developing states in the establishment of an effective international system. It provided for the establishment of an international seabed authority which would include an assembly, a council and a secretariat, an economic commission, a technical commission, an Enterprise which might itself undertake exploitation and a tribunal to settle disputes. In general, activities in the zone would be fulfilled by the authority but provision would be made for joint ventures with private corporations or for service contracts. The revenues of seabed operations would be equitably divided and the authority would promote the transfer of technology to poor countries. Another important point was that the authority would be obliged to protect the interests of the states who are producers of the minerals contained in manganese nodules.

The revised text (WP.8/Part I) reflected the view and interests of the advanced technology states more than was expected.

In terms of reducing adverse economic effects on developing countries exporting metal, the text provided for minimisation or avoidance of possible harm to those but the power of the authority in this regard was vested in the council.

The demand of the Group of 77's that this matter be preserved in an economic planning commission was ignored, and the commission had power only to recommend to the council.

Regarding the topic of the transfer of technology, the

authority was provided with only rather general obligations which would not threaten the attitude of the private companies.

The text indicated the legal status of the superjacent waters of the high seas to be a separate entity from that of the international seabed area.

On the structure of the authority, the text contained the important demanded points made by the U.S. in a speech to C.I. on April 28, whereby provisions concerning voting in the assembly, which was to be by a two-thirds majority, must include a simple majority of the members, and also that powers to delay voting were given to groups mustering support from at least one-third of the members. The structure of the council was based on giving weight to the interests of states involved in nodule mining, and voting was to be on a system of a two-thirds-plus-one majority basis, by which the group of 12 states could form a blockhead. In the issue of allocation of powers, the text considered the assembly as the supreme organ of the authority though important powers and functions were vested in the council. It is notable that the chairman of C.I. mentioned that in case of conflict between the two organs, the assembly could not overrule the council on a matter within the council's jurisdiction.(1)

It also provided for compulsory settlement of disputes and a powerful tribunal, but it was to a large extent,

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(1) P.B. Engo, "Introduction to the Single Text Relating to the Mandate of the First Committee", p.6.

subordinated to the council. In addition, it provided for the contribution of states in the running costs of the authority and it favoured the Group of 77 view of vesting powers in this respect in the assembly. Moreover, it provided for (as demanded by the U.S. and others) active provisions in the Convention to ensure the prevention of any delay in implementing a nodule mining regime.

On the conditions of exploitation, the text provided that:

(1) the seabed area and its resources were declared the common heritage of mankind, but only the rights in the resources were vested in the authority.

(2) scientific research as well as processing and marketing functions were included within the functions of the authority, thus the demands of the Group of 77 prevailed, even although it was provided that the authority did not have the exclusive right to conduct scientific research.

(3) the discretionary powers for the authority were not clearly stated in the text, it did not appear to favour the advanced technology states.

(4) the issue of transferring rights from one operator to another was under the control of the authority but the authority was prevented from withholding consent if reasonable, specified conditions were fulfilled.

(5) financial arrangements: the text provided that although the authority would retain "direct and

effective fiscal and administrative control", the operator was secured the return of his costs out of the proceeds, and also a share of the profits to be specified in the contract.

(6) the right of the authority to revise contracts was inadequately explained in the text. However, operators were given security of tenure and freedom from alteration or suspension of the contract except for "gross and persistant violations" of rules.

The single negotiating text appeared to move in a direction favourable to the advanced technology states, and to be in contrast with many attitudes taken by the Group of 77 in the SBC and at Caracas.

The single negotiating text (SNT) contained provisions to establish a 200-mile exclusive economic zone. The coastal state (within this zone) would enjoy the right to exploit seabed resources, exclusive jurisdiction over fishing and other economic activities, and 'jurisdiction' (not necessarily exclusive) for the purpose of preserving the marine environment.(1) On the issue of fishing, the coastal state would be found to promote optimum exploitation, and thus to allow access for the fishermen of other states, to the extent necessary to perform the permissible catch. Also, it would be obliged to take steps

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(1) The coastal state would also be given rights, under the proposed text, for mineral exploitation even beyond the 200-mile limit, to the outer edge of the continental margin: within that area, however, it was suggested that some royalties should be paid to the international community.

to conserve stocks. In relation to the land-locked states, they were to be given the right to participate in exploiting fishing resources in these zones on an equitable basis (whatever that meant). Moreover, the states in whose waters the fish originated were given regulatory powers.

So far as maritime law was concerned, the text provided for 12-mile territorial waters, and the right of innocent passage through this area was to be protected: the text allowed passage which 'is not prejudicial to the peace, good order or security of the coastal state'. In respect of fully international straits, where straits occurred between two parts of the high seas, in such cases, the coastal states would be obliged to provide free transit, and had a limited right to make regulations which would apply to shipping there. In situations where the straits led only to the territorial sea of another state (like the straits of Tiran) the coastal states would only be able to provide for the right of innocent passage, and the rights to place regulations would be less restricted. The text also contained arrangements for the protection of the interests of a coastal state within its territorial sea; it would have certain powers to regulate pollution and navigation. Besides, the idea of 'archipelagic waters' (as proposed by some states including Indonesia) was provided for in the text in the form that in such waters a state would enjoy some rights to control navigation, but would not have all the rights of the territorial sea or the economic zone.

The matter of pollution was also considered by the text. It was provided that a state would have the obligation to protect and preserve all the marine environment. All states should regulate internal rules on land-based pollution and all states would be obliged to fix regional and global standards in the same spirit. It was accepted by the majority of states that for ship-based pollution there should be uniform national standards. It was urgent to formulate - by a concerned international organisation or by general diplomatic conference... international rules and regulations aimed at preventing, reducing and controlling pollution of the marine environment from vessels. The flag-state would have the essential responsibility to put these rules and regulations into force. In addition, the coastal state would play another role in the matter through the power to inspect and arrest the violating vessels, and in cases where the flag-state failed to take the necessary juridicial action against them. Similarly, with the port state (the state at whose port the vessel subsequently called) which could act against vessels to guarantee compliance with pollution standards. In addition, where pollution in some areas caused irreversible disturbance of the economic balance, coastal states would be allowed to establish their own laws and regulations to protect the marine environment.

CHAPTER 6

THE THIRD UN CONFERENCE ON THE LAW OF THE SEA, 1977 : NEW YORK

The United Nations Law of the Sea Conference held its sixth session in New York for the period of 23 May to 15 July, 1977. This represented another crucial stage in the process of negotiation on the many problems encountered in achieving progress towards a new comprehensive body of law for the seas since the Caracas discussion started in 1974. The fact is that there was much at stake. A wide measure of international agreement was required on a profoundly complex issue which involved all nations and which would have a major impact on the establishment and implementation of the new international economic order.

The Second Committee since the Caracas session broadly focused on three essential issues:

(1) the regime for the 12 mile territorial sea;

(2) the delimitation of the economic zone and;

(3) the nature and scope of states' rights and obligations within the zone.

The debates of the Second Committee,[1] especially on such areas as the innocent passage regime through the territorial sea, and passage through straits, showed the divergent interests of different groups of states. The majority of maritime states, including the United States, the Soviet Union and the United

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(1) R.P. Barston, "Law of the Sea Conference: old and new maritime regimes in international relations," The Journal of the David Davies Memorial Institute of International Studies, Vol (VI), No.1 May, 1978.

Kingdom, were interested in maintaining (on a commercial and a security basis) the maximum possibility of freedom of navigation as well as securing uniform international standards and regulations within the territorial sea and economic zone.

However, remarkable progress was made during the negotiations of the second committee conducted during 1975-76 in the Evensen Group.(1)

The sixth session of the Conference devoted essential work to the issue of the legal status of the economic zone.(2) The second committee faced hard discussions on this question(3) whilst concentrating on the question of residual rights within the economic zone (that is the traditional high seas freedom of navigation, visiting ports in passage, cable laying, overflight, fishing(4) and marine scientific research). The United States, the Soviet Union, the United Kingdom and Japan, together with

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(1) The Evensen Group, one of a number of informal groups, is chaired by Norwegian minister Jens Evensen and was set up before the Geneva Session in 1975 in order to bring together representatives of the main interest groups, especially the major maritime powers and key members of the Group of 77, at the level of heads of delegation and juridical experts. By the sixth session of the conference the membership of the Group had more than doubled to include most states accredited to the conference. During 1975-76 the Evensen Group concentrated on second committee questions, whilst at the sixth session it dealt with the International Seabed Authority.

(2) Explanatory memorandum by the President (of the Law of the Sea Conference) A/CONF.62/WP.10/Add.1, 22 July, 1977, pp.10-11.

(3) For further discussion of the question of residual rights A/CONF.62/WP.8/Rev.1/Part II, 6 May, 1976, p.4.

(4) See for example on fisheries jurisdiction claims, R.P. Barston and H.W. Hannesson, "The Anglo-Icelandic Fisheries Dispute". International Relations, David Davies Institute, Vol.IV, November, 1974, pp.559-84.

other maritime states, argued (on the question of residual rights) that the economic zone should be considered as the high seas with the one exception being that of the rights provided for by the Convention. But many coastal states, including Canada, and members of the Group of 77 (such as Ecuador, Brazil and India) objected to the idea on the grounds that the economic zone was distinct from the high seas and that the coastal states in question had the prerogative of making regulations and enforcing standards.

The second committee took into consideration issues such as the re-demands of the "landlocked and geographically disadvantaged" group of countries consisting of some 49 states and which included Austria, Switzerland, Nepal and Afghanistan, for access to the resources of economic zones. Agreement was far from being reached in this respect but nonetheless, it was likely that Article 58 in the Revised Single Negotiating Text could be an essential working mechanism in overcoming the obstacle.(1)

Discussion which reached an impasse, was held over the definition of the outer limit of the continental shelf. This issue was of special concern to the states with 'wide' margins, for example, the United Kingdom, New Zealand, Australia and India. It was generally recognised that the coastal state would have rights within the 200 mile economic zone over

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(1) A/CONF.62/WP.8, op. cit.

resources within the zone, including the continental shelf, but what was unresolved were the precise limits of coastal state jurisdiction. Because of their inability to extend their limits or sustain economic gain, the land-locked and geographically disadvantaged states were the leading opponents to the definition of the outer limit of the continental shelf as being the edge of the continental margin. Few proposals were introduced at the session and the Soviet Union put forward a revised proposal on the theme of definition for the outer limit at either 200 nautical miles or the 500 metre isobath. The ICNT provided in Article (82) for a revised regime of revenue-sharing under which, after the fifth year of operations on the offshore site between the outer limit of the economic zone and the continental margin, 1% of the value or volume of production would be paid to the International Seabed Authority. The rate of payment would increase by 1% per annum until the tenth year and would subsequently remain at 5%.

The Second Committee paid less concern to the position of base lines for the delineation of archipelagic states and the regime for passage through archipelagic waters (Indonesia and the Philippines were concerned essentially with this issue). So far as the latter issue was concerned, the ICNT provided for a new concept of archipelagic sealanes passage (Article 53),

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(1) A/CONF.62/WP.10 op. cit.

analogous of the right of transit passage through straits (Article 38),[1] for routes across the archipelago.

The Third Committee considered the issue of the preservation of the marine environment and marine science. The widespread dissatisfaction of the developing coastal states with the existing "flag state" regime was an elementary reason for formulating (Part XII) in the text which contains inter alia provisions on state's obligations to protect the marine environment, regional co-operation, and land based sources of pollution. Many Articles (from 212 to 238) provide measures to control vessel source pollution.[2] The new text gave the coastal states enforcement rights in the economic zone. Also, the text provided for what would be called a universal port state jurisdiction,[3] in which the port state under certain conditions may initiate investigations and subsequently commence proceedings for pollution offences committed outside its own internal waters, territorial sea and economic zone.

Article 212 para.3[4] subjugated the powers of port and

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(1) A/CONF.62/WP.10 op. cit.

(2) For a summary of the work of the Third Committee prior to the sixth session see Report by the Chairman of the Third Committee, Alexander Yankov, A/CONF.62/L.18, 16 September, 1976.

(3) Analysis in a paper submitted by the British Branch Committee on the Law of the Sea, "The Concept of Port State Jurisdiction" for the 1974 Conference of the International Law Association held in New Delhi.

(4) A/CONF.62/WP.8, op. cit.

coastal states to a number of guaranteed points, among those being the protection of the right of innocent passage.

The case of those states who would be more subject to pollution due to their location on strategic shipping routes was also considered and protective provisions in that regard were the complement to the Annex II regulations of the 1973 IMCO Convention.(1) The composite text (Article 235) provided for the permitting of the coastal states to establish non-discriminatory regulations within the economic zone aimed at reducing the likelihood of major pollution damage in certain ecologically dangerous ice-covered areas such as are found in the Arctic.

On the subject of marine scientific research, changes were designed to modify the traditional regime, providing for high seas freedom for research, subject to the 1958 Geneva Convention on the Continental Shelf in three areas:

(1) The coastal state was given authorised jurisdiction over marine scientific research within the Economic Zone, including the water column of the zone,

(2) The Convention gave states the right to conduct MSR in the water column beyond the Economic Zone, while under the ICNT the International Seabed Authority would organise and co-ordinate MSR with regard to the International Seabed Area,

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(1) International Convention for the Prevention of Pollution from Ships, 1973, London (HMSO, Cmnd., 5748).

(3) Provision was made for all states, regardless of their geographical location, and whether land-locked or geographically disadvantaged states, to have an equal right to conduct MSR.

An opportunity was therefore given for the conducting of marine research projects by land-locked and geographically disadvantaged states in neighbouring Economic Zones.

The establishment of a seabed authority presented the most difficult, but perhaps the most important issue of all before United Nations Law of the Sea Conference. As the fifth session of the conference was unable to reach a satisfactory solution due to the pattern of conflict between the technologically advanced states and the Group of 77, negotiations were propelled towards a course for a successful outcome in the issue. The first three weeks of the sixth session were devoted to seabed mining questions, including the basic system of exploitation, resources policy and the financing of the Enterprise, under the First Committee Chairman, special representative Jens Evensen, with a sense of urgency to reach agreement on this difficult issue.

By the end of the sixth session, a modified text of articles was introduced by Paul Engo, the Chairman of the First Committee, which was incorporated into the ICNT.

The new text, generally, was inspired by the idea of extending the powers of the Authority[1] (consisting of the

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(1) Cf. ICNT, Explanatory Memorandum by the President, A/CONF.62/WP.10/Add.1, 22 July, 1977, p.5.

Assembly, Council and the Secretariat) over all sources of activities of exploration and exploitation of the minerals of the seabed.

According to this text, the Assembly would be designated as the supreme organ of the Authority, and given the power to establish general policies; the substantial decisions of the Assembly in which each state party would have one vote, to be made by two-thirds majority (Article 158). The Assembly also would have authority to elect the members of the Council, as well as to assess the amount to be contributed by member states until such time as the Authority would become self-sufficient (Article 158), and to review every five years the progress of the deep seabed regime, in addition to its responsibility for the major review of the regime after 20 years from the entry of the Convention into force (Articles 152 and 153). The Council was designated as an executive organ of the Authority and was vested with the responsibility for the establishment of certain policies within the framework formulated by the Assembly. The Council would be composed of 36 members (Article 159), of which half of its members would be elected on the basis of equitable geographical distribution, whilst the rest would be elected on the basis of the representation of special interests (eg. major researching states or developing country mineral importers).

The power of the International Seabed Authority(1)

(1) The Authority could have its headquarters in Jamaica; Malta and Fiji have also put in bids.

designated by the ICNT is extensive and exclusive regarding seabed mining and other activities concerning the International Area and relating to scientific research and the transfer of technology.(1) In exploration and exploitation, it provides for self-determination and a wide range of freedom both to the Enterprise and to joint ventures, production sharing or service contracts between contractors and the Authority.(2) In the latter cases, it is necessary that contract areas be extensive enough to enable the Enterprise to mine one half (the so-called "reserved areas") independently or in conjunction with developing countries.(3) The text also provided for the doubling of the transfer of technology issue so as to programme for discussion of this matter, and the participation of developing countries, at the contract stage of negotiations rather than after mining operations commenced.(4) Another article provided for the establishment of a strong position for the Authority in terms of a resource policy for the first seven years of the interim period of production control, the Authority was empowered to limit the production of minerals from nodules in the Area to the protected cumulative growth of the world demand for nickel.(5) Subsequently, the

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(1) ICNT, Articles 150 and 151 and Annex 2.
(2) ICNT, Annex 2, para. 5(i).
(3) ICNT, Annex 2, para. 5 (j)(i).
(4) ICNT, Annex 2, para 5(j)(ii)(iii)(iv).
(5) ICNT, Article 150, para.1 (g)B.

production level was limited to 60% of the growth of nickel demand in any one year. This also protected the developing countries from any adverse effects on their economies caused by seabed mineral production, by empowering the Authority to participate in any commodity conferences dealing with such minerals produced in the area and to become a party to commodity agreements.(1) When the agreements enter into force the Authority would resume the power to limit seabed mineral production.

The hard reality of the sharp differences between the Group of 77 and the technologically advanced countries was tested after the publication of the ICNT provisions on the international seabed regime. Those difficulties which had so clearly affected the history of the issue were again instrumental in the failure to find an acceptable solution to the issue before the conference. Furthermore, United States Ambassador, Elliot Richardson, criticised the text on the procedural grounds(2) that, on one hand it had not been discussed broadly in the conference and, on the other, that it did not take into consideration the detailed debates which had been held within the framework of the Evensen meetings. Apart from that, the conflict between the Group of 77 and the

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(1) ICNT, Article 150, para.1 (g)A.

(2) The Ambassador text on 20 July, 1977 and also subsequent statement on the same date.

developed countries was represented in three substantial topics:[1]

(1) the conditions of access to the International Area;

(2) production levels, and

(3) the balance of political power within the various organs of the Authority.

To a large extent the point of conflict between the two disputing sides centres on the subject of whether the seabed mining activities fell within the traditional high seas freedoms.[2] The advanced countries (in particular, the United States, the United Kingdom, West Germany and Japan) challenged the weakness of the parallel system of mining operations by the Authority and private companies which was advocated by them from the first, in the ICNT. The United States argued that the text did not clearly provide for the rights of states or companies of access to the international area in regard to the exploration and exploitation system, in that Article (151), paragraphs 1 and 2 provided that activities within the mentioned area were to be carried out either by the Authority itself, or the Authority acting in association with contractors. The system of exploration and exploitation of the resources of the area could revert to a 'unitary' system

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(1) For the United Kingdom position see the written reply of Mr Luard Hansard, 26 October, 1977, cols.844-845.

(2) On this point see, for example, the text of the testimony of Ambassador Richardson before the House International Relations Committee (sub-committee International Organisations) January 23, 1978, p.8.

with the Authority having a monopoly after the 20 year review (Article 153, paragraph 6). Further, that the mandatory transfer of technology accompanied by the financial burdens placed on contractors, was considered detrimental to investment and the generation of technology.(1)

In regard to the regulatory powers of the Authority, doubt was expressed as to whether all minerals of the seabed were under the control of the Authority and if so, whether the Authority's powers should include the setting of prices and the regulating of markets. The problem, which was shared by all, and which had so clearly affected the work of the conference, was the extent to which production of seabed minerals should be limited. This had alerted the conference to the disputes and confrontations which would lie in the failure to find an acceptable solution to the issue. During the Evensen discussion the developing copper and nickel producers (Chile, Peru, Zaire, Indonesia, Cuba) insisted (despite the U.S. compromise on start up finance for the Enterprise) on limiting seabed nickel output to half of the growth of the nickel market (Canada supported the idea). In the eyes of the advanced countries the degree of protection which land-based producers sought for their interests, was

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(1) See ICNT, Annex 2, para.7 and the text of Ambassador Richardson's testimony before the Committee on Commerce, Science and Transportation, October 4, 1977, pp.4-6.

unreasonable and the production limit so low as to prevent efficient development.(1)

Another example of the scope of the varying interests involved in the conference was that concerning the institutional arrangements for running the proposed seabed operations. The technologically advanced countries disagreed with the provisions of the ICNT concerning voting procedure and the powers of the Assembly (Articles 157 and 158) and on the composition of the Council (Article 159). Their argument fell within the limits of their preference for weighted voting and changes in the composition of the Council.(2)

The evidence on the current Law of the Sea Conference at Geneva seems that the hope of reaching agreement is small because of the conflict between western mining countries and mineral producer countries on key issues involving the way of pressing ahead with seabed mining and sharing the activities in the area.

The fact is that only seven mining companies possess the necessary AP as the basic technology involves sucking the nodules off the sea floor. The nodules have been tried and tested under very high costs and feasibility studies alone are costing up to £100 millions. There is a general agreement now that the companies' knowledge and capital will be required in

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(1) See Ambassador Richardson's Cincinnati address of 18 January, 1978.

(2) See Ambassador Richardson's Cincinnati address, ibid, p4.

order to bring the seabed authority into existence.

There is confusion and tension among different sides thus holding up a detailed agreement on the issue. Some companies are worried about the effects of any kind of restrictions which might be imposed on them. Others are happy with the establishing of the new regime because of the sort of security the authority is expected to bring; while western countries are worried about asking companies to transfer technology to the enterprise (the operating body of the authority) on the grounds that it would be their competitor sometime later.

There are still matters to be solved, such as the exact royalties to be imposed, and the authority's system of management.

It is presently expected that seabed mining will not start before 1985, and so far, the Law of the Sea Conference has not yet been able to reach a crucial agreement. Also, nickel production is now shared by some 15 developing countries besides Canada, which was, until recently, the dominant country in this field.

The political events in the world today appear to have been influencing the U.S. to pass legislation which permits unilateral mining disregarding the protests of the developing countries.

The sad fact is that the land-based mineral producers will suffer once seabed mining starts, especially when we know

that many of the companies concerned are owned by states and so are effectively subsidised by the rich countries. One delegate said, "This could depress prices already low, and lay us open to protect seabed mining."

Canada and the U.S. came to a fragile compromise in which to allow seabed miners to produce 60 per cent of extra world demand for nickel over 20 years, while the land-based producers would get the other 40 per cent. Given the initial costs, seabed miners would also produce the equivalent of five years extra demand immediately.(1)

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(1) The Guardian, Monday, April 23, 1979, p.15.

CONCLUSION

It is known that the tasks and responsibilities concerning the ocean space and its natural resources are fairly extensive and have a special character, consequently, the establishment of a separate new international agency seems to be justified. If we are guided by the idea that the seabed area and its resources are the common heritage of mankind, then global organisation with a fundamental concern is necessary to translate the vital concept of the common heritage of mankind into reality, and to prevent the conflict between different countries and to maintain international peace and security for the welfare of all humanity. The establishment of new international legal order to regulate the use of the oceans and their resources would give the world an international law of the sea which would ensure justice and equity for all nations.

The new organisation should be a universal body which is open to all states to participate in. However, membership should be a right rather than be compulsory. The constitutional treaty should establish rules for admission to the organisation and for withdrawal from it. In the case of doubt whether applicant is state or not, the issue should be referred to the court to decide on the matter.

What kind of institutions are really required to undertake the achievement of the system of exploitation and to fulfil the aims which were mentioned earlier?

An international seabed Authority consists of the main organs, an Assembly Council, Secretariat and a tribunal body concerned with settling disputes in legal terms. In addition,

a few subsidiary bodies may be necessary and appropriate to deal with different aspects as given to them, helping the other organs in implementing their responsibilities.

Let us first consider the Assembly as a principle organ with broad authority on which all members are represented. It would be entrusted with primary responsibility for considering matters of substantial importance concerning the exploitation of the resources of the seabed area and would meet relatively frequently to function and take effective decisions. On the basis of some form of majority voting by which decisions of the Assembly would be made and each member would have one vote on the basis of the principle of sovereign equality without taking into consideration the inequalities of members in respect to such factors as area, population and wealth. The decisions of the Assembly would apply equally to those voting in favour and those voting against, as well as to those members which not being represented on the Assembly have no opportunity to vote at all.

In the sense that the Assembly would have larger power and responsibilities than that of the Council, it would take decisions in important matters such as the allocation of sites, the scale of royalties and the distribution of revenues.

The Council would be one of the principal organs of the international Authority. It is envisaged as an administrative organ of limited membership. The Council would perform functions including elective functions in relation to the other principal organs; overall supervision of the financial and administrative affairs of the Agency; and constituent functions,

exercised jointly with the Assembly, on such matters as membership and treaty amendments. The Council would discuss, consider and recommend, but not take action. The size of the Council should be set out in the treaty itself. The seats would perhaps be better allocated according to geographical criteria and the convention should establish the number of states to be represented in each geographical bloc, taking into consideration the fact that one land-locked state should be represented within the elected number of states for each bloc.

Within the UN specialised agencies, different kinds of procedures have been developed to fulfil this.

The system of weighted voting used in the IMF and the World Bank, to give more influence to larger or more economically powerful states. The vote under this system based on formulae related to national income, shares in world trade and other factors. This system is strongly criticised. It has been suggested that in the seabed context, it might be better to have weighting on a simple scale according to population. However, it is very hard to adopt a weighted voting within the Authority of the seabed for two reasons: neither is such a system acceptable any more within the international community, nor is it always certain that every decision taken was based on a wide consensus and was not ignoring the views of many small nations.

Another system of weighted representation has been used in the International Labour Organisation. That is to reserve proportional seats in the governing body for the most industrially developed countries. This system is also being applied in the

Intergovernmental Marine Consultative Organisation, for the chief shipping and ship-using countries (both highly developed) and in the International Civil Aviation Organisation, for those nations which are of importance in aviation, as well as in some others.

The system of according veto power to particular nations is used in the UN itself to ensure that the interests of those countries are not totally overridden. The Soviet Union proposal calling for decision by agreement would provide a universal veto. This would be amended to provide a veto only for the largest powers of all. Such a system is unacceptable to the Seabed Authority because its importance might be reduced due to the recalcitrance of a single state. Another system would be that of group vetoes under which a majority of each geographical group would be required for all decisions of a certain kind. Under such a system no nation alone could prevent a decision but a variety of interests would need to be reconciled in order for any decision to be reached. Meanwhile, effective action could be either crippled or restricted.

There would be the necessity of establishing a permanent secretariat composed of substantial numbers of persons drawn from many nationalities, having a wide range of functions, and operating continuously. It would consist of a Secretary-General and such secretaries and staff as may be required. The functions and powers of the secretariat should be set out in articles of the constitutional treaty. The functions and powers of the Secretary-General would essentially be of a managerial nature.

Such a secretariat would render services to the Assembly, the Council and the number of subsidiary organs and special bodies set up to do the work of the International Authority. These services would include arranging for necessary facilities, preparing and circulating documentation, and seeing that records are prepared. Moreover, there would be technical services to be performed such as the preparation of background papers, the preparation of reports and periodical publications, and a multitude of specific technical tasks which the Secretariat may be asked to perform by the Assembly and the Council. Further, there would be the tasks of personnel and financial administration which must be performed well if the Authority is to function smoothly. The Secretariat would also initially undertake the examination of all applications of the enterprises for contracts, studying each individual technical and financial capability and, on this ground, making recommendations to the Authority. It would arrange the inspection of operations to guarantee the achievement of operating standards, as well as the collection of the various fees, rentals, and royalties, the organisation of the agreed distribution of the proceeds and the general management of the finances of the Agency. It might produce independent research, exploration and technical studies to an extent which would enable the Authority to fulfil the full implication of its duties. The Secretariat would be under the direction of an executive head similar to the Secretary-General of one of the specialised agencies. As in the case of the IMF, the title being the managing director and in the ILO that of the director-general,

either of those would be applicable.

There is also the necessity for the Authority to establish subsidiary bodies as it deems necessary for the performance of its functions in the various fields of its activities. These would be functioning under the direction of, and would report to, the concerned organ. They would be varied as regards origin, composition, structure and function. Those would include 'study' committees and Training and Research Committees, of which one would be composed of qualified experts in technology for inspectors, one would be involved in preventing conflict with the other uses of the Oceans and so on. It would also be desirable to have a body for the overseeing and distribution of revenues.

How could the Authority enforce the system in case of violation of the principles of the treaty or the provisions of the contract? The treaty itself should contain rules providing sanctions as a means of securing compliance by members and enterprises with their obligations. For example, the ordering of the forfeiture of the exploitation rights against an enterprise and the suspension of a state's share of the revenues for a certain period.

On the question of the legal status which the Agency should enjoy it would obviously require full legal personality in order to be able to achieve its functions by entering into contracts, by making purchases, to sue and to be sued. Article 104 and 105 of the UN Charter deals with the related aspect - the legal status of the UN within the territory of, and in its relations with,

member states. The Convention on the Privileges and Immunities of the UN provides in Article I, that:

The UN shall possess juridical personality.

It shall have the capacity:

(a) to contract,

(b) to acquire and dispose of immovable and movable property,

(c) to institute legal proceedings.

Also, most of the specialised agencies have the same or similar provisions in their constitutional instruments. The Seabed Authority would need some kind of similar power and it would require the same diplomatic privileges and immunities for its employees.

Lastly, the problem of solving disputes is one of importance. Disputes would be mainly of two kinds: between enterprises, and between an enterprise and the authority. There could also be disputes between a member state and the authority, or against some other member, concerning the interpretation of the treaty. It could happen that the Authority might have to take legal action against a company for non-fulfilment of obligations, or damage to the marine environment. It is necessary for the reasons given above, to create a special Seabed Tribunal to hear such kinds of disputes. Furthermore, it would be imperative to include the main legal principles to be applied in the treaty itself and the service contract should contain regulations in that respect.

Which principles should be applied to achieve the highest degree of welfare and justice in distributing the revenues of the area? Those principles should have to be laid down in the treaty

itself. Tanzania proposed the distribution of revenues to all participating members in inverse proportion to their contribution to the UN or, more accurately, to their contribution per head. This system gives the developing countries special assistance regarding the principle that the resources are the joint property of all, from which every nation, even the richest, should benefit.

The Secretariat suggested to the Committee (A/AC/38/38 of June 15, 1971) a system of distribution. It made the purely hypothetical assumption that by the end of the decade revenues of $500 million could be available. It then looked at the distribution of this sum among states taking account both of population and income per head related to each other according to five different criteria. They differed on their degree of progressiveness and the extent to which they favoured very small countries or those coming near or above the middle of the income scale. In the same paper, another alternative was suggested, that of concentrating the revenues among the 25 least developed countries (under the current UN definition of these).

It should not be forgotten that a certain amount of the revenues would be devoted to activities concerning the seabed itself - research institutes and seaparks, and another part to secure the transfer of technology to developing countries. It might be useful to create a special body in the form of a commission to achieve this task and make recommendations to this effect.[1]

1. A part might also be required, according to some governments, for the administration costs of the authority. These would be considerable and in the early years much greater than its revenues.

We think that whereas the aim of the International Authority is to the ultimate benefit and welfare of all humanity in dividing the revenues between all countries, many criteria should be taken into account such as population, the economic situation of a country and whether it is a non-coastal state, whether it is economically disrupted because of trade markets and so on. A committee of experts to act in this field would be very helpful.

The Authority as a new body would need to have a liaison with the UN and the specialised agencies so far as the aim of all is the same; that of the achievement of benefit to all humanity. It is quite clear that this Authority would not be a subordinate body of the UN as in the manner of some others. But it is required that this Authority enter into the closest co-operation with the UN and specially with agencies such as IMCO, WMO, and UNESCO, which are all in some way concerned with the oceans.

Amendment of the provisions of the treaty should be mentioned within the treaty itself and the procedure of the amendment to be laid down in the treaty.

A system should be devised whereby all exploitation would be controlled and directly undertaken by an international authority, controlled on the principle of one-nation-one vote. This should co-operate closely with other agencies having other responsibilities within the ocean space; and also, service contracts should be issued from the international authority to the operating enterprises.

The maximisation of production should not necessarily be

the decisive aim. A powerful International Authority would exercise its discretion in ensuring a reasonable balance between enterprises of different regions and types. It is quite fair that the enterprise should undertake to employ a certain proportion of nationals of developing countries in order to ensure their subsequent technological expertise or undertake some sort of training programme for them.

The International Authority should control matters concerning sea pollution and avoidance of unreasonable interference with other uses of the sea, including freedom of navigation, protection of living resources and marine life, adequate safety regulation, prevention of undue waste of resources or damage to the marine environment, and so on should also come under its direct jurisdiction and control.

"AFTERWARDS"

In the past, the use of the oceans had been regarded as the prerogative of a few mercantile powers, but it has recently come to be recognised that the seas and the oceans are the concern of all. Vital matters concerning their efficient and equitable regulation can be resolved only by global strategies and understandings within which international, bilateral and national policies have to be framed. Old quarrels on land must not be replaced by new quarrels at sea. To this end, agreement must be reached while there is still time to do so; otherwise the potential for conflict arising from the sea issue is considerable, and given the inevitable development of marine technology, is bound to increase. There is a general desire to find practical solutions to extremely intricate problems which, if guided by a genuine will to succeed, would mark a real and notable advance towards true agreement on the issue.

A viable and durable agreement on the issues concerning the Law of the Sea is of the greatest importance in the establishment and implementation of the new international economic order and in preserving peace for future generations. The international community would be able to achieve success in workable solutions to global problems only if all nations recognised that it was in the long-term interests of each one that the historic efforts on the issue should succeed in establishing a Law of the Sea that would be respected by all. That would mark a decisive advance in the task of reaching global solutions to

the immense world problems confronting all humanity. The sea is a vital and living organism, and its law must reflect discernible patterns of progressive development.

The formidable increase in the world's population over the next 25 years makes it necessary to find and to manage efficiently and equitably, the immense resources of the sea. In the ocean space, and especially in its seabed, there is room enough and wealth enough to ensure prosperity for all. The common heritage principle, which was emphasised by Dr. Pardo, demands a common endeavour to ensure the common good.

In addition to establishing international seabed regime, a satisfactory solution must be found to ensure the optimum utilisation and protection of fish stocks, and the very important problem of the conduct of scientific research must be resolved. The limits of the territorial sea and the economic zone and the issue of passage through straits must also be resolved.

The contemporary picture of discord and injustice should be changed to a scenario in which states co-operate with each other and with the International Seabed Authority to promote the benefits of the common heritage for all mankind. History shows that nationalism engenders selfishness and injustice, and the present conditions of the Law of the Sea is precipitous. A struggle should be made to direct the whole structure of international co-operation towards good and not for ill, with special consideration towards those countries which are small and poor in order to effect their survival in a cruel and complicated world.

However, while much remains to be done, so far there are certain aspects of the progress of the UN conferences on the Law of the Sea which are a source of encouragement and optimism.

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