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Political prospects for an ocean regime

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POLITICAL PROSPECTS FOR AN OCEAN REGIME

A Thesis

Presented to

the Faculty of the Department of Political Science

The University of the Pacific

In Partial Fulfillment

of the Requirement for the Degree

Master of Arts in Political Science

by

Laurence Arden Hill

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Dated MAY 7, 1974

PREFACE

The following thesis is the product of over two years of research and writing. In preparing a thesis on the proposed international ocean regime one particularly frustrating problem is encountered. There is a lack of any comprehensive work of respectable quality on the topic. Only a small number of short articles of good quality that offer a thoughtful analysis of the subject are available. As a result, an extensive amount of original research was required to prepare this thesis.

It is difficult, if not improper, to name any individual as an expert on the ocean regime issue. The topic cuts across many different disciplines and has no single leading student. There are, however, some outstanding individuals in areas related to the ocean regime issue. Maltese Ambassador to the United Nations Arvid Pardo, must be recognized for his foresight in focusing the world's attention on the need for an ocean regime. In 1967, the Ambassador from Malta, introduced to the United Nations General Assembly a resolution which called for, inter alia, a recognition of the sea-bed as the "common heritage of mankind." It was also Pardo's initiative that helped to establish the United Nations Sea-Bed Committee.

For information on actual and potential ocean resources John L. Mero is the authoritative source. Although

Mero's original works are now somewhat dated, they continue to be the best available. (Consult the Bibliography for pertinent materials.) For an introspective political analysis of the problems presented by an ocean regime Ann Hollick and Evan Laurd, who both have articles in the Winter 1972-73 issue of Foreign Policy, give a realistic view which was very helpful in formulating some of the ideas that follow. Seyom Brown and Larry Fabian, in the January, 1974 issue of Foreign Affairs, have outlined the major issues to be faced at this year's Conference on the Law of the Sea to be held in Caracas, Venezuela.

The efforts of Elisabeth Mann Borgese should also be noted. One of the most prolific authors on the regime topic, Dr. Borgese has helped to bring about constructive dialogue on the regime issue at an international level. Working with the Center for the Study of Democratic Institutions Dr. Borgese assisted in making the 1970 Pacem in Maribus Convocation possible. The Convocation was held in Malta and assembled 260 political leaders, industrialists, scientists and fishery experts in an attempt to stimulate political action. One outcome of the Convocation is a collection of articles by various authorities on topics related to the regime. The book, Pacem in Maribus, is edited by Borgese and was very helpful in several different areas related to this thesis.

It should be noted, however, that all the sources which are mentioned above, while excellent in their purpose, are too brief to provide a comprehensive analysis of the

regime issue. Such an analysis is, to my knowledge, yet to be published. The bulk of information and understanding of the regime issue is to be found in United Nation's documents, resolutions, Secretariat studies and draft proposals submitted by member states.

The subject area of this thesis is the proposed international sea regime. The regime in this context refers to the proposed international organization to control the resources of the sea-bed beyond the limits of national jurisdiction. Regime in the above context has a specific meaning and should not be confused with the more general meaning of a regime of the sea. In the more general sense a regime of the sea would encompass the entire law of the sea. Such a broad scope is not intended, therefore no treatment of fishing rights, limitation of nuclear arms, extensive oil deposits et cetera are attempted except as they specifically relate to the proposed ocean regime and its jurisdiction.

Special thanks must be extended to several groups for the kind assistance they rendered to me. In particular I wish to express my gratitude to the General Committee of the XXIII Session of the Model United Nations of the Far West for their invaluable contributions. Parts of this thesis reflect some of the work of the General Committee. The library staffs at Stanford University and the University of California at Santa Barbara have earned my appreciation and thanks for their skillful assistance. The UCSB library contains one of the best collection of materials on ocean-related topics in the world. Likewise, the United Nations

depository at Stanford University was an indispensable aid. In addition, the library at the University of the Pacific also offered every assistance possible despite limited resource materials on the regime topic.

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CHAPTER I

INTRODUCTION

For centuries nations of the world have used the oceans in a dual, nearly paradoxical way. The seas have tied nations together providing a media for communication, transit, and trade. Conversely, the oceans have also served as a buffer between continents and nations. Thus, the oceans have brought nations together while also keeping them apart. Currently, rapid technological developments threaten to convert the oceans into a battleground as nations grapple for the living and non-living resources of the ocean depths.

The problem of establishing a regime to control the resources of the sea is not unlike other international concerns in the general sense. This problem contains two dynamic conflicts; first is the struggle between man and his environment, and second, is the struggle among nations and among men. Too often when man seems close to harmonizing with his environment the clash between nations disrupts that harmony. Currently, progress toward instituting an international regime to distribute ocean resources has been becalmed by the stalemate of counterbalancing national interests.

The resources of the sea comprise a vast reservoir of wealth heretofore unreachable due to the lack of necessary technology. In mineral wealth alone (to say nothing of the vast off-shore petroleum reserves), the sea offers an

impressive list of resources. Manganese nodules contain enough copper, manganese, nickel, and cobalt to satisfy the world's need at current levels for thousands of years. The technological capacity to exploit these resources is rapidly developing. The danger lies in an ocean "gold rush" among developed nations to secure this wealth. Such a race could easily escalate into international conflicts, even war. In addition, ocean resources, suddenly reachable due to a technological breakthrough, would flood existing world markets, depressing prices of leading minerals by as much as 50 percent. For many developing countries, such as those whose gross national product (G.N.P.) depends heavily on land-based mineral exploitation, uncontrolled ocean mineral production would spell economic disaster. Such a situation could only serve to widen the existing gap between rich and poor nations of the world. The developing countries do not have, and are unlikely to develop, the necessary technology to exploit non-living ocean resources.

To avoid possible escalation of conflicts over sea resources and to prevent the expansion of the gap between rich and poor nations, an ocean regime is clearly needed in the interests of world peace and stability. However, such long-term values have relatively little affect on nations who have vital, short-term economic stakes in ocean reserves. The developed and the developing, the coastal and the non-coastal nations of the world, all want to maximize their share of available maritime wealth. As a result the conflicts of interest have created the current stalemate.

As already mentioned, this situation is an example of the intersecting struggles between man and environment, and the conflicts among nations. In this regard the pattern is similar to other problems in international relations. But in another sense it is altogether unique. Never before has there been an international organization designed to allocate ocean resources. Consider the significance of an international body regulating the flow of resources to nations who may depend upon those raw materials for economic survival or who may demand ocean reserves to avert a potential energy crisis. In light of this extensive responsibility, it seems premature to express optimism about a rapid agreement by nations on a meaningful regime of extensive powers. It would also seem futile to look for operational models for an ocean regime among existing international functional agencies. If and when a regime is established, it will require a structure that can maintain the flexibility to adjust to rapidly changing political realities.

Finally then, we must ask where the solution is to be found. How, in light of conflicting short-term national interests can the long-term interest of world stability and peace be served? The solution, it is the author's thesis, will rest upon a political compromise of short-term interests to accrue the advantage of the long-term need for peace and stability. In short, in order to maintain peace for ourselves and for posterity, we are required to somehow align, through tradeoffs and compromise, short-term interests with long-term goals. The purpose and theme of this paper is to analyze the

various means of achieving this alignment. To accomplish this end, a thorough analysis of the sea-bed controversy is required. The intent is to gain some insight into the issues in the hope that a better understanding of the problem will aid in the effort toward its solution. In pursuit of this goal the following organizational approach is taken. Part I, "Environment and Background," studies the context in which the sea-bed issue exists and the historical roots from which it sprang. Chapter II covers the relevant historical developments which bear on the subject. Chapter III, "Ocean Resources," is vital to an understanding of the proposal to establish an ocean regime. This chapter discusses the extent and availability of ocean wealth -- who stands to gain, who to lose from a sea regime.

Part II, "Politics," is an inquiry into the political aspects of the ocean regime dilemma. This section attempts to study both theoretical and practical approaches surrounding the sea-bed crisis. Chapter IV examines some differing theoretical viewpoints on the sea regime conflict. Chapter V of this section elaborates on the specific international conflicts related to the sea-bed issue.

The final section, Part III, focuses on specific proposals for the sea regime. It presents a critical analysis of several key draft statutes. In making this examination the chapters of this section are divided along a structural-functional pattern. Chapter VI discusses various structural suggestions for the regime. Chapter VII deals with the possible functions and powers that the regime might

exercise.

Before plunging into the text that follows, it may be instructive, in light of the alignment sought between short-term interests and long-term goals, to ponder a pertinent statement by an adroit politician of the past:

Few can be induced to labor exclusively for posterity; and none will do it enthusiastically. Posterity has done nothing for us; and theorize on as we may, practically we shall do very little for it, unless we are made to think we are at the same time doing something for ourselves.¹

Abraham Lincoln

¹U. S. President (Nixon), "Offshore Mineral Resources: A Challenge and an Opportunity," Executive Office of the President (1969), p. 1. This report cites a quotation of President Abraham Lincoln.

PART I

ENVIRONMENT AND BACKGROUND

CHAPTER II

THE HISTORICAL MOVEMENT TOWARD ESTABLISHING A NEW OCEAN REGIME

The primary objective of Chapter II is to outline the significant events that have led to the present proposals for an international ocean regime. It is also hoped that this historical information will help to provide some insight into the intricate international problems currently obstructing the establishment of a meaningful sea-bed authority.

This section is organized chronologically beginning with the Truman Proclamation of 1945, continuing through discussions of the 1958 and 1960 United Nations Conferences on the Law of the Sea, and finally analyzing related events and resolutions in past United Nations General Assembly sessions from 1967 (22nd Session) to the present.

The source of the modern problem of possession of the continental shelf can be directly traced to the Truman Proclamation of 28 September 1945.¹ By asserting national sovereignty over the continental shelf adjacent to the United States, Truman ushered in a new era and created considerable concern for the adequacy of the traditional law of the sea.

¹U. S. President (Truman), "Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf," Proclamation 2667, Federal Register X (Washington: Government Printing Office, 1945), p. 12303.

The fact that the first agenda of the International Law Commission (1949) included the regime of the high seas and the regime of the territorial sea, among topics which it considered both necessary and feasible, shows this concern. Throughout the next five years the Commission prepared articles on its stated topics. At the request of the General Assembly the Commission, in 1954, began to collect the articles which it had adopted concerning the high seas, the territorial sea, the contiguous zone, the continental shelf, and the conservation of the living resources of the sea.

The report of the Commission was presented during the 11th Session (1956) of the General Assembly. It contained seventy-three draft articles covering the territorial sea, the high seas, fishing, the contiguous zone, and the continental shelf. The meticulous work of the commission was not in vain for on February 21, 1957 the General Assembly decided to convene an international conference to examine the law of the sea, taking account not only of the legal, but also the technical, biological, economic, and political aspects of the problem. The results of the Conference were to be embodied in one or more international conventions.

1958 Conference

In 1958, the first United Nations Conference on the Law of the Sea met in Geneva, Switzerland from February 24 to April 27. Eighty-six states were represented, one of the largest group of sovereign states which had ever gathered for any purpose up to that time. The Conference divided its work

into five main committees; the Territorial Sea and the Contiguous Zone, the High Seas and the General Regime, the High Seas Fishing and Conservation of Living Resources, the Continental Shelf, and the Question of Free Access to the Sea of Land-locked States.

The United Nations Conference on the Law of the Sea was successful in that it adopted four international conventions of major importance to the law of nations. However, the Conference failed to provide the international community with a precise definition of the continental shelf, a failure that the community has had to live with ever since. The definition offered by the Conference lies in Article 1 of the "Convention on the Continental Shelf." This article defines the limits of national jurisdiction over the sea-bed largely on the basis of exploitability.² Thus, limits under the "Convention on the Continental Shelf" are expandable as technological capabilities improve.

From the United Nations Conference on the Law of the Sea, the statement on the Law of the Continental Shelf as outlined in Article 1 was extremely vague. It has been interpreted to mean that coastal states may exploit the ocean to any depth which is technologically possible. Of course, in exploring this possibility a little further, it is not hard to see that as science develops, this could give a few technologically advanced nations virtually unlimited access to the ocean bottom. Coastal states could simply extend

²U.N. Document A/Conf. 13/L.55 (1958), p. 1.

their sovereign jurisdiction out as far as the technology permitted. Advanced states could unilaterally claim huge portions of the sea-bed and this development could set off a major rush to claim the existing ocean bottom. This rush would encompass all the major powers and could quite possibly produce conflicts leading to a world war. This eventuality arises out of a possibility that states would begin to claim sovereignty over the sea or the air above the shelf and impose restrictions upon navigational freedom.

Article 2, paragraph 4, relates to the addition of materials which includes "living organisms belonging to sedentary species." This is interpreted to include oysters and crabs "but no shrimp." Further analysis reveals that in the case of the boundary disputes between states on coasts facing each other, the issue was to be settled by agreement or, in the absence of agreement, the principle of equidistance from the coast-line/bay-lines was to be applied. (Further discussion in this area, i.e., historic bays and straits, was disseminated by the International Law Commission, and will be discussed later).

The conventions on Fishing and Conservation, and the High Seas have proven to be less controversial. This is primarily true because these were attempts to codify international customs of long standing. While the first Conference could be called a success because it dealt positively with many issues, it neglected to deal with two controversial issues which were the major reasons for convening the 1960 conference.

1960 Conference

Because of the admitted shortcomings of the first Geneva Conference a second conference was called by the General Assembly on December 10, 1958. The Conference was convened at Geneva between March 16 and April 27, 1960. Eighty-two nations attended the Conference, but the delegates returned home without signing a single document of importance. The Conference failed to solve the problems around which it was called; namely, the breadth of the territorial sea bordering each coastal state and the establishment of fishing zones by coastal states in the high seas contiguous to, but beyond, the outer limit of the territorial seas of coastal states.

The factors which contributed to the controversy in this convention were mainly regional; although there was even some split among the regional blocs. For instance, the NATO countries, as a whole, supported a narrow territorial sea. Japan supported this because it wanted to be able to fish everywhere. Iceland did not support this because it wanted sole jurisdiction over its broad continental shelf in order to protect its fishing industry. The Communist Bloc supported a broad limit for the territorial sea.³ The Arab countries were united on a 12-mile territorial sea, because they felt this would aid them in their attempts to block Israel from the Gulf of Aqaba. Chile, Ecuador, Peru, Costa

³Patrick A. Mulloy, "Political Storm Signals Over the Sea," Natural History, LXXXII (December, 1973), p. 87.

Rica, the Philippines, and Indonesia supported a 200 mile limit of the territorial sea for fishing purposes. The land-locked countries of Afganistan and Bolivia, in particular, supported freedom of access to the sea.⁴ The significance of this "do nothing" conference is that it served to keep the problem of the sea regime before an international forum.

United Nations Involvement Since 1960

In August 1967, Ambassador Arvid Pardo from Malta proposed the following item for inclusion on the agenda of the General Assembly of the United Nations:

Declaration and treaty concerning the reservation exclusively for peaceful purposes of the sea-bed 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.⁵

Mr. Pardo also introduced a draft resolution which called for the exclusion of the sea-bed and the ocean floor "beyond the limits of present national jurisdiction" from national appropriation, and the establishment of an international agency to regulate, supervise, and control all ocean bed activities beyond the limits of national jurisdiction. This agenda item was referred to the General Assembly's First Committee for further consideration.

The developing states, with few citizens having technical training, were reluctant to take part in the debate,

⁴Lewis M. Alexander, (ed.), Law of the Sea Offshore Boundaries and Zones (Ohio: Ohio University Press, 1967), p. 28.

⁵Norman J. Padelford, (ed.), Public Policy for the Seas (Cambridge: Massachusetts Institute of Technology Press, 1971), p. 23.

while the great powers were unprepared to consider this agenda item at this time. In debating the Maltese proposal in the First Committee, the Soviet representative pointed out that a great deal of preparatory work was needed to identify and then to agree upon the most appropriate ways of studying the matter. The representative from the United States stated that a "hasty approach would indeed be imprudent, when all deliberate speed, not indefinite delay is called for."⁶

Primarily due to Mr. Pardo's instigation, the General Assembly approved Resolution 2340 (XXII) on December 18, 1967. The resolution stressed the importance of preserving the sea-bed and ocean floor, and the subsoil thereof, from action and uses which might be detrimental to the common interest of mankind. The resolution also stated that the exploration and use of this area should be conducted in accordance with the purposes and principles of the Charter in the interest of maintaining international peace and security and for the benefit of all mankind.⁷ Of even greater importance was the provision setting up the Ad Hoc Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction. The purpose of the committee was to study the scope and various aspects of the Maltese declaration and report to the General Assembly during the 23rd Session in 1968.

⁶ "Draft U.N. Convention on the International Sea-Bed Area: U.S. Working Paper Submitted to U.N. Sea-Bed Committee," The Department of State Bulletin, LXIII (August 24, 1970), p. 209.

⁷ Padelford, p. 290.

At the 23rd Session, the General Assembly adopted two resolutions. The first, Resolution 2467A (XXIII), created a permanent 42 member Committee for the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the limits of National Jurisdiction. This committee was to consider the various aspects of the problem centered around two main subjects: Legal principles governing the use of the international sea-bed area which are to form the basis of an international regime; and future machinery to regulate the exploitation of sea-bed resources. The second, Resolution 2467C, (XXIII), requested the Secretary-General to study the establishment of international machinery to exploit the resources of the area.

The first resolution passed with a vote of 112 in favor, none against, and seven abstentions. Those abstaining were Belorussian SSR, Cambodia, Cuba, Equatorial Guinea, Hungary, Ukrainian SSR, and the USSR. They abstained on the grounds that the permanent committee did not contain an adequate representation of the Socialist countries, and that the draft should have included the continental shelf within the limits of the area to be used exclusively for peaceful purposes. The representative from the USSR stated that this should have been included to prevent the military use of the sea-bed and the ocean floor.⁸

The second resolution concerning the study of international machinery passed with a vote of 85 in favor, nine against, and 25 abstentions. The vote clearly defined the

⁸

U.N. Monthly Chronicle, VII (January, 1970), p. 73.

split between the developing states and the developed states. The developing states voted in favor, while the developed states voted against, or abstained. The Socialist countries voted against this resolution because they feared that the creation of such international machinery would only serve the interests of "capitalist, imperialist monopolies." The Western bloc felt that it was too early to be considering such a creation, so they abstained.⁹

The permanent Sea-Bed Committee reported on its work during the 24th Session of the General Assembly. Resolution 2574A (XXIV) stated the common belief that there exists an area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction (recognition of which is imperative if there is to be an international regime); that this area should be used solely for peaceful purposes and its resources utilized for the benefit of all mankind; and most importantly, that the area in question could not be appropriated by any nation. The resolution also called on the Secretary-General to collect the opinions of members on the establishment of an international regime and what shape it should take. The resolution passed with 100 votes in favor, none against, and 11 abstentions. Within one year the Soviet Bloc had become convinced of the importance of this work.

Perhaps of even more importance, though, was 2574D.

This resolution:

Declares that, pending the establishment of the
aforementioned regime:

⁹U.N. Monthly Chronicle, p. 73.

a. States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed 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 recognized.¹⁰

This Moratorium Resolution, as might be expected, had considerable opposition. It passed by a vote of 62 in favor, 28 against, and 28 abstentions. The important factor here is that of the twenty-eight negative votes eight were from the Communist Bloc, sixteen were from countries located in Western Europe or the Commonwealth, and the last four were by the United States, Japan, South Africa, and China. No industrialized country was in favor of the resolution. The U.S. and the USSR voted against this resolution on the grounds that it would inhibit technological advancement, and that the objectives of the Committee should not be to issue prohibitions, but to insure that technological development and exploitation would not prejudice or make more difficult the solution of the issues currently under examination.¹¹ (The representatives from the developing nations felt that if the area was to be reserved for the benefit of mankind, it was obvious that such activities should be withheld until the establishment of an international regime.)

At the recommendation of the Sea-Bed Committee the General Assembly passed its most meaningful resolution during the 25th Session. G.A. Resolution 2749 (XXV), entitled

¹⁰U.N. Document A/7630 (1970).

¹¹U.N. Monthly Chronicle, p. 73.

"Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction," was adopted by a vote of 108 in favor, none against, and 14 abstentions. Of major importance here is the fact that no major industrialized country voted against the principles as stated in the declaration. Even though the Soviet Bloc abstained in the voting, there appeared to be a general consensus on the topic as a whole.

Several of the more important principles of the declaration stated that the area and the resources of the area are the common heritage of all mankind; the area is not subject to appropriation by any state or person nor are the rights to the resources able to be appropriated; the exploration of the area shall be carried out for the benefit of all mankind, and taking into particular consideration the interests and needs of the developing nations; the area shall be reserved exclusively for peaceful purposes; and parties to any dispute relating to activities in the area shall resolve these disputes only using peaceful means as set down in the Charter. The resolution also called for the establishment of an international regime which would "... provide for the orderly and safe development of rational management of the area and its resources...."

In another resolution, 2750C (XXV), adopted by a vote of 108 in favor, and seven against (Soviet Bloc), the General Assembly decided to convene an international conference in 1973 which would establish an "equitable international regime including an international machinery -- for the area and

resources of the sea-bed and subsoil beyond the limits of national jurisdiction." The conference was also to deal with "a broad range of related issues on the laws of the seas."

In order to prepare for the conference the Sea-Bed Committee reorganized itself into three sub-committees. Sub-Committee I was to prepare draft treaty articles embodying the international regime for the sea-bed area and its resources. Sub-Committee II was to prepare a comprehensive list of subjects and issues relating to the law of the sea. Sub-Committee III was to deal with the preservation of the marine environment and scientific research.¹²

During the 26th Session the General Assembly's actions consisted mostly of recognition of the work of the Sea-Bed Committee and the Assembly expressed its desire that the work toward the convening of an international conference in 1973 should continue. In the resolution (2881 (XXVI)), the committee was expanded to ninety-one members and the People's Republic of China was named as one of the new members.

This brings us up to the most recent actions of the United Nations in area of the establishment of a sea regime. During the 27th Session, G.A. Resolution 3029A (XXVII) was adopted unanimously on December 18, 1972. The resolution called for the Sea-Bed Committee to continue its work preparing for the world conference. The resolution also:

Requests the Secretary-General to convene the first session of the Third United Nations Conference on

¹²Patricia S. Rambach, (ed.), Issues Before the 26th General Assembly (New York: Carnegie Endowment for International Peace, 1971), p. 81.

the Law of the Sea at New York for a period of approximately two weeks in November/December 1973, for the purpose of dealing with organizational matters, including the election of officers, the adoption of the agenda and the rules of procedure of the Conference, the establishment of subsidiary organs and the allocation of work to these subsidiary organs;

Decides to convene the second session of the Conference, for the purpose of dealing with substantive work, at Santiago, Chile, in April/May 1974, for a period of eight weeks, and such subsequent sessions, if necessary, as may be decided by the Conference and approved by the General Assembly, bearing in mind that the Government of Austria has offered Vienna as a site for the Conference for the succeeding year;¹³

Conclusion

The stage is set for the Third United Nations Conference on the Law of the Sea. The success of the conference depends entirely on the attitudes of the states that attend. Concrete definitions of the "continental shelf" and "territorial sea" should be established. The problem of fishing rights, which is of great importance to many states, should also receive the attention of the delegates. However, what most states will be looking for is the creation of an international regime which will supervise the future exploitation of the seas. The exact powers and functions of the regime will undoubtedly dominate much of the debate at the conference. It seems likely at this time that if the conference, one, uses the "Declaration of Principles Governing the Sea-Bed and Ocean Floor, and the Sub-soil Thereof, beyond the Limits of National Jurisdiction" as a starting place; and

¹³U.N. Document A/RES/3029 (1972). (See Infra, p. 94).

two, a workable compromise can be reached on the structure of the regime as outlined in the draft proposals of the various states (especially the United States, Malta, and the Soviet Union) then there is a possibility that the Third United Nations Conference on the Law of the Sea will be able to accomplish some of its objectives.

CHAPTER III

OCEAN RESOURCES

A knowledge of the present status and availability of ocean resources is vital to the understanding of the proposal to establish an ocean regime. Indeed, it is due to increased exploitation of these resources that has called for a sea regime. It is hoped that the regime will judiciously allocate resources consistent with both political and humanitarian factors.

The proposal is unique to international law and organizations. It is questionable whether or not traditional forms of international agreement are applicable to establishing an ocean regime. Finding a meaningful form of reciprocity and mutual benefit in allocating resources is a far more delicate procedure than recognizing the symbiotic nature of an "innocent passage" rule. Furthermore, even assuming that a satisfactory multilateral method of allocation were established initially, how stable would it be in the wake of rapid technological change that might disrupt the fairness of its distribution? These perplexing questions are not, however, the thrust of the current chapter. The purpose here is to examine the different categories of ocean resources and their effect on the proposed ocean regime.

Basically, there are three significant types of ocean resources: living resources (mostly fish), offshore petroleum

reserves, and hard mineral deposits -- primarily in the form of manganese nodules. All of these resources will have some affect on the regime. The potential impact of the manganese nodules, however, seems to be the most ominous. This chapter will discuss all three categories, the first two briefly and the final one at some length.

Today's supply of petroleum has reached the point where its eventual depletion is foreseeable (See Appendix A). The energy crisis is of particular concern to developed states, and especially the United States. The reason for the concern on the part of the United States is its vast yearly consumption of petroleum and natural gas.

Oil and gas supply approximately three-fourths of this Nation's total energy. With only 6 percent of the world's population, the United States consumes 32 percent of the world's petroleum and 50 percent of its natural gas.¹

United States oil reserves have been declining for the past decade.² As a result the U. S. has been increasingly concerned with finding additional sources of oil. The desire for expanded oil sources is continually affecting American policy in the Middle East. The reason for this being that the Middle East countries contain (exclusive of offshore oil) "... over 60 percent of the total proven crude

¹ U.S. Congress, Senate, Committee on Interior and Insular Affairs. Report by the Special Sub-committee on Outer Continental Shelf, 91st Congress, 2nd Sess., 1970 (Washington: Government Printing Office, 1970), p. 1.

² U.S. Congress, Senate, Committee on Foreign Relations, To Express the Sense of the Senate that the President Should...., Hearings, 91st Congress, 1st Sess., 1969 (Washington: Government Printing Office, 1970), p. 190.

reserves."³ Some writers in this field maintain that the vast additional reserves of offshore oil have significantly lowered the importance of assuring a share of oil from the Middle East. Such an assumption may be rather hasty. There is no argument on the extent of offshore oil reserves; they are plentiful.

In the area of the U.S. continental margin between 200 meters and the seaward edge of the continental rise alone, there is contained an estimated 867 billion barrels of oil; 68 billion barrels of natural gas liquids; 2,045 trillion cubic feet of natural gas.⁴

The point is, rather, that Middle East land-based oil is more marketable because it is less expensive to exploit than the vast reserves of the continental margin. The reason is purely economic. Much of the ocean oil sources lie under deep water at the end of the continental shelf or beyond. Even the technological ability to exploit offshore oil does not render it economically feasible. Elaine Burnell explains why:

Yet, rising technological capability does not necessarily mean lower costs. In fact, the costs of petroleum per barrel rise exponentially with water depth. Deep-water oil must compete with shallow-water oil and with oil produced on the land, as well as with vast amounts of oil potentially available at somewhat higher costs from oil shales, tar sands, and the hydrogenation of coal. One must conclude with T. F. Gaskell that it is unrealistic to expect that an ocean regime will become rich by controlling oil and gas beyond the continental shelf.⁵

³James W. Oswald, "Toward a Political Theory of the Ocean," Exploiting the Oceans, II (June, 1966), p. 370.

⁴Report by the Special Sub-committee on Outer Continental Shelf, p. 2.

⁵Elaine H. Burnell and Piers von Simson, (eds.), Pacem in Maribus (Santa Barbara: Fund for the Republic, Inc., 1970), p. 3.

As the above quotation indicates the significance of an ocean regime controlling oil reserves beyond the continental shelf would hardly justify its existence.

The second topic of discussion in this chapter concerns the food resources of the oceans. Traditionally, the freedom to fish in the high seas went hand in hand with the freedom of the sea. Both of these international "freedoms" are based on the concept of inexhaustibility. The argument is that since the supply (of fish or water) is unlimited, use by one person cannot harm another. Emerich De Vattel in 1883 put forth this principle in his book, The Law of Nations.

It is manifest that the use of the open sea, which consists in navigation and fishing, is innocent and inexhaustible; that is to say -- he who navigates or fishes in the open sea does no injury to anyone, and the sea,⁶ in these two respects, is sufficient for all mankind.

The concept of an inexhaustible supply of fish may have been valid in 1883, but it is not true in modern times.

The myth of abundance is no longer credible. From the Second World War until 1968, the world catch of fish increased at about the rate of 6-7% per year. The catch in 1969 was less than that of the previous year. While the 1970 catch is likely to be larger, the past rate of increase cannot be maintained into the future. Recently made projections indicate that the rate of increase will only be about 2-4% per year until 1985, and may even level off after that. But even though the supply of fish is limited, the demand will continue to grow⁷ and the consequences will become increasingly severe.

⁶ Emerich De Vattel. The Law of Nations (Philadelphia: T. & J. W. Johnson & Company, 1883), p. 125.

⁷ Francis T. Christy, Jr. "Fishery Problems and the U.S. Draft Article," (paper read at the 4th Sea Grant Conference, October 13, 1971, Madison, Wisconsin), p. 5.

Past assumptions of unlimited supplies of natural resources have continually proven incorrect. Francis Christy relates the supply of fish to past beliefs about the supply of American range.

The case of the western range lands is instructive. In 1870, it reported that 'all the flocks and herds in the world could find ample pasturage on these unoccupied plains and the mountain slopes beyond; and the time is not far distant when the largest flocks and herds in the world will be found here, where the grass grows and ripens untouched from year to year.' Such remarks about inexhaustibility are not dissimilar to past assertions⁸ about the inexhaustibility of the sea's fisheries.

In modern times regional shortages of certain species of fish are not uncommon.⁹

Despite the growing need for a system of allocating the living resources of the sea, it remains unlikely that the proposed sea regime could function in this capacity. National patterns of fishing are firmly set in traditional ways. In addition, and as discussed in Chapter V, the fishing controversy is closely related to the dispute over national jurisdiction. It seems that whatever limit prevails for national economic zones will also serve to create enforceable areas of national fishing rights. *

The third category of ocean wealth is hard minerals, primarily in the form of manganese nodules. Of all the resources discussed ocean reserves of valuable metals seem the most inaccessible. However, it appears that the necessary technology to economically exploit ocean nodules is already

⁸ Christy, p. 2.

⁹ Christy, p. 4.

being developed. The potential production of minerals from manganese nodules bears the highest significance for an ocean regime. It is with respect to the mining of nodules that an international regime is most critically needed to perform two vital tasks. One is to prevent a "gold rush" type of confrontation among the developed nations wishing to collect the nodules. The second is to protect the economies of those developing countries whose GNP depends largely on their land-based mining of minerals which the manganese nodule may make plentiful (See Appendix B). The discussion that follows will present information on the extent, value and increasing accessibility of manganese reserves. It also examines the possible economic impact that large-scale production of nodules may have around the world.

* The sea today is destined to become the greatest resource reserve available to mankind. Minerals in the water and on the ocean floor are in abundance. The race for development and exploitation of these resources will inevitably bring about conflict, and inequities will arise if exploitation activities are not adequately controlled.

Ocean resources will affect (in terms of economic feasibility, individual national interests, and geographical locations) the function and structure of a sea regime. Prior to 1970, the impact of the actual importance of sea-bed development had not struck its target insofar as national interests were concerned. The need for technological development and future prospects toward the oceans was deemed inevitable and necessary in order to sustain future

generations' demands for materials contained on the ocean floor.

Today, technological advancements have permitted us to explore the sea-beds. The resources have been found to be abundant, and the economic influences have directed the attention of many developed nations toward the exploitation of these resources. The sea resources referred to are known as sea-floor nodules, generally called manganese nodules, since manganese is the dominant mineral in these nodules. The other major contents in these nodules include nickel, cobalt, copper, zinc, molybdenum, zirconium, cerium, lead, titanium, iron, vanadium and several rare earth elements. These nodules are abundant, and uncontrolled exploitation of these nodules could cause market "flooding" (See Appendix C). According to John L. Mero, of the aforementioned metals only manganese, nickel, cobalt, copper, molybdenum, and zirconium would be produced in quantities which could upset present world sources of these metals.¹⁰

The next step in the investigative process is ascertaining how much of a nodule reserve is contained on the ocean floor, and the estimated worth of such resources. According to A. M. Auburn:

One square-mile of the sea-bed floor may be covered with 70,000 tons of nodules, containing 30,000 tons of manganese, 3,600 tons of aluminum, 2,300 tons of cadmium, 17,000 tons of iron, 400 tons of cobalt, 1,200 tons of nickel, and 650 tons of copper. The value of the

¹⁰ John L. Mero, "A Legal Regime for Deep Sea Mining," San Diego Law Review, VII (July, 1970), p. 496.

manganese alone can be as high as \$9,520,000 per square mile.¹¹

According to John L. Mero, there would appear to be "about 1.5 trillion tons of nodules now exposed to the surface of the sediments of the Pacific Ocean." He goes on to say:

that if only ten percent of the deposits prove economical to exploit, such as manganese, nickel, cobalt, and copper, using average percentage of these metals, it can only be calculated that the reserves of these metals in the nodules are measured in terms of thousands of years on the basis of present-day world consumption.¹²

In effect, the nodule reserves could be considered to be unlimited. Another argument supporting this would be the point brought up by Patrick Childs. "There is some evidence to support the contention that these nodules are being manufactured on the ocean floor at a faster rate than we are using the materials on a yearly basis."¹³

The abundance of sea-bed resources has drawn the attention of developed nations all over the world. This has encouraged competition in the development of machinery and techniques for exploitation of these resources at a rapid rate and has precipitated a race that almost every developed nation is participating in.

In 1961, the bathyscaphe Trieste I reached the deepest sea-bed within the framework of the U.S. Navy programme. In 1966, the Trieste II found the main

¹¹F. M. Auburn, "The International Sea-Bed Area," International and Comparative Law Quarterly, XX (April, 1971), p. 175.

¹²Auburn, p. 176.

¹³Patrick Childs, "The Interests of Land-Locked States In Law of the Sea," San Diego Law Review, IX (May, 1972), p. 499.

portion of the hull of the sunken nuclear submarine Thresher at a depth of 8,400 feet. In 1966, the submersibles Alvin and Aluminaut aided in the location of a lost U. S. hydrogen bomb in deep waters off Palomares, Spain. Since 1966, the Navy has possessed the capability of enabling divers, by a minor surgical operation, to descend to 12,000 feet, although this has not been tested in the actual environment. In 1968, the U.S. Navy commissioned two deep water submersibles, Sea Cliff and Turtle, three man crew vehicles, capable of operating at depths of several thousand feet. In 1968, the deep drilling ship Glomar Challenger found oil formations in the Sigsbee Knolls region in the Gulf of Mexico, at a depth of nearly 12,000 feet. In 1969, the vehicle Alvin was recovered from a depth of over 5,000 feet in the North Atlantic. By 1974, it is expected that the petroleum industry will have the capability to drill and produce at depths of up to 1,500 feet, and by 1980, the industry expects to be able to reach 6,000 feet.¹⁴

More important than these steps leading to the actual prototypes of sea-bed exploitation is the industrial development of sea-bed exploitation machinery itself. The Scripps Institution of Oceanography is now operating a tank-like remote underwater manipulator, (RUM), capable of working in depths up to 6,000 feet of water, lifting loads up to 1,000 lbs. It surveys the ocean floor by television and performs such tasks as planting instruments on the ocean floor.¹⁵ In 1972, the Hughes Tool Company announced that construction was under way on a three hundred and twenty-four foot barge and a five hundred and sixty-five foot mining vessel for the mining of manganese nodules. The vessels are designed to be operational at depths from 12,000 feet to 18,000 feet.

These technological advances are due to the economic

¹⁴ Auburn, p. 174.

¹⁵ Auburn, p. 175.

feasibility of the estimated receipts from resource exploitation. Although dependence on the sea-bed for resources is technically in the experimental and planning stage, it should be hereby noted that approximately twenty percent of the world supply of oil comes from under the sea. The current annual market value of this offshore oil is eight billion dollars.¹⁶

Deep-Sea Ventures, a subsidiary of Tennace, together with a subsidiary of a large German mining firm, Metallgesellschaft, of Frankfurt, is spending between \$5,000,000 and \$10,000,000 on developing the recovery technology concerning resources. This will be sold to a consortium worth a capital of between \$1,000,000,000 and \$2,000,000,000.¹⁷ The product value of one of these operations would be about \$1.8 billion if all products were sold at today's market price. The capital investment to build the facilities to mine and handle 50,000 tons of the nodules per day can be expected to be \$200 million. The net profit would probably be about \$800 million after U.S. taxes.¹⁸

A major concern in the area of economics is the distribution of the sea-bed nodules themselves. According to John L. Mero, one of the characteristics of the nodules is the marked change in the composition over large lateral distances in the Pacific Ocean.

¹⁶ Auburn, p. 175.

¹⁷ Auburn, p. 176.

¹⁸ Mero, p. 497.

Along the continents, they are rich in iron, while in the central part of the ocean and on certain topographical highs, the nodules tend to be enriched in cobalt. In several areas of the Pacific, the nodules are almost pure manganese dioxide. In the areas of the ocean far removed from islands or continents, the nodules are rich in nickel and copper. As the equatorial regions are approached, the percentage of copper in the nodules increases markedly.¹⁹

It can be assumed that due to rapid technological developments of deep-sea exploitation machinery and tremendous economic possibilities concerning sea-bed resources, conflicts will arise over sea-bed rights, rights to profits, and benefits of sea resources. These conflicts will inevitably reflect the interests of nation-states. (Many developing nations are seeking to protect their current land-based markets for minerals, while developed states are anxious to add to their dwindling sources of mineral and petroleum reserves.)

What is the probable economic impact of manganese nodules exploitation? Before this question can be answered, one must determine, first of all, the probable mineral yield from new ocean mining techniques and secondly, the amount of time necessary to build up that yield.

Estimates are that within the next ten years, the first operator will be mining and processing the nodules on an economic, large-scale basis, at a rate of at least 3,000,000 tons per year. Within 15 years, at least five operators will be mining and processing about 50 million tons of the nodules per year. Within the next 30 years, at least

¹⁹ Mero, p. 499.

50 operators will want to produce about 200 million tons of the nodules per year.²⁰ If these estimates are correct, the economic impact of ocean minerals will be significant. Such a sudden supply will naturally lower the price of those minerals being sold on the world market.

The most important benefit of the exploitation of sea-bed resources in the long run is likely to be the expansion of the world resource base of several minerals, some of which might otherwise be in short supply in a few decades.

While this development is beneficial from a global viewpoint, it has already caused concern in developing countries that are traditional exporters of some of these minerals. These countries fear that exploitation of minerals and metals from sea-bed resources, such as manganese nodules, might cut into the demand for their exports and result in a lower price-level of their exports.²¹

According to a study by the U. N. Secretariat, a lower market value will benefit the users of hard minerals who are primarily developed states.

It follows from the foregoing [i.e. sea-bed resources will depress prices] that the greater availabilities and presumed lower marginal costs associated with the production of minerals from the sea-bed would bring direct benefits to the consumers of the minerals concerned, who are, by and large, the mineral-using industries in developed countries.²²

At the same time many developing nations who rely on land-based mineral production for a significant portion of their GNP would be seriously hurt by a sudden drop in the price of minerals. Wolfgang Friedman notes this situation when he

²⁰Mero, p. 499.

²¹Rambach, p. 84.

²²U.N. Document A/AC.138/73 (1972), p. 28.

comments:

The economic consequences of exploiting such minerals as copper or nickel in marketable quantities from nodule concentrations is potentially formidable. By making certain relatively scarce materials abundant, it could completely upset the international commodities market. This in turn could deeply affect the attitude of certain major producers, like Chile, and to a lesser extent Peru, which would have an economic interest in preventing exploitation of copper from the ocean floor.²³

There is little doubt that uncontrolled market flooding of certain minerals would cause economic chaos in several developing states. The problem is that if ocean resources are developed and mined at present levels of consumption and with the full utilization of present technology (and developing technology), it has been calculated that on the world market, some minerals would drop as much as fifty percent in price (See Appendix D).²⁴ This would be devastating to developing nations relying on the exportation of these minerals.

An example of market impact is the possible effects of sea mining on the world market for cobalt.

The impact of sea-bed supply on the cobalt market could be quite dramatic, if the high Co content nodules of the mid-Pacific rise were mined. In this area, west of Hawaii, a single mining operation dredging 1 million tons of nodules per year with 2 percent Co content would be able to supply about 19,200 tons of cobalt. This is equivalent to almost the total output from land in 1969, and would amount to half of the possible 1980 world demand for cobalt.²⁵

The need for an international regime to soften the

²³Wolfgang Friedman, The Future of the Oceans (New York: George Braziller, Inc., 1971), p. 22.

²⁴Childs, p. 410.

²⁵U.N. Document A/AC.138/73, p. 11.

impact of ocean mineral production is clear. Indeed, there seems to be no alternative to an ocean regime if the effect of ocean mining is to be mitigated. This is the conclusion of the United Nations' study on the economic impacts of ocean mineral production.

Mineral sea-bed production could not be assumed to have such a moderate impact on world mineral markets unless the rates at which new supplies were marketed were strictly controlled by the international authority which it is envisaged should be established.²⁶

²⁶ U.N. Document A/AC.138/73, p. 30.

PART II

POLITICS

CHAPTER IV

A POLITICAL THEORY FOR THE OCEANS

The purpose of the current chapter is to analyze some varying general and philosophical approaches to the sea-bed issue. This chapter, therefore, serves as an introduction to the one that follows which deals with specific political conflicts related to the sea regime. The point is not to present or even to support a particular philosophical bent, but rather, to identify and evaluate several different approaches. This thesis attempts to present the political context and issues involved in a sea regime in an objective and realistic manner. Therefore, this chapter strives to strike a distinction between a philosophical and ideological approach versus a realistic and pragmatic one.

At the outset it may be prudent to explicate the inherent political nature of the sea-bed issue. The politics are both national and international in character. Inevitably intermingled in the political milieu is the escalating scientific knowledge and technological developments related to the oceans and sea-beds. Scientists are unable to free themselves from the political context around the sea-bed issue. Robert L. Friedheim has noted this phenomenon.

Ocean science is inextricably caught up in the politics surrounding the uses and expected uses of the sea. We can offer no panacea for those ocean scientists who would like to assure themselves of

stable working conditions with the stroke of a pen.¹ Conversely, international political forums, policies, and circumstances can be drastically altered by changes in scientific knowledge and technological progress. Richard Symonds in discussing international functional agencies has argued that the attempt by these organizations to separate science from politics is futile.

Yet Science is seldom neutral. The discoveries which are promoted by and the innovations which are introduced by international functional agencies often contain a concealed and unappreciated element of political dynamite.²

The issue at hand is inescapably political and international in scope. A key concept in the discussion of virtually any international controversy is the role of national interests. It is primarily around this concept that the varying philosophical approaches to the sea regime issue are set.

Some authors have rejected the theory of national interests and have supplanted alternative rationales. For example, Clark M. Eichelberger, writing in the San Diego Law Review, has argued for replacing national interest with the concept of common heritage. He states:

Another argument directed against the immediate establishment of an international agency to administer the sea's resources is that successful maritime powers cannot place their economic interests in the hands of

¹ Robert L. Friedheim and Joseph B. Kadane. "Ocean Science in the UN Political Arena." Journal of Maritime Law and Commerce, III (April, 1972), p. 501.

² Richard Symonds, International Administration Its Evolution and Contemporary Applications (London: Oxford University Press, 1971), p. 118.

a parliamentary majority of the General Assembly in which the underdeveloped States have a majority vote. It should be remembered that the resources of the sea and seabed are the common heritage not only of the maritime powers but of the developing States and the landlocked States as well. All of them will be a factor in determining the regime of the future.³

Dr. Eichelberger confuses a realistic political argument with a philosophical or moral judgment. That is to say that even if one grants to Dr. Eichelberger that ocean resources are the common heritage of all nations, morally speaking, that does not affect the unwillingness of the maritime powers to cooperate in the regime's "immediate establishment." Basically, he is asking what should be, to control what is.

A more extensive philosophical framework from which to approach the sea regime controversy has been suggested by Elisabeth Borgese. She develops her argument based on the presumption that the oceans are free and that this status is an old and solid international law.

The oceans are free. The mere thought that they could be "appropriated" by any ruler however mighty, by any nation, no matter how vast its empire, has something blasphemous about it. The oceans, in a way, are the most sublime expression on earth of what is extra-human, superhuman, indomitable. That the oceans are free is the oldest of all international laws.⁴

From the assumption that the oceans are free and land is not, Dr. Borgese suggests that a dichotomy exists in the

³Clark M. Eichelberger, "The United Nations and the Bed of the Sea," San Diego Law Review, VI (July, 1969), p. 349.

⁴Elisabeth Borgese, "Toward an International Ocean Regime," Texas International Law Forum, V (Winter, 1969), p. 218.

method of ownership for these respective areas. She holds that two opposing laws are at work: the law of the sea (a system of collective ownership and freedom of use for all) versus the law of the land (the traditional method of private ownership by nation-states). Dr. Borgese concludes that the conflict between these opposing forms of ownership, rather than conflicting national interests or incongruence between national and international interests, is the real crux of the sea-bed issue.

Thus, it is not really any conflict between national law and international law that is in the way of the international ocean regime. The opposition of what appears to be national interests against international interests really comes to an opposition of the law of the land (whether national or international) against the law of the sea (whether national or international). This opposition is as much historical as political; as much economic as historical; as much psychological as economic; as much ideological as psychological--at which point we close the circle and re-enter at the level of history and politics, in the widest sense.

Clearly then, as Borgese develops it, the nations of the world have two roads to choose from. One is to extend the law of the land across the continental shelf down the remainder of the continental margin and out over the ocean floor. The second road is to apply the law of the sea to submarine areas. Borgese explains this choice in the following passage:

Two courses are open to mankind. One is to extend the law of the land to the submarine lands. That is, as technology develops, the developed nations would appropriate ever larger portions of the submarine lands and subject them to their national jurisdiction. The other course is to extend the law of the seas to the ocean floor, adding a further freedom to those

⁵ Borgese, p. 223.

embodied in the Conventions on the High Seas by declaring that the ocean floor and its resources are the property of mankind as a whole, are God's road, and cannot be appropriated by any Nation.

In the final analysis Dr. Borgese views the choice between the two systems described above as a choice between a peace system and a war system. She further maintains that combining the law of the seas for the high sea with a law of the land for submarine territory will fail due to inherent conflicts in their nature.

Borgese concludes her agreement with the following statement.

Thus, the conflict is between the law of the land and the law of the sea. Considering that ocean space is an ecological whole, it seems logical that we cannot have one kind of regime for the deep seas (the law of the land, based on ownership, territoriality, sovereignty) and another kind of regime for the high seas or super-jacent waters (the law of the sea, based on common property, nonterritoriality, and trans-sovereignty). If these two systems are conflicting, they are bound to clash and one will prevail. The law-of-the-sea system, however, is a peace system, a system of mutual cooperation. The law-of-the-land system is a war system, a system of exclusion, competition and conflict. Hence, our option ought to be clear.⁶

The approach expounded by Elisabeth Mann Borgese and paraphrased above is subject to question. An examination of its tenets and conclusions may be instructive. As with most systems of thought, the crucial point is often in the beginning -- the assumptions upon which later arguments or conclusions are based. Borgese begins her statement (as quoted above) with the sentence, "The oceans are free," and

⁶ Borgese, p. 220.

⁷ Borgese, p. 226.

two sentences later, "That the oceans are free is the oldest of all international laws."⁸ Dr. Borgese implies that international law, or the age of this law and not national interests is what keeps the oceans free. This is a misunderstanding of the role of international law. The causal link has been reversed. It is the mutual interests of nations which allows international law to exist and not vice versa. Myres S. McDougal aptly clarifies the juxtaposition of international law and national interests.

Thus, when one contraposes international law and the vital interests of states, one is creating an opposition that we simply cannot live with. International law is established and maintained only because it⁹ secures and protects the vital interests of states.

One piece of supportive evidence for McDougal's thesis is the principle in international law of rebus sic stantibus (while things thus stand). This principle implies that treaties "cease to be obligatory when the conditions upon which they were founded have substantially changed."¹⁰

Borgese's implication that age will add credence to an international law does not stand true. A nation whose vital interests run counter to even, the oldest international law is not likely to continue its observance. A clear example is current claims by some countries of a 200 mile

⁸ Borgese, p. 226.

⁹ Alexander, p. 1.

¹⁰ Urban G. Whitaker Jr., Politics and Power A Text in International Law (New York: Harper & Row, 1964), p. 654.

territorial zone despite a long-standing limit of three miles, traditionally observed by virtually all nations.

It seems that Dr. Borgese fails to understand why the oceans are free. She maintains that it is because of the law of the sea, which is a collective and cooperative system. Once again she assumes law to be the causal factor rather than politics. Urban Whitaker has a different view of the relationship of international law to politics.

Again it seems inappropriate to attach more relevance to legal than to political considerations in such a situation. States which have the power to do so will exercise de facto control over such maritime waters as they deem necessary to the security and prosperity of their territories and populations.¹¹

The freedom of the seas existed historically because no single nation had the power nor the will to control the seas. Today much of the freedom of the seas rests upon the advantages of reciprocity for free passage and uninterrupted trade. The freedom of the sea, therefore, does not stem from some mystical transformation in human nature as he passes from land to sea as Dr. Borgese suggests with her opposing legal systems for earth and water.

In today's world the capability to control more and more ocean space is rapidly increasing. This situation places more reliance upon reciprocity to maintain the freedom of the seas. The principle of reciprocity requires countries to consider more than their immediate gain in protecting their national interests. Lewis Alexander provides an

¹¹ Whitaker, p. 312.

excellent example of this in the following quotation:

To persons not acquainted with the national interests of the United States in the world as a whole, or not concerned therewith, the national interest in our coastal waters is to establish boundaries as far out into the ocean as we can get away with and establish exclusive jurisdiction over everything therein to the United States.

The trouble with this parochial view is that whatever the United States can do in this respect it has to agree that other countries can do the same thing. The reaction we got from the blunder of issuing the Truman Proclamation on Fisheries in September, 1945, is that other countries will claim more than any new claim the United States makes, deliberately interpret the new claim the United States makes in their favor, and use our new claim, their new claim, and their misinterpretation of our new claim, as substantiation for any action they wish to take over and above what the United States wants to do.¹²

In the final analysis, then, the problem of establishing an ocean regime is not a choice between opposing systems of international law but rather a complex political problem. Arvid Pardo confirms this sentiment:

Thus, the creation of an international regime for the sea-bed is not merely a legal task, but is essentially a delicate political task that must balance fundamentally different, but basic, political interests.¹³

It is the intent of this thesis to analyze the issues related to the ocean regime in a pragmatic and realistic manner rather than viewing them through the lens of a preconceived philosophy. There is, of course, danger in assuming that because one speaks of rational interests and realism that he is avoiding philosophical bias. Advocates of

¹²Alexander, p. 125.

¹³Arvid Pardo, "An International Regime for the Deep Seabed: Developing Law or Developing Anarchy?" Texas International Law Forum, V (Winter, 1969), p. 215.

"realism" can become a drag on possible political solutions and innovations by too narrowly construing a nation's interests or the possibilities for compromise and progress. Wolfgang Friedmann in his book, The Future of the Oceans, speaks to this point:

Even the most short-sighted advocates of "national interests" can hardly welcome a world in which groups of states will claim vast stretches of the seas around them as their own, while others extend sea-bed operations further and further outward, with the inevitable result of increasing curtailment of international fishing and navigation, and the threat of confrontation, at the bottom of the oceans.¹⁴ Today's "realism" becomes the madness of tomorrow.

In this thesis, and particularly in the current section dealing with the political issues, an attempt is made to use realism and the analysis of national interests as an analytical tool rather than a philosophical approach. The pitfalls that Professor Friedmann warns of are real. The self-fulfilling prophecy of "realistic pessimism" can hinder new avenues of international cooperation. It is also easy however, to fall back on an oversimplified and optimistic approach as Dr. Borgese has done. In conclusion, the purpose here is to avoid these extremes, to use realism in the analytical sense, to consider the problems and issues as they are and not to predict or suggest solutions.

¹⁴Friedmann, p. 81.

CHAPTER V

INTERNATIONAL POLITICAL CONFLICTS

The study of international relations in modern times has witnessed two dynamic conflicts in the world. One is the struggle between East and West (competition between the superpowers). The other is a North-South struggle between the developed and developing nations. John G. Stoessinger in his book, The Might of Nations, has centered on these conflicts. Stoessinger says of his own work:

... the book is focused upon what the author believes are the two truly dominant events of our time: the struggle of East versus West, and the struggle of nationalism versus colonialism.¹

The sea-bed issue has served to bring the latter clash into focus. It is primarily around the opposition of the developed and developing countries that the important issues related to a sea regime are organized. The North-South struggle has become, in this arena at least, the predominant conflict. The superpowers find themselves uneasy partners since many of their national interests coincide with regard to a sea regime. Often when the interests of the superpowers coincide, agreement and progress are expedited. In this case, as with others in international affairs, the serving of superpower interests is a prerequisite

¹ John G. Stoessinger, The Might of Nations (New York: Random House, 1969), p. 5.

to real progress. Senator Fell draws this point:

Among these realities, or obstacles in the view of some, are the interests of the United States, of the Soviet Union, and of other maritime powers, and these interests must be adequately recognized and protected if any regime is to exist in fact.²

Due to the interplay of both the North-South and East-West struggles, however, the situation is far more complex than just meeting basic superpower interests. The appeasement of developing countries and their support has become a goal of superpower competition. Therefore, the interests of the developing countries are not likely to be completely ignored by the superpowers. As a result the proposal to establish an ocean regime faces a dilemma and a current stalemate. The developed nations, in the meantime, are pursuing their own economic ends which are often explained in altruistic terms.

... too often the developed have talked as if the schemes they propose concerning the law of the sea were pure altruism, having nothing to do with their national interests, and put forth entirely to protect the interests of the world community as a whole. In some respects, these assertions are correct. In other respects they are pure sham--as the developing claim. Such cynicism among the developing is justified if only because it is difficult for even the developed sponsors to³ separate the self-serving from the altruistic.

A rather convincing example of this mixture of self-interest and altruism is the October 30, 1968 statement of

² Elisabeth M. Borgese, (ed.), Pacem in Maribus (New York: Dodd, Mead & Company, 1972), p. 231.

³ Robert L. Friedheim, "A Law of the Sea Conference-- Who Needs It?" (unpublished paper prepared for the Symposium on International Relations and the Future of Ocean Space, April 12, 1972, University of South Carolina), p. 5.

President Nixon regarding the oceans. On the one hand, the United States' intention to guard national interest is clearly stated:

Making full use of the 1966 Act, it will be a first priority of my Administration to present to the Congress an integrated and comprehensive program in oceanography. The purpose of this program will be to:

...Promote international cooperation when such cooperation is in the best interests of the United States.⁴

In the same statement improving the economic position of the United States in the fishing industry is rationalized on the basis of feeding the hungry peoples of the world.

The United States fishing industry has deteriorated, and I have spoken before of the failure of our existing Federal programs to encourage the fishing industry to modernize fast enough to counter foreign competition. But fleet modernization is only one of the many types of technological advances that can bring the United States back to a position of leadership in the fishing industry--and enable us to reap a harvest from the sea that will provide an inexpensive source of⁵ protein for the malnourished peoples of the world.

Currently, the world's fish supply of many species cannot withstand another fully modernized fishing fleet. Wolfgang Friedmann has observed that trawlers from the Soviet Union and Japan, which have developed fish processing ships and mass fishing techniques have been indiscriminately over-fishing. Some ships actually "herd" entire schools of fish by sonar. This type of unregulated "fishing" has resulted in near extinction of many species of whales and a rapid decrease in other common sea fish such as the California

⁴Padelford, p. 337.

⁵Padelford, p. 334.

sardine, Northwest Pacific salmon, and the Barents Sea cod.⁶

Despite the danger of overfishing, (another example of the mixture of self-interest and altruism) the USSR maintains it has, and is, conserving living ocean resources. Mr. Khlestov made the following statement before the United Nations Sea-bed Committee:

The question of fishing was related to that of the territorial sea. It was a difficult issue, but agreement had already been reached on the principle of rational exploitation of living resources; all countries had stated that they were taking steps to ensure the conservation of those resources.⁷

The fishing issue, while not directly germane to the ocean regime, illustrates the propensity of nations to mix self interest with altruism. Proposals for an ocean regime face this identical problem.

It is the main purpose of the present chapter to examine some of the critical political issues involved in the sea-bed proposal. In analyzing each issue particular attention will be paid to the conflicting interests of the developed and developing nations. The three issues of discussion in this chapter are: one, national jurisdiction; two, scientific research and the effects of technology; and three, timing of the regime.

Defining National Jurisdiction

In the present examination of the issue of defining national jurisdictions analysis is made of the conflicting interests between developed and developing states, as well as

⁶Friedmann, p. 27.

⁷U.N. Document A/AC.138/SC. II/SR.14 (1971), p. 147.

between coastal and non-coastal nations. Also included in this section is a discussion of some of the various proposals for establishing uniform boundaries for coastal states.

The importance of establishing national boundaries on the continental shelf and the territorial sea with regard to an ocean regime should be self-evident. Clearly, the further national jurisdictions extend on the continental shelf the less important a regime will be. The value of the resources of the continental shelf are inversely proportional to their distance from the coast-line.

Whether a wide-band or a narrow-band concept of national jurisdiction ultimately prevails will make an enormous difference in the potential economic value of ocean resources coming under the control of an ocean regime....If an ocean regime controlled the disposition of all resources beyond the traditional three-mile limit, it would possess billions of dollars of assets even under existing technologies of recovery. If, on the other hand, its authority began two hundred miles or more from every coast-line, the present economic value of its resources would be negligible.⁸

If the goal of establishing a meaningful regime is to be realized, a somewhat restricted national boundary is called for, and soon. Under the current law of the seas, nations may collect the resources of the continental shelf by the principle of exploitability. Article 1 of the Convention on the Continental Shelf reads:

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and sub-soil 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.⁹

⁸ Burnell, p. 1.

⁹ U.N. Document A/Conf. 13/L55, p.1.

Due to current economic pressures the exploitability principle is being used to its fullest, as Norman J.

Padelford concludes:

The search for new supplies of food and natural resources, for additional trade and security is fostering fresh activity in the oceans as well as drawing nations into closer contact. Given the differing outlooks, needs and aspirations of states, it is essential that national policy be prepared to deal with a variety of contingencies. This leads to speculations on the models that are available for the guidance of future marine policy...The most obvious course for most states to take is to extend their national jurisdiction over wider belts of ocean off their shores.¹⁰

Technology is rapidly making the resources of the continental shelf available to private companies. In addition, entrepreneurs have begun to create other schemes for using the continental shelf such as building islands beyond recognized national boundaries. The United States government by stopping such ventures has, de facto, assumed jurisdiction beyond existing boundaries. Senator Claiborne Pell cites an example of this practice:

At a point some 200 miles off the coast of Oregon, another sea-mount nearly breaks the surface. Here again a private American company wanted to create an island, but our Federal Government refused approval... our Government, in refusing to give its citizens permission to act, is in effect saying that it has jurisdiction.¹¹

The question of a fixed definition for national jurisdiction is both vital and pressing. The decision reached on the limits of national jurisdiction will, in

¹⁰ Padelford, p. 261.

¹¹ U.S., Congressional Record, 89th Cong., 1st Sess. (1968), CXIV, No. 4, 5181.

effect, allocate the available resources of the sea and determine the importance of any type of ocean regime.

The question of the limits of the territorial sea is a matter of international law. Legal maritime boundaries have historically been an important part of the international law of the sea. In attempting to predict what boundaries will be settled on at the upcoming Conference on the Law of the Seas, or simply to analyze the current situation, it is important to note the relationship of international law to politics. Urban Whitaker in his book Politics and Power, comments on this relationship.

Several rules--including the three-mile limit and the rule of historic bays--have evolved to help govern the fixing of boundaries, but all of them give way regularly to the basic rule that law is subordinate to politics.¹²

To examine, then, the current situation with regard to establishing fixed boundaries one must examine the political interests of the concerned nations or groups of nations. Primarily, there are two sets of nations with directly opposing interests: the developed versus the developing nations and the coastal versus the non-coastal nations. The clash between the two groups of the former pair is best illustrated by the running controversy between the United States and several Latin American countries which have claimed exclusive right over ocean resources within 200 miles from their shores and have striven to enforce these rights. The 200-mile limit is for many developing nations an attempt to protect

¹²Whitaker, p. 309.

ocean resources from the hands of the developed countries. Robert Friedheim has noted the importance of this policy to the Latin American states.

A number of developing states, especially Latin American, have pointed out that their territorial definitions are an inherent part of their nationalism. No regime would survive long if it voted contrary to the national myth...What is important is that these developing states have backed themselves into a corner on their favorite proposals we ought not to expect their acceptance of the ensuing convention. In summary, we are not going to get sensible solutions to ocean problems if we force symbolic issues to a vote. Such advice would be a prescription to disaster.¹³

On the other hand, developed nations, such as the United States, are not anxious to lose their distant-water fishing resources. If the U.S. recognized a 200 mile limit, it would have to relinquish nearly all distant-water fishing. This sentiment is expressed by John Stevenson in a statement before the United Nations Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction (Sea-Bed Committee).

However, the fact that over 80 percent of our fisheries are off our own coast does not mean that we are prepared to abandon the remaining 20 percent, the distant-water segment of our industry.¹⁴

The conflict of interests between coastal and non-coastal states is also an intense problem. Non-coastal states are almost entirely dependent upon the goodwill of the coastal states for a share of the ocean's resources. Evan Luard has outlined the problem well:

¹³Friedheim, A Law of the Sea, p. 16.

¹⁴"U.S. Calls for Prompt International Action to Settle Problems of Law of the Sea," The Department of State Bulletin, LXVII (October, 1972), p. 385.

The second vital question concerns the outer limit of national control. Here there is an absolute conflict of interest between the coastal and non-coastal states. There is a real danger that the coastal states, perhaps encouraged by the Latin American example, may increasingly jump on the 200-mile bandwagon to grab the largest possible proportion of the resources for themselves. This would largely exclude the non-coastal states from sharing in the benefits, at least in oil and gas, for the foreseeable future. It will thus be an interesting test whether some of the bigger developing countries, such as Brazil, Argentina and Chile, are willing to show in their policies the same concern for small and poor neighbors that they demand the rich countries show them.¹⁵

The answer to the question of whether the large developing countries will be willing to help the poorer land-locked nations by abandoning a 200 mile limit might be inferred from the stubbornness of these nations to compromise on this issue. As an example, consider the following statement by Mr. Saraiva Guerreiro (representative from Brazil) before the Sea-Bed Committee:

* It has been claimed that the adoption by coastal states of a 200-mile territorial sea would be disastrous for international trade, as if it would necessarily follow that those States would harrass merchant shipping in their waters. The fact that the principle of innocent passage had been consistently and universally respected sufficed to demolish such figments of over-fertile imaginations.¹⁶

The political context of establishing fixed boundaries for the sea and the continental shelf is intricate. Yet it is further complicated by the dilemma faced by developed coastal states.

The great powers, like the United States and the

¹⁵ Evan Laurd, "Who Gets What on the Seabed?," Foreign Policy IX (Winter, 1972-73), p. 146.

¹⁶ U.N. Document (A/AC 138/SC II/SR 14), p. 14.

Soviet Union, find themselves in an ambiguous position. On the one hand, they favor a narrow concept of national jurisdiction in order to preserve maximum freedom of the seas for their commerce and their navies. On the other hand, they covet possession of the resources in and under the oceans along their lengthy coastlines. As a result of these conflicting interests, a bewildering variety of national claims of exclusive fishing, mineral, navigational, and other rights over "adjacent water," "territorial seas," and "continental shelves" has proliferated.¹⁷

A probable guess at the outcome of this collage of political interests is an expanded boundary for the territorial sea to at least 12 miles, a fairly extensive claim to the continental shelf beyond the 200 meter isobath, and a possible concession of expanded economic zones for countries, such as the Latin American ones, which have very short continental shelves.

Proposed Limits

There have been several draft conventions for an ocean regime that have suggested various limitations on national jurisdiction. The four considered in this paper are the U.S. draft, the USSR draft, the Pell draft and the Draft Statute by Elisabeth Borgese. All of these parties favor a 12 mile limit on the territorial sea; however, the proposals for limits on the continental shelf vary considerably. The Pell draft is most considerate to coastal states proposing a limit at a depth of 600 meters. This limit, however, creates a high degree of difference in the extent of shelf that individual countries could claim. As Elisabeth Borgese has pointed out:

¹⁷Burnell, p. 1.

Another point in the Pell Treaty that remains open to question is the definition of the ocean floor. The Treaty proposes to limit the continental shelf--subject to the jurisdiction of the coastal State--to a depth of six hundred meters, abolishing the open-endedness of the Geneva Convention of 1958 but setting a depth limit that is neither geologically nor politically justifiable. For some States, with a steep dropping coast line, this would include an area of less than twelve miles; for others it would extend for hundreds of miles.¹⁸

Dr. Borgese suggests instead that:

The continental shelf should not extend beyond a depth of two hundred meters of the superjacent waters or a distance of fifty miles from the base line from which the territorial sea is measured, whichever is farther.¹⁹

This proposal is really a minimal one and it is questionable whether the majority of coastal states would accept it.

The USSR draft has side-stepped the limits issue. Consistent with their policy that it is too early to establish an ocean regime with licensing powers, the Russians have chosen to omit from their draft any proposals on the limits of the sea-bed.²⁰

In contrast the U.S. draft has suggested the most detailed proposal. It provides for a limit at a depth of 200 meters but not to exceed 60 nautical miles in width, with some exceptions for irregularities in the sea-bed.²¹ In addition, the U.S. draft suggests the establishment of a

¹⁸ Elisabeth M. Borgese, The Ocean Regime (Santa Barbara: Fund for the Republic, Inc., 1968), p. 4.

¹⁹ Borgese, The Ocean Regime, p. 10.

²⁰ U.N. Document A/AC 138/43 (1971), p. 2.

²¹ U.S. Congress, Senate, Committee on Interior and Insular Affairs, Issues Related to Establishment of Seaward Boundary, Hearing, 91st Cong., 2nd Sess. (1970) (Washington: Government Printing Office, 1970), p. 71.

trustee system to supervise the exploitation of resources between the 200 meter isobath and the end of the continental margin. Under this system the coastal state would have control of who exploits resources in the trusteeship area but the profits would be shared with the international community. This share is proposed to be between one half and two thirds of the proceeds from resources taken from the trusteeship area.

A system of graduated jurisdiction, such as that of the trusteeship proposal, is probably the most feasible approach to the problem of defining national jurisdiction. The concept of gradually loosening national control is essential to a workable international regime for the oceans. The idea is consistent with existing maritime law. As William Griffin has observed:

Traditional maritime law divides ocean space into four zones in which the coastal state's authority becomes less absolute seaward until it becomes merged into...the freedom of the high seas:²²

Indeed, graduated jurisdiction may provide a way to compromise the short-term economic interests of coastal states, which call for national control of as much of the continental shelf as possible, with the interests of developing and non-coastal states, as well as the interests of the world community, which would opt for peaceful and equitable exploitation of ocean resources. For proponents of a strong regime that would command control over valuable resources now,

²²William L. Griffin, "The Emerging Law of Ocean Space," The International Lawyer, I (July, 1967), p. 553.

one can only apologize because politically it seems impossible. However, if these proponents are willing to literally give ground in exchange for a strong regime in deeper water, the future may see a strong regime in control of a considerable amount of valuable resources currently unexploitable due to the lack of necessary technology.

Overall, these conflicts are the barriers through which we must pass in order to achieve our goal of structuring a sea regime for the benefit of all mankind. As former President Lyndon B. Johnson declared on July 13, 1966:

Under no circumstance, we believe, must we ever allow the prospects of rich harvest and mineral wealth to create a new form of colonial competition among maritime nations. We must be careful to avoid a race to grab and to hold the lands under the high seas. We must insure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings.²³

Scientific Research and the Effects of Technology

The second area for discussion concerns the effects of oceanographic research and technological advancements related to the seas. In many respects the problem of peacefully allocating ocean resources began with increased scientific knowledge and subsequent technological capacities. It was scientific inquiry that discovered the existence of oil off the coasts of many states. That same inquiry uncovered manganese nodules on the ocean floor. Due to these

²³Eichelberger, p. 340.

discoveries efforts were made to create the necessary technology to exploit these resources. In this process a critical international problem is created--how shall these resources be allocated? The conflicts over the political question of allocation have the potential of upsetting world peace and stability. Scientific research and technological advancements have become issues in the sea-bed dispute.

The developed states have what amounts to a virtual monopoly on scientific exploration and new technological means. In accordance with their national interests, they are pursuing the new possibilities of economically extracting valuable ocean resources. The developing nations, on the other hand, have begun to fear a widening gap between them and the developed countries due to the disadvantaged technologies of the developing states.

The concern expressed by the developing nations is well founded. Professor Padelford explains why:

At the same time it is only fair to recognize the cry uttered by many of the developing countries, which lack the technology and economic strength to explore and exploit the sea beds off their shores, that the present regime of the seas does not allow them equal opportunity to utilize the marine resources needed for their own economic growth.²⁴

As a result of the possible economic bind that many developing states may be put into, they have reacted against scientific research itself, fearing a scientific form of "colonialism." Robert Friedheim provides the details on this point.

²⁴padelford, p. 265.

research off the shores of certain coastal states, to long, onerous applications for clearance far in advance of actual cruises.²⁷

Indeed scientific communities themselves have become embroiled in conflict over this problem. The United States oceanographic community, for example, is caught in a conflict between the interests of the developing nations and forceful interests on the domestic scene. Several spokesmen for non-Western and Latin American states are skeptical about the motivation and value of scientific research related to the oceans. They feel it is directly tied to military and industrial interests which all too often benefit the developed countries at the expense of the developing nations.²⁸

In short, political ramifications have begun to upset previous attitudes toward oceanographic research as neutral and amoral process. Developing nations recognize that they cannot compete with the developed states in the scientific or technological arena. Their hope in the sea-bed controversy is to establish some form of redistribution of ocean resources to offset their lack of technological capacities. Norman Padelford outlines this situation:

The different capabilities of states to apply modern technology and engineering to the use of the oceans represent another dimension of the problem at the international level. This is expressed in the demand voiced by many developing countries to have the United Nations take control of the deep sea-beds, to license exploitation of mineral resources found therein, and to require a sharing either of the resources extracted therefrom or of

²⁷ King, p. 1.

²⁸ King, p. 4.

the income received with the poorer countries for their advancement.²⁹

The developed states, in contrast, want the opportunity to develop their technological capabilities to exploit ocean resources at a profit. It follows that those countries or enterprises engaged in producing systems for ocean exploitation want their investments protected. Developed states in general wish to provide such protection for their nationals. For instance, the United States Department of State has issued the following statement:

The Department does not anticipate any efforts to discourage U.S. nationals from continuing with their current exploration plans. In the event that U.S. nationals should desire to engage in commercial exploitation prior to the establishment of an internationally agreed regime, we would seek to assure that their activities are conducted in accordance with relevant principles of international law, including the freedom of the seas and that the integrity of their investment receives due protection in any subsequent international agreement.³⁰

Currently there is little hope for settlement of the differences between the developed and developing on the sea-bed issue. Perhaps the possibility of a sudden technological break-through that would make many ocean resources immediately marketable has left both groups ambiguous as to the direction in which their best interests lie. For whatever the reason, a deadlock exists on establishing an international regime to control ocean resources, a goal all groups ostensibly favor. Thus, the question of when, if at all, the regime will be established is an important one, and

²⁹ Padelford, p. 309.

³⁰ Report by the Special Sub-committee on Outer Continental Shelf, p. 23.

the topic of the final section of this chapter.

Timing of the Regime

As discussed previously, the rapid development of ocean technology, as well as other factors, have put the sea regime issue under time pressure. To achieve the goals that many of its proponents hope for, an ocean regime must be established before wholesale exploitation of ocean resources begins. Guenter Weissberg has observed:

Time is of the essence if marine imperialism, serious conflict and dangerous competition are to be avoided. The existence of many complexities cannot be denied, but neither can this be regarded as a unique phenomenon nor an insoluble obstacle. Once nation-states come to realise in earnest that in the final analysis it is in their interest "to avoid a race to grab and to hold the lands under the high seas" as President Johnson phrased it, realistic legal principles can be developed which will be of benefit to all.³¹

Despite the urgency that many say is essential to an effective regime, progress toward its creation is moving very slowly. The question, why are things at a standstill, may provide some insight into the situation. Professor Friedheim feels both the developed and the developing are at fault.

Developed and developing have contributed equally to this impasse. Both will have to contribute to getting us out. Nevertheless, it is the contention of this paper that the impasse should have been avoided primarily through a more perceptive set of tactical policies on the part of the developed. The developed should have been able to foresee in what direction a UN Sea-bed Committee would go and then have acted accordingly. Instead, events were allowed to

³¹ Guenter Weissbert, "International Law Meets the Short-Term National Interest," International Law and Comparative Quarterly, XVIII (January, 1969), p. 101.

take their course.³²

Professor Friedheim basically makes two assertions; one, that the developed and developing nations are equal in blame for the deadlock; and two, that the developed countries should have been able to prevent the impasse. The second of these assumptions is more of a moralistic statement than an observation. Even if the developed states could have prevented the current stalemate, the more pertinent question is did they wish to prevent it. The first of Friedheim's statements sounds more like marriage counseling than accurate political analysis. The author maintains that it is primarily the developed countries that are favored by the status quo and, in addition, as time passes and technology develops, their position will continue to improve over that of the developing countries. As evidence of this situation consider the approach of several key developed states. The United States, for example, despite its proposed draft treaty is actually stalling on this issue. Senator Pell notes this situation.

In the United States, the boundary question involves considerations of national security, of freedom of the sea, of the varied interests of the oil industry and of other industries who may ultimately be mining the deep sea-bed, all of which are to some degree conflicting. Thus, the Department of State and the Administration are still, I regret to say, pursuing with vigor their "no policy" policy.³³

A similar attitude has been taken by the Soviet Union. Their policy has been to suggest that the regime be a

³² Friedheim, Ocean Science, p. 3.

³³ Borgese, Pacem in Maribus, p. 231

relatively weak organization, and that its creation now would be a hasty move. The Soviet position is explained by Guenter Weissberg:

Mr. L. I. Mendelevich of the U.S.S.R. took a most restrictive attitude on the Maltese proposal and on the U.S. Plan. After expressing certain platitudes, he termed the very establishment of the Committee on the oceans "very risky" and "premature."³⁴

Ambassador Mendelevich's stand was praised by the representative from Australia, Weissberg suggests why.

Australia, with a continental shelf of over one million square miles and a government which has authorized extensive exploration and exploitation of the oil and gas of the shelf, praised the "cautious wisdom" of Ambassador Mendelevich, and regarded his "warning" against premature and ill-advised duplication as "timely and relevant."³⁵

The developing nations, on the other hand, have been quite anxious to see the regime established with all deliberate speed. Indeed, it was Arvid Pardo of Malta who, in 1967, originally submitted a proposal for the creation of an ocean regime to the U.N. General Assembly. In Ambassador Pardo's statement the importance of immediacy was stressed:

It is, therefore, considered that the time has come to declare the sea-bed and the ocean floor a common heritage of mankind and that immediate steps should be taken to draft a treaty embodying, inter alia, the following principles ...³⁶

In general, it is the developed countries who have the upper hand on the proposed sea regime. On the question of how soon a regime can be established, matters are at a

³⁴Weissberg, p. 54.

³⁵Weissberg, p. 56.

³⁶U.N. Document A/6695 (1967), p. 1.

standstill since the status quo largely favors the economic interests of key developed states. The preponderance of oceanographic research and technology adds weight to the advantage of the developed nations.

Developing states have created a hindrance to some ocean research efforts by refusing to cooperate with research cruises inside their territorial waters. Such action adds little weight to their political positions. In the area of national jurisdiction at least some developing countries have a weapon with which to bargain. That weapon is the 200 mile limit, popularized by Latin American states. As discussed earlier, the 200-mile limit is a sufficient irritant among some major developed nations that it could bring some compromises on the regime, if those with 200-mile limits were willing to bargain. There is some evidence to indicate that the 200-mile limit states may not be so inclined. On the whole then, and not surprisingly, it is the developed states who will control to a large extent the timing and make up of the new regime. Whether the developing countries as a whole will be able to force an adequate form of redistribution of ocean resources is questionable at this time.

PART III

ORGANIZATIONAL PATTERNS FOR AN OCEAN REGIME

CHAPTER VI

POSSIBLE STRUCTURES FOR AN OCEAN REGIME

Just what kind of organizational status the regime should have is an interesting question. There are a number of possibilities that should be considered. It has been suggested that the regime take the form of an international corporation.

Professor Richard Eells has proposed that the ocean regime take the form of a multinational corporate authority whose stock would be allocated among members of the United Nations according to some formula that would assure adequate representation to less developed countries. The corporation would need the moral support of the United Nations. Stock could ultimately be held by governments, foundations, or corporations involved in the oceans, and these stockholders would elect a board of directors to prescribe policies. The corporation would license public or commercial organizations to use resources of the sea, and it would pay ¹ dividends to its shareholders after meeting its costs.

Although the idea sounds simplified for the complex political problems that a regime would have to deal with, the concept merits considerable attention. Supporters of the corporation structure maintain that there is evidence to conclude that such arrangements can work.

To the argument that international organizations lack experience in operating enterprises, there is the answer that they are already carrying on successful banking and financing operations through the International Bank for Reconstruction and Development (World Bank) and the International Monetary Fund. Why should not a corporate subsidiary of an ocean

¹Burnell, p. 4.

regime become equally successful in industrial operations?²

While it is true that the World Bank and the International Monetary Fund are working examples of the structure suggested by Professor Eells, one must ask if these organizations could function in a more intense environment of political conflict. Certainly the proposed regime carries such an environment, but the answer to this question lies outside the scope of this paper. It is only mentioned here as an interesting possibility.

A second possible form for the ocean regime is proposed by Norman J. Padelford:

One alternative for coping with maritime issues is to utilize the community concept as has been developed among the six Western European states who have joined to form the Common Market. The Common Market rests upon the principle that mutual concern for a particular situation or set of problems gives rise, under appropriate circumstances, to a sense of community...

Perhaps eventually states will be agreeable to forming³ similar institutions for regulating use of the oceans.

The principle of mutual concern to which Professor Padelford refers is basic to the working of any international agreement, and it has worked extremely well in the European Economic Community. The key to its success is pinpointed by Mr. Scheingold when he states: "In its most general form the lesson of the European Community is in its capacity as a functional regime to concert national policy on matters of

² Burnell, p. 5.

³ Padelford, p. 272.

real economic importance."⁴ Mutual concern and a concert of national goals is exactly what is needed for an international regime to control ocean resources. These elements are to be found in the structure of the European Community. The world community, on the other hand, simply does not share the same common ground that the European Community has been able to build. Indeed, an analogy between the world community and Europe must leave one a little cold.

The European Community was created out of a widely shared sense of common crisis. At the close of World War II much of Europe lay in ruins; the political systems of the individual states were in shambles; and confidence in the nation-state as a source of security, welfare and democratic values was, to say the least, badly shaken.⁵

While the success of the European Community should serve as an inspiration to those working for an effective regime of the sea, its particular situation has little relevance.

Thirdly, we must ask what relationship should the ocean regime have to the United Nations? Clearly to tie it directly to a U.N. organ such as the Security Council or the General Assembly or both would not work. These organs have developed the function, inter alia, of an international sounding-board. If they were given direct responsibility for the ocean regime, its functioning would become secondary to international rhetoric and political shifting.

There are many U.N. subsidiary organizations that have functions defined in separate agreements. The Report of

⁴Borgese, Pacem in Maribus, p. 215.

⁵Borgese, Pacem in Maribus, p. 219.

the Sea-Bed Committee cites some examples:

A number of United Nations' subsidiary organs perform functions which are defined in international agreements, particular examples being the bodies concerned with narcotic drugs and the Office of the United Nations High Commissioner for Refugees (UNHCR). In the case of the Office of UNHCR, the Office was created by the General Assembly and given functions under a separate convention.⁶

The ocean regime should be functionally separated from the United Nations but it should also hold a relationship to it. Elisabeth Borgese has expressed this view by saying:

The regime must be independent from the United Nations--like the World Bank or the International Atomic Energy Agency--yet it must be in some way connected with it; it must emanate from it; it must be legitimized by it.⁷

The U.N. blessing should be encouraged if for no other reason than to help enhance the universality of acceptance for the ocean regime.

What organizational substructure should the ocean regime have? "The Study on International Machinery" makes the following observation in regard to the regime's structure:

The organization would have an organ in which all the members would be represented, whose purposes would be to establish policy and give direction to the organization; an organ of more restricted membership to examine, recommend or decide on questions of granting of licenses...possibly one or more technical or scientific organs of an advisory nature; and a secretariat. An organ designed to have some functions in respect of settlement of disputes.⁸

⁶ U.N. Document A/7622 (1970), p. 123.

⁷ Borgese, Toward an International Ocean Regime, p. 229.

⁸ U.N. Document A/AC 138/23, (1970), p. 32.

Most of the regime proposals have adopted this design. Basically, the suggested structure is patterned after that of the United Nations. Organs resembling the General Assembly, Security Council, Secretariat, International Court of Justice and the Specialized Agencies appear in virtually all the proposed regimes. Such an arrangement, reflecting the structural pattern of the U.N., makes sense because it is one that all nations are familiar with and somewhat comfortable about. The assembly should provide for even geographical distribution of its membership. Elisabeth Borgese has suggested that the assembly consist of four chambers, one for representatives from nation-states, one for representatives from the international mining corporations, one for fishing organizations and one for scientists. While the idea of including representatives from commercial and scientific interests is an excellent one and should be utilized, it would not be wise to allow them, collectively, to dominate the assembly's membership. An assembly with a broad geographical and political cross-section that also includes representatives from related interests, but in smaller proportions than to nation-states, would be more acceptable.

The council or executive board, as the Russians have called it, should represent by permanent membership the most developed countries. It should also provide for membership of the various interest group nations, i.e. land-locked and shelf-locked states as well as coastal developing countries. The Russian draft calls for an Executive Board of the

following composition:

The executive Board shall consist of thirty States. The Board shall accordingly include five states from each of the following groups of countries:

- a. the Socialist countries;
- b. the countries of Asia;
- c. the countries of Africa;
- d. the countries of Latin America;
- e. the western European and other countries not coming within the categories specified in sub-paragraphs (a) to (d) of this paragraph and;
- f. one land-locked country from each of the aforementioned groups of States.

While this adequately provides for a good geographical distribution and for land-locked representation, it is definitely weighted toward Russian interests. Clearly, if six socialist countries are present at least one of them would reflect Soviet interests; on the other hand, it would be entirely possible that U.S. interests under this arrangement would go unrepresented.

The U.S. draft contains a more realistic proposal.

Article 36 reads:

2. Members of the Council shall be designated or elected in the following categories:

- a. The six most industrially advanced Contracting Parties shall be designated in accordance with Appendix E;
- b. Eighteen additional Contracting Parties, of which at least twelve shall be developing countries, shall be elected by the Assembly, taking into account the need for equitable geographical distribution.¹⁰

The most industrially advanced nations referred to in Article 36 would be determined by the six highest gross

⁹ U.N. Document A/AC 138/43, p. 7.

¹⁰ Report by the Special Sub-committee on Outer Continental Shelf, p. 77.

national products. Thus both superpowers would be permanently represented:

The exact membership of the court and secretariat is not dealt with extensively by the various drafts, although they do generally suggest equitable geographical distribution. The application of this principle to the staffing of the secretariat raises the question of quality in regard to secretariat personnel.

Because the secretariat of an ocean regime should be of high quality and because the type of background that would be required is not likely to be common, it would seem impossible to have both a quality staffing of the secretariat and equal geographical distribution. Richard Symonds in an article entitled "Functional Agencies and International Administration", has summed up the problem thus:

The reality of 'equitable geographical distribution' in recruitment has to be faced. Its application has led to a decline in standards, but member states are likely to continue to insist on its application.¹¹

Since the council of the proposed regime is, in almost all the draft statutes, the focus of power and decision-making, its voting procedure is critical. Evan Laurd has noted this and offered a solution:

More difficult problems surround the nature of the international regime. First, the authority clearly cannot be established on the basis of majority voting and one nation-one vote (if only because the big powers would not enter at all on this basis); but nor should any nation or small group of them (as under the U.S. proposal) exercise a veto. The simplest solution is to have a council of perhaps 30 nations, elected on the basis of geographic representation, and including

¹¹Jordan, p. 113.

adequate representation for non-coastal states, and to require, say, a four-fifths majority for any decision. This would maximize consensus without allowing vetoes or weighting votes.¹²

The elimination of the veto as suggested above seems to be an honorable goal. However, the suggested solution cited above will not do. Any body that does not insure, not only the representation of the superpowers but also the serving of their interests, will eventually fail. If, for example, the council of 30 nations were to make a decision directly in conflict with Soviet interests, the USSR could simply refuse to comply. If the Soviet Union (or any other major power) in such an instance decided to leave the regime and carry on exploitation activities as a non-member state, the very purpose of the regime would be defeated. One might reply that due to the required four-fifths majority the interests of the major powers would not be contradicted. One should then ask what is the difference between this proposal and a system including a veto for major powers?

While the USSR draft calls for what amounts to a veto for all members, the U.S. proposal establishes a system under which any three major powers could by voting together, exercise a veto. Article 23 of the Russian draft reads:

Decisions of the Executive Board on questions of substance shall be made by agreement; decisions on procedural questions shall be made by the majority of the members of the Board present and voting.¹³

While Article 38 of the U.S. working paper states: "Decisions

¹²Laurd, p. 145.

¹³U.N. Document A/AC 138/43, p. 8.

by the Council shall require approval by a majority of all its members, including a majority of members in each of the two categories referred to in paragraph 2 of Article 36."¹⁴

In the U.S. draft a majority of the first category of six members is four, thus three can veto. It seems unlikely that a council without some form of veto for the major powers would be universally accepted.

The problem of financing the ocean regime is a critical part of its structural setup. There are a great many monetary possibilities. It is, however, too early to predict with any accuracy which method will best fulfill the political needs present at the time the financial decision is made. If the new regime follows existing patterns for financing UN organizations, several options are available.

Existing UN organization are normally financed by one of the following three methods:

1. All expenses are provided for in the regular UN budget, e.g. UNCTAD,
2. All expenses are borne by voluntary contributions, e.g. UNITAR and UNICEF,
3. The organization is financed by both the UN and voluntary contribution, e.g. UNIDO and UNHCR.

However, the specialized agencies in the UN follow a separate route. Each agency makes up its own annual budget, and this is then reported to the General Assembly for

¹⁴Report by the Special Sub-committee on Outer Continental Shelf, p. 78.

recommendations. Each agency has a separate financial agreement with the UN differing in various degrees. In case of IBRD and IMF, however, the UN has no control over the agency budgets and the appropriate authorities enjoy full autonomy in deciding the form and content of the budget. Both IBRD and IMF are financially self sufficient organizations.

As we have already seen, existing structural patterns will probably hold little relevance to the proposed regime due to its unique character and indicated function. As a result, some nations have suggested new methods of financing the regime. For example, Tanzania has proposed the following:

1. Initial costs will be borne by the members of the Authority according to the scales established by the executive council,
2. Income received in excess of administrative and other costs will be distributed equitably by the Assembly to the member states.¹⁵

Similar financial arrangements have been proposed by Canada, Poland, and others. The United Kingdom, for example, has suggested that the authority should be self-financing.¹⁶

Underlying the above suggestions for financing the regime is the assumption that the regime will control, to some degree at least, a sizable amount of wealth in ocean resources. If this assumption is correct, one of the regime's major functions will be to redistribute the revenue gained from ocean resources. This particular function is considered in

¹⁵U.N. Document A/AC 138/33 (1971).

¹⁶U.N. Document A/AC 138/46 (1971).

greater detail in the following chapter. However, an additional question is, to what other uses should regime receipts be put? There have been three main suggestions. They are:

1. A proportion of the revenue should be reserved for projects which contribute to the development of the sea-bed as the common heritage of mankind.
2. Conservation schemes and projects sponsored by regional offices of the Authority.
3. Due regard for training personnel and allocating revenue for underdeveloped nations should be given.

The appropriate financial arrangement will depend upon the functions and powers delegated to the regime. Optimistically, it is hoped that the regime can be self-sufficient. If properly arranged revenues from licensing, royalties, and membership dues and/or contributions will provide adequate monetary resources. Finally, and somewhat idealistically, it is hoped that some significant amount of economic redistribution can be maintained to compensate those developing states whose economics may be jeopardized by a flood of ocean minerals.

The importance of a constructive agreement on an ocean regime has led some observers to look for analogous patterns in the form of existing treaties. Two treaties offer limited relevance to a new regime of the sea. They are the Antarctic Treaty of 1959 and the Treaty Governing Exploration of Outer Space, 1966. Both treaties attempt to form mutually acceptable patterns of national behavior in areas lacking

sovereign territorial claims. Both treaties provide for peaceful uses, a prohibition on nuclear arms and cooperation in, and freedom of, scientific research. Beyond the points mentioned above however, these treaties offer little guidance for an ocean regime.

The Antarctic Treaty is based upon the territorial principle of res nullius, (territory belonging to no one) and as such the Antarctic is still available for claims of territoriality through prescription or other legal means. Applied to the oceans the principle of res nullius would escalate the possibility of conflict. Such an approach to the territoriality of the sea has not been seriously suggested since the seventeenth century when Hugo Grotius and John Seldon staged their classic debate over the law of the sea. Grotius proposed a doctrine of mare liberum (free sea) while Seldon proposed mare clausum (closed sea). Grotius' mare liberum was the forerunner of the modern freedom of the seas doctrine.

The Outer Space Treaty, as opposed to the Antarctic Treaty, is based on the principle of res communis (territory owned by all nations). This principle does create an analogous situation to the ocean regime. Proposals for the regime have all been based on the concept of res communis for ocean-space beyond national jurisdiction. The phrase which is widely employed in draft treaties for the ocean and embodies the res communis idea is the "common heritage" principle.

The similarities and differences between the Antarctic and Space Treaties and the proposed ocean regime

are however superficial. The proposed regime is a unique and fundamentally new attempt in international relations. The regime proposals suggest establishing international machinery to control and distribute natural resources, a function which is a long stride beyond res communis. Because the regime is a new and unique idea there is no point in trying to find workable patterns for it in past international agreements. The "international ship of state" must sail into unchartered waters to reach agreement on a meaningful regime, its captain cannot steer a true course by consulting a map of outer space.

CHAPTER VII

FUNCTIONS AND POWERS OF THE REGIME

The proposal to establish an international regime to control the resources of the sea-bed beyond the limits of national jurisdiction has virtually universal support from the nations of the world. There is general agreement on many basic principles upon which such a regime should be founded. The principles enjoying a general consensus include: the use of the sea-bed for peaceful purposes, using sea-bed resources for the benefit of mankind, allowing freedom of scientific research, maintaining the freedom of the high seas, and prevention and control of pollution. To assume a true consensus based on this ostensible homogeneity is to be misled. The attempted application of these principles in various draft proposals has uncovered a list of controversial issues centered around the possible functions and powers of an ocean regime. Three issues have been selected for discussion: the extent of the regime's power, the financial powers of collecting and redistributing money, and finally the role of enforcement in the settlement of disputes.

The Sea-Bed Committee in a report called "Study on International Machinery"¹ lists four possible types of international machinery. Varying in power from weakest to

¹U.N. Document (A/AC 138/23), p. 17.

strongest they are: (1) international machinery for exchange of information and preparation of studies; (2) international machinery with intermediate powers; (3) international machinery for registration and licensing; and (4) international machinery having comprehensive powers. By process of elimination the above list can be narrowed quickly. The grant of power under (1) and (2) is too weak to consider the machinery a regime at all. The proposal under (4), machinery having comprehensive powers, would include the power of the organization to engage in direct exploitation activities. Unfortunately, such a regime is currently politically impossible, since no major nation supports it. Mr. Vincent McKelvey, U.S. representative to the Sea-Bed Committee, made the following statement before the Committee:

Our debate has also brought out some suggested forms and functions of international machinery that my Government does not believe would serve our fundamental objectives of developing sea-bed resources for the benefit of all mankind. I refer in particular to the suggestions that sea-bed exploration ought to be undertaken by an international operating organization...²

Thus, we are left with the third alternative, a system for registration and licensing. Most of the draft proposals assume this level of power for the international regime. Senator Pell's proposal calls for a licensing authority designated by the United Nations with the approval of the Security Council. Such an arrangement would clearly reflect the political realities involved, but it is likely

²"August Session of U.N. Sea-bed Committee Held at New York," The Department of State Bulletin, LXI (September, 1967), p. 286.

that this direct tie-in with the U.N. would encourage the use of the licensing system as a "political football." A separate system not tied directly to the United Nations or the Security Council might avoid such a problem.

The U.S. working paper calls for the establishment of a trusteeship to control registration and licensing in the area between the limits of national jurisdiction and the end of the continental margin. Basically this means the coastal state will control the licensing in this area. Beyond the trusteeship zone the International Sea-Bed Resource Authority (ISRA) would control licensing. However, the ISRA cannot bypass national control completely and carry on exploitation on their own. Appendix A of the U.S. draft proposal outlines the procedures for obtaining an exploitation license. In all cases private companies must work through an "Authorizing or Sponsoring Party" which would be a national government by definition.³ This procedure amounts to a system of "double concession" which is defined in the "Study on International Machinery."

It was suggested that a double concession system might be established, so that the international authority would grant licenses to a State which would act as a sort of "administering authority" in respect of the sublicenses they might in turn grant to enterprises.⁴

This approach has been strongly criticized by Evan Laurd.

³Report by the Special Sub-committee on Outer Continental Shelf, p. 71.

⁴U.N. Document A/AC 138/23, p. 37.

It is widely assumed that licensing will be direct to governments, which will then themselves license companies. This reflects the fact that it is governments that are deciding the question. But it is in fact the worst possible system. It would provide a multiplicity of separate regulations and jurisdictions in a peculiar patchwork all over the sea-bed.⁵

Elisabeth Borgese, in her proposed draft, suggests direct licensing from the regime authority to "Member States." and to international organizations and corporations. This direct procedure would be superior to a system of double concession.

Again, unfortunately, a direct licensing procedure does not seem politically feasible at this time. Despite the fact that the major powers are willing to renounce any claim by a nation-state to any part of the deep sea-bed area, still they are unwilling to allow an international regime to assume sovereign control. As Norman J. Padelford has observed:

Thus far neither the United States nor other principal powers are convinced that control of the seas should be conferred upon an international body. Nor are they ready to endow an organization with supra-national authority to dictate marine activities. Enlightened conceptions of national interest remain the surest guide for policy.⁶

This reluctance seems almost contradictory with the articles proposed by major powers renouncing sovereign claims. For example the Russian draft Article 5 states:

No State shall claim or exercise sovereignty or sovereign rights over any part of the sea-bed or the sub-soil thereof. States Parties to this Treaty shall not recognize any such claim or exercise of sovereignty or sovereign rights.

⁵ Laurd, p. 145.

⁶ Padelford, p. 273.

Similarly, the sea-bed and the sub-soil thereof shall not be subject to appropriation by any means, by States or persons, natural or juridical.⁷

while the U.S. draft states:

No State may claim or exercise sovereignty or sovereign rights over any part of the International Sea-bed Area or its resources. Each Contracting Party agrees not to recognize any such claim⁸ or exercise of sovereignty or sovereign rights.

Yet U.S. Representative, John Stevenson, made the following statement before the Sea-bed Committee:

Accordingly, we believe it is important to dispel any possible misconceptions that my government would agree to a monopoly by an international operating agency over deep sea-bed exploitation or to any type of economic zone that does not accommodate basic United States interests with respect to resources as well as navigation.⁹

Indeed it will be difficult enough for the U.S. administration to continue to support its own proposal, in light of Congressional disapproval, let alone attempting to suggest an increase in power for a proposed regime. In hearings before the Senate Committee on Interior and Insular Affairs, the regime was referred to as "a sort of floating Chinese pagoda."¹⁰ The reason some Senators objected is due to domestic pressures, primarily from the hard mineral mining companies.

In the final analysis the extent of the international

⁷ U.N. Document A/AC 138/43, p. 2.

⁸ Report by the Special Sub-committee on Outer Continental Shelf, p. 71.

⁹ U.N. Document A/7622, p. 383.

¹⁰ Report by the Special Sub-committee on Outer Continental Shelf, p. 25.

regime's power will depend more on its universality of acceptance than any specific licensing procedure. A non-member state would not be bound by the treaty establishing a regime. "Assuming that a particular State did not accept any rights or obligations under the treaty, its activities would be based on existing customary and conventional law."¹¹ And it is the inadequacy of the existing customary and conventional law that makes the proposed regime desirable and necessary.

The second issue for discussion is that of the financial power of the proposed regime both for collecting funds and redistributing them. The collection of funds for the regime authority could come from a number of different sources. The U.S. draft has explored this area in some detail. It suggests one, a license fee of from \$5,000 to \$15,000 per block of exploitable area (of which a portion between one half and two thirds would be forwarded to the ISRA); two, a rental fee beginning in the third year after a license is given and prior to commercial production; three, payments on production including a \$500,000 to \$2,000,000 bonus payment. Thus, resource exploiters, under the U.S. draft would pay license, rental, and royalty fees. Such a system would produce considerable income for the regime.

The concept of graduated jurisdiction discussed in Chapter V and proposed in the U.S. draft in the form of zones of waning national control, will help in the system of

¹¹U.N. Document A/7622, p. 161.

collection and redistribution of funds. This advantage is succinctly described by Evan Laurd:

Harder still are the questions relating to the scale of royalties and the system of redistribution. There is a lot to be said for the intermediate zone system suggested by the United States and Malta. This zone might stretch from 50 to 100 miles from the coast: in it the coastal state would retain some degree of control but would pay a considerable part of the royalties to the international authority. The effect is to reduce the sharp division between the national and the international area. This lessens conflicts on boundaries by asking coastal states to share resources, rather than to forego them altogether.¹²

Under the trusteeship arrangement the ISRA would receive a substantial part of the proceeds from the trusteeship area. The actual percentage is suggested at between 50% and 66 2/3% of the total. The proposed system of collection and redistribution presented in the U.S. working paper is the most specific guide suggested to date.

The final issue to be discussed is the role of enforcement in the settlement of disputes related to the proposed international regime. Most of the proposals include some form of organization to settle disputes. The Pell proposal provides for a review panel to hear the dispute with the possibility of appeal to the International Court of Justice. The U.S. draft calls for a tribunal of final jurisdiction. Whatever the structure, the key question is what type of enforcement can be used? Senator Pell has called for the establishment of a Sea Guard, under the control of the Security Council. The Sea Guard is described

¹²Laurd, p. 145.

in the following terms:

In order to promote the objectives and ensure the observance of the provisions set forth in this Treaty, States Parties to the Treaty agree that there shall be established as a permanent force a Sea Guard of the United Nations which may take such action as may be necessary to maintain and enforce international compliance with these principles...The Sea Guard shall be under the control of the Security Council of the United Nations.¹³

Enforcement under this suggestion would rest on the workability of and principle of collective security in the Security Council. This has been demonstrated to be more a matter of selective security than a reliable form of enforcement:

If a Contracting Party fails to perform the obligations incumbent upon it under a judgment rendered by the Tribunal, the other Party to the case may have recourse to the Council, which shall decide upon measures to be taken to give effect to the judgment. When appropriate, the Council may decide to suspend temporarily, in whole or in part, the rights under this Convention of the Party failing to perform its obligations, without impairing the rights of licensees who have not contributed to the failure to perform such obligations. The extent of such a suspension should be related to the extent and seriousness of the violation.¹⁴

The problem is, of course, that once a member state's rights were suspended, no reason would exist for him to honor the treaty obligations. Thus, he could easily justify defiance of the treaty as a non-member state. The U.S. working paper has no suggestions for enforcing treaty obligations on non-member states. This reinforces the

¹³Congressional Record, CXIV, p. 5184.

¹⁴Report by the Special Sub-committee on Outer Continental Shelf, p. 82.

importance of universal acceptance of whatever treaty is finally drafted. This is noted in the "Study on International Machinery":

It would hardly be possible from a legal standpoint to enforce decisions of the international machinery vis-a-vis third States. Even if the concept of the establishment of an 'objective regime' were generally accepted, there would be practical difficulties, as regards those States which did not agree to the applicability of the concept. The possibility of the use of force with respect to such States should be excluded.... In order, therefore, to ensure fully effective functioning of international machinery of the type in question, it would be highly important to ensure universal participation in the regime to be established.¹⁵

Enforcement of a treaty to establish a regime to control the resources of the sea beyond national jurisdiction will have to depend upon the principle of reciprocity like any other international agreement.

An additional problem related to enforcement concerns the need for some form of control over multinational corporations that have financial interests in ocean resources. This need should be of obvious importance since large corporations, such as the Hughes Tool Company, are developing the capability of exploiting manganese nodules, while the large oil companies are becoming increasingly interested in offshore oil deposits. It was concern over premature exploitation of ocean wealth that led to the Moratorium Resolution discussed earlier.

It seems clear that unrestricted exploitation of sea minerals without some international agreement of regulation

¹⁵U.N. Document A/AC 138/23, p. 62.

is undesirable. Even after a regime is established multinational industries are likely to cause problems. Almost all enforcement clauses in the current draft proposals deal directly with nation-states, assuming that the nation-states will, in turn, control their own private industry. However, large corporations which are international in scope may well elude such control by shifting their base of operations to the country or countries most amiable to their wishes to exploit ocean resources. This type of industrial competition could undermine the entire regime.

Indeed the problem of competition among developing states for foreign investment is not a new one to the international community.

It must be remembered that although a host country has the right to be as strict as it considers appropriate when a multinational corporation operates in its territory, it cannot force a multinational corporation to locate its activities there. The key consideration is that there are often other countries which are eager to offer more attractive conditions. Indeed, in a number of countries, especially those with a federal form of government, various local and provincial authorities outbid one another.¹⁶

If these problems exist in a system of clearly defined national boundaries they can only be intensified when related to the sea regime and the uncertainty that surrounds national ownership of ocean resources.

The most significant concern related to multinational corporations and the ocean regime is the possibility that,

¹⁶ "Report on Multinational Corporations in World Development," International Legal Materials, XII (September, 1973), p. 1130.

due to the unique and disputed jurisdictional situation of the sea regime, corporations may develop that are supranational in character. A recent study published in International Legal Materials has addressed this concern.

Recent proposals for the creation of an international authority for the regulation or exploration of resources of the sea-bed beyond the limits of national jurisdiction indicate further possibilities for the creation of supranational machinery. These proposals also indicate difficult problems of control. The pending negotiations with respect to the sea-bed would thus throw light on possible arrangements concerning the creation of supranational corporations or machinery dealing with them.¹⁷

Although a full discussion of the special problems posed by multinational corporations is beyond the scope of this thesis it is important to note the significance of the situation. The existence of such industry and the increasing threat of full scale exploitation of ocean wealth is multiplying the need for rapid agreement by the international community on a workable ocean regime to avoid the possibility of conflict. It also calls for careful preparation in drafting the agreement for an ocean regime. The regime must make allowances for and be able to deal with the problems posed by multinational corporations.

The various proposals for the establishment of an ocean regime have provided an interesting and informative backdrop on which to consider the political feasibility of such a regime. Currently the regime faces stalling tactics on the part of many nations who are uncertain that

¹⁷ International Legal Materials, p. 1126.

international regulation now would be to their economic advantage. Thus, there is cause for pessimism. Everyone recognizes that frantic, uncontrolled exploitation of ocean resources would be a detriment to all, but many wish to wait until the situation gets worse before they act. Arvid Pardo has commented:

International management of the oceans and their resources may be necessary in the interests of all; but, until present chaos is further compounded, until ocean living resources are seen globally to become scarcer, and until the ecology of the oceans is visibly and gravely impaired over the greater part of our planet, it is to be feared that states will prefer to continue with the present system, seeking to mitigate the negative effects of absence of authority and uncontrolled use by bringing ever wider areas of the seas under national regulation.¹⁸

Of the various proposals presented the U.S. draft is the most detailed and realistic. It provides for a structure patterned after the United Nations. It also has prescribed a fairly realistic set of functions and powers to that structure. It has utilized, through the trusteeship idea, the concept of graduated jurisdiction which will be essential to the success of an ocean regime. One must ask, what is the possibility of near universal acceptance of the U.S. draft? Apparently the outlook is gloomy. John Frohnmayer reports on the Pacem in Maribus Convocation:

The Pacem in Maribus Convocation at Malta in the fall of 1970 provided a forum for some of the first national reactions to the Nixon Proposal. None of the fifty-one nations represented at the convocation expressed support for the proposal, and Dr. Borgese

¹⁸ Arvid Pardo, "Development of Ocean Space -- An International Dilemma," Louisiana Law Review, XXXI (1970-71), p. 52.

concludes that if the reaction of these nations serves as a barometer, the Nixon Proposal has little chance of effective support in the world community.¹⁹

¹⁹ John E. Frohnmayer, "The Nixon Proposal for an International Sea-bed Authority", Oregon Law Review L (October, 1971), p. 616.

CHAPTER VIII

CONCLUSION

At the outset of this thesis two sets of related conflicts were discussed: the struggle between man and his environment and the struggle among nations. The movement to establish a regime to participate in the allocation of ocean resources among nations reflects both struggles. In the first case, modern society has become increasingly dependent upon raw materials and inexpensive fossil fuels. The ocean offers the last untapped reservoir of these resources. Historical patterns of exploitation of natural resources have shown the underlying assumption that raw materials are inexhaustible. The oceans have been called the "last frontier", and it is perhaps from this facade that ocean wealth may be considered inexhaustible, just as fresh land once seemed endless during the westward movement of American history. However, maritime reserves will not be omnipresent if rapidly and wastefully exploited. The following quotation provides a stirring perspective from which to view the longevity of resources from our "last frontier":

The seas seem immense, and it is sobering to view them as did Jacques Cousteau at a recent meeting of students, when he pointed out that if the earth were to be viewed as the size of an egg, all the oceans taken together would constitute only a single drop, which then would be spread over three-fourths of the egg's surface. In that light, we have come to realize that the oceans, a vital life-preserving resource

essential to existence, are not inexhaustible.¹

Mankind is challenged to maximize the potential of ocean resources without evaporating them before viable alternatives can be found to fossil fuels and other diminishing reserves. Such is the problem of man's struggle with his environment.

Superimposed upon this struggle is a second one, that of conflicting interests among nations. Before man can intelligently deal with ocean resources he must first deal with the international problems involved. Thus, an international regime to distribute maritime wealth must depend upon a relaxation of the struggle among nations before it can effectively obtain its primary goal of peacefully allocating resources. A method through which a lessening of global tensions might be achieved is by affecting the political compromises necessary to establishing a workable regime that would be universal in scope and based on some form of reciprocity. Unless some form of progress is made toward resolving the environmental and international struggles facing us today the future may hold a host of undesirable repercussions.

Hoping to prevent conflict over ocean uses and resources the United Nations is sponsoring the third Conference on the Law of the Sea. The Conference is scheduled to begin substantive sessions on June 20, 1974 in Caracas,

¹Thomas A. Clingan, Jr., "Organizing to Probe the Oceans; An Exercise in Political Science," Oregon Law Review, L (October, 1971), p. 398.

Venezuela. The agenda for the Conference will be a long one, some items are of minor importance others could have the impact of "making or breaking" the proposed ocean regime. More important, however, than the specific items of the agenda are several key issues upon which the Conference's success will hinge. The context and significance of many of these issues has already been discussed in the body of this thesis. In the present discussion a summation of these issues is attempted. The more crucial issues will be presented here and evaluated as to their overall impact upon the ocean regime and the probability of their success at the coming Law of the Sea Conference. Five major issues have been selected for discussion.

The first issue is the determination of the limits of national jurisdiction. Perhaps the most important issue, the decision reached on the question of national maritime boundaries will affect virtually every other phase and issue of the conference. The exact limits agreed upon at the Conference, if any, will, in effect, directly determine the amount of power an ocean regime will have. The primary reason for this is that in determining the extent of national ocean boundaries one also allocates ocean resources. It should be recalled from the discussion in Chapter V that the amount of ocean wealth is indirectly proportional to the distance from the shore. This is particularly true of nations with long continental margins.

Although comprising only about 25 percent of the world's total underwater terrain, these margins are of immense significance, particularly the inner

regions of the shelves and slopes, for all coastal and maritime interests. Some 80 percent of all commercial fish swim there. Nearly all potential hydrocarbon resources are located in margin deposits, leaving only the nodules and highly migratory fish as commercially attractive resources beyond the margins.²

In addition territorial and economic boundaries will affect military, scientific and commercial uses of the sea. These problems are, however, more directly related to the second issue which will be analyzed later.

Actual proposals that will certainly be presented at the Conference range from territorial limits of from 12 to 200 miles. The 200-mile limit with full sovereign control by the coastal state is being pushed the hardest by several Latin American states. They are not alone, however, and have been joined by both developed and developing nations who favor the 200-mile limit. The Soviet Union, on the other hand, is proposing a 12 mile limit with an extended economic zone for minerals of the continental margin.

The Soviet Union is proposing that coastal states exercise exclusive jurisdiction over mineral resources out to the point where their margins reach depths of 500 meters or out to 100 miles, whichever is greater. This solution favors countries with wide, relatively shallow margins--like the Soviet Union, whose margin area extends outward many hundreds of miles--but still leaves some margin resources around the world outside the exclusive control of coastal states.³

The United States favors a 12 mile limit, if free transit is guaranteed, and an economic resource area that could extend

²Seyom Brown and Larry L. Fabian, "Diplomats at Sea," Foreign Affairs, LII (January, 1974), p. 303.

³Brown, p. 307.

to 200 miles from shore. There are, of course, almost as many different suggestions as there are nations, however it seems clear that some extension of coastal jurisdiction is imminent.

It is this author's view that, if an agreement is reached on the limits of national jurisdiction, it will involve some system of graduated jurisdiction. That is, a system of gradually lessening coastal state control. That a new territorial limit of at least 12 miles, with full sovereign rights for the coastal state, will emerge is almost certain. Beyond 12 miles there is likely to be established an economic zone of 200 miles from the coast. Within this economic zone many different combinations of coastal state control are possible. These varying possibilities offer the flexibility that is required for the necessary compromises among nations before an agreement can be reached.

The second issue for discussion is the question of exact coastal state control over their territorial and economic waters. This topic partially assumes the outcome of the first issue of national jurisdiction. In other words, everyone is expecting coastal claims to expand, probably to a distance of 200 miles, but what type of control inside which distances has become critical. For example, different distances may well be claimed only for specific resources the coastal state wishes to protect. For oil in the continental shelf a relatively narrow band would suffice, to protect fishing rights a broader limit approaching 200 miles seems adequate. While to lay claim to manganese nodules

beyond the continental margin even greater distances would be required. In addition to the problems presented by ocean resources, which have already been discussed at length, other uses of the sea further complicate the issue under examination.

One of the most illusive problems related to additional uses of the sea is that of military use which includes spying. While clearly a motivating factor to the major industrialized states, military uses of the ocean as a reason to form ocean policy can hardly be persuasive to the world community particularly in light of the rhetoric surrounding international ocean debate. Almost all references to this topic carry the phrase "peaceful uses of the ocean...." As a result maritime powers have been insisting that "other legitimate uses" of the ocean be recognized within the wider coastal state boundaries. Such ambiguity adds an atmosphere of uncertainty to the question of traditional military operations in coastal state waters.

Also related to military use of the oceans but of vital concern to commercial interests as well is the question of international straits which would become "closed" by a 12-mile territorial sea. With a 12-mile limit most straits in the world, with a width of 24-miles or less, would become territorial waters and therefore subject to additional coastal state controls. The United States, Soviet Union, United Kingdom and other major developed states are highly concerned about any additional control over international straits. On the other hand, several other states point to the doctrine of innocent passage and maintain that the new

limit will not cause a hindrance to free transit through formally international straits.

The use of ocean space for scientific research has recently become a very controversial and political issue. While major developed states, mostly those sponsoring the oceanographic research, point to the traditional concepts of freedom of the sea and freedom of scientific research, many developing states are demanding a change. Angered by developed states' abuse of the freedom of scientific research principle (the Pueblo incident, for example), developing states are beginning to question the principle's legitimacy. They argue that the information gained by oceanographic research only benefits developed nations often at the expense of the have-not countries.

A final problem related to the present issue of jurisdictional control is the question of pollution and its prevention. Some countries are suggesting that coastal states be given the complete responsibility for the creation of pollution standards. Other states are opting for international standards. Similarly, some nations favor coastal state enforcement of pollution standards, while others suggest that this function should be performed by an international body.

The eventual agreements made at the Conference related to the jurisdictional controls of coastal states are difficult to predict. However, several things seem probable. Exact military uses of the sea are likely to be dealt with by not dealing with them at all or by some vague reference to

"other legitimate uses" upon which maritime powers will derive their justification for military operations. Although most international straits will probably become territorial straits due to the 12-mile limit, there will almost certainly be a guarantee of free passage with minimal coastal state restrictions. On scientific uses developing states are likely to hold their ground demanding and probably getting, an agreement for coastal state permission and possibly even participation before oceanographic expeditions are permitted near their coasts. The pollution question is not likely to be given much attention or consideration unless it becomes the means to a compromise on other, more deeply felt, issues.

What kind of regime will the Conference on the Law of the Sea establish? An even more fundamental question is, will any be established? These questions have received considerable attention since 1967. Almost everyone agrees that a regime should be established, almost no one agrees on what kind. Basically there are four different categories of powers and functions which the regime could assume. They are gathering information, registration of ocean activities, licensing ocean activities, and direct exploitation of sea resources.

There have been a number of draft proposals submitted by various nations to "establish an international ocean regime beyond the limits of national jurisdiction." The wording above demonstrates the importance that issue number one on national jurisdiction has in relation to the regime. Obviously, if the regime functions only beyond the limits of

national jurisdiction and those limits are set at approximately 200 miles from shore there will be little for a regime to do. This reality raises the question of the possibility of some regime control within coastal economic zones, as suggested in the United States draft. Additional questions related to the regime concern what form it will take and what role it will play in the settlement of disputes.

The final outcome at the Conference on the regime question will depend heavily on current need for certain ocean resources as well as their exploitability. It seems likely that the regime will be given the registration and licensing powers described in Chapter VII. However, its sphere of control will probably be outside of the coastal state economic zones. As a result the only resources of consequence that the regime may have some control over will be the manganese nodules of the ocean floor. Even this possibility is tenuous. If commercial exploitation of nodules begins before a firm agreement is reached at the Conference, the whole idea of a regime could be scuttled. Such an occurrence would indeed be disastrous since the possibilities of conflict over rights to nodules would be greatly increased. At the very least the regime must provide an international forum to mitigate conflict over ocean wealth and provide for settlement of disputes. Seyom Brown in a recent article has underscored the importance of providing a mechanism for the settlement of disputes.

Finally, procedures for settling disputes take on special importance in today's ocean diplomacy simply because the continuing proliferation of

ocean activities portends more disputes among more countries over more issues than ever before.

. . . The United States, not normally a friend of compulsory international jurisdiction, anticipates circumstances in which its nationals, especially its oil drillers and shippers, may be threatened by unilaterally imposed coastal-state restrictions. American negotiators now say that acceptance of compulsory jurisdiction is the cornerstone of new arrangements being considered, and that most of their own proposals for future ocean policy would be absolutely unacceptable without compulsory jurisdiction. Thus the impression is conveyed that compulsory jurisdiction, like free transit, is a non-negotiable demand.⁴

The fourth issue before the Conference is one raised by the ideological phrase that the oceans and their wealth are the "common heritage" of all mankind. Arvid Pardo, the Ambassador from Malta, used this phrase in his now famous declaration before the General Assembly.

It is, therefore, considered that the time has come to declare the sea-bed and the ocean floor a common heritage of mankind and that immediate steps should be taken to draft a treaty embodying, inter alia, the following principles: . . .⁵

The rather obvious implication of common heritage is that nations should peacefully share in ocean uses and resources. The question on this issue is whether or not such talk is real or rhetorical. There have been several draft proposals submitted by various states that provide for a method of redistribution of ocean resources to those developing nations who do not possess the capabilities to exploit the oceans themselves. The principle of common heritage has been universally accepted by the member nations of the United

⁴Brown, p. 313.

⁵Padelford, p. 290

Nations.

This author feels, however, that the ideological principle of common heritage will have little meaning at the bargaining table of the upcoming Conference. The developed nations have already voiced their objections to "misinterpretations" of the common heritage idea. For example, John Stevenson of the United States delegation to the Sea-bed Committee has stated:

. . . the position taken by some delegations with which we have consistently disagreed, that "common heritage" means the "common property" of mankind.⁶

Although common heritage has become part of nearly every draft proposal its meaning is as slippery as the interstate commerce clause of the United States Constitution. John Frohnmayer has noted:

Stirring rhetoric such as "the Seas are the heritage of all mankind" is being recognized as meaning whatever the country using it desires it to mean. Since the current uncertainty of the law of the sea-bed favors the developed countries with technology and capital, underdeveloped nations have chosen a stalemate as preferable to continued lack of controls.⁷

If a plan of redistribution comes from June's Conference, it will probably be token in nature rather than a genuine attempt to practice a philosophy of common heritage. A more significant question is, what amount of tokenism, if any, will the developing nations accept? How stubbornly will they stick to their demands? These questions strike at the heart of the next and final issue.

⁶The Department of State Bulletin, LXVII, p. 384.

⁷Frohnmayer, p. 604.

The final issue for discussion is that of the Conference's impact upon the growing international struggle between North and South. The upcoming Conference of the Law of the Sea has in many respects given focus to increasing tensions between the have and the have-not nations. Seyom Brown has commented:

The ocean bargaining now underway features and reinforces some of the patterns of international politics emerging in the world at large. We are referring particularly to the disintegration of the cold-war coalitions, the relative rise of non-security issues, the diversification of friendship and adversary relations, and the embittering tension between the have and the have-not peoples.

Ocean debate, culminating in this year's Conference, is a major and direct confrontation of the North-South struggle. The Conference's real significance will be more in the patterns of behavior established between North and South than in the specific allocation of ocean resources. What principles will characterize this struggle? Compromise? National self-interest? It may not be logical to assume that the same modes of behavior that have characterized the East-West conflict will also apply to a new North-South confrontation. There is considerable evidence that developing nations, at least on the sea regime issue, may not be willing to compromise for something less than what they want, even though the result of their stubbornness will hurt them far more than the developed countries. Such irrational behavior undermines traditional concepts of national-self interest.

⁸Brown, p. 313.

Another important factor in the opposition between the have and have-not nations is the role that the People's Republic of China will play. Already working hard to establish itself as the leader of the Third World, China may well emerge from the Conference as the bastion of hope for the developing countries.

The developed nations may be paying a higher price for ocean resources than they have figured. If the industrialized states divide ocean wealth among themselves, excluding the developing countries, the result may be an embittered era in international relations--a new era with new divisions and alliances playing an old game of polarization and conflict.

Man is a unique animal. He has the intellectual capacity to substantially alter his environment. However, it has become questionable whether he can also adapt to the environment that he has himself transformed. Wolfgang Friedmann has expressed this concern in his book The Future of the Oceans:

The tragedy of mankind may prove to be the inability to adapt its modes of behavior to the products of its intellect. Twentieth-century man threatens to be a new kind of dinosaur, an animal suffering from a brain ill-adjusted to its environment.⁹

⁹Friedmann, p. 120.

APPENDICES

APPENDIX A

PETROLEUM

WORLD PROVED RESERVES (IN MILLIONS OF BARRELS)*

UNITED STATES	38,100
IRAN	55,500
KUWAIT	66,000
LIBYA	25,000
SAUDI ARABIA	145,300
VENEZUELA	13,900
OTHER FREE WORLD	189,900
COMMUNIST COUNTRIES	<u>98,200</u>
WORLD TOTAL	631,900

* Harry Jiler et al., ed. Commodity Year Book 1973
(New York: Commodity Research Bureau, Inc., 1973), p. 257.

APPENDIX B

PRIMARY METAL TO BE RECOVERED FROM NODULES TO
EXTENT OF TOTAL WORLD PRODUCTION IN 1967*

Metal	1967 world production	Pounds per ton of nodules	Percentage of 1967 world production of associated metals that would be made available simultaneously			
			Manganese	Copper	Nickel	Cobalt
Manganese	18,650,000 short tons ore	--	100(%)	4(%)	59(%)	453(%)
Copper	11,184,377,000 pounds	15	2,502	100	1,479	11,335
Nickel	1,007,943,000 pounds	20	169	8	100	766
Cobalt	32,890,000 pounds	5	22	.9	13	100

*Elaine H. Burnell and Piers von Simson, (eds.) Pacem in Maribus (Santa Barbara: Fund for the Republic, Inc., 1970), p. 3.

APPENDIX C

TONS OF NODULES AND BOTTOM AREAS TO BE HARVESTED
EACH YEAR TO YIELD METALS AT THE 1967
LEVEL OF PRODUCTION FROM LAND SOURCES*

Metal	1967 world production	Pounds per ton of Nodules	Short tons of nodules required	Area to be harvested sq. miles	Fraction of total deep ocean bottom area
Manganese	18,650,000 short tons ore	--	29,800,000	1,069	0.0008(%)
Copper	11,184,377,000 pounds	15	745,625,100	26,746	0.0192
Nickel	1,007,943,000 pounds	20	50,397,150	1,808	0.0013
Cobalt	32,890,000 pounds	5	6,578,000	236	0.00017

*Elaine H. Burnell and Piers von Simson, (eds.) Pacem in Maribus (Santa Barbara: Fund for the Republic, Inc., 1970), p. 3.

APPENDIX D

VALUE OF WORLD PRODUCTION OF NODULE METALS AT 1972 PRICES*

METAL	1972 PRODUCTION	MARKET PRICE	VALUE
Manganese	22,425,000 short tons	\$30.00 per ton	\$ 672,750,000
Copper	14,200,000,000 pounds	.52 per pound	7,384,000,000
Nickel	1,417,000,000 pounds	\$ 1.40 per pound	1,983,800,000
Cobalt	52,900,000 pounds	\$ 2.45 per pound	129,605,000
TOTAL VALUE			\$10,170,155,000

* Harry Jiler et al., ed. Commodity Year Book 1973 (New York: Commodity Research Bureau, Inc., 1973), p. 257.

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