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The Oceans

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THE OCEANS

STAFF

LAW OF THE SEA CONFERENCE

The eight week 1975 Law of the Sea Conference held at Geneva ended on May 9; it was characterized by its President, Hamilton S. Amerasinghe of Sri Lanka, as "neither a failure nor a success." He explained that it was not a success because it had failed to produce a conclusive agreement, yet it was not a failure because "it did not break up." Although the President's feelings were not shared by all the participants, his characterization was acceptable to the majority of the delegates who considered the Conference an additional step in the quest for an international law of the sea. The optimists point to some progress in a number of areas such as unimpeded passage through international straits, acceptance in principle of the 200-mile economic zone, a willingness to accept international standards for pollution and firm agreement on certain anti-pollution measures, freedom of scientific research, and basic agreements on dispute settlement procedures. The pessimists, on the other hand, point to the sharp divisions concerning the exploitation of the seabed, the hardening of positions of some of the developing nations, and the unilateral actions of some countries to counteract potential harmful effects of a future multilateral treaty.

Without doubt many issues remain to be solved, but the desire to compromise could be sensed at Geneva. Evidence of this spirit of accommodation was the Informal Single Negotiating Text which emerged from the Geneva Session. Admittedly this is an unusual document; the product of a request by the Conference to the Chairmen of its three Main Committees to prepare a single negotiating text covering the subjects entrusted to their Committees. The President of the Conference stressed that the single text should take account of all formal and informal discussions previously held, that it should be informal in character, not prejudice the position of any delegation, nor that it represent any negotiated text or accepted compromise. The negotiating text, it was made clear, would serve as a pro-

cedural device and only provide a basis for future negotiations. Further, it would not, in any way, be regarded as affecting the status of proposals already made by delegations nor the right of delegations to submit amendments or new proposals.

Accordingly, three submissions were made, each labelled — INFORMAL SINGLE NEGOTIATING TEXT.

The first of these was presented in the nature of a Convention on the Sea-bed and the Ocean Floor and the Sub-Soil Thereof Beyond the Limits of National Jurisdiction. The text contains seventy five articles covering, *inter alia*, basic definitions and the limitations of the "Area" which is held to be the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction. Other articles in Part I hold the Area and its resources to be the common heritage of mankind, not subject to exercises of sovereignty or appropriation, but nevertheless recognize the acquisition or exercise of rights in minerals therein in accordance with the provisions of the Convention. Subsequent articles deal with general principles regarding activities in and relating to the Area, including scientific research, transfer of technology, protection of the environment and human life. Additional articles deal with the rights of coastal states, legal status of the superjacent waters and airspace, and the role of developing countries, including land-locked and other geographically disadvantaged states, among other subjects. Parts II and III of the Convention contain articles 20 through 63 dealing extensively with the International Sea-Bed Authority. Part IV (Articles 64-75) contain the Final Provisions. The submission of the Chairman of the First Committee ends with three Annexes: (1) Basic Conditions of Exploration and Exploitation, (2) Statute of the Enterprise, and (3) Statute of the Tribunal.

The Chairman of the Second Committee submitted a document in eleven parts, plus an Annex. The heading of the parts follow:

- PART I. THE TERRITORIAL SEA AND THE
CONTIGUOUS ZONE
- PART II. STRAITS USED FOR INTERNATIONAL
NAVIGATION
- PART III. THE EXCLUSIVE ECONOMIC ZONE
- PART IV. THE CONTINENTAL SHELF
- PART V. THE HIGH SEAS

- PART VI. LAND-LOCKED STATES
- PART VII. ARCHIPELAGOS
- PART VIII. REGIME OF ISLANDS
- PART IX. ENCLOSED AND SEMI-ENCLOSED SEAS
- PART X. TERRITORIES UNDER FOREIGN OCCUPATION
OR COLONIAL DOMINATION
- PART XI. SETTLEMENT OF DISPUTES

The Third Committee, through its Chairman, likewise submitted an Informal Single Negotiating Text. The Text consisted of three unnumbered Parts, the first of which was entitled — Protection and Preservation of the Marine Environment. This document contains eleven Chapters on the following subjects successively: General Provisions, Global and Regional Cooperation, Technical Assistance, Monitoring, Environmental Assessment, Standards, Enforcement, Responsibility and Liability, Sovereign Immunity, Other Conventions on Preservation of the Marine Environment, and Settlement of Disputes. The second unnumbered Part is on the subject of Marine Scientific Research and contains six chapters dealing with: General Provisions, International and Regional Cooperation, Conduct and Promotion of Marine Scientific Research, Status of Scientific Equipment in the Marine Environment, Responsibility and Liability, and Settlement of Disputes. The last unnumbered Part covers Development and Transfer of Technology and its three Chapters are on the subjects of: General Provisions, International Cooperation, and Regional Marine Scientific and Technological Centres.

The fourth document emerging from Geneva was a Working Paper on Settlement of Disputes presented by the Co-Chairmen of the informal Working Group which met during the Caracas session in 1974, and which continued to meet regularly at Geneva.

The Texts mentioned above (U.N. Document A/CONF.62/WP.8/Part I-III, reproduced in full, together with the Working Paper on Settlement of Disputes, in XIV International Legal Materials 682, May 1975) may, as previously stated, be used as a basis for study and negotiation pending the next meeting. That session is scheduled for New York in late March, 1976.

It is encouraging to note the frequency of the Law of the Sea sessions and the narrowing of the chasms that have divided the participating nations in the past. Haltingly, progress is being made and those who

believe that a Law of the Sea Treaty will become a reality within the foreseeable future are urging moderation and restraint so as not to unbalance the delicate negotiations still to be held. The concern, a real one, is that special interests in key countries or groups of countries will move unilaterally and undo the achievements of the past before the multinational solution can be achieved. It is a race against time and the divergent economic and political interests involved are making their respective moves. Thus, to the complexities which have always surrounded the law of the sea must be added a new complicating dimension — the time factor. Can the international community restrain and discipline itself until March, 1976? To a large extent, the success or failure of the Spring Session in New York in 1976 will be determined by the answer to the above question.

INTERNATIONAL WHALING COMMISSION

The Commission, established via a multilateral agreement in 1946 to provide for the proper conservation of whale stocks, and thus make possible the orderly development of the whaling industry took significant action in June, 1975 at its annual meeting in London. Specifically, the Commission gave almost total protection to the finback whale and drastically reduced catch quotas on other species. The cuts were made under new management procedures regarding whale stocks adopted by the Commission last year. They allow selective moratoriums to be placed on the commercial whaling of any species falling below a level considered necessary for survival.

The fifteen members of the Commission are: Argentina, Canada, France, Mexico, Panama, Great Britain, United States, Australia, Brazil, Denmark, Iceland, Japan, Norway, South Africa and the Soviet Union. Only the last eight engage in whaling and two of them, the Soviet Union and Japan, account for 80% of the total whale catch between them.

Comments from Japan and the Soviet Union were not forthcoming immediately after the meeting, but in August, 1975 Premier Takeo Miki of Japan announced that Japan accepted "without reservations" the quotas fixed by the International Whaling Commission.

The action of the Commission was hailed even by the United States which for years has advocated a ten year moratorium on whaling. Amidst all the euphoria, however, it is well to remember that the decimation of the whale population over the years has been drastic; further, that the

Whaling's Commission action does not extend to the waters of non-member nations where whalers are still free to take uncounted number of the species.

U.S. - BAHAMAS FISHERIES CONTROVERSY

In mid-summer 1975 a new Bahamian law, with an effective date of August 1, declared the spiny lobster "a creature of the Bahamian continental shelf." Without claiming sovereignty over the lobster's breeding area, the law makes it illegal to fish, without a permit, this type of crustacean in waters adjacent to the Bahamas, but covering well over 100,000 square miles of the continental shelf. About half of the above area is deemed to be in international waters, i.e. twelve miles off the coast.

The practical effect of the legislation is to exclude from Bahamian fishing grounds, insofar as the spiny lobster is concerned, a large number of Florida fishermen (estimates range as high as 2,000) who have been lobstering for years with only local U.S. licenses.

The United States Government has no basis for protest because the Bahamian law, except for minor details, follows closely a 1953 U.S. law protecting Maine lobsters. The clash, however, arises from the position taken by the Bahamian Government not to issue permits, even if requested, to non-citizens of the United States. This limitation seriously affects Cuban exile fishermen operating from Miami who constitute the bulk of the fishermen seeking the spiny lobster off the Bahamas.

The controversy heated up during July, 1975 and in an effort to reach a compromise negotiations were scheduled between the U.S. and Bahamian Governments for mid-August.

The problems facing the negotiators are not easy, but a provision of the law may be a stepping stone to the ultimate solution. Specifically, this provision allows the Government of the Bahamas, if it is considered in the national interest, to conclude "an agreement between the Bahamas and a foreign state for reciprocal fishing rights by vessels owned by citizens of that foreign state, subject to and in accordance with any terms or conditions contained in that agreement or otherwise imposed by the Government."

According to a U.S. Spokesman the U.S. hopes that the talks would focus on two issues: (1) a means for the Bahamas to "allow access to the

spiny lobster resources by a controlled number of U.S. fishermen," taking into consideration the conservation and other needs of the Bahamas government, and (2) the U.S. desire to develop a "longterm, lasting agreement" with the Bahamas as well as Canada and "other neighbors to utilize the fishery resources shared between us." A Bahamian spokesman replied that the Government "will give the fullest and most careful and sympathetic consideration" to the U.S. position, but that "the Bahamas Banks are something more than a unique geological phenomena and something more than the conventional continental shelf, they are an integral part of the Bahamian archipelago."

The preliminaries sound hopeful but it should be noted that the key issue was ignored. What to do about the non-U.S. citizens who are the most deeply affected? The outcome of the negotiations was thus eagerly awaited by this last group, as well as many other individuals and entities whose fortunes are affected by the Bahamian legislation.

Regretfully, any hopes for a compromise were dashed on August 27 when the negotiations were broken off. At the time a State Department spokesman said: "We made a number of proposals which were reasonable and in the interests of both countries. We indicated we were prepared to consider counterproposals, but regrettably the Bahamas refused to advance any proposals, stating they did not feel there was basis for negotiations." On its part the Bahamian Government declined to comment except to say that the talks "ended today with the Bahamian delegation stating at the conclusion that there was no basis for an agreement as a result of these discussions."

COLOMBIA - VENEZUELA

The nearly ten year old controversy between these two countries over the Gulf of Venezuela was highlighted in late July by a pronouncement from the President of Colombia. In his annual message to Congress, President Lopez Michelson referred to the relations with Venezuela and rhetorically asked — "why not declare . . . that the Gulf of Venezuela is a historic bay, co-owned (*condominio de*) . . . [by] Colombia and Venezuela."

The proposal for co-ownership of the Gulf was warmly received in Colombia, but less enthusiastically in Venezuela where, given its origin, it was respectfully received and promised careful study.

Initially, the Colombian proposal was hailed as a breakthrough in the impasse between the two nations and optimism ran high, particularly in Colombia. Careful reading of the proposal indicates that it was not intended to solve at one stroke the existing problem. The presidential pronouncement made clear that the concept of co-ownership, if accepted by both countries, would not affect the continuation of talks seeking to fix the maritime borders in the Gulf of Venezuela.

CANADA - USSR

In July, 1975 Canada barred two Soviet fishing vessels from certain Canadian East Coast ports on the grounds that Soviet trawlers had exceeded the internationally accepted quotas for the catch of certain types of fish off Newfoundland, Nova Scotia and the Grand Banks. Further, that the Canadian claims for damage to Canadian lobster gear had been ignored. In late August the dispute was settled through a proposed joint commission to deal with fishing problems between the two countries. The new entity, to be called the Joint Fisheries Consultative Commission, is similar to one now existing between the United States and the USSR. In reaching understanding both sides recognized the need to insure strict adherence to quotas and other regulations fixed by the sixteen-nation International Commission for the Northwest Atlantic Fisheries "particularly in light of the urgent need to maintain and restore the stocks" of Atlantic fish. However, the Canadian ports will not be opened until the Consultative Commission is actually established.

CARIBBEAN MERCHANT FLEET

The proposed Caribbean Merchant Fleet (7 *Law. Am.* 485, 1975) was established in San Jose, Costa Rica in May, 1975 as the *NAVIERA MULTINACIONAL DEL CARIBE* (NAMUCAR) under a joint agreement of Colombia, Costa Rica, Cuba, Jamaica, Mexico, Nicaragua, Panama and Venezuela. Guatemala, Honduras and El Salvador elected not to participate at the time; Guyana and Trinidad-Tobago indicated they would join at a later date; the Dominican Republic was not represented.

NAMUCAR, whose initial capitalization of \$30 million will be advanced in equal shares by the founding partners, is scheduled to begin operations in January, 1976 in leased ships or such ships as are available from the merchant fleets of the participating countries. In August, 1975 a group of experts from Mexico, Panama, Venezuela, Cuba, Nicaragua

and Jamaica established a "technical group" in San Jose for the purpose of determining future ship movements, potential markets, routes and ships to be used, and other operational data required before the start of operations.

Creation of NAMUCAR is not without political ramifications. U.S. foreign aid legislation prohibited recipients of U.S. aid from operating ships to and from Cuba, but this fact does not seem to have bothered — at least openly — some of the founders of NAMUCAR. And, this lack of concern was not ill founded for on August 21 the aid prohibition was removed for nations whose ships carry goods to Cuba. This was part of the more dramatic action taken by the U.S. Government on that date when it lifted the twelve-year old ban on exports to Cuba by foreign subsidiaries of American companies. Nevertheless, NAMUCAR is expected to have a serious economic impact on foreign ship lines operating in the Caribbean area if trade between the NAMUCAR nations is reserved for NAMUCAR ships or for ships belonging to the participating nations.

The parallel with the aviation industry is clear. If the developments in air transportation constitute a barometer, foreign shipping lines operating in the Caribbean are in for a period of heavy weather.

PORT ACTIVITIES

Another cooperative venture developing in the Central America area involves the establishment of a Central American Port Authority, recently constituted to integrate the area's port system. Main objective is to construct five new terminals which will become the nucleus of nine international ports planned for the future. The five new installations are scheduled to be located at (1) Caldera and Cienquita in Costa Rica to replace Puntarenas and Puerto Limon; (2) Henecan, Honduras on the Gulf of Fonseca to replace San Lorenzo-Amapala; (3) on the Atlantic coast of Nicaragua; and (4) on Guatemala's Pacific coast to replace San Jose and Champerico. An investment of \$86.3 million between 1975/1980 is projected.

Brazil is studying the feasibility of establishing a governmental Brazilian Port Corporation (*Portobras*) to improve its ports' administration in which, presently, different entities, private and public, are involved. With an initial capital of Cr.\$300 million, *Portobras* may create state subsidiaries in which the private sector may participate in a minority position.

Panama has received approval for a loan from the World Bank for \$24 million to help finance a fishing port on the Pacific side of the Isthmus. The exact location is Punta Vacamonte, about 20 miles west of Panama City. The new port is expected to benefit Panama's fishing industry in general, but local shrimp fishermen and international tuna fleets should be specially favored by the new construction.

The Inter American Development Bank has approved a \$35.5 million loan to the Dominican Republic for the modernization of the port of Haina, situated nine miles west of Santo Domingo. The loan represents 74% of the total cost of the project; the remainder will be advanced by Santo Domingo. It is estimated that when the work is completed, Haina will be the most important port in the country for handling bulk cargo.

INTER-AMERICAN DEVELOPMENT BANK AND THE FISHING INDUSTRY

(EDITOR'S NOTE: In a recent Newsletter, the Chief of the Bank's Fishery Section wrote on the role of IDB and the developments of the fishing industry in Latin America. Extracts from his article follow).

Latin America is responsible for 20 per cent of the world's total fish catch, but it consumes only 1.4 million tons — or 10 per cent of its production. It exports the rest to the industrialized countries, mainly as fishmeal for poultry and cattle feed. Fish exports could make up to 50 per cent of the region's animal protein deficiencies. But to reach that goal, the region would need appropriate technology and innovative, specific promotion policies covering lower-income consumer markets. Moreover, Latin America's unexploited fish resources, if appropriately developed, could fully cover its protein deficiencies and open up an important channel for exporting industrialized products outside the region.

In view of these facts, and as part of a policy designed to promote nontraditional sectors, the Bank in 1970 began to encourage the development of fishing industries in its member countries. Through investment studies, technical cooperation programs, and investment projects, the IDB has been seeking to help its member countries to consolidate a basic production and marketing structure, including fishing fleets, ports, aquaculture, processing industries, marketing networks, personnel training, scientific and technological research, and adequate institutional organization.

Latin America's great potential for salt and fresh water fishing has led the Bank to give special attention to small-scale and independent fishermen. Efforts are being made to group fishermen in co-operatives, to organize their production and marketing methods, to establish business management techniques, and to provide appropriate international technical cooperation.

In the area of industrial fishing, however, the Bank seeks to help create conditions that are necessary to enable shipowners and industrialists to work efficiently from the technical and economic point of view. To that end, the Bank helps to finance the construction of fishing ports, industrial plants for manufacturing products intended for export and for domestic consumption, fish terminals, and the purchase of vessels and the establishment of marketing facilities, and fosters the mechanization of all phases of the industry on the basis of techniques suited to regional conditions — which are completely different from conditions in countries located far from fishing grounds and having a shortage of manpower.

Bank policies on regional fishing follow guidelines based on sectoral studies on resources, markets, and institutional structures, and on guidelines provided by technical and economic analyses and evaluations which are revised periodically.

IDB efforts to promote projects have received the support of the United Nations Food and Agriculture Organization (FAO) through a cooperative agreement. The Bank also works closely with the United Nations Development Programme, the Organization of American States, and other international agencies.

To date the Bank has financed 15 technical cooperation programs having a global cost of \$1.8 million — 12 for integrated investment projects and three for strengthening the administrative structure of institutions involved in the fishing industry.

Bank technical cooperation has benefited the Dominican Republic, Costa Rica, Barbados, Mexico, Panama, Haiti, Venezuela, Brazil, Honduras, Guatemala, El Salvador and Nicaragua.

Since 1973, the Bank has provided \$61.7 million in four loans for investment projects. These loans have helped to finance a co-operative fishing program in the Dominican Republic, a national

integrated fishing project in Mexico, a cooperative program in Panama and an integrated project in Costa Rica for infrastructure and production, involving investments of \$110.3 million. Three other fishery projects are under study.

The projects represent investments of about \$206 million; three new technical cooperation projects are now under consideration.

The Bank's promotion work in the region has had a highly significant initial impact: governments have recognized the importance of fishing as a source of low-cost animal food protein and as a generator of foreign exchange earnings. The fishing industry, moreover, has become an important source of well-remunerated employment for populations centered along sea and river coasts.

New institutional instruments, in both fishery legislation and public administration, have increased the countries' executive and managerial capacity and effectively broadened the activity of enterprises in new fishing development projects.

The loans which have been approved are still at the initial stages of execution, so that quantitative results are not measurable. However, the goals set seek substantial improvements that will affect the national economies.

The work required to promote, analyze, and execute fishing projects in Latin America demands exceptional effort and dedication. Two concrete factors represent the basic parameters in the great majority of the countries: the existence of unexploited fishing resources and the prevalence of hunger or under-nourishment. The big problem is how to increase the purchasing power of low-income families and make fish available to them. Strong and intensive action is required, including government political motivation, institutional organization, technical cooperation for preparing viable projects, financial and administrative systems that are operative and easily managed, as well as constant attention to projects during the execution stage.

IDB and FAO activities have demonstrated that, despite the difficulties involved, clear-cut policies and effective action can bring considerable results in successfully developing economic sectors which, like fishing, are not traditional areas of investment.

U.S. OFFSHORE OIL LEASING

The subject of offshore oil leasing continues to be a source of friction between the Federal Government and some of the States. Specifically, California is seeking a delay in the Administration's Outer Continental Shelf Development Program so as to postpone the scheduled October, 1975 auction of oil rights off Southern California. California claims that Congress is considering several bills to alter the leasing system, and thus considers the Administration's proposed October action premature; further, it seeks time to adopt a coastal management program as a basis for offshore development. California makes the additional argument that the Administration's haste in the matter stems from State Department's "maneuvering" against the Arab oil exporting countries rather than from actual need for domestic oil to diminish U.S. dependence on foreign markets.

Although California is at the forefront of this particular conflict with the Administration, it is reported that several other states are prepared to file obstructive law suits to slow up the Administration's timetable. There appears to be common agreement among the interested States that the role of the Development Program in the overall national energy development has not been clearly defined, that environmental factors have not been adequately assessed, that there has been insufficient consultation with the States, that suitable financial and safety assurances for States are lacking, and that the present bidding system favors the big oil companies. Among other States actively interested in the controversy at this time are New York, New Jersey, Massachusetts and Alaska.

Leasing programs off Alaska and the East Coast of the United States are roughly one year behind the California Program, but the Administration continues to move forward. Specifically, on August 8, 1975 the Interior Department announced selection of 154 potential oil and gas lease tracts covering 1,370 square miles of sea-bed from Delaware to New Jersey (Baltimore Canyon). This represented a 73% cutback from the total 557 tracts, covering 5,000 miles previously identified by twenty major oil companies. The cutback, according to Interior, represented some concessions to environmental and fishing interests. The Department also made it clear that the meeting at which the 154 tracts were picked was attended by officials from New York, New Jersey, Delaware, Maryland and Virginia. The effort of Interior to eliminate complaints from East Coast States that they were being excluded from decisions vitally affecting them was obvious.

OIL SPILL LEGISLATION

On July 19, 1975 the Administration sent to Congress proposed legislation on the subject of oil spills. According to the White House the proposal, if enacted into law, would end the "patchwork" of existing laws on oil spills through the following:

1. Setting up a \$200 million domestic fund to cover claims for oil spill damages.
2. Creating a "uniform nationwide system of strict liability for oil spill damages and payments of claims."
3. Implementing two international conventions dealing with oil pollutions caused by tankers on the high seas.

The fund would be created from a tax of 1 to 3 cents on each barrel of oil produced on or near navigable waters. The fund would pay damages when it could not be determined who was liable for damage or if the party responsible for the damage refused to pay. In the latter case the fund would then attempt to recover the damages from the responsible party.

The "fact sheet" on the bill said it would establish strict liability for the discharger of oil but also set up varying limits and qualifications. The liability of vessels that spill would be limited to \$150 a gross ton or \$20-million, whichever is less. Onshore or offshore facilities, such as pipelines or drilling rigs, would carry a maximum liability of \$50-million. In cases of "gross negligence or willful misconduct" the liability would be unlimited. But the oil "discharger" could claim an act of war or of God as a defense against any liability.

In his message to Congress, President Ford said, "I consider this legislation to be of high national importance as we seek to meet our energy needs in an environmentally sound manner." He pointed out that in 1971 there were more than 13,000 oil spills and that the danger was increasing because of the building of the Alaska pipeline, the construction of deepwater ports for supertankers, and expanded oil drilling on the continental shelf.

MISCELLANY

Brazil has announced that it will take firm measures against various "pirate ships" seeking to recover sunken treasures in Brazilian waters. The use of depth charges to break up the hulls within which the treasures are allegedly held has been found particularly objectionable because of its harmful effects on fish and the fishing industry.