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THE OCEANS

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LAW OF THE SEA CONFERENCE: GENEVA

International attempts toward agreement on basic changes in laws relating to the sea are continuing in Geneva during Spring, 1975. Though the Law of the Sea Conference held in Caracas in Summer, 1974 accomplished little in the way of agreement, much of the customary, yet probably unnecessary disputes like the seating of delegates and similar preliminary matters were settled. These arrangements have set the stage for a more concentrated study of the issues with increased possibilities of agreement. Thus, the meeting in Geneva in 1975.

I. The Issues

Disagreement still exists on almost all matters before the convention, diversity being more severe in certain areas than in others. The issues can be divided into five categories: Economic Resource Zone, fisheries, High Seas resources under an international regime, navigation, and scientific research. A sixth issue, marine pollution is also present, but its urgency is not as great.

A. *The Economic Resource Zone*

An Economic Resource Zone, loosely defined, is the coastal state's jurisdiction over an area of the sea, contiguous to the state's baseline seaward. The seaward distance and the degree of jurisdiction in this zone composes the basis of disagreement. The breadth of the Economic Resource Zone will more than likely be adopted at two hundred nautical miles from the baseline. The state's jurisdiction over the seabed will not be appreciably altered by the adoption of an Economic Resource Zone. Current convention law (1958 Geneva Convention; Territorial Zone, Contiguous Zone, Continental Shelf) gives states competence in the seabed to an area on the

continental shelf to "a depth of 200 meter isobath or to where the waters admit of exploitability." Few coastal states have continental shelves beyond two hundred miles, so agreement among coastal states should be relatively assured.

Landlocked and emerging nations may disagree, but more than likely will obtain trade-offs in other areas, such as fisheries, to allow for agreement on the seabed.

B. *Fisheries*

Fisheries present the greatest obstacle to agreement on an exclusive resource zone. In the United States tuna fishermen that fish the rich Humboldt Current are strongly opposed to a two hundred mile zone, while eastern seaboard fishermen desire an Economic Resource Zone to prevent Russian and Japanese "pulse" fishing on the continental shelf.

The Latin American communities are strongly in favor of a resource zone as are the emerging African nations. Russia, Japan, and the United States have long been opposed to the extension of coastal state jurisdiction, but will more than likely agree, anticipating trade-offs in navigation and international straits areas.

One of the great concerns involving fisheries is the possibility of underutilization of resources in the Economic Resource Zone by coastal states which are unable to fish at a maximum sustainable yield. The world food shortage will demand that coastal states with large fisheries utilize their resources to the economical and biological maximum.

Since landlocked states should have a share in the world resources, some provisions will have to be made for fishing rights in coastal state Economic Resource Zones. A proposed method of assuring fishing rights is a fee system which would be established by the coastal state. The fee would be required to be reasonable and non-discriminatory. In order to assure equitable management, an international arbitration system would be established. One problem, of course, would be the binding effect of the arbitration.

If these problems are settled, there is a strong likelihood there will be agreement on an exclusive Economic Resource Zone with provisions requiring coastal states to maintain the stock level of the living resources at maximum sustainable yield and at the same time allow other nations to exploit the oceans' resources.

It should be noted that there will probably be an extension of the territorial sea to twelve nautical miles from the coastal state baseline within the Economic Resource Zone. The jurisdictional competence in the territorial sea would continue as under current convention law.

C. *Beyond the Economic Resource Zone (High Seas Resources under an International Regime)*

The seabed under the continental shelf convention belongs to the coastal state. Current convention proposals will alter this concept only as to those states whose shelves extend further than two hundred nautical miles from the baseline. Since there are only three states affected agreement possibilities are good.

Beyond the Economic Resource Zone is the High Seas. Many developing nations, fearing economic ruin by exploitation of manganese nodules flooding the metals market, have proposed an international regulation of the High Seas seabed under the label of "common heritage of mankind." Generally, the proposal suggests international distribution of profits from the exploitation of "world" resources.

The probability of agreement and implementation of an international regime is so minimal that mention of the concept is made only to indicate future possibilities.

D. *Navigation*

The superpowers of the world have been concerned primarily with international straits and innocent passage, because of the decrease in mobility of their air and naval forces. There will be many trade-offs to assure freedom in these areas.

The Economic Resource Zone will be treated the same as the High Seas for the purposes of navigation. In the expanded territorial sea, the obligations and responsibilities of both ship and coastal state will remain substantially the same.

E. *Scientific Research*

Scientists can look forward to a decrease in the freedom of exploration enjoyed in the past. There will be strong regulation of research by the coastal state. In the future, almost all work will be cleared through respective state department sections. Delays will be the order of the day with the necessary lead time expanded substantially.

II. The Prospects

Although there is pessimism concerning the outcome of the Geneva Conference, there is a good chance that agreement will be reached on the breadth of the territorial sea and the establishment of an exclusive Economic Resource Zone, as well as some decision on fisheries and progress toward a pollution convention. Even though all matters are not resolved, those that look to the sea for their livelihood can anticipate the law of the future, though perhaps not 1975, and plan accordingly.

FISHING VESSELS SEIZURES

In February, 1975 seven U.S. tuna fishing vessels were seized by Ecuador within the 200 mile limit and brought to the port of Salinas until fines were paid. This incident is one more in a series of seizures by Ecuador which has seized ninety-seven U.S. tuna boats in the last ten years. An increase in fines and confiscation of the catch will add about \$2.5 million to the approximately \$50 million already paid Ecuador for previous seizures. The tuna fishermen find themselves in a difficult position even though the U.S. Government reimburses them for about 70% of the fines paid. In addition to the Ecuadorean Government they now find themselves in opposition to other U.S. fishing interests (salmon and lobster) which, together with oil interests, are advocating an extension of coastal state rights up to 200 miles from the shore.

In a related action military aid to Ecuador was discontinued in late January 1975, based on seizures similar to those which occurred in April. Aid shut off under such circumstances is mandatory under current U.S. law.

SEABED JURISDICTION

On March 17, 1975, the Supreme Court of the United States settled conclusively (*U.S. v. Maine et al*) the jurisdictional dispute between the states and the federal government concerning the seabed.

The case originated in June, 1969 with the filing of a complaint by the United States against thirteen Atlantic coastal states alleging the exclusive jurisdiction of the federal government in the seabed beyond three geographical miles from the low watermark. The federal government relied primarily on the sovereign rights of the national government as expressed in Justice Black's opinion in *United States v. California* 332 U.S. 19 (1947).

The states relied on the sovereign rights as successor from the Crown of England. The Court, in affirming the Special Master, cited its previous decisions in *U.S. v. California, supra*; *U.S. v. Louisiana* 339 U.S. 699 (1950); and *U.S. v. Texas* 339 U.S. 707 (1950) as authority and held that dominion over the marginal sea was first accomplished by the national government and that the constitutional system vests paramount rights in the federal government over the ocean and its seabed.

In 1953, Congress passed the Submerged Lands Act, deeding to the states rights in the seabed to the three mile limit. The court had little difficulty in affirming congressional authority to deed the lands but also cited congressional intent to retain both dominion and imperium authority over adjacent subsoil beyond the three mile limit.

Congress further expressed rights over the adjacent seabed by enacting the Outer Continental Shelf Lands Act of 1953, which declared the subsoil and seabed of the Outer Continental Shelf subject to the jurisdiction of the United States.

There seemed to be little question that the Court would affirm its previous decisions in *California* and *Louisiana*. The decision does, however, eliminate any doubt as to the jurisdictional rights in the seabed beyond three miles. Leases of land for the purpose of oil exploration can now proceed without legal question as to authority.

On April 14, 1975 the Chairman of the U.S. Senate's Commerce Committee's National Ocean Policy study proposed major changes in the system of leasing federally owned offshore lands beyond the three-mile coastal limits of the United States for oil and gas development by private industry. According to its proponent the plan would assure an equitable return to the Treasury from the leasing, would greatly reduce the initial "front end" bid under the present system and, thus, would make more capital available for exploration and open up the bidding to smaller, independent companies.

It is expected that the plan outlined above will be introduced as a bill in the present session of the Congress.

SEA FARMING

World concern over the depletion of food reserves has caused scientists, economists, government leaders and others to suggest that the

ocean may be the last hope for supplying the world's growing population with protein. Studies have indicated that most of the cultivable land in the world is already being utilized for farming where it is economically feasible. The increase in productivity by use of chemical and natural fertilizers has been inadequate.

The sad truth is that the ocean will not supply the needs of the world now or in the future. Almost all of the traditional fishing grounds of the world are being utilized, most beyond the maximum sustainable yield level. If the world population growth continues at its present rate even these traditional fisheries will not produce adequate food sources.

An answer to the food shortage may well be through the development of aqua culture, or fish farming. The concept is not new. The Japanese have maintained oyster fisheries for many years as well as experiments with shrimp. However, the systems have proved to be economical only in those products that are considered delicacies. The expense of providing food for the animals being cultured has demanded high costs for the final product.

Aqua culture has also run into difficulty because the need to be located near the ocean engenders competition with recreational and industrial facilities for the contiguous land.

Scientists have approached the problem by attempting to find inexpensive food for maintenance of the culture. At Humboldt State College in California, scientists have made advances in the culture of Dungeness crabs by supplying food from shrimp skins and other by-products from a nearby fishery. Prior to that time there had been no utilization of the skins. The scientists also were able to move the experiments to cages away from the ocean frontage and still sustain life in the animals. The economics of production in this manner have not been thoroughly studied but growth rates and cannibalism among the crabs seems to be substantially reduced.

University of Delaware scientists have a promising new method of allowing oysters and clams to be grown away from the coastal areas. The method makes use of a large tank in which the shellfish are placed. On the sides of the tank algae is grown. The food source for the algae is the waste from the shellfish, while the food source for the shellfish is the algae. The tank has a recycling process, allowing for continuous use of the same sea water.

Means of artificially stimulating certain ocean areas in order to increase productivity are also now in the experimental stages. Almost all of the major world fisheries are located on the continental shelves. The best of these fisheries occur where there is an upswelling of the colder bottom waters. The Humboldt Current off the coast of Chile is a prime example. This upswelling stimulates growth of marine life. Columbia University scientists have developed a system to create an artificial upswelling in St. Croix, Virgin Islands. The method includes the use of pipes placed in the ocean to a depth of 2400 feet or more to bring the colder water to the surface to be warmed by the sun. The scientists report that the rate of growth of shellfish and other marine life has increased four to six times over the rate under natural conditions.

Many scientists and others are optimistic about the future possibilities of aqua culture. Though aqua culture may not be the sole answer to the rising food shortage, a much larger supply of world protein could be provided through its intelligent utilization.

SUPERTANKERS AND OFFSHORE DOCKS

Late in December, 1974, the Congress of the United States passed legislation, subsequently signed into law by the President, allowing construction of deep water ports outside territorial waters for supertankers. The law (Deepwater Port Act), is seen by many to be an economical and environmentally sound solution to the risks involved in loading and unloading of deep draft ships. Transportation of crude oil in large volumes drastically reduces the cost of the oil. The offshort ports will, according to some, reduce the risk of collisions and damage from oil spills.

The new law imposes penalties for damages caused by oil spills from the ports or the tankers, up to \$20 million for the vessel owners and \$50 million for the terminal licensees. However, many do not agree that the supertankers and deepwater ports will be environmentally sound. Though the risk of collision may be reduced, the chances of a disastrous spill, such as the one from the Torrey Canyon off the English coast, are much greater.

The United States and Canada have already become involved in a dispute over the establishment of a deepwater port across from the Canadian border near Maine. Since the supertankers must traverse

Canadian waters to reach the proposed port, Canadians fear pollution of the clean waters of the Bay of Fundy and fisheries of the area.

The State Board of Environmental Protection in Maine has held hearings to determine the dangers from pollution, but a final decision has not been reached at this writing. Environmentalists and Maine industrialists have been at odds over the proposed port industry, pointing generally to the state of the national and state economies and the energy crisis.

Port Harkesbury, Nova Scotia, on the other hand, is actively seeking deepwater ports and the inevitable pollution problems, arguing the lack of major population centers in the general area. American oil companies are reluctant, however, to invest in foreign development because of the growing independence of Canada, which manifests itself in possible future limitation of oil products being shipped to the United States.

Whatever the outcome of disagreements on the international level and objections by national environmentalists, the use of supertankers as a means of transportation of oil products is inevitable. Requirements for the prevention of oil pollution in the new law should greatly lessen the chances of a major oil spill and at the same time allow for some relief of the growing energy crisis.

POLLUTION

The projected dumping of poisonous waste in the South Atlantic by a tanker under the control of the Finnish State Oil Company drew strong protests from Argentina and Brazil. Finland heeded the protests and the tanker was ordered to return to Finland with more than 15,000 pounds of arsenic trioxide and some potassium oxide. Brazil's complaint to Finland was based on its fear that ocean currents would eventually bring the poisonous matter to its shores; Argentina joined the protest.

COLOMBIA-VENEZUELA

With the statement that there was "nothing new to report" a high Venezuelan government official, in mid-April, characterized the status of the dispute between the two countries over the Gulf of Venezuela. The difference between the two neighboring States has been considered at the highest levels of government, but still remains unsolved.

CABOTAGE

Two bilateral agreements in South America on the subject of cabotage are of interest, particularly with the growing trend to form multilateral organizations within the economic integration movement in the Hemisphere. Specifically, Chile and Brazil have agreed that commercial maritime traffic between the two nations will be carried out on Chilean and Brazilian flag vessels. A similar agreement has been reached by Peru and Argentina.

CARIBBEAN MERCHANT FLEET

A multinational fleet of cargo and passenger vessels to operate in the Caribbean, proposed by Mexico, has found support in principle by the nations approached by Mexico. Alleging the existence of excessive maritime rates in the Caribbean area, among other things, a Mexican Mission has been presenting the project at the highest governmental levels in countries bordering the Caribbean. A preliminary meeting of seventeen interested countries took place in Mexico City in mid-April, and a more formal meeting is planned in San José, Costa Rica in early May, 1975 during which it is expected that the new legal entity will be formed. Operations could begin six months thereafter. Nations invited to join are: Mexico, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, Guyana, Trinidad & Tobago, Barbados, Grenada, the Dominican Republic, Haiti, Jamaica and Cuba.

SHIPBUILDING

Brazil's shipbuilding industry continues to show steady growth. A recent order for twenty-five ships totalling \$295 million included six grain carriers. Orders came from Chilean, Liberian, Panamanian and West German customers.