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The Oceans

Staff Report

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THE OCEANS

STAFF

EDITOR's NOTE: *Lawyer of the Americas* takes pride in starting this particular report on The Oceans with a personal note regarding its regular Contributing Editor on the subject—Professor Thomas A. Clingan, Jr. of the University of Miami School of Law.

Professor Clingan joined the *Lawyer of the Americas* in February 1971 and since that date has been a faithful and enthusiastic contributor to our publication. Like many others, his efforts in behalf of the *Lawyer* have been made at a personal sacrifice, particularly when higher commitments demanded more and more of his time. Yet, in spite of incessant and increasing pressures he managed to find time for the *Lawyer*; an effort deeply appreciated by the Editor, and surely by his readers.

Professor Clingan has brought to the *Lawyer* more than a series of factual reports on the subject of Ocean Law. His background, dedication and expertise on the law of the sea have produced a number of articles sprinkled with the knowledge of one truly involved in the major national and international events in the ocean area. His competence in this highly specialized field was perfectly obvious to us; others soon came to recognize it also. Thus, it is with great pleasure that we reproduce below the press release issued when Professor Clingan received a well merited honor from the government of the United States:

University of Miami law professor Thomas A. Clingan, Jr. is on leave to serve as Deputy Assistant Secretary of State for Oceans and Fisheries Affairs in Washington, D.C. A recognized authority in the field of ocean law, Professor Clingan is also Acting Assistant Secretary, heading the Bureau of Oceans and International Environmental and Scientific Affairs, established October 14, pending appointment of an Assistant Secretary.

In January, 1974 Professor Clingan was appointed by former President Nixon to the National Advisory Committee on Oceans and Atmosphere. He has served as a member of the

Ocean Affairs Board and Committee on Freedom of Scientific Research of the National Academy of Sciences, and on the Advisory Committee on Law of the Sea to the Department of State. In 1973 he attended as member of the U.S. delegation an eight-week session of the United Nations Committee on the Peaceful Uses of the Seabed and Ocean Floor Beyond the Limits of National Jurisdiction, held in Geneva, Switzerland. This past summer he served in the 80-person U.S. delegation to the United Nations Law of the Sea Conference in Caracas, Venezuela.

Professor Clingan received his bachelor of science degree in 1950 from the U.S. Coast Guard Academy and his Juris Doctor degree (with distinction) in 1963 from George Washington Law School where he taught before joining the University of Miami School of Law. From 1973 to 1974 he served as interim dean of the law school.

THIRD LAW OF THE SEA CONFERENCE

The Third United Nations Law of the Sea Conference concluded in Caracas on August 29, 1974. The First and Second Conferences were held in Geneva in 1958 and 1960, respectively.

Approximately 3,000 delegates from nearly 150 nations met from June 20 to August 29 in an effort to draft the framework for a new treaty which would replace the Convention on the Law of the Sea hammered out at Geneva in 1958. As expected from a multi-national gathering in which deep differences in political, social and economics views prevailed, the results were far from uniform. For some states little was accomplished; others, if not totally satisfied, at least felt that some progress had been made. Regardless of individual evaluations on the Conference two facts stand out — no substantive issues were decided and no articles for a new convention were adopted.

Nevertheless, the Conference may be said to have accentuated certain trends clearly discernible prior to the Caracas meeting. Acceptance of a 12-mile territorial sea and an additional economic zone to a maximum of 200 miles found favor with a majority of the participating states. But acceptance of this proposal is, in the view of many states, dependent on the satisfactory solution of other basic issues, e.g. navigation rights through international straits, the limits of the continental shelf and the demands of landlocked states, among others.

The Head of the United States Delegation has expressed the opinion that the Conference produced some positive results. Among these he lists: 1) The organization of the vast array of the law of the sea issues and proposals into a comprehensive set of working papers containing precise treaty texts and reflecting trends on each precise issue; 2) the relatively easy transition from a preparatory committee of about 90 to a conference of almost 150, including many newly independent states; 3) the inclusion of a 12-mile territorial sea and a 200 mile economic zone was all but formally agreed subject to the acceptable resolution of other issues; 4) initial progress toward negotiation of the basic question of exploitation of the deep seabeds; 5) replacing traditional political and regional alignments with informal groups whose membership is based upon similarities of interest on particular issues; and 6) increasing the number of private informal negotiating meetings.

The feeling of cautious optimism of the United States is shared by a key nation in Latin America—Mexico. Speaking during the general debate at the XXIX United Nations General Assembly, Ambassador Alfonso Garcia Robles had this to say about the Caracas conference:

Another international meeting that seems to us equally worthy of praise by this Assembly is the third United Nations Conference on the Law of the Sea, recently held in Caracas. Though the Conference did not successfully complete the complex and difficult task with which it was entrusted—as was obvious to participating countries from the very beginning—thereby making it necessary to call a second conference for next year, it is unquestionable that important progress was made in certain vital areas.

The proposal for a twelve-mile limit of territorial waters, to be completed with an additional economic zone known as “patrimonial waters” according to a Mexican suggestion, over whose sea, seabed and subsoil resources the coastal state would have the same right of exploration and exploitation as it does over its territorial waters, without in any way infringing on freedom of navigation and overflight, was approved by a large majority of states.

Further, considerable headway was made in acceptance of the doctrine that the resources of seabeds and subsoil outside national jurisdiction are the common patrimony of mankind

and their exploitation should therefore be placed under an international authority to ensure equitable distribution.

We dare to hope that the continuation of this task next year in Geneva will conclude with the signing of a general agreement to codify the multiple aspects of the law of the sea, an effort initiated by the United Nations in 1958. We believe that this would be in the best interest of both coastal and noncoastal countries, and the great sea powers.

Continuation of the quest for a general agreement is scheduled for Spring, 1975 at Geneva. The internationalists concerned are too seasoned to express anything more than guarded optimism concerning the results expected at the next meeting. Nevertheless, the dialogue will continue and this in itself is a hopeful sign given the depth of feeling generated by the multitude of issues to be resolved by the participating states. It must be obvious to all concerned by now that the matter is too complex for ready made solutions and that the answers, if they are ever forthcoming, will arrive only after prolonged debate and a willingness to compromise, whatever the reasons.

DEEP SEA MINING

A novel claim to mineral rights in the deep ocean floor was filed with the U.S. Secretary of State by Deepsea Ventures, Inc., a private concern, in November, 1974. A document entitled "Notice of Discovery and Claim of Exclusive Mining Rights and Request for Diplomatic Protection and Protection of Investment" sets forth Deepsea's claim to title, and its intention to mine a deposit of manganese nodules in the eastern part of the Northern Pacific.

Based on Congressional testimony by a representative of the Department of State that:

It is certainly the position of the United States that the mining of the deep seabed is a high seas freedom and I think that would be a freedom today under international law. And our position has been that companies are free to engage in this kind of mining beyond the 200-meter mark subject to the international regime to be agreed upon, and of course, assured protection of the integrity of investment in that period . . .

Deepsea alleges validity of the claim under International Law until an international regime is established, and seeks diplomatic protection and protection of the integrity of its investment by the U.S. Government.

Deepsea has given notice of the above to other U.S. government agencies, and a number of oceanographic institutes, foreign governments and other firms, national and foreign, interested in deepsea mining. The future of Deepsea's claim will, without a doubt, be watched with interest by the law of the sea fraternity.

FISHING RIGHTS EXTENSION

Certain segments of the U.S. fishing industry strongly backed a bill introduced in the Senate to extend U.S. fishing jurisdiction from the present 12 miles to 200 nautical miles until a future Law of the Sea Conference reaches agreement on the subject. Claiming that the bill was needed to protect seriously depleted fish stocks, the proponents prevailed in the Senate on December 11, 1974. The outcome in the House, however, did not appear favorable. The Chairman of the House Fisheries Subcommittee opposes the measure. The Administration is also opposed on foreign policy grounds, and lastly other segments of the fishing industry believe that passage of the bill would bring about retaliation on those U.S. fishermen who operate long distances from the United States. (The bill did not become law in the 93rd Congress.)

BILATERAL VENTURES

Argentina and Poland have agreed to form a joint fishing company which will operate fishing vessels constructed in Argentina. A catch of 150,000 gross tons per year is planned by the new venture.

Bank of Brazil has extended to *Nacional Financiera* of Mexico a line of credit amounting to \$30 million to finance the importation of fishing vessels constructed in Brazilian shipyards.

GULF OF VENEZUELA CONTROVERSY

Both Venezuela and Colombia have expressed a desire to renew negotiations to reach "a just, balanced and acceptable" agreement regarding

the dispute concerning the Gulf of Venezuela. Talks on the subject have been in recess for a few months, occasioned by changes of governments in both countries.

The very cautious atmosphere in which both governments wish to negotiate this matter was somewhat disturbed in mid-October, 1974 with the publication of a manifesto by a large number of retired Venezuelan military officers. In strong language the officers concerned expressed the opinion that Venezuela should not cede even "one square millimeter of land or sea beyond Castilletes."

An incident at sea further served to highlight the matter. Specifically, in late December, 1974, two Venezuelan fishing vessels allegedly operating in Colombian waters were seized by Colombia and brought to Cartagena for adjudication. At the time of writing the fate of vessels and crews was undetermined inasmuch as Colombia was moving very cautiously on the matter.

MERCHANT MARINE

Puerto Rico continues to increase its investment in a merchant marine (6 *Law Am.* 891). Latest development is the acquisition of three vessels for the transportation of trailers, making a total of fourteen vessels of this type under Government control. Of these only six may presently be used pending approval by the Federal Maritime Commission of an agreement between Puerto Rico and Sea Land Corporation.

An investment of Cr \$20 billion has been announced by the Brazilian Transport Ministry to finance the construction of more than 700 vessels. Completion of the building program will increase the tonnage of the merchant fleet by 4.5 million tons by March, 1979.

Argentina plans a \$800 million investment to increase its merchant fleet to 1.6 million tons over a five year period. In a related development, a contract amounting to \$48 million was signed in October, 1974 to begin a new seaport at San Antonio Este in Rio Negro.

SHIPBUILDING AND SHIPYARDS

Mexico has announced plans to construct or obtain abroad about 1,000 shrimp trawlers and a dozen large tuna fishing vessels. Private shipyards plus Mexican government installations are producing nearly

40 vessels a month to take advantage of increased maritime activity as the country, "inward looking" in the past, capitalizes on its own ocean resources.

A. B. P. Appledore Ltd. of London has signed an agreement with Puerto Rico to build an \$80-million shipyard on the island's South coast. The Government's Economic Development Administration has been trying to interest investors in establishing a shipyard in Puerto Rico for some time. The agreement promises initial financing from the government Development Bank of \$10 million. The project will include, in addition to facilities for construction and repair of ships a training institute on shipbuilding skills.

Astilleros Alianza, a private Argentine firm, has begun work on a new shipyard at Puerto Madryn in the Punta Este area, and Argentine's YPF has ordered two 60,000 tankers to be built by a state owned company — *Astilleros y Fábricas Navales del Estado*.

Peru's major shipyard development at Callao concerning the building of supertankers continues to move forward. British governmental assistance seems virtually assured, and British private firms will provide construction and consultant services.

A marine platform being constructed in the United States is scheduled for delivery to Chile in January, 1975. The platform is to be used for oil drilling in the Straits of Magellan, and the expected deposits are expected to meet at least one third of Chile's oil needs.

OCEAN DUMPING

The U. S. Environmental Protection Agency (EPA) has ordered DuPont de Nemours & Co. to stop dumping chemical wastes in the Gulf of Mexico 230 miles off the coast of Florida, even though no ecological harm from the practice had been shown. The EPA Administrator said the Marine Protection, Research and Sanctuaries Act of 1972 obliged him to deny renewal of an interim dumping permit because he had not been able to establish that there would not be "unreasonable environmental degradation." He also said the wastes fell under a "special care" category of the 1972 International Convention on the Prevention of Marine Pollution, and that the Marine Protection Act "and the public interest do require at the very least" that "further technical studies are necessary

before a permit could be granted." The wastes came from the manufacture of three products — ethylene glycol, a constituent of polyester film, and a fungicide. The principal waste component that the Environmental Agency was wary about was antimony, a metallic element that can have toxic effects. Du Pont said its wastes were too voluminous to store indefinitely and that it would study processing alternatives. The company also said it was "extremely disappointed" with the agency's ruling because in five years there had been "absolutely no indication of environmental damage" from its ocean disposal methods. "The company believes it has fulfilled all requirements of the Marine Protection Act to support reissuance of the permit," a duPont statement said. "The EPA has reviewed our practices five times and has at no time disagreed with the conclusion (of no evidence of damage)."

On October 2, 1974, in Leonardo, New Jersey, EPA dedicated a 2.6 million gallon test tank in an attempt to find better means to combat the nation's "intolerable number of oil spills." The tank, which is 670 feet long, 65 feet wide and filled with 8 feet of water can generate waves to duplicate marine conditions, short of the open sea. In a dedication speech, an EPA official stated that there were as many as 14,000 potentially damaging spills per year, and that "nearly one million gallons of oil were spilled in 83 cases investigated by EPA in the first three months of 1974 alone." In December 1973 the EPA set up regulations requiring any facility that stores more than 1,320 gallons of oil above ground or more than 42,000 gallons below ground to develop its own spill-control and countermeasure plan. The plans must detail the kind of spills that might occur and the equipment on hand to contain them and clean them up.

The plans were to be filed with the EPA by July 1974 and be ready for implementation by January, 1975. According to EPA filing of plans is lagging and many of the plans filed fall short of containing the oil. The new tank, under government control, is designed to show the type of equipment that can do the job.

In late October, 1974 the Shell Oil Company announced that the VULCANUS, an incinerator ship, had successfully eliminated 4200 metric tons of industrial waste at a burning site in the Gulf of Mexico, some 125 miles south of Galveston, Texas. Authorized by EPA this was the first time that wastes were incinerated aboard ship off the U.S. coast. After the operation, Shell reported that incineration averaged over 99.9% and no change in the acidity of the water. The results are to be made public by EPA.

RESEARCH

Exploration of the ocean depths continues (6 *Law.Am.* 887). Plans are now being made to drill further than ever before (more than a mile) into the bedrock of the ocean floor to determine the structure of the earth's oceanic crust. The continued effort, scheduled to begin in August, 1975 by the *GLOMAR CHALLENGER* is a six year program to be known as IPOD, International Plan of Ocean Drilling. The deepest penetration into bedrock beneath the seas so far has been 1,920 feet when the ship drilled last summer near the site west of the Azores where French and American deep-diving craft were exploring the mid-Atlantic rift valley.

A seaweed grown commercially off the coast of California, kelp, is being considered as a new energy source. Scientists from the California Institute of Technology are advancing the theory that kelp, the fastest growing plant known, may supply energy in large quantities if it can be grown in large scale. About 300 full-grown kelp plants will comprise the first "marine energy farm," near San Clemente Island off the Southern California coast. The project is designed to determine if the kelp will flourish on artificial bottoms anchored in deeper water than that in which it generally grows. The theory is that if the plants can be grown in sufficient quantity they might provide a vast amount of petroleum-like products for generating food, fuels and electric power.

Panama will launch a Maritime Archaeological Project in 1975 which may shed further light on the maritime history of the Hemisphere. The project, under the direction of a British archaeologist, will, among others, seek: 1) To find one of the vessels of Christopher Columbus; 2) to locate one of the two ships of Francis Drake that went down at Portobelo in 1596; 3) to find a French sailing vessel that sank off Darien in the 17th century; 4) to locate the ship lost by Henry Morgan at the mouth of the Chagres River; 5) to recover a Spanish galleon which sank in the Las Perlas archipelago.