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THE OCEANS

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CARACAS MEETING

In August, 1973, the United Nations Committee on the Peaceful Uses of the Seabed and Ocean Floor Beyond the Limits of National Jurisdiction concluded its preparatory work of the third international Law of the Sea Conference. In October, the General Assembly of the United Nations scheduled a two-part meeting for that Conference. The first, an organizational meeting, to be held at the United Nations in New York from December 3 to December 14, 1973. At that meeting, questions of organization, membership, and voting would be discussed. The second, substantive session of the meeting, has been scheduled to take place in Caracas, Venezuela, from June 20 to August 29, 1974.

GENEVA REPORT

The preparatory work for LOS III has now been completed, at least in the sense that the life of the Seabeds Committee has run out. The last meeting at the end of August was greeted with mixed emotions. Most nations appeared to sense a feeling of disappointment that more was not achieved by way of narrowing the issues. But there were also feelings of relief on the part of the few nations who would rather see no conference than a conference held along the lines trends seemed to be indicating.

The Committee's objective was to prepare a series of draft articles indicating, where possible, agreement on issues, and where agreement was not possible, narrowing and making more precise the nature of the disagreements in order that political choices between rational alternatives could be made once the Conference begins.

Because of the complexity of the issues and because of the manner in which the Seabeds Committee was organized, there was limited agreement on treaty articles or alternatives. However, the ultimate conclusion was that despite disappointing progress, the meeting should continue as nearly on schedule as possible.

The purpose of this report is to review the progress made by the Seabeds Committee, and to take a backward look at its organizational difficulties. First, by way of review, the Committee organized itself into three sub-committees. Each of these was given a basic area or areas of investigation. Subcommittee I was charged with developing a regime and machinery for the seabed area beyond the limits of national jurisdiction, wherever those limits might be established. It carried out its mandate by creating a working Group (known as Working Group I), and several ad hoc drafting groups and other units as needed. The Second Subcommittee, and its Working Group of the Whole dealt with problems of the territorial sea, international straits, archipelagoes, continental shelf resources, fisheries, and other related subjects. Subcommittee III was divided into Groups to deal with problems of the marine environment (Working Group 2), and Marine scientific research (Working Group 3).

The major difficulty throughout the considerations of the Seabed Committee was, ironically, its potential strength. Decisions were taken by consensus, meaning that each nation had the veto power. Such a rule of procedure clearly places heavy demands upon the skill and patience of the chairman of each group, but once decisions are taken, the rule assures broad agreement. Since there is a growing feeling that a new convention on the Law of the Sea must have broad acceptability if it is to be truly effective, the consensus rule is a good approach for the purposes of preparatory work.

The greatest progress during the summer meetings appeared to be achieved in Subcommittee I with regard to a deep seabed regime. Perhaps the basic reason for this was that this subject did not require the members to come to grips with the difficult and vexing problems of jurisdiction. The work began with the understanding that the area being discussed was beyond the limits of national jurisdiction, wherever that line might occur. There were no formal negotiations of a substantive nature, however, the Committee, through its Subcommittee and drafting groups was able to prepare alternative articles utilizing bracketed language where needed to show that there were differing points of view. Chairman Paul Engo of Cameroon attempted on several occasions to encourage delegations

to discard or limit technical discussions in favor of broader substantive negotiations on the issues, but most nations seem to feel that the task of the Committee was better served by drafting alternatives which would narrow the areas of disagreement to the maximum extent, leaving substantive negotiations for the conference itself.

While many draft articles achieved a second reading, certain basic areas of disagreement were still present, and were highlighted during the discussions. The most basic of these concerned the relative powers of bodies of an international authority. While all nations agreed that there should be a broadly based international authority for the governance of the area of the seabeds beyond national jurisdiction, there was disagreement on the functions of its constituent parts or executive body. Some nations, perhaps expressing the predominant view, felt that the effective power in the new organization should rest in the Assembly, where all parties would receive an equal vote. The developed countries were uniform in their view that the Council should play the primary role, with a weighted voting system designed to protect the heavy investment those nations might be making in the oceans. Under this view the assembly would have a recommendatory role.

A further difference of opinion arose with regard to the system for resource exploitation within this area. Early in the session, the Latin American States introduced a proposal embodying the enterprise concept. Under this system, there would be established an operating enterprise within the authority exclusively empowered to exploit the seabed of the area either directly or through joint ventures and contracts. The opposing point of view generally favored a licensing authority, rather than an enterprise. The basic differences between the two would be that under the licensing system, any qualified operator meeting international standards would have the right to exploit, while under the enterprise system that power remains with the enterprise itself. While disagreement on this issue was apparent, it was equally apparent that fruitful discussions were taking place as to how these concepts might be brought closer together.

Another issue regarding the deep seabeds centered on price and production controls. There was fear on the part of some nations that uncontrolled exploitation of deep seabed hard mineral deposits could prejudice the economic position of certain mineral exporting developing nations.

One of the most difficult issues in the negotiation will clearly be that of the composition of the Council. There is at this stage no sign of

concession on how the Council should be structured, and the working group passed over the question simply setting forth a set of alternatives for further use.

With regard to the work of Subcommittee II, the most difficult issues were those related to the territorial seas, resources within national jurisdiction, and straits. One block of nations clearly expected broad territorial seas, i.e., 200 miles. But this was a minority view. Most nations were willing to accept a universal limit to territorial seas of 12 miles, although some would condition their acceptance on agreement to one or another qualification. For example, the U.S. conditioned their acceptance on agreement to freedom of transit through and over international straits. The supporters of the Santo Domingo Declaration would accept 12 miles if linked to a special economic zone or patrimonial sea. The general support for a 12-mile limit indicated that these issues will be negotiable.

The question whether straits used for international navigation should receive special treatment from other areas of the sea is still, however, under debate. Major maritime powers continued to stress the need for a right of passage through such waters, but many others felt that the existing regime of innocent passage would be adequate protection. The majority of States, however, remain silent on the issue. Affecting both the straits issue and the breadth of the territorial seas was the position of the archipelago States. The Philippines, Indonesia and Fiji continued to press for a special regime for such groups of islands, permitting them to enclose large areas of seas within their perimeters by drawing straight baselines around the outermost islands. Regardless of the resolution of this issue, island regimes continue to be a problem of their own. This was one of the least understood problems during the summer discussions. Some preferred the concept that islands should be entitled to the same territorial seas and resource rights as mainland areas. Others would not. Still others would differentiate between islands based upon their location, size, population, and other similar factors.

With respect to coastal State resource jurisdiction beyond the limits of the territorial seas, there seemed to be widespread support for some kind of special economic resource zone, perhaps to a limit of 200 miles or even more. The U.S. draft articles on the Coastal Seabed Economic Area and the Patrimonial Sea concept are typical of the general principle, though there are wide variations in the details. Under the concept, coastal nations would have the exclusive right to authorize and regulate, at the minimum, non-living mineral resources within the zone subject to

minimal international pollution standards. Nations disagreed, however, whether living resources of a non-sedentary species should be included within the regime.

There were basically two controversial issues in connection with continental margin resources. The first had to do with the relationship of the existing regime for the continental shelf and the new regime of the economic resource zone. Some, such as the Latin American States supporting the Santo Domingo Declaration, felt that there should be a dual regime. To a limit of 200 miles, the coastal State's rights would be controlled by the economic resource zone rules, while beyond that limit, the continental shelf regime, as provided for in the 1958 Geneva Convention, should apply. Others, however, were of the view that an outermost limit of 200 miles should apply for all purposes. The U.S. took no position on the outermost limit. The other issue involved the desire by landlocked and other "geographically disadvantaged" States to share in or have access to the resources of their neighboring states.

With respect to fisheries, most nations seem to favor a zonal approach, allowing the coastal State jurisdiction over its living resources to a fixed distance—most frequently suggested to be 200 miles. The U.S. continued its support for a species approach, emphasizing the need for maximum utilization of all popular stocks. This concept would assure distant water fishing fleets of other nations the right to utilize stocks of fish within the jurisdiction of a coastal State if that state was unwilling or unable to do so. Presumably, allocation of such unused stocks would be to foreign fleets based upon a historical rights concept. Some nations, however, such as Japan, the USSR, and the U.K. continued to advocate distant water fishing rights in general. The U.S. further continued to press for special rights for the coastal State for anadromous fish stocks, and for international, as opposed to coastal State, authority over highly migratory fish. There was a great deal of debate on fisheries problems, but no draft alternatives were adopted by Subcommittee II.

In Subcommittee III, there was again a major split on the issues of importance. With regard to pollution, the majority of interested States split on the question of coastal State vs. international authority. The United States, spokesman for one point of view, stressed the importance of universal, exclusively international pollution standards for ships, no matter how strict. Canada, on the other hand, urged that coastal States be permitted to exercise jurisdiction to protect their own special interests, noting problems in the arctic areas as examples. It was Canada's view

that the coastal State should be competent to prescribe rules and to enforce them. The United States, on the other hand, took the position that standards should be internationally prescribed, and enforcement should be permitted only by flag States and port States. There was no narrowing of areas of disagreement on these issues. Some nations also voiced concern over the economic implication of pollution controls. There appeared to be a strong desire on the part of developing countries to build in exceptions to environmental standards which might restrict economic development. Finally, there was a great deal of concern over the nature of the body most appropriate for establishing standards for vessel source pollution. IMCO, the most frequently mentioned body, came under heavy attack on the ground that its Council was heavily influenced by the maritime nations of the world.

Scientific research questions also polarized in Working Group 3. On the one hand, many nations felt that scientific research should not be conducted within the area to be known as a special economic zone (at least 200 miles), without the prior consent of the coastal state. This concept would be an extension of the regime of the continental shelf regarding research. The USSR was in strong opposition to the consent regime, while the Peoples Republic of China favored not only such a regime in the economic resource zone, but perhaps in the area previously known as the high seas as well. The United States recognized the traditional rights of sovereignty of coastal States within territorial seas, but suggested a different kind of regime for science in the economic resource zone. Under this proposal, research vessels would be required to meet certain criteria regarding publication of results, participation by the coastal State, sharing of data and samples, notification, pollution protection and the like. Once a vessel was certified as representing a qualified institution in purely scientific research and had met the criteria, no consent within the economic resource zone would be required. Along with scientific research in ocean space, countries frequently raised questions regarding the transfer of marine technology. However, formal discussions of technology transfer were vague and poorly structured.

Finally, during the closing days of the summer session, the subject of dispute settlement was raised. The United States tabled a set of draft articles calling for the establishment of a Law of the Sea Tribunal with final binding jurisdiction. This would not preclude settlement of disputes by negotiation, good offices, mediation, inquiry, or conciliation. However, any party to a dispute could call for mandatory settlement by the tribunal at any stage of the dispute. Further, the tribunal would have jurisdiction

to grant emergency relief where justified. This might be, for example, in the case of a vessel unduly detained by a coastal State. The articles were tabled at such a late date, that an informed judgment on how they were received is impossible. It can be said, however, that a number of States felt that the concept of compulsory settlement is inconsistent with the traditional principle of equality of sovereigns.

This very summary discussion of the complex issues above indicates the wide lack of solid agreement on any issue. In that sense, the meeting was discouraging. However, in two respects, the meeting may be said to lead to hope. In the first instance, more national positions with respect to the issues were made public than ever before, indicating accelerating interest in seeking a settlement. Secondly, there was general feeling that further meetings of the Seabeds Committee would probably be little more productive than the last two, and this might suggest that there is no point holding any other meeting except for hard political negotiations.

SHIP POLLUTION

On November 2, 1973, an international conference on marine pollution sponsored by the Inter-Governmental Maritime Consultative Organization (IMCO), signed a new Convention on Pollution from Ships designed to supplant previous such conventions. The documentation consists of the text of the Convention itself, five annexes, and two protocols.

The Convention itself, which becomes effective twelve months after not less than fifteen States, the combined merchant fleets of which constitute not less than fifty percent of the gross tonnage of the world's shipping have become parties, contains the basic rules applying to all forms of vessel source pollution. It applies to all ships entitled to fly the flag of a party to the Convention, or those which operate under the authority of a party, except for warships, naval auxiliaries, and other government-owned non-commercial vessels. Violations of requirements of the Convention are prohibited and both the Administration (the government under whose authority the ship is operating) and a party having jurisdiction over the vessel may take action to enforce the rules. Vessels will be required to hold a certificate verifying that they meet convention requirements, and port States will have the power to inspect to see if these requirements are met while in ports or at offshore terminals. For violations, the Administration shall take action, while if the violation takes place within the jurisdiction of another State, the State having jurisdiction

may act or request the Administration to act. A provision also requires penalties under the law of a party to be adequate to discourage violations of the Convention. The Convention further places liability on a State for loss or damage suffered for undue delay to ships. While the treaty expressly supersedes the 1954 Convention, as amended, it is made clear that nothing in the Convention should prejudice codification and development of the law of the sea now scheduled for Caracas this summer. This is particularly so with respect to jurisdictional issues. It is also of interest that an article adopted in committee with respect to the right of a coastal State to adopt higher than Convention standards in situations where the environment is exceptionally vulnerable did not receive the necessary two-thirds majority in plenary for inclusion in the treaty.

Of the five annexes, the first two are compulsory for signatories, while the last three are optional. Annex I contains regulations for the prevention of pollution by oil. This annex tightens regulations for the discharge of oil, and spells out requirements in more detail than ever before. Special requirements are set out for special areas where more stringency is needed. The only exceptions permitted are discharges for the purpose of securing the safety of a ship or saving a life at sea, or discharges resulting from damage to a ship or its equipment if reasonable safety precautions had been taken. The annex also deals with the provision of reception facilities in ports of call, segregation of oil and water ballast, retention of oil on board, oil discharge monitoring and control systems, and other technical requirements necessary to implement the objectives of the treaty.

Annex II deals with regulations for the control of pollution by noxious liquid substances in bulk. For purposes of regulation, such substances are listed in four categories. Category A consists of liquid substances which, if discharged into the sea, would present a *major* hazard to marine resources or human health. Category B includes those substances which would present a hazard only. Category C liquids would present a *minor* hazard, and Category D substances would present a *recognizable* hazard. The ensuing regulations are structured with the various categories in mind, rules for Category A liquids being the most stringent. The same exceptions apply to discharges of these materials as for oil and oily substances.

Annexes III, IV, and V are optional annexes, and may be adhered to singly, all together, or not at all by individual parties to the Convention. Annex III contains regulations for the prevention of pollution by

harmful substances carried in packaged forms, freight containers, portable tanks or road and rail tank wagons. Annex IV deals with the prevention of pollution by sewage from ships, and Annex V regulates the prevention of pollution by garbage from ships.

The first protocol contains regulations concerning reporting on incidents involving harmful substances. It lays out the duty to report, the methods of reporting, and the contents of a report. Protocol 2 provides an arbitration procedure to be applied to the settlement of disputes unless the parties choose another method. The decisions of the three man arbitral body are final and binding.

About six hundred and fifty delegates from seventy-nine countries attended the conference in England. At the final vote, sixty-eight voted in favor, none against, and three abstained. The most controversial annex dealing with construction stipulates that all new tankers over 70,000 deadweight for which building contracts are placed subsequent to December 31, 1975 must be fitted with segregated ballast tanks. The resulting loss in cargo carrying capacity could mean an increase of operating costs in addition to construction costs.

COLOMBIA — VENEZUELA

The controversy between the two countries relating to the limits of the Gulf of Venezuela remains unresolved. High level contacts, even at the presidential level, have failed to break the impasse in spite of the reiteration by both parties that an amicable solution to the dispute should be found through direct negotiations. Indicative of the sensitivity of the subject and the desire not to bring the issue into high profile was its absence as a campaign issue from the presidential election on December 9, 1973. Nevertheless, the issue remains a deep one between the two countries, recently grown in importance in the light of the world-wide energy crisis.

“HAZARDOUS WATERS”

The waters between the United States, the Bahamas and Cuba have again become “active” as charges and countercharges are filed by fishermen, and sometimes governments, for damages done to fishing vessels in international waters. Factors contributing to the recurring tension,

among others, are contested fishing rights, the activities of Cuban exiles in Miami and governmental foreign policies, all of which have made the waters in question a potential hazard to those pursuing legitimate interests therein. As a means of self protection some of the fishing vessels now carry heavy weapons and unfortunately some shooting incidents and woundings have occurred.

PERU'S FISHING FACILITIES

Peru's Ministry of Fisheries is deeply involved in a program to upgrade the fishing industry through the construction of port facilities, fishing vessels, processing plants and distribution centers. For example, about \$35 million is being spent at the port of Paita where Peru, Japan, the Soviet Union and private industry are participating in new construction and improvement of existing facilities.

Peru is also engaged in its own boat building program. Besides constructing vessels for its own fishing fleet, Peru has built twenty vessels for Cuba and four for France.

CARIBBEAN COMMUNITY

A Meeting of a Ministerial Committee on the Law of the Sea and Related Matter was held at the Caribbean Community Secretariat in Georgetown, Guyana, on the 21st of November, 1973.

The Ministerial Committee, which has met several times, was first established by a Decision of the Sixth Heads of Government Conference held in Jamaica in April, 1970 for the purpose of harmonizing the positions of Commonwealth Caribbean countries on questions to be discussed at the forthcoming United Nations Conference on the Law of the Sea. This Conference will seek to formulate a new International Convention governing the ownership and exploitation of the ocean space and its resources on a global level. The Ministerial Committee therefore directed its attention to the adoption of a regional approach to this Conference and to organizational aspects of preparations. The Committee also gave consideration to reports on developments on the Law of the Sea over the past year at Meetings of a Standing Committee of Regional Officials on this subject as well as in Latin America and United Nations' forums.

OFF-SHORE DRILLING

It is believed that up to one hundred billion barrels of recoverable oil now lie buried beneath the waters off the eastern coast of the United States. Research activity by oil companies and the Department of the Interior have diagnosed three areas of particular promise; The Blake Plateau Basin, beginning 150 miles off the northern half of Florida; the Baltimore Canyon Basin, forty miles off Maryland, Delaware and New Jersey; and the Georges Bank Basin between Long Island and Cape Cod.

This potential oil and gas deposit has not escaped the attention of the governments (Federal and State), the oil industry, the conservationists, and the general public, whose interests in the matter are now accentuated by the nation's energy problems. Some of the specific issues raised in connection with off-shore drilling are the conservationists desire to prevent pollution threats to the sea and the shorelines; the concern of private parties with property values; the oil industry's preoccupation with the exhaustion of oil reserves in land outside of Alaska; and the federal government's oil import policies, among others. Also complicating the problem is the dispute between the federal and certain Eastern state governments regarding the continental shelf. The federal government holds that state jurisdiction over the continental shelf is limited to the three mile limit while the states concerned claim jurisdiction as far as 200 miles (5 *Law. Am.* 641,1973).