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## THE OCEANS

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### LAW OF THE SEA

#### *United Nations*

The third preparatory session of the United Nations Seabeds Committee was held in New York from February 28th to March 30th with little progress noted. The goal of the Committee was to lay plans and, if possible, generate an agenda for the proposed 1973 Law of the Sea conference, but to date the more than 90 delegates to the three subcommittees have failed to reach agreement on any of the important issues.

Subcommittee Two, with responsibility for questions regarding fishing, the territorial sea, and transit through straits, was perhaps the most active, but even here much of the debate was procedural, with little focus on matters of substance, and no progress on those. Much of the debate centered on the preparation of a list of issues which, if adopted, could become a basis for an agenda or possibly a draft of articles. However, the debate did not get much past the stage of trying to decide the mechanism by which the list might be prepared. Some felt that the work should be done by the Subcommittee sitting as a whole in regular session, while others thought the best approach would be to refer the matter to a special ad hoc working group for later approval by the entire subcommittee. At a late date, a list was prepared by a caucus of developing countries, but no action was taken.

On the merits, the U.S. delegation concentrated on the fisheries issues. The U.S. fisheries position is based upon a "species" approach to management that would provide rules for three different categories: the widely ranging oceanic species; anadromous fishes that spawn primarily in the waters of a single coastal state; and coastal species that spend their lives in the inshore areas. This position is in opposition to that of several de-

veloping states who favor complete coastal state control of marine resources either through the use of a broad (e.g. 200 mile) territorial sea, or a broad "economic zone" or "patrimonial sea".

Of general interest was the opening presentation before the full Committee of the Peoples Republic of China, seated for the first time. The speech heavily condemned the "robbery and plunder" by the "pirate vessels" of the United States and "the other superpower," and criticized the "collusion" between the United States and Japan toward the invasion of Chinese coastal rights.

The statement concluded with the following propositions:

"We hold that equality of all countries regardless of their size should be a basic principle to which all countries jointly adhere in settling questions concerning the rights over the seas and oceans. We are resolutely opposed to the one or two superpowers acting arbitrarily, ordering others about and imposing their will upon others.

We hold that it is within each country's sovereignty to decide the scope of its rights over territorial seas. All coastal countries are entitled to determine reasonably the limits of their territorial seas and jurisdiction according to their geographical conditions, taking into account the needs of their security and national economic interests and having regard for the requirement that countries situated on the same seas shall define the boundary between their territorial seas on the basis of equality and reciprocity.

We maintain that all coastal countries have the right of disposal of their natural resources in their coastal seas, sea-bed and the subsoil thereof so as to promote the well-being of their people and the development of their national economic interests.

We maintain that the seas and the oceans as well as their submarine resources beyond the limits of territorial seas and national jurisdiction are in principle commonly owned by all the peoples of the world. Questions of their use, exploitation, etc. should be settled through consultation by all countries jointly, both coastal and land-locked. And manipulation and monopoly by the one or two superpowers are absolutely impermissible.

We maintain that the sea-bed and ocean floor beyond the limits of territorial seas and national jurisdiction should only be used for peaceful purposes in the interest of safeguarding international peace and security. They should not be used to serve the policy of military aggression of any country.

We maintain that the Five Principles of Peaceful Coexistence should be the principles guiding relations among states. The sovereignty and territorial integrity of all countries and their rights and interests in the seas and oceans should be universally respected. We are resolutely opposed to any foreign aggression, interference and plunder.

We are deeply convinced that these propositions are in conformity with the fundamental interests of all the peoples throughout the world and also with the spirit of the principles of the United Nations Charter, and they provide a basis for equitable and reasonable settlement through discussions of the questions concerning the rights over the seas and oceans. We hope that the above propositions of the Chinese delegation will be given serious consideration by this session and that, through the common efforts of all the participating countries, this session will make favorable progress.”

After five weeks, the meetings, in the words of the *New York Times*, drew “to a spiritless close . . . with delegates acknowledging that they had little to show.” Many delegates privately admitted disappointment in the rate of progress and some expressed doubts that the forthcoming conference could begin as scheduled, or that it would, if begun, string along for several years. The next meeting of the Seabeds Committee will be in Geneva in July.

### *Bogotá Conference*

Early in January, the ministers of fourteen South and Central American countries met in Bogota to consider a draft proposal that could, if adopted, become the basis of a strong although small bloc of votes at the 1973 conference on the Law of the Sea. The proposal, generated by Colombia and strongly supported by Venezuela, is based upon the distinction between the concept of the territorial sea and the concept of a patrimonial sea. The Colombian proposal defined the territorial sea as a State's defense zone in which police, fiscal, sanitary and customs surveillance are permitted. The patrimonial sea would be a separate zone in which the coastal State has the right to preserve, explore and exploit the resources of the sea and seabed. The draft proposal, which if adopted, would be submitted to the Law of the Sea Conference in 1973, is based on the following points:

1. The maritime jurisdiction of a coastal State includes the territorial sea, the contiguous zone, the continental shelf, and the patrimonial sea.

2. The coastal State has the right to explore, conserve, and exploit the marine resources of the sea and seabed adjacent to its coasts within its patrimonial sea.
3. No State through unilateral action may occupy the sea area or continental shelf belonging to another State.
4. The coastal State has the right to determine the breadth of its territorial sea up to a reasonable limit. Twelve nautical miles is the limit suggested. In addition, the coastal State has inherent rights in the continental shelf adjacent to its shores.
5. A coastal State may exercise special jurisdiction in the zone beyond the territorial sea, extending, geography permitting, as far as two hundred miles. This zone is known as the patrimonial sea.
6. Where geographical considerations do not permit the establishment of a 200 mile zone without infringing the rights of other States, the zone shall be set under the normal procedures established by international law.
7. With respect to the patrimonial sea, a coastal State may:
  - (a) reserve all or part of its rights to the resources of the area.
  - (b) grant concessions for the exploitation of such resources to private enterprises, or to foreign or international organizations.
8. The rights of a coastal State within its patrimonial sea must be compatible with the right of ships of other nations to transit over the sea, including the right of overflight. Nor may the coastal State prohibit the laying of submarine cables or the carrying out of scientific research, provided that it does not interfere with resource exploitation.
9. With regard to straits, special navigational rules shall be established for vessels of all nations.

#### *Caracas Workshop*

A special workshop on Law of the Sea problems affecting nations bordering on the Gulf of Mexico and the Caribbean was held at Simón Bolívar University in Caracas, Venezuela, in the latter part of February. This workshop, which brought together diplomats and scholars from thir-

teen countries, was planned by the Law of the Sea Institute of the University of Rhode Island, and was co-sponsored by Simón Bolívar University and the University of Miami Law School. The meeting received support from the Ford Foundation.

The three-day program involved discussion of such issues as fisheries and mineral resource management, the protection of non-extractive values, and regional institutions. Attendance was by invitation only; the discussions were informal and no verbatim record was kept. Each session was introduced by the presentation of a brief paper by a known expert, followed by general discussion. Papers were presented by Dr. Robert Hodgson, the Geographer, U.S. Department of State; Dr. Geoffrey Kesteven, FAO, Mexico; Ambassador Jorge Castañeda, Permanent Representative of the United States of Mexico to the United Nations at Geneva; Dr. José Antonio Galavis, Director of the Institute of Technology and Marine Sciences, Simón Bolívar University; Mr. John McCracken, Attorney at Law, New York; Dr. Warren Wooster, Scripps Institution of Oceanography, La Jolla, California; Professor Harlan Lampe, University of Rhode Island; Dr. Alfredo Martínez Moreno, Former Minister of Foreign Affairs, El Salvador (speaking for Dr. Reynaldo Galindo-Pohl, Permanent Representative from El Salvador to the United Nations); and Dr. Constantino Tapias Rueda, CICAR/IOC, Colombia. The formal record of the meeting will consist of the papers presented plus a rapporteur's report, but no persons will be quoted or remarks attributed other than the formal presentations. This report should be available soon through the Director, Law of the Sea Institute, University of Rhode Island, Kingston, R. I.

While the discussion was indeed broad-ranging, much interest was focussed on legal systems for resource management, including the recently propounded concept of the patrimonial sea. Singled out for special attention were the problems of assuring adequate data for proper decisions through scientific research, and the protection of the marine environment. While all participants favored increased scientific research on marine matters, there was much difference of opinion regarding the degree of controls, if any, that should be applied to research vessels or platforms. Discussion was also held on the distinction between research produced for open publication and that which is strictly proprietary in nature. With regard to protection of the environment, many participants from the island countries bordering the Caribbean felt that this should be a primary issue in future law of the sea discussions.

The meeting ended with a general discussion on the question of how a regional solution to the problems, if designed, would or could be integrated into an overall international agreement on law of the sea matters.

*Claims to Expanded Jurisdiction*

As the deadline for the proposed 1973 Law of the Sea Conference nears, more nations are considering or announcing expanded claims to territorial jurisdiction. One of the best documents available reflecting the continuing changes in approaches of the various countries is "International Boundary Study, Series A, Limits in the Seas, National Claims to Maritime Jurisdictions, No. 36, January 3, 1972." This document contains a summary of each type of claim made by every nation in the world for which data is available, the date of the claim, its source, the terms, and several valuable notes. The publication is produced by the Bureau of Intelligence and Research, U.S. Department of State, and the data was collected by the State Department's Geographer. Inquiries should be addressed to the Office of the Geographer, Department of State, Washington, D.C. 20520.

One of the more recent claims to extended jurisdiction has come from Iceland, which will extend her offshore fishing rights to fifty miles effective next September 1. Her present claim is 12 miles. The announced change has brought vigorous protests from Great Britain and West Germany, whose vessels have traditionally fished the same area. Iceland bases its right to extend its limits on its "special position." In 1970 fish and fish products constituted 72.9% of Iceland's exports, and Icelandic officials fear that the invasion of new and more efficient foreign trawlers will result in depletion or complete annihilation of certain domestic species. The government sees its claim as the equivalent of the Truman Proclamation of 1945 regarding the offshore mineral rights of the continental shelf. Iceland's claim is meant to approximate the waters above her continental shelf. The British and German protests are based on economic losses to the industry in certain of their coastal towns.

There are also indications that when independence is achieved, the Bahamian government will consider laying claims to expanded jurisdiction under the archipelago concept extending as far seaward as 200 miles. In a speech last October, the Honorable A. D. Hanna, Deputy Prime Minister and Minister of Home Affairs indicated that the sea's importance to the Bahamas would dictate such a move. He cited illegal fishing, and transit of vessels near shore (3 miles), carrying illegal cargoes among the problems the Bahamas face.

Fishing pressures have also caused responses from certain states in the United States. Last year, for example, the State of Massachusetts enacted new legislation enabling the State Director of the Division of

Marine Fisheries to “. . . adopt, amend, or repeal all rules and regulations, with the approval of the Governor, necessary for the maintenance, preservation and protection of all marine fisheries resources between the mean high water mark of the commonwealth and a straight line extension of the lateral boundaries of the commonwealth drawn seaward to a distance of 200 miles or to a point where the water depth reaches 100 fathom, whichever is the greatest.” Violation of the state law is made punishable by a fine not to exceed \$10,000, and violators are to be prosecuted in the Massachusetts superior courts. While the constitutionality of this law is in serious question, it is indicative of the determination of many coastal states to seek adequate protection of local fishery resources from depletion by foreign fishing fleets.

## FISHERIES

### *Latin American Shrimp Talks*

During the past few months, several independent discussions were held in an attempt to resolve the problems raised by Brazil's recent claim to a 200 mile territorial sea. The situation in Trinidad and Tobago is perhaps symptomatic of these problems. The declaration by Brazil severely interrupted the shrimping industry being carried on by more than 100 trawlers, 90% of which were operated by about fifteen American companies, and idled the four million dollar processing plant at Sea Lots resulting in a lay-off of some 700 persons.

Trinidad and Tobago had been operating, since the decree, under an interim agreement whereby Brazil permitting 50 deep sea trawlers to operate within the new Brazilian zone, provided that no third-party vessels were involved. Since there were only six Trinidad-owned ocean-going trawlers at that time, the agreement was not of substantial benefit. On April 3, talks began between Trinidad and Tobago and Brazil aimed at a new agreement, and, at the time of this writing, substantial agreement was reported. It was believed that part of the agreement would include Trinidad and Tobago's recognition of Brazil's 200 mile territorial sea claim.

Meanwhile, the United States and Brazil signed an agreement aimed at avoiding the seizures of U.S. fishing vessels off the Brazilian coast. Details of this agreement have not been released, but it is believed that U.S. shrimp trawlers will purchase Brazilian licenses to fish inside the 200 mile zone. Unlike Trinidad and Tobago, the U.S. has consistently refused to recognize the legality of Brazil's claim, and the license me-

chanism is seen as a way out of the dilemma. It has also been reported that Brazil is seeking to induce U.S. vessels to utilize the port of Belen, which has a shrimp processing plant that is standing almost idle.

### *West Coast Fishing Problems*

The Chilean Government has ordered Soviet fishing boats operating along its coast to stay outside the three-mile limit. Apparently Chilean fishermen have been complaining that Soviet vessel operations have been destroying nets and damaging fishing in the area. These Soviet vessels were purportedly leased by the Arauco Fishing Enterprise through a contract signed by the Chilean State Development Agency. The vessels were to remain for a year off the southern Chilean coast, while other Russian ships were engaged in scientific studies which could result in new fishing areas being utilized.

The U.S./Ecuadorian "tuna-boat war" may be somewhat defused as a result of the increasing tendency on the part of U.S. tuna boats to purchase Ecuadorian licenses. Such a license for a 400 ton seiner would cost about \$8,000 and would be good for fifty days, but the fine for a boat seized within the 200 mile zone claimed by Ecuador could run to \$40,000, or double that if it is a second seizure. Fines over the last year, involving about 60 seizures, have amounted to nearly \$3,000,000. The members of the west-coast based American Tuna Boat Association have apparently decided that discretion is the better part of valor, and it is reported that more than half the boats based in San Diego took out licenses for the January trips. The U.S. has consistently taken the position that the purchase of Ecuadorian licenses would prejudice its view that the Ecuadorian claim violates the principle of the freedom of the seas.

While the U.S. reimburses its tuna boat owners for fines incurred in the area viewed by the United States as high seas, reimbursement does not ordinarily cover the loss of catch while the ship is in custody or damages incurred to the vessel in the course of seizure. Further, it often takes from eight months to one year to obtain reimbursement. To alleviate that problem, H.R. 7117, a bill to amend the Fishermen's Protective Act of 1967, was introduced into the U.S. House of Representatives. The purpose of the bill is to expedite the reimbursement of U.S. vessel owners for charges paid by them in the event of seizure, and to strengthen provisions relating to the collection of claims against countries for amounts reimbursed. However, on March 22, the bill was taken from the Calendar and referred to the House Committee on Foreign Relations with instructions that it report back within 40 days.

At the same time that U.S. distant-water fishing fleets sought to alleviate their problems, U.S. coastal fleets continued to press for further domestic protection. On March 22, two bills, H.R. 14019 and H.R. 14026, were referred to the House Merchant Marine and Fisheries Committee for consideration which would establish a contiguous fishery zone beyond the limit of the territorial sea. The first of these bills would extend this zone to the outer limits of the continental shelf.

### *Quota System for Herring*

If the recommendations of the International Commission for the Northwest Atlantic Fisheries (ICNAF) are adopted by the member nations, the first agreement on national quota allocations in a multilateral fisheries management body will become effective. Previous criticism of existing commissions focused largely on their inability to agree on such quotas. However, the growing concern over sharp declines in herring resources sparked the desire to reach agreements concerning the Nova Scotia, Georges Bank, and Gulf of Maine stocks. Of the 30,000 metric ton total quota recommended for the Gulf of Maine, the suggested allocation is 21,000 tons for the U.S., 6,000 tons for Canada, and 2,500 tons for the Federal Republic of Germany. An allocation of 250 tons each is reserved for other member governments and for nations which are not members but which are presently engaged in the fishery. Of a total quota of 150,000 tons for Georges Bank, 4,000 tons is reserved for the United States, 5,800 for Canada, 31,600 tons for the Federal Republic of Germany, 1,200 for Japan, 49,400 for Poland, 600 for Rumania, and 48,200 for the USSR. One thousand metric tons is reserved for other members, and 8,200 metric tons allowed for non-members presently engaged in the fishery, according to reports from the National Cannery Association.

## OCEAN POLLUTION

During the next two years, the subject of pollution of the oceans will be considered at three major international conferences. It will be discussed at the environmental conference in Stockholm this summer, and it appears to be a certain item for discussion at the 1973 meeting of the Intergovernmental Maritime Consultative Organization (IMCO), and at the 1973 Law of the Sea Conference. There are a number of problems facing negotiators. The first deals with the problem of jurisdiction over regulation. Traditionally, IMCO, an arm of the United Nations, has dealt with pollution as it pertains to oil carried by ships. From IMCO have come

agreements concerning the prohibition of spillage in certain zones, and the recent agreements (not yet in force) relating to liability for oil spills and intervention to prevent damage to a coastal state. Future problems may involve not only oil, or other hazardous cargoes carried by ship, but discharges as the result of undersea exploration and the exploitation of submerged minerals, or from pollutants that are dumped into the oceans, or are washed from the land into the oceans. Some observers have voiced concern over the extent to which ocean-related discussions should become involved with pollution from land-based sources. The Stockholm meeting will deal with the problem in broad terms. Many would like to see the jurisdiction of IMCO expanded to include more than simply ship or transport related spills, but several of the developing nations have voiced opposition on the basis that IMCO is controlled by the major maritime nations, and hence their interests are not adequately represented in the negotiations. In announcing its 100 mile pollution control zone, Canada made it clear that it was unable to achieve satisfactory progress toward the protection of its arctic region within IMCO.

As a preparatory move leading to the Stockholm conference, twelve nations have signed an agreement to prevent the dumping of poisonous waste by ships and planes in the northeast Atlantic Ocean. Under the terms of the convention, certain materials that are classified as dangerous cannot be dumped. These would include mercury, cadmium, poisonous halogen or silicon compounds, carcinogenic substances, and persistent synthetics that float. A second category of materials could be dumped only with special permits. This group includes arsenic, lead, pesticides, scrap metal, tar, copper, zinc, cyanides, flourides, and containers. When it is necessary to dump such materials, the dumping must be done in water exceeding 2,000 meters in depth and not less than 150 nautical miles from shore.

The signatory nations are Britain, Norway, Belgium, France, Denmark, West Germany, Finland, Iceland, the Netherlands, Portugal, Spain, and Sweden.

The area to which the prohibitions apply includes the high seas and territorial waters in the northeast Atlantic, including the North Sea and part of the Arctic Ocean. It extends westward to Greenland, and southward to the Strait of Gibraltar. The Baltic Sea is excluded. The agreement will take effect when ratified by seven of the signatories.

While the agreement has been characterized as "the biggest single step yet taken to fight sea pollution," only ships and planes are mentioned in the agreement. More than 90%, however, of the pollution of the type in-

cluded is caused by domestic discharges through rivers, estuaries, and outfalls under national jurisdiction.

It is believed that some type of limited ocean dumping ban may emerge from the forthcoming Stockholm conference, but the subjects of land-based pollution are too complex to be dealt with rapidly. Further, many developing nations would see strong controls on land-based pollutants as a limitation on their economic progress.

## WATER POLLUTION

Bills have passed both houses of the U.S. Congress that would amend the existing Federal Water Pollution Control Act in ways that would significantly strengthen it. Differences between the two bills will have to be straightened out in conference before the new laws go into effect.

The primary changes are these. Under the present law, enforcement proceedings against a polluter cannot begin until it can be shown that the receiving waters, after a suitable period of mixing, have been degraded below an acceptable standard. This means that a point source may dump polluted effluents into a stream so long as the established water quality standards are not exceeded. Under the new law, the emphasis will be shifted from the quality of the receiving water to the quality of the effluent discharge. That part of the Rivers and Harbors Act of 1899 that permits the discharge of waste into the navigable waters if the person desiring to do so has obtained a permit will be incorporated into the new law. Henceforth, any polluted discharge will be prohibited unless such a permit has been obtained from the state or the federal government. The result of this change is to introduce the principle of non-degradation of receiving waters into federal law.

Secondly, the new law streamlines the enforcement procedures where there has been a violation. If an enforcement is deemed desirable under present law, a long series of conferences and hearing is begun. Court action may not be taken for more than a year in most cases. The new law provides for prompt and effective enforcement in all cases. This law is expected to become effective before Congress adjourns in December, 1972.

## OCEAN MINING BILL

Both houses of Congress are presently considering identical bills "To provide the Secretary of the Interior with authority to promote the con-

servation and orderly development of the hard mineral resources of the deep seabed, pending adoption of an international regime thereof." The Senate bill is number S. 2801, while the House version is H.R. 13076.

The bill, if enacted, would give authority to the Secretary of the Department of the Interior to issue licenses to U.S. citizens, or companies authorized by U.S. law to do business in the United States, for the exclusive right to recover hard minerals from the deep seabed, pending the establishment of an international regime. These licenses would be exclusive as against all persons subject to the jurisdiction of the United States or of any reciprocating State which would care to cooperate in such a venture, and the licenses would be registered with an "international registry clearinghouse." The function of the clearinghouse is solely that of record-keeping, and its records are available to the public for inspection.

The bills have built-in limitations. First, no license could issue which would result in more than 30% of any area within a specified diameter being acquired by a single applicant, or where more than 30% would be acquired by the United States. Second, to assure active use, the licensee would be required to make minimum expenditures for development ranging from \$100,000 in the first year, and expanding to \$700,000 by the eleventh year. Finally, within ten years of the date any block of land is licensed, the holder of the license must relinquish 75% of the block held.

An escrow fund would be established to be used for the assistance of reciprocating developing states at a rate of revenue to be collected from operations covered by the act to be set by the Congress.

The most controversial portion of the proposal is the provision dealing with investment protection. Section 10(a) provides: "Licenses issued under this Act may be made subject to any international regime for development of the deep seabed hereafter agreed to by the United States: *Provided*, That such regime fully recognizes and protects the exclusive rights of each licensee to develop the licensed block for the term of the licensee. . . ." Supporters of the legislation claim that this protection is absolutely essential to give them the security and tenure of investment necessary for them to obtain sufficient financial backing. Opponents say that the result would be to tie the hands of the State Department in its negotiations regarding mineral deposits of the deep seabed. The Executive Branch of the U.S. government has not yet commented on this or any other provision of the bills.

While the bills speak in terms of regulating U.S. citizens only, and thus do not constitute a claim of sovereignty over the deep seabeds *per se*, there seems to be little doubt that such a move by the U.S. would directly impact on the course of present negotiations. The proposal has been severely criticized by several of the developing states, and a specially critical comment was delivered by the Honorable Fernando Zegers Santa Cruz of Chile during the recent Seabed Committee discussions