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The Oceans

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VENEZUELA-COLOMBIA OIL DISPUTE

For several months, delegates from Venezuela and Colombia have been discussing in Rome the allocation of submerged oil deposits beneath the northern Gulf of Venezuela. More recently, it was reported by the Trinidad Guardian that the Colombian and Venezuelan Foreign Ministers met in Costa Rica in conjunction with the April OAS meeting, to discuss the issue.

Earlier talks seemed to indicate that Colombia has laid claim to half of the northern sector of the Gulf, bearing rich petroleum reserves, on the principle of median line construction as provided for in the 1958 Geneva Convention on the Continental Shelf. Article 6 (1) of that convention provides that where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary shall be determined by agreement, and, in the absence of agreement, the boundary is to be the median line. Because of the configuration of the coastline enclosing the Gulf, application of the median line principle of construction would allocate a large portion of the area to the control of Colombia. However, Article 6 also provides for a different boundary where justified by special circumstances. Venezuela insists that it has a "historical right" to the waters of the Gulf; thus ordinary median line rules should not apply. Talks in Rome in an effort to solve this dispute recessed in March without reaching agreement.

U.S./CUBAN FISHING PROBLEMS

In a recent incident, the U. S. Coast Guard seized the Cuban fishing vessel "Lambda 102" which it observed fishing some six or seven miles off the coast of Florida, near the Dry Tortugas, west of the Keys. Three other Cuban vessels were present, but were not observed to be fishing,

and the Coast Guard commenced to escort them to international waters. However, Florida State patrol boats intercepted them and arrested the three vessels. Executive Branch intervention in the resulting dispute managed to persuade the state of Florida to abandon its claims to jurisdiction, and the vessels' masters were tried by the Justice Department in U.S. District Court and fined.

The incident exemplifies the recently accelerating dispute between the state of Florida and the federal government concerning the respective powers of the two sovereigns in waters where both claim some degree of jurisdiction. Article II, Section 1 of the Florida State Constitution claims state boundaries extend to a point due south of and three leagues from Loggerhead Key, the westernmost of the Dry Tortugas Islands. The United States claims sovereignty to three miles, but asserts rights to regulate fishing to an additional contiguous zone of nine miles.

In a previous similar incident, U. S. Attorney General John Mitchell sought and obtained an injunction against the State of Florida to prohibit the State from arresting Cuban boats within waters claimed by the State, but not by the Federal government. The court found that the boats were in an area "regarded by the community of nations as the high seas."

CANADA'S CLAIMS TO FISHING AND POLLUTION CONTROL JURISDICTION

On April 8, 1970, Bills C-202 and C-203 were first read in the Canadian House of Commons. C-202 established legislative authority for the Canadian Government to lay claims to the right to control pollution in zones of Arctic waters up to 100 miles from every point of Canadian coastal territory above the 60th parallel. Within these zones, Canada would assert the right to control all shipping, to prescribe standards of vessel construction, navigation and operation, and to prohibit, if Canada deemed it necessary, the free passage of vessels in these waters. C-203 provided for a twelve mile territorial sea in substitution for the three mile limit previously claimed, and provided authority for the Governor in Council to set such special fishing zones adajcent to the Canadian coast as he might deem necessary.

These claims brought quick and hostile reaction from the United States. In its press release of April 15, 1970, the U.S. State Department took the position that international law provided no basis for the proposed unilateral extensions of jurisdiction on the high seas. "The U.S.", it said "can neither accept nor acquiesce in the assertion of such jurisdiction."

The release went on to say: "We are concerned that this action by Canada if not opposed by us, would be taken as precedent in other parts of

the world for other unilateral infringements of the freedom of the seas. If Canada had the right to claim and exercise exclusive pollution and resources jurisdiction on the high seas, other countries could assert the right to exercise jurisdiction for other purposes, some reasonable and some not, but all equally invalid according to international law. Merchant shipping would be severely restricted, and naval mobility would be seriously jeopardized. The potential for serious international dispute and conflict is obvious."

Pursuant to the authority contained in C-203, Canada established fisheries zones affecting Queen Charlotte Sound and the Hecate Strait and Dixon Entrance off British Columbia, and the Gulf of St. Lawrence and the Bay of Fundy on the east coast. The closing lines became effective on February 28, 1971, bringing approximately 80,000 square miles of coastal waters under Canadian fisheries jurisdiction. It was also announced recently that the Canadians intend to negotiate a phase-out of fishing activities by countries which have traditionally fished this area, except that by agreement U. S. fishing activities in the zone would remain unaffected. The United States once again declared its regrets with respect to this action in view of the resolution calling for a Law of the Sea Conference in 1973.

SOVIET PLANS FOR SEABED STUDY

Apparently moving to fill the vacuum created by an absence of an international regulatory authority, the Soviet bloc nations have agreed upon an ambitious plan for seabed study, according to recent newspaper reports.

Soviet bloc geologists met recently in the Baltic port of Riga and decided to set up an International Coordinating Center of Marine Exploration in the Soviet Union. Representatives from Bulgaria, Hungary, East Germany, Poland, Rumania and Czechoslovakia were in attendance. It was decided that the Center would plan joint expeditions in the Atlantic and Indian Oceans to select prospective mineral exploitation sites. Exploration efforts would be directed toward finding oil and gas fields, and deposits of gold, tin, nickel, cobalt, titanium and zirconium. The Center will be open to all members of the Council of Mutual Economic Assistance.

In December of last year, the Soviet bloc voted against the U.N. General Assembly's resolution to convene a Law of the Sea Conference in 1973, on the ground that its agenda was too broad. The U. S. has favored holding such a meeting at the earliest possible time. The Soviet move will undoubtedly create additional pressures on diplomats concerned with

establishing an international regime for the exploration and exploitation of the natural resources of the seabeds beyond national jurisdiction.

BRAZILIAN FISHING REGULATIONS

Brazil has now adopted strict fishing control measures extending 200 miles seaward. It had been the hope of the United States, whose delegates have been requesting Brazil to wait until 1973, that Brazil would not enforce its 200 mile limit, adopted a year ago. Foreign fishermen must now request a permit and they are not allowed to fish for shellfish except under an agreement between individual foreign states and Brazil. Fishing boats from the U.S., Japan, France, South Korea, Nationalist China, and several Caribbean and South American nations are active in the shellfishing industry in waters adjacent to the Brazilian coast. The regulations were made effective by presidential decree on March 29.

RECENT MEETINGS ON LAW OF THE SEA MATTERS

In February, the Law Committee of the Marine Technology Society held a one-day seminar/workshop in Washington, D. C., to consider developments in the law of the sea. During the morning session, papers were presented by representatives of the State Department, Interior Department, and members of the bar. The topics for the morning included a review of the activities of the 25th General Assembly with respect to these matters, a presentation of the U. S. position, and predictions with respect to the procedural and substantive matters that may arise in connection with the proposed 1973 conference.

In the afternoon, a panel of experts presented their views regarding the impact of the proposals outlined in the U. S. Working Paper tabled in Geneva on August 3, 1970, on oil and gas, the hard minerals industry, fishing, scientific research, and domestic and international relations. The luncheon speaker was the Honorable Henry L. Bellmon, U. S. Senator from Oklahoma, who presented a summary of the conclusions of the Special Subcommittee on the Outer Continental Shelf of the Senate Interior and Insular Affairs Committee.

The proceedings of this meeting will be available shortly. Inquiries should be addressed to the Marine Technology Society, 1730 M St., N.W., Washington, D.C. 20036.

On April 19-20, in connection with the annual meeting of the Offshore Technology Conference in Houston, Texas, the American Bar Association's Committee on Marine Resources of the Natural Resources Section con-

ducted a series of panels focusing on the Law of the Sea. Representatives from the United States included members of the oil and gas and hard minerals industries, the Departments of State, Defense, Interior, and Commerce. Also appearing were various lawyers engaged in private practice. Of special interest was the appearance of various members of the international community, including Paul Engo, Cameroon, Fernando Zegers of the Chilean Mission to the U.N., John Freeland of the United Kingdom, and Alan Beasley from Canada.

Mr. John Stevenson, Legal Advisor to the U. S. Department of State stressed that the United States, because of its diversified maritime interests, must view regimes for ocean exploitation as just a part of its overall policy for the oceans, and that what is to be sought is an accommodation of all of the interests in reasonable balance. Pointing to the rapid increase in members of the so-called Lesser Developed Countries, and the number of unilateral claims, he concluded that time is not on the side of those seeking multilateral solutions. Ambassador Engo criticized the voting procedure of the Council of the International Seabeds Authority suggested by the United States in its August 3rd Working Paper, on the ground that the weighted vote was discriminating against the LDC's. He called the 1958 Continental Shelf Convention "irrelevant" to those African nations not parties to it, and voiced the opinion that Africa would have a strong say in any future regimes.

Fernando Zegers spelled out five elements of ongoing debate that he referred to as "general trends": (1) A feeling that the forthcoming conference must be comprehensive as to issues; (2) that there must eventually be more regulation of the high seas; (3) that a major role should be given to the coastal states with regard to scientific research off their coasts; (4) that there should be greater international regulation of fishing with a broader role for the coastal states; and (5) that there is a trend toward protection of Lesser Developed Countries and expanded jurisdiction for coastal states where required for economic reasons.

Mr. Beasley, Legal Advisor to Canada's Department of External Affairs, pointed out that Canada was quite willing to live with the terms of the 1958 Continental Shelf Convention as an expression of existing international law. He voiced the opinion that the prospects for achieving an acceptable seabed regime beyond the limits of national jurisdiction are reasonably good, provided that agreement could be reached with regard to the limits of that jurisdiction. He suggested a three-part approach to overcoming the present procedural deadlock: (1) create a moratorium calling on all States to define their claims to the continental shelf. This would define a non-contentious area of the seabed which then could be

regulated, (2) The U.N. should establish skeletal machinery to handle problems in this area before 1973. The functions of this machinery would be limited, but provision should be made, ultimately, for a full range of functions, (3) there should be a voluntary acceptance by all States of a development tax pending the final solution of the problems.

Mr. Freeland said that the UK's view favored a simpler division of the seabeds than proposed in the U.S. draft. He favored a deep limit, or a combination of depth or breadth in a formula to produce a broad, deep limit to coastal state jurisdiction on the seabeds. It was his view that the regime to be agreed upon could not simply be an expression of common heritage, but it must provide a practical means of carrying it out. Thus, he concluded, operating conditions affecting capital must not be prohibitive.

Many of the papers presented at this meeting are expected to be published in a forthcoming issue of the Natural Resources Lawyer, the official organ of the Natural Resources Section.

The matters discussed at these meetings will be considered in depth at a four day meeting scheduled at the Law of the Sea Institute, University of Rhode Island, on June 21-24. The topics for discussion at this meeting, which is entitled "Geneva '73: Consequences of Nonagreement and Prospects for Agreement" are: (1) Consequences of Nonagreement: (2) The Contents of Negotiations; (3) Interests to be Negotiated; (4) Machinery and Strategies for Reaching Agreement; and (5) The Prospects for Agreement. Inquiries should be addressed to Dr. Lewis M. Alexander, Executive Director, Law of the Sea Institute, University of Rhode Island, Kingston, R. I. 02881.

UNITED NATIONS ACTIVITIES

Lawyer of the Americas is pleased to present the following summary of U.N. General Assembly resolutions 2660 (XXV), 2749 (XXV), and 2750 (XXV), which were adopted in December, 1970, during the closing days of the 25th General Assembly. The summaries were prepared by Dr. Isidoro Zanotti, Chief, Division of Codification and Legal Integration, Department of Legal Affairs, Organization of American States.

SEA-BED AND OCEAN FLOOR TREATY ON THE PROHIBITION OF THE EMPLACEMENT OF NUCLEAR WEAPONS AND OTHER WEAPONS OF MASS DESTRUCTION ON THE SEA-BED AND THE OCEAN FLOOR AND IN THE SUBSOIL THEREOF

In Resolution 2660 (XXV) of December 7, 1970 the U.N. General Assembly approved the Treaty on the Prohibition of the Emplacement of

Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof, and expressed the hope for the widest possible adherence to the Treaty. On February 11, 1971, the Treaty, which consists of eleven articles, was simultaneously opened for signature in Washington, London and Moscow.

According to Article I, paragraph 1, the States Parties to the Treaty undertake not to emplant or emplace on the sea-bed and the ocean floor and in the subsoil thereof beyond the outer limit of a sea-bed zone as defined in Article II of the Treaty, any nuclear weapons or any other type of weapon of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons. Paragraph 2 of this article provides that the undertakings of paragraph 1 shall also apply to the sea-bed zone referred to in the same paragraph, except that within such sea-bed zone, they shall not apply either to the coastal State or to the sea-bed beneath its territorial waters.

Article II provides that, for the purpose of the Treaty, the outer limit of the sea-bed zone referred to in Article I shall be coterminous with the twelve-mile outer limit of the zone referred to in Part II of the Convention on the Territorial Sea and the Contiguous Zone, signed in Geneva on 29 April 1958, and shall be measured in accordance with the provisions of Part I, Section II, of this Convention and in accordance with international law.

Article III stipulates that, in order to promote the objectives of and ensure compliance with the provisions of the Treaty, each State Party to the Treaty shall have the right to verify through observation the activities of other States Parties to the Treaty on the sea-bed and the ocean floor and in the subsoil thereof beyond the zone referred to in Article I, provided that observation does not interfere with such activities.

Paragraph 2 of Article III provides that, if after such observation reasonable doubts remain concerning the fulfillment of the obligations assumed under the Treaty, the State Party having such doubts and the State Party that is responsible for the activities giving rise to the doubts shall consult with a view to removing the doubts. If the doubts persist, the State Party having such doubts shall notify the other States Parties, and the Parties concerned shall cooperate on such further procedures for verification as may be agreed, including appropriate inspection of objects, structures, installations or other facilities that reasonably may be expected to be of the kind described in Article I. Paragraph 4 provides that if consultation and cooperation pursuant to paragraphs 1 and 2 of Article

III have not removed the doubts concerning the activities and there remains a serious question concerning fulfillment of the obligations assumed under the Treaty, a State Party may, in accordance with the provisions of the Charter of the UN, refer the matter to the Security Council which may take action in accordance with the Charter.

According to Article X, the Treaty is open for signature to all States.

DECLARATION OF PRINCIPLES GOVERNING THE SEA-BED AND THE OCEAN FLOOR, AND THE SUBSOIL THEREOF, BEYOND THE LIMITS OF NATIONAL JURISDICTION

In Resolution 2749 (XXV) of December 17, 1970 the U.N. General Assembly approved a Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction.

This Declaration contains 15 principles, some of which are reproduced here.

1. The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind.

2. The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty over any part thereof.

3. No State or person, natural or juridical. shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international regime to be established and the principles of the Declaration.

4. All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international regime to be established.

5. The area shall be open to use exclusively for peaceful purposes by all States whether coastal or land-locked, without discrimination, in accordance with the international regime to be established.

6. States shall act in the area in accordance with the applicable principles and rules of international law including the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the U.N. General Assembly on October 24, 1970.

7. The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into particular consideration the interests and needs of the developing countries.

8. . . . .

9. On the basis of the principles of this Declaration, an international regime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character. . . .

10. . . . .

11. With respect to activities in the area and acting in conformity with the international regime to be established, States shall take appropriate measures for and shall cooperate in the adoption and implementation of international rules, standards and procedures for, *inter alia*: (a) Prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment; (b) Protection and conservation of the natural resources of the area and prevention of damage to the flora and fauna of the marine environment.

12. In their activities in the area, including those relating to its resources, States shall pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as of all other States which may be affected by such activities. Consultations shall be maintained with the coastal States concerned with respect to activities relating to the exploration of the area and the exploitation of its resources with a view to avoiding infringement of such rights and interests.

13. Nothing herein shall affect: (a) The legal status of the waters superjacent to the area or that of their air space above those waters; (b) the rights of coastal States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat thereof resulting from, or from other hazardous occurrences caused by, any activities in the area, subject to the international regime to be established.

14. . . . .

15. The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in

Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international regime to be established.

RESERVATION FOR PEACEFUL PURPOSES OF THE SEA-BED AND OCEAN FLOOR; CONVENING OF A CONFERENCE ON THE LAW OF THE SEA

The U.N. General Assembly, in Resolution 2750 (XXV) of December 17, 1970, Part A, requested the Secretary General to cooperate with the United Nations Conference on Trade and Development, specialized agencies and other competent organizations of the United Nations system in order to: (a) identify the problems arising from the production of certain materials from the area beyond the limits of national jurisdiction and examine the impact they will have on the economic well-being of the developing countries, in particular on prices of mineral exports in the world market; (b) study these problems in the light of the scale of possible exploitation of the sea-bed taking into account the world demand for raw materials and the evolution of costs and prices; (c) propose effective solutions for dealing with these problems.

The Assembly requested the Secretary General to submit his report thereon to the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction for consideration during one of its sessions in 1971. It called upon the said Committee to submit a report on this question to the General Assembly at its twenty-sixth session.

In Part B of this resolution the General Assembly requested the Secretary General to prepare, in collaboration with the United Nations Conference on Trade and Development and other competent bodies an up-to-date study of the matters referred to in the memorandum dated January 14, 1958 prepared by the Secretariat on the question of free access of land-locked countries to the sea and to supplement that document, in the light of the events which have occurred in the meantime, with a report on the special problems of land-locked countries relating to the exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction.

In Part C of this resolution the General Assembly decided to convene in 1973 a Conference on the Law of the Sea which would deal with the establishment of an equitable international regime — including international machinery — for the area and the resources of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction. The Conference would also seek to establish a precise defini-

tion of the area, and also deal with a broad range of related issues including the regimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, *inter alia*, the prevention of pollution), and scientific research.

The Assembly also decided to review at its twenty-sixth and twenty-seventh sessions the reports of the above mentioned Committee on the progress of its preparatory work with a view to determining the precise agenda of the Conference, its definitive date, location and duration, and related arrangements. If the General Assembly at its twenty-seventh session determines the progress of the preparatory work of the Committee to be insufficient, it may decide to postpone the Conference.

The Assembly reaffirmed the mandate of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction set forth in Resolution 2467 A (XXIII), as supplemented by the present resolution. It also decided to enlarge the Committee by forty-four members, appointed by the Chairman of the First Committee in consultation with regional groups and to take into account the desirability of equitable geographical representation. Further, the Assembly instructed the enlarged Committee to hold two meetings in Geneva in March and July-August 1971 in order to prepare for the Conference draft treaty articles embodying the international regime, including an international machinery for the area and the resources of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction.

The Assembly further requested the Committee to prepare, as appropriate, reports to the General Assembly on the progress of its work, and requested the Secretary General to circulate those reports to Member States and Observers to the UN for their comments and observations. It decided to invite other Member States which are not appointed to the Committee to participate as observers and to be heard on specific points.