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Political Cobwebs Beneath the Sea

Introduction

Two years ago, the United Nations General Assembly by a resolution[1] charged the United Nations Seabed Committee with the responsibility for serving as the preparatory body for a 1973 Law of the Sea Conference. The resolution delegated to the U.N. Seabed Committee responsibility for preparing a list of subjects and issues which, under the terms of Resolution 2750C, "should be dealt with by the Conference."

The Seabed Committee was also charged by that resolution with the task of preparing draft articles for a future treaty. With this background in mind, one should examine the results of the four sessions that the Seabed Committee has undertaken in the past two years. Other than individual treaty proposals offered by various member states and the usual committee reports, and associated documentation, the only major tangible results of the past two years' work of the U.N. Seabed Committee are two documents which the committee agreed upon at its summer 1972 session.

The first is a list of subjects and issues prepared by Subcommittee II which should be dealt with by the conference. The list contains 107 issues and sub-issues which the conferees could discuss. The second document contains draft texts on seabed principles prepared by a working group of Subcommittee I, which presumably would be incorporated in a future treaty. However, working group members agreed that any draft text contained language that was not necessarily acceptable would be included in brackets. Consequently, most of the language of the draft principles is bracketed.

The most positive statement that can be made about the summer 1972 session of the U.N. Seabed Committee is that in contrast to its previous three sessions, most delegates acted in a businesslike manner in the preparation of both the draft articles containing the principles and the list of

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[1] 2750C (XXV).

issues which might be discussed at the next Law-of-the-Sea Conference. Those who have attended previous sessions of the U.N. Seabed Committee could not help but be aware of the polemic tone frequently employed by many of the delegates.

Name-calling, procedural wrangling and other obstructionisms were more the rule than the exception. In August 1972, however, most delegates did get down to business. To their credit, the professionalism exhibited reflected an increasingly sophisticated knowledge of the subject matter they were discussing. This knowledge resulted in part from the educational process of several years of Seabed Committee debates and discussions. Yet it must be said that in their more professional approach to law of the sea problem-solving they did not reach agreement on the major issues. Such agreement, therefore, remains a responsibility yet to be met.

The "Principles" Draft

The truth of this contention may be borne out by returning to the working group's draft principles. It was originally thought by some that such a task would be diplomatically easy and rather perfunctory, inasmuch as the 1970 U.N. General Assembly had already adopted a resolution (2749 XXV) in a nearly unanimous vote, which contained legal principles related to the seabed. But such was not to be the case. Notwithstanding the legal principles resolution, the working group was unable to agree on the meaning of the individual provisions of Resolution 2749 (XXV). Therefore its members had great difficulty reaching agreement on how such provisions should be re-formulated for the purpose of inclusion in a seabed treaty.

The working group completed a first reading or review of all of the texts of the draft articles. It completed a second reading of the texts II, III, IV, V, VI, VII, and VIII, leaving texts IX to XXI to be read for the second time. Yet even after the second reading much was still bracketed.

The entire contents of text I concerning the limits of national jurisdiction, which did not receive a second reading, were not only bracketed but contained no substance other than indicating the broad areas on which agreement was needed. Thus, subparagraph 1 merely stated: "Delimitation of national jurisdiction" while subparagraph 2 simply listed: "Procedures for notification, record and publication of actual limits of national jurisdiction." In fairness to Subcommittee I, it had been earlier agreed that after Subcommittees I and II considered the issue of the limits of national jurisdiction, the issue would be negotiated by the full committee. None of these three bodies has yet reached agreement.

Text 2, captioned "Common heritage of mankind," contains evidence in

subparagraph 1 of the long-standing dispute regarding the question of whether the convention will apply to the "International Seabed" (impliedly its mineral contents only), or to the entire "area" of the seabed beyond national jurisdiction. Subparagraph 2 reflects disagreement on whether the resources of the entire water column, or just those of the underlying seabed, will be included within the scope of the convention. There was further disagreement as to whether the living resources of the seabed (sedentary species) should be included and if so, how they would be defined.

Text 3 combined the texts of the earlier draft texts III and VII. Subparagraph 1 of Text 3 contained the following language:

> All activities in the Area, including scientific research and the exploration and exploitation of the resources of the Area, and other related activities shall be governed by the provisions of these Articles and shall, unless otherwise provided in these Articles, be subject to regulation by the Authority established.

Subparagraph 2, completely bracketed, defines "activities." Its bracketed language reveals the yet unresolved issues as to what activities will be governed by the régime, and what will be the scope of the authority of the international agency established by the régime. "Activities" included in the bracketed text include:

> . . . scientific research, preservation of the marine environment, the prevention of pollution, processing and marketing of commodities recovered from the Area, accommodation of uses of the Area, conservation of living resources and the protection of archaeological and historical treasures.

While such details will have to be resolved in the substantive provisions of the régime following the "principles" section, the early bracketing of the activities to be regulated by the régime portends further disputes down the future negotiating trail.

Text 4, combining texts IV, V and VI of the earlier draft version, is captioned "Non-appropriation and no claim or exercise of sovereignty or sovereign rights . . ." It provides two alternative formulations on this issue, which when read in comparison with one another, raise the very important questions of rights to seabed resources of states not party to the régime, and the rights regarding seabed resources of states party to the régime as against states not party to the régime.

One version would prohibit both appropriation of seabed resources and appropriation of the Area and claim, or exercise of sovereignty or sovereign rights to the Area except as specified in the treaty, while the other, prohibiting such appropriation of the Area and such claim or exercise of sovereignty or sovereign rights to the Area, would by implication permit appropriation of seabed resources other than under terms of the treaty.

Text 5, derived from the earlier draft text VIII, reflects agreement that ". . . the Area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination. . . ."

The remaining texts IX to XXI, which received only one reading, will be considered again by the working group at its next session. Most members of the working group concluded their summer 1972 negotiations, with the common belief that their drafting effort constituted a substantial achievement. That they agreed to proceed with negotiations in an orderly manner was indeed an achievement compared to past performances. But the fact that little of substance in the area of general principles alone was agreed to during a two-year period following adoption by the U.N. General Assembly of Resolution 2749 XXV, which dealt with essentially the same subject matter, causes one to wonder how long it will take to reach agreement on alternative formulations of the remainder of the draft treaty texts pertaining to general principles, let alone the more substantive sections which are to follow.

The "List"

Further evidence of a lack of progress on reaching agreement on substantive issues can be found in an examination of the efforts of Subcommiteee II, related to the development of a list of subjects and issues which could be dealt with by a future conference on the law of the sea.

At the end of the March 1972 session of the Seabed Committee, a coalition of fifty-six cosponsors, including most developing coastal countries of Africa, Asia and Latin America, and China, Iceland, Rumania, Spain and Yugoslavia, introduced a draft list of subjects and issues. Its sponsors presented arguments that the list was objectively compiled, and fairly represented the interests of all member countries.

However, the delegate of Kenya—one of the sponsors—while referring to the list, mentioned that:

> The existing law of the sea had been designed specifically to favour the strong countries over weak countries, the industrialized over the poor and the developed over the developing. The developing countries were therefore united in their determination to achieve a more balanced and equitable régime, and that determination was reflected in the list under consideration. The sponsors were convinced that the list offered a framework in which all delegations could raise any subject of importance to them at the Conference. If the Sub-Committee accepted the list on that basis, it could proceed to a substantive discussion on the subjects and issues at the summer session. . . . The sponsors believed that their work fulfilled the mandate entrusted to the Seabed Committee in resolution 2750C (XXV) to prepare a comprehensive list of subjects and issues relating to the law of the sea. The Committee should proceed expeditiously on the other part of its task, which was to prepare draft articles on subjects and issues.

The non-sponsors of the list did not want to proceed to drafting articles without first seeking to amend the list. They believed, as the statement of the Kenya delegate implied, that the list catalogued the subjects and issues in a manner prejudicial to the interests of the developed countries and the land-locked and shelf-locked countries. Thus, the United States,[3] Italy,[4] the Soviet Union[5] and Japan[6] submitted separate amendments to the list while the land-locked and shelf-locked countries, Austria, Belgium, Bolivia and Zambia,[7] jointly submitted amendments. The amendments tell the story of what was felt to be wrong with the list sponsored by the fifty-six. They merely sought to insure that the conference agenda would contain a neutral formulation of the issues, in order to prevent an implied forfeiture of their positions before the substantive discussions began.

Thus, in the summer 1972 session of the U.N. Seabed Committee, negotiation of the proposed amendments took place. The negotiations were conducted by a working group followed by adoption of its agreed revisions by Subcommittee, II, and then finally the Full Committee.

The controversial items were as follows:

Item 4 of the list proposed the fifty-six sponsors reads:

4. Straits
   4.1 Straits used for international navigation
   4.2 Innocent passage

The United States and the Soviet Union had made proposals for a right of free transit through and over international straits. Nowhere in the list proposed by the fifty-six sponsors did free transit appear. Thus, the U.S. amendment called for the addition of sub-item "4.3 Free transit." The Soviets sought the same end by amending item 4 to delete sub-item 4.2.

The Full Committee, in its summer 1972 session, finally agreed on the following formulation.

4. Straits used for international navigation
   4.1 Innocent passage
   4.2 Other related matters, including the question of the right of transit

The above two subparagraphs are clearly contradictory and reveal that the straits issue in general, and the free transit issue in particular, remain unresolved.

Item 6 of the list of the original fifty-six sponsors was captioned, "Exclusive economic zone beyond the territorial sea."

The U.S. amendment submitted in March 1972 called for a new caption:

[2]A/AC.138/SC.II/SR. 29 of March 31, 1972, at 6.
[3]A/AC.138/68, March 29, 1972.
[4]A/AC.138/69, March 29, 1972.
[5]A/AC.138/70, March 29, 1972.
[6]A/AC.138/71, March 29, 1972.
[7]A/AC.138/72, March 29, 1972.

"Exclusive economic zone or other coastal state economic jurisdiction or rights beyond the territorial sea." The Japanese amendment would rephrase item 6 to read: "Exclusive economic zone or preferential rights of coastal states beyond the territorial sea." The USSR amendment called for a reformulation of item 6 to read: "Preferential rights of coastal states beyond the territorial sea."

The land-locked countries' amendments called for a major overhaul of item 6 to include, among other things, provision for land-locked and shelf-locked country participation in development of resources in marine areas adjacent to coastal states. Additional amendments were suggested specifically to protect their fisheries interests, and their participation in the régime for the deep seabed beyond the limits of national jurisdiction.

The final version of item 6 agreed to by the full Committee in August 1972, consisted of two alternative formulations, providing respectively for an exclusive and non-exclusive resource zone, listed as items 6 and 7.[8] The

[8]They consisted of the following:

6. Exclusive Economic Zone Beyond the Territorial Sea
   - 6.1 Nature and Characteristics, Including Rights and Jurisdiction of Coastal States in Relation to Resources, Pollution Control and Scientific Research in the Zone. Duties of States
   - 6.2 Resources of the Zone
   - 6.3 Freedom of Navigation and Overflight
   - 6.4 Regional Arrangements
   - 6.5 Limits: Applicable Criteria
   - 6.6 Fisheries
   - 6.6.1 Exclusive Fishery Zone
   - 6.6.2 Preferential Rights of Coastal States
   - 6.6.3 Management and Conservation
   - 6.6.4 Protection of Coastal States' Fisheries in Enclosed and Semi-Enclosed Areas
   - 6.6.5 Regime of Islands Under Foreign Domination and Control in Relation to Zones of Exclusive Fishing Jurisdiction
   - 6.7 Seabed Within National Jurisdiction
   - 6.7.1 Nature and Characteristics
   - 6.7.2 Delineation Between Adjacent and Opposite States
   - 6.7.3 Sovereign Rights Over Natural Resources
   - 6.7.4 Limits: Applicable Criteria
   - 6.8 Prevention and Control of Pollution and Other Hazards to the Marine Environment
   - 6.8.1 Rights and Responsibilities of Coastal States
   - 6.9 Scientific Research
7. Coastal State Preferential Rights or Other Non-Exclusive Jurisdiction Over Resources Beyond the Territorial Sea
   - 7.1 Nature, Scope and Characteristics
   - 7.2 Seabed Resources
   - 7.3 Fisheries
   - 7.4 Prevention and Control of Pollution and Other Hazards to the Marine Environment
   - 7.5 International Cooperation in the Study and Rotational Exploitation of Marine Resources
   - 7.6 Settlement of Disputes
   - 7.7 Other Rights and Obligations

formulation of item 6 confirms that no agreement had been reached on the extent of coastal state rights and duties regarding mineral and fishery resources adjacent to coasts, nor on the breadth of the zone in which such rights and duties would apply, nor on the correlative rights and duties of other states in the marine areas adjacent to coastal states. The juxtaposition of the terms "exclusive" and "preferential," and "rights" and "duties" reflects the continuing lack of agreement on these issues.

The alternative formulation of the resource jurisdiction issue as item 7 further reflects such differences. Its caption "Coastal State Preferential Rights and or Other *Non-Exclusive* Jurisdiction . . ." points up the striking differences between those advocating exclusive coastal state jurisdiction over marine resources, and those seeking an equitable international arrangement in which the world community as a whole would benefit, and in which there would be a balance between coastal state rights and those of other states having resource development interests in areas adjacent to coastal states.

Item 7 of the list tabled in March by the original fifty-six sponsors reads:

7. High Seas
   - 7.1 Nature and Characteristics
   - 7.2 Freedom of Navigation and Overflight
   - 7.3 Rights and Duties of States
   - 7.4 Management and Conservation of Living Resources

The U.S. amendment called for a rephrasing of item 7.2 as follows: "Freedom of Navigation and Overflight and Other Uses." The Soviet amendment called for the following reformulation of the item: "Freedom of Navigation and Other Freedoms."

Subcommittee II, at its summer 1972 session, agreed to the following formulation renumbered as item 8:

8. High Seas
   - 8.1 Nature and Characteristics
   - 8.2 Rights and Duties of States
   - 8.3 Question of the Freedoms of the High Seas and Their Regulation
   - 8.4 Management and Conservation of Living Resources
   - 8.5 Slavery, Piracy, Drugs
   - 8.6 Hot Pursuit

Sub-item 8.3 reveals the continuing differences between those favoring unrestricted retention of protected high-seas freedoms, and those favoring their limitation through regulation.

Item 12 of the list tabled in March by the fifty-six sponsors reads:

12. Scientific Research
   - 12.1 Nature, Characteristics, and Objectives of Scientific Research of the Oceans
   - 12.2 Regulation of Scientific Research
   - 12.3 International Cooperation

The U.S. amendment called for a new sub-item 2 to read: "12.2 Freedom of research and access to scientific information." The Soviet amendment called for a reformulation of the item to read: "Coordination of scientific research." Both amendments were withdrawn after long discussion failed to produce a satisfactory rephrasing.

The Working Group, unable to agree on a single neutral formulation, decided as it had in items 6 and 7 to present alternative formulations as items 13 and 14:

13. Scientific Research
    - 13.1 Nature, Characteristics and Objectives of Scientific Research of the Oceans
    - 13.2 Access to Scientific Information
    - 13.3 International Cooperation

14. Development and Transfer of Technology
    - 14.1 Development of Technological Capabilities of Developing Countries
    - 14.1.1 Sharing of Knowledge and Technology Between Developed and Developing Countries
    - 14.1.2 Training of Personnel from Developing Countries
    - 14.1.3 Transfer of Technology to Developing Countries

Item 13 represented the developed-country view, while item 14 represented the developing country "transfer of technology" view. This is one other area of continuing dispute.

Item 21 of the list tabled in March by the original fifty-six sponsors reads:

21. Peaceful Uses of the Ocean Space: Zones of Peace and Security

The U.S. amendment sought to rephrase the item: "Peaceful Uses of Ocean Space," while the Soviet amendment would have rephrased the item "Peaceful Uses." The item finally appeared as originally drafted in the list proposed by the original fifty-six sponsors. Its inclusion in the final agreed list, however, was by no means a concession on the part of the United States and USSR, which did not by eventually accepting the item intend to defer to the wishes of some delegations, that the Seabed Committee expand its jurisdiction and undertake to resolve disarmament questions.

These were the major issues on which debate was centered in the Subcommittee II working group. The delegates were pleased finally to have reached agreement on the list. That their approach to negotiations in the summer 1972 session was more businesslike than in their previous three sessions, cannot be denied. However, it did take two years to reach agreement on the list which is merely to serve as a proposed agenda for the conference. The list is long and cumbersome, duplicative and contradictory in parts. Although it reveals many of the major areas of disagreement, and thereby provides a focal point for future negotiations, its drafters were

careful not to permit its formulation in any way to compromise their respective national or regional positions, or prejudice their right to take whatever position they desire on any issue in subsequent discussions.

Summary of the Issues and Positions

In retrospect, when one considers what was contemplated in the 1970 General Assembly resolution calling for a 1973 Law of the Sea Conference, one must conclude that the timetable for adequate preparatory work within the Seabed Committee was highly optimistic. Two years later, comparatively little was actually achieved other than an identification of issues for future discussions. The negotiations, however, generally revealed a more sophisticated grasp of the issues.

Although the summer 1972 session represented a quantum jump in the attitudinal approach of delegates to negotiations, it also revealed that no consensus was near on most of the major issues. The preceding analyses of the "principles" draft prepared by Subcommittee I's working group, and the "list" adopted by the full Committee bear this out. To recapitulate, the major unresolved issues reflected in these two documents are:

1. The limits of the territorial sea[9] and navigational rights of vessels and aircraft, in and over international straits which are contained within the territorial sea of coastal states.
2. The limits of coastal state jurisdiction[10] over resources of the seabed adjacent to and beyond the territorial sea, and the nature and limitations of coastal state jurisdictional authority in such areas.
3. The nature of fishing rights which coastal countries may obtain in high seas areas adjacent to their coasts, to regulate the activities of foreign fishing fleets, the distance from the coastline in which such coastal nation rights would apply, and the substantive limitations on such coastal country rights.
4. The measures which coastal countries may take in high seas areas adjacent to their coasts, to protect themselves against marine pollution caused by foreign nations or their nationals, the distance from the coastline in which such coastal nation rights would apply, and the substantive limitations on such coastal nation rights.
5. The measures which coastal countries may take in high seas areas adjacent to their coasts to regulate the conduct by foreign nationals of scien-

[9]Although not expressly stated in Seabed Committee reports, general agreement did seem to be emerging that the territorial sea should be limited to twelve miles. But agreement on this issue by developing coastal states was clearly predicated on the understanding that their resources interests in areas adjacent to their coasts would be adequately protected.

[10]A consensus has begun to develop on a 200-mile limit regarding coastal state resources jurisdiction. Coastal states with continental margins extending beyond 200 miles, however, seem to prefer that their entire continental margins be included within the limits of coastal state jurisdiction. The limits question, however, remain largely unresolved because of continuing differences over the "mix" of coastal state rights and duties with respect to other states' rights and duties, regarding resource matters in such areas.

tific research on the high seas and underlying seabed, the distance from the coastline in which such coastal country rights would apply, and the substantive limitations on such coastal country rights.

6. The rights of individual countries and their nationals to explore and exploit the natural resources of the seabed beyond the limits of national jurisdiction, the rules and conditions under which such exploration and exploitation would take place, and the institutional and legal means of administering such exploration and exploitation, and of disturbing benefits resulting from such activities, and of resolving disputes arising from such activities.

To generalize, the major objectives of most developing coastal nations of the world are to:

1. Extend seawardly the limits of their exclusive jurisdiction and control over
   (1) fisheries,
   (2) exploration and exploitation of seabed minerals, and
   (3) scientific research conducted by foreign vessels in areas adjacent to their coasts, and in other parts of the high seas;
2. Minimize any restrictions on their exercise of such jurisdiction;
3. Establish an international organization, which they would control. It would have exclusive authority to explore and exploit the resources of the seabed beyond the limits of exclusive coastal-nation jurisdiction. It would control mineral production in this area, and thereby maximize the benefits therefrom to developing countries. Through control of such an international organization, those nations would deny effective commercial access by the technologically advanced states, to the natural resources of the seabed lying beyond the limits of exclusive coastal nation jurisdiction.

On the other hand, the objectives of most of the developed countries with respect to the oceans are to:

> Preserve as best they can the largest possible area of the high seas, and within that area to retain, with minimal restrictions, their rights to exercise the high seas freedoms (especially the freedom to navigate, fish and conduct scientific research on the high seas, and to retain their high seas freedom, subject only to reasonable international regulation, to mine the minerals of the ocean floor beyond the limits of coastal country jurisdiction.)

The developed countries do not oppose creation of an international organization to administer the exploration and exploitation of seabed resources beyond the limits of coastal country jurisdiction. But they would prefer that the organization neither conduct exploration and exploitation of the resources of the ocean floor, nor control production thereon. The developed nations would neither restrict opportunities for exploration and exploitation of the ocean floor by developing countries, no object to paying a portion of the value of the minerals produced on the ocean floor to an international organization for the use and benefit of developing countries.

The major exception to these generalities on the objectives of developing and developed nations, is that land-locked and shelf-locked nations are generally opposed to the extension of exclusive coastal-nation jurisdiction over fisheries and minerals, because they wish to preserve as large an area

as possible beyond the limits of exclusive national jurisdiction for their own maximum benefit.

Strengths and Weaknesses of Major Positions

Little progress has been made toward resolution of these issues through a reconciliation of conflicting views. One means of assessing the relative strengths of the proponents of the various conflicting positions, is to speculate on what would happen should there either not be a Law of the Sea Conference or should it fail.

Regarding the issue of navigation, merchant vessels of all countries would undoubtedly continue to sail from port to port through international straits as necessary. Without such a result international trade would be slowed to a standstill, with severe disruption of the economies of all countries—an untenable position for any country to be able to accept.

Insofar as navigational rights for military ships and aircraft are concerned, NATO and Warsaw Pact countries have too much of a national defense stake in the free mobility of their fleets and aircraft, to tolerate any unilateral prevention of transit through international straits or impediments to navigation on the high seas. On the other hand, in the interest of navigational safety it would seem likely that naval policy-makers would be willing to comply with reasonable ship traffic safety schemes and aircraft safety regulations, related to straits so long as such schemes did not prejudice naval mobility.

Regarding coastal state jurisdiction over mineral resources, it can fairly be said that under the Continental Shelf Doctrine, such rights already appertain to the exploration and exploitation of the resources of the continental margin. The threat of continuing unilateral assertions of further control by developing coastal states over fishery resources, absent international agreement is a possibility not to be overlooked, notwithstanding a similar possibility of a retaliatory reaction to such measures by distant water-fishing states.

Whether most coastal states, developed or developing, have either the desire or the capability unilaterally to impose and enforce new regulatory constraints related to pollution prevention and control, and to the conduct of oceanographic research on the high seas, is subject to some doubt when consideration is given to other law-of-the-sea objectives expressly acknowledged to be more important.

With respect to the exploitation of the mineral resources of the deep seabed, it is in the area of the high seas and the deep ocean floor that the developed nations have the greatest strength; a freedom of the seas tradition, ships, technology, capital and the option to refuse to ratify—without

effective developing-nation countersanctions—a régime for the deep seabed.

Bearing these considerations in mind, it would seem to be in the interests of most states to make progress toward international agreement on the law of the sea issues. Absent agreement, on balance, it would appear that developing states have more to lose.

However, no hard evidence is yet discernible which points toward a present willingness on the part of Seabed Committee members to make the compromises necessary to reach agreement on the host of yet unresolved issues.

The Seabed Committee as Compared to the International Law Commission

In fairness to the Seabed Committee, it must be stated that its approach to problem-solving is substantially different from the International Law Commission of the 1950s which served as the preparatory body for the 1958 and 1960 Law of the Sea Conferences. the ILC staff, composed mainly of international lawyers and technical experts, prepared a series of draft articles specifically designed to codify existing law, and to establish new law on a rational, problem-solving basis. Such articles were drafted and redrafted many times before the politically appointed plenipotentiaries first met to begin negotiations on them.

By contrast, the Seabed Committee is an inherently political body, whose representatives' skills and inclinations as tacticians and protagonists, often tend to exceed their skills as legal craftsmen and expert technologists. Notwithstanding these differences, it would seem apparent that if international agreement within the Seabed Committee on law-of-the-sea issues is to become a reality, a lessening of the emphasis on the former and an increase of the latter would be mandatory. Until a common recognition of these needs is achieved and implemented, progress on reaching international agreement may well continue to maintain its present snail's pace.

Awareness of the absence of substantial progress was recognized this summer by the members of the Seabed Committee. It became evident to all that the 1973 Law of the Sea Conference called for by the 1970 General Assembly resolution would not be practicable. Chile and Austria each volunteered to serve as host countries for a 1974 Law of the Sea Conference. The U.N. General Assembly, at its fall 1972 session, called for a 1974 Law of the Sea Conference and charged the Seabed Committee to continue with its preparatory work in 1973.

Unless members of the Seabed Committee commit themselves to serious dedication to resolution of conflicting interests during 1973, it may be well

beyond 1974 before a Law of the Sea Conference can successfully result in reaching international agreement.

The Moratorium Issue

Another event of note occurred in the March 1972 session of the Seabed Committee when Kuwait, with the support of thirteen developing nations and China, attempted to secure approval of a "draft decision" of the Seabed Committee, to "call upon all states engaged in activities in the seabed area beyond national jurisdiction to cease and desist from all commercial activities therein and to refrain from engaging directly or through their nationals in any operations aimed at the commercial exploitation of the area before the establishment of the régime."

At the summer 1972 session of the Seabed Committee the moratorium resolution was again raised and discussed in the Committee's report, with the general understanding that it would be introduced by its sponsors at the fall 1972 session of the U.N. General Assembly.

As a matter of history, the 1969 General Assembly adopted a moratorium resolution which urged that pending the establishment of an international régime, states and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdictions. The United States voted against it and contended that the resolution was designed to retard the development of the technological capacity for deep seabed exploitation; that it would encourage nations to move unilaterally toward unjustifiably expansive claims of national jurisdiction just in order to remove areas of exploitation from the scope of the prohibition contained in the resolution; and that adoption of the resolution would represent a breakdown, on a matter of basic importance, of those processes of cooperation and consensus which are necessary if any genuine accomplishment is to result from the labors on the seabed issues in the United Nations.

The United States representative suggested that passage of the resolution would indicate that the "United Nations were now . . . willing to make fundamental decisions on seabed issues through a 'politics of confrontation' and paper majorities."

As suggested by the United States representative, the adoption of the so-called Moratorium Resolution reflected the efforts of a growing number of nations to engage in the "politics of confrontation." The vote ensuring its adoption represented a concerted bloc action by developing nations against the developed nations whose interest, in part, is in achieving a deep seabed régime which will be attractive to investors. The vote further reflected the desire of some developing nations to prevent the tech-

nologically advanced nations from exploiting deep seabed resources until they could be assured of fully "sharing the benefits" thereof.

A year later the General Assembly adopted another resolution, earlier mentioned, known as the "Legal Principles" Resolution. It does not tacitly refer to any prohibition on exploitation, nor does it specifically affirm the high seas freedom to exploit the deep seabed. The position of the United States and most other developed countries remains that, under international law, there is a present right to exploit the deep seabed, and indeed prior to establishment of a deep seabed régime.

S. 2801, a U.S. Senate bill drafted by the American Mining Congress, would establish an interim licensing system designed to provide security of tenure to United States nationals with respect to one another for deep seabed mining activities. Hearings were held in 1972 in both houses of Congress on this proposed legislation. The U.S. State Department, at the time of the hearings, requested the Congress not to take further action on the legislation until after the fall 1972 session of the U.N. General Assembly.

Legislation providing for an interim system for the regulation of deep-seabed mining by United States nationals could become a blessing in disguise. Although an initial negative reaction to it by developing countries is to be expected, such legislation could be more helpful than harmful to developing countries.

First, it could stimulate good-faith discussions within the U.N. Seabed Committee to formulate a seabed régime which would be acceptable to a broad spectrum of its membership—developing and developed alike.

Second, it could stimulate experimental development of seabed mining techniques with the attendant benefit of an early accumulation of a body of working experience and resulting data. Such information could not help but benefit members of the U.N. Seabed Committee, as they seek to establish a specific framework to govern future mining efforts on the deep seabed.

If early efforts conducted pursuant to such legislation were successful, revenues to be used for the benefit of developing countries could be generated prior to the entry into force of a subsequent régime.

Further, under such legislation mining activities conducted by United States nationals would be made specifically subject to the régime to be established. Additionally, the legislation could provide a mechanism to regulate seabed mining efforts prior to the establishment of a régime, and to limit the area of the seabed in which mining activities would be taking place—results certainly not to be realized should larger scale seabed mining efforts commence without the enactment of legislation.

A possible benefit to world consumers could also result from such

legislation, inasmuch as the interim licensing system established could promote competition between United States seabed mining companies. With several companies involved in ocean mining, each would most likely be motivated to develop seabed minerals at competitive costs.

Other interim benefits could also accrue from such legislation, including the protection of the integrity of investments and, in turn, the growth of technology without in any way interfering with the existing rights of other states, to proceed with the development of their own ocean mining capability.

Thus, far from being a unilateral act, detrimental and unconducive to reaching international agreement on a seabed regime, such legislation could serve as a helpful catalyst for arriving at a timely and widely acceptable international arrangement for deep ocean mining.

Conclusion

Possible legislation aside, the question remains as to whether a collective international will to reach a satisfactory resolution of the many disputed law-of-the-sea issues, may be expected to develop within the U.N. Seabed Committee in time to enable that Committee to proceed with a sufficiently comprehensive preparatory effort, to ensure the success of the now scheduled 1974 Conference on the Law of the Sea. Some observers of, and participants in, U.N. Seabed Committee activities, have expressed optimism for such a development. They say that breakthroughs taking the form of widespread international conciliations are imminent and can be expected to materialize this year.

Others feel that agreement is a long way off. They state that if it took the U.N. Seabed Committee two years to reach agreement on only the listing of issues to be discussed at a future Law of the Sea Conference, and the translation of fewer than half of the principles contained in Resolution 2749 (XXV) into alternative texts for inclusion in a draft seabed treaty, then resolution of the plethora of the remaining hotly-disputed issues will take nearly a decade.

The setbacks for all nations, individually and as representatives of the international community as a whole, failing timely international agreement on outstanding law-of-the-sea issues, would be substantial. That U.N. Seabed Committee members accordingly should proceed earnestly with a good faith effort to accommodate each other's needs, is beyond dispute. It is therefore entirely possible that the success or failure of the U.N. Seabed Committee in resolving the matters before it, may signal whether or not the United Nations as an institution may be able to continue to play a vital part in the reconciliation of international problems.