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Chairman's Report

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Chairman's Report

Serving as your Chairman during the past year has been a richly rewarding experience. The most significant activity was the formulation of principles recommended as the policy of the United States relating to the exploration and exploitation of the sea bed and subsoil thereof beyond the limit of national jurisdiction. Details will appear later in this report.

Hopefully the address of a Soviet practitioner and his reply to questions about Soviet law will lead to further dialogue between the lawyers of the United States and the Soviet Union to the end that each may derive a better understanding of the legal system applicable in each country. Need for a better understanding is apparent.

Annual Meeting in Philadelphia

The first session of the Council was held on August 3. [Members] Present were your Chairman; David M. Gooder, Chairman-Elect; Clifford J. Hynning, Benjamin Busch, Harry A. Inman and G. W. Haight, Divisional Vice-Chairmen; Katherine Drew Hallgarten, Secretary; Edward D. Re, Donald K. Duvall, William C. Farrer, Charles R. Norberg, Walter E. Craig, James T. Haight, John R. Stevenson, Leonard v.B. Sutton, Eberhard Deutsch and David F. Maxwell, [all] members of the Council. Also in attendance were Max Chopnick, Section Delegate; Harry LeRoy Jones and J. Wesley McWilliams, Past Chairmen; and Committee Chairmen Malcolm Wilkey, Gen. Martin Menter, John G. Laylin, Walter Slowinski, Mrs. Miriam Rooney, and Robert Starr; and M. Terrence O'Donnell, Staff Assistant.

Your Chairman called attention to the plans of the New Zealand Law Society to celebrate its one hundredth anniversary in April, 1969, and its hope that a substantial number of members of the bar of the United States would attend. The Executive Director of the ABA had requested your Chairman to furnish a list of individuals who might be able to attend at their own expense and to whom the Society would extend formal invitations. Several names were suggested for transmittal to Mr. Early.

Edward D. Re, Chairman of the Committee on Policy and Planning,

called attention to an ambiguity in the language of Council action making the Editor of *The International Lawyer* a member of the Council, particularly whenever the Editor is also an elected member. The Committee recommended that prior action of the Council be construed to mean that an elected member's status would be unaffected by his selection as Editor of *The International Lawyer*, but that he would be limited to only one vote. The Council approved this recommendation.

This Committee also reported on its consideration of the basis for law student membership in the Section. After lengthy discussion the Council voted to approve dues of \$5.00 per year for student members and further voted to appoint a special committee of the Section to work with the officers of the Law Student Division on establishing means for effective student activity in the Section, and to report this action to William Reece Smith, Chairman of the Committee on Liaison with other Sections.

The Committee Chairman then reported the views of his Committee on the subject of standing and special committees. The question was raised whether the Council should express its concern about the proliferation of activities affecting international and comparative law through the establishment and continuance of standing and special committees of the ABA. Upon a motion made, seconded and carried, it was agreed that the Council is concerned with the overlapping jurisdiction and functions of such standing and special committees within the fields of international and comparative law. It was the consensus that whatever ABA funds would be appropriated for such committees' activities should be appropriated to the Section and that a copy of the foregoing be sent to the Board of Governors.

After recess for luncheon, the Council reconvened at 1:45 p.m.

Donald Duvall requested the Council to consider whether action should be taken on a proposal which had been previously adopted by the Council to request the Department of State to arrange a seminar on International Relations Law for lawyers who do not specialize in that field of law. The Council voted to refer the matter to the Committee on Continuing Legal Education for a recommendation as to what action should be taken.

The Chairman of the International Organizations Division stated that Robert Starr, Chairman of the Subcommittee on Constitutional Structure of the Division's Committee on United Nations activities, had prepared a report on a proposed resolution recommending that the United States take steps toward the convening of a General Conference

of the Members of the United Nations for the purpose of revising the Charter. The report concluded that there is serious doubt whether a Charter review in the near future is desirable. It was voted that no action be taken at this time on the proposed resolution.

John G. Laylin summarized for the Council the Joint Report to the Association, which had been prepared by the Sections of Natural Resources Law, International and Comparative Law, Administrative Law and the Standing Committee on Peace and Law through United Nations, on jurisdiction of the seabed beyond the continental shelf. The report, containing a recommendation to the House of Delegates, was approved and was referred to the Section for its action.

The Chairman of the Special Committee on Relations with Lawyers of Other Nations reported on the plans of his Committee. A motion was made, seconded and carried that the Committee on Policy and Planning consider and report back to the Council on the activities of the Special Committee and make a recommendation on whether such Committee should be a standing committee of the Section.

The Council recessed at 5:30 p.m. and met again on August 4 at 10:00 a.m.

Present were your Chairman; David M. Gooder, the Chairman-Elect; Clifford J. Hynning, Benjamin Busch, Harry A. Inman, and G. W. Haight, Divisional Vice-Chairmen; Katherine Drew Hallgarten, Secretary; Edward D. Re, Donald K. Duvall, William C. Farrer, Charles R. Norberg, James T. Haight, John R. Stevenson, Leonard v.B. Sutton, Eberhard Deutsch, and David F. Maxwell, members of the Council; and Max Chopnick, Section Delegate.

Also in attendance were Past Chairmen, Victor C. Folsom, Harry LeRoy Jones, and Lyman M. Tondel, Jr.; and Richard P. Brown, Jr., John G. Laylin, Gen. Martin Menter, Samuel V. Geekjian and Glenn Sedam.

A report was given by Clifford J. Hynning, the retiring Editor of *The International Lawyer*. Upon conclusion of his report, the Council expressed its gratitude and appreciation for the fine work the editor had done. A motion was made, seconded, and carried that the officers and members of the Council, upon a personal basis, order and present to Mr. Hynning a bound set of the volumes edited by him, signed by each person on the fly leaf.

Upon the suggestion of the Section Delegate, a motion was made, seconded and carried that the Section and the British Institute of Com-

parative Law publish a joint edition of their respective journals to appear just before or at the time of the annual meeting in London in 1971.

An informational report was received from Malcolm Wilkey, Chairman of the Committee on Antitrust Law Affecting International Trade.

Your Chairman next introduced Glenn Sedam, Chairman of the Division on International Programs of the Law Students Division, who described plans which they are making for a conference of law students' organizations in various countries of the world. Your Chairman expressed the interest of the Section in their efforts and appointed Harry A. Inman chairman of a Special Committee to cooperate with the Law Students Division. With consent to the Council your chairman authorized him to appoint two other members of the committee.

The Council next heard a report from Gen. Martin Menter, Chairman of the Committee on the Law of Outer Space. The Council expressed approval of the request of the Committee that the Committee on the Law of Outer Space be permitted to appoint nonlawyer experts on outer space as technical consultants to the Committee on a non-compensated basis, after consulting with the Executive Director of the ABA.

The Chairman of the Division of International Law presented a report of the Atomic Energy Committee.

The Vice Chairman, Division of International Trade and Investment Law, reported on the activities of that Division. After consideration of the report and recommendation of the Division's Committee on Tariffs and the Gatt on the Convention Establishing the Customs Cooperation Council, the report and recommendations were approved and referred to the Section with the proviso that they be discussed with the Chairman of the Standing Committee on Customs Law.

At the request of the Vice Chairman, Division of International and Comparative Law, your Chairman called on Harry LeRoy Jones to make a suggestion concerning the Committee on International Cooperation. Mr. Jones suggested that there be established a new committee to be known as the Committee on Transnational Procedure and that the activities of the Committee on International Judicial Cooperation be limited to matters such as the exchange of jurists. Leonard Sutton, Chairman of the Committee, stated that he and Mr. Jones had previously discussed the matter and that he favored Mr. Jones's suggestions. The suggestion was referred to the Policy and Planning Com-

mittee and Mr. Jones and Judge Sutton were invited to attend the meeting at which that Committee would consider the matter.

Your Chairman asked the Chairman of the Policy and Planning Committee to present for the consideration of the Council the text of the recommendation of that Committee as to the views of the Council on Specialization. After discussion, it was voted that the recommendation be embodied in the following letter to be signed by your Chairman in response to the request of Chesterfield Smith, Chairman of the Special Committee on Specialization:

"Dear Mr. Smith:

Pursuant to the request contained in your letter of February 22, 1968, the Council of the Section of International and Comparative Law has considered the question of specialization in the practice of law, and is pleased to report as follows:

That the Council of the Section of International and Comparative Law recommends that the American Bar Association oppose all programs of certification of specialization in the practice of law;

That the Council of the Section of International and Comparative Law opposes certification under Bar Association auspices based upon voluntary assertion of specialization in the practice of law;

That the Council of the Section of International and Comparative Law further recommends that if a program of formal certification of specialization be adopted by the American Bar Association, in such event the standards and procedures for the recognition or certification of specialization with respect to International and Comparative Law shall be established under the guidance and in consultation with the Section of International and Comparative Law."

The meeting adjourned at 12:30 p.m.

Section Meeting

On Monday, August 5, the first General Session of the Section at the annual meeting convened at 2:00 p.m. for an illustrated lecture by George T. Murphy, Special Assistant to the President of North American Rockwell Corporation Space Division, on the Apollo Program Mission to the Moon, with emphasis on International Law questions incident to the program.

Upon the conclusion of the presentation, there was a business meeting of the Section. Your Chairman announced that the first item on the agenda was a proposed joint report and recommendation to the

Association by the Sections of Natural Resources Law, International and Comparative Law, Administrative Law, and the Standing Committee on Peace and Law through United Nations, which had been approved by the Council. Upon request, John G. Laylin, Chairman of the Working Group of the Section on the report, summarized its contents, and read the text of the recommendation. Mr. Laylin said that the report had the unanimous approval of the committees jointly behind it. The Section unanimously approved the report and the following resolution for submission on waiver to the House of Delegates at this Annual Meeting:

Recommendation

The Sections of Natural Resources Law, International and Comparative Law, and the Standing Committee on Peace and Law Through United Nations, recommend that the following resolution be adopted by the House of Delegates:

WHEREAS, the natural resources of the seabed and subsoil under the high seas are becoming, through technological progress, increasingly available to mankind in ways until recently unforeseen; and

WHEREAS, a Committee of the United Nations General Assembly is presently considering "practical means to promote international co-operation in the exploration, conservation and use of the seabed and the ocean floor, and the subsoil thereof . . . and of their resources"; and

WHEREAS, the United States, as a member of that United Nations Committee, has proposed that the exploration and use of the deep ocean floor be open to all states and their nationals without discrimination and in accordance with international law, and as a corollary of this that the exercise of sovereignty or sovereign rights over any part of the deep ocean floor be ruled out; and

WHEREAS, the treaty known as the 1958 Convention on the Continental Shelf in force between 37 nations, including the United States, recognizes that each coastal state has "exclusive sovereign rights for the purpose of" exploring and exploiting the natural resources of the "seabed and subsoil of the submarine areas adjacent to the coast . . . to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas"; and

WHEREAS, it is generally recognized that the definition in the 1958 Convention on the Continental Shelf of the boundary between the

area of exclusive sovereign rights and the deep ocean floor needs to be clarified by an agreed interpretation; and

WHEREAS, the House of Delegates, by its Resolution of August 9, 1966, stated that "prior to framing a policy . . . the United States Government . . . review thoroughly the issues at stake in consultation with representatives of the American Bar Association and others competent in the field of international law, with scientific and technical experts and with leaders of American industry in oceanic development";

NOW, THEREFORE, BE IT RESOLVED, that the American Bar Association

SUPPORTS the efforts being made in and out of the governments of interested states to protect the seabed and subsoil of the deep ocean floor beyond the limits of national jurisdiction from claims of sovereignty or rights of discretionary control by any nation or group or organization of nations;

SUPPORTS the call by the United States Government for internationally agreed arrangements governing the exploitation of natural resources of the deep ocean floor beyond the limits of national jurisdiction to be established as soon as practicable;

RECOMMENDS

(1) That the United States consult with other parties to the 1958 Continental Shelf Convention with a view to establishing, through the issuance of parallel declarations or by other means, an agreed interpretation of the definition of the boundary between the area of exclusive sovereign rights with respect to natural resources of the seabed and subsoil and the deep ocean floor beyond the limits of national jurisdiction.

(2) That within the area of exclusive sovereign rights adjacent to the United States, the interests of the United States in the natural resources of the submarine areas be protected to the full extent permitted by the 1958 Convention on the Continental Shelf.

(3) That on the basis of the information now available the most desirable long-range goal for a regime to govern exploration and development of the mineral resources of the seabed and ocean floor and subsoil beyond the limits of national jurisdiction is not the creation of a supersovereignty with power to grant or deny mineral concessions, but rather agreement upon norms of conduct designed to minimize conflicts between sovereigns which undertake such exploration and development.

(4) That the resources of the bed and subsoil of the deep sea, beyond the limits of national jurisdiction, be the subject of study and consultation with a view to formulating rules and practices to be observed by common restraint or by other arrangements which will assure, *inter alia*, freedom of exploration by all nations on a nondiscriminatory basis, security of tenure to those engaged in producing the resources in compliance with such rules, encouragement to discover and develop these resources, and optimum use to the benefit of all peoples; and

AUTHORIZES representatives of the Sections of Natural Resources Law and International and Comparative Law and the Standing Committee on Peace and Law Through United Nations to express the foregoing as the views of the American Bar Association to agencies of the Government of the United States and to the Congress of the United States.

Divisional Vice Chairman Harry A. Inman reported on the activities of his Division. He reported to the Section that the Council had approved the following recommendation which was presented to the Section for its approval:

The Section of International and Comparative Law recommends that the following resolution be adopted by the House of Delegates:

RESOLVED, That the ABA favors accession by the United States to the Convention establishing the Customs Cooperation Council as recommended by the President of the United States, and it is further

RESOLVED, That representatives of the Section of International and Comparative Law be authorized to express the foregoing as the views of the American Bar Association to agencies of the Government of the United States and to the Congress of the United States.

A motion was made, seconded and unanimously carried that the resolution and report thereon be adopted and referred to the House of Delegates for its consideration in February 1969.

Dr. Miriam Rooney, who has just returned from Saigon where she was a visiting professor of law at the University of Saigon, gave a brief report of her experiences, and of the conferences which she attended en route home.

The Chairman-Elect and Divisional Vice Chairman for International Law and Comparative Law, reported on the activities of their respective divisions. General Menter, The Chairman of the Committee on the Law of Outer Space also made a report. Copies of the report of

the Committee on Relations with International and Foreign Associations of Lawyers were distributed.

The Chairman noted that consideration of business items of the Section had progressed so rapidly that remaining items might well be completed on Tuesday, August 6, and asked members to consider whether the scheduled business session at the Civic Center on August 7 should be cancelled if the Tuesday session could act upon remaining items.

The meeting recessed at 4:00 p.m.

The Second General Session of the Section met at 9:00 a.m. on Tuesday, August 6.

The Section was addressed by the Honorable Alexander F. Volchkov, President of *Iniurcolleguia*—the Foreign Department of the Moscow Bar Association—U.S.S.R. Judge Volchkov was introduced by Richard P. Brown, Jr., Chairman of the Committee on International Courts.

The first item on the agenda was a report given by the Vice Chairman, Division of International Organization Affairs, on the activities of that Division. John Carey, the Chairman of the Subcommittee on Trade and Development of the Committee on International Conditions, also gave a report.

At the request of your Chairman, the Divisional Vice Chairman for International Law called upon Leonard U. Tuft, who was substituting for the Chairman of the International Communications Committee, to give a report.

At this point the Chairman noted that there was very little remaining business of the Section and inquired whether the members preferred to proceed with election of officers or to come back to the Civic Center after the Joint Breakfast on August 7 for that purpose. It was the consensus that the Section proceed with the election.

The Chairman then asked for the report of the Nominating Committee. The following nominations by the committee were then made:

CHAIRMAN: David M. Gooder, Chicago, Illinois.

CHAIRMAN-ELECT: Clifford J. Hynning, Washington, D.C.

DIVISIONAL VICE-CHAIRMEN:

International Law: G. Winthrop Haight, New York, N.Y.

Comparative Law: Benjamin Busch, New York, N.Y.

International Trade & Investment: Harry A. Inman, Washington, D.C.

International Organizations: Ewell E. Murphy, Houston, Texas
SECRETARY: Katherine Drew Hallgarten, Washington, D.C.
COUNCIL MEMBERS:

Term Ending 1972:

Victor C. Folsom, Boston, Massachusetts

Donald K. Duvall, Washington, D.C.

William C. Farrer, Los Angeles, California

Term Ending 1970:

Walter A. Slowinski, Washington, D.C.

SECTION DELEGATE TO THE HOUSE OF DELEGATES:

Max Chopnick, New York, N.Y.

The Chairman of the Nominating Committee, Edward D. Re explained that the Council had unanimously approved the interpretation made by that committee that a Council member's status as an elected Council member was not affected by his selection as Editor-in-Chief of the *Int'l Lawyer* and that the appointment of Eberhard Deutsch as Editor-in-Chief did not make a vacancy on the Council. The Section approved this interpretation.

Your Chairman then called for other nominations, but none were made. Upon motion made, seconded and unanimously carried, those nominated were elected.

The Divisional Vice Chairman for Comparative Law expressed on behalf of the Section the deep heartfelt affection, respect and admiration for the retiring Chairman, who stated it had been a pleasure and a privilege to serve as Chairman.

The Chairman-Elect asked that the record reflect a vote of appreciation to the outgoing Editor-in-Chief of *The International Lawyer* for the outstanding work he had done in that capacity. Upon request, the Secretary announced to the Section that the officers and members of the Council had voted to present on a personal basis the retiring Editor-in-Chief of *The International Lawyer* with a bound set of the volumes he edited.

Your Chairman expressed to Richard P. Brown, Jr. the appreciation of the Section for his having made the arrangements for Judge Volchkov to address the Section.

There being no further business to come before the meeting, it was recessed until Wednesday, August 8 at 8:00 a.m. for the joint breakfast with the American Foreign Law Association, to permit Section members to lunch with the Patent, Copyright and Trademark Section and to participate in a joint program with that Section in the afternoon.

The Section reconvened at 8:00 a.m. August 8 at the Benjamin Franklin Hotel for the joint breakfast with the American Foreign Law Association. After the address of Dr. Nehemias Gueiros, Special Representative of Brazil at the United Nations, and President of the Inter-American Bar Association, your Chairman called to the attention of the Section that three amendments to the By-Laws approved by the Council at its May, 1968, meeting had not been acted upon by the Section. The newly elected Chairman presented these amendments which would increase Section dues from \$8.00 to \$10.00 and which would eliminate the restriction requiring special meetings to be held within the continental United States, and would also eliminate the requirement that the Mid-Winter meeting be held at the same time and place as that of the House of Delegates. All of the proposed amendments were unanimously approved by the Section for presentation to the Board of Governors and then to the House of Delegates.

At this point, Charles J. Lipton of N.Y. was recognized. He raised a point of order on the election of officers of the Section at a time different from that indicated on the agenda appearing in the printed program of the Section. After the chronology of events was reviewed, your Chairman overruled the point of order and on appeal from this ruling was sustained by a vote of 40 to 7.

The Section meeting was then adjourned subject only to a joint program with the Corporation, Banking and Business Law Section and a joint meeting of this Section's Committee on Commercial Arbitration and Conciliation of Investment Disputes and the Committee on Commercial Arbitration of the Section of Corporation, Banking and Business Law at 2:00 p.m., August 8, and the traditional joint reception with the Inter-American Bar Association at 5:30 p.m.

The new officers and Council then held its first meeting to make Committee assignments and plan its work for the coming year.

Respectfully submitted,

JOE C. BARRETT

Addendum to Chairman's Report

The following Recommendation and Report by the Committee on Oceanography of the Section of International and Comparative Law in cooperation with the Section of Natural Resource Law, and the standing Committee on Peace and Law through the United Nations submitted to the American Bar Association's House of Delegates the following report

concerning the jurisdiction of the seabed beyond the continental shelf. This report was approved by the ABA House of Delegates at its August, 1968 Annual Meeting in Philadelphia.

American Bar Association

**Joint Report of Sections of Natural Resources Law,
International and Comparative Law,
and the Standing Committee on Peace and Law through United Nations**

Recommendation

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WHEREAS, a Committee of the United Nations General Assembly is presently considering "practical means to promote international co-operation in the exploration, conservation and use of the seabed and the ocean floor, and the subsoil thereof, . . . and of their resources"; and

WHEREAS, the United States, as a member of that United Nations Committee, has proposed that the exploration and use of the deep ocean floor be open to all states and their nationals without discrimination and in accordance with international law, and as a corollary of this that the exercise of sovereignty or sovereign rights over any part of the deep ocean floor be ruled out; and

WHEREAS, the treaty known as the 1958 Convention on the Continental Shelf in force between 37 nations, including the United States, recognizes that each coastal state has "exclusive sovereign rights for the purpose of" exploring and exploiting the natural resources of "the sea-bed and subsoil of the submarine areas adjacent to the coast . . . to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas"; and

WHEREAS, it is generally recognized that the definition in the 1958 Convention on the Continental Shelf of the boundary between the area of exclusive sovereign rights and the deep ocean floor needs to be clarified by an agreed interpretation; and

WHEREAS, the House of Delegates, by its Resolution of August

9, 1966, stated that "prior to framing a policy . . . the United States Government . . . review thoroughly the issues at stake in consultation with representatives of the American Bar Association and others competent in the field of international law, with scientific and technical experts and with leaders of American industry in oceanic development";

NOW, THEREFORE, BE IT RESOLVED, that the American Bar Association

SUPPORTS the efforts being made in and out of the governments of interested states to protect the seabed and subsoil of the deep ocean floor beyond the limits of national jurisdiction from claims of sovereignty or rights of discretionary control by any nation or group or organization of nations;

SUPPORTS the call by the United States Government for internationally agreed arrangements governing the exploitation of natural resources of the deep ocean floor beyond the limits of national jurisdiction to be established as soon as practicable;

RECOMMENDS

(1) That the United States consult with other parties to the 1958 Continental Shelf Convention with a view to establishing, through the issuance of parallel declarations or by other means, an agreed interpretation of the definition of the boundary between the area of exclusive sovereign rights with respect to natural resources of the seabed and subsoil and the deep ocean floor beyond the limits of national jurisdiction.

(2) That within the area of exclusive sovereign rights adjacent to the United States, the interests of the United States in the natural resources of the submarine areas be protected to the full extent permitted by the 1958 Convention on the Continental Shelf.

(3) That on the basis of the information now available, the most desirable long-range goal for a regime to govern exploration and development of the mineral resources of the seabed and ocean floor and subsoil beyond the limits of national jurisdiction is not the creation of a supersovereignty with power to grant or deny mineral concessions, but rather agreement upon norms of conduct designed to minimize conflicts between sovereigns which undertake such exploration and development.

(4) That the resources of the bed and subsoil of the deep sea, beyond the limits of national jurisdiction, be the subject of study and consultation with a view to formulating rules and practices to be observed by common restraint or by other arrangements which will assure, *inter alia*, freedom of exploration by all nations on a nondiscriminatory

basis, security of tenure to those engaged in producing the resources in compliance with such rules, encouragement to discover and develop these resources, and optimum use to the benefit of all peoples; and

AUTHORIZES representatives of the Sections of Natural Resources Law and International and Comparative Law and the Standing Committee on Peace and Law Through United Nations to express the foregoing as the views of the American Bar Association to agencies of the Government of the United States and to the Congress of the United States.

Report

The House of Delegates of the American Bar Association, on August 10, 1967, adopted Report #97 of the Section of Natural Resources Law which constituted an offer through the Section of the Association's "services and assistance" to the National Council on Marine Resources and Engineering Development and the Commission on Marine Science, Engineering and Resources and an authorization and instruction to the Section "to establish and maintain a continuing liaison with the Council and the Commission to the end that the Section shall prepare and submit to the House of Delegates, for approval, recommendations with respect to the report or reports proposed by the Council or the Commission." The resolution required that the Section collaborate with the Section of International and Comparative Law and the Section of Administrative Law "with a view towards developing joint recommendations and policies" with regard to matters within the official purview of interest of these sections.

The Section assigned responsibility for implementing this resolution to the Chairman of the Section's Committee on Marine Resources. Subsequently, a Consulting Committee on Marine Resources was formed, consisting of representatives of the named sections as well as the Association's Standing Committee on Peace and Law Through United Nations and the Committee on World Peace Through Law.

In the fall of 1967 liaison was established with the Council and the Commission which resulted in the Commission's making inquiry as to a number of subjects affecting the interest of the United States in off-shore lands. Work with the Council and Commission is continuing toward the end of assisting in the formulation of a United States policy in these matters. The Council and the Commission have not as yet made any reports or recommendations on these subjects except of the most preliminary nature.

This report discusses some of the issues involved in developing a regime for exploration and exploitation of the mineral resources on and under the floor of the ocean. It also discusses the question of the extent of the area of exclusive mineral resource jurisdiction of the adjacent coastal states.

The matter has taken on some urgency owing to a number of factors. One is the fact that the Convention on the Continental Shelf, to which reference is made later, is, by its terms, subject to amendment after June 10, 1969. Of more immediate concern, however, is the motion submitted to the Twenty-Second Session of the General Assembly of the United Nations by the delegate from Malta. This apparently contemplated establishment of an international agency which would regulate, supervise and control activities on the deep ocean floor beyond the limits of national jurisdiction. Implicit, of course, is the threshold problem of establishing the line between the area of exclusive seabed jurisdiction of the coastal nations recognized by the Convention on the Continental Shelf, and the deep ocean floor seaward of that jurisdiction. This problem is of grave importance to the United States as a coastal nation engaged in major development of the minerals of the submarine continent.

The General Assembly recognized that so far-reaching a suggestion called for profound study and by resolution decided to establish an *ad hoc* committee "to study the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction." This committee was requested by the resolution to prepare a study for consideration by the General Assembly at its next (Twenty-Third) session. The committee was asked to include in its study "an indication regarding practical means to promote international cooperation in the exploration, conservation and use of the seabed and the ocean floor, and the subsoil thereof." The resolution was adopted on December 18, 1967, by a vote of 99 to 0. The United States voted for the resolution and is one of the members of the *ad hoc* committee consisting of thirty-five nations.

The Convention on the Continental Shelf

The threshold question, vital to the United States, is the geographical extent of the exclusive rights now vested in the coastal nations, as recognized in the 1958 Convention on the Continental Shelf. The relevant articles of this Convention read:

"Article 1

"For the purpose of these articles, the term 'continental shelf' is used as referring (a) to the seabed and subsoil of the submarine areas

adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

"Article 2

"1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

"2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

"3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

"4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

"Article 3

"The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters."

Interpretations of the Convention

The Convention's definition of the seaward extent of the coastal state's jurisdiction has been subjected to a number of interpretations.

Some argue that the factor of exploitability would carry the coastal nation's exclusive mineral jurisdiction to mid-ocean. We disagree. Others argue that it should be restricted to waters as shallow as 200 meters or 12 miles from shore. We disagree with this, too.

The better view, in our opinion, is that the "exploitability" factor of the Convention is limited by the element of "adjacency." The exclusive sovereign rights of the coastal nations to the exploration and exploitation of the natural resources of the seabed and subsoil encompass "the sub-

marine areas *adjacent* to the coast but outside the area of the territorial sea." According to this view, therefore, the exclusive sovereign rights of the coastal nations with respect to the seabed minerals now embrace the submerged land mass of the adjacent continent down to its junction with the deep ocean floor, irrespective of depth.

Importance of the 1958 Convention to the United States

If the minerals underlying the seabed adjacent to our coasts remain under American control, as they now are under the Continental Shelf Convention as we construe it, they continue to be resources available for national defense, essential components of the American economy, and important elements of the federal and state tax base.

We do not believe that it is in the interests of the United States that negotiations for the creation of an international regime to govern mineral development of the ocean floor should proceed on the assumption that this new regime will have authority to take over the administration of, or the governmental revenues derived from, the development of the minerals of any part of the submerged segments of the American continent.

In our opinion, the United States should stand on its rights under the Convention as heretofore ratified.

If legal uncertainties are believed to constitute an impediment to utilization of undersea mineral resources, such uncertainties can be eliminated by uniform declarations of the coastal nations which are parties to the Convention on the Continental Shelf, identifying their claims of jurisdiction with the submerged portion of the continental land mass, and reciprocally restricting their claims accordingly. No new conference to amend the Continental Shelf Convention is necessary to accomplish this.

The Seabed Seaward of National Jurisdiction

With respect to the minerals of the deep seabed beyond the exclusive jurisdiction of the coastal nations, three observations are in order: First, the problem is less pressing in point of time because most mineral development will continue to take place first in the shallower waters which are within coastal jurisdiction; second, less is known about the abyssal deeps and therefore about the type of regime that would best effectuate their utilization; third, the negotiation of an international agreement to establish a wholly new regime will consume an extended period of time.

Based on the information now available, it appears that the most desirable long-range goal for a mineral regime to govern exploration and exploitation of the mineral resources of the ocean bed and subsoil seaward of the coastal jurisdiction will not be the creation of a supersovereignty with competence to grant or deny mineral concessions. Instead, the desirable goal appears to be an agreement upon norms of conduct by sovereign parties, in order to minimize conflicts between the nationals of the respective sovereigns which sponsor such developments.

While there were some early comments supporting the idea that the United Nations should step in as a supersovereign of the ocean depths, it would appear that there is no official support for this in the United States. At the same time there also appears to be general agreement, both in and out of government here and abroad, that no state should be permitted to acquire territorial sovereignty over any portion of the deep ocean floor outside the limits of national jurisdiction, but that such ocean floor should be open for exploration and exploitation by all nations. There is also general agreement that a nation which undertakes the exploration and exploitation of mineral resources on and under the deep seabed should be protected in the exclusive right to occupy the areas involved, with due regard to other uses of the marine environment, and without impairment of the high-seas character of the overlying waters.

We strongly endorse the principle that the ocean floor beyond the limits of national jurisdiction should be open for exploration and exploitation to the nationals of every country in accordance with accepted principles of international law.

Members of the Committees of the Section of Natural Resources Law and of the Section of International and Comparative Law concerned with the subject of submarine mineral resources, together with members of the Standing Committee on Peace and Law Through United Nations and members of the Committee on Deep Sea Mineral Resources of the American Branch of the International Law Association, have agreed on the following conclusions:

Conclusions

1. With respect to the gathering of factual information

Full support should be given to the International Decade of Ocean Exploration, now being formulated, and to the continuance of the

maximum international cooperation in the acquisition and exchange of information about the ocean floor.

There should not be any embargo on or prohibition of exploration of deep sea mineral resources pending the negotiation of an international agreement relating thereto. To the contrary, all possible exploration, research, and exchange of knowledge should be encouraged. There is no need to prohibit this desirable progress because of uncertainties as to who shall control production, if minerals are discovered.

2. With respect to the area within the exclusive jurisdiction of the coastal nations over submarine mineral resources

Since exploration and exploitation of undersea minerals is likely to occur earlier in the shallower waters of the oceans adjacent to the continents than in the abyssal depths, it follows that if jurisdictional uncertainties arise to impede such operations during the next several decades, such problems will be primarily related to the scope of the mineral jurisdiction which is already vested exclusively in the coastal states by the "exploitability" and "adjacency" criteria of jurisdiction which now appear in the Continental Shelf Convention. This uncertainty, if necessity for its resolution occurs, might be removed by consultation among the major coastal nations which are capable of conducting deep sea mineral development, looking toward the issuance by those states of parallel *ex parte* declarations. These declarations might appropriately restrict claims of exclusive seabed mineral jurisdiction, pursuant to the exploitability and adjacency factors of the Continental Shelf Convention, to (i) the submerged portions of the continental land mass, or (ii) to a stated distance from the base line, whichever limitation encompasses the larger area. These declarations might appropriately recognize special cases. Two such classifications suggest themselves: (i) in the case of states whose coasts plunge precipitously to the ocean floor (e.g., on the west coast of South America), the limit on seabed mineral jurisdiction would automatically operate on the deep ocean floor; (ii) in the case of narrow or enclosed seas, the principle of adjacency might appropriately carry coastal mineral jurisdiction to the median lines, even though these are beyond the continental blocks.

This proposal should not necessitate any amendment of the text of the Continental Shelf Convention. That Convention's differentiation between the coastal state's exclusive rights in seabed minerals, on the one hand, and, on the other hand, the non-exclusive status of the

seabed with respect to research and other uses not related to mineral exploitation, would be retained. So also with the Convention's preservation of the high-seas status of the overlying waters.

It would, however, be both appropriate and desirable to reiterate these understandings in the recommended declarations. In the instance of scientific research, which is being increasingly impeded by the requirement of coastal consent for research undertaken on the continental shelf, these parallel declarations might be employed to secure greater protection for this vital activity.

3. With respect to the regime which should be applicable to the minerals in and under the seabed, seaward of the limit of the coastal state's exclusive jurisdiction

(1) On the basis of the information now available, we do not think jurisdiction should be vested in the United Nations or in any other international organization to administer an international licensing system with power to grant or deny exploration and production concessions with respect to these resources.

(2) We think there should be created an international commission (including adequate representation of the maritime powers now engaged in oceanic research and mineral exploration), or vesting responsibility in an existing commission so constituted, with instructions to draft a convention (subject, of course, to ratification) which shall have as its objectives:

a. Creation of an international agency with the limited functions of (i) receiving, recording, and publishing notices by sovereign nations of their intent to occupy and explore stated areas of the seabed exclusively for mineral production, notices of actual occupation thereof, notices of discovery, and periodic notices of continuing activity, together with (ii) resolution of conflicts between notices recorded by two or more nations encompassing the same area.

b. Establishment of norms of conduct by sovereign nations with respect to the recording of the notices proposed in the preceding paragraph, and in the occupation of the seabed and exploration and production of minerals therefrom. The drafting commission could appropriately recommend for inclusion in the resulting convention, among other things, standards (or a mechanism to establish standards) relating to permissible areas for inclusion in exploration and production phases, periods of exclusive rights of occupancy, requirements of diligence as related to tenure, conservation, avoidance of pollution, accommodation

with competing uses of the marine environment, etc. The instructions to the negotiating commission should stipulate that the resulting convention shall contemplate that the actual production and marketing of minerals discovered shall be controlled by the laws of the recording nation, and that that nation shall be held accountable for the conduct of those operating under its flag in the exploration and exploitation of minerals.

c. Establishment of (i) reasonable payments to be made, preferably to the World Bank, by the nation which undertakes mineral development, in areas seaward of coastal mineral jurisdiction, in the nature of registration fees, and development fees or royalties, and (ii) the purposes to which such revenues, when received, shall be applied. These purposes should be restricted to international activities on which wide agreement can be reached, such as oceanic research, programs aimed at improved use of the sea's food resources to alleviate protein malnutrition, and the development of the natural resources of the less developed countries.

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