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United Nations Affairs Ad Hoc Committee on Sea-Bed and Ocean Floor

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United Nations Affairs
Ad Hoc Committee on Sea-Bed and Ocean Floor

The 35-nation Ad Hoc Committee established by General Assembly Resolution 2340 (XXII) to study the peaceful uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction is composed of seven states from Africa (Kenya, Liberia, Libya, Senegal, Somalia, Tanzania and U.A.R.), five from Asia (Ceylon, India, Japan, Pakistan and Thailand), six from Latin America (Argentina, Brazil, Chile, Ecuador, El Salvador and Peru), eleven "Western" countries (Australia, Austria, Belgium, Canada, France, Iceland, Italy, Malta, Norway, U.K. and U.S.A.), and six communist countries (Bulgaria, Czechoslovakia, Poland, Romania, U.S.S.R. and Yugoslavia).

For the purpose of having it considered at the 23rd session of the General Assembly and in co-operation with the Secretary General, the Committee was requested to prepare a study which would include:

> (a) a survey of the past and present activities of the United Nations, the specialized agencies, the International Atomic Energy and other intergovernmental bodies with regard to the sea-bed and the ocean floor, and of existing international agreements concerning these areas;
>
> (b) an account of the scientific, technical, economic, legal and other aspects of this item;
>
> (c) an indication regarding practical means to promote international co-operation in the exploration, conservation and use of the sea-bed and the ocean floor, and the subsoil thereof, as contemplated in the title of the item, and of their resources, having regard to the views expressed and the suggestions put forward by Member States during the consideration of this item at the twenty-second session of the General Assembly;

The Committee's first session was held in New York in March 1968, its second in June and July. By the time this note is published, it will have concluded its third session (in Rio de Janeiro), and will have submitted a report to the 23rd session of the U.N. General Assembly.

At its first session, the Committee established a legal working group and an economic and technical working group, each group having the same membership as the main Committee. At its second session, in June and July 1968, the two groups discussed problems in their respective spheres. The Committee itself dealt with these in the context of the broader aspects of co-operation and co-ordination.

It was at this second session that Leonard Meeker, Legal Adviser to the State Department and a member of the Council of the ABA Section of the International and Comparative Law, speaking for the United States in the legal working group, suggested that "at some relatively early stage" it could be constructive "to consider the adoption of certain principles which would then serve as a guide to states in the conduct of their activities and also as general lines of direction to be observed in the working out of more detailed and internationally agreed arrangements that might be required later." [1] The statement indicates the views held by the United States Government regarding such principles and possible future agreements.

At the outset there is reiteration of the frequently quoted statement made by President Johnson at the commissioning of the oceangraphic research vessel "The Oceanographer" in 1966:

> Under no circumstances, we believe, must we ever allow the prospects of rich harvest and mineral wealth to create a new form of colonial competition among the maritime nations. We must be careful to avoid a race to grab and to hold the lands under the high seas. We must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings.

When this subject came before the General Assembly a year later, Ambassador Goldberg proposed immediate work on the development of "general standards and principles to guide states and their nationals in the exploration and use of the deep ocean floor." Knowledge and technological skill "could prove of little value, if man's law-making faculty does not keep pace." [2]

Meeker's statement, in June 1968, suggested some first steps in this task of law-making. In view of the limited time and information available, he said, it would not be possible to deal with the whole range of problems involved or to complete definition of the legal arrangements applicable to the deep ocean floor in weeks or even months, but at

[1] Press Release of U.S. Mission, USUN—100 (68) June 20, 1968. *See also* draft resolution proposed by the United States, A/AC. 135/25, 28 June 1968.
[2] Quoted in House Report No. 999, December 7, 1967, at 287, 288.

least a start could be made. The legal group could, for example, "identify principal areas for further study, and, for the later drafting of documents, as a first step in working toward a legal regime for the deep ocean floor."

It was considered constructive, "at some relatively early stage in the work of law-making," to consider the adoption of certain principles which would serve as a guide to states in the conduct of their activities, and also as general lines of direction to be observed in the working out of more detailed and internationally agreed arrangements that might be required later. As a precedent for such a procedure, Mr. Meeker referred to the declaration made by the General Assembly in 1963 of legal principles relative to outer space and to the later conclusion of the special treaty in 1967. The following seven subjects are then listed as appropriate for "a UN statement of principles for the deep ocean floor";

> Exploration and use of the deep ocean floor should be recognized as "open to all states and their nationals without discrimination and in accordance with international law."
>
> A corollary of this would be to "rule out any claims to the exercise of sovereignty or sovereign rights over any part of the deep ocean floor."
>
> States and their nationals should "conduct their activities on the deep ocean floor in accordance with international law . . . in the interest of maintaining international peace and security and promoting international cooperation, scientific knowledge and economic development."
>
> International cooperation in scientific investigation of the deep ocean floor should encourage "timely dissemination of plans for and results from national scientific programs" and "cooperative scientific activities by personnel of different states."
>
> There should be "respect and reasonable regard for the interests of others in exploration and use of the deep ocean floor." A statement of this should cover "avoidance of unjustifiable interference with the exercise of the freedoms of the high seas by other states and their nationals, interference with conservation of the living resources of the seas, and interference with fundamental scientific research looking toward publication of findings." Appropriate safeguards must also be provided to minimize pollution and disturbance of existing biological, chemical and physical processes and balances. There should also be provision for consultation in the event of "concern that a particular marine activity or experiment could harmfully interfere with the activities of another state or its nationals in the exploration and use of the deep ocean floor."
>
> An obligation should be expressed to "render all possible assistance

> in the event of accident, distress or emergencies arising out of activities on the deep ocean floor."
>
> Finally, there might appropriately be included "some guidelines as to the treatment of installations, equipment or other property taken to the deep ocean floor in connection with activities there."

Elements of these seven subjects, it is said, could be effectively incorporated in a statement of principles "at a level of generality permitting wide agreement." Other areas of subject matter would require additional procedure and treatment in order to become effective. One of these "other areas" is "what constitutes the deep ocean floor."

Although the "deep ocean floor" is nowhere defined, it is clear from the Meeker statement that it is the sea-bed outside the jurisdictions of coastal states. That jurisdiction is defined in Article 1 of the 1958 Convention on the Continental Shelf,[3] but the definition lacks precision beyond the 200 metre depth line, as it embraces beyond that depth:

> the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea . . . to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas. . . .

As to this question, Mr. Meeker urged that there should be established as soon as practicable "an internationally agreed precise boundary as to what constitutes the deep ocean floor." In doing this, account would be taken of the Continental Shelf Convention. It was not considered necessary "to delineate this boundary before agreement can be reached on general principles applicable to the deep ocean floor." Any statement of principles on this matter, however, should specify that:

> exploitation of the natural resources of the ocean floor occurring prior to establishment of the boundary shall be understood not to prejudice its location, regardless of whether the coastal state considers the exploitation to have occurred on its "continental shelf."

The United States recognizes, Mr. Meeker said, that the suggestions made for a statement of principles would by no means add up to a comprehensive legal regime adequate to govern the exploitation of ocean bed resources. Much more would be required. Detailed negotiations are called for, and "substantial periods of time are likely to be occupied in formulating the necessary arrangements."

It was also considered that a statement of principles could appropriately state that there should be established as soon as practicable

[3] *Treaties and Other International Acts Series* (T.I.A.S.) 5578.

internationally agreed arrangements governing the exploitation of ocean bed resources. These should include provisions for the following:

(a) the orderly development of resources of the deep ocean floor in a manner reflecting the interest of the world community in the development of these resources;
(b) conditions conducive to the making of investments necessary for the exploration and exploitation of resources of the deep ocean floor;
(c) dedication as feasible and practicable of a portion of the value of the resources recovered from the deep ocean floor to world or regional community purposes; and
(d) accommodation among the commercial and other uses of the deep ocean floor and marine environment.

Limits to Jurisdictions of Coastal States

Most of the Meeker statement was concerned with general principles applicable to the deep ocean floor. It was nevertheless urged that "an internationally agreed precise boundary" be established "as soon as practicable." This suggestion was in accord with views expressed by several governments.[4] Some felt that the time had come to consider a revision of the definition of the continental shelf in the Geneva Convention; [5] others that, although the question of definition was not a prerequisite for starting discussions concerning the ocean floor, the establishment of a regime there would require a precise definition.[6]

There are, however, obvious difficulties in the way of reaching agreement on a new definition.[7] The 1958 Convention created rights which coastal states would be reluctant to surrender. It was questionable whether it would be possible in the present circumstances to obtain the consensus necessary to secure substantial amendments to Article 1.[8] The Latin American States are particularly zealous in maintaining their sovereignty over maritime areas recognized by the Convention or asserted by agreement among some of themselves.[9]

Although imprecise, the definition in Article 1 of the Convention,

[4] Austria, Belgium, Canada, Cyprus, Denmark, France, Iceland, Libya, Norway, Sweden, U.A.R., as reported in *Summary of Views of Member States,* U.N. GAOR, A/AC.135/12, 7 June, 1968, at 4-5.

[5] Denmark, Ecuador, France, Madagascar, Turkey, United Arab Republic, *id.,* at 6.

[6] Finland, France, Ghana, Iceland, Malta, Netherlands, United States, Yugoslavia, *id.,* at 7.

[7] Australia, Canada, Iceland, United States, *id.,* at 8.

[8] Norway, *id.,* at 8.

[9] Argentina, Chile, Ecuador, El Salvador, Honduras, Peru, *id.,* at 9.

when read in conjunction with its legislative history, evidences an impressive measure of international agreement. It resulted from seven years of intensive study by the International Law Commission, during which period three successive drafts were issued and debated.[10] The last of these incorporated views was adopted by American states, including the United States, at the Ciudad Trujillo Conference in the Dominican Republic in March 1956.[11]

Article 1 of the Geneva Convention retained the 200 metre depth limit but included also the Ciudad Trujillo formula of extending the limit "to where the depth of the superjacent waters admits of the exploitation of the natural resources" of the sea-bed and subsoil. This formula had been adopted by the Commission in 1951, but dropped in 1953 after many states had criticized its lack of precision. Its restoration in 1956 was the consequence of extensive consideration.[12] In its 1956 Report, the Commission said: ". . . exploitation of a submarine area at a depth exceeding 200 metres is not contrary to the present rules merely because the area is not a continental shelf in the geographic sense." [13] From this it is clear that exploitation beyond the depth specified, or on the ocean floor beyond any continental shelf in the geographical sense, was deliberately included within the exclusive jurisdiction of the coastal state.

It is this aspect of the definition that has led some to conclude that the only effective limit beyond the 200 metre isobath is the depth at which natural resources are exploitable.[14] Such a view, however, does not take account of the requirement that the sea-bed and subsoil to which the definition applie must be "adjacent to the coast." Although also not a precise limitation, this requirement does prevent extending the legal "shelf" out to the middle of the oceans.[15]

Adjacency denotes not only proximity but appurtenance as well. This is clear from the legislative history of the definition as well as from the origin and development of the continental shelf doctrine. In its 1956 Report the International Law Commission said that it was not possible:

> to disregard the geographical phenomenon whatever the term—

[10] *Legal Aspects of the Question, etc.*, U.N. GAOR, A/AC.135/19, Part I, 21 June 1968, at 7-16.

[11] *Id.*, at 10.

[12] *Id.*, at 7-12.

[13] *Id.*, at 11, quoting paragraph (7) of the Commission's commentary.

[14] *Id.*, at 17.

[15] *Id.*

> propinquity, contiguity, geographical continuity, appurtenance or identity—used to define the relationship between the submarine areas in question and the adjacent non-submerged land.[16]

This was not disputed at the 1958 Conference in Geneva. Several representatives there referred to the fact that the continental shelf was a prolongation of the mainland as the basis for extending the jurisdiction of the coastal state over it.[17] In its instrument of accession, France expressed the view that "the expression 'adjacent' areas implies a notion of geophysical, geological and geographical dependence." [18] Thereby ruling out an unlimited extension of the shelf. None of the 37 parties to the Convention have objected to this statement.

The notion of appurtenance is to be found in the Truman Proclamation of 1945 where the continental shelf doctrine had its first formal pronouncement. One of the reasons there given for the proposition that the doctrine was "reasonable and just" was the fact that "the continental shelf may be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it . . ." [19]

Some ten years later, at Ciudad Trujillo, nineteen Latin American states together with the United States unanimously adopted the declaration that:

> The sea-bed and subsoil of the continental shelf, *continental and insular terrace, or other sub-marine areas, adjacent to the coastal state,* outside the area of the territorial sea, and 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 sea-bed and subsoil, *appertain exclusively to that state and are subject to its jurisdiction and control.* (emphasis added)[20]

At Geneva, two years later, this concept of appurtenance was accepted, although the definition adopted as Article 1 of the Convention did not include the expression "continental and insular terrace." Doubtless, it was considered otiose to particularize to this extent, since the

[16] *Id.*, at 18.
[17] *Id.*
[18] *Id.*
[19] *Id.*, at 25.
[20] For text and comment, *see* GARCIA-AMADOR, THE EXPLOITATION AND CONSERVATION OF THE RESOURCES OF THE SEA, (2d ed. 1959). *See also* Whiteman, *Conference on the Law of the Sea: Convention on the Continental Shelf,* 52 AM. J. INT'L L. 629, 633, 634 (1952). The expression "continental terrace" is defined as "The zone around the continents, extending from low water line to the base of the continental slope." 1 Y.B. INT'L COMM'N 131 (1956).

all-embracing phrase "submarine areas adjacent to the coast" was employed. That the United States continued to regard the entire submerged portion of the continental land mass as included is evident from the following statement made by the U.S. representative in the Fourth Committee:

> The definition of the rights of the coastal State to the continental shelf *and the continental slope* adjacent to the mainland proposed by the International Law Commission would benefit individual States and the whole of mankind.[21] (emphasis added)

That it was well recognized at the Conference that the broad expression "submarine areas adjacent to the coast" embraced the entire continental margin is also indicated by the proposal made by the Netherlands and the United Kingdom that the definition read:

> The provisions of the following articles shall apply to the sea-bed and subsoil of submarine areas contiguous to the outer limit of the territorial sea, including the continental shelf, the continental slope, and the submarine areas contiguous to islands.[22]

This proposal was withdrawn, but that action suggests that its proponents were satisfied that it was adequately covered by the more generic terms of the Commission's draft, particularly when this was read in conjunction with the commentary on it and the statements made by government representatives at the Conference.

It has since been pointed out that geologically there is a distinct difference between the submerged portion of the continental land mass and the deep ocean floor, or abyssal depths. No less an authority than the Director of the United States Geological Survey has said:

> "Geoscientists generally agree that one of the most fundamental natural boundaries in the earth's crust is that which separates the continents from the ocean basins. There is a consistent and systematic difference in thickness, in physical properties, and in chemical composition of the crust between oceans and continents. . .
>
> "Definition of a natural boundary between continents and oceans is based on geologic interpretation of geophysical data, and the precision with which it can be located is dependent both upon the availability of data and the local geologic character. The geologic boundary is in many places irregular or gradational, but generally it lies near the base of the continental slope which throughout much of the world is at or below the 2500 metre

[21] U.N.Doc.A/C.13/C.4/40.

[22] U.N. GAOR.A/AC.135/19, 21 June 1968, at 15.

> isobath (depth contour). The 2500 metre isobath, therefore, could be used as an interior line of demarkation to delineate the continents from the oceans until more permanent boundaries can be agreed upon" [23]

Any suggestion that the continental regime of the coastal state should stop at the 200 metre depth line or at some other arbitrary isobath short of the 2500 metre depth line, or at some geographical point landward of the geologic boundary between the continent and the ocean floor, would thus run counter to the position taken by the United States in the Truman Proclamation of 1945, in the Ciudad Trujillo Declaration of 1956, and, according to the interpretation suggested above, the Geneva Convention of 1958. Although, as Mr. Meeker said in the Ad Hoc Committee in June 1968, international agreement should soon be established on a precise boundary for the deep ocean floor, it cannot be anticipated that the United States would in reaching such agreement surrender exclusive rights thus vested in it with respect to the exploration and exploitation of the sea-bed and subsoil areas adjacent to its coasts.

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[23] U.S. Department of the Interior, (February 21, 1968). *Geologic Boundary of the Continents,* GEOLOGICAL SURVEY.