The Donnybrook Fair of the Oceans

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Professor R.R. Baxter, the U.S. State Department's Counselor on International Law, in addressing the Asian-African Legal Consultative Committee at Lagos earlier this year capsulized what the debates over the oceans' future have been about. He stated:

The law of the sea is, as it were, the constitution of the oceans. As such, its major concern is with distribution of authority. As is true of all constitutions, two basic questions are involved in the distribution of authority: Who shall exercise authority in a particular respect? What conditions or restrictions are to be placed on the exercise of this authority?

For the last half decade these questions have been vigorously aired in the United Nations General Assembly and in its Seabed Committee. At times the debate over what the future law of the sea should be tends to obscure what the present law of the sea is.

The existing written "constitution" of the oceans consists primarily of four conventions negotiated in Geneva in 1958 and subsequently ratified by various numbers of states. They are the Conventions on the Territorial Sea and Contiguous Zone, the High Seas, the Continental Shelf, and on Fishing and the Conservation of the Living Resources of the High Seas.

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They contain answers to the questions of who shall exercise authority in a particular respect and what conditions or restrictions are to be placed on the exercise of this authority. In a nutshell, the answers provided by the four 1958 Geneva Conventions are as follows:

With respect to the territorial sea, a state's sovereignty extends beyond its land territory and its internal waters to the territorial sea, its underlying bed and subsoil and the airspace above it. The restrictions are that the coastal state must not hamper innocent passage through its territorial sea of foreign vessels coming to and from its ports and passing through straits used for international navigation which form a part of its territorial sea.

With respect to the continental shelf, which begins on the seabed at the seaward limits of the territorial sea, the coastal state is entitled to exercise exclusive sovereign rights to explore and exploit the natural resources of the seabed and subsoil of the shelf. The restrictions are that the coastal state must limit the exercise of its sovereign rights to exploring and exploiting the natural resources of the continental shelf and must respect the legal status of the superjacent waters as high seas and the airspace above the high seas.

With respect to the high seas, which begin at the seaward edge of the territorial sea, all states enjoy the freedoms specifically to navigate, fish, lay submarine cables and pipelines and to fly over the high seas. All states impliedly enjoy the freedom to conduct scientific research on the high seas and to explore and exploit the mineral resources of the bed and subsoil of the high seas lying beyond the continental shelf in accordance with applicable principles of international law. The restrictions on states are that these high seas freedoms shall be exercised by all states with reasonable regard to interests of other states in their exercise of the freedom of the high seas.

With respect to fishing, all states have the right for their nationals to engage in fishing on the high seas, subject to their treaty obligations, the interests and rights of coastal states, and a series of rules related to negotiating conservation regulations as specified in the Convention on Fishing and Conservation of the Living Resources of the High Seas.

What the future law of the sea should be is another matter. The major questions which many states feel were not resolved with adequate precision and detail in the text of the four 1958 Geneva Conventions on the Law of the Sea, or which need to be reexamined with a view toward seeking new answers, are:
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(1) The seaward limits of the territorial sea.
(2) The precise seaward limits of the continental shelf.
(3) The measures which coastal states may take in high seas areas adjacent to their coasts to regulate the activities of foreign fishing fleets and the distance from the coastline in which such coastal state rights would apply.
(4) The substantive limitations on such coastal state rights.
(5) The measures which coastal states may take in high seas areas adjacent to their coasts to protect themselves against marine pollution caused by foreign states or their nationals and the distance from the coastline in which such coastal state rights would apply.
(6) The substantive limitations on such coastal state rights.
(7) The means which coastal states may take in high seas areas adjacent to their coasts to regulate the conduct by foreign nationals of scientific research on the high seas and underlying seabed and the distance from the coastline in which such coastal state rights would apply.
(8) The substantive limitations on such coastal state rights.
(9) The rights of individual states to explore and exploit the natural resources of the seabed beyond the limits of the continental shelf.
(10) The rules and conditions under which such exploration and exploitation would take place.
(11) The institutional and legal means of administering such exploration and exploitation and of resolving disputes arising from such activities.

These are some of the major questions for which conferees at the next Law of the Sea Conference will be seeking to negotiate mutually satisfactory answers.

But before speculating further about the future, it might be well to consider the past.

The four 1958 Geneva Conventions on the Law of the Sea represented primarily a codification of what had evolved over centuries as customary international law. The conventions also contained some provisions which represented agreement on issues which had little or no precedent in customary international law. In the latter category were parts of the Continental Shelf and Fishing Conventions which provided new law for the resolution of new problems. It is fair to say that although the conferees at the 1958 Geneva Conference on the Law of the Sea were generally representative of all states then in existence, most of the principles of
international law, which were contained within the four conventions, reflected to a large extent the time-tested legal traditions of major maritime states.

Since 1958 a number of new states have declared their independence. These and other developing states in recent years have been individually and collectively assessing their interests and objectives in the oceans. Some feel that the 1958 Geneva Conventions contain rules of law inconsistent with their best interests. They seek changes in the law which will better serve their interests. They have been relying on various measures, including unilateral action and international debate and negotiations, carried out on bilateral and multi-lateral fronts, to achieve such objectives.

To generalize, the major objectives of most developing coastal nations of the world, particularly those which are exporters of copper and petroleum, are

— to extend seawardly the limits of their exclusive jurisdiction and control (1) over fisheries, (2) over exploration and exploitation of seabed minerals and (3) over scientific research conducted by foreign vessels in areas adjacent to their coasts and in other parts of the high seas;

— to minimize any restrictions on their exercise of such jurisdiction;

— to establish an international organization which they would collectively control which would be vested with exclusive authority to explore and exploit the resources of the seabed beyond the limits of exclusive coastal state jurisdiction and;

— to control mineral production thereon, and thereby maximize the benefits to developing countries resulting from such development;

— and through control of such an international organization to deny effective commercial access to the technologically advanced states to the natural resources of the seabed lying beyond the limits of exclusive coastal state jurisdiction.

The objectives of most of the developed countries with respect to the oceans, on the other hand, are

— to preserve as best they can the largest possible area of the high seas, and within that area retain, without 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 mine the minerals of the ocean floor beyond the limits of coastal state jurisdiction).

While not opposed to the creation of an international organization to administer the exploration and exploitation of resources of the seabed beyond the limits of coastal state jurisdiction, the developed states wish to avoid the establishment of developing nation control of such organization and to restrict it from itself
conducting exploration and exploitation of the resources of the ocean floor or controlling production thereon. There is no wish on the part of the developed nations to restrict opportunities for exploration and exploitation of the ocean floor on the part of developing states acting individually or collectively. There is no objection on the part of developed states 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 states.

The major exception to these generalizations of developing and developed nations' objectives is that land-locked and shelf-locked nations are generally opposed to the extension of exclusive coastal state jurisdiction over fisheries and minerals because they wish to preserve as large an area as possible beyond the limits of exclusive national jurisdiction in which they may maximize for themselves benefits from the use of such area.

How these positions evolved over the past several years is relevant to an understanding of what may happen in the future regarding possible partial accommodation of such conflicting aspirations.

In 1968 a 42-member U.N. Seabed Committee was created by General Assembly Resolution 2467A (XXIII). It followed the creation of an ad hoc Seabed Committee the year before. At that time there was the mistaken belief or hope on the part of many developing countries that the deep ocean floor contained a substantial treasure house of mineral wealth. Consequently, it was thought that if they could acquire the technology to mine it within a reasonable period of time, the developing countries could better be able to elevate themselves to a near economic par with the developed states. Thus, the phrase was born that the wealth of the seabed should be used for "the common benefit of mankind . . . taking into account the interests and needs of the developing countries."

During its 1969 sessions the Seabed Committee began to undertake the tasks entrusted to it in Resolution 2467A and learned more about the content and location of the mineral wealth of the sea. The result was a disenchancing realization that most of the wealth of the seabed, namely petroleum, was not located on the
deep ocean floor, but was located within the continental margins of the world and therefore easily within the reach of the national jurisdiction of individual coastal states. The recoverable wealth that lay on the deep ocean floor beyond the continental margins consisted mainly of black nuggets, called manganese nodules, which contained quantities of copper, cobalt, nickel and manganese. At the time no one knew how profitably to mine or smelt these nodules, but it was generally felt that if anyone was on the verge of learning how, it was one or more of the developed countries. Thus, the developing countries concluded that if they were to prevent the developed countries from snatching what limited wealth there was on the deep ocean floor, rules concerning its ownership and for its exploration and exploitation should quickly be formulated; developed nations should be discouraged from exploiting the seabed’s wealth until such rules could be formulated; and that an institutional means should be devised to control development of deep seabed resources in a manner beneficial to the interests of developing nations. Among the developing nations, those exporting copper and petroleum additionally wished to impose production controls on all future mining of the deep ocean floor in order to keep commodity prices from falling and otherwise to protect their export markets.

At the same time the developing countries with coast lines concluded that in order to maximize the extent of exclusive coastal state control over fisheries and minerals of their continental margins, it would prove tactically advantageous to re-examine the 1958 Geneva Conventions on the Law of the Sea simultaneously and in the same context as the negotiations related to the future status of the deep seabed.

The United States and the Soviet Union for the preceding year or so had been negotiating bilaterally with various coastal countries in order to lay a foundation for reaching international agreement on the limits of the territorial sea, navigation through international straits affected by an expanded territorial sea, and an accommodation of the increasing conflicts between distant water fishing states and the coastal states off of whose coasts the former were fishing.

As just indicated, the developing nations on the other hand wanted to keep discussion of all law of the sea issues in one forum and proceeded to take measures to protect their position. They sponsored, and succeeded by their strength in numbers in securing adoption of, four resolutions in the 1969 session of the U.N. General Assembly. Resolution 2574A (XXIV) requested the
Secretary General to poll member states on the desirability of convening at an early date a law of the sea conference in which the four 1958 Geneva Conventions would be reviewed, and a definition of the area of the seabed beyond national jurisdiction adopted, along with a regime pertaining to the development of the resources of such area.

Resolution 2574B (XXIV) requested the U.N. Seabed Committee to expedite its work on the preparation of a set of legal principles, requested by Resolution 2467A (XXIII), relating to the seabed beyond national jurisdiction and to submit a draft resolution containing such principles to the U.N. General Assembly for consideration at its 1970 session.

Resolution 2574C (XXIV) requested the Secretary General to conduct a study on various types of international machinery, particularly machinery which would have the power to control all activities relating to exploration and exploitation of deep seabed resources. This resolution contained the message that the developing nations were interested in no part of a registration or licensing system as had been advocated by developed states. In fact, the Secretary General in a previous report had suggested that a registration or licensing system was more feasible than an operating agency. But most developing nations would not accept that conclusion.

The final, and most controversial, resolution adopted by the 1969 U.N. General Assembly, that is, 2574D (XXIV), purported to declare a moratorium on all exploitation of the seabed beyond national jurisdiction pending the establishment of an international regime.

The record of the General Assembly debates concerning most of these resolutions, and in particular the moratorium resolution, reflected the displeased reaction of the developed countries to the paper majority tactics and the spirit of confrontation exhibited by the developing nations. The record was made clear that U.N. General Assembly resolutions contain mere recommendations and have no binding force of law. The record was also made clear that in order for a future seabed treaty to become successfully operative it must contain provisions which accommodate the interests of the greatest possible number of nations; otherwise its ratification will be limited.
In the March 1970 session of the U.N. Seabed Committee little was achieved in the way of reaching an understanding on a set of legal principles. The disharmony, which characterized the seabed debates of the twenty-fourth General Assembly, still existed.

In May 1970, President Nixon announced his ocean policy proposal which was followed by a draft working paper tabled by the U.S. delegation at the August 1970 session of the U.N. Seabed Committee. The fact that both the Nixon statement and the U.S. draft working paper contained terms and provisions intended to be responsive to the perceived interests of the developing nations seemed to result in the substantial reduction of fear on the part of such nations that the U.S., as a representative developed nation, was determined to grab for itself the largest possible share of the ocean pie to the detriment of developing nations. Accordingly, the atmosphere at the August 1970 session of the U.N. Seabed Committee seemed considerably more conciliatory than in March of that year, yet not sufficiently conciliatory to achieve agreement before it adjourned on a set of legal principles applying to the deep seabed.

In the autumn of 1970, under the quiet and effective leadership of Ambassador Amerasinghe of Ceylon, Chairman of the Seabed Committee, various delegates met to attempt to reconcile differences concerning and reach agreement on, a set of legal principles. Those informal meetings resulted in a consensus which in December 1970 appeared as General Assembly Resolution 2749 (XXV).1

The vote in support of the resolution was nearly unanimous with only the Soviet Union and a few other nations abstaining.

What is the political significance of this resolution?

The term “common heritage” appearing in article one of the resolution was never defined—its meaning, if it yet has any, is still a mystery to many as later will be discussed.

The dispute over recognition of the 1969 moratorium resolution was resolved by compromise. The 1970 resolution on legal principles does not tacitly refer to any prohibition on exploitation, nor does it specifically affirm the high seas freedom to exploit the deep seabed. The United States position, supported by most all developed nations, is that under international law there is a present right to exploit the deep seabed and indeed prior to establishment of a deep seabed regime.2

1. These principles appear as Appendix A to this article.
2. See testimony of Jonh G. Laylin before the Subcommittee on Inter-
One provision of the resolution would seem to suggest common recognition that unless there is widespread ratification of the future seabed treaty, at least by technologically advanced nations, it will be almost impossible for the regime to operate with any degree of success. Article 9 calling for an international treaty of a universal character points to this conclusion.

The resolution makes provisions for inclusion of appropriate international machinery in the regime to be established—thereby ruling out hopes of some countries that no international administrative mechanism would ever be created.

A very significant development reflected in the resolution was the reemergence of a recognition of the special rights of coastal states. This was largely because of the efforts of the Latin Americans who have asserted the position that national jurisdiction should be expanded seaward on the theory of the inherent right of each coastal state to determine its own seaward limit of national jurisdiction. Assisting the Latin Americans in this effort was Canada's strong plea for coastal state authority to take unilateral action to protect its coasts from marine pollution.

In short, the "Principles" Resolution, considered in the context of its discordant gestation, was a remarkable compromise between developed and developing states. But the truce it appeared to establish was to be short-lived.

Three other resolutions were passed by the 25th General Assembly, one of which, Resolution 2750 (XXV) called for the Secretary General of the United Nations, in cooperation with various U.N. agencies, to do a study for the Seabeds Committee which would:

(a) Identify the problems arising from the production of certain minerals from the area beyond the limits of national jurisdiction and examine the impact they will have on the economic well-being of the developing countries, in particular on prices of mineral exports on the world market;

(b) Study these problems in the light of the scale of possible exploitation of the seabed taking into account the world demand for raw materials and the evolution of costs and prices . . .

This resolution was instigated by those less developed nations who are large exporters of mineral and petroleum resources. These nations continued to fear that development of seabed re-


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sources will have an adverse impact on their export markets. The Secretary General’s report resulting from this resolution concluded that little harm, if any, would result to the mineral export markets of developing countries if production of deep seabed minerals became a reality. Many developing countries, however, refused to accept that conclusion.

The next resolution, 2750B (XXV), was instigated by the landlocked countries. It requested the Secretary General of the United Nations to do a study for the Seabeds Committee on the special problems of landlocked countries relating to the exploration and exploitation of the resources of the deep seabed.

The landlocked countries, which had begun to recognize their common interests, did not want to be left out in the cold when the ocean resource pie is divided up.

The final resolution concerning the oceans passed by the United General Assembly in 1970 was 2750C (XXV). It called for a new law of the sea conference to be held in 1973 which would deal with the establishment of an equitable international regime—including an international machinery—for the area and the resources of the seabed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues including those concerning the regimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of preferential rights of coastal States), the preservation of the marine environment (including, inter alia, the prevention of pollution) and scientific research . . .

It also expanded the Seabeds Committee from 42 to 86 members and charged it with the job of preparing draft articles for a future seabed treaty and preparing a comprehensive list of subjects and issues relating to the law of the sea to be discussed at the 1973 Law of the Sea Conference.

It provided for review by the General Assembly of the progress of the Seabeds Committee in preparing for the conference at its fall 1971 and 1972 sessions, with the right to postpone the 1973 conference if the progress of the Seabeds Committee is insufficient.

In its March 1971 session the expanded Seabed Committee slowly reorganized itself to begin work in preparing for the Law of the Sea Conference. Three subcommittees were established.

The first subcommittee, then chaired by Mr. E.E. Seaton of the
United Republic of Tanzania, was delegated the task of handling the regime for the area of the seabed beyond national jurisdiction including appropriate machinery, e.g., the design of international institutional arrangements related to exploration and exploitation of deep seabed resources. This task includes the preparation of draft treaty articles, the study of the economic implications of the exploitation of the resources of the area, the methods and criteria for sharing the benefits of such exploitation, the special needs of the developing countries, including the needs and problems of the landlocked countries, and the exploration of what, if any, “unfavorable” economic consequences of fluctuations in commodity prices which might possibly result from the exploration and exploitation of the resources of the deep seabed.

The second subcommittee, chaired by Mr. Galindo Pohl of El Salvador, was assigned the task of grappling with the knotty problems of the limits of the territorial sea; navigation through international straits which form a part of the territorial sea; the contiguous zone; the regime of the high seas; the limits of the legal continental shelf; and fishing and conservation of the living resources of the high seas, including the question of preferential rights of coastal states. The work here is to entail, inter alia, a review of the practice of states regarding each of these issues as well as an analysis of the 1958 Geneva Conventions on the Law of the Sea including background documents and significant studies, resolutions, and other materials made since the 1958 and 1960 Geneva Conferences. This subcommittee also was given the task of compiling a list of subjects and issues which would constitute the agenda for the Law of the Sea Conference and of making a recommendation to the plenary committee on a suggested limit of national jurisdiction.

The third subcommittee, chaired by Mr. A. Van Der Essen of Belgium, was charged with the responsibility for dealing with matters related to the preservation of the marine environment, including the prevention of pollution, and with matters involving oceanic scientific research.

For the remainder of the March 1971 session and at its July-August 1971 session the main committee and each subcommittee each conducted a number of meetings. During these meetings several working papers were introduced which, when related to
the regime, usually appeared in draft treaty article form. Others
took the form of suggested lists of subjects and issues which might
constitute an agenda for the future law of the sea conference.

The first subcommittee conducted unstructured debates on a re-
gime for the deep seabed, with most countries detailing their indi-
vidual positions on what they would like to see included as the
major substantive contents of a future regime.

The second subcommittee began its debates on the topics en-
trusted to it and conducted negotiations on the list of subjects
which it was charged to compile as a recommended agenda for
the Law of the Sea Conference. It was unable to reach agreement
on a conference agenda, nor was it able to arrive at a consensus on
the other issues being debated.

The third subcommittee held only a few sessions. It seemed to
be waiting until more was learned of the relevant developments
which would be taking place at the 1972 Stockholm Conference
on the Human Environment and the forthcoming conference on
marine pollution sponsored by the International Maritime and
Consultative Organization.

In short, little progress was made in the 1971 sessions of the
U.N. Seabed Committee toward fruitful preparation for a 1973 law
of the sea conference. No consensus seemed to be emerging on
the tough issues.³

The U.N. General Assembly, for a change, took no major actions
during 1971 related to the law of the sea except to expand the
Seabed Committee from 86 to 91 members. The new members are
China, Fiji, Finland, Nicaragua and Zambia.

The March 1972 session of the U.N. Seabeds Committee served
to demonstrate that the continuing differences between its mem-
ber states on important law of the sea issues were hardening.
The major developments which occurred at the March session will
be discussed in the context of the main committee or subcommittee
sessions in which they occurred.

At the opening sessions of the main committee the Chairman
announced that, as agreed upon at the close of its 1971 session,

³ For further information on specific developments of the 1971 Seabed
Committee sessions, see, The Law of the Sea Crisis, a Staff Report on the
United Nations Seabed Committee, The Outer Continental Shelf and Marine
Mineral Development, U.S. Senate Committee on Interior and Insular Af-
fairs, December 1971. This report also contains a reprint of the 1971 Re-
port of the Seabeds Committee to the U.N. General Assembly along with
copies of all the working papers submitted at the 1971 session of the U.N.
Seabed Committee. See also law of the Sea Reports published by the
general debate in the main committee was closed, but that new members could make general statements if they chose. He emphasized that instead of continuing such debates it would be better to get on with the work which constituted the major priorities facing the Committee. Of equal priority, he suggested, were the task of preparing draft treaty articles for a deep seabed regime, which had been allocated to Subcommittee I, and preparation of a comprehensive list of subjects and issues relating to the law of the sea—a task which was allocated to Subcommittee II. He suggested that Subcommittee II ought not to engage in substantive debate until it completed its list of subjects and issues which would serve as an agenda for the Law of the Sea Conference.

During the following sessions of the main committee the new members made opening statements, the most noteworthy of which was that of China. China, in her usual Mao Tse Tung textbook polemic, launched an attack on the U.S. and the U.S.S.R. as "superpower" enemies of the developing nations. China also attacked the Japanese for making "imperialistic" territorial claims to islands rightfully belonging to the "province of Taiwan", a part of China which is being "forcibly" occupied by the United States. By ironic contrast, China supported the Latin Americans in their unilateral 200 mile territorial sea claims. She said, "It was within each country's sovereignty to decide the extent of its rights over territorial seas . . . all coastal states had the right to dispose of the natural resources in their coastal seas and the seabed and subsoil thereof so as to promote the well-being of their people and the development of their economic interests."4

A further example of the style of the Chinese polemic is included below to illustrate the rough-edged bluntness of China's debut as a member of the Seabed Committee and to demonstrate how inartfully China attempted to persuade the developing countries that she was really only one of them.

Since imperialism had come into being, it had run rampant over the seas and oceans and committed aggression and plunder at will. After the Second World War the United States had attempted to dominate the world and had increasingly extended its activities from the surface of the sea to the seabed. It had violated the territorial waters of many countries and plundered their undersea resources and had even committed armed inter-

vention and aggression. Realizing the importance of being the first to gain control of the seabed, the other super-Power had also energetically sought to establish its presence in the seas and oceans everywhere. The two super-Powers were contending and yet acting in collusion with each other at the same time in order to dominate the seas and oceans. While paying lip service to the peaceful uses of the seabed, they were in fact stepping up the development of nuclear submarines, emplacing nuclear and other military installations on the seabed and using it for arms expansion and war preparations. Under the guise of jointly exploiting seabed resources, they were sending out their so-called research ships and fishing vessels for brazen intrusion into the territorial seas of other countries and unbridled plunder of their undersea wealth and coastal fishing resources. Such expansionist acts by the super-Powers harmed the economic interests of many coastal States, especially those of Asia, Africa and Latin America, and violated their national sovereignty...

All of those facts showed that the current international struggle with regard to rights over the seas and oceans was in essence a struggle between aggression and resistance, between plunder and conservation, between foreign hegemony and independence, a struggle of Asian, African and Latin American countries in defense of their national rights and interests and their sovereignty against the hegemony of the super-Powers.5

The indicator of China's success in persuading the developing nations that she was their trustworthy potential confidant, was the fact that she was excluded from the private caucuses of the "Group of 77", the informal body in which developing nation policy and strategy is coordinated.

Also of note during the March sessions of the main committee were the addresses of the Secretary General of the Stockholm Conference on the Human Environment and a representative of the Food and Agriculture Organization of the U.N. The former indicated that at Stockholm governments would be making an important beginning on the task of controlling marine pollution which they would pursue further in the work of the Seabed Committee, while the latter presented FAO documents containing factual information of relevance in resolving the fisheries issue.

Another event of note occurred in the final session of the main committee in which 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 sea-bed 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

5. Id at 8, 10.
the establishment of the regime." Approval of the resolution was temporarily blocked on procedural grounds, but the Chairman indicated that the committee decided to consider the Kuwait draft at its next session.

The resort to such paper majority tactics, in lieu of serious negotiations aimed at securing a genuine consensus usually occurs when developing states feel that there is a danger that the attainment of their objectives may not be realizable. Evidence substantiating this conclusion may be found in the summary records of the main committee and Subcommittee I.

The latter at its opening sessions elected a new chairman to replace Mr. Seaton who had retired. Mr. Paul Engo of Cameroon was chosen to lead Subcommittee I. The subcommittee then adopted, with slight amendments, the working paper co-sponsored in 1971 by Australia and Jamaica as its plan of work. It called for structured debate on the following issues:

(1) Status, scope and basic provisions of the regime based on the Declaration of Principles, Resolution 2749 (XXV).

(2) Status, scope, functions and powers of the international machinery in relation to:
   (a) Organs of the international machinery, including composition, procedures and dispute settlement.
   (b) Rules and practices relating to activities for the exploration, exploitation and management of the resources of the area, as well as those relating to the preservation of the marine environment and scientific research, including technical assistance to developing countries.
   (c) The equitable sharing in the benefits to be derived from the area, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked.
   (d) The economic considerations and implications relating to the exploitation of the resources of the area, including their processing and marketing.
   (e) The particular needs and problems of land-locked countries.
   (f) Relationship of the internal machinery to the United Nations system.

The majority of subsequent sessions were devoted to item one, following the conclusion of which a 33-nation working group was appointed, under the chairmanship of Mr. Pinto of Ceylon, to begin work on drafting the "principles" section of a suggested future seabed treaty. The working group is slated to begin work
at the next session. Six meetings of the subcommittee were held to discuss item 2, with four more sessions scheduled for continued debates on that item for the July-August 1972 session.

Debate on both items revealed that the conflicting basic positions regarding the creation of a future deep seabed regime enunciated by developing coastal states, developed coastal states, and developing and developed land-locked and shelf-locked states had not changed since the debates preceding adoption of the Legal Principles Resolution in December of 1970.

To summarize these differences as they pertain to a regime for the deep seabed, most developing coastal countries want a broad limit (200 miles) of exclusive national jurisdiction over fisheries and mineral development, beyond which the regime for the deep seabed would apply. The regime would establish an international operating agency under developing nations' control by means of a one nation-one vote allocation of decision-making authority among states party to the regime. The operating agency would be vested with virtually the exclusive right to mine the deep ocean floor and the authority to control production thereon in order to regulate mineral commodity prices. Prior to the agreement on such a regime no state should be entitled to exploit deep seabed resources, the developing countries contended.

Most coastal developed states would also like a broad limit of national jurisdiction (200 miles) over minerals, but not fisheries, beyond which the regime for the deep seabed would apply. The regime would establish an international agency with restricted administrative authority to issue licenses to mine the deep ocean floor to states party to the treaty. The international agency created to administer licensing arrangements should be overseen by a body consisting of states party to the treaty, but the means of arriving at decisions by such a body should not be made on a one nation-one vote principle in order to avoid control by developing nations. Exploitation of the minerals of the deep seabed, pending agreement on a regime, is entirely lawful, the developed countries said.

The developing and developed land-locked and shelf-locked states tend to prefer a narrow limit of coastal state jurisdiction, over mineral development in particular, in order to realize benefits flowing from development of mineral production in an "intermediate zone" consisting of the outer parts of the continental margins of both, developing and developed coastal states. The land-locked and shelf-locked states also wish to be given weighted voting rights in the international agency which would be created
by the regime and which would have some authority over development of minerals in the intermediate zone and principal authority to regulate mineral development on the deep ocean floor.

The arguments advanced by each of these groups in support of their objectives consisted of their interpretations of the Declaration of Legal Principles (UNGA Resolution 2749 (XXV)) and other contentions which have long been repeated during the course of the Seabed Committee debates.

The “common heritage” provision of paragraph 1 of the Declaration of Legal Principles provided the major springboard for the arguments presented by developing coastal states. The Mexican delegate stated that the common heritage principle was just as well-founded as the concept of res communis or common property. Its originality lay not in the concept it expressed, but in the fact that mankind sought for the first time to take up rights and obligations in accordance with international law. The international community, as owner of the area and its resources, had the right to share directly in their development until it acquired the technical and financial means to exploit them by and for itself. There was nothing to justify a system of operating permits which would assign to legitimate owner the role of a mere spectator.6

The delegate of Ceylon stated that the ability of the Authority to carry out exploration and exploitation on its own represented the highest expression of its central role as the administrator of the common heritage of mankind.7

The delegate of Iraq stated that “a purely mercantilist laissez-faire system of licenses could not be reconciled with” the concept of common heritage.

The Peruvian delegate stated that the major powers could not reconcile themselves to the idea of giving up, even in part, their monopoly of power, technology and capital, even in the case of resources which they themselves had agreed to consider as the common heritage of mankind.8

Some of the developing countries tended to express the view that common heritage means, as a matter of present international

law, that the resources of the deep seabed beyond the limits of
national jurisdiction are owned jointly by mankind as a whole;
that developing nations collectively representing mankind had the
indisputable right, through creation of a supranational operating
agency, to reap the principal benefits of deep seabed minerals; and
that no state individually presently had any right to exploit the
minerals of the deep seabed. The unspoken but implied rationale
seemed to be that if developing states individually had the ex-
clusive sovereign right to explore and exploit the resources within
their land territory and continental margins, then collectively they
had the same sovereign right exclusively to explore and exploit
the resources lying beyond national jurisdiction. Furthermore,
the developed states had a concomitant duty within the meaning
of common heritage to transfer their ocean resource technology to
the developing states who, collectively as its guardian, would ap-
ply it to the benefit of states, party to the treaty, according to
need. Only developing states would have such need.

The developed states had a somewhat different view of the
present international law related to the development of the min-
erals of the deep seabed. They also had a different view of what
type of international machinery ought to be created to administer
deep seabed mineral development and what limitations of author-
ity ought to be imposed on such machinery. Needless to say,
they also had an entirely different view of the meaning of the
term “common heritage” than did the developing states.

Regarding existing international law of the sea as codified in
the 1958 Geneva Conventions, the Belgian delegate stated that
even if the 1973 Conference abrogated the 1958 Convention by
replacing them with other Conventions, it was possible that the
1958 Conventions would remain in force for those of their con-
tracting parties which so wished. Even if it was declared that
the 1958 Conventions had lapsed, it would be unthinkable that
the rules of customary law embodied in them should ipso facto
be declared null and void.10

Alluding to notions favoring the creation of a supranational or-
ganization for the seabed, he stated,

It must be remembered, however, that international relations
were still governed by nineteenth century concepts of State sover-
eignty which made no provision for the idea of an international
community regulating the peace, security and economic well-
being of nations independent of the will of States.11

The Australian delegate similarly concluded,

11. Id. at 12.
Neither the United Nations nor any specialized international body should be given sovereignty over the area beyond the limits of national jurisdiction.\textsuperscript{12}

Referring to the status of the Principles Resolution, the Belgian delegate stated that,

the Declaration of Principles represented a solemn undertaking on the part of Member States to negotiate a treaty or treaties establishing an international regime. To read more into the Declaration would be a mistake. Certainly it would be wrong to regard the Declaration as enunciating general principles of international law in the sense of Article 38 of the Statute of the International Court of Justice.\textsuperscript{13}

Applying this same line of reasoning to the common heritage concept as included in the Legal Principles, the Greek delegate commented that such principle was new and unique in international law, but was unrelated to the fundamental norm of international law whereby treaties created rights and obligations only between parties to them. For states which were not contracting parties, a treaty was \textit{res inter alias acta}; that preemptory norm of general international law had recently been codified in Article 34 of the Vienna Convention on the Law of Treaties. Therefore, despite its universal value, the first principle of the Declaration should not be interpreted as making the treaty under preparation binding even upon States which were not parties to it.\textsuperscript{14}

Other developed nations' comments concerning the meaning, legal content and status of the common heritage provision contained in the Declaration of Principles Resolution were stated as follows:

—Canada: Principle 1, concerning the “common heritage of mankind,” raised the question of the scope of the treaty. Although fundamental, it did not imply that the United Nations should be given sovereignty over the area . . . the concept of the common heritage should not be interpreted to mean that, because of the unique legal status of the area, the future seabed treaty could automatically be made universally binding—even upon States which might not adhere to it.\textsuperscript{15}

—Poland: Some provisions and concepts contained in the Declaration were drafted in such general language that their meaning was not sufficiently clear, and thus gave rise to different interpretations. That was true, for instance, of the concept of a “common heritage of mankind,” which had no precise legal content . . . that view was supported by the fact that various dele-

gates had offered different and sometimes contradictory interpretations during the March and July/August sessions of the Committee.\textsuperscript{16}

—Japan: . . . The phrase (common heritage) was not legally precise and was subject to various interpretations.\textsuperscript{17}

As the debates in Sub-Committee I progressed from interpretations of the abstractions contained within the Declaration of Principles to a more concrete consideration of the content of a future regime the differences between the major factions of the Seabed Committee became even more evident.

The delegate of Chile stated that

the international machinery should have power to: explore and exploit, control production and market resources, control research and pollution, distribute profits, preserve the marine environment and promote the development of the area by planning and ensuring the transfer of science and technology.\textsuperscript{18}

The British delegate, by contrast, commented that

The central concern of the machinery would be the exploration and exploitation of the resources of the area. It had been suggested that the international authority should itself be, or should direct, an operating enterprise which would have the sole right to engage in the exploration and exploitation of resources within the area. However, that approach was not without difficulties, of which the most obvious was the question of funds. An enterprise engaging directly in the exploitation of the minerals of the area, including hydrocarbons, would have to invest thousands of millions of dollars. Even if the international authority conducted its operations largely through joint ventures with established enterprises, it would still need to raise substantial capital, far exceeding the United Nations budget. It would not be realistic to suppose that either the international capital market or the States parties to the convention would be willing or able to subscribe sums of that magnitude to the future authority. Even if they did so, the servicing of that capital would constitute a prior charge on future revenues, thus complicating and postponing their distribution among States parties.\textsuperscript{19}

He concluded, therefore, that a licensing system would be more practical and indeed more equitable.

Although developing and developed states generally agreed that the international organization to be created to administer arrangements agreed upon for mining the deep seabed should consist of an assembly consisting of all states, each having one vote, an executive council consisting of a smaller number of states and a secretariat to handle administrative matters, the major differences

\textsuperscript{17} U.N. Doc. A/AC.138/SC.I/SR.38, at 6 (March 16, 1972).
\textsuperscript{19} U.N. Doc. A/AC.138/SC.I/SR.41, at 6 March 24, 1972.)
related to allocation of votes in the executive council. The developing countries wanted it to be determined on the basis of geographic distribution of states which would mean that general consensus among developing states would be sufficient to control that body's decisions.

The Soviet Union, on the other hand, suggested that the application of the principle of consensus in the Executive Board (among all states represented on it) was essential if the Board was to be an organ of cooperation among states and not a means by which some states could impose their will on others, forcing through resolutions at variance with the vital interests of other states.20

The Bulgarian delegate further developed this argument by stating that

... it was politically unacceptable that an international body, such as the proposed supranational machinery, should be established to control individual states, whose sovereign interests should always come first.

The concept of supranational machinery called for an international body with exclusive jurisdiction over the seabed and the management of its resources. At no point in the Declaration of Principles ... was there any call for States to abdicate their rights to explore and exploit the resources of the international area in favour of the future international machinery.21

With the hardening of positions during the March session debates of Sub-Committee I regarding the future rules governing exploration and exploitation of deep seabed resources; the scope of the authority of the machinery to be created to administer such rules; and the allocation of voting rights among member states within such machinery, it should have become apparent, as stated by the Turkish delegate, that

an international treaty of a universal character could be achieved only if all countries represented on the Committee, both developing and developed, worked on agreement in a spirit of international co-operation and willingness to make reciprocal concessions to accommodate divergent views and interests.22

This conclusion was echoed by the Romanian delegate who stated that

The development of the regime must proceed on a democratic basis. Any departure from that principle would serve only to

widen the gap between developed and developing countries. History provided ample proof that a legal regime could endure only if it reflected that political and economic realities existing at the time of its establishment and enjoyed the general support of all states concerned.23

At the opening meeting of Sub-Committee II in March, Mr. Beesley of Canada, speaking in his capacity as chairman of the eleven member working group appointed at the July-August 1971 session, reported that the group had not been able to reach agreement on a list of subjects and issues which could serve as an agenda for the Law of the Sea Conference scheduled for 1973. The Group of 77, it was announced, was caucusing with a view toward submitting its own recommended conference agenda. Thus, Mr. Beesley suggested that the 11 member working group should await the results of the Group of 77 before meeting again.

A tactical decision had been made by the Group of 77 that they should resolve the differences between the proposed Latin American list of subjects and issues24 and the African-Asian list.25 Each had been submitted as a working paper at the July-August 1971 session of the Seabeds Committee. The Group of 77 consumed most of the month of March deliberating privately.

In the meantime, only three additional sessions of Sub-Committee II were held in March prior to release by the 77 of their list. These meetings for the most part consisted of the continuation of debates on the subjects delegated to Sub-Committee II, such as navigation, fishing and other leftover problems of the 1958 and 1960 Geneva Law of the Sea Conferences.

Then on Friday, March 24, with four more working days remaining in the March session, the Group of 77, without formally introducing it, released its new list.26 It had about fifty sponsors consisting of Latin American, Asian and African developing countries, plus China, Iceland, Spain and Yugoslavia. All of the landlocked developing countries refused to join as co-sponsors. The decision was made that the Sub-Committee should meet to discuss the list on Tuesday and Wednesday, March 28 and 29, the two days preceding the close of the March session.

On March 28 the list was formally tabled in Sub-Committee II and its various sponsors presented arguments that it was an objective list, fairly representing the interests of all member States.

23. Id. at 20.
26. The list appears as Appendix B to this article.
The delegate of Kenya, however, while referring to the list, did mention 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 regime, 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 to the other part of its task, which was to prepare draft articles on subjects and issues.27

The non-sponsors of the list were not about to proceed expeditiously to drafting articles without first seeking to amend the list. They believed, as hinted by the Kenyan delegate, that the list catalogued the subjects and issues in a manner highly prejudicial to the interests of the developed States and the land-locked and shelf-locked states. Thus, the United States,28 Italy,29 the Soviet Union30 and Japan31 submitted separate amendments to the list while the land-locked and shelf-locked countries, Austria, Belgium, Bolivia, Mali and Zambia,32 jointly submitted amendments. The amendments tell the story of what was felt to be wrong with the list sponsored by the Group of 77.

Item 4 of the 77’s list reads:

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

The U.S. and the Soviet Union had sought free transit through international straits. Nowhere in the list of 77 did free transit appear. Thus, the U.S. amendment called for the addition of sub-

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item "4.3 Free transit." The Soviets sought the same end by amending item 4 to delete sub-items 4.1 and 4.2.

Item 6 of the list of the Group of 77 was captioned, "Exclusive economic zone beyond the territorial sea."

The U.S. amendment called for a new caption: "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 U.S.S.R. 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, provisions for land-locked and shelf-locked participation in development of the exploitation of natural resources. Additional amendments were suggested to protect their fisheries interests and their participation in the regime for the deep seabed beyond the limits of national jurisdiction.

Item 7 of the list sponsored by the Group of 77 read:

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 item 7.2: "Freedom of navigation and other freedoms."

Item 12 of the list of the Group of 77 read:

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: "Freedom of research and access to scientific information." The Soviet amendment called for a reformulation of item 12.2 to read: "Co-Ordination of scientific research."

Item 21 of the list of the Group 77 read:

21. Peaceful uses of the ocean space: zones of peace and security.
The U.S. amendment would rephrase item 21 to read, “Peaceful uses of ocean space,” while the Soviet amendment would rephrase the item, “Peaceful uses.”

These were the major amendments proposed. No one could honestly claim that they were not proposed in good faith, with a view toward providing at least a partial balance in the formulation of subjects and issues which would constitute an agenda for the next law of the sea conference. Yet, it was clear to everyone that the Group of 77 had sought to predetermine the outcome of the next law of the sea conference by drawing up an agenda which precluded adequate representation of the interests of the developed states and the land-locked and shelf-locked states. The atmosphere at the close of the March session of Sub-Committee II was not unlike that of the twenty-fourth session of the UN General Assembly. It was a return to the spirit of paper majorities and tactics of confrontation. It closed with no agreement on a conference agenda.

Sub-Committee III held only five sessions. The result was an agreement on a work plan for its summer 1972 session. It calls for a review of the results of the Stockholm Conference, the preparatory sessions for the IMCO conference on marine pollution and other relevant developments, regarding matters related to oceanic research and marine pollution.

The March session of the U.N. Seabed Committee ended with little progress, if any, in the way of reconciling differences among developing coastal states, developed coastal states and the land-locked and shelf-locked states. The developing coastal states seemed determined to rely on their strength in numbers to force agreement on a deep seabed regime, lopsidedly favorable to their interests; prevent interim exploitation of the deep seabed pending such agreement; and establish control over fishing, mineral development and scientific research within a 200 mile belt adjacent to their coasts.

If their interest was in securing international agreement in the form of one or more treaties, they failed by their collective assertions to win much sympathy from the developed coastal states.

33. See U.N. Doc. A/AC.138/SC.III/L.14 (March 27, 1972) which appears as Appendix C to this article.
and the land-locked and shelf-locked states for the substance of what they were proposing.

If their intent was to cause delay of the 1973 law of the sea conference in order to buy time to more adequately secure their objectives through unilateral and regional action and subsequent political maneuvering in the Seabed Committee and the U.N. General Assembly, they may discover that they are playing a dangerous game. For it would seem that such a plan might have disadvantages. If, for instance, they feel that their proposed exclusive economic zone in time will become a fait accompli without need for agreement in treaty form, they will be faced with protests and counter sanctions by the developed states and land-locked and shelf-locked states against whom such claims are made. If such becomes the case, then hope that the common heritage concept may bear fruit in a future seabed regime might never be realized. For it is in the area of the high seas and the deep ocean floor that the developed nations have the greatest strenght: a freedom of the seas tradition, ships, technology, capital and the option to refuse to ratify—without effective developing nation counter-sanctions—a regime for the deep seabed. It will take more than a voting majority in the U.N. General Assembly and at a future law of the sea conference for the developing coastal states to secure their stated objectives.

If an agreement is to be reached, it will require genuine trade-offs, offered by all parties in a spirit of good faith. With positions hardening, this course will be difficult to achieve. But, unfortunately, it is the only route for reaching international agreement. If a new constitution for the oceans is to be written, ratified and to enter into force, all members of the Seabed Committee will have to pause to rethink the answers to the questions of who shall exercise authority in a particular respect, and what conditions or restrictions are to be placed on the exercise of this authority.

It remains to be seen if a return to a spirit of good faith negotiation is possible at this time. The Seabed Committee is at a crossroad. The choice facing its member States in preparing for their summer 1972 session is whether to proceed with preparations for a new law of the sea conference which present conferees with a combination of options which can result in the formulation of an ocean regime which has realistic prospects for widespread ratification by a diversified representation of developing and developed member states including those which are coastal, land-locked and shelf-locked.
The other alternative is for the Seabed Committee to proceed on the same course taken during its March session with subsequent sponsorship of inflammatory and provocative resolutions by the Group of 77 in the twenty-seventh UN General Assembly. While the experience of the twenty-fourth General Assembly established that the adoption of such resolutions was possible by the Group of 77's paper majority the repeat of such a performance in the twenty-seventh General Assembly would only serve to further discourage international cooperation in the formulation of a new regime for the oceans.

What happens this Summer in Geneva at the next session of the UN Seabed Committee may well determine whether a new constitution for the oceans will become a political reality or whether discussions concerning the ocean's future will remain for years to come a Donnybrook Fair.
APPENDIX A

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the First Committee (A/8097)]

2749 (XXV). Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968 and 2574 (XXIV) of 15 December 1969, concerning the area to which the title of the item refers,

Affirming that there is an area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, the precise limits of which are yet to be determined,

Recognizing that the existing legal régime of the high seas does not provide substantive rules for regulating the exploration of the aforesaid area and the exploitation of its resources,

Convinced that the area shall be reserved exclusively for peaceful purposes and that the exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole,

Believing it essential that an international régime applying to the area and its resources and including appropriate international machinery should be established as soon as possible,

Bearing in mind that the development and use of the area and its resources shall be undertaken in such a manner as to foster the healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by the fluctuation of prices of raw materials resulting from such activities,

Solemnly declares that:

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

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

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

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

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

6. States shall act in the area in accordance with the applicable principles and rules of international law, including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970, in the interests of maintaining international peace and security and promoting international co-operation and mutual understanding.

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

8. The area shall be reserved exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to a broader area. One or more international agreements shall be concluded as soon as possible in order to implement effectively this principle and to constitute a step towards the exclusion of the sea-bed, the ocean floor and the subsoil thereof from the arms race.

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

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1. Resolution 2625 (XXV).
inter alia, provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.

10. States shall promote international co-operation in scientific research exclusively for peaceful purposes:

(a) By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries;

(b) Through effective publication of research programmes and dissemination of the results of research through international channels;

(c) By co-operation in measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes.

No such activity shall form the legal basis for any claims with respect to any part of the area or its resources.

11. With respect to activities in the area and acting in conformity—with the international régime to be established, States shall take appropriate measures for and shall co-operate in the adoption and implementation of international rules, standards and procedures for, inter alia:

(a) The prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment;

(b) The protection and conservation of the natural resources of the area and the prevention of damage to the flora and fauna of the marine environment.

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

13. Nothing herein shall affect:

(a) The legal status of the waters superjacent to the area or that of the air space above those waters;
(b) The rights of coastal States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the area, subject to the international regime to be established.

14. Every State shall have the responsibility to ensure that activities in the area, including those relating to its resources, whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the international regime to be established. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability.

15. The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established.

1933rd plenary meeting,
17 December 1970.
APPENDIX B

List of subjects and issues relating to the law of the sea to be submitted to the Conference of the Law of the Sea sponsored by Algeria, Argentina, Brazil, Ceylon, Chile, China, Colombia, Congo, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Ghana, Guatemala, India, Indonesia, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Senegal, Sierra Leone, Spain, Sudan, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia and Zaire.

Explanatory note

The present list of subjects and issues relating to the law of the sea has been prepared in accordance with General Assembly resolution 2750 C (XXV).

The list is not necessarily complete nor does it establish the order of priority for consideration of the various subjects and issues.

Since the list has been prepared following a comprehensive approach and attempts to embrace a wide range of possibilities, sponsorship or acceptance of the list does not prejudice the position of any State or commit any State with respect to the items on it or to the order, form or classification according to which they are presented.

Consequently, the list should serve as a framework for discussion and drafting of necessary articles until such time as the agenda of the Conference is adopted.

List of subjects and issues relating to the law of the sea

1. International régime for the sea-bed and the ocean floor beyond national jurisdiction
   1.1 Nature and characteristics
   1.2 International machinery: structure, functions, powers
   1.3 Economic implications
   1.4 Equitable sharing of benefits bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked
   1.5 Definition and limits of the area

2. Territorial sea
   2.1 Nature and characteristics, including the question of the unity or plurality of régimes in the territorial sea

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1. To be considered in the light of the procedural agreement as set out in paragraph 22 of the report of the Committee (A/8421).
2.2 Historic waters
2.3 Limits
  2.3.1 Delimitation of the territorial sea
  2.3.2 Breadth of the territorial sea. Global or regional criteria. Open seas and oceans, semi-enclosed seas and enclosed seas
2.4 Innocent passage in the territorial sea
2.5 Freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea

3. Contiguous zone
  3.1 Nature and characteristics
  3.2 Limits
  3.3 Rights of coastal States with regard to national security, customs and fiscal control, sanitation and immigration regulations

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

5. Continental shelf
  5.1 Nature and scope of the sovereign rights of coastal States over the continental shelf
  5.2 Outer limit of the continental shelf: applicable criteria
  5.3 Question of the delimitation between States
  5.4 Natural resources of the continental shelf
  5.5 Régime for waters superjacent to the continental shelf
  5.6 Scientific research

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
  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 seas
6.6.5 Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction

6.7 Sea-bed 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. 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

8. Rights and interests of land-locked countries
8.1 Free access to the high seas
8.2 Free access to the international sea-bed area beyond national jurisdiction in accordance with the régime to be established, and other arrangements relating to such access
8.3 Developing land-locked countries' interests in regard to fisheries
8.4 Participation of land-locked States in international régime

9. Rights and interests of shelf-locked States and States with narrow shelves or short coastlines
9.1 International régime
9.2 Fisheries
9.3 Special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines

10. Rights and interests of States with broad shelves

11. Preservation of the marine environment
11.1 Sources of pollution and other hazards and measures to combat them
11.2 Measures to preserve the ecological balance of the marine environment
11.3 Responsibility and liability for damage to the marine environment and to the coastal State
11.4 Rights of coastal States

12. Scientific research
12.1 Nature, characteristics and objectives of scientific research of the oceans
12.2 Regulation of scientific research
12.3 International co-operation

13. Development and transfer of technology
13.1 Development of technological capabilities of developing countries
13.1.1 Sharing of knowledge and technology between developed and developing countries
13.1.2 Training of personnel from developing countries
13.1.3 Transfer of technology to developing countries

14. Regional arrangements
15. Archipelagoes
16. Enclosed and semi-enclosed seas
17. Artificial islands and installations
18. Régime of islands: (a) under colonial dependence or foreign domination or control; or (b) under sovereignty of a foreign State and located in the continental shelf of another State in a different continent
19. Responsibility and liability for damage resulting from the use of the marine environment
20. Settlement of disputes
21. Peaceful uses of the ocean space: zones of peace and security
22. Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction
23. Transmission from the high seas
APPENDIX C

Programme of work for Sub-Committee III as adopted by the Sub-Committee at its 19th meeting on 27 March 1972

A. Preservation of the marine environment (including the seabed)

1. General debate

2. Relationship to the preservation of the living resources of the high seas (without prejudice to the terms of reference of Sub-Committee II)

   (a) Report on the Conference
   (b) Discussion of the report
   (c) Communication of results of discussion to the Stockholm Conference

4. Meeting of FAO Committee on Fisheries, April 1972 (without prejudice to the terms of reference of Sub-Committee II)
   (a) Report of the meeting
   (b) Discussion of the report

5. (a) Requirements of scientific research
   (b) Freedom of access to scientific information
   (c) Participation of littoral States in scientific research and in the results and benefits therefrom

6. Formulation of legal principles and draft treaty articles

7. Other matters

B. Elimination and prevention of pollution of the marine environment (including the seabed)

1. General debate

2. Stockholm Conference on the Human Environment—Marine Pollution Principles
   (a) Reports of Intergovernmental Working Group on Marine Pollution, London, June 1971, and Ottawa, November 1971
   (b) Discussion of the reports
   (c) Communication of results of discussion to the Stockholm Conference

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(d) Report of the Stockholm Conference 
(e) Action by the Sea-Bed Committee

3. Stockholm Conference on the Human Environment—draft articles on ocean dumping
   (a) Reports of Intergovernmental Working Group on Marine Pollution, London, June 1971, and Ottawa, November 1971
   (b) Discussion of the reports
   (c) Communication of results of discussion to the Reykjavik Meeting and the Stockholm Conference
   (d) Report of the Stockholm Conference
   (e) Action by the Sea-Bed Committee

4. Stockholm Conference on the Human Environment—marine aspects of the proposed Declaration on the Human Environment
   (a) Report of the Intergovernmental Working Group on the Declaration on the Human Environment
   (b) Discussion of the report
   (c) Communication of results of discussion to the Stockholm Conference
   (d) Report of the Stockholm Conference
   (e) Action by the Sea-Bed Committee

5. IMCO Conference on the Elimination of Ship-Generated Pollution
   (i) February/March 1972 Preparatory Meeting
      (a) Report on the meeting
      (b) Discussion of the report
      (c) Communication of results of discussion to IMCO
   (ii) June 1972 preparatory meeting
      (a) Report on the meeting
      (b) Discussion of the report
      (c) Communication of results of discussion to IMCO

6. Oslo Regional Dumping Convention
   (a) Report on the Convention
   (b) Discussion of the report
7. Norway-Canada draft resolution on preliminary measures to prevent and control marine pollution (A/AC.138/SC.III/L.5 and Add.1)
   (a) Discussion of draft resolution
   (b) Communication of results of discussion to the Stockholm Conference
8. Examination of existing Conventions relating to marine pollution
9. (a) Requirements of scientific research
   (b) Freedom of access to scientific information
   (c) Participation of littoral States in scientific research and in the results and benefits therefrom
10. Formulation of legal principles and draft treaty articles including draft articles which may be considered as follow-up action to the Stockholm Conference
11. Other matters

C. Scientific research concerning the marine environment (including the sea-bed)
1. General debate on the nature, characteristics and objectives of scientific research
2. Consideration of principles set forth in resolution 2749 (XXV) on the subject of scientific research
   (a) Report of the IOC Working Group
   (b) Discussion of the report
   (c) Communication of results of discussion to IOC
   (a) Report of the Preliminary Conference
   (b) Discussion of the report
   (c) Communication of results of discussion to UNESCO/IOC and IMCO
5. Examination of existing conventional provisions relating to marine scientific research
6. Freedom of access to scientific information
7. Formulation of legal principles and draft treaty articles
8. Other matters
D. Development and transfer of technology

1. Development of technological capabilities of developing countries
2. Sharing of knowledge and technology between developed and developing countries
3. Training of personnel from developing countries
4. Transfer of technology to developing countries

E. Other matters