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THE UNITED NATIONS AND RESOURCES OF THE DEEP OCEAN FLOOR

PANEL DISCUSSION

(The following discussion is an edited version of the morning and afternoon panel discussion sessions.)

PANELISTS

Chairman:
Professor L.F.E. Goldie
Director, International Legal Studies
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Mr. Michael Hardy, Esq.
Legal Advisor, United Nations, New York

Professor H. Gary Knight
Professor of Law, Louisiana State University,
Baton Rouge, Louisiana

Dr. Fernando Labastida
Legal Officer, United Nations, New York

Dr. Gerard Mangone
Senior Fellow, Woodrow Wilson International
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Commander William Palmer, U.S.N.
Office of the Judge Advocate General,
Washington, D.C.

Professor Zdenek Slouka
Fellow, Woodrow Wilson International Center
for Scholars

The Chairman requested comments from the panel on the current state of discussions on the development of international machinery to regulate the uses of the deep seabed and the ocean floor. Noting that the Soviet Union has shown little interest in international controls, he asked if there was any ground for optimism for a global agreement.

Professor Slouka was "pessimistic" about prospects of a universal agreement. Modern history knows no instances of global conventions effectively allocating space and resources among nations. The rule of the 1958 Convention on the Continental Shelf defining the limits of coastal control over the sea-bed was rendered obsolete and ineffective by technology even before the treaty entered into force in 1964 for the twenty-two ratifying states. Except for the general rule that the coastal state has some exclusive rights over some portion of the adjacent sea-bed—a rule legally independent of the Convention—the Convention on the Continental Shelf contains very little general accord on any concrete points of the law of the sea-bed. However, regional regimes of the continental shelf have emerged in the North Sea, in the Baltic Sea, in the Adriatic, and in the Middle East Region; in the Asian mediterranean area (Indonesia, Philippines, Malaysia) still another

local system of order is also being developed on the basis of regional needs and local perceptions of international law. This is a dominant trend. While on the global level an international debate goes on, on the lower, regional and local levels states act according to their diverse and immediate needs. A related trend is characterized by national resort to unilateral assertions of regulatory powers extended into high sea areas where such assertions are seen as defensible by some locally distinct imperatives; the Canadian claim of a right to exercise extensive pollution controls over shipping and other uses of the Arctic sea and its seabed is an outstanding example.

Professor Knight was more optimistic. He considered the fact that such issues as pollution, fishing rights and access to the sea-bed are so pressing, that there will have to be a conference in the early 1970's that will implement "hard" agreements by 1980.

Professor Slouka commented that the ratification process itself often takes up to eight years. Even when the Continental Shelf Convention finally received in 1964 the validating number of ratifications, it still covered continental shelves adjacent to less than thirty percent of the total sea coastline and did not apply to the majority of industrially important parts of the shelf.

The Chairman emphasized the problem presented by the "special interests" of States, citing the refusal of the German Federal Republic to ratify the Continental Shelf Convention, because its own interests would have been badly jeopardized. He suggested the possibility of regional solutions within the framework of a universal or semi-universal document which would give the regional settlement a perspective and a frame of reference. Such a universal document would be very important in resolving, for example, the volatile situation in the North China Sea off Ryuku where there is one of the world's largest submarine oil deposits, and Mainland China as well as Taiwan, Korea and Japan all have claims.

Professor Knight, continuing his optimistic approach, pointed out that if ten or fifteen of the technologically powerful nations, and those with broad shelves, would commit themselves to an interim regime, such as that proposed by President Nixon on May 23, 1970, and as has been done in deep sea mining ventures, there would be some degree of international accord until a universal agreement is made.

Mr. Hardy pointed out that an agreement, to be effective, would have to be generally supported by countries holding different political views and by both developed and developing countries.

There was a question from the floor asking what the special-interest position was of the Chile, Ecuador and Peru countries regarding the sea-bed, and what they have said in the United Nations.

Professor Slouka responded that they would not oppose an international sea-bed regime as long as it did not undermine their exclusive fisheries claims and other assorted rights within the two hundred mile limits.

Dr. Labastida added that the Latin American countries favor a comprehensive Law of the Sea conference, one that would largely rewrite the Law of the Sea, including the regimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing rights, and the prevention of pollution and scientific research.

Professor Slouka saw a reason for optimism in the possible impact of the global debate on the policies of the maritime states whose involvement in the ocean may make them more sensitive to outside pressures. Once they realize that no timely and effective solution can be had through the global policy-making process, they may start working out local solutions broadly compatible with such general principles as the global debate may help formulate and legitimize. He pointed to the influence that the United Nations sea-bed debate had on the moulding of the foreign policy of the United States concerning the regime of the deep ocean floor as it has evolved from 1967 to President Nixon's May, 1970 proposals.

In a comment from the audience, *Professor Weeks* of the Syracuse University College of Law introduced the Private International Law viewpoint on the hostile commercial uses of the sea-bed. He suggested that there may be commercial interests currently working very rapidly to attempt to exploit the sea-bed before there is time for an administrative regime to be established. He feared a kind of mootness that a United Nations regime might be faced with if commercial interests act first. The United Nations should structure a "halt" before-the-fact kind of machinery.

The Chairman indicated that not all commercial enterprises are so inclined, and some oppose the laissez-faire position of the National Petroleum Council. For example, Mr. John Laylin, counsel for the Kennicott Copper Corporation, advocates the establishment of an international regime and international reciprocity.

In an additional comment, *Professor Weeks* asked if the copper companies' stance might not result from their position of technological superiority to the petroleum industry.

Mr. Hardy drew attention to the fact that the manganese nodules (from which copper and other hard minerals can be derived) are widely distributed over the ocean floor, while exploitable oil and gas deposits are relatively close to the shore. Furthermore, whereas off-shore oil production was now in the region of seventeen to eighteen per cent of world production, a percentage which, though likely to increase, was

not likely to change drastically, it might be possible, according to some estimates, to meet a large amount of the world demand for the hard minerals in question from exploitation of a relatively small area of the ocean floor.

The Chairman agreed that the copper companies' motives are not altruistic. He pointed out, however, that private international interests do put strange bed-fellows together.

The Chairman then asked how far along we are towards at least some kind of viable formulation from the Sea-Bed Committee of the United Nations.

Mr. Hardy said that a beginning had been made and that individual States were now at a stage where they were able to develop their own positions, as distinct from sharing in a general regional viewpoint. Further progress was likely to proceed through three sub-committees: one dealing with the future regime and machinery for the international area of the sea-bed; one dealing with Law of the Sea issues; and one dealing with marine pollution and scientific research. There were various problems of co-ordination as regards other United Nations bodies (such as the Intergovernmental Oceanographic Commission, for example), dealing with the same or related topics. In addition to the United States proposal, Tanzania had submitted a draft treaty, and others might be expected.

The Chairman asked Dr. Mangone for his views on regionalism and universalism and what hopes there are for a common denominator.

Dr. Mangone replied that we must take into account the new problems facing us. Some thirty to thirty-five States have already permitted oil concessions beyond the two hundred meter isobath. We must deal with the whole new thrust of pollution along with the traditional questions of fisheries and zones. In addition, we have good reason to believe that the Soviet Union and the United States are examining so-called defensive weapons that can be put upon the sea-bed to detect vessels that may be under water. Both have submarines that can rest submerged at great depths for indefinite periods of time. This is a "strategic element" of the problem which was not foreseen just a few years ago. Thus, the pollution element and the strategic element must be added to fisheries and mineral resources issues to form a problem whose solution will require the accommodation of the interests of all the States. Professor Slouka's pessimistic view is certainly accurate if one is looking for a global settlement on all of these issues at one time in the foreseeable future. But there are a broad range of possible negotiations. Some regimes may be worked out earlier and apart from others. The oil pollution regime, for example, may be the first one to be settled through a global system of monitoring how much

oil is being introduced into the oceans and by whom. Large and small nations would need to work out terms of "what is it that we want to get out as a common denominator of an international regime—what are we prepared to trade off." This would mean increasing intention by each State in its own national interest to find some means of accommodation. For example, the United States might wish to use her wealth of petroleum resources on an internationalized sea-bed as one of her trade-offs for defense considerations in gaining a narrow territorial sea. If Peru could be persuaded that she will have all the benefits of exploiting fish off her coast, she might agree to restrain her claims to wide territorial sea.

Commander Palmer thought the trade-off situation should not be over-simplified, finding it difficult to see what a small territorial limit would have to do with defense considerations.

Dr. Mangone compared the strategic element to chess: the object of the narrow territorial sea is to preserve the mobility of a powerful nation's fleet in moving around the oceans. The object is to keep the marine environment as open as possible to international passage, not hindered by wide territorial seas of coastal states.

Commander Palmer stated his question as the opposite of that: what is the relevance, from the standpoint of a coastal State's security, of a broader territorial sea, given the range of submarine missiles?

Dr. Labastida pointed out that many developing countries favor a wider territorial sea to prevent military and scientific research by the big powers, giving the big powers added advantage over them.

Professor Slouka turned again to the pollution issue, pointing out the difficulty of getting treaties negotiated in a global forum and ratified on a global scale. The developing states would often find it impossible to accept anti-pollution agreements obligating them to build expensive shore installations for the disposal of oil wastes, or to equip their ships with costly anti-pollution equipment. Under such agreements, and without particular adjustments responding to the international economic asymmetries, the developing states would no longer be able to buy and operate older ships which often form the nucleus of their young merchant marine. A solution will have to be sought gradually with anti-pollution standards adjusted to the geographical setting and other environmental factors as well as to the economic conditions of the individual states. This would then be an added pressure towards the emergence of diverse local systems, often primitive, struggling and far from ideal; just as in the case of the sea-bed regime, here too impulses toward an early and easy establishment of a rational and uniform global system of control are lacking.

Mr. Hardy said that suggestions had been made that the richer States

should aid the poorer ones in the event that anti-pollution measures were proposed requiring expensive technology. He also pointed out the difficulties involved in enforcing compliance with pollution regulations. In the case of fishing zones, fishing vessels can, up to a point, be stopped and inspected; the creation of anti-pollution zones or restrictions, potentially applicable as regards all vessels, including warships, raised more difficult problems as regards enforcement.

The Chairman thanked the participants for their valuable contributions to clarifying thought on the problems of "ocean space" or "inner space" not only for Syracuse and the people at the Regional Meeting, but also for the wider audience whom, so he hoped, the published version of these proceedings would reach.