

**PROCEEDINGS OF THE EIGHTH REGIONAL MEETING  
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**THE UNITED NATIONS AND RESOURCES OF  
THE DEEP OCEAN FLOOR**

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**RICH AND POOR COUNTRIES AND THE LIMITS  
OF IDEOLOGY— AN INTRODUCTION TO  
THE DAY'S PROCEEDINGS**

L. F. E. GOLDIE

**I. INTRODUCTION**

This is the eighth annual Regional Meeting of the American Society of International Law here at Syracuse. Our topic for this meeting is "The United Nations and the Resources of the Deep-Ocean Floor." The problems which this theme signals are becoming acute as the world's population increasingly presses on our diminishing resources and as our environment is threatened with major and possibly irreversible degradation.

**II. THE INTERFACE OF THE REGIME OF THE CONTINENTAL  
SHELF AND THAT OF THE DEEP OCEAN FLOOR**

*A. The Outer Limits of the Continental Shelf*

We are faced now, some say, with the possibility of a kind of "Oklahoma Land Rush" into the deep ocean floor, or a new phase of colonialism similar to the nineteenth-century "Grab for Africa." There are, however, those who argue that while we may be faced with a great deal of talk about the possibility of an "Oklahoma Land Rush," there is none of the reality. The truth, as always, is somewhere between these extremes. The open-endedness of the definitions for demarcating the outer limits of the continental shelf region over which coastal states may exercise specialized sovereign rights under the 1958 Continental Shelf Convention provides possible conditions for territorial imperatives and cartographical chauvinism dominating the future exploration and exploitation of the seabed. When the participants in the United Nations Conference on the Law of the Sea held in Geneva from February 24th to April 27th, 1958, discussed the Continental Shelf Doctrine they, following the International Law Commission and experts whom the International Law Commission had consulted, felt that there was safety in prescribing a fixed isobath as the outer limit to the continental shelf, namely 200 meters, or 100 fathoms. This was seen as the outer limit not only in a legal sense, but also in a practical sense, since most of the delegates considered that technology would not permit exploitation further out than that bathymetric contour line for many years to come. This was not however, the only point of view, as the International Law Commission's 1951 Draft Article 1 illustrates.

There were optimists (or rather realists) who, throughout the decade, had said that technology would shortly permit the exploitation of the seabed beyond the fixed maximum depth of 200 meters. One may note that in 1958 the maximum depth of economic exploitation where oil was being won was approximately 30 fathoms. Hence, they argued, the law, in order to be flexible, required a supplementary and contingent criterion which would enable the law to govern relations when technology permitted seabed mining and drilling operations to move out into seabed regions well beyond the 200 meter depth line. This criterion whose counterpoint with that of depth was evident throughout the 1950's also was enshrined in the Convention and the "exploitability test" thus came to be added to the definition of the continental shelf in Article 1 of the Continental Shelf Convention. Thus the continental shelf came to two concurrent outer legal limits: the 200 meters bathymetric contour line, and beyond that line to whatever depth the shelf is exploitable. Thus the article came to read as follows:

For the purpose of these articles, the term 'continental shelf' is used as referring (a) to the seabed and subsoil of submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that point, to where the depth of superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

There has been a great deal of debate as to what we mean by "admits of the exploitation" in that article. Is it simply an engineering test, so that "exploitability" merely means whatever is technologically exploitable? Or are economic parameters involved? That is, does exploitability include "profitability"? That, of course, is a kettle of fish no one, I hope, will be discussing today! Finally, should exploitability be limited by environmental considerations? Be that as it may, everyone felt quite secure until the middle 60's about the definition of the outer extent of the continental shelf, in terms of Article I of the Continental Shelf Convention.

Since 1958 technological developments accelerated. First, oil drilling at considerably greater depths than 200 meters became both technologically and economically feasible. By 1968 we find the drills aboard the exploration ship *Glomar Challenger* boring through 10,000 feet of water and another couple of thousand feet of soil and rock beneath that to somewhat around about 12,500 feet from the surface of the sea. In 1969 those landmarks of oil deposits, salt domes, were drilled in the deep ocean floor off the West African coast, between the West African coast and the Atlantic Ridge. In the meantime, people had come to talk about the problem of regulating the exploration and exploitation

of oil deposits beyond 200 meters. This began in 1965. By 1966 there were meetings, papers read, articles published and enterprises launched to take advantage of the new technological and economic breakthroughs. What impact do these developments have on "exploitability" as a test for determining the outer limits of the legal continental shelf? In commenting on Senator Pell's Senate Resolution 33 of 1969 I proposed that the Resolution should:

[c]ontain a pledge that no exploration or exploitation authorities will be espoused or licensed by states, or by any international organizations, at depths greater than the feasibility of closing of blowouts. Nor should pipelines be permitted below . . . depths [at which they may be rapidly repaired].

The pledge referred to in this quotation is, of course, a promise by states parties to the "Declaration of Legal Principles" which Senator Pell included in his Resolution, that they would promulgate the necessary domestic legislation to prohibit drilling wells and pipelines below the depths of rapid and complete repair. Indeed, while "exploitability" remains a test for determining the outer limits of the continental shelf, the technological capacity to control the consequences of drilling holes in the seabed, rather than the mere capability of inflicting them on the environment, should set both the outer limit of exploitations, and the meaning of "exploitability" as a criterion of the extent of coastal states' continental shelves under Article 1 of the Continental Shelf Convention.

### *B. The Resources of the Abyssal Floor*

Another set of developments have helped the issue of drilling capabilities to precipitate the problem of devising regimes to govern the exploration and exploitation of the mineral resources of the deep-ocean floor. They include the present technological capacity to win manganese nodules from the deep ocean floor. Nodules are sedimentary concentrations of manganese, iron, copper, cobalt, tin and many other metals. They vary greatly in size and proportions of their constituent chemical compounds. Many of them, however, are sufficiently rich in copper and manganese to be on the threshold of becoming commercially feasible resources, contemporary commercial interests and the possibility of their being capable of competing with land-based copper and manganese resources in the immediate future. They may be won by sweeping or collecting the individual pieces from the deep ocean floor. They could become of very great value to the United States as land-based minerals either become scarce or harder to obtain through national policies developed in countries from whose land territories those minerals have standardly been brought to the United States.

But contemporary interest is not only involved with ensuring a regulated mining system for the resources of the deep ocean floor as a means of preventing the dangers of a twentieth century analogy of the "Grab for Africa" or of the "Oklahoma Land Rush." There are many collateral considerations. In the General Assembly, Chile's concern over the deep ocean floor exploitations has almost nothing to do with a desire to protect any possible deposits off its own coast or to vindicate the progressive developments of international law. It has a great deal to do with how Kennicott Copper and Anaconda may be able to get a substitute for the resources they may have won previously in Chile and which have become nationalized.

In addition to manganese nodules and submarine oil and sulphur resources, there are other resources which can be won from the deep ocean floor. There are many other resources of the beds of the oceans, for example the location there of stations engaged in the transformation of the energy which tides and waves generate into usable electric power, or the location on the seabed of recreational and even hospital establishments. Regarding this last point, Captain Jacques-Yves Cousteau's description of how cuts and bruises, which were almost impossible to be cured ashore in the Sudan, healed almost miraculously in a few days in the seabed habitat of Conshelf II presents food for thought. This rapid healing might merely have resulted from a by-product of special breathing gases and the high pressures of that habitat, or it may have been caused by some beneficial effects of environment that we know nothing about at present. Be that as it may, it is perhaps not too far-fetched to suggest casualty hospitals and hospitals engaged in major surgery might be established on the seabed of continental shelf regions. These speculations underscore the multifariousness of the future uses of the oceans and of their resources. But for the moment I merely wish to touch on the ones of major popular interest. These are oil, sulphur, and manganese nodules.

### III. ALTERNATIVE REGIMES OF THE SEABED

The really crystalizing event, I think it's true to say, of concern about regimes from the seabed was Ambassador Pardo's speech introducing his resolution into the United Nations General Assembly. Ambassador Pardo, very interestingly, was the representative of a small country. But his speech was not derived from a desire to establish Malta as an important constituency for the seabed. Rather, his purpose appeared to be one of giving, in world affairs, a new kind of leadership which a small country is able to offer, that is, a moral leadership, a leadership in ideas, which has nothing in common with the traditional basis of leadership in international relations. This is a very important new

development in the significance of smaller states which results from the arms stalemate of the great powers, together with the function of the United Nations General Assembly as a town hall for the world. Indeed, the Great Powers' present confrontation in a posture of catatonic *stasis* underscores the lack of a capacity to lead in the realms of creative thought. Hence Ambassador Pardo should be recognized as a pioneer diplomat who was prepared to stake his career on an idea which had very little material advantage directly to himself or his country, except, of course, the honor of being its main draftsman and advocate.

Following Ambassador Pardo's speech, various theories of regimes for the deep ocean floor developed. Many proposals reflected self-interest on the part of various groups of states. Every theory that has been advanced in the General Assembly has also had a thorough airing in the academic debates, publications and lecture halls of the United States' educational and scientific estate and analysis by the technostucture. Thus I know of no doctrine that has been espoused by any country in the General Assembly, or in the former Ad Hoc Committee or in the present Deep Sea Committee, which has not, either previously, or concurrently, had its economically motivated or its theoretically and academically oriented supporters within the United States. There is one and possibly only one exception—namely the proposal of the National Petroleum Council. What are issues upon which all these theories turn? Briefly, the various blueprints for alternative regimes revolve around certain common considerations. These include:

1. The scope of authority to be enjoyed by an international agency in making allocations of seabed areas, the means of obtaining revenues from exploitations of seabed areas and the distribution of the surplus of revenues over and above the actual cost of administration;
2. The legal bases for the rights of states and enterprises to exploit the seabed, i.e., should they be governed by "first-come-first served" nations, or by some concern for distributive equities?
3. The titles of states and enterprises to the resources they have severed from the seabed and its subsoil;
4. The power of an international agency administering the regime to levy revenues over and above the costs of administration, and the destination of any "surplus" revenue;
5. The impact of military uses of the seabed on winning minerals therefrom;
6. The outer limits of the continental shelf. Where does it end and the international regime begin? There have been a great many proposals on this issue, but it seems to me that they all divide into two main groups, the so-called "narrow shelfers," which has the largest support in the

lecture halls and seminar rooms of the universities of the United States, and the "wide shelfers." There is also a third position which is, in reality, a compromise "narrow shelf" theory. The narrow shelfers all argue that the exploitability test of the Continental Shelf Doctrine should be rescinded by the parties to the Convention so that there will be a general agreement that the continental shelf ends at 200 meters. It is then hoped that a widespread practice and consent on this point may make customary international law and so bind nonparties to the Convention. Having come this far, the narrow-shelfers then divide.

#### IV. NARROW VS. WIDE SHELFERS

##### A. *The Debate*

The narrow-shelfers argue that the whole jurisdiction and control seaward of the 200 meters bathymetric contour line should be vested in the international agency which then may grant limited rights of exploration and exploitation over specified and determined regions for fixed periods of time to states and/or enterprises. The advocates of this position argue that states should give up whatever expectations of extended continental shelves beyond the 200 meter bathymetric contour line they might have under the exploitability test. They tend to divide, however, with respect to coastal states' rights over submarine regions beyond that isobath which have already fallen under coastal states' exclusive competences on the basis of their present exploitation. Some argue that these should continue to fall within the continental shelf patrimony of coastal states on the basis of a "grandfather clause" type of equity. Others argue that coastal states should deliver up such regions and render the international agency an accounting for any revenues obtained from working those zones. The only "grandfather clause" type of equity, these writers argue, should be the according of a right of compensation to the enterprise which exploited the region so passing from the competence of the coastal state to that of the international agency, should the international agency decide to terminate the enterprise's activities.

Some of the most articulate of the "wide shelfers" seek to place their argument on a foundation of geology and oceanography as well as upon the exploitability test in Article 1 of the Continental Shelf Convention. Theirs is an elaborate formulation. The geological argument is based on statements attributed to Dr. Pecora of the United States Geological Survey to the effect that at the "rise" of the continental pedestal, namely the slopes beyond the pedestal's foot or toe, there is a marked change of structure between the continental mass and the crust of the deep ocean basin. At this rise the geological nature of the seabed changes from being solely maritime, constituted by the special muds of

the deep sea floor, into the rocks and the geological structure of the continental pedestal upon which the continental land mass itself stands. This is where the geological change takes place. The group of wide shelfers who rely on Dr. Pecora and Article 1 of the Continental Shelf Convention then argue that if the whole of the continental slopes, and indeed the abyssal plains are not now exploitable, they shortly will be. Accordingly, the exploitability test, without the limiting effect of the term "adjacent" in Article 1 would allow the whole seabed including the abyssal plains, to be brought within the sovereign rights of coastal states. The effect of the term "adjacent" is to bring, here and now, the whole of the continental pedestal, right out to the rise and beyond the toe of the pedestal, within states' legal continental shelves.

We should note that this piece of advocacy also engages in some sleight-of-hand with the concept of the continental shelf. The whole pedestal, shelf, slopes, margin, toe, and rise—is now subsumed under the name of the section which, correctly speaking, merely indicates the "shoulder" of the total formation. The second misleading use of words in this argument is that of appraising an interest which is contingent on future events (namely future exploitations) upon the basis of the supposed certainty of those events occurring, rather than upon their present contingent nature. This attitude is reminiscent of those storybook remaindermen who see in contingent gifts to them an immediately accessible entry to fortune. The third fallacy is the acceptance, as a hard and fast description of the whole seabed capable of providing the prescriptive groundwork of legal proposition.

While the lawyers who argue for the continental rise as representing the terminal line of demarcation of the continental shelf put forward Dr. Pecora's work as an unquestioned and objective fact, we find many discrepancies between it and other influential rulings. See, for example, the *Report* of the United Nations Secretary General to the Economic and Social Council on the *Resources of the Sea, Part One: Mineral Resources of the Sea Beyond the Shelf*, U.N. Document E/4409/Add. 1 (mimeo. 19 February 1968). The third, and most obvious, relates the impossibility at such depths as that of the rise, of determining the boundaries between adjacent states' continental shelves in regions where there are many states and many different ways of drawing demarcation lines. In short, the wide shelfers' position seems as reminiscent of a territorial imperative as the presentation of a valid and workable legal doctrine.

### *B. A Compromise: The Intermediate Zone or "Trusteeship Area"*

The third, the compromise, position proposes that coastal states' continental shelf regions should extend out to the 200 meter isobath, but

no further; and that the seabed and subsoil regions between that bathymetric contour line and the continental rise should be administered, in terms of a trusteeship, by coastal states on behalf of the international community and answerable to the international agency. In particular, the coastal state would copy the authority of licensing seabed mining activities in the trusteeship area, but that area, by reason of this fact, would not be permitted to fall under the coastal states' continental shelf regimes. I have pointed out in a number of published pieces that, despite the attractiveness of this proposal of an intermediate or trusteeship zone as a compromise between the wide-shelf and the narrow-shelf parties, it has some fatal flaws. First, in practice there might well develop contests between coastal states and the international regime as to the modalities of control. Whereas mining activities in the zone would be regulated by the international authority, coastal states might demand a further say in what goes on in the trusteeship zones fronting onto their continental shelves, especially as this may well lead to the control of many other activities in the zone, the conduct of some of which might be compatible with mining, thus leading to a need for administrative and even, perhaps, juridical adjustments. In addition, if coastal states were to have a voice in the granting of mineral exploration and exploitation licenses, then they would be in a position to impose conditions upon the issuance of those licenses. If, further, the coastal states' demands for a dominating position became intense, the conditions they stipulated for the licenses might well become of greater practical importance than the international regime's regulations. This latter authority might, indeed, subside into a residual, revenue-collecting regulatory agency. The chances of this becoming an eventuality are enhanced when one recalls how contemporary events in maritime law and policy reflect the greater pressure and authority of exclusive state claims over international claims and the continued assertion of the former at the expense of the latter.

Since it is conceived of as a compromise, the trusteeship zone may, in effect, be merely a temporizing and temporary legal institution ready and poised to be merged into whichever of the two adjoining regimes (the coastal state's continental shelf regime or the international deep-ocean regime) comes to exercise the stronger attraction. Hence, the proposal may turn out to be no more than a compromise of the moment.

### C. "Cutting One's Coat According to One's Cloth"

In place of the trusteeship zone *tout court*, I have suggested that a variety of regimes might be appropriate for seabed zones with the same outer geographical boundaries and dimensions as those proposed for the

outer limits of the continental shelf by the wide shelf party and having an inner limit at the 200 meter isobath. Such a variety might be more feasibly tailored to local needs, due to the political geography and community histories of different offshore areas in many parts of the world, than a single type of regime would be.

The geographical areas of such zones off, for example, the greater part of Australia (except, perhaps, under the Arafura Sea), Canada (with the exception of where that country's coastal boundaries join with those of Denmark, France and the United States), the Soviet Union (with similar exceptions, in principle, to those indicated for Australia and Canada), or the United States (again, with reciprocal exceptions similar to those just indicated for Canada, and, further, bearing in mind possible Mexican and Caribbean countries' equities) might well be absorbed into those countries' exclusive continental shelves. But, off the Caribbean submarine slopes of Central America or in the northern continental borderlands and slopes of the North Sea bed, for example, political and economic factors would militate against individual countries' gaining exclusive rights over "broad shelves." In such regions, submarine areas beyond the "narrow" continental shelf should be regulated by means of a managerial regime of conciliation and/or cooperation established by all the states of the region.

Finally, in other areas (for example, perhaps, off West Africa, east of the Strait of Hormuz or off the Horn of Africa), where the facts of political and physical geography should, *ceteris paribus*, lend the offshore zones beyond the 200-meter bathymetric contour line to the regional managerial blueprint, but where local internal political instability, territorial rivalries, irredentism and long-lived hatreds preclude the formation of such a regime, the zones should be administered under the international regime to be established to regulate the resources of the deep-ocean bed. Such a takeover should not be accomplished, however, until a local regime of managerial cooperation had been tried and had been proved to have failed beyond redemption. Furthermore, it should be conducted as a trust for the countries of that region (as a group) which have been unable to combine effectively to administer the submarine areas in terms of a regime of administrative or managerial conciliation.

A friendly criticism made to this writer questioned whether this more complex proposal would be politically marketable in the present state of the world. Would it be acceptable to developing countries? At first blush it would seem unduly to favor the "have" countries. Different as are the various proposals which have just been made for regimes governing the offshore zones between the 200 meter contour and the continental rise of states of continental or sub-continental

dimensions, they would all appear to give those coastal nations greater or more valuable or more exclusive rights than would the proposals for the offshore zones of middle-sized or smaller states. A persuasive reply would point out, in the first place, that small states would not get much under the standard compromise proposals of trusteeship zones either, and land-locked states would get nothing. In fact, both of these classes of states would gain more from a managerial regime than from the current proposals. Indeed, these proposals seem more likely to provide smaller states occupying regions of indented coastlines with the opportunities of engaging in boundary disputes than with rights of peacefully enjoying offshore resources.

Secondly, it could be pointed out that, under these proposals, not only "have" countries would enjoy valuable increments to their offshore resources, but also a number of large and medium-sized "have-not" states, for example Nigeria, Brazil, India, Argentina, the Federation of Malaysia, and Indonesia, would qualify to gain the addition of whatever increments to their continental shelves could be agreed upon.

Thirdly, these proposals can be supported by the argument that they provide an added initiative to "Balkanized" regions of the world to federate and so become more stable factors in international politics. One example will suffice: Concern about a possible failure of these proposals to make adequate provisions for the Central American States would not be so pressing if they were to federate, or if the Republic of Grand Colombia could be re-established. In brief, this blueprint may assist in inhibiting "Balkanization" and even reverse the trend. This same argument can be applied, *mutatis mutandis*, to many other Balkanized regions.

Finally, these proposals are intended to bestow the advantages of federation upon the regulation of exploring and exploiting the seabed and subsoil resources of offshore zones beyond the two hundred meter isobath when the coastal states are in no mood to federate. A managerial regime is also a supranational authority. As such it may offer the means of removing some of the more deleterious results of disunity in a region from the administration of offshore resources beyond the two hundred meter isobath. A further advantage is that the land-locked states of the region could also participate in, and benefit from, the regime, whereas they are inevitably excluded from participating in the fruits of the standard proposals of trusteeship zones.

#### V. IDEOLOGIES AND THE ART OF THE POSSIBLE—A DISCOVERY!

Although I have discussed the blueprints which have been put forward and received a following in terms of theoretical criteria, we

should not forget that their basic viability stems from the fact that they are championed by states. Unless they have been so championed there is little hope for their practical implementation. It is of interest, therefore, to note that the states of the world have as diverse concepts of their own separate interests, or of the inclusive interests of the world community, as may be in any university seminar room or lecture hall.

The differences between states tend to reflect their differences regarding the politics and economics of the distribution of the seas' resources. They point up that juxtaposition of poor and rich countries, the north and south countries, which further complicate the politics of the problems of future exploitation of the ocean's resources.

We should note, with great interest, that the most conservative country with a powerful stake in the exploitation of all the oceans' resources is the Soviet Union. Indeed, the Soviet's stance on the distribution of the resources of the high seas more closely resembles those of nineteenth century industrial tycoons than one might expect. "Every man for himself and the devil take the hindmost," said the elephant as he danced among the chickens. The most concerned countries, those who advocate that there are extensive economic possibilities for the winning of resources whose revenue should be sharable among the peoples of the world, propose that the resources of the seabed should be held, in Ambassador Pardo's ringing phrase "the common heritage of mankind." But we should not see the present debate as only involving the claims of *laissez faire* versus regulation and welfare. There are other dimensions. Some states have an interest in diverting expected exploration activities from the seabed to their own untapped resources. There are others again who see in the maritime exploitation of minerals competition for the exports on which they depend. There is concern that they are not going to be beaten in the market place by the smelting of nodules.

In conclusion I must point out a surprising fact. In an age where a great many political ideologies are brandished about on dry land, they have not provided the reference points or the theoretical framework for any proposals for seabed regimes. No dogmatics have appeared to resolve the problems of formulating the true seabed regime. Nor have any publicists established the necessary logical relation between what a state may propose and the terms of the national ideology, as distinct from the interests as determined by pragmatic criteria. This may be due either to a sensible and worldwide resort to pragmatism (which comes closest to making universal our own American way of operating), or it may be due to the fact that more and more people are getting tired of ideologies and want to see a more rational ordering of the world community in the light of humanistic values and goals.

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It is to be very greatly regretted that little has been said, in connection with our topic for today, by publicists and states on behalf of the environment and of the amenities of life which the wholesale exploitation of the seabed's resources may threaten. I shall reserve my own comments on this vital matter, together with my strong expressions of disappointment with writers and diplomats alike, for a later section of this Regional Meeting.