The Legging Law of the Continental Shelf: Some Problems and Proposals

Paul Sutherland

Follow this and additional works at: https://scholarship.law.edu/lawreview

Recommended Citation
Available at: https://scholarship.law.edu/lawreview/vol22/iss1/9

This Comments is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.
The Lagging Law of The Continental Shelf: 
Some Problems and Proposals

Introduction

Rapid advancement of marine technology coupled with the traditionally slow pace of legal development has produced an uncomfortable gap between the law which governs the continental shelf and efforts to discover and utilize its resources.¹ In response to the enthusiastic challenge of recent marine technology, a new body of law has evolved in an unusually short period of time. Some of it has already proven inadequate; much is yet untested. The uncertainty which presently clouds the legal maritime regime has dangerous overtones. It also offers a unique opportunity for the international community to comprehensively devise a legal system under which every sovereign state can peacefully partake in the wealth of resource which is the continental shelf. Technology, however, is impatient. If major conflict is to be avoided, international law must be developed rapidly and prospectively. It must not only deal with problems which are already present, but with some which have not yet been identified.

Generally the questions which must be answered concern what rights are exercisable by coastal states on their continental shelves, and what rights, if any, are left to the other nations of the world which have no coastal continental shelves. It is interesting to speculate whether viable laws can be designed in the face of a largely unknown and perhaps unforeseeable technological future, and which can, presently, provide adequate protection to diverse interests in trade, travel, and defense on national and international levels. Past indications of our ability to meet the challenge of deep sea legislation are not encouraging.²

In May of 1970, President Nixon made the first official U.S. response to the problem of the continental shelf by outlining a proposed U.S. Oceans Policy.³ Nixon’s statement originated within the State Department, then

². It will be shown in subsequent sections of this paper how repeated attempts to clarify the law of the continental shelf have resulted in perpetuating prior uncertainties.
under the direction of Elliot Richardson. It was the end product of extensive intergovernmental activity, and represented the skeleton of what was later to become the United States’ draft treaty for presentation at the United Nation’s Conference on the Law of the Seabed in Geneva in 1973. Some of the specific issues raised in the Draft Convention are a major topic of discussion later in this paper. In order to gain a proper perspective of the pending problem of continental shelf law and technological advancement, however, it is advantageous to trace that law generally from its beginnings.

Background

Surface Waters

Until relatively recently in the history of nations, a state’s interest in the oceans has been confined to the ocean surface and super-adjacent waters. These are the realms which involve traditional ocean activities. The relevance of the concept of total ocean space—of water surface, water column, seabed, and subsoil—is only a recent product of technological advance.

Man’s earliest efforts to “legislate” internationally with respect to the oceans came in 1609 when Hugo Grotius first championed the cause of the freedom of the high seas. By the end of the seventeenth century the concept of freedom of the high seas was accepted as a general legal principal. The need for some surface line demarcation soon manifested itself however, as it became clear that no coastal state could reasonably recognize the existence of international territorial rights on its very shores. As a consequence, the doctrine that territorial rights extended over as much of the sea as could be defended from the shore was established. Today territorial claims vary considerably with respect to distance from shore.

Traditionally, ocean surface space has been divided into four areas ranging from the closest and most easily controlled by the individual coastal state to the furthest and least controllable. Starting landward, those areas

---

5. Id. at 486; the Richardson proposal was officially adopted by the White House in May of 1970, and President Nixon delivered his address on May 23, 1970. At that time, a special appointed inter-agency committee was in the process of refining the policy into a detailed legislative convention proposal. The proposal was introduced in August of 1970 at a U.N. Geneva Conference on the seabed. It was tabled and will be considered at the next scheduled convention in 1973.
7. State v. Ruvido, 15 A.2d 293, 295 (Me. 1940); see also 48 C.J.S. Int’l Law. § 7 n.11 (1947).
8. Knight 473 n.57. It is interesting to note, however, that the original, and perhaps still most widely recognized limitation of three miles was based in 1703 on the then range of a cannon shot. 15 A.2d at 295.
Continental Shelf are: 1. internal water, 2. territorial sea, 3. contiguous zone, and 4. high seas. It has been much easier to categorize the rights to be exercised in the four areas than it has been to define them geographically or legally. Only one thing is certain: one area is recognized over which the coastal state has complete and exclusive territorial jurisdiction, and another is recognized over which no state has territorial jurisdiction. Where one area stops and the other begins is uncertain. The extent to which intermediate zones exist is unclear. The status of corresponding areas of the seabed and subsoil is even a greater mystery.

Seabed and Subsoil

Unlike the surface of the sea, the sea bottom is characterized by distinct topographical features. Moving seaward, the sea bottom is composed of four areas: the continental shelf, the continental slope, the continental rise, and the abyssal plain.

Though subject to several inconsistent definitional theories, in its broadest, non-legal sense, the continental shelf is that area of the under-water seabed which surrounds the continents and is a gradual, continuing extension of the dry land mass under the surface of the sea. It is bordered seawardly by the continental slope, which is the transitional section of seabed between the relatively shallow shelf and the depth of the ocean floor. In most areas of the world the continental slope is a very dramatic drop. It has been called the “greatest topographical feature on the face of the earth.” From the base of the slope runs the continental rise. It is a gradual sedimentary slope, which in some instances (where it exists) provides the final link be-

---

10. The term "continental shelf" was first used by President Truman in 1945. In 1953 The International Committee on Nomenclature of the Seafloor suggested that the shelf be defined as the zone around the continental shelf which extends from the low water line to a depth at which there is a marked increase of slope to a greater depth. Pres. Proc. No. 2667, 3 C.F.R., 13 DEP’T STATE BULL. 485 (Sept. 30, 1945). Sept. 28, 1945; 10 Fed. Reg. 12303. See also Knight 464 n.8.
11. The International Oceanographic Commission called the continental slope: the greatest topographical feature on the face of the earth, an escarpment 3½ km. high and over 350,000 km. in length, which in turn is the surface expression of the greatest structural discontinuity on the earth’s surface, the transition from continental to ocean crust.
I.O.C., Opportunities and Problems in Marine Geology and Geophysics, 3 MARINE GEOLOGY 227, 234 (1965). Water depth at the edge of the seaward slope ranges from approximately 1000 meters to 4000 meters, averaging 2500 meters. One can appreciate the declivity of the slope by considering that the average water depth at the outward edge of the shelf is 130-140 meters, and the average width of the slope is approximately 32 km. Knight 464, 468.
tween the continental land mass and the ocean floor. The ocean floor itself is technically referred to as the abyssal plain.

The status of the seabed and subsoil beyond territorial waters has long been the subject of considerable disagreement. The issue is complicated by the fact that the continental shelf is not uniform in width off the various coastlines of the world. Three theories have been advanced on the status of the seabed and subsoil beyond the territorial water mark. The first is that the seabed, like the high seas (beyond territorial waters), is the common property of all nations, or "res omnium communis." It is thus unable to be appropriated by any single state. A second theory is that the seabed is "res nullius," or the property of no one, but that it can be claimed or acquired by a sovereign. The third theory distinguishes between seabed and subsoil, and implements both the "res nullius" and "res omnium communis" ideas. The seabed itself is "res communis," while the subsoil can, in certain circumstances, be "res nullius." Some states have rejected all three theories. Many found them only interesting topics of debate, until recently, when the reality of extensive underwater technological exploration was suddenly at hand.

In 1945 President Truman acted unilaterally on behalf of the United States in declaring this country's sovereignty over its continental shelf. The Truman Proclamation represents the beginning of the development of the modern law of the seabed on both a national and international basis.

Modern Law of Continental Shelf

The modern law of the Continental Shelf is best understood through a

---

12. The continental rise actually overlaps both the base of the slope and the beginnings of the true ocean floor. It is technologically significant because it is believed to contain deposits of hydrocarbons. Statement of Dr. Miller B. Spangler, Center for Techno-economic Studies, National Planning Association, Hearings before the Special Subcommittee on Outer Continental Shelf of the Senate Committee on Seaward Boundary of U.S. Outer Continental Shelf, 91st Cong., 2d Sess., pt. 2, at 229, 301 (1970).

13. The abyssal plain comprises approximately 2/3 of the ground surface of the earth. Although it is far from flat, detailed description of its features is not relevant to present purposes. Knight 471.


15. Shelf width ranges from virtually nothing off the western coast of South America to 800 or more miles beneath the Bering Sea. It averages approximately 40 miles in width world wide. In The United States shelf width varies from one mile off parts of California to 200 miles off New England. Internationally, states having the greatest continental shelf areas are: The Soviet Union (1,324,000 sq. miles), Canada (926,000 sq. miles), The United States (860,600 sq. miles), Australia (827,500 sq. miles), and Brazil (264,800 sq. miles). These figures are based on a shelf edge at a 200 meter water depth. Knight 465.

chronological consideration of its significant stages dating from Truman's Proclamation of 1945 to the present time. On September 28, 1945, President Truman stated in part:

> [h]aving concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and the seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another state, or is shared with an adjacent state, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.\(^\text{17}\)

Before the Truman Proclamation, very little serious attention had been paid by this or any other country to the land mass which extends beneath territorial waters. The land had no recognized utility. Truman's statement was a result of the simultaneously existing facts that there was in 1945 a national need for petroleum and that geologists had discovered great quantities of it under the continental shelf.\(^\text{18}\) Also, for the first time, the United States had the technological ability to extract mineral resource from beneath the sea. It is probably because of the early advancement of technology in the United States that much of international continental shelf law has its basis in United States law and United States activity. The Soviet Union, until relatively recently, had always taken a very conservative position regarding seabed resource exploitation. In 1950, in the first Soviet writing on the subject, V.M. Koretskii was critical of underwater claims made by this and other countries. He wrote that such behavior (laying claim to shelf lands under the high seas) would lead to a struggle by states for appropriation of submerged areas and would result in an unjust acquisition by the strongest powers of the riches of the continental shelf areas.\(^\text{19}\)

It wasn't until the discovery of extensive gas fields in the shelf areas of the North Sea in 1959 that Europeans showed real interest in underwater land claims.\(^\text{20}\) Conflicting interests in that area eventually led to the Great

---

17. Proclamation of President Truman, supra note 10.
18. The Truman Proclamation represents a dramatic change of policy from 1918, when the State Department wrote in response to a United States citizen who claimed to have discovered oil in the Gulf of Mexico, 40 miles offshore, that the United States had no jurisdiction over the bottom of the Gulf beyond territorial waters adjacent to the coast. 1 Natural Resources Law. 2 (1968).
North Sea Continental Shelf Cases. A reasonable conclusion would seem to be that, generally speaking, a nation’s particular interest and viewpoint in continental shelf areas and continental shelf law is directly proportional to its own potential economic return from the underwater territories.

Truman’s statement was determinative in some aspects, but it left several important questions unanswered. One of the primary issues which arises is the exact nature of the property interest which the United States was claiming. No mention of sovereignty, title, or ownership was made. Truman’s remarks included only a statement of intention regarding natural resources of the seabed and subsoil. Was it to be inferred from the language of the proclamation that interests and rights other than mineral natural resource were not claimed by the United States? The question is of much more significance now, in view of an expanding awareness of underwater utility, than it could have been in 1945.

On the same day that President Truman made the Continental Shelf Proclamation, he issued an executive order to the Department of the Interior for regulatory purposes regarding the new minerals just claimed. Neither the proclamation nor the order defined the term continental shelf. However, an accompanying press release described it as that area adjacent to the continent covered by no more than 600 feet of water. Since the point at which the geologic continental shelf typically becomes the continental slope is approximately at a depth of 600 feet, it has been assumed that the term “continental” shelf used in the proclamation was intended in its geologic sense. Since in many areas, however, the continental shelf extends well beyond a depth of 600 feet, and the 600 foot figure is used by scientists as a mere convenience, it appears that the proclamation could cover areas which in fact lie much deeper than 600 feet, but which are geologically identifiable as a border of the continental land mass. Argument has been made that the geologic concept of the shelf can be expanded to include the continental slope. Though it is doubtful that the proclamation contemplated any claim which far outdistanced the 600 foot mark, modern tech-

22. Stimulation for the Truman Proclamation came from the U.S. Department of the Interior, and particularly Secretary Ickes who was concerned with the dwindling domestic oil supply. Secretary Ickes was of the opinion, though his hopes were as yet unconfirmed, that the continental shelf contained great oil reserves. Borchard, Resources of the Continental Shelf, 40 AM. J. INT’L L. 53 (1946).
23. Young, Recent Developments with Respect to the Continental Shelf, 42 AM. J. INT’L L. 849, 851 (1948).
24. Id. at 851.
nology has developed an issue where perhaps none existed in 1945. At the present time, the proclamation is most widely interpreted as a claim inclusive even of the continental slope.  

In 1953 Congress passed the Outer Continental Shelf Lands Act which stated that the jurisdiction asserted by the Truman Proclamation was to have the weight of statutory law. The Outer Continental Shelf Lands Act was a companion measure to the Submerged Lands Act, which ceded to the individual coastal states the proprietary interests in submerged lands up to a three mile limit, but it was of much more than domestic significance. It dealt with the lands outside the territorial belt of three miles—the land which had always fallen internationally into a "res nullius" or "res omnium communis" category. The Act addressed itself to two of the questions which were earlier pointed out as being raised by Truman's Proclamation. Specifically, first, it did not restrict itself to those lands which lay inside the continental slope. Section two of the Act defines the term "Outer Continental Shelf" as including:

all submerged lands lying seaward and outside the area of lands beneath the navigable waters title to which was confirmed unto the coastal states by the Submerged Land Act . . . and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

One consequence of the Act is that it left the international community with two definitions of continental shelf. The geologic definition is specific and limited to one of a series of underwater relief features. The legal definition, on the other hand, appears open ended and seems to include, for United States' purposes, whatever part of the underwater land which can be minerally exploited. Herein, however, lies the second issue which was originally raised by the Truman Proclamation. The Act authorizes leasing only for the purpose of mineral development. No federal law authorizes

26. Id. at 466. Domestically the Truman Proclamation raised the issue of states versus federal rights of exploitation in the underwater domain. In U.S. v. California, 332 U.S. 19 (1947) it was held by the Supreme Court that the nation and not the state has paramount rights in the three mile belt of seabed and subsoil under territorial waters. In 1953, however, Congress responded to the California decision by effectively reversing it with The Submerged Lands Act (43 U.S.C. § 1301). This statute ceded to the individual coastal states the United States' proprietary interests in the submerged lands up to a three mile limit. Later in 1953 Congress passed The Outer Continental Shelf Lands Act (43 U.S.C. § 1331-43) which attempted to expand and define the interests involved in the Truman Proclamation and the Submerged Lands Act.


either the leasing or use of the outer continental shelf for any non-mineral purposes. In view of early concern with the production of oil and gas, the exclusive language is not surprising. As time and technology continue to unfold, however, the problem of further legislative inaction becomes more serious. We are at a point where speculation concerning non-mineral uses of the seabed is seemingly limitless. In conjunction with such speculation, questions are being raised as to the nature of the property interest which has been claimed and is exercisable by the United States.

By 1956, most of the world community had acquiesced to the United States position. Many states made similar claims on their own continental shelves. These claims, however, suffered from a conspicuous lack of uniformity. Some states claimed their adjacent shelves to indefinite lengths and depths; others restricted their claims by either. Some Central and South American countries with little or no geologic continental shelf claimed the seabed based to an exact width of the high seas measured from their shores. The status of these diverse claims as evidence of customary international law was the subject of some speculation. The Geneva Convention on the Continental Shelf was held in 1958 in an attempt to gather information and codify new developments. Its success in doing so is questionable. In its efforts to agree upon the definition of the continental shelf, the Convention merely restated the confusion. In so far as non-mineral uses of the seabed are concerned, the Convention is restrictive.

Disagreement over precise definition of the shelf was most evident between those who would have the shelf limited by a depth figure (200 meters) and those who would open the shelf to whatever extent its adjacent state could effectively exploit its natural resource. The result is an ambiguous compromise. The shelf is defined as:

\[ \text{The seabed and subsoil of the submarine areas adjacent to the coast (and islands) but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the superadjacent water admits of the exploitation of the natural resources of the said areas.}\]

31. Id. at 471.
32. Id.
33. Geneva Convention of 1958, Art. 1, 499 U.N.T.S. 311; T.I.A.S. No. 5578 (1958); U.N. Doc. A/CONF. 13/L. 55. Not surprisingly, considerable controversy has arisen over the meaning of the last phrase of the definition. One contention is that it was the intent of the Conference that the definition cover only the geologic shelf which normally ends at 200 meters, and that the purpose of the exploitability test was to permit the development of nearby adjacent areas only. Others have argued that the legislative history supports an interpretation of the clause to include whatever territory is exploitable, be it shelf, slope, or continental rise. The latter view is favored
The problem of nondefinition of non-mineral rights in the seabed carries over from the Outer-Continental Shelf Lands Act to the 1958 Geneva Convention. The Convention does not authorize other uses of the seabed and subsoil, such as traditional real property, recreational or defense uses. It limits authorized use to specific mineral-oriented provisions. Such an approach is surprisingly shortsighted, even for 1958.

Article three deals with the waters overlaying the continental shelf. It prohibits any interference with their use as high seas, insofar as travel and fishing rights are concerned. Those waters remain international waters and subject to the Convention on the High Seas.

The 1958 Geneva Convention was signed by a majority of the 86 states attending. It became effective in 1964, and as of July of 1970, had been ratified by 39 states, including the United States and Russia.

A problem which has lurked in the background, ever since serious exploitation of the seabed has become a reality, is the nature of the underwater property rights which various coastal states consider to be their own. It has been pointed out that the Truman Proclamation, the U.S. Outer Continental Shelf Lands Act, and the Geneva Convention of 1958 have addressed themselves only to the issue of natural resource rights in the seabed. As technologists continue to probe into possible uses of the seabed, however, it is evident that such limited legal guidance will do little to avert future international discord in reference to other than resource claims. In the United States, the issue of property rights on the ocean floor was dealt with, at least peripherally, in the 1969 Federal District Court case, U.S. v. Ray.

Briefly stated, the issue in the Ray case concerned proprietary rights of the United States in a small group of coral reefs outside of territorial waters off the eastern coast of Florida. The reefs were clearly on the continental shelf, and they were totally submerged. Controversy arose when a U.S. citizen and a domestic corporation attempted to define the reefs as undiscovered islands, and lay claim to them under the theory of "res nullius." The

---

both nationally and internationally, and does in fact seem a truer reading of the Act. Particularly indicative of the U.S. position is its own behavior which has carried it far beyond the 200 meter limit in continental shelf and slope exploitation. The general trend of international mining activity supports development of a customary principle of international law, if not a formal one, in favor of the exploitable theory of national right. This international aggressiveness, however, points out further the need to define specifically international rights and privileges in the sea. So far our legal development has most significantly been characterized by a virtually unchecked race to grab whatever is obtainable. See Kreuger 479.

34. Id. at 477.
35. Id. at 472.
United States argued that the reefs were part of the continental shelf, and as such were under U.S. control via the Outer Continental Shelf Lands Act and the 1958 Geneva Convention. The court found for the Government, and in so doing made a number of determinations which are of interest with respect to the application of national and international laws on the seabed. First, in order to bring the reefs under the scope of the Shelf Act and the Convention, it was necessary to classify them as a natural resource. Arguably, the reefs are a natural resource, but a question is raised concerning seabed which is not a natural resource, per se. What are U.S. rights in that territory in relation to an interested domestic or foreign party with designs other than natural resource exploitation? Or is all of the continental shelf a natural resource? Secondly, and perhaps in amplification of the first point, it is significant to note that the Ray court declines to define any specific property right in the seabed. It states, rather:

[whatever proprietary interest exists with respect to these reefs belongs to the United States under both national (Shelf Act) and international (Shelf Convention) law. Although this interest may be limited, it is nevertheless the only interest recognized by law, and such interest precludes the claims of the defendants and intervenor.]

In 1969, the North Sea Continental Shelf Cases came before the International Court of Justice. The cases called into question the status of the Shelf Convention as customary international law. Based on a boundary dispute between two parties to the Convention, Denmark and the Netherlands, and a nonparty, Germany, the case determined specifically that the equidistance formula set out in Article 6 (sec. 1) of the Convention was not

37. Id. at 538.
38. Id. at 542. The Ray case is an important phase of development in the international law of the seabed in that it precludes foreign states from the establishment of any sort of installation on submerged reefs off the coast of another state. It is interesting to speculate, however, on the hypothetical case of one foreign state seeking to use the shelf floor off the coast of another state. Clearly, this would not be tolerated, but on what legal basis? Is the entire shelf itself a natural resource? In The Shelf Act, natural resource is said to include but not be limited to: oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life. (Outer Continental Shelf Lands Act, 43 U.S.C. § 1301(e) (1953)). The 1958 Convention contains the following statement on the subject:

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

U.N. Doc. supra note 33, Art. 2(4). It appears that neither definition contemplates the inclusion of the entire seabed and subsoil as a natural resource. A question also remains regarding what the adjacent state itself can do on its continental shelf beyond resource exploitation.
norm creating and therefore not customary international law. Its reasons for doing so were based primarily on the language of that Article, and hence, do not carry over to other provisions of the Convention. A more interesting question concerns the court's view of whether the concept of the continental shelf had itself become customary international law. The court contended that, independent of the Shelf Convention:

[t]he rights of the coastal state in respect of the area of continental shelf that constitutes a natural prolongative of its land territory into and under the sea exist ipso facto and ab initio, by virtue of its sovereignty over the land, and, as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is an inherent right. . . .39

The Court seems to have assumed two things: first, the concept of the continental shelf has become part of general customary international law. As such it is binding on all states, regardless of their affiliation or lack thereof with the Shelf Convention. Second, in the language quoted above, the careful distinction heretofore drawn between a state's general rights to its continental shelf, and rights in that shelf's natural resources, is insignificant. Paragraph nineteen contains the implication that a state's rights in its continental shelf are the same as those it exercises upon its sovereign territory, i.e., all inclusive.

If it is true that the rights of adjacent states in their coastal shelves are recognized to an unlimited extent by virtue of customary international law, and if, as the International Court implies in its opinion, that this recognition is not and indeed probably cannot be a result of the 1958 Shelf Convention,40 then this unchecked right must date back to the Truman Proclamation and/or consistent international behavior. Is there not to be any effect given to the limiting language implemented by all states (including the United States in the Truman Proclamation) in depicting states' rights in the continental shelf? The customary law which grows out of a declaration of an accepted practice cannot be broader than the terms of the declaration or the extent of the activity itself. To the present time, seemingly deliberately, a state's rights in its adjoining continental shelf have been articulated by

40. Paragraphs 73 and 74 of the International Court's opinion indicate that the remainder of the Shelf Convention, outside of Art. 2, has failed to establish itself as customary international law on three counts:
   a. The number of ratifications and accessions (39 in 1969) is insufficient.
   b. Time is inadequate; it had been only eleven years since the signing of the Convention in 1958, and only five years since it came into force in 1964.
   c. No international reaction based on a legal sense of obligation is evident.
those states as being limited to natural resource exploitation. A wider description of those rights is erroneous, and can have no basis in international or municipal law.

The impact of the Continental Shelf Cases on the development of the law of the seabed is dubious at best. An unfounded declaration of customary international law has been made which purports to recognize a perhaps, though not clearly, unlimited sovereignty of each state in its adjacent continental shelf. The Convention, which to date is the clearest expression of intention by the international community, has been (and probably rightfully) denied the status of norm-creating for nonmember states. No satisfactory definition of the shelf itself has yet been offered. On the positive side, the Continental Shelf Cases have pointed out the major defects in the present law of the seabed, and its inability to deal with both present and future challenges. As more countries become technologically more advanced, the impossibility of equitable resource allocation on the basis of unguarded competition becomes more obvious. The problem of rival claims between West Germany, Denmark and the Netherlands underlines the necessity of a definite vertical or horizontal limitation of the continental shelf to replace the open-endedness of Article 1 of the Convention. A definition of rights within that area must be made explicit to overcome the ambiguity of the Convention and its subsequent interpretation. Lastly, a world perspective needs to be developed regarding resources of the seabed outside a limited area. This must be done to insure that all the states of the world, not only the technologically advanced and the riparian, may share in the common heritage of the wealth of the sea.41

Issues And Proposals

Toward Geneva in 1973

In August of 1967, before U.S. v. Ray or the Continental Shelf Cases had further exposed the present inadequacies of seabed law, Ambassador Arvid Pardo, representative of the Permanent Mission of Malta to the United Nations, proposed in a note to Secretary General U Thant the inclusion of an item in the agenda of the Twenty-second session of the General Assembly entitled "Declaration and Treaty Concerning the Reservation Exclusively for Peaceful Purposes of the Sea-bed and of the Ocean Floor, Underlying the Seas Beyond the Limits of Present National Jurisdiction, and the Use of Their Resources in the Interests of Mankind."42

42. Knight 477.
Ambassador Pardo expressed his concern in an accompanying statement:

In view of rapid progress in the development of new techniques by technologically advanced countries, it is feared that . . . the seabed and ocean floor, underlying the seas beyond present national jurisdiction, will become progressively and competitively subject to national appropriation and use. This is likely to result in the militarization of the accessible ocean floor through the establishment of fixed military installations and in the exploitation and depletion of resources of immense potential benefit to the world, for the national advantage of technologically developed countries.\(^4\)

The Nixon statement of May, 1970,\(^4\) to which reference has been made, introduced an, as of then, undeveloped sketch of the proposed United States Oceans Policy. Between the time of Ambassador Pardo's and Nixon's statements, extensive work was done in preparing an acceptable international approach to the seabed problem. Subsequent to Nixon's statement, the United States has developed a draft Convention for consideration by the United Nations at its next scheduled Convention on the Seabed, in Geneva, 1973.\(^5\) The Draft Convention was discussed by the United Nation's Seabed Committee in August of 1970, and tabled for future action at the Geneva meeting.

The remainder of this paper is to be a consideration of the major issues which were identified as a result of the inadequacies of prior law on the seabed, and their treatment in the U.S. Draft Convention for the Geneva Convention on the Seabed in 1973. The Draft Convention is severely restricted by its very nature because it is one nation's solution to an international problem. It is, however, a comprehensive document. The exact role which it will play in any final treaty agreement is presently unforeseeable. That it is a significant effort towards final agreement is apparent, however, and as such it merits special attention. Discussion will be limited to three issues in particular, each of which, it is felt, is currently not only a primary source of confusion, but also is basic to any viable solution of the seabed problem:

1. What boundaries, if any, shall be placed on the continental shelf as it is referred to in the Shelf Act and the Shelf Convention of 1958? What are the territorial limits to a coastal state's rights in its adjacent seabed?

2. Once these boundaries have been established, what is the nature of the adjacent state's property right? To what extent can it con-

\(^4\) Id. at 477-78.
\(^5\) Statement, supra note 3.
trol the seabed, and are its rights limited to natural resource ex-
ploration?
3. What rights, if any, do noncoastal states have in the seabed?

**Territorial Boundaries**

The need for the establishment of definite, geographically discernable boundaries in the territory under the sea is obvious, and yet it has been shown how the Truman Proclamation, the Outer Continental Shelf Lands Act, and the Shelf Convention of 1958 dealt with the issue in a totally am-
biguous fashion. Such an approach by this country, and the U.N. as a whole, no doubt was a direct source of the anxiety expressed by Ambassador Pardo. In actuality, aggressive claims, well beyond any geological shelf area, have been and continue to be made.\textsuperscript{46}

The problem was officially recognized well before the appearance of the 1970 Draft Convention Document. In September of 1967, Senator Claiborne Pell introduced to the Senate Resolution 172 on the seabed question. Paragraph five of the resolution states that:

\begin{quote}
[F]ixed limits must be set for defining the outer boundaries of the Continental Shelf of each nation, and such limits can be best determined by an international conference. . . .\textsuperscript{47}
\end{quote}

In February of 1969, in the fourth in a series of resolutions introduced by Pell, he elaborated on his conviction that boundaries must be set:

\begin{quote}
. . . [F]or purposes of this treaty the term continental shelf is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea to a depth of 550 meters, or to a distance of 50 miles from the baselines from which the breadth of the territorial sea is measured, whichever results in the greatest area of continental shelf. . . .\textsuperscript{48}
\end{quote}

It has been earlier stated that the proposal finally selected by the White House upon which to build the official U.S. Oceans Policy was drafted in the State Department. In his May, 1970 statement in which he introduced that policy, President Nixon said:

\begin{quote}
. . . I am today proposing that all nations adopt as soon as possible a treaty under which they would renounce all national claims over the natural resources of the seabed beyond the point where the high seas reach a depth of 200 meters. . . .\textsuperscript{49}
\end{quote}

\begin{flushright}
\textsuperscript{46} Krueger 478.
\textsuperscript{47} S. Res. No. 172, 90th Cong., 1st Sess. 5 (1967).
\textsuperscript{49} Statement of President Nixon, supra note 3 at ¶ 4.
\end{flushright}
The Draft Convention, as it was presented to the U.N. Seabed Committee in August of 1970, contained the language:

[The International Seabed Area shall comprise all areas of the seabed and subsoil of the high seas seaward of the 200 meter isobath adjacent to the coast of the continents and islands. Each Contracting Party shall permanently delineate the precise boundary of the International Seabed area off its coast by straight lines. . . .]^{50}

It is clear that for the first time the issue of territorial limitation of the continental shelf is not being avoided. It is interesting, however, to note the basic distinction between Senator Pell’s suggestion in his resolution of 1969, and the language of the Draft Convention. Pell provides for underwater territorial claims by coastal states which do not have a geological continental shelf. Presumably, such an approach serves two purposes. It offers offshore protection from foreign exploitation of seabed off every coast. It also anticipates a time when all nations will have the technological means to utilize the ocean bottom, be it shelf, slope or abyssal plain. By the terms of the Draft Convention, on the other hand, it appears that in the case of a coastal nation having no continental shelf, seabed lying beyond territorial waters is an international domain.\(^5\)

In apparent recognition of the value of Pell’s alternate proposal, the United States itself proposed, simultaneously with its Draft Seabed Convention, a convention which would, \textit{inter alia}, fix the boundary between the territorial sea and the high seas at a maximum of twelve nautical miles from the coast. Such a resolution, however, even if passed, would have only an indirect bearing upon the crucial issue of underwater territorial rights. Clearly, a surface water territorial delineation is not automatically applicable to the ocean floor below. If the language of the proposed Convention were adopted as it stands, mentioning only a 200 meter depth limitation on the shelf areas of a coastal state, and the twelve mile territorial water resolution were also passed independently of the Seabed Convention, several important questions would remain unanswered. What are the seabed rights of a coastal state whose shelf drops off beyond the 200 meter depth at points adjacent to its shores? Do they extend to the twelve mile territorial limit, and if so, under what authority? If not, is there any justification for depriving a coastal state of the same use of the territory under its coastal

---

51. The United States has simultaneously proposed an international convention which would fix the boundary between the territorial sea and the high seas at a maximum distance of twelve nautical miles from the coast.
waters that a similar state whose shelf is shallower enjoys? Presuming there is no such justification, if a coastal state, under the foregoing conditions, be permitted use of its seabed to a distance of twelve miles from its shores, the 200 meter depth limitation becomes meaningless in any case in which the shelf drops below that level within the twelve mile mark.

The solution to the whole problem of distance-or-depth territorial limitation is of course in the type of proposal originally brought forward by Senator Pell in 1969. The Convention should be specific in designating an alternate boundary which would be easily and uniformly applicable. The Convention should specify that the International Seabed Area shall comprise all areas of the seabed and subsoil of the high seas seaward of the 200 meter isobath adjacent to the coast of continents and islands or seaward of all points twelve miles from the outer shores of the coastal states, whichever is further.

Scientifically there is little rationale for a unilateral limitation of seabed rights at depths greater than 200 meters. In the United States, Humble Oil has already developed means of extracting petroleum from depths of well over 200 meters. Designs for exploitation in water depths of as much as 600 meters are presently in the making. Indications are that giant fields of oil and other mineral resource lie untapped in the depths of the sea. Substantial sums of money are being spent by many of the major petroleum companies of this country in hopes of sharing the profits of these fields. It is well known that worldwide annual consumption of crude oil is rising and that our present sources are limited. Of particular appeal to industrial nations is the prospect of new energy sources which are relatively near their projected points of consumption. These facts, in addition to the cost and environmental risk of oil importation, add credibility to the prediction that the U.S. and other advanced nations will soon possess economical means of mineral extraction from deep water sources. When the time comes, a treaty which places needed adjacent resources in international territory because of a seemingly arbitrary characteristic of depth will not only be unpopular, but difficult to justify.

52. A deep sea drilling project sponsored by the National Science Foundation has developed the capability for drilling core holes at abyssal depths and has drilled many such holes in water depths as great as 6,140 meters. Recently it developed the hole re-entry capability that can be expected to lead to well control necessary for deep water exploratory drilling. Thus, whereas an exploratory oil well a few years ago could not be drilled at any cost at such depths, the technologic capability for doing so is now coming into hand. Statement of Dr. Vincent E. McKelvey, Senior Research Geologist, U.S. Geological Survey, Palais des Nations, Geneva, March 25, 1971.

53. Id.
The Nature of a Coastal State's Property Right
in its Adjacent Continental Shelf

Whether the Convention ultimately incorporates an alternate, distance-depth seabed limitation, or imposes only a 200 meter depth limitation as is presently proposed, the situation will, in some instances, arise in which a coastal state's exclusive shelf territories extend under the high seas. For reasons of navigation and fishing it is essential that one's use of the seabed does not interfere unreasonably with international use of the superadjacent waters and high seas. It has been shown that prior to the Draft Convention, uses of the seabed, other than resource exploitation, have never been legislated upon. It is unrealistic to assume, however, that the technology of the future will not suggest seabed use of a non-mineral-oriented variety. One area in which there is already a substantial amount of speculation is underwater transportation. An elaborate system would entail travel routes, stopping places, instrument stations and, of course, the presence of moving vehicles themselves. Such an installation would almost certainly have an effect upon international use of regions above the seabed. The question is what light, if any, is shed upon this inevitable conflict of rights by the Draft Convention.

In so far as the full title of the Draft Convention is the "Draft United Nations Convention on the International Seabed Area," it is not surprising that it is of little use in determining property rights of nations in seabeds of a non-international designation. A tempting conclusion to draw is that a coastal nation's territorial rights in its continental shelf (legal definition) are sovereign. The theory would be that the shelf is no more than a natural extension of the continental land mass under water, and hence the same exclusion rights of territorial use characterize the shelf that do the land. Article 2, paragraph 1 of the Draft Convention provides that no state may claim or exercise, sovereignty, or sovereign rights over any part of the international seabed area or its resources. Does this imply that a coastal state's rights in its shelf are in fact sovereign? Articles 6, 7, 8, and 9 emphasize the autonomy of the waters which cover the seabed in respect to any provisions of the Convention. Does this include waters over a state's shelves which are not international territory? The Convention document offers no answers. Senator Pell's resolution of February, 1969, which has absolutely no direct bearing on the Draft Convention, is more specific. Article 10 of that resolution says:

All states parties to the Treaty shall have the right for their na-

tionals to engage in fishing, aquaculture, insolation mining, transporta-
tion, and telecommunication in the waters of ocean space beyond the territorial seas of a state.55

Perhaps if an assumption has to be made as to the nature of property rights a state exercises in its own shelf territory beyond the limits of territorial water, it should be based on a combined reading of the Senate Resolution and the Draft Convention. Such an approach would dictate that a state's rights in the seabed are sovereign, in so far as they do not unreasonably interfere with the international use of superadjacent waters. While it would be difficult to think of a more equitable principle to state, it is easy to see that such a conclusion, if indeed the correct one, is far from adequate in view of the many specific disputes which are bound to arise over conflicting uses of national seabed territory and superadjacent international waters. For instance, what does the foregoing standard tell a coastal nation about how to construct its underwater railway?

In his statement to the United Nations Committee on the Peaceful Uses of the Seabed and The Ocean Floor Beyond the Limits of National Jurisdiction on March 21, 1972, U.S. Representative, John R. Stevenson said:

We believe that it is of critical importance that the regime contemplated . . . provide for peaceful and compulsory settlement of disputes. We know from experience with resource exploitation on land that disputes are likely to occur. They should not be allowed to become burdens on political relations between states. We have proposed a special tribunal to settle disputes under the treaty regime because it would encourage the development of a body of expertise in interpreting provisions of the regime. We have also provided for referral from the tribunal to the International Court of Justice of general questions of international law.66

The “regime” to which Mr. Stevenson refers is the “intermediate zone”—that area beyond the exclusive control of coastal states but not totally of an international character. The elaborate machinery proposed by the Draft Convention is meant to establish an effective means of national and international arbitration and control of the intermediate zone. The zone's jurisdiction could easily be expanded to areas outside of the intermediate zone, and should, in fact, be widened to include disputes springing from conflicting uses of national seabeds and the international water territories which are above them.

Rights of noncoastal states in the seabed

Probably the major defect of the present law on the continental shelf is that it assures noncoastal states absolutely no role in the exploitation of the seabed. The inequity of such a situation is readily apparent, and yet absent international legislative control it is unrealistic to expect it to change. Certainly Ambassador Pardo's concern for the undeveloped noncoastal nations was genuine. Even if the interest of the United States in reaching an equitable agreement is not as meritorious as it could be, it is probably sincere. President Nixon's assessment of the present predicament seems valid:

\[\ldots\] At issue is whether the oceans will be used rationally and equitably and for the benefit of mankind or whether they will become an arena of unrestrained exploitation and conflicting jurisdictional claims in which even the most advantaged states will be losers.\(^57\)

For whatever reason, the main thrust of the Draft Convention is to establish a just system whereby the territory designated as international seabed—that falling outside the limits of the legally defined continental shelf—will be used to the advantage of all the nations of the world.\(^58\) President Nixon described the program in two parts. First, he suggested that coastal nations act as trustees for the international community for those zones of the continental margins beyond a depth of 200 meters.\(^59\) Each trustee would consequently receive only a share of the revenues yielded by territories bordering its continental shelf. Second, it was proposed that international authorization and regulation of resource use beyond the continental margins be undertaken by an internationally agreed upon group to be appointed in the future.

Details of the trusteeship procedure are contained in Chapter III of the Draft Convention. Some of its more significant aspects will be the subject of later discussion.

Chapter IV of the Draft Convention deals with President Nixon's second proposal, the administrative disposition of exploratory rights beyond the continental margins. It establishes a five part "International Seabed Re-

\(^57\) Statement of President Nixon, supra note 3, at ¶ 1.
\(^58\) For a complete description of the general principles which are meant to establish a basis for specific international seabed exploitation regulation, see Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction. U.N.G.A.RES. 2749/XXV/12/17/1970.
\(^59\) The international trusteeship area is that part \ldots between the boundary described in Article 1 (200 meter depth) and a line, beyond the base of the continental slope \ldots where the downward inclination of the seabed declines to a gradient of \ldots (to be determined).
U.N. Convention, supra note 45, Art. 26, ¶ 1.
source Authority” made up of 1. an Assembly, composed of all parties who are members of the Convention; 2. the Council, the organization’s decision-making body; 3. Commissions, established specifically to regulate activity in certain areas; 4. the Tribunal, to decide disputes and answer questions; and 5. the Secretariat, or the officers appointed by the Council to preside over the Authority.

Detailed analysis of the various departments and their functions is beyond the scope of this paper. It is relevant, however, to note briefly the specific proposals for determining membership in the Council. Since this body is to be the power center of the Authority, that it be truly representative of the international community is essential to the success of the Authority.

Article 36 of the Convention describes proposed Council membership. By its terms there shall be twenty-four members, 18 of which shall be elected by the entire Assembly. The twenty-four members are categorized in the following manner:

a. The six most industrially advanced members of the Assembly shall be automatically appointed.

b. Of the eighteen additional members, at least twelve shall be developing countries, as elected by the Assembly, and taking into account equal geographical distribution.

c. Of the twenty-four membership total, at least two shall be landlocked or shelf-locked.

From a preliminary view, the proposed power distribution seems reasonable and fair. Depending, of course, on future refinements in the decision making process, and matters not herein discussed, the Draft Convention machinery for resource exploitation regulation outside of the continental margin regions appears equitable. Some criticism has been made of the automatic inclusion of the Authority’s six greatest industrial powers in the Council, on the basis that it is the underdeveloped countries which should be guaranteed representation rather than the giants.60 For at least three reasons the criticism is unwarranted. First, Article 36, section 2-b assures membership to twelve “developing” countries. While a clear definition of “developing” would certainly be helpful, the provision makes certain that Council membership is not meant to be dominated in numbers by large industrial interests. Second, the presence of those powers which have achieved the greatest state of technological advance will make an intelligent and efficient disposition of underwater resource more likely. Third, the greatest industrial powers will probably always be politically divergent. It

60. Knight 498.
is unfortunate, but true that ideological differences provide a great stimulus
in our world to competitive industrial and military development.

While it is certainly true that a combined application of the rules and
principles embodied in Chapters III and IV of the Draft Convention go a
long way toward the development of an equitable and comprehensive pro-
gram for international underwater resource use, the plan is not without its
faults. Chapter III particularly contains distressing language which, when
put to the test of judicial processes proposed in Chapter IV, could fall sig-
nificantly short of the professed goal of equal exploitation opportunity in the
intermediate trusteeship area.

Fortunately, the problem with the Trusteeship Zone is not that its boun-
daries are uncertain. Article 26 makes clear the territorial characteristics
of the area. Serious problems do arise, however, on the issue of operations
control. Article 27, paragraph 1, of the Convention states:

Except as specifically provided for in this Chapter, the coastal
State shall have no greater rights in the International Trusteeship
Area off its coast than any other contracting Party.

As is often the case, the weight of the provision lies in the "except"
clause. In subsequent sections and subsections, the coastal state is given
enough authority over its particular trusteeship zone to render the latter part
of paragraph 1 practically meaningless. Not only is each coastal state given
exclusive authority to issue—or refuse to issue—licenses to foreign states de-
sirous of working in adjacent international areas, but the coastal state is also
given free reign to impose whatever standards it pleases upon those potential
licensees. Furthermore, Subsection C of Article 28 expressly removes any
ban on discrimination by the coastal trustee against potential developers.
Subsection B of the same Article gives the trustee the ultimate authority to
refuse the granting of any licenses at all.

It is not difficult to see that the way is paved for any coastal state to im-
pose impossible requirements, either deliberately or otherwise, upon other
less fortunate nations, and thus effectively preclude them from all oppor-
tunity to participate in the extraction of so called "international" under-
water resource. There is obvious merit in giving consideration to the in-
herent interests of coastal states in regulating foreign industrial activity off
their own shores. But the principle can be carried too far. The power to
regulate should be distinguished from the power to control. It is basic to the
purpose of the trusteeship design that those marginal areas beyond a depth
of 200 meters be virtually open for legitimate exploitation by nations not
fortunate enough to have adequate resources off their own coasts. Articles
27 and 28 place the success or failure of that purpose squarely in the hands
of each trustee whose own legitimate interests may well conflict with it. The present arrangement actually encourages discrimination against the so-called "developing" states whose methods would necessarily be less efficient, less profitable, and yield lower returns to a coastal trustee, the interests of which would, quite naturally, be in its own profit and protection. At least in this formative stage, the Convention sadly lacks any assurance that the less fortunate nations will play a meaningful part in the utilization of the seabed.

It might be argued in favor of the Draft Convention that it establishes its own judicial structure, and that practices which are unjust can be remedied within the system. To an extent this is certainly true. Subsection 2-d of Article 44 delegates to the Operations Commission the duty of initiating proceedings for alleged violations of the Convention.\(^6\) This, presumably, entails bringing the matter before the Tribunal. Article 46 of the Convention authorized the Tribunal to decide upon all questions relating to interpretation and application of the Convention, and requires it also to apply relevant principles of international law. The Tribunal may, in its discretion, request the International Court of Justice to give an advisory opinion on any question of international law.\(^6\) While the process is certainly an equitable one, its instigation depends on an initial finding of a violation of the terms of the Convention. Generally speaking, the practices which seem most likely to threaten fulfillment of the Convention goals are two: political and economic discrimination on the part of the coastal trustees. Neither is, on its face at least, necessarily culpable. Yet discrimination of any kind against nations which, for any reason, are unable to compete on a par with strong and wealthy nations, will undermine completely one of the primary purposes of the trusteeship arrangement: to provide a system through which all interested nations may partake in the wealth of the seabed resource.\(^6\)

To appreciate the nature of the economic discrimination which is the natural outgrowth of the Convention, one need only consider the financial aspects of the trustee-licensee relationship as it is prescribed in the text of the Draft. At the outset, a requirement of technical and financial competence is imposed, not unreasonably, upon any potential licensee.\(^6\) Application for licensees to explore or exploit in the trusteeship areas must be accompanied by fees ranging from $500.00 to $15,000.00.\(^6\) Additional fees of up to

\(^6\) The Operations Committee itself would be composed of five to nine members appointed by the Council from among persons nominated by Contracting Parties. No two Commission members would be nationals of the same state.

\(^6\) U.N. Doc., supra note 45, Art. 46.

\(^6\) Declaration, supra note 58, at ¶ 5.


\(^6\) Id. at App. A art. 3, ¶ 3.1; art. 4, ¶ 4.1.
$30,000.00 may accompany the acceptance of an application. Once the licensee has actually begun its exploration and/or exploitation, annual rental fees become due. These rental fees are regulated within limits by the Convention, but are tied directly to the volume of production. As a licensee's productivity increases, so does its annual rent. Should a particular licensee fail to achieve a certain predetermined level of commercial production within a given period of time, its license may expire.

In every case in which a fee is exacted from a licensee by its trustee, a certain designated percentage of the fee is paid by the trustee to the Authority. More importantly, however, a certain proportion is also retained by the trustee. The arrangement is, for the trustee particularly, a business transaction. Its investment value is directly related to the success or failure of the licensee. It is not unreasonable to arrange for a coastal state to share in the profits of its adjacent seabed territories. This is especially true when the coastal state has exercised management duties over the area. Nor are the fees which have been proposed by the Convention exorbitant. It is unreasonable, however, to expect that the system as a whole will in any way work to the advantage of the "developing" nations whose competitive capability is, by definition, inferior.

Political discrimination is also based on natural impulse. Clearly, every nation has its friends and enemies. Short of the extremes of actual alliance, ideological differences have a great effect upon the extent to which one state is willing to associate, or be associated with, another. In some instances a coastal state will be eager to accommodate the desires of another nation to work in its adjacent coastal areas. The possession of a fertile seabed will undoubtedly prove a tremendous asset to many nations as a means of developing favorable relationships where such are deemed important. But many states, and particularly the developing ones, have no influence, or bargaining power, or special friends. It is they who will be discriminated against naturally by all trustees. Presumably the larger states whose presence in some areas may be considered undesirable for reasons of national security will have alternatives. It is the smaller, politically less significant countries whose interests must be protected.

The problem of discrimination, both political and economic, is a serious one which effects the prospective effectiveness of the United States proposal as a whole. It is one, however, which can be remedied with several basic

66. Id. at App. A, Art. 4, ¶ 4.4.
67. Id. at App. A, Art. 6, ¶ 6 et seq.
68. Id. at App. A, Art. 5, ¶ 5.8-5.9.
changes in the overall program design. Two major revisions in particular seem appropriate:

1. The degree of control of each trustee over the selection of licensees who will be permitted to operate in its territory should be diminished.

2. Aid in the form of training, materials, and funds should be offered to "developing" countries, on a limited basis, in order to equip them with competitive capabilities.

The system should be revised so that each trustee is required to consider all applications submitted to it, from whatever source, provided that such applications conform to certain pre-determined standards. A requirement of cause should be imposed upon the trustee for the rejection of any properly submitted application. In instances where the activity proposed by the applicant appears to pose a threat, or even the possibility of a threat, to some legitimate interest of the trustee, the trustee should be permitted to reject it, in writing, with reasons stated, and within a reasonable period of time. The rejected applicant should be given the opportunity to revise its application or appeal the decision of the trustee if it so desires. Appeals should be made to the Authority. The Authority, in turn, should consider each case promptly. Rejections which do not appear ill founded in view of the national interests of the trustee should be sustained. Others should result in fines or restrictions against the trustee. In no case, however, should a coastal state be coerced into permitting the actual presence of a foreign state whose application he refuses to accept. Such a system would, if effectively administered, have several advantages. It would tend to cut down on pure political discrimination, and it would make conspicuous those states which are unable to compete financially for seabed rights simply because of their own underdevelopment.

To those nations who, through the application process, demonstrate their need for assistance, special attention should be given. A generous fund within the Authority should be designated for the exclusive purpose of putting in a realistically competitive position "developing" states which are interested. As previously mentioned, this should be accomplished through training, the provision of necessary equipment, and percentage subsidy of funds. Rigorous guidelines should be established to insure that those underdeveloped countries desiring to participate contribute a reasonable amount of money to the project, as well as show specific progress within a predetermined period of time. All aid should be offered on a strictly temporary basis, thus placing upon the recipient as much of the burden of accomplishment as is realistic.

Obviously, the administration of both of the foregoing suggested programs
would present some problems. There is no doubt, however, that the Authority could be set up to accommodate additional functions. Much forethought and some ingenuity would be required to accomplish the desired goals without becoming hopelessly lost in a multi-levelled bureaucracy. A plan which is designed to deal comprehensively with an international issue as extensive as seabed territorial rights must, by its very nature, be exceedingly complex. The United States Draft Convention goes a long way toward the achievement of a desirable end. It contains some weaknesses, however, which could result in the final demise of the principle it is meant to serve—a truly equitable international distribution of rights in the resource which lies in the territories under the sea.

**Conclusion**

The problems which are raised by the seabed and technology will never be satisfactorily disposed of in a single remedial measure. If crisis is to be avoided, however, comprehensive and prospective international legislation must be formulated soon. At stake is a tremendous resource, an unusual opportunity for development, and a whole new phase of international relations.

Present law of the continental shelf is most conspicuously deficient in the areas of uniformity and foresightedness. Its development has been in response to, rather than anticipation of, technology. If this trend is to be reversed, our methods of response must be reformed and co-ordinated as well.

The Draft Convention, proposed by the U.S. for Geneva in 1973, does not answer all the questions which have been raised in reference to seabed development. It does, however, provide a procedure for dealing with unresolved issues both now and in the future. To that extent it is enormously significant.

A system which is as responsive as technology is changing must be devised to protect and distribute the wealth of the sea. It is not important that the system be the one embodied in the United States Convention. It is important, however, that the true value of the United States proposal be recognized.

*Paul Sutherland*