"EXPLORATION AND EXPLOITATION OF THE SEABED"

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Men have always used the sea as a highway, a fishpond and a battleground. Far from losing their importance, these traditional uses of the sea are taking on new forms and significance in response to the needs of a vastly expanding world population and the awful possibilities of nuclear power. There is today a lively and growing interest in the sea and its resources. New types of claims to national jurisdiction are evoking new responses. The law of the sea has entered a period of rapid evolution, rich in promise but also in difficulty. It is the potential uses and resources of the seabed and ocean floor, however, which are attracting the most intense interest as spectacular advances in marine science and technology are making these areas known and accessible.

It was against this background, in 1967, that Ambassador Pardo of Malta introduced before the United Nations General Assembly a proposal the implications of which, in the legal, political, economic and military fields, are so far-reaching that they will continue to be the subject of intense study and debate for some time to come.

The Maltese proposal called for the United Nations to undertake the "examination of the question of the reservation exclusively for peaceful purposes of the seabed and ocean floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind".

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Canada was among the 35 countries on the original ad hoc committee set up by the General Assembly in 1967 to conduct this examination and was also represented on the new 42-member permanent committee on the seabed, formed in late 1968 to continue the work of the ad hoc group. At the 25th session of the General Assembly, this committee was further expanded to comprise 86 members - almost exactly the same number of states which participated in the 1958 and 1960 Geneva conferences on the law of the sea. At the same time the General Assembly decided that a third conference on the law of the sea should be held in 1973 and assigned to the expanded seabed committee the mandate of preparing for that conference.

The decision to convene a new conference on the law of the sea required lengthy and difficult negotiations in light of the wide divergence of views regarding the scope of the conference and the priority attaching to the various issues it will consider. Canada was among those countries (mainly the developing states) favouring a conference broad in scope and according priority to the seabed regime as against the more restricted conference favoured by a number of other states which wanted only matters of direct interest to them included. It is the Canadian view that no accommodation on the law of the sea issues can be successful unless it is a comprehensive accommodation on all major unresolved issues, in view of the inter-relationship between these issues. A partial solution will be no solution at all in the long run. With respect to the timing of the conference, significant differences also existed on this point in the General Assembly debate. In the end it fell to the Canadian delegation to

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chair the negotiating group seeking an accommodation among these conflicting views and to bring about agreement on the compromise resolution which was finally adopted. That resolution, introduced by the Canadian delegation on behalf of the many sponsors, called for a conference to deal with a broad range of issues, including:

(i) the establishment of an equitable international regime (including international machinery) for the seabed and ocean floor beyond the limits of national jurisdiction;

(ii) a precise definition of this area of the seabed;

(iii) the breadth of the territorial sea and the question of international straits;

(iv) fishing and conservation of the living resources of the high seas, including the preferential rights of coastal states;

(v) preservation of the marine environment and the prevention of pollution;

(vi) marine scientific research.

Both the agenda and timing of the conference, however, are subject to review at the 1971 and 1972 sessions of the General Assembly, and the conference may be postponed if insufficient progress has been made in its preparation by that time.

Undoubtedly one of the most complex and difficult tasks of the new preparatory committee for the law of the sea conference and of the conference itself will be the negotiation of an equitable international regime (including international machinery) for the seabed and ocean floor beyond the limits of national jurisdiction, and the precise definition

of this area. That definition, of course, underlies the discussion of every aspect of the proposed international regime. The reason for this is simple: the definition of the limits of the seabed beyond national jurisdiction necessarily involves the definition of the seabed within national jurisdiction, that is, of the juridical continental shelf. Here, of course, we are dealing with an area in which there have already been significant developments in international law and in which certain basic rules and principles have already been laid down. This existing legal framework provides guidance for, but also adds complexity to, the task of defining the seabed beyond national jurisdiction.

As is well known, the unilateral proclamation by President Truman in 1945 began a new trend in state practice which later resulted, after only a little more than a decade, in the adoption of the only relevant international convention, the 1958 Geneva Convention on the Continental Shelf. There are other rules in existence - national laws and bilateral or multilateral conventions - which have a bearing on the subject but the Geneva Convention is the embodiment of contemporary international law in this field.

The Geneva Convention on the Continental Shelf, which is now in force, having been ratified by more than 40 states (including Canada), recognizes that coastal states may exercise certain rights in respect of the resources of their continental shelves.

The convention provides that coastal states enjoy exclusive sovereign rights for the exploration and exploitation of the resources of their continental shelves. These rights do not depend on occupation

or on any express proclamation. No one may explore or exploit the continental shelf without the express consent of the coastal state, even if the coastal state itself is not conducting such exploration or exploitation. How the continental shelf should be defined for these purposes is much less clear.

It will be recalled that the convention left the juridical continental shelf with elastic inner and outer limits. The inner limit is the edge of the territorial sea, which, according to national claims, ranges from 3 to 200 miles in breadth. The outer limit is a double one, being a water depth of 200 metres or, beyond, to whatever depth will allow exploitation of the underlying resources. The only other limitations laid down by the convention are found in the concepts of adjacency and equidistance. The continental shelf is defined as being "adjacent" to the coast, but then, what does adjacent mean on the Pacific or Atlantic coasts of Canada, for instance? 10 miles? 100 miles? or more? With respect to equidistance, the convention stipulates that, in the absence of agreement and unless another boundary is justified by special circumstances, the continental shelf boundary between two states whose coasts are opposite or adjacent to each other shall be determined by the principle of the median or equidistance line. In any event, however elastic may be the definition of national jurisdiction provided by the Geneva Convention, there can be no question that the convention relates to the continental shelf, and not to the whole of the deep ocean bed. In other words, the Continental Shelf Convention recognizes that there <u>is</u> an area of the seabed and ocean floor beyond the limits of national jurisdiction.

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It may be concluded from the foregoing comments that the Geneva Convention on the Continental Shelf is not fully satisfactory. The Convention remains, however, the only international instrument applicable on a widespread scale. There is no question but that, weaknesses notwithstanding, it embodies a large number of essential rules which, in any event, will have to remain an integral part of whatever new law is developed. In spite of the criticisms being made of the convention, particularly in United Nations discussions, it is most difficult to offer workable alternatives and the convention must be regarded as a remarkable achievement even if ultimately it turns out to be regarded as only a good first try. In the meantime, and this I believe would be the view of any jurist who has considered this problem, it must be accepted that the convention represents existing international law, however imperfect or incomplete.

As a country with a large and promising offshore area, Canada is intensely concerned with the development of a new definition of the continental shelf. The 1958 Geneva convention obviously provides a basic point of reference. Another basic point of reference is the geographical and geological realities which underly the juridical concept of the shelf. The International Court of Justice, in the North Sea Continental Shelf Cases, confirmed the principle that the coastal state's rights over the continental shelf flow from the fact that this submarine area constitutes a natural prolongation of the coastal state's land territory. It is of interest to note in this connection that even prior to the first United Nations conference on the law of the sea in 1958, the Canadian view, as expressed in an official

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publication, was that "precision would not be forfeit...if the boundary of the shelf were its actual edge. Where the actual edge might be ill-defined or where there is no shelf in a geographical sense, the boundary might be set at such a depth as might satisfy foreseeable practical prospects of exploitation of the natural resources of the seabed adjacent to a particular state."

As I stated at the first meeting of the preparatory committee for the 1973 law of the sea conference in Geneva last March, I know of no question to be considered by the conference which is comparable to the seabed item in the demands it places upon the international community for innovation, imagination, and accommodation. It raises problems ranging from boundary questions (always one of the most sensitive issues of concern to states), to arms control matters, to the need for new concepts of resource administration, to economic problems relating to possible market disruptions, to basic questions concerning the developmental needs of the third world, and to new problems concerning international institutions which if unresolved could lead to conflicts not only between states but even perhaps between states and the United Nations itself. All of these complicated problems are inherent in the topic. To which should we direct our attention at this conference? The complex problems can be reduced, in my view, to three central issues: (a) the need to define the limits of the area of the seabed and ocean floor beyond national jurisdiction; (b) the need to elaborate an international regime for the area; and (c) the need to create international machinery to administer the regime. What are the prospects? What progress is being made?

So far as limits are concerned, I have already outlined some of the factors involved in the discussion of this question. I should now like to review some of the possibilities which have been considered and some of the proposals which have been made with a view to resolving this fundamental issue.

One of the simplest - indeed, I would say simplistic - approaches to determining the boundary between the seabed within the area beyond national jurisdiction would be to adopt the 200-metre isobath as the dividing line, that is, the first element of the definition of the continental shelf laid down in the Geneva convention. A number of variations could and have been made to this approach but all share one basic difficulty. They do not take into sufficient account, if at all, the second element of the shelf definition provided by the 1958 exploitability test. Nor do they take into sufficient account the geographical and geological realities underlying the concept of the continental shelf. Canada's studies of the 200-metre isobath and its possible relevance indicate that it is not generally representative of the shelf break. In fact, not only does the shelf break occur throughout the world at depths usually considerably less than or greater than, this figure, but the world average is estimated by marine geologists to be only about 132 metres. So, if there is an attempt to strike an average as a basis for determining the limits of national jurisdiction, there would be more logic to 132 metres rather than 200. The essential point, however, is that any arbitrary depth or distance-plus-depth formula which disregards existing international law, state practice and geographical-geological realities is likely to prove unacceptable to a significant group of coastal states.

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Perhaps the most complete and most complex proposal as far advanced with respect to seabed limits is the draft treaty (the "Nixon proposal") submitted to the U.N. by the USA in August, 1970. According to this proposal, new limits of national jurisdiction based upon the 200-metre isobath would be established by coastal states renouncing their exclusive sovereign rights over seabed resources beyond a water depth of 200 metres. Provision would be made, however, for the general use of straight baselines not exceeding 60 miles in length, and for straight baselines not exceeding 120 miles where a trench or trough deeper than 200 metres transects an area less than 200 metres in depth. The offshore areas beyond the new limits of national jurisdiction would comprise the "International Seabed Area" to be governed by an international regime. That portion of the international seabed area between the new limits of national jurisdiction and the outer edge of the submerged continental margin (i.e., the continental shelf plus slope), would become the "International Trusteeship Area", in respect of which the adjacent coastal state would retain certain prescribed rights.

This proposal by the United States obviously places considerable emphasis on the cessation, not of all national rights, but of exclusive sovereign rights at the 200-metre isobath. I have already noted the basic difficulties connected with the use of this criterion in seabed boundary proposals. A second point I would like to make is that the shelf break for nearly all continental shelves between the latitudes 50° North and 50° South occurs at considerably less than 200 metres, averaging indeed less than the 132 metre figure I have referred to. North of 50° N latitude, and south of 50° S latitude, the shelf break commonly occurs at depths

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of 400 to 650 metres, due to the unrecovered effects of weighting by glacial ice. In contrast the Arctic shelves that escaped this glaciation may break at less than 100 metres, such as in the Laptev and East Siberian Seas north of Russia, in the Chukchi, Bering and Beaufort Seas off Alaska, and in the Beaufort Sea off the Mackenzie River Delta.

These may sound like highly technical matters, but there are quite practical implications for countries like Canada and Argentina, for example, with deeply glaciated shelves. To illustrate, we find from a table constructed by Canadian experts, that although the USSR has the largest physical shelf in the world and twenty-seven percent of it extends beyond 200 metres, only five percent of it would fall into the US proposed trusteeship zone, after closing lines are drawn between islands and 200-metre banks in the Arctic Ocean and between the Kuriles Islands in the Pacific. Australia also has an extensive shelf area of which only a small fraction would fall into the trusteeship zone, since almost all its shelf is shallower than 200 metres. The USA would retain full sovereign rights to all of its physical shelf since the sixty-mile baseline provision contained in the US draft treaty would enable the enclosure of the Santa Barbara Channel where some promising oil discoveries have been made in 450 metres of water, as well as several troughs cutting the shelf elsewhere.

Now, without intending any criticism or commendation of the US proposal, it is, I think, relevant to note that in our own case Canada would lose something like eighteen percent of its shelf, quite apart from the slope and the rise. Some two-fifths of Norway's large

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Arctic shelf would fall into the trusteeship zone. Denmark and Iceland would fare little better. In the case of the United Kingdom - although her oil and gas reserves in the North Sea area would not be affected - some fifteen percent of her total physical shelf would fall into the trusteeship zone, involving areas adjacent to Rockall Bank and the Falkland Islands. It indicates to Canada at least that we must be careful in choosing any depth criteria as a sole basis for determining national jurisdiction. This is a truism, perhaps, but one that is very valid today when we are faced with this vexing and delicate problem of determining the area beyond national jurisdiction and hence the touchy question of boundaries of states.

Another very important proposal with respect to limits is that advanced by Ambassador Pardo of Malta at the March, 1971 meeting of the preparatory committee for the 1973 law of the sea conference, since elaborated by him in the form of a draft treaty. Dr. Pardo's proposal is that the multiplicity of limits of coastal state jurisdiction in ocean space should be consolidated into a general clearly-defined outer limit of national jurisdiction that recognizes and reasonably satisfies the totality of coastal state interests in the marine environment. In Dr. Pardo's view there is no alternative but to select the criterion of distance from the coast for this new outer limit of coastal jurisdiction. His suggestion is that in the light of existing claims it has become necessary to establish a distance of 200 miles from the nearest coast as that outer limit, with new provisions to be made with respect to the baselines to be used for measuring such a limit and with respect also to jurisdictional claims which may be founded

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on the possession of certain categories of islands. Within this single area of national jurisdiction, Dr. Pardo also proposes that certain internationally recognized legal limitations should be set on the freedom in the exercise of its discretion that a state now enjoys within the area subject to its control.

In what direction is the international community likely to proceed on this issue? No one can say. Some states support a narrow shelf concept based on the 200-metre isobath or an even narrower limit; some states suggest the retention of the present definition of the shelf limit, that is, in effect, the outer edge of the submerged continental margin; and some states suggest something in between these poles, perhaps in the form of a combined 200-mile/200-metre distance-depth formula.

In approaching this matter, which involves such complex problems and such widely varying interests, Canada considers that the principle of equity should be applied not only to the sharing in the benefits of the common heritage of the seabed beyond national jurisdiction but also to the spatial aspects of the issue in determining the contributions to be made to that common heritage. It was for this reason that Canada suggested at the 24th session of the General Assembly that consideration be given to an approach whereby every ocean basin and every seabed of the world should have similar percentages of its underwater acreage reserved for the benefit of mankind. If such an approach were adopted then the fundamental concept of the benefit of humanity would be applied to the development of the law for the

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definition of the area beyond national jurisdiction as well as for the regime to be applicable there. Such an approach would have the advantage of providing earlier and greater benefits for humanity as a whole than any other formula so far advanced. It would also ensure that the interests of all states would be equally involved. Why, in principle, should it make any difference whether a shelf is shallow or deep? Is there any valid reason why shallow basins should be exempted from such an approach, whether or not riparian states have divided up such areas, albeit in good faith, by a process of unilateralism, or bilateralism, or as parties to the Continental Shelf Convention?

In our further study of this proposal advanced by Canada at the 24th UNGA, we have found certain technical difficulties with respect to its strict and literal application. The fundamental principle of equity underlying the proposal nonetheless remains valid and is reflected in the variation of the proposal which the Canadian delegation put forward at the March, 1971 meeting of the preparatory committee for the law of the sea conference, to which I will return later.

Moving now to the question of the regime for the seabed beyond national jurisdiction, the most striking feature to be noted is the organic and complex inter-relationship between the definition of the limits of national jurisdiction and the nature of the regime to be developed for the area beyond. This is well illustrated in the US and Maltese proposals on limits which I have just described.

Under the Nixon proposal, the offshore areas beyond the new 200-metre limit of national jurisdiction would be governed by an

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international regime covering all aspects of the exploration and exploitation of seabed resources, such as the types of licences that could be issued; the issuance and relinquishment procedures for these licences; rentals, royalties and other fees; work requirements; appeal procedures for licencees; and so on. With respect to the international trusteeship area between the 200-metre isobath and the outer edge of the continental margin, the adjacent coastal state would in fact act as an agent of the proposed international seabed resource authority in implementing the international regime, and would receive a share (from one-third to one-half) of the revenues derived therefrom. The principal powers of the international seabed resource authority would be granted to a council composed of 24 states, including a permanent corps of the six most industrially advanced contracting parties, whose concurrence would be required in any decision of the council.

Under Dr. Pardo's proposal, the international seabed regime would be founded on a treaty comprising the following elements: general norms governing activities for ocean space as a whole whether within or outside national jurisdiction; a clear and precise definition of the outer limits of coastal state jurisdiction ignoring present distinctions concerning the territorial sea, continental shelf and so on; general norms governing activities in the area beyond these outer limits of coastal jurisdiction; specific norms governing conservation and exploitation of resources beyond coastal state jurisdiction, including norms for the equitable distribution of benefits and provisions concerning scientific research and the preservation of the marine

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environment. The treaty would also establish institutions not merely for the seabed but for ocean space as a whole beyond national jurisdiction, define their powers and create a mechanism for the interpretation of the treaty. Dr. Pardo's proposal also envisages contributions by the coastal state to the international community of a percentage of the revenue received from the exploitation of the living and non-living resources from a wide area of the zone within coastal state jurisdiction, based on a sliding scale of contributions related to distance from shore.

These various proposals remain, of course, proposals only. The actual development of the new legal order for the seabed beyond national jurisdiction has proceeded no further than the resolution on seabed principles adopted by the General Assembly last year. That resolution represents a major landfall in that it constitutes the first and only consensus of the international community in this field and lays the foundation and framework for the international seabed regime. In essence, the resolution affirms as follows:

(i) there is an area of the seabed and ocean floor which is beyond the limits of national jurisdiction and which constitutes the "common heritage of mankind";

(ii) this area is not subject to national appropriation or claims of sovereignty;

(iii) the exploration and exploitation of the resources of the area shall be governed by an international regime and international machinery to be established, and shall be carried out for the benefit of mankind as a whole, taking

into particular consideration the interests and needs of the developing countries;

(iv) the area shall be reserved for exclusively peaceful purposes;

(v) every state shall be responsible for ensuring that activities in the area conducted by its agencies or entities or persons under its jurisdiction shall be carried out in conformity with the international regime.

I should like to comment briefly on the provisions of this resolution which is a major achievement in bringing about a compromise agreement, albeit in a form which Canada considers to be less than satisfactory and on which we, like most members of the U.N. have certain reservations.

With regard to the existence of the area of the seabed beyond national jurisdiction, the draft declaration is obviously based on the fundamental premise that there is such an area. It clearly implies that this fact in itself also represents a legal principle. It would have been preferable to have such a fundamental principle incorporated in appropriate terms in the operative part of the declaration, but we are aware that for some countries, while this is a state of facts which must be recognized, it does not yet constitute a legal principle.

With regard to the legal status of the area and the resources of the area beyond the limits of national jurisdiction, there is general agreement on the principle that the area shall not be subject to appropriation by any means by states or persons and that no state shall exercise sovereignty or sovereign rights over any part of it.

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The acceptance of this far-reaching principle ranks in importance, in our view, with the agreement on the applicability of a similar principle to outer space and celestial bodies. It represents a bold new approach towards a developing world order and a turning away from traditional land-oriented concepts of jurisdiction and sovereignty. Most significantly it puts the general interest of the world community ahead of the special interests of any state or group of states. It is a concept holding great promise for the future.

Of equal importance is the principle that the resources of the area should be considered to be the common heritage of mankind. Certain difficulties arise, however, concerning the affirmation that the area itself is the common heritage of mankind. This tends to imply that all uses of and all activities on the seabed beyond the limits of national jurisdiction should be regulated by the international regime to be set up for the exploration and exploitation of the resources of that area. The primary purpose of the proposed international regime, after all, should be to promote the exploration and exploitation of the resources of the seabed beyond national jurisdiction for the benefit of mankind and particularly of the developing countries. This is hardly likely to occur if the regime does not have certain connected regulatory powers, but it would be preferable to confine the scope of the regime to those functions necessary to ensure an orderly, efficient and equitable system of exploration and exploitation of seabed resources. With regard to the possibility of a broader regime covering all uses of and activities on the seabed beyond national jurisdiction, caution is necessary not only because we are aware of

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the complex and far-reaching problems involved in attempting to regulate all other uses and activities, but also because of the danger that the establishment of a regime for resource exploration and exploitation may otherwise be indefinitely delayed.

Another significant principle in the U.N. declaration is the provision made with respect to the responsibility of states to ensure that activities in the seabed beyond national jurisdiction, whether undertaken by them or by entities or persons under their jurisdiction or acting on their behalf, shall be carried out in conformity with the international regime to be established. It would have been preferable, however, if the declaration had clearly spelled out the principle of state responsibility in all its implications.

These comments on some of the deficiencies of the declaration of seabed principles do not in any way indicate a lessening of Canada's commitment to participate in the elaboration of an international regime on the basis of these same principles. Indeed, Canada was the first Western state to indicate its support for the declaration at the last session of the General Assembly. So far as deficiencies are concerned, these can be further considered and in the actual negotiation of the regime itself.

I should like to turn now to the third fundamental issue concerning the seabed beyond national jurisdiction, namely the question of machinery. As has often been noted, there is an intimate connection and interpenetration between the principles applicable to the seabed beyond national jurisdiction and the kinds of international institutions or machinery required to ensure the effective implementation of the

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regime to be based on those principles. It is a measure of the progress achieved in the work of the seabed committee that there is now widespread and almost general acceptance of the need for some form of international machinery. There does not yet appear to be general agreement, however, as to whether the machinery should consist merely of a resource authority or an authority of broader scope including within its mandate all seabed activities. I have already indicated that the Canadian preference would be to confine the scope of the regime and hence the mandate of the machinery to those purposes and functions which would be essential to an efficient and equitable system of exploration and exploitation of resources, and to proceed somewhat cautiously with regard to other broad powers. Quite apart from other concerns, Canada would be anxious to ensure that the proposed machinery should not become so vast and cumbersome that its operating costs would eat up the profits of seabed resource exploitation, particularly in the early stages of its existence.

Another question on which there now appears to be relatively general agreement is that the proposed machinery, by virtue of the very nature of the task to be performed, should be a wholly new institution rather than one developed out of existing organs and agencies within the United Nations family. On the actual structure of the machinery, there seems to be a developing consensus that it should comprise a governing body, a plenary body of some sort, a secretariat, and some form of dispute-settlement tribunal. There is already disagreement, however, as to whether the "one state-one vote" principle

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should apply throughout or whether some other decision-making system should be devised. The Nixon proposal, for its part, suggests a weighted system of representation for the future international authority.

As to whether or not the proposed machinery might have the legal and administrative capacity actually to exploit the resources of the seabed beyond national jurisdiction, no consensus has yet developed on this point. Canada's own inclination would be to go very slowly concerning this possibility. While it might conceivably be useful to provide the proposed machinery with the power to engage in exploitation at some stage in the distant future, we tend to the view that exploitation should be left to states (or their nominees) as those most likely to have the necessary expertise. Here too, we would be concerned about making the proposed machinery too cumbersome and building up overhead costs which might never be warranted by returns. Whatever may be differences of views on this point, there seems to be general agreement that in any event the machinery must have the power to register and license activities by others. There seems to be general agreement also that mere registration would not suffice and that some form of licensing system must be established, although differences of views exist as to whether or not licences should be confined only to states.

Many other aspects of the proposed international machinery could be mentioned. I will conclude this portion of my remarks by touching on only a few more of these, primarily because they have not yet received sufficient attention in international discussions. There is, first, the question whether the machinery could envisage regional

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institutions. Provided their constitutions and working rules are compatible with the proposed regime, it may well be that regional institutions could provide an effective means for enabling developing countries to work together in their mutual interests, to offset the disadvantages of gaps in technology. The second issue arising out of a consideration of the structure of the proposed machinery, on which relatively little has been said thus far, is whether it may prove ultimately necessary to establish some form of inspection authority, perhaps even with policing powers, such as a "sea guard". No one seems anxious to press any such proposal, but it is within the realm of possibility and it may in time prove necessary to consider such a possibility.

The third relatively unexplored issue is a prosaic and practical one and relates to the system of licensing to be devised for the seabed beyond national jurisdiction. The Canadian delegation in the seabed committee has stressed that the single most important factor in promoting resource exploitation in the area beyond national jurisdiction will be the adoption of a resource management system designed to encourage and maintain investment - from whatever sources - on a continuing and orderly basis. Only in this way will it be possible to ensure fulfillment of the basic purpose of benefiting mankind as a whole and particularly the developing countries. Canada has been gratified that the Canadian offshore resource management system has been the subject of some discussion in the seabed committee as a possible model for the proposed regime and that a number of elements of that

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system have been incorporated in working papers submitted to the seabed committee by the delegations of the United States, Britain and France. While it is obvious that no single national system can be considered as wholly fulfilling the requirements necessary for an appropriate international regime, it is worth noting that the Canadian system of management of offshore resources is specifically designed to encourage exploration and exploitation and may therefore be of particular relevance.

Finally, a central aspect of the proposed licensing system is the need to control pollution. Pollution is a complex subject in itself and involves problems the solution to which will be basic to the future well-being of all mankind. Although it is clearly in the world's interest to facilitate the orderly development of what may be vast new areas of mineral resource potential beyond the limits of national jurisdiction, it is necessary at the same time to protect the vulnerable ocean environment from pollution by means of effective supervision and controls. We must be concerned with measures designed to protect the ecology of our seas and oceans. Conservation of the living resources of the sea and the water itself are vital objectives. Here, however, we face the risk that the debate between conservation interests on the one hand, and economic interests on the other, which has already assumed dramatic proportions in the domestic politics of many states, will spread to the international level and perhaps create serious stresses within the international seabed regime and machinery. The same possibility arises, of course, with respect to the restraints which may ultimately have to be placed on the exploitation of the resources of the international seabed area to guard against the dislocation

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of markets. For many years to come, however, the primary concern will be to ensure that actual exploration and exploitation of the seabed area will be a practicable possibility, and this aim is not incompatible either with conservation or the protection of traditional markets.

All of the various matters I have just rehearsed have far-reaching implications and are among the greatest challenges and most promising opportunities now before the international community. Curiously enough, however, the major road-blocks which have hampered the progress of the international community in reaching agreement on these matters have been procedural problems. To illustrate my point I need only remind you that at the meeting of the preparatory committee for the law of the sea conference in Geneva last March we were faced with the unhappy spectacle of a committee of the United Nations which for two weeks was unable even to agree to meet or to begin to discharge its mandate.

The basic issue at the root of all these procedural difficulties arises from the complex inter-relationship between the ultimate definition of the limits of the seabed beyond national jurisdiction and the nature of the regime to be developed for the area beyond. It is well known that many states are reluctant to commit themselves to any form of regime or international machinery until they have come to grips with the problem of limits. It is also well known that other states are equally reluctant to commit themselves on limits until they know more clearly the nature of the regime they are going to be facing, and how much real power and authority will be assigned to the international machinery. This is

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"après vous, Alphonse" with a vengeance, a procedural merry-go-round, or more aptly still, a law-of-the-sea-saw which may ultimately threaten law-of-the-sea-sickness.

This conundrum is, of course, not entirely procedural in nature, but nevertheless can only be resolved in a procedural manner. Canada for its part has put forward a simple suggestion which could offer a way out. That suggestion, which was made at the meeting of the preparatory committee in Geneva last March, is as follows: that every member state of the United Nations should, by a specified early date, define and make known its continental shelf claims. If a state did not have a clear idea as to where its interests lie, then it could specify the maximum limit beyond which it would never claim in any event. The effect of this definition of national claims would be that, as of a given date, the international community would be provided with a definition of the minimum non-contentious area of the seabed beyond national jurisdiction. This new and radical form of moratorium on national claims would not settle the problem of limits, nor would it prejudge the final resolution of this question. It would, however, ensure the reservation of a very large percentage of the seabed - surely at least 50 percent and perhaps much more - for the benefit of humanity as a whole. It would give immediate concrete reality to the concept of the seabed beyond national jurisdiction and bring this area into actual existence rather than leaving it as a matter of conjecture and abstract theorizing.

If the international community were to proceed with this immediate definition of the minimum non-contentious area of the seabed beyond national jurisdiction, it would be possible simultaneously to

set up a skeletal international machinery for the purpose of managing the non-contentious area and gradually extending such management to other areas, some of which are still in dispute. The skeletal machinery would have the necessary powers, for example, to cope with the kinds of problems raised by the announced plans of Deepsea Ventures Incorporated to proceed with a full-scale mining operation for the recovery of manganese nodules from the Pacific seabed off the Hawaiian Islands. Whereas no one is now in a position to authorize this undertaking, yet no one is in a position to forbid it nor to regulate it once it gets under way. What are the implications of initiating this undertaking in the absence of any international authorization and control? How are the investors going to be protected? What kind of title are they going to require? Are they supposed to set aside any portion of benefits for international purposes? We believe that the approach suggested by Canada presents possible and feasible answers to these questions.

There is a third element in the Canadian suggestion, which is really independent of the first two but which could provide operating funds for the skeletal machinery. That third element would have every coastal state grant, voluntarily, to an international development fund, a percentage - perhaps as little as one percent - of the revenues accruing to it from the exploitation of offshore resources beyond the limits of its internal waters, pending a final decision on the international regime. The territorial sea would also be subject to this form of international development tax which could provide funds to the international community at a rate which might be perhaps as little as

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2½ million dollars a month or perhaps as much as 15 million a month.

On the basis of this proposal, Canada believes that it would be possible to break the procedural deadlock now facing the international community and make a considerable leap forward in attacking the problems involved in the preparations for the third law of the sea conference in 1973. We realize that there are difficulties in the way of acceptance of such a proposal. We do not believe, however, that it will encourage wide national claims, because we doubt if any state is going to be motivated by any considerations other than the necessary balancing between its own national interests and the interests of the international community. And we think that the Canadian suggestion can bring this about since it goes some way towards meeting the essential requirement which should provide the basis for any seabed regime, namely the principle of equity to which I have earlier referred. The Canadian suggestion would meet this requirement because it would provide an opportunity for all coastal states, whether their continental shelves be wide or narrow, deep or shallow, to contribute to the benefit of humanity as a whole.

I have kept for the last what is perhaps the most difficult question related to the seabed item, namely the reservation of the seabed exclusively for peaceful purposes. From the outset the basic Canadian position on this question has been that the widest possible range of arms control measures should be extended to the widest possible area of the seabed and ocean floor, subject only to the provision that this objective should be understood in the light of the United Nations

Charter and other principles of international law. Canada was perhaps the first country to call for the widest possible area of the seabed to be reserved for peaceful purposes, irrespective of the area which will eventually be subjected to an international legal regime. We were thus highly gratified that the seabed arms control treaty negotiated within the Committee of the Conference on Disarmament and approved by the General Assembly last year should have provided for the extension of arms control measures to the continental shelf as well as the seabed beyond. We warmly welcomed this treaty as a crucial first step towards the exclusion of the seabed from the arms race and we look forward to the promise it holds forth of continued negotiations concerning further measures leading to this end. Such further measures will be essential if we are to avoid possible conflicts not only between individual states but also between states and the future international machinery arising from the military activities of states on the seabed and ocean floor. They will also be essential if non-nuclear coastal states like Canada are to secure the assurances they desire that the seabed will not present a new source of threats to their security and that even permissible defensive activities on the continental shelf are limited to the coastal state concerned. These issues are largely beyond the scope of the forthcoming law of the sea conference but there can be little doubt that they will have an important bearing on the discussions at that conference and on the results achieved.

A somewhat heady atmosphere has prevailed in international discussions of the seabed item since it was first introduced by

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Ambassador Pardo of Malta in 1967, at least among academic circles and in the seabed committee and the General Assembly, if not in the Conference of the Committee on Disarmament. It would be dangerous, however, to overlook the continuing realities of international life and politics in our enthusiasm to institute new and nobler forms of peaceful international cooperation under the sea and to seize this opportunity of reducing the gap between rich and poor. What is necessary is to strike a reasonable balance between utopian claims on the one hand and submarine colonialism and submarine militarism on the other. That balance will not be easy to find in view of the crucial and often conflicting interests involved. If we fail to find it, however, the results could be truly disastrous. We do not know whether it will be possible to build a new Atlantis on the seabed and ocean floor, but hopefully we can at least avoid the erection there of the City of Dreadful Night. That, surely, is an interest we all have in common.