The Continental Shelf Redefinition, with Special Referencc to the Arctic

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The present debate in the United Nations Sea-Bed Committee relating to a redefinition of the continental shelf takes on special importance when the various proposals are applied to the Arctic. Indeed, it is there that we find the largest continental shelves in the world. The purpose of this study is to review the meaning of the present definition of the continental shelf and to discuss the main proposals for a redefinition in the light of their application in the Arctic.

I. The Present Definition of the Continental Shelf

The question of the outer edge of the continental shelf is dealt with in the Convention on the Continental Shelf of 1958. It came into force on June 10, 1964 and 47 states are now Parties to the Conven-

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tion. Four of the five Arctic states have ratified the Convention: the U.S.S.R. (22 November 1960); the United States (12 April 1961), Denmark (12 June 1963); and Canada (8 February 1970). Norway did not sign the Convention in 1958 and has not yet acceded to it but, for the purpose of examining the extent of costal states' rights over the continental shelf, it can be assumed that such rights have become part of the basic legal concept of the continental shelf. It is generally agreed that this legal concept has passed into international customary law in the nineteen fifties.[1] In addition, Norway has adopted national legislation claiming jurisdiction over submarine areas "as far as the depth of the superjacent waters admits of exploitation of natural resources".[2] It is therefore obvious that Norway invokes the criterion of exploitability contained in article 1 of the Continental Shelf Convention. In these circumstances, article 1 of the Convention may be taken as representing the present law on the subject. It reads as follows:

> For the purposes of these articles, 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 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar areas adjacent to the coasts of islands.

With the developing technology permitting the exploitation of the seabed and subsoil at increasing depths, the interpretation of this provision has become the subject of considerable controversy. More specifically, the question arises as to whether the exploitability criterion may serve as an adequate way of defining the limit of the continental shelf beyond 200 meters. It is now agreed that, regard-

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[1] In his extensive study of the question of sovereignty over submarine areas back in 1950, Lauterpacht concluded that the continental shelf doctrine had already become part of customary international law. See: H. Lauterpacht, *Sovereignty over Submarine Areas* (1950), 27 B.Y.I.L. 376, at pp. 393-398. Lord Shawcross came to a similar conclusion when he said: "By 1953 the practice of so many states, generally acquiesced in by the rest, had I think resulted in the acceptance of the principle that a State has *ipso jure* and without proclamation sovereign rights over submarine areas in its continental shelf as part of custom in international law". See: Lord Shawcross, *The Law of the Continental Shelf with special reference to the North Sea,* The World Land Use Survey Discourses to the Twentieth International Geographic Congress (1964), 35, at p. 36.

[2] See Sec. I of *Act No. 12 of 21 June 1963 relating to the Exploration for and Exploitation of Submarine Natural Resources,* in *Survey of National Legislation,* prepared by the U.N. Secretariat, U.N. Doc. A/AC. 135/11 (4 June 1968), at p. 46.

less of the technical possibilities of exploitation of natural resources of the sea floor, there must be a limit beyond which the coastal state has no jurisdiction. The question remains "where should that limit be?" This question has been examined by many but is still unresolved.[3] This study does not pretend to find a solution to the controversy — only a new international agreement or an interpretative declaration by the Parties to the Convention could do this effectively — but it does attempt to throw some light on three basic aspects of the continental shelf as a legal concept: (a) the notion of natural extension; (b) the factor of adjacency; and (c) the criterion of exploitability.

a. *The Notion of 'Natural Extension'*

The idea that the continental shelf is the natural extension or appurtenance of the land territory or domain over which the coastal state has complete sovereignty was at the basis of the Truman Declaration of 1945 which, as stated by the International Court in the *North Sea Continental Shelf Cases*, "soon came to be regarded as the starting point of the positive law on the subject".[4] Indeed, the Proclamation of President Truman on September 28, 1945 specified in its Preamble as one of the reasons for claiming jurisdiction over the mineral resources of the continental shelf that "the continental shelf may be regarded as an *extension of the land-mass* of the coastal nation and thus naturally appurtenant to it".[5] The Proclamation further stated that "these resources frequently form a *seaward extension of a pool or deposit lying within the territory*".[6] It is important to note that these were stated in the form of reasons and justifications for the Proclamation. The idea of the seaward extension of the land-mass is therefore at the very basis of the coastal

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[3] See, for instance, the 1970 Report of the I.L.A. Committee on Deep-Sea Mining, reproduced as Appendix F to the *Report by the Special Committee on Outer Continental Shelf to the Committee on Interior and Insular Affairs*, U.S. Senate, (21 Dec. 1970), 100 at p. 112, where it is stated: "At this stage the Committee is unable to put forward an agreed recommendation on the problem of the outer limit of the continental shelf".

[4] (1969), I.C.J. Rep. 3, at pp. 33-34. It is interesting to note in passing that the same notion of natural prolongation was at the basis of the Russian Declaration of September 26, 1916, claiming sovereignty over a number of islands which it considered "une extension vers le nord de la plateforme continentale de la Sibérie;" See Appendix in V. L. Lakhtine, *Rights over the Arctic Regions*, (Moscow, 1928).

[5] Reproduced in 4 Whiteman, *Digest of International Law*, (1965), at p. 756, Emphasis added.

[6] *Id.*, emphasis added.

state's jurisdiction over the continental shelf, and it was so recognized by the International Law Commission.[7]

As for the 1958 Convention on the Continental Shelf, it did not expressly incorporate the notion of natural extension or appurtenance, but it certainly appears to underlie one of its provisions which stipulates that "the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation" (Art. 2(3)).

The fundamental importance of the concept of "natural extension" was also emphasized by the International Court in the *North Sea Continental Shelf Cases*.[8] In refuting Germany's argument that a coastal state was entitled to a just and equitable share of the available continental shelf, the Court made the following pronouncement:

> ... the doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in article 2 of the 1958 Geneva Convention, though quite independent of it, — namely that the rights of the coastal State in respect of the area of continental shelf that constitutes *a natural prolongation 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 exercice of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources.[9]

The court underlined again at a later stage in its judgment that "it is this *idea of extension* which is, in the Court's opinion, determinant".[10] The submarine areas constituting the continental shelf, said the Court, "may be deemed to be actually part of the territory over which the coastal state already has dominion, — in the sense that, although covered with water, they are a prolongation or continuation of that territory, *an extension of it under the sea.*"[11] *In short, the coastal state has jurisdiction over submarine areas which may be considered as the natural extension or prolongation of its land territory.* But the question remains: "what does this mean in practical terms?". Leaving aside the question of 'adjacency' for the moment, the crite-

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[7] For a discussion of the legal basis of the coastal state's jurisdiction, see: (1956), I.L.C. Yearbook (II) 298.

[8] This is clearly demonstrated by Professor Jennings in *The Limits of Continental Shelf Jurisdiction: some Possible Implications of the North Sea Case Judgment*, (1969), 18 Int'l & Comp. L.Q. 812, at p. 821-825; emphasis added.

[9] (1969) I.C.J. Rep. 3, at p. 22; emphasis added.

[10] *Ibdi.*, at p. 31; emphasis added. None of the dissenting judges expressed disapproval of this opinion.

[11] (1969) I.C.J. Rep. 3, at p. 31; emphasis added.

rion of 'natural extension', as pointed out by Professor Jennings,[12] brings in not only the geological continental shelf but the continental slope also, since they are made up of the same type of rock. The only difference between the two features is in the degree of slope or gradient. The continental rise, however, poses a problem. As seen earlier, it will often cover rock belonging partly to the slope and partly to the abyssal plain. In these circumstances, the only sure way to determine the limit of the natural extension is to stop at the inward edge of the continental rise rather than at its outward edge. Another reason which makes this preferable is the fact that the rise might sometimes be so wide that its outer edge could no longer be considered as being "adjacent to the coast".[13]

b. *The Factor of 'Adjacency'*

The element of adjacency or proximity is expressly mentioned in the Convention, and it has the specific function of qualifying and limiting the exploitability criterion. The importance of this function grows with the time, since technology makes it possible to exploit at ever increasing depths. Not only is this factor of "adjacency" expressly incorporated in the Convention but, taken as being synonymous to contiguity, it has always been considered as part of the justification for the coastal state's jurisdiction over the continental shelf. The operative part of the Truman Proclamation of 1945 specifies that the natural resources regarded as being subject to the jurisdiction and control of the United States are those "of the continental shelf beneath the high seas *but contiguous to the coasts* of the United States".[14] The Press Release issued on the same day specified that "(g)enerally, submerged land which is *contiguous to the continent* and which is covered by no more than 100 fathoms (600 feet) of water is considered as the continental shelf."[15] The importance of contiguity as a possible legal basis of jurisdiction over submarine areas was very carefully examined by Professor Lauterpacht in 1950.[16] He considered that, although contiguity may have served in the past as a basis for making exaggerated territorial claims, "(t)his does not mean that in a case such as that of submarine areas it does not represent the only solution consonant with convenience, economic necessities and requirements of international

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[12] *Op. cit.*, n. 8, at p. 829.

[13] *Op. cit.*, n. 8, at p. 830.

[14] Whiteman, *op. cit.*, n. 5, at p. 757; emphasis added.

[15] *Ibid.*, at p. 758; emphasis added.

[16] See: Lauterpacht, H. *Sovereignty over Submarine Areas*, (1950), 27 B.Y.I.L. 376, at p. 423 et *seq.*

peace".[17] The International Commission has also emphasized the importance of contiguity as a basis for jurisdiction over the continental shelf. In its report of 1956, the Commission states that it is not possible "to disregard the geographical phenomenon whatever the trem — propinquity, contiguity, geographical continuity, appurtenance or identity — used to define the relationship between the submarine areas in question and the adjacent non-submerged land".[18] And the Commission adds: "All of these considerations of general utility provide a sufficient basis for the principle of the sovereign rights of the costal State as now formulated by the Commission."[19]

As already seen, the Commission suggested, and the Geneva Conference adopted, the expression "adjacent to" to characterize the submarine areas whose natural resources are subject to the jurisdiction of the coastal state. In proposing the expression adjacent to the coastal state, Dr. Garcia-Amador explained to the International Law Commission that those words placed a definite limitation on the submarine areas envisaged. He stated that "(t)he adjacent areas ended at the point where the slope down to the ocean bed began, which was not more than 25 miles from the coast".[20]

As for the International Court, it did not consider the factor of 'adjacency' as being as fundamental in importance as that of natural extension to justify the exercice of jurisdiction by a coastal state, but it certainly did not reject it as an important consideration to impose a limit on the distance which a state may claim in the exercice of that jurisdiction. True, the Court was discussing the meaning of adjacency in the context of article 6 of the Convention relating to boundary lines between opposite or adjacent states and not in the context of article 1 relating to the outer limit of the continental shelf; however, it is submitted that the Court's interpretation of the expression "adjacent to" in the context of article 6 is substantially applicable to the same expression in the context of article 1. Indeed, the Court did not specifically refer to article 6 when discussing the meaning and importance of 'adjacency'. After stating that "the idea of absolute proximity is certainly not implied by the rather vague and general terminology employed in the literature on the subject,"[21] the Court went on to make a rather important

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[17] *Ibid.*, at p. 430.
[18] (1956) I.L.C. Yearbook (II), at p. 298.
[19] *Id.*
[20] (1956) I.L.C. Yearbook (I), at p. 134.
[21] (1969) I.C.J. Rep. 3, at p. 30.

pronouncement, albeit an *obiter dictum*, on the meaning of the expression "adjacent to" used in the Convention. It said in particular:

> To take what is perhaps the most frequently employed of these terms, namely "adjacent to", it is evident that by no stretch of the imagination can a point on the continental shelf situated say a hundred miles, or even much less, from a given coast, be regarded as "adjacent to" it, or to any coast at all, in the normal sense of adjacency, even if the point concerned is nearer to some one coast than to any other.[22]

Now the Court did not say that a continental shelf may never extend to 100 miles. Indeed, the whole sea bed of the North Sea consists of a continental shelf of less than 200 meters, except for the Norwegian trough along part of the Norwegian coast, and the median line between the United Kingdom and Norway is over 300 km in places.[23] The Court was careful to specify that it was then referring to "the normal sense of adjacency", which implies proximity or nearness. But it must have a wider meaning than that in the Convention; otherwise, the expression "adjacent to" would make no sense in article 1, which incorporates the exploitability criterion; nor would it make more sense in article 6, which envisages cases "where the same continental shelf is adjacent to the territories of two or more states" or "where the same continental shelf is adjacent to the territories of two adjacent States".

What the Court explained, in effect, was that the expression "adjacent to" in the convention did not necessarily mean 'proximate to'. For instance, said the Court, "a point inshore situated near the meeting place of the coasts of two States can properly be said to be adjacent to both coasts, even though it may be fractionally closer to the one than the other.... Indeed, local geographical configuration may sometimes cause it to have a closer physical connection with the coast to which it is not in fact closest".[24] As a consequence, the Court concluded that "(t)here seems ... to be no necessary, and certainly no complete, identity between the notions of adjacency and proximity."[25]

The fact remains, however, that the notion of adjacency was inserted and retained in the Convention for a purpose. It is interesting to note on this point that, when France acceded to the Convention in June 1965, it attached the following Declaration relating to article 1 which states: "In the view of the Government of the French Republic, the expression "adjacent" areas implies a notion of geophy-

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[22] *Id.*

[23] See large scale map of the North Sea in back cover pocket of I *North Sea Continental Shelf Cases — I.C.J. Pleadings* (1968).

[24] (1969) I.C.J. Rep. 3, at p. 30.

[25] *Ibid.*, at p. 30.

sical, geological and geographical dependence which *ipso facto* rules out an unlimited extension of the continental shelf."[26] It might also be significant that, of the 46 other states that have ratified or acceded to the Convention, only 3 have taken note or reserved their position with respect to the French Declaration: the United Kingdom, on January 14, 1966,[27] the United States on September 9, 1965,[28] and Canada on February 6, 1970.[29] However, without attaching undue importance to this fact, surely the purpose of inserting the qualifying adjacency factor must have been to impose some seaward limit to the jurisdiction of the coastal state. Otherwise, the sole limit would be the farthest point at which technology can permit exploitation, and the qualifying expression becomes meaningless.

c. *The Criterion of 'Exploitability'*

Article 1 of the Convention on the Continental Shelf limits the outer edge of the continental shelf "to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources".

This so-called exploitability criterion has given rise to difficulties of interpretation right from the beginning, when it was discussed in the International Law Commission. It was first adopted by the Commission in 1951, abandoned in 1953, and retained again in the 1956 draft on a majority vote.[30] The purpose here is not to retrace the whole history of article 1 of the Convention[31] nor to review the controversy which has been going on ever since over the proper interpretation of the exploitability criterion. The object rather is to

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[26] Multilateral Treaties in respect of which the Secretary General performs depository functions (List as at 31 December 1970). ST/LEG/SER/D/4, at p. 376.

[27] *Ibid.*, at p. 378.

[28] *Id.*

[29] *Ibid.*, at p. 377.

[30] For a brief history of this criterion, see Commentary in the Report to the General Assembly in (1953), I.L.C. Yearbook (II), at pp. 213-214 and (1956), I.L.C. Yearbook (II), at pp. 296-297.

[31] This was already done by Lt. B. H. Oxman (U.S.N.R.) of the Office of the Judge Advocate General; see: *The Preparation of Article I of the Convention on the Continental Shelf*, P.B. No. 182100 (1968). For a summary of the discussions on article 1 at the Geneva Conference, see Whiteman M. *Conference on the Law of the Sea: Convention on the Continental Shelf*, (1958), 52 A.J.I.L. 629, at pp. 633-634. See also: J. A. C. Gutteridge, *The 1958 Geneva Convention on the Continental Shelf*, 35 B.Y.I.L. 102, at pp. 106-110; and L. F. E. Goldie, *The Contents of Davy Jone's Locker — A Proposed Regime for the Seabed and Subsoil*, 22 Rutgers Law Rev. 1-66, at pp. 1-21.

present a simple proposition, namely that the fixed limit criterion of 200 meters was intended to be the normal limit and that the supplementary criterion of exploitability beyond that limit was meant to cover exceptional cases.

The Commentary to draft article 67 (which became article 1 of the Convention) explains why certain members of the Commission wished to re-introduce the exploitability criterion. The Commentary states: "While maintaining the limit of 200 meters in this article as the *normal limit* corresponding to present needs, they wished to recognize forthwith the right to exceed that limit if exploitation of the seabed or subsoil at a depth greater than 200 meters proved technically possible."[32] The eventual technical possibility to exploit at a greater depth than the normal limit of 200 meters therefore constitutes the first reason for the exception. The second reason advanced was to cover the case where there is no continental shelf in the normal sense but "where the depth of the sea would nevertheless permit of exploitation of the subsoil in the same way as if there were a continental shelf".[33] A reading of the summary records of the discussions which took place in the Commission bears out the accuracy of the Commentary just quoted from. In other words, *the exploitability criterion was intended to serve a supplementary role to the fixed limit criterion of 200 meters but was never meant to supplant it.*[34] Now, with the extensive interpretation which is being

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[32] (1956), I.L.C. Yearbook (II) at p. 296; emphasis added.

[33] *Ibid.*, at p. 297.

[34] A number of writers have expressed similar views and some of them are mentioned here. R. Young, maintains that "there is no evidence in the preparatory work for the Convention. either in the International Law Commission or at the Conference, of any thought that the shelf regime should apply to the great ocean depths". See: *The Limits of the Continental Shelf — And Beyond,* Proceedings of the Amer. Soc. of Int'l Law (1968), 229, at p. 330. Max Sorensen states: "The legal concept of the continental shelf cannot reasonably be understood, even in its widest connotation, as extending far beyond the geological concept". See his dissenting opinion in the *North Sea Continental Shelf Cases,* (1969), I.C.J. Rep. 3 at p. 249. J. Andrassy maintains: "The framers of the Convention intended that the exploitability test only supplement the 200 meter isobath test in exceptional circumstances; in normal times they considered the isobath test controlling." *International Law and the Resources of the Sea,* (1970), at p. 87. The Commission to Study the Organization of Peace, presided by Professor Louis Sohn, came to the conclusion that "whatever the reasons for its inclusion, the exploitability criterion was originally regarded as subordinate in importance to the 200 meter depth line." — The *United Nations and the Bed of the Sea.* (March 1969), at p. 23. As for the opinion of Soviet jurists, Professor Butler states that, in their view, there is no basis for interpreting article 1 of the Convention as permitting an

given by some, the exception (exploitability criterion) is gradually replacing the rule (fixed criterion). A good example of such extensive interpretation is that given by the U.S. Senate's Subcommittee on the Outer Continental Shelf, chaired by Senator Metcalf, which interprets the definition of the continental shelf as including "the entire continental margin".[35]

The Report of the Special Subcommittee states in particular:

> The exploitability clause read together with the adjacency clause clearly connotes an expanding boundary which at any given time extends to the limit of exploitability then existing within an ultimate limit of adjacency. Adjacency as applied to the legal Continental Shelf means the seaward limit of the natural prolongation of the submerged land continent. The submerged land continent encompasses the geomorphic shelf, slope and rise.[36]

When it is recalled that the average depth of the seaward edge of the rise is 4,000 meters, it becomes obvious that the fixed limit criterion of 200 meters of the continental shelf has been left behind 20 times over. Indeed, we are no longer talking about the continental shelf; we are construing article 1 of the Convention as if the draftsmen of the Convention had defined the submerged areas without reference to any specific feature. However, the fact is that the International Law Commission was quite familiar with the different features of submerged areas and indeed, when it decided to retain the exploitability criterion, considered the idea of eliminating altogether the expression continental shelf and retaining simply the expression submarine areas which already appeared in the definition. As clearly stated in the Commentary, "(t)he majority of the Commission decided to retain the term "continental shelf" because it is in current use and because the term "submarine areas" used without further explanation would not give a sufficient indication of the nature of

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extension of sovereign rights to explore and exploit the deep seabed. Wm. E. Butler, *The Soviet Union and the Law of the Sea,* (1971), at p. 145. He adds: "These jurists also find nothing in the proceedings of the International Law Commission to justify such an interpretation; throughout its discussions, the commission is said to have assumed that there existed a natural, geological limit to the shelf beyond which sovereign rights to explore and exploit the seabed are not granted". This is essentially the view of S. Nikolaev who concludes: "The criterion of the 200 meter depth clearly defines the average outer limit of geological shelf and therefore is of most vital importance". — S. Nikolaev, *Where is the Limit of National Jurisdiction,* (1971), *Soviet State and Law* 53, at p. 60; this article published in Russian was translated for the writer by Professor Ann Kleimola (Ph. D.) of the University of Nebraska.

[35] See: *Report by the Special Subcommittee on the Outer Continental Shelf to the Committee on Interior and Insular Affairs,* (Washington, 1971), at p. 29.

[36] *Ibid.,* at p. 16.

the areas in question."[37] In other words, the whole purpose of retaining the term "continental shelf" was to impose a definite limitation upon the submarine areas envisaged. This intention was impliedly confirmed by the 1958 Conference when it defeated an amendment introduced by Panama which would have excluded from the definition of the continental shelf any limitation in figures and would have retained the geological criterion only. The amendment proposed that the usual expression "continental shelf" be used to designate the continental margin of the sea-bed composed of the shelf and the slope, up to deep-sea oceanic basins.[38] It was defeated by a vote of 38 to 4, with 26 abstentions.[39] In these circumstances, one must agree with the conclusion of the Soviet jurist Nikolaev that "the participants in the Conference were not inclined to include the slope in the juridical concept of the continental shelf".[40]

However, in spite of the intention of the International Law Commission and the 1958 Conference to impose a limit in the light of foreseable technological developments, the fact is that technology is developing to the point where the exploration and exploitation are becoming possible much beyond the continental shelf as contemplated in the Convention. It was reported recently that the *Glomer Challenger* had "bored 4,264 feet into the bottom of the Arabian Sea beneath 11,610 feet of water".[41] In addition, exploitation of manganese nodules will soon be possible at depths ranging up to 5,000 metres. Mr. McKelvey of the United States stated in the Sea-bed Committee of the U.N. on 14 March 1972 that "24 companies from various countries intended to finance in the summer of 1972 a programme to test the continuous line bucket dredging system, which had been invented in Japan and was designed to recover Pacific sea-floor nodules from depths ranging to 5,000 metres".[42]

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[37] (1956), I.L.C. Yearbook, (II), at p. 297.

[38] *Conférence des Nations Unies sur le droit de la mer*, Vol. VI; 4e Com.; A/CONF. 13/42, (1958), at p. 147.

[39] *Ibid.*, at p. 57.

[40] S. Nikolaev, *op. cit.*, n. 34.

[41] See: Walter Sullivan, *4 Years of Sea Drilling Yields Vast Lore*, in N.Y. Times, (29 May 1972), at p. 1.

[42] See: A/AC.138/S.C.1/SR.37, (17 March 1972), at p. 13. The representative of Japan described the continuous line bucket technique in the following terms: It consisted of a continuous wire cable suspended from two winches at either end of a ship. The buckets, essentially scoops, were attached at intervals on the wire cable. They were lowered vertically from the ship to the sea-bed; then, turning horizontally, each bucket in turn took its scoop from the sea-bed. The buckets were then raised vertically and emptied into the ship. See: A/AC.138/SCI/SR38 (16 March 1972), at p. 8.

Considering these developments, the definition of 1958 has simply become obsolete.[43] Either it must be changed to fit the facts or restrict the facts to the definition. The first solution is, of course, the more reasonable course to follow and is being proceeded with.

II. Redefinition of the Continental Shelf

The redefinition of the continental shelf has been the subject of considerable study and debate during the past several years. This debate has been particularly active since August 1967, when Ambassador Pardo of Malta made his proposal at the United Nations to consider the sea floor and subsoil beyond the limit of national jurisdiction as a common heritage of mankind.[44] He suggested to reserve the deep sea area exclusively far peaceful purposes and to have it administered by an international agency for the benefit of all peoples.[45] The implementation of such a proposal presumes, of course, that agreement must be reached as to the limit of national jurisdiction. The outer limit of the continental shelf must be fixed, and it is on the determination of that outer limit that disagreement

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[43] It must be stated, of course, that some commentators do suggest to keep the definition as it is and exploit to the maximum the exploitability criterion. This is the opinion of the U.S. National Petroleum Council (which prepared a report for hte Department of the Interior), of L. W. Findlay (former manager, Government Relations Department, Standard Oil Company, New Jersey), and of O. L. Stone (General Counsel for Shell Oil, New-York). See: N.P.C. *Report* on Petroleum Resources under the Ocean Floor (1969); L. W. Findlay, *The Outer Limit of the Continental Shelf*, (1970), 64 A.J.I.L. 42, and O. L. Stone, *Some Aspects of Juridiction Over Natural Resources Under the Ocean Floor*, (1970), 3 Natural Resources Lawyer 155. It should be added that Professor Oda, of Japan, has also interpreted the exploitability criterion in such a way that "all the submarine areas of the world have been theoretically divided among the coastal states at the deepest trenches". He hastens to add, however, that he is in favour of a revision and that he "does not suggest that, as *lex ferenda*, the deep sea should be divided amongg the various coastal states". See: S. Oda, *Proposals for Revising the Convention on the Continental Shelf*, (1968), 7 Colum. J. Transnat'l L. 1, at p. 9.

[44] See: U.N. Doc. No. A/6695 (XXII), 18 August 1967.

[45] Ambassador Pardo has explained his proposal in a number of places outside the United Nations. See: *Sovereignty under the Sea*, (1968), The Round Table, 341; *Panel: whose is the Bed of the Sea*, (1968), Proc. of Amer. Soc. of Int'l Law at pp. 216-229; *An International Regime for the Deep Seabed: Developing Law or Developing Anarchy*, (1969), 5 *Texas Int'l Law Forum*, 204; and statement in front of the U.N. *ad hoc* Seabed Committee, U.N. Doc. A/AC 135 WG. 1/S.R.7, (27 June 1968), at pp. 48-53.

begins. Some advocate a narrow shelf, others suggest a wide one,[46] and various criteria are proposed to indicate the extent of the shelf. The criteria are based on exploitability, geology, depth, distance, or a combination of depth and distance.[47] Due to the difficulties of reaching agreement on a redefinition of the shelf, the efforts at the United Nations have focused on the legal regime and machinery which will apply to the international area of the sea-bed beyond the continental shelf properly so-called or the limits of national jurisdiction, leaving such limits to be determined later. Of course, it is difficult, if not impossible, to discuss adequately the legal regime of the international area without reference to the limits of national jurisdiction. Consequently, the debates and proposals have touched upon the delimitation of the continental shelf and, to the extent that they do, they will be reviewed briefly. The most comprehensive proposal presented thus far is that of the United States and special attention will be devoted to it. The present section will be divided as follows: (a) U.N. Sea-bed activities; (b) U.S. draft convention and (c) Urgency and perspectives of a re-definition.

a. *U.N. Sea-Bed Activities*

The Pardo proposal was well received by the General Assembly and, on December 18, 1967, the Assembly decided "to establish an

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[46] The same holds true for individuals and associations. Among those who suggest a *narrow shelf*, see the following: L. F. E. Goldie (200 m.) in *Deep-Sea Mining*, Report of Fifty-Third Conference of the I.L.A., (1968), at p. 206; L. Henkin (200 m. plus a buffer zone) in *Law for the Sea's Mineral Resources*, (1967), at p. 105; R. Young (300 m. or 100 miles) in *Panel: Whose Is the Bed of the Sea*, Proceedings of the Amer. Soc. of Int'l Law, (1968), at p. 233; Senator Pell (550 m. or 50 miles) in S. Res. 33, 115, *Congressional Record* (21 Jan. 1969), at p. 1330; J. Andrassy (200 m. or 30 miles plus a buffer zone) in his book *International Law and the Resources of the Sea*, (1970), at pp. 118-119; the Commission to Study the Organization of Peace, presided by Louis Sohn (200 m. or 50 miles) in *The United Nations and the Bed of the Sea*, (March 1969), at p. 24; and the World Peace Through Law Center (200 m.) in *Revised Draft Treaty Governing the Exploration and Exploitation of the Ocean Bed* (1971), Pamphlet Series No. 14, (Geneva 1971).

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Among those in favour of *wide shelf*, see the National Petroleum Council, L. W. Findlay and O. L. Stone who all suggest that the coastal State has jurisdiction already as far as and including part of the continental rise: *op. cit.*, n. 43.

[47] For an excellent discussion of the advantages and disadvantages of these criteria, see Lewis M. Alexander, *Alternative Regimes for the Continental Shelf*, a paper prepared for *Pacem in Maribus*, Preparatory Conference on the Legal Framework and Continental Shelf, University of Rhode Island, January 30 to February 1, 1970. See also: *Statement of Lewis M. Alexander*, in Hearings before the Special Subcommittee on Outer Continental Shelf, Part 2, (Washington 1970), at pp. 483-490.

Ad Hoc Committee to study the peaceful uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction".[48] At its Rio de Janiero meeting of August 30 1968, the Committee reached an agreement on certain basic principles, two of which are relevant here: 1. there is an area of the sea-bed, ocean floor and sub-soil beyond the limits of national jurisdiction, and 2. there should be a precise boundary for the area.[49]

In November of the same year, a Standing Committee of 42 members was established to elaborate principles governing the eventual exploitation of natural resources beyond the limits of national jurisdiction. The Committee's membership has now reached 91 and its mandate covers not only the question of the sea-bed but all of the law of the sea issues, so that it has in fact become, and is often referred to, as the Preparatory Committee for the Third Law of the Sea Conference. This Conference is scheduled to be held in 1973, at which time a decision on the basic question of limits should be reached. In the meantime, the General Assembly has adopted a Declaration of Principles in December 1970 [50] and the Sea-bed Committee has gone ahead with its work.

The Declaration of Principles, adopted by the General Assembly on December 17, 1970, by a vote of 108 in favour, none against, with 14 abstentions, represents the most tangible accomplishment of the United Nations on the whole question of revising the Law of the Sea, in the light of technological developments and a proper balance between the interests of the members of the international community taken collectively and those of its members taken individually, particularly the developing countries. The principles themselves relate only to the area beyond the limits of national jurisdiction and do not cover the delimitation of that area, but they presume that there is such an area. Indeed, the Preamble of the Declaration affirms that "there is an area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, the precise limits of which are yet to be determined".[51]

Using these fifteen principles as guidelines, the Sea-bed Committee, divided into three sub-committees since 1971, proceeded with

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[48] Resolution 2172 (XXII), 18 December, 1967.

[49] *Report of the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, U.N. Doc. A/7230 (1968).

[50] Resolution 2749 (XXV), U.N. Doc. A/C.1/544, reproduced in (1971), 9 Int'l Legal Materials 220 and (1971), Dept. State Bulletin 155.

[51] *Id.*

its 3-point mandate to prepare draft treaty articles on the following: 1. the legal regime and machinery governing the international area beyond the limits of national jurisdiction, 2. the subjects and issues to be discussed at the Third Law of the Sea Conference, the continental shelf being specifically mentioned, and 3. the preservation of the marine environment. As for the question of limits, an understanding was reached in 1971 that "the matter of recommendations concerning the precise definition of the area (beyond the limits of national jurisdiction) is to be regarded as a controversial issue on which the Committee would pronounce".[52] It was further agreed that:

> While each Sub-Committee will have the right to discuss and record its conclusions on the question of limits so far as it is relevant to the subjects allocated to it, the main Committee will not reach a decision on the final recommendation with regard to limits until the recommendations of Sub-Committee II on the precise definition of the area have been received....[53]

It should be pointed out, however, that Sub-Committee II took so long to agree on a list of issues that it had little time left for debate on substance and did not deal with the re-definition of the continental shelf. It was rather in Plenary or in Sub-Committee I, when dealing with the legal regime and machinery of the international area, that states either presented specific proposals or touched upon the question of limits in the course of debate. The main proposals and suggestions which have been made in UN debates concerning the delimitation of the sea-bed area of exclusive national jurisdiction may be classified as follows: continental margin, 200 miles, 200 miles or 2,500 meters, 200 miles or 550 meters, 200 miles or 200 meters, 200 meters, 200 meters or 40 miles, 200 meters plus a trusteeship zone over the continental slope and part of the rise. The latter proposal is that of the United States and is part of a comprehensive draft convention on the international sea-bed area. It is the most detailed proposal presented so far in the Committee and deserves to be examined separately. It becomes all the more important within a study of Arctic sea-bed delimitation that it is the only such proposal presented by an Arctic state.

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[52] *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction* G.A. Official Records: 26th session, Sup. No. 21 (A/8421), (1971), at p. 5.

[53] *Ibid.*, at p. 8.

b. *The U.S. Draft Convention*

The U.S. draft convention, proposing a continental shelf limited to 200 meters plus a trusteeship zone the slope and part of the rise, is based essentially upon a study made by the President's Commission on Marine Science (the Stratton Commission) completed in 1969. It disregards the recommendation made the previous year by the National Petroleum Council which had interpreted the 1958 Continental Shelf Convention as giving coastal states exclusive jurisdiction over the natural resources of the continental margin.

Stratton Commission: The President's Commission made an extensive study of the new legal-political framework which should govern the exploration and exploitation of mineral resources underlying the high seas and recommended the adoption of a 200-meter isobath or 50 mile limit, whichever is the greater. The recommandation to the President reads as follows:

> The continental shelf of each coastal State, for purposes of the Convention on the Continental Shelf, shall be redefined so that its seaward limit is fixed at the 200 meter (656 feet) isobath or 50 nautical miles from the baselines used for measuring the breadth of its territorial sea, whichever alternative gives the coastal State the greater area for permanent, exclusive mineral resources exploration and exploitation.[54]

A second recommendation made by the President's Commission is to create an intermediate zone beyond the continental shelf as newly defined as far as the 2,500 meter (8,200 feet) isobath or 100 nautical miles from the baselines of the territorial sea, whichever gives the greater area. Only the coastal state or its licensees would be authorized to explore and exploit the mineral resources within that zone.[55] Beyond that, the Commission recommends the establishment of an international regime the details of which are to be defined later. The Commission's recommendations were followed by a formal oceans policy statement by President Nixon.

Nixon proposal: On may 23, 1970, President Nixon made a formal announcement of the United States Oceans policy. "At issue," he said, "is whether the oceans will be used rationally and equitably and for the benefit of mankind or whether they will become an area of unrestrained exploitation and conflicting jurisdictional claims in

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[54] Commission on Marine Science, Engineering and Resources, Vol. 3, *Marine Resources and Legal-Political Arrangements for Their Development*, (1969), at VIII-5.

[55] *Id.*

which event the most advanced States will be losers."[56] The essential operative part of the declaration reads as follows:

> Therefore, 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 sea-bed beyond the point where the high seas reach a depth of 200 metres (218.8 yards), and would agree to regard these resources as the common heritage of mankind.[57]

The proposal then goes on to provide for an international regime, with a trusteeship zone outside the continental shelf as redefined. The President's announcement was transmitted to the Chairman of the U.N. Sea-bed Committee and it specified that the United States would introduce specific proposals at the next meeting of the Committee to implement the stated objectives.

At a hearing before the Special Subcommittee on outer continental shelf the following week, the Under Secretary of State explained why the United States had opted for a narrow shelf. He stated in particular: "For the United States to propose a concept of broad extension of national jurisdictions would have indirect, but serious, national security implications, and would impede the freedom of scientific research and other uses of the high seas."[58] He also underlined that a 200-meter limit is the only figure stated in the Convention and added that "(i)ts choice was also dictated by the difficulties involved in interpreting the adjacency and exploitability criteria of the Continental Shelf Convention."[59] The proposed Convention was then formally introduced in the Sea-bed Committee.

Draft U.S. Convention: On August 3, 1970, the United States delegation submitted a *Draft United Nations Convention on the International Seabed Area*[60] as a working paper for discussion purposes in the U.N. Seabed Committee. This draft convention incorporates the Nixon Proposal that the continental shelf would end at the 200-meter isobath with a maximum baseline of 60 nautical miles. The proposal provides also for an international trusteeship area compos-

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[56] *Statement by the U.S. President on Oceans Policy*, U.N. Doc. A/AC 138/22 (25 May 1970), reproduced in 9 *Int'l Legal Materials* 806, at p. 807.

[57] *Id.*

[58] *Clarifications of Presidential Proposal on Oceans*, reproduced from U.S. Dept. of State Press Release No. 162 (May 27, 1970), in (1970), 9 Int'l Legal Materials 821, at pp. 824-825.

[59] *Ibid.*, at p. 826.

[60] See: U.N. Doc. A/AC.138/25 (3 August 1970), reproduced in (1970), 9 Int'l Legal Materials at pp. 1046-1080 and in the *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, U.N. Doc. Sup. No. 21 (A/8021) (1970), at pp. 130-176.

ed of the continental slope and part of the rise. The part of the rise is defined for the moment as extending to "a line, beyond the continental slope . . . where the downward inclination of the surface of the seabed declines to a gradient of 1: ———".[61] It is stated in a footnote that "the precise gradient should be determined by technical experts, taking into account, among other factors, ease of determination, the need to avoid dual administration of single mineral deposits, and the avoidance of including excessively large areas in the International Trusteeship Area".[62] It is still not clear, therefore, what is the exact portion of the rise which will be included in the trusteeship zone.

Reaction to the U.S. Proposal: The U.S. proposal has met with opposition both in the United States and in the Sea-bed Committee.

In the United States, the Senate's Special Sub-committee on Outer Continental Shelf objected that "(t)he offer to renounce our sovereign rights beyond the 200-meter isobath could cast a cloud on our present title to the resources of our continental margin"[63] and stated that it would press for the incorporation of its caveats in subsequent revisions of the U.S. proposal.[64]

In the Sea-bed Committee, the reaction to the U.S. draft convention has been mixed. States, like Canada, that have a large continental margin are very reluctant to accept the 200-meter isobath as representing the fixed limit of the continental shelf. It is pointed out that, under the U.S. proposal, the United States itself would retain nearly all of its physical shelf and so would the U.S.S.R., since their shelf break is generally at depths shallower than 200 meters.[65] On the other hand, the other three Arctic states would lose considerably. Canada, in particular, would lose about 18% of its physical shelf,[66] mainly because the break of most of its Arctic shelf occurs at depth beyond 200 meters and reaching as far as 650 meters before the true slope begins. Norway and Denmark would also lose a considerable portion of their Arctic shelf to the trusteeship zone, since the shelf-break off Greenland and Spitzbergen occurs at greater depths than 200 meters.[67]

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[61] U.N. Doc. A/AC.138/25, (3 August 1970), at p. 7.

[62] *Id.*

[63] *Report by the Special Subcommittee on Outer Continental Shelf to the Committee on Interior and Insular Affairs* (21 Dec. 1970), at p. 29.

[64] *Ibid.*, at p. 33.

[65] J. A. Beesley, *Exploration and Exploitation of the Seabed,* World Peace Through Law Conference, (Belgrade, 21 July 1971), at p. 10.

[66] *Ibid.*, at p. 11.

[67] *Id.*

In order to help solve the problem of redefinition of the continental shelf and to expedite matters generally in sea-bed activities, Canada made a three-point proposal in March 1971. The three points may be summarized as follows: 1. that a *minimum non-contentious area* of the international sea-bed region be determined quickly by having all states define their continental shelf claims; 2. that a *transitional international machinery* be established to regulate exploration and exploitation in this minimum non-contentious international area and 3. that coastal states agree to make voluntary contributions to an *international development fund* of a fixed pecentage of their revenues from off-shore exploitation in the area within their national jurisdiction.

The proposal was repeated at the Belgrade Conference of World Peace Through Law in July 1971 by Canada's legal adviser, for the Department of External Affairs, Mr. Alan Beesley, who explained with respect to the interim redefinition of the shelf that:

> 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.[68]

Mr. Beesley added that this would ensure that a very large percentage would definitely be used for the benefit of mankind and it would permit the simultaneous establishment of an international machinery to manage the development of the non-contentious area.[69]

The developing countries also have considerable difficulty in accepting the Nixon proposal mainly because of the fact that the 200-meter limit of the continental shelf is coupled with a trusteeship zone within which the coastal state exercices a considerable degree of jurisdiction. On this point, Kuwait's position is probably fairly representative and its statement of March 14, 1972 reads as follows:

> The developing countries also had grave misgivings about the creation of a trusteeship zone in which coastal States would be entitled to exercice additional rights and privileges. The area lying beyond the limits of national jurisdiction should be as large as possible and should not be diminished by a trusteeship zone which would give preference to one group of States at the expense of the international community. Furthermore, the creation of such a zone would be contrary to the concept of the common heritage of mankind.[70]

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[68] *Ibid.*, at p. 25.
[69] *Ibid.*, at pp. 25-26.
[70] A/AC.138/SC.I/SR. 38 (16 March 1972), at pp. 4 and 5.

c. *Urgency and Perspectives of a Redefinition*

Urgency: Progress toward a redefinition of the continental shelf has been slow thus far. Indeed, the solution to this most fundamental question seems to have been postponed until the Third Law of the Sea Conference. This does not mean, however, that there is no urgency for such a redefinition. On the contrary, there exist definite indications that the matter is a condition precedent for the normal and peaceful development of sea-bed activities. One such indication is the Moratorium Resolution adopted by the General Assembly on December 15, 1969. The resolution in question imposes a moratorium on all exploitation of the deep sea-bed until the question of a regime for its exploitation is settled. It declares:

> that, pending the establishment of the aforementioned international regime:
>
> (a) States, persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;
>
> (b) No claim to any part of that area or its resources shall be recognized.[71]

Commanding a majority in the General Assembly, the developing countries were able to force through this resolution by a vote of 62 to 28, with 28 abstentions and 9 being absent. Only three developed countries (Finland, Sweden, Yugoslavia) supported the resolution. Although any such resolution by the General Assembly can only have the force of recommendation, it cannot be disregarded and, indeed, caused some concern to the Chairman of the U.S. Senate Subcommittee on the Outer Continental Shelf. One of the questions on which he asked the opinion of the Legal Adviser of the State Department was "what position does the State Department anticipate toward U.S. nationals who express an intention to exploit minerals from the deep seabed, such as manganese nodules?".[72] The opinion given was that if that event materialized "prior to the establishment of an internationally agreed regime, we would seek to assure that their activities are conducted in accordance with relevant principles of international law, including the freedom of the seas and that the integrity of their investment receives due protection in any subsequent international agreement".[73]

Regardless of the fact that General Assembly resolutions on this subject are not legally binding decisions for the member states, the

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[71] Resolution D, A/RES/2574 (XXIV), (15 January 1970).

[72] See: Letter from Lee Metcalf to John R. Stevenson, dated 23 December 1969, and reproduced in (1970), 9 Int'l Leg. Materials, at p. 831.

[73] *Ibid.*, at p. 832.

United States recognized that it "is required to give good faith consideration to the Resolution in determining its policites".[74] Indeed, it must have felt that there was considerable urgency in having agreement reached on the delimitation of the continental shelf and the legal regime beyond, since the Nixon Proposal was made less than six months after the adoption of the Moratorium Resolution. It should also be noted that the President's proposal also calls on other nations to join the United States in an interim policy under which all permits for exploration and exploitation beyond 200 metres would be issued "subject to the international regime to be agreed upon".[75] The proposal further provides that "a substantial portion of the revenues derived by a State from exploitation beyond 200 metres during this interim period should be turned over to an appropriate international development agency for assistance to developing countries".[76] It is obvious that the main purpose of the interim period proposal is to ensure that exploration and exploitation of the deep sea-bed continues, and to give entrepreneurs the necessary protection for their investments during that period.

Another indication of the urgency of reaching agreement on the limits of national jurisdiction is found in the speeches of some of the developing countries at the 1972 March session of the Sea-bed Committee in New York, alleging that a certain number of western countries, either directly or through their national corporations, had already begun the exploitation of the international sea-bed area.[77] Kuwait in particular made the following statement:

> A major problem yet to be solved was that of defining the limits of the area beyond national jurisdiction. The time had come to tackle that problem with courage, realism and in a manner that would do justice to the concept of common heritage.
>
> .....
>
> Many, if not all, of the developing countries were seriously concerned about the course events were taking. They would appreciate receiving formal assurances from all States connected with such activities that no commercial exploitation of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction would be undertaken before the establishment of the international regime.[78]

Not having received the assurances requested, Kuwait introduced a draft decision at the end of the March session, at a plenary meeting

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[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] See in particular Chile's statement of March 9, 1972, in A/AC.138/SC.I/SR. 35, (13 March 1972), at pp. 13 and 14, as well as Kuwait's intervention of March 16, 1972, in A/AC.138/SC.I/S.R.38, (16 March 1972), at pp. 4 and 5.

[78] A/AC.138/SC.I/S.R.38, (16 March 1972), at p. 5.

of the Sea-bed Committee, the operative part of which reads as follows:

> Decides also that all arrangements made or to be made for the commercial exploitation of the resources of the area prior to the establishment of the regime shall have no legal validity and shall not form the legal basis for any claims with respect to any part of the area or its resources.[79]

Since no notice of the draft resolution had been given, the Chairman ruled that there could be no discussion of the document but he did say that it could be discussed at the next session of the Committee to be held in Geneva in July-August 1972. This ruling, however, did not prevent the delegations of Algeria, Cameroons, Chile, China, India, Libyan Arab Republic, Mauritania, Nigeria, Pakistan, Peru and Yemen to express their solidarity with the delegation of Kuwait. In addition and on the very next day, a Note was sent by the Secretary-General to the members of the Sea-bed Committee asking them to provide relevant information pertaining to deep-sea mining activities carried on by their nationals before April 30, 1972. The purpose of this request by the Secretary-General is undoubtedly to enable the Secretariat to complete the Progress Report which the Chairman of Sub-Committee I had mentioned previously when he asked states to provide the fullest information on their deep-sea activities.

Regardless of the view which one takes as to the binding nature of the 1969 Moratorium Resolution adopted by the General Assembly and irrespective of the outcome of the Kuwait resolution at the 1972 July-August session of the Sea-bed Committee, the urgency of reaching agreement on the basic issue of limits is clearly evident. The question which remains is: what are the perspective for reaching such an agreement.

Perspectives: The prospects of reaching an early agreement on a redefinition of the continental shelf do not appear good at the moment. The reason simply is that there are very real difficulties in trying to define limits of exclusive national jurisdiction in such a way as to protect adequately the interests of states with a wide shelf and those of states with a narrow one. *The 200 meter isobath* is out of the question as an adequate solution: it is neither representative of the average nor of the maximum depth of the shelf break. The world average shelf depth is estimated to be about 132 meters and the shelf break occurs at depths up to 650 meters in the Arctic. Except for the United States, such a criterion would be unsuitable to all of the Arctic states since a considerable proportion of their shelf breaks at depths greater than 200 meters. This is the case for

[79] See: A/AC.138/L.II.

about 35% of Canada's Arctic shelf and about 25% for that of the U.S.S.R. The corresponding portion of the shelf off Spitzbergen and Greenland is of similar magnitude. The *continental margin* would likewise seem unacceptable: it includes features (slope and rise) which are beyond the real shelf and, in addition, would give very little to states with a narrow shelf, the entire margins of such shelves being also usually narrow. As for the Arctic states, all of their continental margins are wide and such a criterion would be most favourable to them but it remains unsatisfactory for the great majority of the other states.

The *200-mile* proposal, espoused by Pardo of Malta and incorporated in a draft ocean space treaty, appears so far to have gained the greatest number of adherents in the U.N. Sea-bed Committee. This would give a uniform breath of exclusive national jurisdiction to all coastal states, except those that are shelf-locked, and would generally benefit Latin American and African countries, as well as a few Asian ones. Consequently, if one can speak of a trend emerging from the debates in the Sea-bed Committee, it would seem to be toward accepting the 200-mile proposal. The concepts of economic zone and patrimonial sea advanced by certain African and Latin American countries are quite similar to Pardo's proposal, and those countries would probably be willing to accept it. The 200-mile proposal has the advantage of not only providing a limit which is easily determined but it goes a long way to accommodate the generality of states. In his speech of March 23, 1971, in the Sea-bed Committee, Ambassador Pardo reviewed the various criteria in the light of their general acceptability and the practical difficulties of application. He came to the conclusion that a fixed distance of 200 miles was the most feasible criterion to use. He summarized his conclusion in the following terms:

> Taking into account the general interest of the international community to keep the widest possible area of ocean space open to the non-discriminatory access of all, and taking into account the fact that some coastal States have already proclaimed that their jurisdiction extends to 200 miles from their coasts, my delegation has come to the reluctant conclusion that, to avoid prolonged debate and haggling, it has become necessary to establish a distance of 200 miles from the nearest coast as the outer limit of coastal State jurisdiction in ocean space. ... Three or four States may have legitimate claims to an ocean space juridiction exceeding 200 miles from their coasts which are founded on the depth criterion of the 1958 Geneva Convention on the Continental Shelf. I believe that, if moderation is shown, the interests of these States can be fully satisfied.[80]

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[80] See: *Statement delivered by Dr. Arvid Pardo, Permanent representative of Malta to the United Nations in the Main Committee* (typewritten copy circulated at the time of delivery), (23 March 1971), at p. 65.

The few states in question include Canada, the USSR and the United States (Alaska); they would lose part of their shelf or margin. Canada, for instance, would lose the eastern portion of the Grand Bank and the Flemish Cap, all of which it presently claims as a natural extension of its land-mass. Theoretically, it is always possible that some proviso be attached to the 200-mile criterion so as to include the wider shelves claimed by those few states. Practically, it is doubtful that the other states would agree to such a solution, considering that those few states would already benefit to the maximum from the 200-mile strip. Consequently, it would seem that the straight 200-mile criterion offers the best chance of agreement.

Applying the 200-mile criterion to the Arctic sea-bed area, the result should be quite acceptable to the Arctic states. Indeed, this criterion compares very favourably with the continental margin. Three states (Norway, Denmark and Canada) would keep all of their continental margin. The U.S.S.R. would lose only a small portion of her margin off the Chukchi and East Siberian Seas, but it would gain a considerable area beyond the continental margin off Severnaya Zemlya and Franz Josef Land. The United States would lose substantial portions of two plateaus (Chuckchi and Northwind) located at the western boundary of its margin west of Point Barrow, Alaska, but would gain a considerable area lying east of Point Barrow. This area offers the important advantages of being much more accessible from the coast and of presenting a very uniform surface.

As for the international or central polar area beyond the 200-mile limit of national jurisdiction, it would come, in principle, under the legal regime and machinery governing the international area for all other oceans. However, since the Artic Ocean is virtually enclosed by the land-mass of the five Arctic states, the exploitation of the international area could not very well be done without their close cooperation and participation. Furthermore, those states include the two big Powers possessing the most advanced technology for the exploration and exploitation of the sea-bed. In these circumstances, an agreement could be made with the International Seabed Authority whereby the Arctic states would exploit the central North polar area. The terms of this agreement, of a semi-trusteeship nature, would have to insure an equitable sharing of the benefits by the international community, considering in particular the needs of the developing countries. This concept of weighted equitable sharing is the basic principle underlying the exploitation of all international seabed areas.