PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY A MATHEMATICAL, PHYSICAL & ENGINEERING SCIENCES

The Law of the Sea and the Deep Seabed

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The law of the sea and the deep seabed

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It is the object of the third United Nations Conference on the Law of the Sea to obtain broad international agreement on the limits to the territorial sea, on that area beyond these limits within which the coastal state may exercise rights over living and non-living resources and on the nature and manner of exercise of those rights. The Conference is also required to establish an international régime to deal with the exploration and exploitation of the deep seabed beyond the limits of coastal states' rights. The work done by the Conference in five sessions since 1973 will have its effect on international law and practice but, partly owing to differences between the viewpoints of less industrialized and the more industrialized states (not confined to marine matters), the global solution essential for the orderly regulation of movement of shipping, scientific research and development of fisheries and sea-bed mineral resources may yet elude the Conference, to the detriment of the participating states and of the international community as a whole.

The Conventions of 1958

If until recently there was a broadly recognized body of international maritime law, it was enshrined in the four Conventions of 1958 – the Conventions on the Territorial Sea and Contiguous Zone, on the Continental Shelf, on the High Seas, and on Fishing and Conservation of the Living Resources of the High Seas. The product of the Conference of 1958, these conventions were in the main a codification of what could be said to be generally accepted internationally. But to a great extent this was a codification of what was acceptable to the traditional maritime powers. I do not need to delve into history to demonstrate that the concept of the freedom of the high seas, and the limitation of territorial waters to three nautical miles breadth was of primary interest to the powers with navies dominant on blue water. It is perhaps significant that the first breach in established concepts was made by the U.S. in the Truman Proclamation subjecting the resources of the continental shelf to its control, and announcing the intention to establish conservation zones for fishing. The significance to me is in the date: 28 September 1945, the time of the greatest relative power of the U.S. in military and naval terms. That these new ideas found their place in the 1958 Conventions is an important illustration of the part State practice plays in the development of International Law. But the many countries becoming independent since 1958 see them as freezing for all time a system evolved for the benefit of the established powers. That system has been challenged as discriminatory against the developing countries.

The Territorial Sea Convention had its value. It established the methods by which baselines were to be drawn, and incorporated a definition of islands. It provided for the right of innocent passage through territorial seas and stated the conditions to be observed. Provision was also made for a 12 nautical mile wide Contiguous Zone for certain customs and other similar functions.

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But the Conference had failed to reach agreement on the breadth of the territorial sea, as did the 2nd Conference in 1960.

The Continental Shelf Convention gave formal recognition to the principle of the Truman Proclamation by granting sovereign rights to the coastal state for the purpose of exploration and exploitation of its resources, but its definition of the shelf was imprecise. The term was used as referring 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 m, or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas. I do not have to point out in this company that the test of exploitability has rather different dimensions in 1977 from those envisaged in 1958.

The High Seas Convention codified the classic tradition: the high seas meant all parts of the sea beyond territorial waters and 'being open to all nations no state may validly purport to subject any part of them to its sovereignty'. The freedoms of navigation, fishing, overflight and cable-laying were confirmed, and warships on the high seas were stated to have complete immunity from the jurisdiction of any state other than the flag state. An obligation was laid on states to prevent pollution of the sea by discharge of oil from ships and from exploitation, and from the dumping of radioactive waste. The Fishing Convention has no direct relevance to the questions concerning this meeting. I make only two points: the Conference failed to get agreement on limits – the second attempt in 1960 failed by one vote – but did recognize a general obligation to cooperate in the conservation of the living resources of the High Seas. It also recognized the special interest of a coastal state in the maintenance of fishstocks in areas adjacent to its territorial waters, and a conditional right to adopt conservation measures unilaterally.

If the four Conventions of 1958 gave a formal status to traditional concepts they also gave some fairly clear pointers to the future. The Contiguous Zone concept, if its inclusion did something to blur the differences between the three-mile-limit nations and those claiming wider jurisdiction, was nevertheless for most states an extension of jurisdiction. The Continental Shelf Convention extended jurisdiction over the seabed without effective limitation. The High Seas Convention itself, although stated in its preamble to be 'generally declaratory of established principles of international law', recognized a general obligation in its anti-pollution provisions. And the Fisheries Convention, with its licence to a coastal state to take unilateral steps for conservation in the High Seas adjacent to its territorial sea, is a striking invitation to coastal state encroachment on traditional freedoms.

The pressure for review

However, the inadequacies of the 1958 Conventions swiftly became evident. In 1958 most states were content to claim a territorial sea of 6 nautical miles breadth or less. There were only 13 claimants to 12 miles. By the time the present Conference opened more than sixty states – by some counts eighty – or the majority of the greatly expanded U.N. membership, were claiming 12 miles or more. Fisheries claims to 200 nautical miles were more numerous and I have only to mention the problems that Britain has had with Iceland to remind you of how real these problems are.

The evolution of doctrine is well illustrated by the contrast between the case involving Britain and Norway in the International Court in 1951 and the Iceland case in 1974. In the

first it was common ground that fishing rights were coterminous with the territorial seas. In the second the Court spoke of state practice revealing an 'increasing and widespread acceptance of the concept of preferential rights for coastal states'.

The steady encroachment of state practice on traditional doctrine of freedom of the seas, and the recognition which the Court appeared to give to this encroachment, may perhaps afford a clue to the long-drawn-out proceedings of the Conference of the Law of the Sea. If an increasing number of states had become impatient of such restrictions on unilateral extension of jurisdiction as the 1958 Conventions imposed, they could see no advantage in any rapid attempt to resolve only the questions left open by the earlier conference. When, following the famous speech by Ambassador Pardo in 1967, the establishment of a legal régime for the deep seabed began to be considered, pressure also developed for a complete review of international maritime law. The opponents of an attempt at a comprehensive treaty based their arguments in the main on the length of time the elaboration of such a treaty would take and the need for early action to settle the status of the deep seabed, which the Assembly in 1970 declared to be the common heritage of mankind.

Preliminaries to a new conference

The resultant argument, played out in the Seabed Committee of the U.N., ended in an acceptance of the viewpoint of those who sought a comprehensive treaty. In my judgement, such a result to the argument was both inevitable and sensible, given the increasing uncertainties which divergent practices were fomenting.

In consequence the agenda of the Conference embraces all the questions of jurisdiction and resource development of the oceans. The story of its development through the meetings of the Seabed Committee is itself a long and intricate one, which time prevents me telling here, but in the course of it almost every political problem commonly complicating international affairs surfaced to plague us at one time or another.

Finally the Assembly called the Conference into being. Its first session was held in December 1973, at which the Committee structure was established and its officers elected. The problem of rules of procedure remained. The maritime states had in the main sought for a conference limited to the essential issues: to establish the area of 'the common heritage of mankind' and the régime for its exploitation. It was the developing countries who pressed for a comprehensive treaty. It had already become evident that many coastal states would seek extensions of jurisdiction which could gravely impair issues of major importance to the maritime countries. The concept of an Exclusive Economic Zone (E.E.Z.) of 200 miles breadth came in. Claims were being made which would hamper passage through straits, and threatened a plethora of uncoordinated regulations about pollution to the detriment of normal shipping movement. Scientific research was also at risk.

Because the maritime states with the most interests at stake – the U.S., the Soviet Union and her allies, the countries of the European Community and Japan – could muster relatively few votes by comparison with the countries of Africa, Latin America and mainland Asia, the Seabed Committee had from the start agreed that it would operate by consensus, and it continued to do so.

Clearly, however, an international Conference could not be committed to this principle. There had to be some provision for voting in the last resort. A formula was finally negotiated

PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY A MATHEMATICAL, PHYSICAL & ENGINEERING SCIENCES

which should ensure that the majority cannot arbitrarily use its voting strength to impose unacceptable provisions on the powers with major maritime interests.

The second session of the Conference in Caracas ran for 10 weeks, the third, in Geneva in the spring of 1975, for 8 weeks. The fourth and fifth sessions were held in New York in the spring and summer of 1976, and the sixth session is at present (summer 1977) under way in that city.

Procedural problems

The 1958 Conference had one great advantage over the present. It had before it from the outset draft texts prepared after years of work by the International Law Commission embodying the highest common factor of agreement as to the law then generally accepted. But inevitably the new Conference had to break new ground. No predigested single text was possible. So, with an exhortation by the Assembly to proceed by consensus the Conference set to work in Caracas on all extant proposals put to the Seabed Committee. This offered up to 16 variants of some basic matters, and the Conference churned slowly through this mass of paper without being able to establish anything in the nature of agreed positions. Trends, however, were beginning to emerge.

One other feature of the Conference must be mentioned. There were of course the usual geographical groupings of Africa, Asia, Latin America and Europe, and as has become customary at U.N. Conferences efforts were made by the geographical groups to establish defined positions on which they would remain firm. There were, however, conflicts of interests which made group decision on policy issues difficult, notably the difference between the landlocked states, who formed their own group, and the coastal states.

There had also developed, from early discussions between certain of the coastal states under the leadership of Norway, Canada and Australia, a grouping of states with divergent interests who sought to find a basis for agreed progress. Mr Evensen of Norway served as their chairman. Though the numbers of this group were at first limited, they reflected the principal interests of the Conference. The group's value lay in the informality of its proceedings. There were no records, and no formal secretariat participation. It was a carefully observed convention that every participant spoke in his personal capacity, thus preserving his right if need be to repudiate himself in public session. Already before Caracas very useful progress began to be made in this group in the beginnings of reconciliation of different positions. However, the very informality of the proceedings and the limitation of participants led to some suspicion and some jealousies. Gradually, as time went on and meetings of the group continued between sessions of the Conference proper, the number of participants expanded, and it was eventually agreed that although the meetings should be 'closed' so far as public attendance and records were concerned, any delegation had the right to sit in, and speak if desired – in a 'personal' capacity. The work of this group took on further importance as Mr Evensen on his own responsibility prepared and circulated suggested texts of issues central to the Conference on which he thought progress towards a compromise might be founded. After further discussion in the group Mr Evensen rewrote the texts on a number of instances, often more than once. His personal contribution has been invaluable.

When the third session of the Conference opened in Geneva in March 1975 there was some hope that enough had been done to permit real negotiation, either in the formal committee sessions or at least in informal meetings. But it was not to be, and the lack of progress

compelled a reassessment of procedure. It was clear that the absence of anything like a basic text on which to negotiate was one of the troubles. Without such a focus it was too easy for those who had no taste for early agreement to obstruct progress.

After 4 weeks the proposal was therefore made and accepted by the Conference that the chairman of its three main Committees should each prepare a single negotiating text, which should take account of all discussions to date, would be informal in character, and be without prejudice to the position of any delegation. Three texts were duly prepared and circulated on the last day of the Conference. This was by design, since it was obvious that if the device was to serve a useful purpose Governments must have time to consider and to consult on these texts before Delegations took positions on them. As a result of further sessions the texts are now before the Conference in revised form.

Progress to date: the régime for the deep seabed

How do matters stand now? This is the best seen by reference to each Committee in turn.

The first Committee of the Conference is concerned with the régime for the seabed beyond the limits of national jurisdiction. These limits will be established by the work of the second Committee, but the limits to national jurisdiction will at the least be at the 200-mile mark and may extend to the edge of the continental margin where that lies beyond the 200-mile mark. We are therefore talking of the deep seabed beyond the continental rise – and if I attempt no clearer definition of the margin at this or indeed at a later stage there are many who will understand and sympathize.

The Conference has to devise a method by which the resources of this area can be developed, consistent with the Assembly declaration of the common heritage of mankind. Let us assume that the resources in question are the manganese nodules lying at or near the surface of the deep seabed at depths for the most part of 12 000 ft or more. There are of course questions still at issue regarding petroleum resources, at least until 'the limits of national jurisdiction' have been agreed, but let us leave that aside for the moment.

It is only in the last decade or so that exploitation at these great depths has appeared possible. For the industrial countries new sources of nickel and copper are needed. The developing countries are eager for new sources of wealth to promote development world wide. There is also concern on the part of present producers that new sources may damage markets.

It is common ground between these parties of differing interests that an International Authority shall be established to exercise surveillance over resource exploitation. The differences of course are over the powers to be exercised by that Authority and the manner in which decisions over the exercise of that power should be reached.

The Group of 77 wished to establish that the right of exploitation lay with the International Authority, and that it should be solely for the Authority to decide whether there should be any contracting out. The industrial countries were concerned to ensure access to and production of deep seabed minerals by states and their nationals under reasonable conditions with security of tenure.

Various means of bridging this difference of approach have been explored over the past 5 years. It has been a period during which the basis of resource exploitation all over the world has been undergoing radical change, and much closer control by national governments has become the rule. In this climate the concept of concession granting by the International

PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY A MATHEMATICAL, PHYSICAL & ENGINEERING SCIENCES

Authority on anything like the terms to which the international companies had been accustomed in the past was swiftly seen to be unnegotiable. But the degree of authority claimed by the 77 was inconsistent with the sort of assured tenure required to justify the enormous cost of prospecting and mining.

Nevertheless, some progress has been made. If agreement is reached on a text it will, I think, broadly follow the shape of the Revised Single Negotiating Text (S.N.T.) – although further changes of substance would be necessary to achieve a compromise. This part of the text runs to 77 pages, with 63 articles and 3 long annexes, and I can give no more than the most impressionistic of descriptions of it. It is, however, a conference paper in the public demesne, and obtainable from the usual sources.

The first 19 articles are concerned with the definition of the area and its limits. Of course the extent of national sovereignty over the seaward projection of the continental land mass is still in dispute, but is for settlement elsewhere in the Convention. The text provides that the area and its resources are the common heritage of mankind, that no state may claim or exercise sovereignty over any part of the area or its resources and that activities shall be carried out for the benefit of mankind as a whole, taking into particular consideration the interests and needs of the developing countries. Article 9 is of crucial importance in laying down the general principles regarding the economic aspects of activities in the area. This clause has been much expanded in the Revised Text. It requires these activities to be developed so as to increase the availability of resources to meet world demand, but elaborates on the protection of existing developing country producers by commodity agreements in which the International Authority should take part. It provides that total production shall not exceed the projected cumulative growth of the nickel market during an interim period of 20 years.

Powers of the proposed International Authority

There are provisions relating to scientific research, giving the Authority power to conduct research, but not attempting to give any exclusive right to the Authority. There are also provisions to encourage the transfer of technology to developing states, to protect the marine environment and regarding damage liability. In all of these there is much ground now common to all delegations.

Now for exploitation. The governing provision here is Article 22. This empowers the Authority to conduct activities directly. A later provision establishes an organ called 'the Enterprise' to be the operational arm of the Authority. States or enterprises either state or private may also operate in association with the Authority on a contractual basis. The terms for such contracts are set out in Annexe I. Of these provisions I would say only that the Authority would control the contractor at all stages of the operation to ensure compliance with the contract and all provisions of the convention. The contractual concept is in itself a compromise between the earlier insistence of the developing countries on the Enterprise as alone having the right to conduct mining operations and the wish of the industrial countries for a licensing system, to be administered by the Authority. In his report on the fifth session, the Chairman of the first Committee noted that developing countries now generally accept that, as well as the Enterprise, other entities such as companies may also participate in mining operations in a form of association with the Authority. The common interest, in encouraging rapid and efficient seabed mining

operations in order to increase supplies of raw materials, does find recognition in the Revised Text, as does the demand for protection of land-based producers.

The system envisaged is in effect one of parallel access. The annexe also provides in paragraph 8 that the Authority shall enter into negotiations with an applicant who meets the stated requirements with a view to conclusion of a contract. This obligation on the Authority would seem especially important in the context of the requirement for assured access. The parallelism is enhanced by paragraph 8 (*d*), which the Committee Chairman elaborates in his covering note. He explains that in applying for a contract the applicant will specify an area twice as large as the intended mine site, or two areas of equivalent promise. If a contract is concluded, the Authority retains one of the two sites, which would then be available if it were so decided for direct exploitation by the operating arm of the Authority, to be styled the Enterprise.

Given the powers of the Authority in relation to the terms of contracts and their supervision, the organs of the Authority itself and their powers in relation to its day-to-day operations are of manifest importance.

Institutions of the Authority

As to institutions, it is proposed that there should be an Assembly, a Council, a Tribunal and a Secretariat.

The Group of 77 have, as a reflection of their general approach to international problems – the Security Council would never have its present composition of permanent members if the U.N. charter were being written today – sought to insist on the absolute power of the Assembly. The Assembly is to meet annually, on a one-member one-vote basis, but with a provision requiring a two-thirds vote on questions of substance. The text proposes some interesting procedural devices reminiscent of those of the Conference itself, to reduce the risk of precipitate decisions. The executive organ of the Authority would be a 36 member Council, with the duty to ensure that the Authority acted consistently with the general policies to be prescribed by the Assembly.

The Council structure is intended to give reasonable representation to the various interests. Of the 36 members, 6 are intended to represent the industrialized powers directly, 6 from the developing countries selected to ensure representation of exporters, importers, the landlocked and so on respectively, and 24 in accordance with the principle of equitable geographical representation as understood at the U.N. Here a two-thirds 'plus one' majority rule is to prevail.

The Council is to arrange for the setting up of a Planning Commission, a Technical Commission and a Rules and Regulations Commission, all of which are advisory to the Council.

The relation between the Assembly and the Council is critical to the negotiations. The Chairman states in his report that a system based on the supremacy of one organ of the other 'could not constitute a compromise solution'. A system is therefore proposed under which the Council would have sufficient latitude to execute the various tasks assigned to it and to carry out day-to-day operations in accordance with general policies established by the Assembly.

Despite the efforts at compromise, there are obviously differences still to be bridged. The respective powers of Assembly and Council cannot in all probability be laid down in advance to the satisfaction of all parties. As the then leader of the U.S. delegation put it, 'any protection of industrial country interests built into the Council will be essentially nugatory if Council decisions may be revised or circumscribed by an Assembly operating on a one nation–one vote principle'.

PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY A MATHEMATICAL, PHYSICAL & ENGINEERING SCIENCES

Much work clearly remains to be done on this issue. Much work has also to be done in order to work out the respective rôles of the Enterprise and other entities and their relation to the Authority. Perhaps sufficient definition of these can be achieved to render differences of an ideological character about the supremacy of the Assembly appear of less moment. But agreement on these issues is vital to the outcome of the Conference as a whole.

The continental shelf

The work of the Second Committee embraces the most diverse of the issues before the Conference, covering the Territorial Sea and its limits, innocent passage, international straits, fishing rights, the extent of the continental shelf, high-seas rights, archipelagos, islands and related questions to all these matters.

While I shall concentrate on matters relating to the continental shelf and its extent, you will realize that the various provisions affecting the freedom of movement of shipping are of at least equal importance. The existing drafts are in the main satisfactory and provided they stick should prove an acceptable part of the package. If so the extension of the breadth of the territorial sea to 12 miles is acceptable to us.

How broad is the continental shelf? Under the present text the coastal state is entitled to establish beyond its territorial sea an economic zone extending to a maximum of 200 miles from the baselines from which the territorial sea is measured. In that zone the coastal state would have sovereign rights over living and non-living resources of the seabed and water column, and exclusive rights and jurisdiction regarding the establishment of artificial islands, installations and research. The fishing rights of the coastal state are subject to qualification, but the mineral rights are unqualified. For seabed resources, the 200-mile limit has to be considered in relation to the definition of the continental shelf, in Article 64, which reads:

> The Continental Shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines where the outer edge of the continental margin does not extend up to that distance.

The next articles confirm the exclusive right of the coastal state to exploration and exploitation of the continental shelf.

This definition of the continental shelf is of great importance to the United Kingdom. As I remarked earlier, the test of exploitability, on which rights at depths beyond 200 m rested under the 1958 Convention, left matters somewhat unclear. For us the North Sea is not the only area of interest for its hydrocarbon potential. To the West of Scotland and in other areas around our coast there are geological structures which could well contain oil. Some of these areas off the West of Scotland lie well over 200 miles from the mainland. In September 1974 Her Majesty's Government (H.M.G.) designated under the Continental Shelf Act 1964 a considerable area of the shelf – although not all to which the U.K. is entitled. These rights are, in the view of H.M.G., enjoyed under existing international law, under the 1958 Convention and under customary international law as evidenced by state practice and enunciated by the International Court in the North Sea Continental Shelf cases. However, not all states share this view. A clear legal definition of the edge of the margin is necessary, therefore, if conflict is to

be avoided, whether between states themselves or between coastal states and the International Authority. Such a proposal is now on the table although not in the S.N.T. The Chairman of the second Committee in his covering note indicated that there was significant support for the concept that the continental shelf extended to the edge of the margin and was therefore sympathetic to proposals for its precise definition. He thought, however, that the proposals put forward, because of their very technical nature, needed to be considered by a group of experts at the fifth session. No agreement was reached there, regrettably, and discussions are to be resumed at the present session.

Opposition to such a concept comes from many states who would not benefit, particularly the Group of Landlocked and Geographically Disadvantaged States. This Group includes such landlocked states as Austria, Nepal, Afghanistan and Switzerland and shelf-locked states such as East (and West) Germany who for geographical reasons can claim only a limited E.E.Z. or shelf. There are 57 states in this group and if they hold together they could block conclusion of a Convention if their needs were not met. But as a move towards compromise, the U.K. and some other coastal states have proposed that a share of the value of production (presumably mainly petroleum) in the area between the 200-mile mark and the outer edge of the margin should be given to a fund presumably for the benefit of developing countries.

Rights of passage

I should mention here one other matter of great importance to the Conference – that of the status of the waters of the economic zone. Do they or do they not retain that of the High Seas? From the point of view of the discussions here this question has perhaps little direct relevance, but the maintenance of freedoms of navigation, over-flight and cable laying and other traditional High Seas uses are of major importance to many users of the oceans. (The Chairman of the Second Committee takes the view, with which I have myself much sympathy, that the waters of the E.E.Z. are *sui generis* and in informal discussions there has been progress towards a compromise between those who claim the equivalent of territorial sea status for the whole E.E.Z. and those who regard as vital the maintenance of High Seas rights, other than those like fishing, quite incompatible with the E.E.Z. concept.)

Similarly the problem of vessel source pollution, while of central significance to the prospects of a Convention, has no direct relevance to our concerns here. However, on both these vital issues some compromise is in sight.

The future of research

Of greater interest to this meeting is the position regarding marine scientific research. The key issue here is the extent to which research in the economic zone and on the continental shelf should be subject to the consent of the coastal state. Some states consider that prior consent of the coastal state is required before any research of any sort should be conducted. Others maintain that the need for consent should be confined to research concerned with the discovery and evaluation of economic resources. One can see the territorialists at work again.

Detailed control, exercised perhaps in different ways by neighbouring states, whenever planned within 200 miles of the coast or anywhere on the shelf, would be a serious hindrance to marine scientific research generally. Indeed, if prior and specific consent had to be obtained

PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY A MATHEMATICAL, PHYSICAL & ENGINEERING SCIENCES

for voyages passing through the zones of a number of different countries, a research project could suffer interminable delays. Even a notification procedure would be hampering. A good deal more work is clearly needed on this.

Dispute settlement

I will make only the briefest mention of the fourth part of the Text, although its importance is obvious. This provides for Dispute Settlement Procedure, and envisages a Law of the Sea Tribunal. To many participating countries, notably the United States, the inclusion of a mechanism for the compulsory settlement of disputes is basic to the Convention. The attempt to exclude the E.E.Z. from this procedure, given the views I have described of some states that the 200-mile zone should be to all intents akin to a territorial sea, is not surprising. To quote the some time leader of the U.S. delegation, 'If states cannot resort to international adjudicatory procedures to protect their rights, they are ultimately faced with the same problems arising from unilateral treaty interpretation that arise from unilateral claims.' In other words, what would then be the point of the treaty?

Prospects

What then are the prospects for a Convention? Given the issues still unsettled, affecting access to the deep seabed minerals, institutions of the Authority, extent of coastal state jurisdiction, pollution, research and compulsory dispute settlement, a final consensus will require a package deal.

The determination of the U.S. administration to get a solution can perhaps be measured by the appointment of that experienced public servant Elliot Richardson, formerly Ambassador in London and a senior officer in a Republican administration, as leader of the U.S. delegation. This suggests a desire for a bipartisan approach, but, together with other changes in the Delegation, a fresh look at some of the issues. This, given a similar readiness on the part of 77, could make for faster movement. It has I think been true that the 77 have been reluctant to make any major change in their position during the meetings in the summer of 1976 because of hope that a Democratic administration might be more sympathetic to their claims.

On any commonsense assessment of remaining differences, the gaps would look fairly easy to bridge – certainly the Revised Single Texts now before the conference represent a great advance in themselves. But what I would term the theological differences, symptomatic of what we term nowadays the North–South conflict, still present obstacles. The recent failure of the Organization for Economic Cooperation and Development to agree on means for commodity price stabilization is not a good augury.

After the experience of the last three years I hesitate to suggest that if no conclusion is reached this summer, there will be no Convention. If the 'package' is agreed, there will still be work to be done before a Convention is ready for signature, and ratification and entry into force can of course take years more.

But if the Conference should finally break down, whether it were this year or next, its work to date would have made for considerable differences in what would be generally acceptable as maritime law. A 12-mile breadth to territorial waters would be respected universally. There

would, I think, be no attempt to challenge the rights of the coastal states over the resources of the seabed and the superjacent waters up to 200 miles.

Those states who have yet to claim rights over resources up to 200 miles would be quick to do so, and what this Conference would have failed to establish would gain universal recognition through state practice. Pollution control might be more satisfactorily settled as a separate matter. The existing Intergovernmental Maritime Consultative Organization Convention of 1973, if ratified and enforced, would itself go a long way to meet the anti-pollution objectives of Committee Three as regards vessels. The degree to which unilateral powers of control could be exercised could, however, lead to serious conflict with consequent damage to international trade if left unsettled for long. Nor, so far as I can see, can the extension of state practice provide a framework for the discharge of rights and obligations of those who seek to exploit the deep-sea mineral resources. I would not, of course, attempt to assess the weight or lack of it to be given to the Assembly resolution declaring these resources to be the common heritage of mankind.

The loss of the opportunity to settle finally arguments about coastal states' rights to resources to the edge of the margin would be at least equally regrettable.

Perhaps the most dispiriting aspect of failure would be the demonstration it would give of the inability of the international community to mould a needed system of law by conference. It may be that such a failure would be no more than many had expected from so ambitious an attempt. But a successful conference would in my view have implications beyond even its subject-matter, and one must hope that the governments participating will be moved by the general as well as the particular considerations to ensure that a Convention of universal application can be concluded.

PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY A MATHEMATICAL, PHYSICAL & ENGINEERING SCIENCES