

Section of Natural Resources Law (Annual Meeting 1973)

WHEREAS, A third United Nations Conference on the Law of the Sea is formally scheduled to convene in an organizational session in November, 1973, December, 1973 and to commence substantive work on all aspects of the law of the sea in the spring of 1974; and

WHEREAS, In the course of the preparatory work for the Conference now under way in the United Nations Seabed Committee, the U.S. Representative to that Committee has expressed positions which generally merit the support of this Association but in some instances would appear to warrant amplification or modification; and

WHEREAS, The House of Delegates, by its resolution No.73 of 08/07/68, recommended with respect to one of these issues "That within the area of exclusive sovereign rights adjacent to the United States, the interests of the United States in the natural resources of the submarine areas be protected to the full extent permitted by the 1958 Convention on the Continental Shelf"; and

WHEREAS, Subsequent to the date of that resolution the International Court of Justice enunciated the "natural prolongation of its land territory into and under the sea" as the judicial basis of exclusive sovereign rights of a coastal State to the seabed resources off its coast; and

WHEREAS, The American mining industry is approaching the point of commercial operations for the mining of manganese nodules from the deep seabed beyond the limits of national jurisdiction and has requested legislative assistance to that end; and

WHEREAS, The increasing dependence of American consumers on foreign petroleum and other mineral resources makes it imperative that transportation thereof to the United States be unimpeded; and

WHEREAS, Both the rapidly worsening shortage of domestic supplies of oil, natural gas, and other minerals to meet domestic requirements and the adverse outlook for the U.S. balance of payments makes the protection of all domestic energy and mineral sources even more important today than they appeared to be at the time of adoption of the 1968 resolution;

NOW, THEREFORE, BE IT RESOLVED, That the American Bar Association:

As to Seabed Resources of the Continental Margin

(1) REITERATES its position "that within the area of exclusive sovereign rights adjacent to the United States, the interests of the United States in the natural resources of the submarine areas be protected to the full extent permitted by the 1958 Convention on the Continental Shelf," and asserts that these areas encompass, or with advancing technology will encompass, the full extent of the

continental margin adjacent to the United States. The environment must be adequately protected, and other uses of the ocean must be accommodated. Similar rights and obligations are to be recognized in all other coastal States. If an "economic resource zone" is to be agreed upon, in which the coastal State shall have exclusive rights to seabed resources, the proposed width of 200 nautical miles is acceptable, provided that the exclusive seabed jurisdiction of the United States should be protected to that distance or to the full width of the continental margin, whichever is greater at any given point on the coast. Any treaty commitment for contributions of governmental revenues from the American continental margin for international community purposes should be limited in amount, any larger contributions being reserved for appropriation by Congress in the light of the overall national interest from year to year.

(2) SUPPORTS the view that the portions of the U.S. Outer Continental Shelf in waters deeper than 200 meters, being now clearly within the exclusive resources jurisdiction of the United States, acting through the Congress, should remain so, and their subjection to any future international treaty should be limited to standards for the prevention of unreasonable interference with other uses of the ocean, for the protection of the ocean from pollution, for the protection of the integrity of investments, and for the compulsory settlement of disputes.
As to Seabed Resources Seaward of the Limits of National Jurisdiction

(3) RECOMMENDS that the United States insist that any international regime established with respect to the areas seaward of the limits of national jurisdiction incorporate the following principles:

- (a) That the United States and other developed countries have representation in the governing council which gives adequate weight to the economic importance of the resource to their people;
- (b) That any international authority created be administrative and regulatory only, with power to allocate areas, and that it have no control over volume or rates of production, distribution or pricing of seabed resources.

(4) RECOMMENDS that the United States implement its announced policy of encouraging exploration and exploitation of seabed resources beyond the limits of national jurisdiction during the negotiation of a treaty and supports the companion policy of seeking the provisional entry into force of the seabed mining aspects of any treaty that is agreed upon.

As to Fishery Interests

(5) SUPPORTS the position on fisheries expressed by the United States delegation to the United Nations Seabed Committee, which seeks to assure the rational use and conservation of all fish stocks by adopting broad coastal State management of coastal species, host State management of anadromous species, and international management of highly migratory species, such as tuna.

As to Protection of the Environment

- (6) RECOMMENDS that provision be made for establishment of internationally agreed standards for the prevention of marine pollution, to the ends:
- (a) That the marine environment be adequately protected;
 - (b) That, with respect to vessels engaged in international navigation, there be a single set of uniform standards, internationally determined;
 - (c) That, with respect to exploration and exploitation activities on the seabed, the community interest in the oceans be recognized by acceptance and enforcement of international standards everywhere beyond the territorial sea, but with the possibility of supplemental, more exacting, coastal State standards within the areas of special economic interest to such States;
 - (d) That liability for pollution by vessels and by seabed activities be strict but finite and insurable, with supplementation, if need be, by an international fund or funds.

As to Unimpeded Navigation and Transportation

(7) SUPPORTS the principles that straits which have historically been open for international maritime traffic are international waters whose status should be protected against change as a result of any agreement on the breadth of the territorial sea, and that, as international waters, they should be subject to internationally agreed rules for the safety of navigation and prevention of pollution, with the proviso that any powers granted to coastal States in enforcement of international safety or antipollution regulations applicable to such waters be accompanied by adequate provisions for the prompt release under bond of any vessel of foreign registry detained under such regulations.

FURTHER SUPPORTS the acquiescence by the United States in the recognition of a 12-mile territorial sea, subject to adequate safeguards against such actions impairing the world community's existing rights of free movement through, and overflight of, straits which have historically been open for international maritime traffic. Further SUPPORTS the authority of the United States and other coastal States to provide for and regulate the peaceful use of the seabed of the adjoining continental margin in aid of navigation and transportation.

(8) RECOMMENDS comparable provisions to assure the right of unimpeded transit through archipelagic waters.

(9) SUPPORTS the view that coastal States have the right to establish deep water ports on the continental margins adjacent to their territorial sea and to operate them under their exclusive control, provided that they do so in such a manner as to avoid unreasonable interference with international navigation or other high seas freedom, and that any new international treaty dealing with the subject should so provide.

As to Integrity of Investments

(10) RECOMMENDS that the integrity of investments in seabed resources be fully assured.

As to Determination of Disputes

(11) RECOMMENDS that provision be made for compulsory determination by an international tribunal of disputes relating to marine resources between States, or between any international organization and a State, or between either of them and a foreign private party.

As to Scientific Research

(12) SUPPORTS the general principle of freedom of scientific research, but recognizes the right of coastal States, within internationally agreed guidelines designed to provide the maximum practicable application of this principle, to impose reasonable restrictions on activities on their continental margins which will entail threats to their national security or hazards to the environment, as by drilling into the seabed.