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# The Outer Space, Antarctic and Pell Treaties--Similar Solutions to a Common Problem

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# THE OUTER SPACE, ANTARCTIC AND PELL TREATIES--SIMILAR SOLUTIONS TO A COMMON PROBLEM

## I. INTRODUCTION

During the past two decades, there has been an increasing interest in those rules of international law governing the exploration and exploitation of ocean space.[1] This is due primarily to the recent upsurge of technological developments among the highly industrialized nations.[2] Rivalry between the U.S.S.R. and the United States has spurred these two countries, in particular, to a high level of competition in the field of ocean mining technology. The less highly developed countries are also interested in exploiting the ocean space in order to bolster their own economies.

The traditional principle governing the law of the oceans has been freedom of the seas.[3] The concept of freedom of the sea has always been subject, however, to a nation's sovereign control over portions of the ocean adjacent to its shores.[4] In recent years, however, there has been a change in this principle, and many nations, including the United States, have extended claims of sovereign control to other parts of the ocean.

In the eighteenth century, the international rule as to territorial waters was that they extended only as far as the range of the costal state's cannon which would enable that nation to assert control over intruders. At that time, the effective distance of a cannon-shot was about three nautical miles.[5] Today, however, there seems to be no agreement among nations as to what the rule delimiting territorial waters is. A number of nations have claimed six and twelve mile limits. Many nations have claimed jurisdiction over adjacent portions of the oceans out to two hundred miles for particular purposes

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[1]The Truman Proclamation of 1945 stated that the United States had "jurisdiction and control" over its adjacent continental shelf. Presidential Proclamation No. 2667, 59 Stat. 884 (1945). Due to the varied claims of right over the continental shelf, the International Law Commission was created by the U.N. General Assembly to assist in the development and codification of international law.

[2]Goldie, The Contents of Davy Jones' Locker--A Proposed Regime for the Seabed and Subsoil, 22 RUTGERS L. REV. 1, 66 (1967).

[3]M. McDOUGAL & W. BURKE, PUBLIC ORDER OF OCEANS 2 (1962).

[4]Id.

[5]Walker, Territorial Waters: The Cannon-Shot Rule, 1945 BRIT. Y. B. INT'L. LAW 210.

such as fishing rights.[6] The International Law Commission has reported that there is no uniformity in international practice as to the territorial claims over adjacent portions of the ocean.[7]

It is in this climate of disorder and confusion that nations are now beginning to move into the high seas to exploit its mineral wealth.[8] Clearly there is a need for order; but it is equally clear that existing international rules are inadequate to maintain public order in this area.

On March 5, 1968, Senator Claiborne Pell of Rhode Island introduced a draft Treaty on Principles Governing the Activities of States in the Exploration and Exploitation of Ocean Space (hereinafter called the Pell Treaty).[9] The Pell Treaty attempts to establish international order by developing new principles for the exploitation of ocean resources. This article will examine the Pell Treaty in light of two earlier treaties which dealt with similar problems--the Antarctic Treaty of December 1, 1959,[10] and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies of January 27, 1967,[11] (hereinafter called the Outer Space Treaty).

## II. THE BACKGROUND

The subject matter of the Antarctic and Outer Space Treaties is similar in many respects to that of the Pell Treaty. The basic problem in all of the treaties involves the reconcillation of national claims over territories which had previously been inaccessible, but which have now been made or will be made exploitable due to technological advances. Added difficulties arise

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[6]The United States extended its exclusive fishing rights from three to twelve miles. 16 U.S.C.A. §§ 1091-94 (Supp. 1967). Certain Latin American countries claim jurisdiction over a "continental shelf" up to 200 miles. See Garaioca, The Continental Shelf and the Extension of the Territorial Sea, 10 MIAMI L.Q. 490, 494 (1956).

[7]1956 INTERNATIONAL LAW COMMISSION REPORT, art. 3 of ARTICLES ON LAW OF SEA.

[8]"The technological frontier, pushed forward by the explosion of interest in the ocean sciences during the last few years, is now advancing into the deep sea beyond the limits of the geographical shelves, and the pace may be expected to accelerate in the next decade." Young, The Legal Regime of the Deep-Sea Floor, 62 AM. J. INT'L L. 641 (1968). See also Into the Sea, LIFE, Oct. 4, 1968 at 64.

[9]S. Res. 263, 90th Cong., 2d Sess. (1968).

[10]See 54 AM. J. INT'L L. 477 (1960).

[11]See 61 AM J. INT'L L. 644 (1967).

where these territories can be effectively exploited by only a few of the most technologically advanced nations. Because of the similarity of the problems involved much can be gained by examining the principles and fundamental sources embodied in the Antarctic and Outer Space Treaties and by noting the several important similarities and differences between the regions dealt with in those treaties and ocean space.

## A. THE ANTARCTIC TREATY

The first landing on the Antarctic mainland was made by Captain John Davis on February 7, 1821. From time to time for the next 130 years, various expeditions were sent out by a number of nations.[12] At the beginning of the 20th century, the exploring nations began to assert national claims over parts of the Antarctic territory. The resulting competition and friction, especially among certain Latin American nations,[13] prompted the United States to take the initiative in calling a conference looking to a possible internationalization of the Antarctic region. The Washington Conference on Antarctica was called in 1959[14] and resulted in the Antarctic Treaty, signed by twelve countries.[15]

The governing principles of the treaty are set out in the preamble. They include: (1) the desire that all nations use Antarctica for peaceful purposes and that the use shall be free from international discord; (2) the conviction that in the interest of science and progress of all mankind there shall be freedom of scientific investigation and international co-operation; and (3) the desire that the principles and purposes found in the Charter of the United Nations be furthered.

The Articles of the Treaty codify these principles into certain specifics. Article II provides that freedom of scientific investigation shall continue. Article III provides for the exchange of scientific information, personnel, and data. Nuclear explosions and disposal of nuclear waste are prohibited in Article V. Article IV provides that "no new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted...." Because of the previous

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[12] For a detailed account, see Hayton, The Antarctic Settlement of 1959, 54 AM. J. INT'L L. 349 (1960).

[13] "Diplomatic and military temperatures were rising so rapidly in the 'South American Quadrant' that Britain, Chile, and Argentina found it expedient to arrive at an understanding... Competition had already driven these three claimants to maintain 'continuous occupation' of a number of bases with military and some scientific personnel." Id. at 352.

[14] See 41 DEP'T STATE BULL. 650 (1959).

[15] Signed by Argentina, Australia, Belgium, Chile, French Republic, Japan, New Zealand, Norway, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom, and the United States of America.

claims of sovereignty over portions of the Antarctic territory, Article IV further provides that nothing in the treaty shall be interpreted as a renunciation of a previous claim, a renunciation of a previous basis for a claim, or a prejudice regarding a Contracting Party's recognition or non-recognition of any other state's right or claim to territorial sovereignty. Article VIII provides that observers, scientific personnel, and their staffs "shall be subject only to the jurisdiction of the Contracting Party of which they are nationals..."[16] Finally, Article XI provides that a dispute between Contracting Parties shall be settled by consultation, arbitration or any other peaceful means which the disputants choose. If this fails, the dispute may, with the consent of the disputants, be referred to the International Court of Justice.

## B. THE OUTER SPACE TREATY

The Outer Space Treaty was the result of about ten years of discussion and negotiation, starting with the Ad Hoc Committee on the Peaceful Uses of Outer Space created by the United Nations General Assembly on December 13, 1958. The Treaty embodies the principles of the United Nations General Assembly Resolution 1721 of December 20, 1961, Resolution 1962 approved on December 13, 1963, and Resolution 1884 of October 17, 1963.[17] The first resolution proclaimed that international law, including the United Nations Charter, applied to outer space and that the celestial bodies are free for exploration and use by all nations and are not subject to national appropriation. The second resolution called upon nations to refrain from placing nuclear or mass destruction weapons into orbit. The third resolution declared that a state is internationally responsible for its activities in outer space and for the activities of its nationals and organizations and that the state has jurisdiction over objects and personnel it launches into outer space.[18]

The Outer Space Treaty also has provisions comparable to those in the Antarctic Treaty. Article I of the Outer Space Treaty provides for the freedom of all states to explore outer space and the celestial bodies; Article IX provides for cooperation and mutual assistance; Article IV prevents a nation

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[16]This is similar to the Roman law concept that a person carries his own state's law with him wherever he goes. The concept would seem to be necessarily applicable in the Antarctic where sovereignty over territory is not allowed. Nonetheless, this could prove to be a point of friction where a nation tries to exercise jurisdiction over a person inside territory claimed by that nation prior to the Treaty.

[17]Beyer, Background Aspects of a Treaty Governing the Exploration and Use of Outer Space, 38 PA. BAR ASS'N Q. 320 (1966-67).

[18]Id. at 320-323.

from orbiting nuclear or mass destruction weapons. Article VIII provides for jurisdiction of the State Party over objects and personnel launched by it into space. Article VI provides that a State is responsible for activities of its nationals even though the national may not be acting for his state. Finally, article XIII provides for the settlement of "practical questions" by "appropriate international organizations" or with "states members of that international organization, which are Parties to this Treaty."

The Outer Space Treaty, however, went a step further than the Antarctic Treaty toward internationalizing inaccessible areas for the purpose of exploitation for the benefit of all men. Since there were no prior claims of sovereignty on the celestial bodies, there was no need that the treaty allow for prior sovereign claims as did the Antarctic Treaty. Therefore, Article II prohibited any claims of national sovereignty by any means.

## III. THE PELL TREATY--A COMPARISON

The Pell Treaty was introduced by Senator Pell on March 5, 1968.[19] The Treaty embodied principles set out in Senate Resolution 186 which had been introduced by Senator Pell on November 17, 1967.[20]

Although the Pell Treaty, if adopted, would be a significant step forward from the Outer Space Treaty and its predecessor, the Antarctic Treaty, it is basically structured on the broad concepts and principles of the Outer Space[21] and Antarctic Treaties. These principles, which are set out under Parts I and IV of the Pell Treaty respectively entitled General Principles Applicable to Ocean Space and Use of Seabed and Subsoil of Ocean Space for

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[19]S. Res. 263, 90th Cong., 2d Sess. (1968). The creation of this treaty was somewhat unusual in that it was initiated in the Senate as a resolution advising the Executive to enter into negotiations with other countries. Normally a proposed treaty will emerge from the Executive branch and go to the Senate for its advice and consent before ratification by the Executive.

[20]S. Res. 186, 90th Cong., 1st Sess. (1967). The principles outlined included a provision for the peaceful use of the ocean, sea bed, and subsoil, a prohibition of the disposal of radioactive waste material in ocean space (which was later modified in Article 27 of the Treaty to allow such disposal, subject to the safety regulations of the International Atomic Energy Agency in consultation with the licensing authority created by Part III, Article 12), and establishment of a Sea Guard to enforce the rules and principles of the Treaty.

[21]Borgese, The Ocean Regime at 2, in 1 A CENTER OCCASIONAL PAPER, (October 1968).

Peaceful Purposes Only, are: (1) the freedom of all nations to engage in scientific investigation, exploration, and exploitation of ocean space; (2) the prohibition against national appropriation by sovereignty or occupation; (3) state responsibility for its nationals' activities; (4) mutual assistance, cooperation, and aid to others in distress; (5) use of ocean space only for peaceful purposes; (6) and the prohibition of nuclear or mass destruction weapons. Part I, Article 4 provides that the exploration and exploitation ocean space will be conducted under the rules of international law and the United Nations Charter. Part II of the Pell Treaty deals with the use of the water and natural resources found in the water of ocean space. Article 10, Part II provides that all parties have a right to fish and mine in the water. They may use the water for transportation and "aquaculture." This can be likened to the exploitation of the medium through which one must travel to reach the celestial bodies--outer space, but there are no similar provisions in the Outer Space Treaty relating to the exploitation of the vacuum of outer space, probably because, at this time, nothing exploitable has been found there. The Antarctic situation is different from either of the above in that the land mass is the medium over which the explorers travel and is at the same time the exclusive subject of the exploration. Therefore, there was no need to deal separately with the medium of travel and the subject matter in the Antarctic Treaty as there was in the Pell Treaty. Consequently, while the Outer Space Treaty and the Antarctic Treaty address themselves solely to the question of exploration of outer space and the Antarctic respectively, they do not deal with the exploitation of natural resources which is the primary concern of the Pell Treaty. This provision in the Pell Treaty, then, may well set a precedent if, in the future, it is found that outer space and Antarctica may be profitably exploited in some presently unknown way.

The subject matter of Part V of the Pell Treaty is the disposal of radioactive waste material in ocean space. Unlike the Outer Space Treaty or the Antarctic Treaty, the Pell Treaty permits the disposal of radioactive waste in ocean space; but disposal is subject to safety regulations to be prescribed by the International Atomic Energy Agency in consultation with the licensing authority. Such disposal is also subject to "any other international agreements concerning the use of nuclear energy, including the disposal of radioactive waste material, to which all of the States Parties to the [Pell] Treaty are parties..."[22]

Part VIII of the Pell Treaty retreats from the prevailing but controversial concept of criminal law jurisdiction in international law. It provides that all nationals are subject only

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[22]Pell Treaty, Part V, Article 27, S. Res. 263, 90th Cong., 2d Sess. (1968).

to the criminal law of their own state, pending agreement on an international code of law governing criminal activities in ocean space. This is not derived from the principles of the Outer Space or Antarctic Treaties and contradicts the principle of international criminal jurisdiction as articulated by the Permanent Court of International Justice in The S. S. "Lotus" (France v. Turkey).[23] In that case the Court endorsed the "passive personality" principle of criminal jurisdiction which has been strongly contested by many nations. It allows a nation's court to take jurisdiction over a foreigner who has injured one of its nationals. Part VIII of the Pell Treaty acknowledges as being the sole basis of jurisdiction the "nationality" principle, a universally accepted principle which says that jurisdiction is determined by reference to the nationality of the person committing the offense.[24]

The most progressive provisions of the Pell Treaty are those providing for its enforcement. These provisions are found in Part III entitled Use of the Sea Bed and Subsoil of Ocean Space and Part VII entitled Sea Guard. Part III, Article 12 creates a licensing agency which has the power to control who may explore and exploit ocean space. The licensing agency can also control the activities of the licensed nations or organizations through its power to grant and revoke licenses.[25] The provision as to jurisdiction over nationals and national organizations is similar to those of the Outer Space and Antarctic Treaties in that it provides, in Part III, Article 14, that a state must make applications for licenses for its nationals and is responsible for the authorization and supervision of its nationals. Part III, Article 14 also recognizes that, when activities are carried on by an international organization, "...a license may be issued to such organization as if it were a State."[26]

The agency is also given a judicial function in Part III, Articles 21 and 22. Disputes are to be settled by the licensing agency which determines its own procedure. The procedure is limited only by the requirement that each party is entitled to a "full opportunity to be heard and to present its case."[27]

If the state fails to comply with the provisions of the Treaty or with an award made by the licensing agency, the agency has the power to revoke the states's license under Part III, Article 20. The state may request a review under the provisions

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[23]Case of the S. S. "Lotus," [1927] P.C.I.J., ser. A, No. 10.

[24]See Dickinson's Introductory comment in W. BISHOP, INTERNATIONAL LAW: CASES AND MATERIALS 463 (2d ed. 1962).

[25]The powers of the licensing agency under the Treaty are consisely listed in Borgese, supra note 27, at 3.

[26]Pell Treaty, Part III, Article 14, S. Res. 263, 90th Cong., 2d Sess. (1968).

[27]Id. at Art. 21.

of Part III, Article 23. It is provided that a standing review panel, consisting of three members appointed by the International Court of Justice, shall appraise the decision of the agency if a review is requested within 30 days after receipt by the parties of notice of the decision. An appeal from the panel's decision to the International Court of Justice may be taken. The case is within the compulsory jurisdiction of the International Court of Justice under the provision of paragraph 1, Article 36 of the Statute of the International Court of Justice.

Finally, Part VII of the Pell Treaty creates a Sea Guard which is to act as a permanent police force of the United Nations for the purpose of enforcing the principles of the Treaty, according to Part VII, Article 30. In addition, Part III, Article 19 provides that all installations and equipment are open for inspection to the licensing agency except that, if there is an objection, they shall be open to the Sea Guard. The powers of the potentially strong Sea Guard, however, are somewhat mitigated by Part VII, Article 31 which places control of the Sea Guard in the hands of the Security Counsel in consultation with the licensing authority. Practically, this will render the Sea Guard impotent in cases where issues in the national interests of the major powers arise. Nonetheless, the licensing agency would still be in a position, even without the consent of the Security Counsel, to enforce the provisions of the Treaty or a decision by the agency by threats of revocation of the state's license.

## IV. CRITICISMS AND CONCLUSIONS

Several new problems are presented by the Pell Treaty and several existing problems are not solved. First, there are no guidelines to govern the licensing agency's decision-making process.[28] It might be possible for nations to agree on specific guidelines after the Treaty has been concluded, but it would be far more desirable if such guidelines were included in the Treaty. In particular, questions might arise as to how the agency should treat past decisions--as law, and therefore binding on the agency, or merely as evidence of law. Procedural rules of the agency and the extent of the agency's jurisdiction are other questions which should be answered. The chances that the Treaty would fail after its inception would be greatly lessened if the specific items of possible contention are included within the Treaty and dealt with in the preliminary negotiations. Therefore, it is suggested that the Treaty provide guidelines for the agency's decision-making processes identical to the guidelines of the International Court of Justice; the International Court is the ultimate reviewing court of the agency and the agency must make decisions according

[28] See Goldie, supra note 2, at 33.

to the precepts of international law and the United Nations Charter. Therefore, if guidelines similar to those of the International Court of Justice were provided, jurisdiction of the agency would depend on consent of the parties, the procedural rules of the agency would be identical to those of the International Court as set out in Chapter III of the Statute of the International Court of Justice,[29] and decisions would have no binding force as under Article 59 of the Statute.[30] These guidelines would likely be acceptable as they have already been accepted for the International Court of Justice.

For reasons similar to those supporting the provision of guidelines, the structure of the licensing agency should be specified in the Treaty. It would not be unreasonable, considering the strong international control envisioned by the Treaty, to create a relatively powerful agency. An administrator could be appointed by the General Assembly in the same way the Secretary-General is appointed.[31] The Administrator would receive no instructions from any government or from any other authority other than the General Assembly — he would act as an international official.[32] Advisors to the Administrator could be elected by the General Assembly. No two Advisors, nor a member of the International Court of Justice and an Advisor, could be nationals of the same state. The Administrator would have the power to issue licenses and make initial decisions after consulting the Advisors. A decision by the Administrator could be vetoed by a contrary vote of the Advisors. The veto power would be needed as a political buffer against the power of the Administrator since the Treaty would probably be otherwise unacceptable.

Some criticism has been leveled at article 14 of the Treaty which allows an international organization to be licensed "as if it were a State".[33] If such an organization were aggreived, it would be allowed to bring an action before the agency and conceivably before the International Court of Justice which, according to the argument, would be a violation of the rule that only states have standing before the International Court of Justice.[34] This is a misconception of the rule, however. The principle that only a state has standing before the International Court of Justice is a legal fiction, used to select those cases which are properly before the Court; that is, those cases which

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[29] I.C.J. STAT. Chap. III.

[30] I.C.J. STAT. Art. 59.

[31] U.N. CHARTER Art. 97 provides that the Secretary-General be appointed by the General Assembly upon recommendation of the Security Council.

[32] U.N. CHARTER Art. 100.

[33] Borgese, supra note 21, at 3.

[34] I.C.J. STAT. Art. 34, para 1.

are governed by principles of public international law.[35] If such a dispute were to arise under the Treaty in its present form, the International Court of Justice would have little difficulty in finding that, since the parties to the Treaty agreed that the organization is to be treated as a state, then there must have been agreement among the ratifying states that it be a state for jurisdictional purposes.

It is suggested that there is an unnecessarily close tie between the Security Council and the creation of the agency under Part III, Article 12 which subjects the General Assembly's choice of members of the agency to the approval of the Security Council. One of the principles on which the Treaty is based, however, is the recognition of "the common heritage of mankind in ocean space." The interests of all nations would be better represented in the General Assembly. This is a compelling reason for allowing the agency and the Sea Guard to be created and controlled by the General Assembly.

The problem of whether a nation may legally exploit the ocean floor without a license from the agency should also be considered. This turns on the question of whether the high seas are characterized as res nullius or res communes. Article 4 of the Treaty states that the principles of international law are to be applied when interpreting the Treaty. The traditional principle of international law was that the unexplored regions of the earth were considered res nullius and were therefore subject to claims of national sovereignty.[36] There is, however, ample evidence that the law is changing. The Antarctic Treaty differentiated between land which was or might have been subject to prior claims and land which had not been claimed, the latter being immune from claims of sovereignty. The Outer Space Treaty similarly declares that sovereign claims are not allowed in furtherance of the principle that exploration of the celestial

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[35] See Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations, [1949] I.C.J. 174 where it was said that the United Nations had the capacity to bring an international claim against a government for damages on the ground that if it had no such standing, the United Nations would be unable to carry out its duties because it could not protect its agents. The principle might not be applicable to the case of an international organization licensed under the Pell agency. The above case is cited to indicate that the rule involves a legal fiction which should not be cited as a crystalized rule. See also Jenks, 1945, BRIT. Y.B. INTL. L. 267.

[36] Legal Status of Eastern Greenland, [1933] P.C.I.J., ser. A/B, No. 53. Island of Palmas Case (United States v. Netherlands), Hague Court Reports, Second Series (Scott) 83 (Perm. Ct. Arb. 1932).

bodies should benefit all mankind. This would seem to imply that the depths of the high seas, being heretofore unexploitable and inaccessible, are to be considered res communes. The solution to this problem would be an express stipulation in the Pell Treaty that ocean space is to be considered res communes. This stipulation would be binding on the states which ratify the Treaty, and if many nations could be persuaded to ratify the Treaty, there would be strong evidence that the stipulation represented consensual law.

Part III, article 15(b) provides that if two or more countries apply for licenses to explore the same area and if the countries fail to agree among themselves that either one or more of the countries will abandon their claim or that they will engage in a joint working relationship, then the agency may determine which state shall be granted the license, due regard being given to encouraging the "development of the technologically developing States."[37] It is difficult to tell whether the quoted phrase indicates an intent to help an underdeveloped nation that is "technologically developing" from scratch or whether it shows a preference to the state which is "technologically developing" the fastest, regardless of the relative state of its technology. The former interpretation probably should be adopted, since the encouragement of underdeveloped countries is consistent with the peaceful purpose of the Treaty. The denial of a license to an underdeveloped country in favor of a highly developed country whose technology is expanding more rapidly can hardly be said to contribute to peace. The underdeveloped country stands to lose a great deal more relative to its available resources than does the highly developed country; a policy favoring the relatively greater deprivation from the underdeveloped state would breed international friction.

One final question remains--what shall be the line of demarcation between the high seas area and the continental shelf? The United Nations Conference on the Law of the Sea, held at Geneva in 1958, resulted in the approval of four treaties, one of which was the Convention on the Continental Shelf of April 29, 1958.[38] The Continental Shelf Convention deals with the exploitation of the resources of the ocean, and the surface and subsoil of the continental shelf. Article 2(1) provides that "[T]he coastal state exercises over the continental shelf

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[37]Pell Treaty, Part III, Article 15(b), S. Res. 263, 90th Cong., 2d Sess. (1968).

[38]For the texts of the four treaties entitled 1) Convention on the Territorial Sea and the Continguous Zone, 2) Convention on the High Seas, 3) Convention on Fishing and Conservation of the Living Resources of the High Seas, and 4) Convention on the Continental Shelf, see 52 AM. J. INT'L. L. 830-864 (1958).

sovereign rights for the purpose of exploring it and exploiting its natural resources." Article 1 defines the continental shelf in dual terms: it is 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 metres or, beyond that limit, to where the depth of the superadjacent waters admits of the exploitation of the natural resources of said areas..." The second part of the definition of the continental shelf, referring to that part of the ocean which is "exploitable" and therefore part of the continental shelf and subject to the sovereign claims of the coastal state, is a source of difficulty, because the whole of the ocean floor will probably be exploitable in the not too distant future.[39] Therefore, one might logically conclude, from a literal reading of Articles 1 and 2, that the whole of the ocean would be subject to the sovereign claims of the coastal states. Under Article 6 of the Covention,[40] the ocean would, in the absence of other agreement, be carved up into boundary lines, equidistant from shore lines of the various coastal nations. Several reasons have been advanced as to why this is a desirable result: authority and responsibility for portions of the ocean would be given to the various coastal states; a single set of rules and principles would govern the whole of the ocean; the chances of disputes would be greatly reduced; and, because of the certainty and stability of this system, entrepreneurial activity would be greatly encouraged.[41]

It is suggested, however, that this result is undesirable. To begin with, the Continental Shelf Treaty, by virtue of its scope as reflected in the title, is limited to an area adjacent to the waters over which a nation has a traditional sovereign claim; the Treaty cannot reasonably be extended to include the entire ocean area. Additionally, the term "continental shelf" implies a distinction between the high seas and the relatively shallow adjacent waters.[42] Another important consideration is that land-locked countries would be completely excluded from sharing in the wealth of the ocean. Finally, a broad interpretation of "continental shelf" would work an injustice to a number of nations. The U.S.S.R. would, for example, have a legal claim on only a relatively small

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[39] See Goldie, supra note 2. Appendix II of this article indicates how rapidly the more advanced nations are approaching capabilities for such exploitation.

[40] "...in the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured." Article 6 of the Convention on the Continental Shelf, 52 AM.J. INT'L L. 860 (1958).

[41] See Young, supra note 8 at 644.

[42] Id. at 644, 645.

portion of the ocean in comparison with her interest and technological ability. Bermuda, in contrast, would own many thousands of square miles of ocean which she would not be able to exploit for some time.

Therefore, a logical interpretation of the Continental Shelf Convention might hinder attempts to solve the problems of a reasonable and acceptable legal regime for the exploration and exploitation of ocean space. Clearly the Continental Shelf Convention definition is inadequate.

It is also suggested that the Pell definition under Part VI, Article 29, delimiting that area inside a line at the 600 metre depth to be continental shelf, is equally unsatisfactory. This is so because some coasts drop off very rapidly from the shore line whereas others extend several hundred miles out from the shoreline before reaching the 600 metre depth. Simply because of these fortuitous circumstances, the "shallow coastline" nations would have a much greater area to exploit. A solution, however, might be found in alternative limits--one limit in terms of depth and the other in terms of breadth. For example, the boundary line of the continental shelf would be a line at the 300 metre depth or a line 100 miles from the shore line, whichever is greater.

The greatest problem will be, of course, the negotiations for acceptance of the Pell Treaty. As it stands now, the Treaty may possibly provide too much international control over the participating nations to be widely acceptable. On the other hand, the subject matter of the Treaty is commercial in nature; no great national security interests are involved. This kind of treaty is susceptible to a stronger degree of control than conventions, such as the nuclear test ban treaties, which may compromise a state's national security. A nation will be much more willing to accept an adverse economic decision and comply with the award than a decision infringing on its national security. In any case, the Pell Treaty is a great step forward and should be discussed and negotiated at once, in this period of relative calm on the ocean, rather than later when conflicts will be less easily solved.

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