Some 150 nations are trying to do the impossible! Since 1975, when most countries of the world with seashores decided they wanted to control the waters and submarine shelf two hundred miles out from their coastal boundaries, nations have been meeting to make up a whole new body of law. It has to fit an entirely new situation, satisfy countries around the world with diverse cultures, problems, and wants or needs, and then settle control for all those laws and all those countries equitably.

The idea of a coordinated effort to achieve this actually started eleven years ago, when Dr. Arvid Pardo, a little-known diplomat, former ambassador to the U.S. from the island of Malta, introduced a resolution in the General Assembly of the U.N. He advocated in 1967 that the vast resources of the world's seabeds be developed as "the common heritage of mankind." The resolution was passed, and forgotten—until intercountry squabbles began erupting rather regularly over control of the seas and seabeds and their riches, primarily fish and minerals. For example, there was near warfare when a South American country arrested U.S. fishermen at gunpoint in a zone the U.S. considers international waters but the other country called its own "territory." The international community began to appreciate what Pardo had been talking about—what control of offshore waters could mean both politically and economically. The stakes are now acknowledged to be immense.

So immense are they, in fact, it seems impossible that so many countries have been able to agree to so much so soon on so many regulations. For there is consensus on roughly 90-per cent of the substantive issues in the 303 articles discussed at the Law of the Sea conferences, which were set up beginning in 1975. All have been incorporated into a newly proposed institution, unique in the history of the world, called the International Seabed Authority, which may be likened to a U.N. council for the seas. The remaining 10 per cent, concerning the crucial points of how and by whom the Authority will be administered, is the current bottleneck.

Any committee of 150 is going to move slowly. But include in such a group those who are attempting to arrange their country's future in perpetuity, and things will absolutely crawl. One of the first problems pitted countries with seashores and submarine shelves against countries without them but which wanted to share the wealth these features contain. Each country wanted or needed something different and felt it must protect itself from being outmaneuvered by other countries with wants or needs that might be detrimental to theirs. The debates and partial resolutions that developed in the August 17, 1976, Malta meeting, the December 18, 1976, and December 17, 1970, General Assembly resolutions, and the third Law of the Sea Conference in Geneva in 1978 can be followed in 350 pages of committee notes. These notes condense the 303 articles covering nearly fifty basic areas of concern to some 150 old, new, and still-emerging nations of the world.

Stakes include fishing, oil, mineral, and other economic rights on or under five-sevenths of the world's surface. Most of this has been beyond the claims of any country because it has been almost impossible to reach. Untapped oil reserves alone are estimated at trillions of dollars, and deposits of manganese, cobalt, nickel, and other metals are estimated at hundreds of billions more. These riches are but estimates, of course, because only 3 per cent of these areas have been explored.

No wonder nations with seashores immediately came into conflict with nations without. In view of the rapid progress in the development of new techniques, many nations fear that sea, seabed, and ocean floors will be subject to exploitation by the technologically advanced and militarily strong countries.

This is the fear today, just as it was the fear in 1967 when the U.N. General Assembly declared the seabed and ocean floor a common heritage of mankind and moved to
draft a world treaty. Suggested principles, which have remained basically static, included: (1) making the seabed and ocean floor underlying the seas beyond the limits of present national jurisdiction free from national appropriation in any manner; (2) undertaking exploration of the seabed and ocean floor beyond national limits in a manner consistent with the principles of the U.N.; (3) undertaking such exploration with the aim of safeguarding the interests of mankind, with the financial benefits derived used primarily to develop poor countries; (4) reserving such areas for exclusively peaceful purposes in perpetuity; and (5) creating an international agency, as a trustee for all nations, to regulate, supervise, and control all activities thereon according to provisions of the agreed treaty.

This recommendation was ultimately sponsored by seventy-five nations, from Afghanistan to Yugoslavia. The group was to prepare a study for the following U.N. session on past and present activities of everyone concerned—the U.N., the International Atomic Energy Agency, and other intergovernmental bodies and agencies—regarding the seabed and ocean floor, as well as the scientific, technical, economic, and legal aspects of the treaty's five principles. Once all this was compiled and reduced to workable principles, it became necessary to develop regulations and to set up international machinery to make the regulations work.

AFTER MUCH TIME AND EFFORT, most pertinent related issues for regulation were grouped under sixteen headings. They include Use of Terms, Territorial Sea and Contiguous Zone, Straits Used for International Navigation, Archipelago States and How to Measure Them, Exclusivity of Economic Zone, Continental Shelf, High Seas, Regime of Islands, Enclosed or Semi-Enclosed Seas, Right of Access of Land-Locked Countries to and From Sea and Freedom of Transit, Definition, Scope and Principles Governing Areas, Protection and Preservation of the Marine Environment, Marine Scientific Research, Development and Transfer of Marine Technology, Settlement of Disputes, and a final catchall called Final Clauses, dealing primarily with ratification, accession, and transitional provisions.

Each of these parts of the study, however, was composed of many subsections, since each tried to cover several aspects of every point. A lot of tough-nut questions had to be considered. Such problems arose as the rights of ships from warring countries in water passages controlled by nonwarring countries. Another involved overlapping zones between mainlands that are close to one another and between islands controlled by different nations.

Still another involved the air space over these areas. There were members who wanted to be able to transfer rights of usage and members who did not. There were questions involving what to do about migratory "livestock"; how to measure boundaries for lands with small offshore islands grouped as a nation; the definition of a reef and whether it could be claimed by a nation as territory; the status of artificial islands; whether inland waters and mouths of bays and ports should be included in the international laws; the duties of ships and aircraft during passage through another country’s area (involving pollution, destruction of submarine cables, or pipelines); and what to do about payments or liabilities by those who are not signatories to the treaty.

The further the study went, the greater the areas of concern requiring consideration. What were the responsibilities of the home nation for a ship flying its flag in foreign ports? Who would arrest law breakers—national or international policing bodies—and where would they be jailed? What would happen if two ships from different countries collided in a neutral port? What are the duties of foreign ships to render assistance inside territorial waters and what the duties of the home-waters authority in rendering assistance to foreign ships? Could laws be enacted to prevent the transport of certain cargoes, such as drugs and slaves? How would piracy be defined, and who would handle such problems? What would be the liability for seizure without proper grounds?

And still the questions piled up! What
about unauthorized broadcasting from the high seas? Free ports? The duties of member nations for the transfer of technology? What about the introduction of new species of sea life, and who would control them? Should profits be used primarily to improve the lot of poor nations? What contingency plans to make for pollution, disease, etc.? What privileges and immunities for members of the Seabed Authority, and could they own property and assets controlled in any way by the Authority? What about ice-covered areas—were they to be regarded as land or merely as areas of frozen water that did not rate their own boundaries? How could worldwide monitoring and environmental assessment be carried out? How could the Authority's archives be rendered inviolable?

Answers to most of the above are still pending. The reason seems to be a power move by a large bloc of small nations that would give them control of the Authority. They proposed in March, 1978, that the Authority be composed of the 150 nations already involved, with each having one vote. This would mean that the smallest nation would have as much to say about everything as the largest—and, with the Group of 77 already working as a body, it would effectively give control of the rule-making to these small countries. This, according to Elliot L. Richardson, the U.S. delegation leader, is "fundamentally unacceptable" even for continued discussion—so unacceptable, in fact, that he has stated that the U.S. might be prepared to abandon the entire treaty and go it alone.

Under a one nation—one vote dictum, Richardson explains, the Group of 77 would control everything and thus be able to pass the laws they want: to use all profits taken in by the Authority to help poor countries (whom they would also have the power to name) and make sharing of technology mandatory between the "have" nations like the U.S. and the "have-nots."

Rather than allow this, the U.S. representatives felt the United States has the power, the financing, the technology, and the cooperation of fellow industrialized nations to move ahead. Word is that four major international mining consortia are already preparing financing—up to $700 million—to begin seabed prospecting by 1983. They include Kennecott, U.S. Steel, Lockheed, and International Nickel.

SO MUCH HAS BEEN WORKED OUT against such overwhelming odds, however, that delegates remain hopeful. They all realize that, as Leigh Ratiner, one of the U.S. negotiators, says: "What we are doing is dealing with one of the greatest economic policy decisions that will be made in this part of the 20th century."

The 1975 conferences pretty well established acceptable boundaries for national controls: 12-mile territorial sea rights and a 200-mile economic zone, which each nation has the right to and responsibility for. The 12-mile contiguous zone is an area for which the coastal nation may take measures to prevent and punish infringement of its customs and fiscal, immigration, and sanitary laws. It was actually established at the 1958 Territorial Sea Convention but not universally accepted until 1975.

The U.S., along with France and Canada, later derived considerable satisfaction from improving the portion of the text dealing with protection of endangered species and of fragile ecosystems from pollution. These changes widened the jurisdiction over ship-routing systems, clarified the right of coastal nations to obtain prompt notice of events that might result in pollution off the coast so that there would be time to act, and removed certain restraints on the powers of coastal nations to establish and enforce discharge standards stricter than international ones for ships in innocent passage in the territorial seas.

These are inroads into the ultimate objectives of the Law of the Sea conferences and their proposed International Seabed Authority's comprehensive treaty and means for enforcing it. But with all these factors to consider for so many diverse cultures and philosophies, we can still ask whether it is realistic to expect the nations of the world to negotiate such a treaty governing use of the oceans in perpetuity. Or is the task simply too difficult?

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