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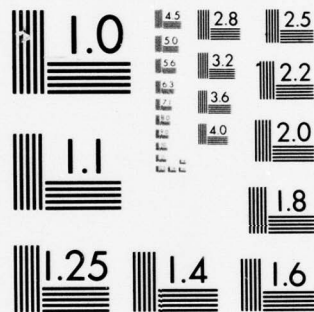
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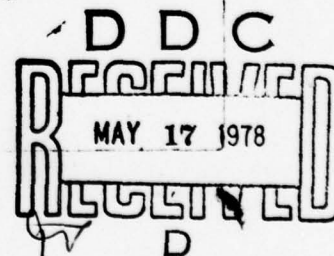
THE UNITED STATES NAVAL WAR COLLEGE
SCHOOL OF NAVAL WARFARE
THESIS



THE UNITED STATES NAVY AND AN INTERNATIONAL
SEABED REGIME (U)

by

Theodore E. Newark
Captain, U. S. Navy



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THESIS

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Captain, U. S. Navy

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Theodore E. Newark
1 April 1971

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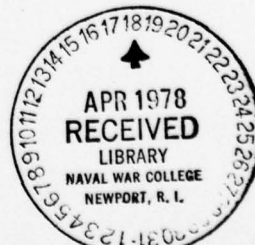
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Abstract of
THE UNITED STATES NAVY AND AN INTERNATIONAL SEABED REGIME

Progress is steadily increasing toward developing the natural resources of the seabed as technological advances create both the ability and demand for their exploitation. Concomitantly, reliance of the United States upon its naval forces for national security is increasing the development and use of sea based weapons systems for the future. These expanding uses of the ocean are creating the need for a new, world wide system of order to avoid the inevitable clash of conflicting interests in the sea, both commercial and military. With the advent of an international regime concerned with the resources of the seabed now becoming discernable, this paper examines the form which such a regime seems to be taking along with its impact upon naval operations. Although this evolving change to the traditional law of the sea will influence naval planning, it is not viewed as an intolerable incumbrance and it is to the Navy's advantage to actively participate in the regime's formation and operation. Recommendations are made relative to the policing activities requisite for the regime in order to eliminate the tendency for tasking naval units for such uses.



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PREFACE

The purpose of this paper is to meet the joint requirements of the U.S. Naval War College and the Master of Marine Affairs Program of the University of Rhode Island.

The paper proposes to briefly outline the Navy's general role as one element of this nation's overall seapower. The expanding sources of conflicting interest in uses of the sea are examined along with the barely visible form which debates are presently giving toward the creation of an international regime for the peaceful exploration and exploitation of the natural resources of the seabed and its subsoil, located beyond the limits of national jurisdiction. Naval adjustment to the requirements expected to derive from new aspects of the evolving changes to present law of the sea are analyzed and recommendations are drawn in order to preclude naval involvement as a policing agency for such a regime.

It should be emphasized that developments in this particular field are of relatively recent emergence, primarily recognized only since the Law of the Sea conferences held at Geneva in 1958. Despite this aspect there is a proliferation of source materials regarding the increased emphasis upon sea resource development, largely centering around legal theory and commercial technological-scientific applications. Only limited discussion exists relating specifically to the interface

between the Navy and an international agency controlling the seabed. Coupled with this fact is the highly political nature of achieving the difficult correlation between the theoretical approach and the realities of the existing world which defy clear definition.

The author has therefore taken the liberty of considerable deductive reasoning, backing his conclusions where possible by reference to the more recent writings of persons possessing greater learned experience and academic polish than his own.

Grateful acknowledgement is accorded to Professor Daniel Wilkes of the University of Rhode Island for his patient counseling and helpful guidance in developing this paper.

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THE U. S. NAVY AND AN INTERNATIONAL SEABED REGIME

CHAPTER I

INTRODUCTION

What are the implications for the U. S. Navy of an international regime controlling the deep seabed? Would such a regime serve to restrict or enhance naval operations which have traditionally taken place under the concept of freedom of the seas? What benefits might accrue to the Navy from such a regime? What role will the Navy have in respect to the regime?

These questions are addressed in this study along with an examination of what the present concepts for the international regime appear to be, based upon the proposals now under consideration by United Nations officials. Over the last two years increasing impetus has been given toward establishing the regime. Indeed, the United States has now taken the position that all necessary steps for achieving world wide acceptance of the regime's make up and function should be completed by 1973.¹

National Goals of the United States. The world is discernably entering a new phase of development in this last third of the twentieth century. Bipolar relationships between East and West which developed at mid-century have been supplanted by the political impact of newly emerged nations comprising

the "Third World". Despite increased capabilities in air transportation, the seas still remain the primary mode of moving trade between most nations. Technological advances are opening new undersea frontiers previously not expected, as resources become attainable from the ocean depths. Therefore, seapower will assume even greater significance than it has in the past. As an integral part of this nation's seapower, its naval strength -- and the latitude to employ it -- will serve to enable the United States to continue a leading role in the future.

In developing an analysis of the Navy's role and how an evolving regime for controlling the deep seabed may affect future naval strategy, it is necessary first to determine what the national goals of our nation will be. For the United States, determination of national goals tends to be somewhat illusory in that for a government such as ours, policy must encompass a consensus derived from a broad section of highly diverse public will which itself is constantly changing in attitude and interest. This problem of changing will has been dramatically emphasized by the reactions of the American people over the past few years toward the military involvement in South East Asia.

For the 1970's and beyond, however, the clearest pattern upon which we can base a blue print of U.S. national policy is the "Nixon Doctrine", first mentioned in July 1969 during a news conference at Guam and later more fully articulated in

the President's report to Congress on February 18, 1970.² Without delving deeply into all the facets of that report, it should suffice to note that the present leaders of the nation are attempting to plot less a role of dominance as one of partnership in concert with other nations and on a more co-equal basis than in the past. This is particularly so in the military sphere, for as President Nixon stated:

"Its central thesis is that the United States will participate in the defense and development of allies and friends, but that America cannot -- and will not -- conceive all plans, design all the programs, execute all the decisions and undertake all the defense of the free nations of the world."³

Over and over again his report emphasizes the future role to be one of sharing responsibility and placing the importance of self-help by the nations of the world themselves toward shaping their own destinies and defense, without American manpower.

The Navy's Role. At the same time, the Nixon Doctrine places increased emphasis upon maintaining a viable defense system of our own. Although the President singles out no particular mode of this strength, the lessons of history clearly dictate that sea forces of the U. S. Navy must play an important part.⁴ For in the event of hostilities, the Navy must have the "...ability to maintain by force an even, uninterrupted trade over the seas and to deny that ability to the enemy."⁵

While implementing its role of partnership, the United

States cannot avoid the fact of its leading position among the free world nations by virtue of its advanced state of resources and industrial-military-economic capabilities. While seeking to be a partner we will necessarily be a dominant one and this factor will demand utmost talents for the implementors to overcome the tragic mistakes of the past which led to accusations of "imperialism" when Quixotic motives of assistance were actually our goals. For example, although the United States has never sought to be a colonial power, the aftermath of World War II has placed us in the position of responsibility for administering the last remaining Trust Territories in the Pacific Ocean. Particularly in the emerging nations of the Third World, American economic ties aimed at their development are frequently denounced as imperialistic. Despite our good intentions, our actions have in fact frequently lent inadvertant credence to such criticism through our insistence to pursue programs which the people were not yet ready to accept, whether they wanted them or not. Attempts to plant democracy in Southeast Asia exemplify perhaps the most flagrant mistakes of this kind.

One factor which assistance through partnership will entail is a lessening of military involvement through standing armies and air forces on foreign soils. Already we are witnessing the relinquishment of overseas bases. Increasing thought is being directed toward withdrawal of U. S. nuclear

weaponry from the peripheries of Soviet Russia and Communist China in order to mitigate their fears of a pre-emptive strike by the United States. Solid planning is evident for the reduction of bases and forces in the Far East such as Vietnam, Japan, Korea and Okinawa as well as discussions of future NATO force reductions in Europe.⁶

With this retrenchment, dependence of the nation will increase upon its seapower to ensure programs vital to its interests are not thwarted.⁷ As Professor W. T. Burke recently phrased it:

"...states have continually resorted to the sea in many ways for promoting power objectives. Traditionally, the movement of ships, military and private, has been the chief form of exploiting the sea for power purposes, and states have engaged in frequent power struggles to preserve or acquire control over the ocean or strategic parts of it..."⁸

Those who understand the insights provided by Alfred Thayer Mahan more than three generations ago will find his teachings regarding the seas -- and those who control them -- will have continuing relevance upon the future importance of the navies of the world.⁹ Although Mahan was writing in an entirely different era of ships, weapons and world political environment, the basic premises upon which he demonstrated a nation's dependence upon the seas are no less important today. It is already recognized that Russia is following Mahan's precepts on the influence of sea power through its expanding maritime and naval strength.¹⁰

It should be clear that the United States must and will place continued emphasis upon maintaining its own naval strength. The nuclear deterrent "triad" involving Polaris and Poseidon submarines deployed ocean wide to bolster the land based strategic missile and aircraft nuclear delivery systems of the nation are commonly accepted by most Americans as essential to the national interest. Integrally tied to this triad are the conventional naval forces involving aircraft carriers and surface combatants as well as submarines which can assure the maintenance of open commercial sea lanes throughout the world.¹¹ To be sure, the modern navy is no longer limited to its previous role of ocean oriented usefulness since sea based air and missile power now is capable of extending deep into any land mass on earth.¹²

Naval forces are uniquely fitted to augment the overall seapower of the nation due to the physical properties of the three-dimensional environment in which they operate. Mobility is one of the most important factors and closely related to this is the element of concealment, particularly for submarine forces. However, these advantages accrue to a potential enemy as well. The submarine threat posed by the Russian Navy generates a most definite challenge to protect our merchant and naval fleets. While the sea has offered a protective buffer to keep hostilities off our land in the past, the advent of missile-armed submarines makes absolute control of the ocean

depths vitally important in the future.

The U. S. Navy, in addition to providing a strategic element of the deterrent triad, will seek to expand its defensive capabilities to ensure the security of our shores from attack by sea. Improved surveillance systems will be required to counter the Soviet undersea threat. This in turn will entail increased knowledge and use of the seabed as a base for extending information collection systems. The "Man in the Sea" program will encompass increased use of the seabed as supporting forces for more conventional naval operations move into the ocean depths. Eventual use of the sea for storage of military supplies is equally as likely.¹³

An Expanding Frontier Under the Sea. In recent years increased knowledge and technology have permitted greater exploitation of the resources lying under the seas. As one of the most industrially advanced nations, the United States already receives large quantities of petroleum and other mineral products from the ocean depths. At the present time offshore mineral production approaches five billion dollars annually in value. Of this most is from petroleum although iron ore, sulphur, beach sands, tin and other minerals are extensively mined.¹⁴ New potentials are continually being found for resources which will compete with those on land for extraction and use. Only in an environment of world peace will the development of ocean resources be possible.

It should therefore be clearly understood that the Nixon Doctrine will encompass an increasing interest of this nation in the sea and our capability of exerting a military presence upon that sea. It should be equally clear that the United States will have a vital interest in any measures which involve the exploitation and the control of such exploitation of resources in and under the sea.

While acknowledging that tactical employment of naval weapons and forces will undergo constant and wide-ranging changes in the near and distant future, it is not the intent here to examine what forms these changes will take. Rather, the intent is to point out that the sea plays a key role affecting whether the United States can achieve its national goals under the Nixon Doctrine. As such the strategic importance of its Navy's role cannot be overlooked. At the same time, while all nations seek to embrace the natural resources of the sea -- the Navy has a vital interest in how any international controls may affect its operations on that sea.

CHAPTER II

THE NAVY, THE REGIME AND INTERACTIONS OF INTEREST

Interactions of interest will be increasingly evident as man pushes further into using the sea, an area which has abounded with absolute freedom for so many centuries. Yet, has freedom of the sea actually been totally free? There have been many restrictions placed upon the so-called freedom of the seas. Some restrictions have grown from custom while others have been created by edict mutually agreed upon by many sovereign states. While the United States proclaims only a three mile territorial sea, it has passed laws and regulations prohibiting foreign vessels from fishing in its "exclusive" fisheries area which extends to the twelve mile limit of the contiguous zone -- part of the high seas. The Fisheries Convention of the North Pacific Ocean invokes the abstention principle whereby foreign fishermen agree not to take certain species indigenous to American waters such as salmon, halibut and herring in specified areas of the high seas.¹

The sum total, then, is that in the international law sense, freedom itself has long been limited by certain constraints in order that its benefits may be assured for the maximum good of everyone. Thus we find such things as the International Rules of the Road which bind ships to certain actions of navigation in order that they -- and other ships --

may travel in safety with at least a minimum danger of interference. Even the sovereignty of nations over their own territorial waters is not absolute in that the right of innocent passage assures ships from other nations to transit through them in pursuit of world commerce.

Increasing Interactions in the Sea. As we enter an era of technology which makes possible the access to vast resources from the sea, what any one nation may seek to accomplish is more and more likely to impinge upon another nation. Law makers, writers and thinkers are delving into a new and untried arena upon which to base their logic. The seabed, by providing vast opportunities for overlapping interests which could breed conflict, offers great challenge for developing the pattern of new international rules and the forum which will have to implement them.

Since World War II the use of the ocean depths as a medium for nuclear deterrence by missile-armed submarines has posed unlimited problems of interaction for the opposing super powers. How can a nation seek to assure its own self preservation from possible obliteration through attack from under the sea without going under the sea with opposing forces itself? It is postulated that through the Soviet submarine response to such a threat, the resulting interaction may well be one of stabilization -- a factor which can only be judged in the long view of history.² So long as the use of such

forces does not come into play, this stabilization will be judged as contributing to the maintenance of world peace, the seemingly only alternative to global destruction. Similarly, as naval forces roam the surface of the seas -- and the skies above them -- conflicting interactions will continually result since obviously two fleets cannot operate in the same waters without accommodation with each other. So long as neither side is bent on pushing tensions to the extreme, this too could result in a stabilizing, standoff condition.

Commercial Enterprises. A factor which is far more likely to raise real conflicts of interaction arises from the commercial enterprises which will take place in the deep sea and the various nations' attempts to accommodate their national security interests around such enterprises. As commercial exploitation moves from national jurisdiction into the international arena, even the most orderly steps taken by these activities will affect the operations of other entrepreneurs as well as the purely military functions of the world's navies.

Seabed exploitation operations by their very nature will necessitate use of the water column above. This will serve to limit the free use of these waters by surface and subsurface units not connected with such exploitation activities. For instance, it is expected that construction of some form of rigid, physical apparatus at least of a temporary nature will usually be required on the ocean bottom at the locus of

exploitation. Above this will likely be a means of marking the point, whether by rigid construction such as a tower, or less rigid yet physically present as with a tethered buoy or floating platform. Even where rigid installations are not required the means of conveying resources to the surface will necessarily interact upon water column use whether it involves an underwater elevator, cable, suction hose hoist, or a free acting submersible.

Accommodation of Interactions. Just as naval forces will need to seek accommodation around such impediments to sea navigation, the entrepreneur himself will be concerned that his rigs not be endangered from inadvertant damage or loss through collision with other sea users.

An international regime is perhaps the only means of limiting such contradictory interactions without resort to force which would in reality be total anarchy in the sea. The historic example of colonial development experienced from the sixteenth to the nineteenth centuries emphasizes how conflicting interests inevitably have led to war. Even the more recent development of America's western frontier witnessed the use of force over the conflicting interests between such varied enterprises as sheep and cattle growers, land and railroad developers, to name but a few. Only through the establishment of a legitimate system of law and order can avoidance of force be assured as conflicting interests converge.

Exchange of information at least as to location of operations would lessen the possibility of conflict. Certainly any international scheme of control would require prior notice such as information to other mariners alerting them to the locality and extent of operations likely to affect others on or under the sea. Further, the elements of safety at sea might be greatly enhanced through some standard means becoming required for local, on-scene warning devices to alert other users of the sea to hazards which may exist in the vicinity of exploitation enterprises. Already a safety zone of 500 meters is provided for such rigs,³ however no universal system of warning has been established.

As to the implications involving U.S. naval operations on and under the seas, there can be little doubt that as more activities develop for the exploitation of natural resources within the world's oceans, their impact will greatly affect both tactical and strategic deployments of sea forces through the inevitability of interaction of interests. As these interactions develop the national interest of the United States will be to ensure their resolution through peaceful means if at all possible. For this reason the U.S. Navy must retain an active role in formulating the nation's decision on what form international controls should eventually take in order to avoid as far as possible any potential conflicts between commercial and naval activities in the depths of the sea.

For, according to William T. Burke:

"...the protection of common interest calls for continued appraisal and study, by all participants but particularly by the nation-state, of the process of interaction, claim and decision involving the ocean."⁴

CHAPTER III

THE EVOLVING INTERNATIONAL REGIME

"An oceanic issue of primary importance before the worlds' nations is that of the legal status of the seabed and deep ocean floor."¹

The prospects for creating an international seabed regime and the arguments in favor of it and in opposition to it are beyond the intent of the present study. The purpose here is rather to examine what impact such a regime might hold for naval interests in the future. For this it may be helpful to outline the general form which the agency is taking, based upon current debate within the United Nations.

Recent Evolution. It has only been in recent years that consideration for controlling activities of the seabed began. In December 1967 the United Nations established a legal working group entitled the "Ad Hoc Committee To Study The Peaceful Uses Of The Sea-Bed And The Ocean Floor Beyond The Limits Of National Jurisdiction."² Within this group, early agreement was reached on the principal that the seabed beyond national jurisdiction should not be subject to appropriation, but that a distinction should be made allowing exploitation which would not serve as a basis for claims of national sovereignty over the seabed.

The following year, a more permanent committee of the same name (without "Ad Hoc" in its title) was established by

the General Assembly as a result of the Ad Hoc Committee's work. The new committee was assigned specific questions to be examined relative to the establishment of machinery for promoting cooperation in the exploration and exploitation of seabed and subsoil resources. So it has only been during the years 1969 and 1970 that this committee has studied the myriad problems of seeking agreement among its forty-two members.

Problems in Achievement. In the committee's annual report to the twenty-fifth session of the General Assembly in October 1970, only very general principles are discernable.³ Except for acknowledging that something must be done, there is little agreement upon what form should be pursued. For instance there is a basic question of the relationship between machinery and a regime itself: some members of the committee hold that a regime would imply machinery as necessary to "give effect to the principles and standards of the regime and regulate their principal application."⁴ Other members feel no machinery need be implied -- that the principles of a regime once agreed upon would then generate the form of such machinery.

Types of international machinery considered by the committee further exemplify the problems of finding agreement. Four main types were studied in detail: one which calls merely for exchange of information and preparation of studies; one for registration and licensing; one possessing intermediate powers; and one having comprehensive powers.⁵ The latter is

perhaps the most practical from the standpoint of achieving the aims of such a regime.

Another problem confusing the issue comes from the less developed nations who express fear that the more technically developed nations would dominate any controls envisaged for a supranational authority. This feeling pervades their approach toward solving the basic issues while at the same time the more developed nations seek to ensure the less developed nations will receive the benefit of revenues derived from ocean resources.

To be sure, there is not even a clear definition yet upon how far national jurisdiction is permitted upon the seabed. Unlike the territorial waters which nations have arbitrarily established as linear distances from their shores, the 1958 Geneva Convention on the Continental Shelf designated the limit of national seabed control as extending to the 200 meter depth which in many cases lies beyond the territorial waters and under the high seas. However, the Convention went on to allow for even greater depths which may become capable of exploitation. This wording opened two additional problems which were unforeseen at the time for determining an absolute boundary: the questions of what constitutes exploitability and how far from shore the principle of adjacency should extend. Lacking a clear definition to these two questions effectively thwarts progress toward achieving delineation of where an international

regime would be empowered to act. This aspect of the present Law of the Sea also bears heavily upon any plans the Navy may develop toward its use of the seabed as an operating base. Acknowledging that arms control agreements will probably encompass the entire sea, some permitted forms of military uses of the sea and its floor may differ significantly under the evolving law depending upon whether they will be under national or international jurisdiction. Regarding military uses:

"... the recommended framework does not subject military uses to any control or regulation; they will be governed by existing principles of international law and any arms control agreements that may be reached."⁶

Progress Toward Achievement. In May 1970, the United States offered a solution to the problems of exploitability and adjacency by calling upon all nations to renounce claims beyond the 200 meter depth.⁷ This proposal has not received wide acceptance, especially from commercial interests in this country who see this as potentially giving away enormous sources of revenue from the continental shelves surrounding the United States.⁸

Despite these problems which hover menacingly in the background there are broad areas in which some general principles have permeated most of the discussions regarding a seabed regime from the beginning: avoidance of outright appropriation of the seabed or its resources by any state or by any international body; avoidance of interference among and between the various enterprises undertaken either upon or within the ocean

floors; prevention and control of pollution along with conservation of the sea's resources; and the assurance that benefits derived from the seabed resources be shared in some manner with all nations, especially developing or landlocked countries lacking access or exploitation capabilities.

The United States' Proposal. There were numerous draft resolutions studied at the committee's August 1970 meeting on what general principles should apply to the international regime. However, the United States submitted a working paper in the form of a draft treaty proposal which, though far from overcoming the lack of agreement in many areas, provides perhaps the best general indication of what form a regime may eventually take.

The United States working paper encompasses the establishment of an International Seabed Resource Authority. Accompanying this would be the creation of the International Seabed Area as the

"... common heritage of all mankind...(consisting)
...of the seabed and subsoil of the high seas seaward of the 200 meter isobath adjacent to the coast of continents and islands."⁹

A geographic transition zone would be provided by the International Trusteeship Area of some agreed upon width, seaward from the 200 meter depth limits of national jurisdiction to an outer boundary generally suggested as the break between the continental slope and the continental margin. The basic

intent here would be to secure to the coastal power the right to administer controls near its area of geographic interest in behalf of the international regime. Beyond the Trusteeship Area, the regime would assume management of controls.

Regime Status Under International Law. One basic premise of the U. S. proposal is that the establishment of the international authority should provide for a juridical personality, that is it would have legal capacity, privilege and immunity such as provided for the United Nations organization. The authority would have an active role engaged in controlling seabed operations beyond national jurisdiction rather than merely recording the activities of various exploitive undertakings.

As envisioned by the proposal this authority would consist of a General Assembly of delegates from all contracting nations, a Council consisting of twenty-four designated or elected delegates and a Tribunal to which disputes or advice on interpretive measures could be referred. The latter would consist of internationally appointed jurists who would serve the day-to-day functions of an international court relating specifically to problems of the seabed regime. Supportive commissions would perform the technical functions specified by the convention and be composed of appointed personnel with "suitable qualifications and experience in seabed resources management, maritime safety, ocean and marine engineering, ...mining and mineral technology...operation of marine installations, equipment and devices..."¹⁰ A Secretariat would be

formed on the model of the United Nations Organization. The authority could be a part of the U. N. or a completely separate body.

Aims of the Regime. The basic premise of the U. S. proposal is that the International Seabed Resource Authority would engage in licensing the exploration and exploitation enterprises of a commercial nature which:

"have as their principal or ultimate purpose the discovery or appraisal, and exploitation, of mineral deposits..."¹¹

Further, provision is made for exploiting living resources of the seabed in accordance with conservation measures; creation of protective rules against pollution; the promotion of scientific research; and the designation of specific areas as marine parks and preserves having "unusual educational, scientific or recreational value."¹²

It is readily apparent from the wording of the working paper that purely military ventures would come exclusively outside the jurisdiction of such an authority, although it is pointed out that arms agreements such as the emplacement of strategic weapons of mass destruction would come under the purview of arms control limitations separate from but certainly of interest to the regime.

If the Navy were to engage in commercial or non-defense oriented activities on the ocean floor, there is every reason to believe it would follow the same licensing procedures as

any other such enterprise. Here again, the basic aim of the United States should be interpreted as allowing for military uses of the seabed. These uses would not be subject to the regime's jurisdiction so long as they relate to defensive or scientific purposes which will promote world peace. ✓

In view of historic events since World War II and the evolution of the "Cold War" despite the creation of the United Nations, it seems likely that only if defensive military uses of the sea and ocean floor are permitted will political realities in the family of nations ever allow creation of an international regime.

CHAPTER IV

NAVAL ADJUSTMENT TO THE REGIME

Nowhere else on earth does there seem to be a greater need for clear definition and outline to resolve conflicting interactions of interest than under the high seas. In attempting to accommodate the traditional, yet already limited freedom of the seas concept, some further infringement upon this freedom seems virtually inevitable in the expanding exploration and exploitation of the underlying seabed. If this were merely to involve an accommodation of business interests alone, the issues might be capable of easy resolution through knowledgeable lawyers and shrewd bargaining between commercial representatives. But in addition to vast mineral resources, the potential means of assuring a nation's survival also lie under the sea.

The development of nuclear powered submarine fleets armed with weapons capable of incalculable destruction upon an enemy has increased the importance of the sea in national security, particularly for the major world powers. It is therefore imperative that the U. S. Navy and other national planners proceed cautiously, examining in every detail the ramifications an international seabed regime might hold relative to the defensive capabilities of this country.

The Sea as a Different Legal Environment. The seas and

their floors offer a far wider area for the conflicts of interaction than are found on land. For example, on the land areas of the world armies were once free to roam wherever their power permitted. Under the nation-state concept and with the evolution of laws in more modern times, the armies of the world have become constrained to remain within their own territorial boundaries unless nations choose to wage aggression against their neighbors. This concept of territorial sovereignty and integrity was even extended into the air overlying nations once the impact of the aviation age came to be realized.

Not so, however, with the oceans which have been held free at least in principle since Hugo Grotius outlined the concept during the seventeenth century. In the present day the fear of nationalization of the world's oceans, or significant portions of them, is perhaps the most compelling force for seeking agreement on controlling measures for exploiting ocean resources while keeping the seas themselves reasonably free. The trend in recent years has been for nations to expand the previously accepted three nautical mile limit of the territorial sea. Already more than forty nations adhere to the twelve mile line and increasing numbers have extended their jurisdictions out to 200 miles from their coastlines.¹ Indications are clear that others may well follow as the lure of seabed resources becomes ever greater.

On the other hand, as long as the seas are free and not

under the domain of any nation there exists the very real possibility for multiple and conflicting interactions. Consider such hypothetical factors as an aircraft sweeping its sonic boom over a fishing vessel which has its nets deployed into the sea along the ocean floor and in turn interfering with a resource extraction operation on the seabed which is itself in conflict with subsoil drilling and mining activities -- all at one geographic point on the earth, involving men and equipments from many different nations!

The principle of "Res Communis" under which the sea floor belongs to all mankind and therefore not subject to anyone's jurisdiction would certainly permit such conflicting interaction at sea. By contrast, land sites have long permitted appropriation, jurisdiction and therefore control which prevents such overlapping interests involving resource development.²

The counter principle of "Res Nullius" implies belonging to no one and would therefore at least theoretically permit establishment of sovereignty over the seas, a condition most international statesmen are seeking to avoid.³ For, as many writers on the subject agree, a land grab of the ocean floors would not be in the best interests of mankind. Yet as already shown, some nations have begun to extend their sovereignty into what was previously the high seas. Some writers point out that even greater progression may extend to the midpoints of the deep oceans themselves unless the principles of an international regime can be adopted. Should nations continue to

expand their territorial waters, it will create a very real risk of conflicting interests between them which could lead to war.

Naval Interest in the Sea. It is axiomatic that the Navy's interests in the sea are many and varied. In general they stem from the historic fact that where man goes in trade, his problems, and therefore his military, usually follow. The sea, as an avenue to world trade, has generated wide applications of naval power stemming from the special physical properties of the ocean. These are today manifested in mobile based Strike Air Warfare, Anti-Air Warfare, Anti-Submarine Warfare and ocean surveillance enabling the projection of military power at specific localities as well as strategic deterrence offered by both conventional and nuclear weapon systems.⁴ These are all seemingly obvious, yet relating these interests here to a context in which they could be relinquished in deference to international control would throw an awesome shadow over the tasks of anyone planning future naval strategy. To identify all of the potential naval uses of the seas defies even the wildest imagination. However, of special concern to this study are three general, yet principle duties of the Navy: to use the sea as a base for attacks upon land; to transport men and materials by sea in support of wartime operations; and to deny such capability to the enemy.⁵ The nuclear deterrence role of the submarine fleet is included in the first, while nearly

every other facet of naval strength will contribute to all three.

It is difficult to determine a dividing point between patently naval interests in the sea and those which are strictly commercial in nature. Much of the research and development overlaps heavily between them. The Navy, whether operating a single ship or multiple fleets will require the ability to roam at will over, on and under the high seas. The conventional display and use of naval power can range to every conceivable purpose from supporting military operations on land in remote areas of the world to ensuring that American and Free World ocean commerce remains unrestricted by any nation which might otherwise choose to hinder it.

The expanding naval capability of the Soviets, particularly in their submarine armaments, generates a strong potential challenge to our Navy.⁶ This threat is basically two fold: it could be employed to hazard sea commerce anywhere in the world as well as to deliver a nuclear missile attack from under the sea against the United States or one of its allies.

Countering this dangerous undersea naval threat is a widely diversified system of weapons and devices employed under the aegis of Anti-Submarine Warfare. Quite naturally this ASW capability encompasses ships and aircraft which roam the seas and skies in search and tracking evolutions.

The Source of Naval-Regime Interaction. Potentially more

significantly affected by international controls over the seabed, however, would be the emplacement of remote sensing devices for the passive detection of submarine craft transiting the ocean depths. Many of these surveillance systems are classified and little can be said of them except that they generally consist of acoustic listeners capable of detecting ship's noises and whose location on the seabed would most desirably be kept secret from any potential enemy.⁷

It is mainly in this type of interaction that naval and commercial factors could easily be expected to clash. As more resources are exploited from the ocean floor, chances increase that drilling, mining or dredging operations will eventually take place where such ASW detection networks have been placed. By the same token, the installation of exploitation equipment could serve to restrict waters through which surface and under-sea vessels have been free to maneuver in the past. These two factors appear to be inevitable.

Impact Upon the Navy. What then of the questions originally posed regarding the implications of possible restraints an international seabed regime might hold for the U. S. Navy? There seems little reason to believe that the Navy -- indeed all the world's navies -- could not operate effectively in conjunction with such a regime so long as the regime remains concerned primarily with commercial uses of the seabed. Neither does it appear that commercial exploitation operations under

such a regime need have an overburdening effect that would serve to alter the future value of naval strengths to fulfill their nations' security interests.

On the contrary, such a regime could permit all navies a far more orderly appraisal of existing and planned commercial enterprises which might potentially hazard or interfere with their own naval forces. Certainly it would serve both national as well as regime purposes to have naval representatives on the regime's staff in order to be alerted to potentially interactive conflicts of interest. Such a working program need not obviate a nation's reliance upon secret factors concerning its own national security. Also this does not imply that commercial enterprises would be restricted from any area of possible exploitation. Where such activities might encompass an area already in use, by for instance some passive-defensive device placed on the ocean floor, immediate steps toward accommodation could more readily be started.

The U. S. Navy has long been operating under international constraints on the seas of the world. U. S. naval operations have consistently honored the territorial waters of other nations. Similarly, the controls imposed upon aviation under the International Civil Aviation Organization since 1944⁸ have not hindered the growth in importance of naval aviation as an extension of United States sea power. The Navy has traditionally accommodated to civilian economic interest as shown by its

frequent adjustment of oceanic operation areas and outright curtailment of maneuvers in deference to such enterprises as fishing, oil exploitation, recreational activities, etc.⁹

The implications of a regime for controlling the exploitation of the deep seabed offer little change to the Navy's capability of national security operations in the future. No where in the proposed draft treaties, nor in the discussions surrounding them, has there been an inference that covert military efforts of a defensive, peaceful nature would be curtailed.¹⁰ Although some discussion toward total prohibition of military use was contained in reports of the United Nations Commission to Study the Organization of Peace from 1966 to 1969, this aspect has received little focus in subsequent U. N. debate.¹¹ This is despite the inclusion by Dr. Pardo in the famous Malta proposal of 1967 to reserve the seabed "exclusively for peaceful purposes in perpetuity."¹²

It is also recognized that the Soviets have introduced proposals containing reference to prohibition of military uses of the sea, however these have been largely propaganda in nature and have not received widespread consideration. Indeed, the U. S. Congress Foreign Relations Committee in discussing a draft Treaty on Ocean Space during January 1969 specifically provided for the continued operation of Polaris submarines and defensive underwater detection systems.¹³ It would appear that the more likely forum for further study of strictly military

limitations will come from the Eighteen Nation Disarmament Conferences at Geneva and its related Strategic Arms Limitation Talks at Helsinki and Vienna. Meanwhile, the commercial aspects of discussion by the U. N. Seabed Committee can proceed to create an environment conducive to promoting the exploitation of ocean bottom resources through the international regime.

Judging from the political realities surrounding creation of such a body, the main focus of the regime will apparently be directed toward the orderly development and exploitation of resources in the commercial sense for the benefit of mankind and only minimally indirectly affecting other uses of the sea. This aims mainly toward avoiding the "land grab" practices such as were employed during the colonialization period of the sixteenth to nineteenth centuries.¹⁴ Closely tied to this concept will be the means of taxing the exploitation enterprises for the benefit of developing nations.

Strategic implementation of naval forces or devices of a defensive nature will in no way serve to counter the purposes of such a regime. It would seem therefore that the Navy has much to gain from the creation of an international seabed regime. Further, the orderly development of commercial exploitation provided by such agreement would avoid the hazards of power conflicts which might otherwise develop without such control.

An Interaction to Avoid. Although it seems logical that the navies of the world should be represented within the administrative organization of such a controlling body, it should not be construed that naval forces would be used for the policing activities which might be required for inspection and enforcement of its regulations. Such a use of naval vessels would seriously impair their missions relative to defense of their respective nations. It can therefore be deduced that all navies would be extremely reluctant to commit any of their forces to the international regime for such duties.

CHAPTER V

AN ALTERNATIVE TO NAVAL INVOLVEMENT

In order to avoid the understandable opposition which would arise from use of the world's navies as enforcement agents and as an alternative to their being expected to meet such a requirement, the creation of an international ocean force capable of policing the goals of a seabed regime seems both desirable and entirely feasible. Senator Claiborne Pell brought forth such a concept in 1966 when he proposed an International Sea Patrol for which the United States Coast Guard would serve as the nucleus.¹

Later, in 1968 Senator Pell carried his idea further in a draft treaty on "Principles Governing the Activities of States in Exploration and Exploitation of Ocean Space." Changing the name to Sea Guard, the draft called for the policing agency to "maintain and enforce international compliance" with the principles of the seabed treaty.²

The need for policing adherence by all enterprises to international measures controlling exploitation of seabed resources is certainly beyond question. Without the protection such services would provide, there would be little purpose in formulating rules which could be undermined by unscrupulous behavior or even inadvertent misadventure due to pollution or to extinction of those resources. The basic premise for a

regime is to assure order rather than chaos on the ocean floors.

Creating Enforcement Measures. The international ocean policing activity should of course be multinational in nature. It could, at least initially, be created from discarded naval vessels, aircraft and other equipments from nations willing to contribute them. Or perhaps these equipments could be appropriated through long term financing arrangements since it is anticipated that the regime will become a self sufficient activity through revenues obtained from the licensing of commercial ocean enterprises.

In view of the myriad other obstacles the regime would have to overcome from the beginning, the former suggestion seems preferable. Certainly the more technologically advanced countries, who stand to be the most concerned with ocean exploitation, should take the lead in making the equipments available since the success of the regime will most directly affect the success of their undersea commercial development programs. The transfer of equipments might even be closely allied with future disarmament measures.

Let us examine more closely how such a force could be composed. The international ocean force would not assume authority to control the territorial waters of any nation nor the International Trusteeship waters bordering them except as requested by nations incapable of policing their own areas of interest.

Economic Factors. Since the force would be strictly of a policing nature it need not be based upon heavy armaments, but on capable, seaworthy vessels for patrolling the high seas in order to monitor registered exploitive operations and to detect violations of international agreements. As such, the force would be manned by individuals possessing a wide range of talents drawn from the naval, merchant and even fishing fleets of the world who no longer pursue careers in those fields but still retain man's inexplicable desire to go down to the sea. Such a force would require uncommon dedication and total acceptance of the challenge to work for the benefit of all mankind in keeping the seas' resources from falling into ruin such as has resulted so many times from the uncontrolled exploitation suffered in many regions of the world's land areas.

Regarding the costs, ships operated in a service such as this certainly would not be as expensive as when they are maintaining the complicated armaments which apply to modern combat naval forces. In addition, the force could provide manifold benefits to all countries through the job opportunities that would be available for retiring seafarers as well as training opportunities for the youth of all nations who might wish to become men of the sea. The trained and experienced manpower reserve this would provide to the parent nations of these individuals might permit augmentation of their own naval, merchant or fishing fleets if situations should arise that require them.

Feasibility Factors. Man has traditionally been capable of cooperation at sea and a force manned by multinational crews should prove workable through the common bond of the sea. For instance, the world's merchant marines are frequently crewed by sailors of varying nationalities. Further, the United States Navy proved the concept of a multi-national crew from the Navies of seven NATO nations during the highly successful cruise of USS Ricketts from July 1964 to December 1965.³

Modern technology of both Russia and the United States provides numerous supporting methods which could assist in policing the oceans without the international agency itself having to expend large amounts for an exclusive system of its own. Internationally shared data from orbiting satellite collection devices such as Nimbus, ESSA, ATS and TIROS should easily be available to policing activities of the regime.⁴ Computer derived analysis from a wide variety of sources would permit the agency to keep abreast of its entire area of interest.

The greatest benefit of all would be the assured status of commercial investment which presently hangs in question for developing enterprises in the ocean beyond the limits of clearly defined national jurisdiction. The orderly process of both exploration and exploitation would ensure a more reasonable return to the investors which in turn would enhance all aspects of developing the resources of the ocean for the use of all mankind.

Potential for Future Expansion. The international ocean force need not necessarily be limited to monitoring seabed exploitation activities alone. Indeed, in view of the inevitability of interactions arising within the sea, it is quite conceivable that the regime itself could one day be closely allied with the other various international agencies and activities concerned with ocean services such as fisheries, weather observation and scientific exploration. Appropriate personnel working for the international community could be stationed on the ships, aircraft and floating or land based stations which could meet the requirements of policing objectives for all such organizations.

Other functional duties which could be assumed by the international force include an active role in search and rescue activities presently performed by coastal states under provision of the Convention on the High Seas.⁵ This service would certainly be in keeping with the goal of using the ocean's resources for the benefit of all mankind. The humanitarian principles of the rescue activities of any state are now provided to air and sea users of all nations. Augmentation by the international ocean force would be a reasonable extension of such services and might relieve the burden for some coastal states.

As postulated earlier, creation of an international ocean policing force would relieve the naval forces of the world from an unwanted task which would interfere with their basic missions

of national security. At the same time it would offer one of the most unique opportunities yet attempted for international co-operation within the United Nations. It would be fitting that such an advance for mankind might stem from his operations on the ocean frontier. For, although the expanding world populations live on the land, roughly three quarters of the world is made up of the sea -- and it is from the sea that mankind may derive the greatest part of his future existence.

CHAPTER VI

CONCLUSIONS

The foregoing has sought to show that in the foreseeable future there will be a continuing need for a strong naval presence on the high seas as an expression of United States determination to remain a maritime power. The U. S. Navy will have an increasing role in implementing United States policy in support of the Nixon Doctrine which calls for a lessening of military posture tied to overseas bases.

The flexibility of response and mobility permitted through naval forces will be in consonance with the "low profile" posture signalled by the new foreign policy for the last third of the present century. This policy recognizes the changes in world political developments that have emerged from World War II and the subsequent Cold War doctrines of the past two and one-half decades.

The world is becoming increasingly conscious of the value to be derived from the ocean's resources. Modern technology is making possible the exploitation of tremendous riches from the ocean depths. As mankind moves to the deep ocean frontier, conflicts of interest will result from the overlapping uses of its surface, submarine and seabed properties. To prevent such conflicts becoming open war, international agreement is desirable and necessary to permit the peaceful development of

natural resources for the benefit of all mankind.

In order to create order from impending chaos, the United Nations is examining the framework of an international regime for controlling the exploration and exploitation of natural resources in the seabed and its subsoil beyond the limits of national jurisdiction. At present these limits require clearer definition before substantive agreement can be reached upon the formation of the regime. However, some important principles have been approved by most nations: there exists an area of the seabed which must not be subject to appropriation by any state and the benefits of its resources must be reserved for all mankind.

Contrary to what the concept at first implies, establishment of an international seabed regime will not necessarily impinge upon naval forces in their roles of safeguarding national security. Rather than restricting naval operations of the future, such a regime could enhance them by signalling potential areas of conflict with commercial enterprise, thereby permitting early accommodation and adjustment.

Present planning for a regime is limited strictly to control of commercially oriented enterprises which would be licensed to find and develop resources under the sea. Measures designed to limit military uses will be the subject of separate arms control agreements.

A potential source of trouble for the Navy would be the

natural tendency to task certain elements with the enforcement duties which could be expected to evolve from an international regime. It is suggested that an independent ocean force be established under the regime itself along with the free exchange of multiple data gathering services already in use and yet to be devised by national and international agencies. It is further suggested that the regime could easily be expanded to encompass other worldwide activities such as the enforcement of fishing regulations, weather collection and other environmental services as well as a role in the search and rescue activities presently performed by coastal states throughout the world.

Man's involvement with man over the centuries on land has drawn a history of almost continual war. With his last frontier opening to him under the sea, it is hoped that he can now learn from the past and create a new road to future prosperity based upon peace and cooperation which an international seabed regime could offer.

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<u>Country</u>	<u>Officers</u>	<u>Men</u>
Greece	2	24
Italy	2	30
Netherlands	1	17
Turkey	1	10
United Kingdom	2	24
United States	10	164
West Germany	2	47
	<u>20</u>	<u>316</u>

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