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SEABED FROM THE GLASS PALACE

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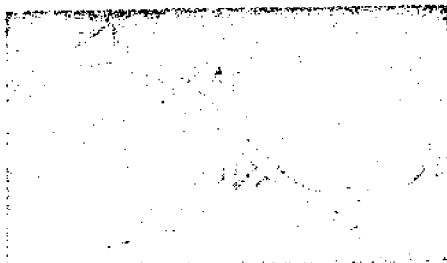
MARGARET LYNCH GERSTLE

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**Law of the Sea Institute**  
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THE POLITICS OF UN VOTING:

A VIEW OF THE SEABED FROM THE CLASS PALACE

Margaret Lynch Gerstlé

In the two years since the representative of Malta introduced in the General Assembly the proposal to consider the peaceful uses of the seabed beyond the limits of national jurisdiction, the item has progressed within predictable patterns of Assembly voting on a subject, largely economic in nature, which does not impinge directly upon the vital interests of a number of countries, or which does so only in its relationship to other more crucial issues.

It has been suggested that a possible key to the solution of the thorniest of many elements of the problem - that of the boundary of national jurisdiction on the seabed<sup>1</sup> - might be found in the geography of the shelf as it is distributed around the world. But, to attempt to predict voting patterns of compromises from the view from the shelf is to look through a prism backwards; such a measure of a state's interests can be usefully assessed only when added to the pot of other political brews which condition UN voting patterns.

Dr. Lewis Alexander, in his paper "Alternative Regimes for the Continental Shelf" prepared for the preliminary conference of Paeem in Maribus at the University of Rhode Island in January, included a tabulation of nations by the geographic nature of their continental shelves. Of the 124 nations that are members of the UN, only 26 are listed as having broad shelves. Of the rest, 56 have narrow shelves defined as less than 50 nautical miles in breadth, 19 are shelf-locked and 23 are land-locked. This numerical suggestion

<sup>1</sup>This paper was written before the President's announcement on May 23 of the US position on the boundary question. The policy decision does not change the substance of the paper which suggests some of the problems that the US may encounter in seeking general support for its proposals.

of mutual interests in the extent of national jurisdiction on the seabed is, by itself, highly misleading. How that interest is shaped by other overriding political considerations suggests some of the present weaknesses of the UN in finding any meeting ground on this issue as in many others.

It is the purpose of this paper to analyze one vote - that on the so-called moratorium resolution of the 24th General Assembly last December - in terms of the existing political framework of the vote, and the distribution of shelf interests: and to suggest what, if any, conclusions might be drawn from this isolated but significant roll call in the Assembly.

On almost all subjects of UN concern, four interacting factors establish the frame within which actual interests in a specific subject may alter the composition. These are: the present dominant context of UN politics, the nature of the subject, the stage of its evolution, and its relation to other items in search of votes.

The dominant context of early UN voting days - using 1960 as an arbitrary watershed - was the cold war division amidst a membership of some fifty plus nations, most of which had a history and identity as such. Post 1960 UN politics is characterized by the gaping fissure between developed and developing nations, accompanied and abetted by the substantial increase in UN membership of newly emergent nations. In its worst manifestations it becomes a case of power on one side and votes on the other, with the voting side of the scale increasing in weight as it becomes more sophisticated in its ability to maintain a common front for tactical purposes, even in cases where substantive interests are divergent. A parallel development has been the emphasis on consensus to avoid the futility and fragmentation of paper majorities - and ultimately the futility of the UN itself.

At its maximum, the "poor nation" side of the aisle numbers about 83 and encompasses virtually the entire world with the exception of the US and Canada, the Soviet Union and its Eastern European satellites, and the group known as Western European "and others" (Japan, Australia, New Zealand).

Within this context of rich nations and poor nations, and creating some shifts within it, is the regional vote: Western, Soviet, Latin, and Afro-Asian. The Afro-Asian bloc is the heart of the developing nation vote. While Latin interests are not always consonant with those of other developing nations, it is increasingly allied with, and has become adept in using, alliance with the Afro-Asian bloc for tactical purposes. The Soviet vote shifts depending on whether its current purpose is to curry favor with the developing nations or to achieve a specific goal of a substantive nature; in the case of the seabeds issue, their primary goal appears to be to postpone the time table for international decision or arrangements.

Within this dominant framework, the degree of unity of the developing nation vote is affected by the nature of the subject at hand. This is particularly noticeable on economic subjects which align rich vs. poor. The seabeds item is a relatively pure example; at stake is a pot of gold which not only divides rich and poor but which is at present largely conjectural and hence adaptable to unrestrained fantasy.

Unity of developing nations is also affected by the evolution of the item - whether it is in the early stages of an education process or tactical skirmishing, or whether it has proceeded to decision on actual interests, and the degree to which there is, in fact, a direct interest as distinct from a related concern which may confer value on a vote. The seabeds item has not yet passed beyond the educational and tactical stages, hence the nature of the physical shelf has affected the unity of the developing countries only in cases where there is strong present interest in mineral exploitation (Indonesia, Liberia and some Middle Eastern countries).

Applying these factors to the vote on Resolution 2574D<sup>2</sup> of the 24th General Assembly - the moratorium resolution - one can come up with a text book illustration of the forces at work on an item seen by most as an issue of rich vs poor, which is still in its tactical stages, and which is of actual as distinct from theoretical or peripheral interest to only a small number of nations. The resolution itself was primarily tactical (despite claims of its Latin sponsors that it purported to state the *lex lata*). It does not define the boundary beyond which the moratorium is to apply, and it proceeds on the illusion that such a tactic could effectively forestall the foreclosure of options that might result from the advancing technology of a few nations.

The votes were 62 for, 28 no, and 28 abstaining. A breakdown of the vote by the above categories and by the shelf measure as listed by Dr. Lewis Alexander, follows. If the no's and the abstentions are combined, the division between that vote and the yes vote, in all four shelf categories, is fairly split down the middle. Why this was so does not encourage any optimistic assessments of the ability of the Assembly, or the seabeds committee, to come to grips with the boundary issue, or to resolve it in favor of a relatively narrow extent of national jurisdiction.

<sup>2</sup>Resolution 2574D states that pending the establishment of an international regime states and persons "are bound to refrain from all activities of exploitation of the resources of the area of the seabed beyond the limits of national jurisdiction."

By Stage of Development and  
Alexander Classification of Shelf  
Developing Nations

Stage of Development	Developing Nations				Developed Nations				Totals
	Broad Shelf	Narrow Shelf	Land-locked	Sub Total	Broad Shelf	Narrow Shelf	Land-locked	Sub Total	
For	0	0	2	2	0	2	0	2	62
Against	13	5	4	26	0	4	4	28	28
Abstentions	0	5	0	5	0	0	0	5	28
Totals	13	10	6	33	0	6	4	10	118

Stage of Development	Developing Nations				Developed Nations				Totals
	Broad Shelf	Narrow Shelf	Land-locked	Sub Total	Broad Shelf	Narrow Shelf	Land-locked	Sub Total	
For	11	26	12	53	62	13	13	88	118
Against	13	6	4	23	28	5	4	37	28
Abstentions	2	19	3	24	28	4	4	36	28
Totals	26	51	19	96	118	22	21	161	118

DEFLECTIONS FROM THE DEVELOPING VS DEVELOPED NATION SPLIT<sup>3</sup>

1. Western and Developed Countries for: 2 (Sweden and Finland)  
Sweden cherishes a leadership position on behalf of the developing nations, especially on seabeds, arms control and related issues. Both Sweden and Finland are shelf locked with little of substance at stake.
2. Developing Countries against: 1  
Ghana (offshore oil interests) (in most cases, such votes were expressed as abstentions).
3. Abstentions  
19 (of 28) are developing nations with conflicting actual interest in offshore oil exploitation.

The principal deflection from the developing nation group was expressed in the abstentions of some 19 African, Asian and Middle Eastern nations with existing or prospective interests in offshore mineral exploitation. Even with this dilution the vote was as close as the UN has come to a confrontation between power and votes; it is, fortunately, doubtful that such a confrontation will obtain issues of substance since there is in it no basis for a consensus that could combine votes and major power interests.

One of the most interesting breakdowns of the vote is that of the 77 nations with either broad or narrow shelves (that is, with some real interest in the outcome); only 16 outside of Latin America and the Caribbean voted in favor of the resolution. The sixteen included for the most part the more radical Afro-Asian states. This suggests that any regime and boundary proposals that are acceptable to some developed nations, and also acceptable to the Latins, and/or to other developing nations with coastal interests, could create a quite different voting nucleus of the UN membership.

If the desired end is a limit of national jurisdiction over resources of the seabed established considerably short of the 200 miles now claimed by some Latin American states, then the question becomes one of the value which the developed nations put on the need for a UN agreement on a regime; the extent to which they can reconcile their own divergent interests, and the price to be paid for additional support. It is increasingly apparent that Latin votes and interests in fishing rights hold some important keys to the kingdom of the underwater world.

Any conclusions drawn from any single vote, especially one as misguided in time and logic as this one, is suspect from a number of standpoints. For one, it is arguable that had the US exercised strong leadership on the question of the boundary, with its considerable power of persuasion, the kind of futility which plagued the General Assembly discussions, and the meeting

<sup>3</sup>These divisions are somewhat arbitrary and imprecise. Developed nations generally include Western and Eastern Europe, the U.S., U.S.R., Canada, Australia, New Zealand and Japan. Mexico might be considered a developed nation economically but votes with the Latin bloc. Some Eastern European countries might be economically developing; none but Yugoslavia, part of the Soviet bloc, is considered so in UN parlance.

of the seabeds committee in March, would not have occurred. In the absence of any firm decisions by either of the great powers, all bets were open.

Nonetheless the vote does suggest some threads of thought and possible future courses of action which are not consonant with the prevalent UN rhetoric which sets up the little good guys against the big bad guys. It is, in fact, not wholly illogical to suggest that the interests of the US are closer to, or at least more compatible with, those of the poorest of the poor than with those of the international middle class.

The argument of the developing nations has been that the seabeds are common heritage of all and that wealth should be administered by and for all. In brief, the developing nations want an assurance of a fair share of the pot and to that end have devoted their efforts to blocking any arrangement de jure or de facto - which would effectively exclude them. One means has been to invest the phrase "common heritage" with the meaning of common usage or international trusteeship, and the right to common management.

A parallel tactic has been to hold the question hostage for the more favorable resolution of other outstanding international differences such as fishing the breadth of the territorial sea. From this point of view, the moratorium resolution as an effort to slow down the pace of technology to match the plod of diplomacy has a certain logic - if it were effective.

The argument put forth by the developed nations is to the effect that, if there is a good sensible regime, meaning one in which power and interest are suitably reflected, all nations may look more favorably on narrow boundaries of national jurisdiction.

The trouble with both of these pleas is not their chicken and egg character but the fact that they are not accurate summations of the actual interests on either side.

For example, within the developed nations there are many concerned not only with the economic consequences of boundary decisions, but with elements of physical and environmental security (and freedom from superpower sniffing) which argue in favor of a fairly broad shelf, or at least jurisdiction for specific purposes over a fairly extensive area. These factors will exist regardless of the nature of the regime. The developed nations which favor narrow boundaries are those like Sweden with relatively little to lose either in exploitation or physical security. In fact, only the US, and to a lesser degree the USSR, are faced with a substantial conflict of interest between the desirability of maximum control of their own shores, and maximum maneuverability everywhere else.

Nor is the rhetoric of a narrow shelf and a strong regime particularly persuasive to many of the developing nations. The abstentions on the moratorium resolution indicate that there is no lack of perception of the value of a bird in hand vs one in the UN bush. And it is quite evident that the argument for a narrow shelf would find new advocates in Latin America. On the contrary, the largest reach of shelf is that which extends down the entire east coast of Canada, the US, the Caribbean and Latin America, inviting a hemispheric alliance of interest in broad shelf jurisdiction, again with the exception of the U.S.'s overriding strategic interests. West coast Latin states, with little or no shelf, have long claimed jurisdiction over waters 200 miles seaward from their coasts.

On the east coast, Brazil has claimed sovereign rights over the sea and the seabed to a distance of 200 miles and other Latin American nations have claimed rights to the resources of the sea and the seabed to that extent.

Both Brazil and Argentina are engaged in extensive oil exploration so that the interest of east coast Latin nations in broad shelf claims may be

reinforced by actual interest in oil recovery as well as by the value of jurisdictional claims as a negotiating tactic for the Latin bloc as a whole. The notion that a majority of the UN, if given the power to choose, would endorse a strong regime and a narrow boundary, irrespective of fishing and other trading factors, is probably erroneous. Despite their tactical alliance to date, there is no real identity of interest between the Latin bloc and most developing nations.

In fact, the US may have the most substantial stake in a narrow zone of national jurisdiction, and by continuing vacillation ensure by default not - as U.S. oil companies fear - a narrow zone, but a broad one with all its potentially restrictive effects upon other uses of the seas.

If this is the case, then it follows that, if the US is to influence the outcome in favor of restricted areas of national jurisdiction, it must make that decision promptly and assess the price to be paid in terms of other law of the sea matters which are unlikely to remain separate or separate.

Such an assessment also suggests that an adjustment of preferential fishing zones, and a concept of limited intermediate zone jurisdiction on the seabed along with some provision for revenues to an international fund, would probably be operative elements of accommodation among a substantial nucleus of developed nations and other nations with interests in the shelf or coastal waters. Some form of intermediate zone jurisdiction would satisfy the demand for physical security and independence of coastal nations, as well as primary rights of exploitation and control without carrying with it a claim of jurisdiction for all purposes. The nature of such a zone - whether it evolves as primarily national or primarily international in character - might well be determined by the immediacy or remoteness in time of an agreement on the elements of a regime.

In April, Canada asserted limited jurisdiction in Arctic waters seaward for 100 miles for the purpose of controlling pollution, a position to which the US responded with considerable diplomatic anger. However valid the objections, it is likely that in the absence of international agreement on various aspects of administration of uses of the sea and the seabed, such unilateral decisions will proliferate. The same unilateral claims made for the limited purpose of protection of the environment can, unfortunately, also be made for other purposes under the same umbrella of "self-defense", by other nations more concerned with the revenue from oil leases than with the protection of their coastal areas.

If US interests are best served by preserving maximum freedom for all legitimate uses of the seas, they will be best served by taking an active part in constituting a regime which can enlist support for the kind of intermediate zone or areas of limited jurisdiction, which will not in fact become an extension of national jurisdiction for all purposes.



VOTE ON RESOLUTION 2574D, 24th GENERAL ASSEMBLY, DECEMBER 1969

BY ALEXANDER CLASSIFICATION OF SHELF

In Favor - 62		
Broad Shelf	Narrow Shelf	Land-Locked
Argentina	Algeria	Afghanistan
Brazil	Barbados	Bolivia
Guyana	Ceylon	Burundi
Honduras	Chile	Central African Republic
India	Colombia	Chad
Mauritius	Congo (Brazzaville)	Lesotho
Mexico	Congo (Democratic Republic)	Mali
Nicaragua	Costa Rica	Nepal
Pakistan	Cyprus	Niger
Turisia	Dahomey	Paraguay
Uruguay	Dominican Republic	Rwanda
	Ecuador	Uganda
	Guatemala	Zambia
	Guinea	
	Haiti	
	Jamaica	
	Kenya	
	Maldives	
	Mauritania	
	Morocco	
	Panama	
	Peru	
	Somalia	
	Trinidad and Tobago	
	Tanzania	
	Venezuela	

Against - 28

Broad Shelf	Narrow Shelf	Shelf-Locked	Land-Locked
Australia	Bulgaria	Belgium	Austria
Byelorussian S.S.R.	Ghana	Denmark	Czechoslovakia
Canada	Italy	Netherlands	Hungary
France	Japan	Poland	Luxembourg
Iceland	Malta		Mongolia
Ireland	Portugal		
New Zealand			
Norway			
South Africa			
Ukrainian S.S.R.			
Union of Soviet Socialist Republics			
United Kingdom			
United States			

Abstentions - 28			
Broad Shelf	Narrow Shelf	Shelf-Locked	Land-Locked
Indonesia	Burma	Iran	Laos
Philippines	China	Saudi Arabia	Malawi
	Cuba	Sudan	Swaziland
	El Salvador		Upper Volta
	Greece		
	Israel		
	Ivory Coast		
	Lebanon		
	Liberia		
	Libya		
	Madagascar		
	Nigeria		
	Romania		
	Sierra Leone		
	Spain		
	Syria		
	Togo		
	Turkey		
	United Arab Republic		

