CARACAS -- 1974

The second session of the Third United Nations Conference on the Law of the Sea (UNCLOS) took place in Caracas, Venezuela, from June 20th to August 29th. It concluded the first phase of the greatest international conference ever held.

The subject matter was of first importance. The oceans cover more than two-thirds of the planet. Every problem of war and peace that has ever beset relations between nations projects itself into the oceans: food, minerals energy, communications, science, technology, environment, territoriality, sovereignty, power, and the life and death of the planet. If we learn how to handle these problems in the oceans, we can handle them elsewhere as well. A new law for the oceans is a new law for the world.

There were three thousand participants, along with supporting staff, at Caracas. One hundred and thirty-eight nations were represented, plus the United Nations Council for Namibia. There were a number of regional and intergovernmental organisations, such as the League of Arab States, the Organization of African Unity and the Organization of American States; the Commonwealth Secretariat,

and the European Economic Community; the Inter-American Development Bank, and all the specialized agencies of the United Nations; about two dozen nongovernmental organizations and nine national liberation movements, including the Palestinian Liberation Organization.

There was an array of senior members of the U.N. Secretariat, including Secretary General Kurt Waldheim; his special representative, Constantine Stavropoulos; and the father and founder of the whole momentous undertaking, Arvid Pardo of Malta.

Two heads of state (the Presidents of Mexico and of Venezuela), one deputy head of state (Crown Prince Tupotoa of Tonga), one Deputy Prime Minister (Anton Vratuša of Yugoslavia), fifteen foreign ministers, and thirty-two other officials of ministerial rank participated in the conference.

The largest delegations were those of the United States, Venezuela, Canada, and the Soviet Union, consisting of about 120 members each. The smallest -- such as Tonga's -- consisted of one or two. The large delegations had the advantage of expertise in every conceivable area, but their policies, more often than not, were compromises between their own internal interest and pressure

groups rather than the result of a give and take within the international community. The smaller delegations had more flexibility. The whole enterprise, after all, was due to the initiative of Malta, the second smallest member of the United Nations.

The ten-week working period was divided into four overlapping phases.

The first phase, from June 20th to June 27th, was devoted to the Rules of Procedure. The main issue was how decisions would be made on substantive matters. This was no problem for the developing nations, who now hold an overwhelming majority of votes in the United Nations. But this is what troubled the industrialized nations. They tried to mitigate the impact of automatic majorities by insisting on the requirement of a very large majority (at one point the Soviet Union proposed nine-tenths) for any substantive decision-making.

The compromise -- a testimony to the firmness and diplomatic brilliance of the conference president, Ambassador H. Shirley Amerasinghe of Sri Lanka -- was that decisions on substantive matters were to be taken by a two-thirds majority of members present and voting, but that this must include a majority of

"participating states." This decision itself was taken by consensus, without a vote, and reflects a significant development in U.N. decision-making. It was formulated during the preparatory session of the conference in New York last December. This so-called "gentlemen's agreement" stipulated that decisions would be made by consensus, based on extensive discussion and negotiation. Voting would be resorted to only after all possibilities of reaching consensus had been exhausted. This should go a long way toward allaying the fears of states who are now in a minority in the United Nations.

The Rules of Procedure also provide that non-governmental organizations, with observer status recognized by the conference, have the right to distribute documents and to take the floor, in the plenary as well as in the three main working committees. This provision was made in response to an amendment introduced by the Vatican.

The second period, from June 28th to July 15th, was dedicated to plenary sessions at which general statements were made, setting the tone for the technical work of the three committees. One hundred and twenty-four such statements were presented by 115 states and nine representatives of organizations, during twenty-one meetings. They dealt with:

[] The limits of the territorial sea;

[] The extension of national jurisdiction over living and nonliving resources within an "economic zone" of two hundred miles;

[] The management of fisheries;

[] The passage through straits;

[] The rights of landlocked nations;

[] The establishment of an International Authority for the mining of seabed minerals in the area beyond the limits of national jurisdiction.

The major points of view clearly emerged in these general statements. The conflict is not so much between "nationalists," eager to expand the limits of national jurisdiction, and "internationalists," desirous to maximize the international zone, even though many observers still cast it in these terms.

The real conflict is between a minority of nations who hold out for the basic "freedoms of the sea" and for limited and fragmented international and national regimes, on the one hand, and, on the other, a majority of nations who have stepped forward in favor of a strong and rational regime for the oceans, the management of which would be shared by coastal nations, regional organizations, and the

International Authority.

"One of the dogmas that we shall challenge is the freedom of the sea," said the representative of Tanzania, "for that freedom has served only the interests of the stronger, in navigation as well as in fisheries. The management of living resources and all other activities on the high seas must come under effective international control." In another statement, that same delegate went as far as to say, "If freedom of navigation were made the main objective of this conference, that freedom would destroy humanity."

At least two dozen nations -- all of them developing -- spoke out strongly in favor of a comprehensive ocean-space regime, such as first proposed by Malta. The President of Mexico, addressing the plenary session, said:

"Man's entire attitude with regard to the sea must change. The dramatic growth of the world's population, and the consequent increase in demand for food from the sea; the expanding industrialization on all continents; the congestion of populations in coastal areas; the intensification of navigation and the ever more frequent deployment of supertankers, containers of liquid gas, and nuclear powered vessels; the increasing use of

chemical substances which eventually end up in the seas -- all these are factors which impose the necessity to regulate globally, to administer internationally, the uses of the oceans. Every day there will arise new and greater conflicts between different competitive uses of the oceans, conflicts which no nation will be able to resolve alone.

"There is, furthermore, a constant interaction between the multiple uses of the oceans. The exploitation of seabed resources may affect the utilization of the superjacent waters; activities in international areas and in national coastal zones affect one another mutually; and the sea in its totality, and the atmosphere above it, form one ecological system. All these interactions demand a global and integrated vision and treatment of the marine environment."

The establishment of such a regime is a long and profoundly revolutionary process. It will take years. Paul Engo of Cameroon, the chairman of the First Committee, said, "Negotiations should not be based on existing laws and rights, since the aim of the conference is to adopt new, universal, and probably revolutionary regimes."

The third period, overlapping with the second, was taken by the technical work of the three working

committees which ahd been established by the first session of the conference last December.

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The First Committee dealt with the International Seabed Authority and its machinery. It is in this committee where the most innovative and constructive work needs to be done. In the words of Chairman Engo, "The First Committee is entrusted with perhaps the greatest responsibility for designing international peace with norms and institutions hitherto unknown." The committee's informal working sessions were chaired by Sri Lanka's Christopher Pinto. Both Engo and Pinto have distinguished themselves during long years of work in the preparatory U.N. Seabed Committee.

The First Committee began its work on July 10th. It held about twenty formal and many informal sessions. It produced eleven formal proposals and a number of synopses, comparative tables, and working papers. The main result was a draft of the twenty-one first articles of a treaty establishing a Seabed Authority. There is not yet a single, agreed text; in many cases, the draft lists alternative provisions. However, these

alternatives have been boiled down and contrasts and contradictions clarified, so that the document is a useful basis for intersessional negotiation, and discussion at the next session.

The central issue was captured in Article 9 of this draft treaty, "Who Shall Exploit the Area," and in a series of working papers on the "conditions of exploration and exploitation of the area." The majority of nations favored a strong international authority, competent to manage directly all phases of exploration, exploitation, production, and marketing of seabed minerals. A minority of industrialized nations opted for a laissez-faire system under which the international authority would be limited to the role of a licensing agency.

With regard to conditions of exploration and exploitation, the majority of nations favored the inclusion of a set of guidelines in the treaty text which would be flexible enough to enable the Authority to adapt its regulations to changing technological and economic requirements. A minority of nations insisted on the inclusion of a rigid and complex mining code, spelling out conditions of work and production on a basis of status quo, a status quo of yesteryear.

The critical point in the committee's work was the presentation, by the U.N. Secretariat and by the U.N. Conference on Trade and Development, of documents (not always in accord among themselves) on the economic implications of seabed mining, the gist of which was summarized by the representative of UNCTAD:

"It can be safely assumed, if normal commercial criteria were to guide the production of minerals from the seabed, one important result would be to bring direct benefits to the consumers of these minerals, which are largely the mineral-using industries in developed countries. In the absence of special arrangements to protect the interest of developing nations, the availability of minerals from the seabed might result in a widening of the income gap between developed and developing countries."

The ensuing discussions, partly in committee, partly in an informal seminar organized by the chairman, were complex and dynamic. It must be said that the counterarguments offered by the United States and the United Kingdom, West Germany, and East Germany (which -- mirabili dictu -- came to the eloquent defense of the European Economic Community) did not fall on very fertile ground. The

impression remained that a nodule-mining international Authority not only would not do much good for the majority of nations (considering that the Authority's revenues, in the best of cases, would be very small indeed), but that it could be definitely harmful to mineral-exporting developing nations. The latter's projected increase in income, it was estimated, would decrease by more than three hundred million dollars by 1980 because of manganese, cobalt, and copper production from the seabed, unless the Authority had broad powers to take preventive and compensatory measures. In no event, however, would the income of the Authority be large enough to compensate developing nations for their export losses. This issue remained unresolved, and it cannot be resolved in terms of a seabed Authority alone.

The First Committee concluded its work on August 27th. Its substantial achievement was a clarification of issues, a dynamic change in perception of interests, a maturation of concepts: all basic for the work next year. Its procedural achievement was the establishment of a working group responsible for arriving at a single text for Articles 1 to 21, with special emphasis on the key Article 9. The group worked to the very end of the Caracas session, and will officially

reconvene at the beginning of the next session. Between sessions, informal contacts and consultations will continue.

This group is constituted on the basis of the regional principle: each of the five geographic regional groups (Latin America, Asia, Africa, Eastern Europe, Western Europe and other states) delegated nine members; to these were added five members who had introduced major proposals for "the conditions of exploration and exploitation" or for Article 9, that is, one each from the United States, the "Group of 77," the E.E.C., Japan, and Australia.

The principle of regional representation, which gives to the developing nations a less overwhelming majority than they hold in the committee as a whole, was conjoined with the principle of decision-making by consensus rather than voting.

While it was emphasized by some nations that "the composition of this group should not constitute a precedent for future bodies," that the group should be "open-ended," and that membership "was not in accordance with the principle of equitable geographical distribution" (it is sufficient to mention that India and China were lumped together with other nations in one Asian group),

the trend is nevertheless significant. It is now practically conceivable that the Council of the Seabed Authority may be constructed on the principle of regional representation, although the concept of "region" would need considerable refinement in such a case.

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The Second Committee, under the chairmanship of Ambassador Andres Aguilar of Venezuela, began its work on July 3rd and ended on August 28th. It dealt with fifteen major areas of the law of the sea, including the breadth of the territorial sea, the continental shelf, the economic zone, fishing zones and fisheries management, high sea, islands and archipelagic states, straits, and the rights of landlocked nations. It produced eighty-four new proposals and thirteen working papers setting forth major trends. It thus created a broad working basis for the next session.

If the thrust of the First Committee was toward the construction of an international regime, the Second Committee focused on national rights and duties. Putting the work of the two committees in perspective, one notices a disturbing imbalance: the

Second Committee deals with national ocean space as a whole, whereas the First Committee deals with only a part of international ocean space, namely, the seabed. And whenever inevitable interactions between national and international zones appeared in that discussion -- whether in connection with pelagic fisheries, navigation, or other issues transcending national boundaries no matter where they are -- the Second Committee invoked an International Authority which, in reality, existed nowhere, since the Authority to be established by the First Committee is limited in its competence to the seabed and its minerals. This imbalance must be corrected somehow during the next session.

The Second Committee gave most attention to the economic zone. Ninety-nine statements were hear heard on this subject -- more than on any other item. In summing up the committee's labor, Mr. Aguilar reported that the proposal for a territorial sea belt of twelve miles and an economic zone of up to two hundred miles had received support from the majority of delegations, even though final agreement depended on the resolution of a number of concurrent problems such as passage through straits, the outer limits of the continental

shelf, the regime of islands and archipelagic states, and the rights of landlocked nations. Whereas there was near-unanimity among the majority of nations with regard to international ocean space, no such agreement existed in the Second Committee with regard to national ocean space.

There were divisions on the question of the extension of the economic zone. Many Latin American delegations, joined by India, Norway, and Australia, among others, proposed a two-hundred-mile zone, plus an extension of jurisdiction over the seabed beyond that -- to include the outer margin of the continental shelf, down to the abyssal plain. The African nations, joined by Romania, Switzerland, Jamaica, Malta, among others, postulated an economic-zone concept that would replace the archaic division between territorial sea, fishing zone, contiguous zone, and continental shelf with a unified system of national ocean space, approaching the basic concept of the Maltese Draft of 1972. This would end at two hundred miles: water column, seabed, and all. The best definition of this concept was contained in a series of draft articles by Tanzania. These also accommodated the rights of landlocked and geographically disadvantaged nations, encouraged trends toward

regional management systems, and guaranteed regulated freedom of navigation, overflight, and cable-laying.

Some delegations -- e.g., Haiti -- hailed the economic-zone concept, claiming unqualifiedly that it would "put an end to inequality and underdevelopment." Others, like Lesotho, pointed out that the economic-zone concept would increase inequality, making the poor nations poorer and the rich richer. The main winners, after all, would be the United States, Canada, Australia, Brazil, and South Africa, who were already rich; while a large number of nations would be disadvantaged. Sixty-eight such nations were mentioned among the latter, of which fifty-four would be developing nations, including the poorest, which are landlocked.

The landlocked nations introduced articles which would assure them of free access to the sea, the right to exploit the living and nonliving resources in the economic zone of coastal nations, and participation in the decision-making of the international Authority. However, some of the coastal nations stood adamantly on their existing rights over the mineral resources of their continental shelf which they were determined not to share with anyone.

Thus the economic-zone concept came under a two-pronged attack: from the conservative great naval

powers, who want to maintain the "freedom of the sea" (the Soviet Union, for example, insisted on treating the economic zone as belonging to the "high seas," and on strictly limiting national jurisdiction to resource exploitation while preserving the other "freedoms of the high seas" in the area); and from the landlocked nations, especially the developing ones, who want their fair share of the "common heritage of mankind." Obviously, much work remains to be done before an agreement on the economic zone is reached.

One came away from these meetings with the impression that the discussions had been limited to purely legal considerations. A debate on the economic implications of the economic zone -- similar to the one that shook the First Committee with regard to seabed mining -- might have had a clarifying and unifying effect and contributed to the maturation of the concept. It is not too late for such a discussion.

In the meantime, the majority nations would do well at this point to concentrate their attention on international ocean space and its management, where they so widely agree, rather than risk breaking up their unity on arguments about the details of national ocean space. Once they have cemented their unity with an agreement on a comprehensive, strong, international

ocean-space authority, they may find it easier to reach agreement on national ocean space. Politically it is essential that the majority should maintain and strengthen their unity.

Some progress was made with regard to international straits. A United Kingdom proposal would reconcile the perceived needs of the great naval powers with the concerns of coastal states, with most international straits falling within national ocean space. From the standpoint of the superpowers, the problem of free and unimpeded passage of warships through straits has assumed a crucial -- one might say obsessive -- importance. Both the Russians and the Americans and their client states kept asserting that there would be no treaty unless it guaranteed this right.

While the security interests of states bordering straits must be safeguarded, the Soviet Union conceded, "the security of the straits' users is no less important. The defense and security of the Soviet Union depends on communication through international straits." Neither the Soviet Union nor the United States would ever accept the concept of "innocent" passage through straits.

To the majority of nations the straits problem was not very interesting. Most thought that the right to innocent passage was good enough. Albania suggested that the passage of warships through territorial waters

-- which now include all straits less than twenty-four miles wide -- "must be according to the laws and wishes of the neighboring coastal states." It also demanded that the Mediterranean countries liquidate foreign bases on their territories, and deny facilities to American and Soviet fleets. "The conference should establish norms to prevent the concentration of large military fleets on the high seas or near the shore, and forbid military maneuvers near coasts."

Algeria proposed that the convention should include opposition to anything that could threaten the exclusively peaceful use of the sea; and the Dominican Republic demanded that all nonpeaceful uses of the seas should be prohibited.

Sri Lanka said a distinction should be drawn between the passage of commercial and military vessels. It would be in the interest of world trade to guarantee passage of commercial vessels against hindrance save for exceptional circumstances, on the basis of nondiscrimination in regard to flags or cargoes, regardless of origin or destination. It would not be reasonable to expect a coastal state to turn a blind eye when it found an armada of military vessels within invasion range of its territory. Military vessels must give prior timely notice of passage through international straits to the coastal states concerned.

Other nations, including Tanzania, Egypt, and Peru, agreed that merchant ships are useful to the world community and must enjoy unimpeded passage -- subject, of course, to safety and traffic regulations, especially in the case of tankers -- while warships, as the Tanzanian representative said, are "used mainly to further the foreign policy objectives of a few states. They must observe norms that would insure peaceful passage."

It seems difficult for a compromise to be reached on this point. Either warships, including submersed submarines, may pass, or they may not.

It should be noted, however, that the rights of passage of warships are not very clearly defined under existing international law, and rather than heading toward a collision between the few naval powers on the one hand and the majority of nations on the other, it may be wiser to leave things as they are, and not attempt explicit provisions for the passage of warships.

Here, again, the discussion appeared excessively legalistic, as though the international law aspect were all. This problem also has a technological aspect: e.g., the improvement of tracking and monitoring technologies may prevent the unobserved passage of submersed submarines through straits even if the law guaranteed it. On the other hand, such passage may

become less crucial with the availability of intercontinental missiles and ULMS, with the help of which the Mediterranean, for example, might well be controlled without a single warship passing through the Straits of Gibraltar or the Dardanelles. In addition, the problem has a political component: that is, passage could be arranged bilaterally, where deemed necessary, by dint of promises and threats, even if there were no universal treaty establishing the right of free passage through straits.

There is, however, another consideration of overriding importance. The great naval powers have cause to worry: the days of their free and unimpeded operations in ocean space are over. They are over because the rapid development of the peaceful uses of ocean space cannot be stopped. The industrialization of ocean space involves an increase in management and governance, whether national or international. And such governance imposes limitations on military uses. In fact, the naval powers might fare better under an international ocean-space authority, which they now so greatly fear but in whose decision-making they would participate, than they would if they have to face the intransigence of national jurisdictions in ocean space.

Alternative articles were drafted, and main trends established on a number of other items on the huge Second Committee agenda. A single text of all the

material is being prepared for the next session. The smaller problems will undoubtedly fall into place once the big issues are clarified and settled.

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The Third Committee, under the chairmanship of Ambassador Alexander Yankov of Bulgaria, began its work on July 4th. It held seventeen formal and a number of informal meetings, and concluded its work on August 27th. Its concerns were the preservation of the marine environment; scientific research; and development and transfer of technology.

As in the other committees, there was a contrast between a minority of states holding out for freedom of scientific research under a weak international regime and weak coastal-nation control, and a majority of nations favoring the internationalization of research in the international area and effective control by the coastal states in national ocean space. Again, with regard to national ocean space, there was a discrepancy between coastal developing nations who, unqualifiedly, included the economic zone in national ocean space, and landlocked nations, some of which favored different regimes for the territorial sea and the economic zone with regard to scientific research.

And the imbalance noted between the First and Second Committees concerning the competence of the International Authority existed also between the First and Third Committees. Time and again, delegates referred to an "Authority" which should conduct scientific research and be responsible for environmental controls -- which, in the First Committee, limited as it was to seabed mineral extraction, simply did not exist.

Within its own terms of reference, however, the Third Committee did a lot of work and heard a number of new and constructive proposals.

One of the best drafts on pollution came from Kenya, home of the United Nations Environment Program. It went a long way toward spelling out the conditions laid down by UNEP's secretary, Maurice Strong, in his address to the plenary session.

In the Kenya draft, responsibility for pollution control is shared by states, regional and global international organizations, the Seabed Authority, and UNEP, in ways which are not always clear. Thus the Seabed Authority is charged with the obligation of setting up binding standards to control pollution from exploration and exploitation of marine resources of the seabed and water column beyond the limits of national jurisdiction, and of taking all necessary measures to prevent the

pollution of the marine environment from all sources beyond the limits of national jurisdiction. This presumably includes ship-borne pollution for which the Intergovernmental Maritime Consultative Organization, not the Seabed Authority, is responsible in the present framework. And while, according to the Kenya draft, UNEP would be in charge of sorting out duplications and contradictions of this kind, evidently the problem cannot be solved systematically without co-operation with the First Committee.

A zonal or regional approach was proposed in various papers and drafts, with regard both to pollution controls and the transfer of technology. Thus Chile proposed the establishment of regional stations financed through contributions from the oil consortia and similar organizations "not only to prevent fuels from catching fire but also and above all to eliminate the effects of pollution of the marine environment caused by the spillage of large quantities of fuel ensuing from such accidents."

A number of draft articles dealt with the transfer of technologies. In this context, Nigeria proposed that "the International Seabed Authority shall make available to any country, on request, blueprints and patents of plants and machinery used in the exploration and exploitation of the international area."

Trinidad and Tobago proposed a kind of scientific enterprise for the conduct of scientific research in international ocean space, analogous to the Enterprise that is to manage the exploration and exploitation of seabed minerals in the area: "Marine scientific research in the international area shall be conducted directly by the International Authority and, if appropriate, by persons, juridical or physical through service contracts or associations, or through any other such means which may be determined by the International Authority and which shall insure its direct and effective control at all times over such research."

The work has been concrete and clarifying. The alternatives have been laid out. Which ones will be adopted in the end will depend, of course, on the outcome of the work of the other committees.

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The concluding days of the Caracas session were dedicated to a plenary review of the results and to plans for future sessions.

The next session will be held in Geneva, from March 17th to May 3rd or 10th, 1975. It is not realistic to expect that the colossal amount of work to be done can be completed by next May. Considering the complexity and novelty of the task, anything done

hastily could only be bad. Another working period of at least eight weeks, after Geneva, will be necessary. That additional session may be held in either Vienna or Caracas, later in 1975 or in 1976. It is anticipated that the treaty will be signed in 1976 in Caracas, in recognition of Venezuela's magnificent organizational efforts and hospitality as demonstrated at this conference.

The Third Conference on the Law of the Sea heralds a revolution in international relations. It is not only that the developing nations, supported on various occasions also by groups of developed nations, hold a solid majority of votes -- well over two-thirds. This fact by itself might be construed by the minority as a token of obsolescence of the U.N. structure and its one-state-one-vote system, which according to some, no longer corresponds to the political, economic, and technological realities of today, and therefore is unworkable. This, however, was not at all the impression one got in Caracas. There were other signs of the political reality and validity of the revolution.

Conference President Amerasinghe comes from a developing country. His diplomatic skill and political vision were challenged by no one. The conference could not have had a better president.

Of the thirty-one vice-presidents of the conference, twenty-three come from developing nations.

Of the three committee chairmen, two are from nonaligned developing nations, and one from a developing Socialist nation (Bulgaria). Of the nine vice-chairmen of the three committees, five come from developing nations; of three rapporteurs, two come from developing nations.

A committee has been established to draft the final Treaty Articles. It is chaired by Ambassador Alan Beesley of Canada, who has distinguished himself during the years of preparatory work in the Seabed Committee as one of the leaders in the whole endeavor. Of the twenty-two members of his committee, sixteen are from developing nations.

The credentials committee, headed by Mr. Gleissner of Austria, consists of eight members, five representing developing nations.

It would not be fair to ascribe this preponderance merely to the voting strength of the developing nations in the Plenary Assembly. For it was not the numerical preponderance that was the most striking feature of the conference. Much more impressive was the fact that the intellectual and conceptual initiative definitely has passed from the minority of great powers and developed nations to the Third World. The entire effort stems from the initiative of a small, developing nation, Malta. And while the majority, on the whole, showed a remarkable

degree of restraint and willingness to negotiate, the minority of industrialized nations seemed intellectually and politically on the defensive, and -- with some exceptions -- not very effective at that.

It would be tragic if the minority insisted on its rigid rejection of change. For change will come. It could be peaceful, it could be glorious, if the developed nations regain flexibility and initiative. It could be painful, beset with starvation, disruption, and violence, if the rift between majority and minority is allowed to widen.

Another striking feature was the emergence of the regional principle as a basis for organization. This ranged all the way from the ceremonial (on the occasion of both the commemoration of the death of President Juan Peron and the celebration of the birthday of Simon Bolivar, the Libertador, homage was rendered by the chairman of each of the geographical regional groups), to substantial work and negotiation, as exemplified by the working group of the First Committee referred to earlier. The regional groups met continuously in closed sessions, contributing political cohesion to the work of all the committees.

Of course, regional organization and representation still need a lot of refinement. There remain imbalances, overlaps, and gaps. And the most important of these groups,

the so-called "Group of 77," comprises nonaligned developing nations on all continents. This group turned out to be the heart of the conference.

Other informal groups -- "nonterritorial" and "functional" groups -- played important roles in the background of the conference, including the "Evensen Group," named after its chairman, Jens Evensen of Norway. It consisted of about twenty, mostly coastal, nations which did a considerable amount of clarifying and negotiating during the session and will continue its activity between sessions.

There was also the "Dispute-settlement Group," co-chaired by El Salvador's outstanding Ambassador Galindo Pohl and Australia's Counsellor H. C. Mott. This consisted of about thirty nations, including the United States. In his report to tne final plenary session, Ambassador Pohl extolled, in particular, the contribution of Louis Sohn of the United States to the work of this committee. Sohn's was probably the most constructive contribution of the United States to the whole conference. This group is considering a dispute-settlement system which might take any of several alternative forms. It might be joined to the International Court of Justice at the Hague which might be reorganized in various "chambers" to deal with various kinds of issues arising under the new law of the sea;

it might be created by a separate Treaty on Protocol; or it might be attached to the Seabed Authority. The decisions of such a court would be binding on nations and other entities operating in ocean space.

Such a court would not be competent, however, to deal with questions affecting the territorial integrity of nations. Such questions may not be amenable to compulsory settlement and should be referred to the competent political organ of the International Authority, presumably the council, for arbitration or conciliation. Pohl pointed out that this kind of compulsory dispute-settlement system offers the only guarantee for the rights of smaller and weaker nations against the larger powers.

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There will be a great deal of work going on between sessions of the conference, not only at the U.N. Secretariat and at a number of specialized agencies and international organizations, but also among contact groups, regional groups, functional groups of national delegations. The full success of Caracas can be assessed only at the beginning of the Geneva session next March.

Looking forward to the chances and challenges of the next sessions of the conference, some problems and

issues have not been considered simply because they do not fit within the terms of reference of the three main working committees of UNCLOS. This applies, in particular, to the interactions of uses of ocean space -- of which the mining of seabed minerals is just one and not the most important one, nor, as the discussion of the First Committee revealed, is it one of economic interest for the majority of nations. It also applies to new uses and new technologies which, if unregulated, may alter large ocean areas during the next decades. It is on the regulation and management of these interactions and new technologies that the conservation of the ocean environment and the development of its resources depends.

The "Authority" referred to by all three committees must be made consistent and be given competences responding to the needs of these committees. In other words, we need an Ocean-Space Authority, not merely a Seabed Authority. This message came through clear and loud, in statement after statement from the majority of nations. It has been blocked by the conservatism of the minority nations, as well as by the terms of reference of the three existing committees.

What can be done politically to help reach this goal? Theoretically, one could change the terms of reference of the First Committee to enable it to con-

sider an international regime for ocean space, comprising the surface, water column, the seabed and subsoil thereof; and appropriate international machinery to give effect to this regime. The conference is sovereign and competent to make such a change -- as the delegate from Tanzania pointed out in the First Committee.

There are dangers, however. The change might be diversive. It might jeopardize work on the seabed -- which certainly also is needed and has made such a successful start -- without achieving the wider political aim.

A second way would be to create a Fourth Main Working Committee to combine the work of the three committees and take up problems that do not fit into any of them.

The disadvantage of this approach would be shortage of manpower. It is a strain on many delegations to muster enough expertise to participate actively and simultaneously in the work of all three committees. Adding a fourth committee might overtax their capabilities.

A third way would be for the delegation or delegations of some forward-looking nation or group of nations to prepare treaty articles establishing the required Ocean-Space Authority, or to take up the

Maltese draft and revise it as may be required by the progress of the work achieved during this session, and to introduce it at the next session in all three working committees. Each committee might then take up the section falling within its own competence and, at the end, propose the results of its deliberations to the plenary session.

It certainly would be more productive to work from a unitary and systematic text than to work in bits and pieces on the basis of conflicting premises. The new basic document should place the Seabed Authority in its proper perspective of interaction with other uses of the oceans and provide a common framework for the activities of this new Authority and of the Fisheries Department of the Food and Agriculture Organization, the Intergovernmental Oceanographic Commission, and the Intergovernmental Maritime Consultative Organization, with the structural modifications required to manage fisheries, navigation, and science in accordance with the deliberations of the Second and Third Committees.

Such developments may well mature in the intersession period. The job ahead is enormous. But the amount of work already done is remarkable.

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THE U. N. CONFERENCE ON THE LAW OF THE SEA

On June 20, the third United Nations Conference on the Law of the Sea (UNCLoS) will get under way in Caracas. Attended by about 5000 people, including delegates, experts, consultants and supporting staff from all 135 member states as well as representatives of all the specialized agencies of the U.N. and from a number of nongovernmental organizations, this may well turn out to be the most important international conference since the San Francisco conference that established the United Nations.

What is at stake is the fate of the oceans, covering over 70 percent of the earth's surface and holding the promise of new common wealth, together with the threat of ruin for each and all. And this is the first reason for the importance of this Conference.

The second reason is that the world has actually entered into a revolution in international relations. The emergence of so many new states in Asia and Africa, and the inequity of existing economic relations between the industrialized and the developing world has caused growing tensions in international relations. The Sixth Special Session of the U.N. General Assembly, which closed in New York in April, was the first explicit manifestation of a change in these relations. It was not able, however, nor was it intended, to give a structure to this revolution. All it did, and was supposed to do, was to come up with a set of principles.

UNCLoS will be the first international conference with a precise mandate to create a new international organization which must, as all new international organizations henceforth, structuralize this revolution.

If UNCLoS succeeds in creating a new type of international organization, meeting the challenges of technological, economic, and political change for which the post-World-War-II set of organizations simply were not designed, UNCLoS will have done more than saved the oceans. It will have created a pattern for international organization in the twenty-first century. And this is the third reason why UNCLoS is so important.

The job, however, will not be completed in Caracas. It will not even be completed in Vienna, where a second session of UNCLos is scheduled for 1975. It will take the rest of the seventies, if we are to be optimistic.

On November 1, 1967, Ambassador Arvid Pardo of Malta delivered his epoch-making address to the General Assembly of the U.N., proposing that the seabed beyond the limits of national jurisdiction be declared the common heritage of mankind and that an international regime be established to preserve this common heritage for future generations and develop and administer its resources for the benefit of mankind as a whole and especially for that of the developing nations.

In the wake of this sweeping, three-hour address, the so-called Seabed Committee was established to study the question and make its recommendation to the General Assembly.

The Seabed Committee has worked for six years, with two sessions a year ranging from three to eight weeks each; from an "ad hoc" committee it developed into a permanent committee; from a membership of 35 to a membership of 91 nations -- thus becoming the most important committee in the history of the United Nations -- and its mandate was enlarged from dealing with the international seabed only to encompassing all ocean affairs in preparation of the UNCLoS.

The work the Seabed Committee, aided by the U.N. Secretariat and by all of the Specialized Agencies, turned out is rather prodigious. It comprises a voluminous background material on geo-physical, biological, technological, economic and legal developments as well as a dozen draft treaties defining the international authority to be established -- and some of these are quite elaborate. But political change and technological development proceeded so rapidly that much of this material is already obsolete before it gets to UNCLoS.

The Seabed Committee also adopted a number of important resolutions. The basic documents, which are to guide the work of UNCLoS are the Declaration of Principles, adopted by the XXV General Assembly in 1970, which is, to some extent, already obsolete, and a List of Subjects and Issues Relating to the Law of the Sea, which, although it was agreed upon only after long and trying discussions in 1973, does not provide much guidance.

The first and foremost issue UNCLoS will have to settle is that of the limits of national jurisdiction.

This issue has undergone amazing transformations during the years of preparation. From the outset, there was a conflict between developed and developing nations on this

question. The developed nations, under the pressure of oil interests -- tended to maximize claims, and a byzantine array of justifications was developed for extending national jurisdiction over the seabed down to the abyssal plane, including the slope as well as the rise. The poor nations, on the other hand, wanted as much as possible of the mineral resources under international jurisdiction, which would have given them their fair share in the management of and the profits from the common heritage.

Then, at a certain moment, the tables were turned. It became clear that jurisdiction over the seabed was a "creeping concept" and bound to affect the superjacent waters, and vice versa, and the concept of an "economic zone," including both seabed and water column, was beginning to take shape. The developing nations, anxious above all to defend the living resources off their coasts against the inroads of the industrialized distant-water fishing nations, began to claim a 200 mile "economic zone" or "patrimonial sea," thus following the lead of a number of Latin-American States which, in the sixties, had extended their "territorial sea" to a limit of 200 miles, while the industrialized nations, now under pressure from their navies, began to press for freedom of navigation and, consequently, for narrow limits of national jurisdiction.

There are some signs indicating the possibility of another about-face on the part of the developed nations, responding, this time, to pressures from fisheries and environmental protection interests. Canada was the first among the developed nations to claim a pollution control zone of 100 miles, and several States of the U.S. are actively considering an expansion of their fisheries and pollution control zones to 200 miles.

Thus the issue is far from clear-cut, and alignments are wavering. It is no longer rich nations versus poor nations. The poor nations are sharply divided between coastal nations hoping to maximize profits from the development of resources in their "economic zone," and land-locked or shelf-locked or zone-locked nations who are still pressing for narrow limits of national jurisdiction and maximization of the common heritage of mankind under an international regime in whose management, and profits, they could share. And the rich nations are split between their industrial interests in mineral and living resources, and their shipping interests, both military and commercial.

It is nevertheless likely that a compromise will be reached, on a 200-mile economic zone, in return for freedom of navigation and overflight as well as free transit through straits; security of investments; some formula enhancing the freedom of scientific research; and special rights for the land-locked nations.

Who will really benefit from such an arrangement remains to be seen.

What is certain, instead, is that the adoption of an economic zone, placing practically all presently exploitable resources under national jurisdiction, would profoundly affect the concept of an international seabed regime. For why bother with an elaborate machinery to administer what, for all practical purposes, is a desert? The concept of the international seabed regime is bound to wither away -- unless it is adapted to the new reality, and this can only be done by <u>expanding</u> it into that of an international ocean-space regime, of the kind we have proposed at the Center since 1968. At the U.N. it is only the Maltese Draft that proposes such a regime.

The danger is that, having adopted the economic zone, UNCLoS at Caracas will end up with a crazy quilt of conflicting, enlarged national jurisdictions, a crippled seabed regime, and a patchwork of impotent international organizations to take care of the rest. There would be, inevitably, so much duplication of efforts, and so many loopholes in such a non-system that conflict over fishing rights and oil concessions and totally unregulated new uses of ocean space and resources would be absolutely inevitable, and pollution would continue unabated.

In the meantime, economic and technological developments will continue to transform the potential of the oceans and our perceptions of national interest. It is likely, for instance, that distant-water fishing will suffer a decline: not so much because of restrictions consequent on the establishment of economic zones, but because of steep increases in fuel costs on the one hand, and spectacular developments in fish farming and aquaculture on the other. It is a hazardous prediction, but I would venture it just the same, that also oil production and the attendant tanker traffic, will go into decline while other energy technologies, all ocean-based, wil be developed over the next two decades. The construction of atomic-powered oil super tankers seems to me to symbolize the end of one era and the beginning of another.

The development and application of the new technologies ought to be internationalized now, on the basis of the principle of the common heritage of mankind. Otherwise they will merely serve -- as technological change, divorced from structural change, always has -- to make the rich richer and the poor poorer.

The hope is that UNCLoS, having adopted the Economic Zone, will not go to rest on its laurels but leave the options open for the development of a strong, operational, international ocean regime, capable of doing the job that needs to be done: to coordinate and integrate the multiple peaceful uses of ocean space and resources; to coordinate and integrate local, national regional and global needs and interests; to safeguard the ocean environment from industrial and military pollution; and to give an institutional body to the aspirations of the Sixth Special Session of the U.N. General Assembly.

If this is the goal, UNCLoS at Caracas should make it quite clear that the seaward boundary of the economic zone, 200 miles out in the ocean, is a boundary between sovereign states, not between the sovereign state and the international organization to which it voluntarily belongs and in whose decisions it participates. In other words: while the economic zone should be impenetrable to the explorative and exploitative activities of other nations -- thus protecting the developing nations against the predatory inroads of the industrialized nations and companies -- it should be penetrable to international cooperation, on which development so largely depends. For the functional mastery of technologies is rapidly becoming far more important for development than the territorial ownership of resources; and the transfer of technologies can be hastened by international cooperation.

If this is the goal, UNCLoS at Caracas might well proceed on the basis of the economic zone; but in return for freedom of navigation and free transit through straits it should demand the internationalization of tracking devices,

from buoy systems to satellites; in return for security of investments, it should demand international standards and controls over the international operations of corporations and enterprises; in return for freedom of scientific research, it should press for the maximal internationalization of research and development projects in the oceans.

This would set the stage for constructive action at the second session of UNCLoS in Vienna in 1975.

List of Subjects and Issues Relating to the Law of the Sea

1. **International regime for the seabed and the ocean floor beyond national jurisdiction:**
   - 1.1 Nature and characteristics.
   - 1.2 International machinery: structure, functions, powers.
   - 1.3 Economic implications.
   - 1.4 Equitable sharing of benefits bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked.
   - 1.5 Definition and limits of the area.
   - 1.6 Use exclusively for peaceful purposes.

2. **Territorial sea:**
   - 2.1 Nature and characteristics, including the question of the unity or plurality of regimes in the territorial sea.
   - 2.2 Historic waters.
   - 2.3 Limits.
   - 2.3.1 Question of the delimitation of the territorial sea; various aspects involved.
   - 2.3.2 Breadth of the territorial sea. Global or regional criteria. Open seas and oceans, semi-enclosed seas and enclosed seas.
   - 2.4 Innocent passage in the territorial sea.
   - 2.5 Freedom of navigation and overflight resulting from the question of plurality of regimes in the territorial sea.

3. **Contiguous zone:**
   - 3.1 Nature and characteristics.
   - 3.2 Limits.
   - 3.3 Rights of coastal states with regard to national security, customs and fiscal control, sanitation and immigration regulations.

4. **Straits used for international navigation:**
   - 4.1 Innocent passage.
   - 4.2 Other related matters including the question of the right of transit.

5. **Continental shelf:**
   - 5.1 Nature and scope of the sovereign rights of coastal states over the continental shelf. Duties of states.
   - 5.2 Outer limit of the continental shelf: applicable criteria.
   - 5.3 Question of the delimitation between states; various aspects involved.
   - 5.4 Natural resources of the continental shelf.
   - 5.5 Regime for waters superjacent to the continental shelf.
   - 5.6 Scientific research.

6. **Exclusive economic zones beyond the territorial sea:**
   - 6.1 Nature and characteristics, including rights and jurisdiction of coastal states in relation to resources, pollution control and scientific research in the zone. Duties of states.
   - 6.2 Resources of the zone.
   - 6.3 Freedom of navigation and overflight.
   - 6.4 Regional arrangements.
   - 6.5 Limits: applicable criteria.
   - 6.6 Fisheries.
   - 6.6.1 Exclusive fishery zone.
   - 6.6.2 Preferential rights of coastal states.
   - 6.6.3 Management and conservation.
   - 6.6.4 Protection of coastal states' fisheries in enclosed and semi-enclosed seas.
   - 6.6.5 Regime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction.
   - 6.7 Seabed within national jurisdiction.
   - 6.7.1 Nature and characteristics.
   - 6.7.2 Delineation between adjacent and opposite states.
   - 6.7.3 Sovereign rights over natural resources.
   - 6.7.4 Limits: applicable criteria.
   - 6.8 Prevention and control of pollution and other hazards to the marine environment.
   - 6.8.1 Rights and responsibilities of coastal states.
   - 6.9 Scientific research.

7. **Coastal state preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea:**
   - 7.1 Nature, scope and characteristics.
   - 7.2 Seabed resources.
   - 7.3 Fisheries.
   - 7.4 Prevention and control of pollution and other hazards to the marine environment.
   - 7.5 International cooperation in the study and rational exploitation of marine resources.
   - 7.6 Settlement of disputes.
   - 7.7 Other rights and obligations.

8. **High seas:**
   - 8.1 Nature and characteristics.
   - 8.2 Rights and duties of states.
   - 8.3 Question of the freedoms of the high seas and their regulation.
   - 8.4 Management and conservation of living resources.
   - 8.5 Slavery, piracy, drugs.
   - 8.6 Hot pursuit.

9. **Land-locked countries:**
   - 9.1 General Principles of the Law of the Sea concerning the land-locked countries.
   - 9.2 Rights and interests of land-locked countries.
   - 9.2.1 Free access to and from the sea: freedom of transit, means and facilities for transport and communications.
   - 9.2.2 Equality of treatment in the ports of transit states.
   - 9.2.3 Free access to the international seabed area beyond national jurisdiction.
   - 9.2.4 Participation in the international regime, including the machinery and the equitable sharing in the benefits of the area.
   - 9.3 Particular interests and needs of developing land-locked countries in the international regime.
   - 9.4 Rights and interests of land-locked countries in regard to living resources of the sea.

10. **Rights and interests of shelf-locked states and states with narrow shelves or short coastlines:**
   - 10.1 International regime.
   - 10.2 Fisheries.
   - 10.3 Special interests and needs of developing shelf-locked states and states with narrow shelves or short coastlines.
   - 10.4 Free access to and from the high seas.

11. **Rights and interests of states with broad shelves.**

12. **Preservation of the marine environment:**
   - 12.1 Sources of pollution and other hazards and measures to combat them.
   - 12.2 Measures to preserve the ecological balance of the marine environment.
   - 12.3 Responsibility and liability for damage to the marine environment and to the coastal state.
   - 12.4 Rights and duties of coastal states.
   - 12.5 International cooperation.

13. **Scientific research:**
   - 13.1 Nature, characteristics and objectives of scientific research of the oceans.
   - 13.2 Access to scientific information.
   - 13.3 International cooperation.

14. **Development and transfer of technology:**
   - 14.1 Development of technological capabilities of developing countries.
   - 14.1.1 Sharing of knowledge and technology between developed and developing countries.
   - 14.1.2 Training of personnel from developing countries.
   - 14.1.3 Transfer of technology to developing countries.

15. **Regional arrangements.**

16. **Archipelagoes.**

17. **Enclosed and semi-enclosed seas.**

18. **Artificial islands and installations.**

19. **Regime of islands:**
   - (a) Islands under colonial dependence or foreign domination or control;
   - (b) Other related matters.

20. **Responsibility and liability for damage resulting from the use of the marine environment.**

21. **Settlement of disputes.**

22. **Peaceful uses of the ocean space; zones of peace and security.**

23. **Archaeological and historical treasures on the seabed and ocean floor beyond the limits of national jurisdiction.**

24. **Transmission from the high seas.**

25. **Enhancing the universal participation of states in multilateral conventions relating to the law of the sea.**

TEXT OF RESOLUTION 2749 (XXV)

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968 and 2574 (XXIV) of 15 December 1969, concerning the area to which the title of the item refers,

Affirming that there is an area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, the precise limits of which are yet to be determined,

Recognizing that the existing legal régime of the high seas does not provide substantive rules for regulating the exploration of the aforesaid area and the exploitation of its resources,

Convinced that the area shall be reserved exclusively for peaceful purposes and that the exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole,

Believing it essential that an international régime applying to the area and its resources and including appropriate international machinery should be established as soon as possible,

Bearing in mind that the development and use of the area and its resources shall be undertaken in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by fluctuation of prices of raw materials resulting from such activities,

Solemnly declares that:

1 The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind.

2 The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.

3 No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international régime to be established and the principles of this Declaration.

4 All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international régime to be established.

5 The area shall be open to use exclusively for peaceful purposes by all States whether coastal or land-locked, without discrimination, in accordance with the international régime to be established.

6 States shall act in the area in accordance with the applicable principles and rules of international law including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970,[1] in the interests of maintaining international peace and security and promoting international co-operation and mutual understanding.

7 The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into particular consideration the interests and needs of the developing countries.

8 The area shall be reserved exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to a broader area. One or more international agreements shall be concluded as soon as possible in order to implement effectively this principle and to constitute a step towards the exclusion of the sea-bed, the ocean floor and the subsoil thereof from the arms race.

9 On the basis of the principles of this Declaration, an international régime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon. The régime shall, *inter alia,*

[1] Resolution 2625 (XXV).

provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.

10 States shall promote international co-operation in scientific research exclusively for peaceful purposes:

(a) By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries;
(b) Through effective publication of research programmes and dissemination of the results of research through international channels;
(c) By co-operation in measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes. No such activity shall form the legal basis for any claims with respect to any part of the area or its resources.

11 With respect to activities in the area and acting in conformity with the international régime to be established, States shall take appropriate measures for and shall co-operate in the adoption and implementation of international rules, standards and procedures for, *inter alia:*

(a) Prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment;
(b) Protection and conservation of the natural resources of the area and prevention of damage to the flora and fauna of the marine environment.

12 In their activities in the area, including those relating to its resources, States shall pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as of all other States which may be affected by such activities. Consultations shall be maintained with the coastal States concerned with respect to activities relating to the exploration of the area and the exploitation of its resources with a view to avoiding infringement of such rights and interests.

13 Nothing herein shall affect:
(a) The legal status of the waters superjacent to the area or that of the air space above those waters;
(b) The rights of coastal States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat thereof resulting from, or from other hazardous occurrences caused by, any activities in the area, subject to the international régime to be established.

14 Every State shall have the responsibility to ensure that activities in the area, including those relating to its resources, whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the international régime to be established. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability.

15 The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established.