CHRISTIAN SCIENCE MONITOR

The forthcoming Seventh Session of the U.N. Conference on the Law of the Sea may be crucial for the fate of the oceans and the fate of the world. It had been hoped that final agreement would be reached, during this session, on a few key issues. After that, only technical and drafting work would be left which would require a few more months; and the signing ceremony, crowning a global effort of a decade and inaugurating a new order in ocean space, could have taken place in Caracas some time in 1979.

Instead, the Seventh Session is opening under the sign of a towfold crisis, procedural and substantial, a crisis that threatens the viability of the Conference while the goal of a successful conclusion of a Convention is receding on the horizon.

What can the U.S. -- what can Americans do to help?

Not much can be done with regard to the procedural aspect of the crisis, arising from the adventitious fact that the new Government of Sri Lanka has made sweeping changes in its diplomatic appointments, withdrawing, among others, its Permanent Representative to the U.N. who happens to be the President of the Conference on the Law of theSea, Ambassador H. Shirley Amerasinghe.

President Amerasinghe is simply irreplaceable, considering his long experience, his fairness and his parliamentary genius which has saved the Conference during more than one crisis. Perhaps the Conference may succeed, after the opening of the Seventh Session, in finding some procedural way to keep its President even though he no longer represents his country or any country for that matter. This aspect of the crisis, in any case, is grave; but besides expressing its support for Amerasinghe, there is not much the U.S. can do.

It could do a great deal, instead, in helping solve the second aspect of the crisis, that is, the crisis in substance. This crisis arises from the fact that the Conference is remote from any agreement on the principles and the machinery to be applied to the exploitation of the mineral wealth of the deep seabed beyond

the limits of national jurisdiction.

For the last two years, the Conference has pursued an approach, ~~first suggested by the U.S.,~~ which turned out to be conceptually deficient and practically inapplicable. This is the so-called "parallel system," under which seabed mining would be undertaken both by an international public Enterprise, the operational arm of the International Seabed Authority -- an apparent concession to Third-World demands -- and by States and their companies, under a licensing or "contract" system -- a concession to the industrialized States. The main defect of this approach is that it places the Authority and its Enterprise into competition with established industry -- a competition which it can in no way sustain. Within the constraints of this dual system, the Conference has been tossing over from one side to the other and back again: imposing financial burdens and resonsibilities of technology transfers on the industrialized States and their companies which would be unbearable to them but would appear necessary if the Enterprise were to be enabled to compete; or easing these burdens so as to make them bearable: but then the Enterprise could not get off the ground. There was no way out of this dilemma. The Enterprise, no longer an embodiment of the common heritage of mankind principle, became a status symbol for poor nations, and, with the rich States and their companies free to mine what they needed -- who needed the Enterprise? Frustrated, disillusioned and increasingly cynical, the Conference was dragging itself toward the end of a dead=end road.

But there are alternative roads, and the U.S., ~~which bears a large share of responsibility for the "parallel system" approach,~~ could be decisive in making them accessible.

At the end of the Fifth Session of the Conference (New York, September, 1976) The Delegation of Nigeria proposed a "unitary joint venture system" as a way out of the dilemma.

During the intersessional meeting in Geneva, in March 1977, the Delegation of Austria elaborated on this proposal. The text of the Austrian proposal is appended to Minister Evensen's Report presented to the Sixth Session.

The Austrian proposal abandons both horns of the dilemma. There is not going to be a licensing system, nor is there going to be an "Enterprise" as considered heretofore. There would be, instead, an Enterprise system consisting of as many Enterprises as there would be mining proejcts: not more than four or five, to start with. Thus States and their companies, whether public or private, would have guaranteed access to the international seabed area, but only in joint venture with the Authority. In other words: each one of the four or five international consortia, duly authorized by their States of origin, must form an Enterprise with the Authority whereby the Authority must furnish at least one half of the capital investment (including the value of the mineral nodules in situ, which are the Common Heritage of Mankind), appoint at least one half of the Board of Directors and obtain at least one half of all profits.

Companies are obviously quite used to working under such a system which offers them the advantage of reducing their capital investment and sharing their risks. Tenure, within an international system established by Treaty which cannot be changed except by international consensus, would be more securely guaranteed than it is in joint ventures with weak or unstable individual countries. On the other hand, this sytem offers to developing countries the possibility of broad participation in all Enterprises, through appointment, by the Authority, to the Governing Boards; and it offers the Authority the possibility of control and of broad financial participation.

The system vastly simplifies the problem of "financing" the Enterprises, since half the required capital comes from established industry, as well as that of technology transfer, which would follow standard form under a joint-venture agreement and would raise no particular problem.

The proposal has a number of other technical and political advantages over the "parallel system." Among other things, it would greatly facilitate agreement on a resource policy which has turned out to be totally intractable under the "parallel system," and it would considerably shorten and simplify the present text, freeing it of involved sub-paragraphs and lengthy annexes.

The United States, as one of the countries most advanced in deep-sea mining and as the leader of the industrialized world,

bears a great responsibility at this Conference. It was the U.S. that led the Conference into the dead-end road of the "parallel system." What the U.S. will do now that we are at the dead-end, will clearly be of crucial importance.

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notes for a speech in Japan

EXECUTIVE SUMMARY

When, exactly ten years ago, the United Nations Convention on the Law of the Sea was opened for signature at Montego Bay, the Secretary-General described the event as the biggest achievement of the international community since the creation of the United Nations itself.

The historic significance of the Convention could be summarized under ten headings:

- a triumph of international democracy and the international parliamentary process;
- the most radical redistribution of ocean space through peaceful change, reconciling the interests of maritime and coastal states;
- the replacement of a system of self-destructive laissez-faire, with a system of management for sustainable development;
- the introduction of the principle of the Common Heritage of Mankind into international law, pointing in the direction of a new economic system of sustainable development;
- the recognition that "the problems of ocean space are closely interrelated and need to be considered as a whole," giving rise to "integrated coastal and marine management" with all its institutional implications;
- the reservation for peaceful purposes of the largest part of our planet: a concept to be elaborated during the coming decades;
- the advancement of an international law of cooperation;
- the most advanced framework for North-South cooperation in science and technology development, and regional cooperation, including land-locked States;
- the most comprehensive, binding and enforceable international environmental law;
- the most comprehensive, binding system of peaceful settlement of disputes.

The decade that passed since Montego Bay has seen the collapse of the world order that had emerged from World War II. Under its ruins, the international order of the nation states that prevailed over the last three hundred years, is shaken in its foundations. In such a situation it is to be expected that the forces of reaction gather to stem the tides of change, and our so innovative Convention has felt this onslaught. It is indeed remarkable that it did not succumb to the old and the pioneers of change were able to adjust to the new and unforeseen. The "Pioneer Regime" that emerged from the ten years of labour of the Preparatory Commission is the best response to the challenge. It is fortunate that the Pioneer investors represent industrialised as well as developing countries and all shades of ideology and political regimes. A joint Pioneer undertaking in exploration, development of human resources and R&D in the high technologies required for seabed exploration and sustainable development thus is as breakthrough, a unique venture "pioneering" into a genuinely new international order advancing peace and security, technological/economic development, and the conservation of the environment. Should we not utilize it even better?

From now on, the implementation and further development of the Law of the Sea must be considered in the broader context of the U.N. Conference on Environment and Development and the restructuring of the United Nations system.

A plausible scenario for the next decade, then, could be:

- the continuation of the Preparatory Commission, beyond the coming into force of the Convention, functioning as an "Interim Authority";

- the continuation of the "Pioneer regime" consolidated in a joint undertaking, recognized as the "Interim Enterprise" which should yield enough knowledge and experience to enable those who will come after us to draft a realistic mining code at the time when production will become economically and environmentally sustainable;

- the strengthening of regional cooperation and development;

- the establishment of an "ocean forum" in the context of the Commission for Sustainable Development.

The next decade requires no less ingenuity, flexibility, and devotion to the common cause than did the previous decades of the making of the Convention and the emerging of the interim regime. They have not failed us in the past. They shall not fail us in the future.

"Coastal Management" or "integrated coastal management" -- these have become catch phrases which tend to distract us from the fundamental insights of the Third United Nations Conference on the Law of the Sea, that "the problems of ocean space are closely interrelated and need to be considered as a whole."

No doubt, a very large part of exploitable resources are within 200 miles from the coast, in most cases. And this applies to living resources (about 85 percent of commercial fisheries) as well as to offshore oil and gas (almost exclusively on the continental shelf within 200 miles), placers, heavy sands, coal, and other resources. True, also, that the most severe environmental problems, particularly those affecting human health, are concentrated in nearshore areas. One must also take into account that 60 percent of the world population lives today within 60 miles from shore, and that this proportion is going to rise to 75 percent during the coming decades. Coastal management, furthermore, is under national jurisdiction; the development of coastal resources, the management of ports and harbours are an integral part of national development planning.

Fish, however, do not respect national boundaries, nor does pollution. The coastal zone, even if extended to include the entire Exclusive Economic Zone, is not a closed management system. What happens beyond its limits may profoundly affect what happens within its limits and frustrate any efforts to manage resources rationally.

It is this "amphibious" character of the coastal zone that makes it so fascinating: that makes it the nucleus of both national and international governance.

There exists today already a rich literature describing the kind of institutional framework that is required for "integrated coastal management" , and that is already emerging in many places, We know that this institutional framework must be interdisciplinary and transcend the boundaries between separate departments, as none of them, as they are constituted today, could consider the problems of the oceans as a whole and deal with ocean uses in their interaction. We know that it must be participational, that is, that both consumers and producers must be able to participate in decision-making and may contribute to monitoring the state of health of the coastal sea. We also know today that integrated coastal management requires new forms of cooperation and integration between

national, provincial, and local governance. This implies that changes are needed also at the provincial and national level, to facilitate interdisciplinary and trans-sectoral planning and decision-making.

In the seaward direction, corresponding changes will be necessary.

In almost every sector of marine activities there will be issues that transcend the limits of national jurisdiction. Economic/ecological space and political space no longer coincide.

States have new rights and new responsibilities with regard to the enforcement of environmental laws and regulations: particularly port states who have the legal right, and moras duty, to arrest any ship suspected of having committed an act of pollution anywhere --even on the high seas. This will encourage new forms of communication and cooperation among port states, as it has already done among European port States.

States must cooperate on a regional basis in the management of their fisheries: for if they don't, stocks will not be sustainable. Freedom of fishing in the high seas is simply incompatible with management in the EEZ. The problems of ocean space are closely interrelated and need to be considered as a whole.

States will have to cooperate on a regional basis in the advancement of marine sciences and technology: too costly for small and poor states to pursue individually. States, however, can do jointly what none of them can do alone.

Beyond the provisions of the Law of the Sea Convention, States are increasingly realizing that they must cooperate also in the management of offshore oil that may be "straddling established boundaries, or frustrate boundary agreements. Joint Management Zones, Joint Development Zones are becoming more frequent and more comprehensive.

Just as in the coastal zone, sea uses in regional seas are interacting and must e considered as a whole. Regional mechanisms thus will mirror the structure of coastal management mechanisms, and coastal management governance must interact with regional governance, just as it must interact with national governance, and this interaction must be duly institutionalized.

There are, furthermore, issues which transcend the limits of regional concerns, and which are global, such as migratory stocks, navigation, or ozone depletion.. And at the

global level, likewise, ocean uses are interacting and require changes in the structure of he United Nations system --changes which are already in course.

Coastal management thus must be considered in the broader context of regional and global cooperation; ocean governance must be considered in the wider context of the UNCED process (sustainable development) and the restructuring of the United system as a whole.

(1)

Part I contains the Constitution for the International Seabed Authority, which is to administer the resources which are the common heritage of mankind for the benefit of all people, especially those in the poorer countries. It is an impressive, very innovating, very complex structure. It embodies, in concrete terms, the principles solemnly adopted by the Twenty Fifth General Assembly in 1970.

But we are no longer in 1970. We are ~~in 19~~ at the end of 1975, and the common heritage of mankind has been eroded by national claims. It is a ~~[illegible]~~ not infrequent historical occurrence that institutions are established, in a certain functional context -- which changes over time, so that the institution is left without functions: it is "ritualized" in a certain sense. That an institution is newly established for functions which have already atrophied *before* it is born -- that the institution is "ritualized" at conception -- that is an occurrence without precedent in history. And yet, this is what the negotiations presently carried on in the First Committee and embodied in Part I of the SNT for are pointing to.

There is a disturbing disproportion between the structure and the function of the International Seabed Authority. Considering the resource basis as it is now conceived, any functions the Authority can really exercise ~~in the mass~~ one would have to come to the conclusion that the structure should be drastically reduced — which would mean the renouncement of the principles solemnly adopted. Or, the alternative would be to find ways to enlarge the functions of the Authority. At any rate, functions and structures must be brought into balance again.

A second weakness of the Seabed Authority such as it is now designed is the composition of the Council which is based, partly, on the principle of regional representation, but, partly, on unstable interest groups, such as developed, develop[ing], producer, consumer, etc. — ~~groups that are unstable~~

4 freezing the status quo

which is more likely to ~~advance harmonious~~ exacerbate conflict and instability than to promote ~~harm~~onious and equilibrated cooperation.

The role of scientific research in the International Seabed Authority is far from clear; for while it is among its stated competence to undertake as well as coordinate such research, ~~there is no organ provided for to that~~ the text does not provide for any organ to which this activity could be entrusted; furthermore, the relationship between the scientific activities of the ISA and existing international organizations in this field, in particular ~~such as~~ IOC, needs to be clarified.

~~The text does nothing about multi~~

These are, perhaps the main defects of the Text. It would be useful, perhaps, if the ISA had an organ, a Commission to advance the development of international law in this new, and innovating area of ~~seabed~~ activities. It would also be desirable that it did something about multinational corporations — about which the whole text does nothing, but to this I shall return later.

Part II deals with the traditional Law of the Sea. It is far less innovating. It certainly does not create a new order, but merely effects shifts within the old order: from the principle of freedom of the sea to the principle of sovereignty. Since both these principles, however, are eroded by ~~modern~~ contemporary technological and other concurrent developments, this shift is like the ~~turning~~ rolling over of an insomnia-stricken sufferer from one side to the other: it achieves nothing.

Taking the text as it is, the ~~best~~ most that could be hoped for is a certain cleaning up process: a definition of baselines from which the breadth of the territorial sea is measured; the absorption of the completely unscientific continental shelf concept into the Economic Zone concept; ~~the phasing out of the notion~~ a certain simplification and streamlining would be useful.

which might include the phasing out of the notion of historic bays and waters, and the elimination of the contiguous zone (absorbed by the territorial sea of 12 miles and the Economic zone of 200). Also the provisions on fisheries, both in the economic zone and on the high seas, stand in need of improvement. ~~According~~ Just as they ~~stand~~ are, they are, according to FAO expert Sidney Holt "100% unhelpful" in solving the real problems of fisheries management.

Part III, dealing with the protection of the marine environment, scientific research, and the transfer of technology contains many concepts and principles that are innovating and point toward the future. The greatest weakness of this part ~~besides~~ is in the lack of institutional infrastructure to act on these principles. Too often it is states that "nations shall" when we know all too well that "nations won't" unless there are some radical changes in the structure of conducting affairs – what Part III fails to provide.

As far as scientific research is concerned, the distinction between "fundamental" and "resource-oriented" research is totally untenable, and will inevitably lead to litigation -- and, therefore, to paralysis.

There are a number of contradictions between Part III and parts I and II. These can easily be eliminated. The greatest success of Part III, however, would be if its constructive concepts were absorbed by the other parts of a coherent, comprehensive structure.

Part IV, providing for a system of dispute settlement, is, together with Part I, the most innovating and exciting. Realistically flexible, offering all options to litigating parties, combining special procedures and general procedures, the functional and the juridical in new and creative ways, Part IV is in some ways, a first piece of the "integrative machinery" that Pardo and I have been proposing: which decentralizes open procedures, and is the 'multichannel' fundamental organ of a General Law of the Sea Tribunal; ~~[illegible]~~ One might even say, a model for the kind of "functional federalism" we have been experimenting with and to which I shall return at the end of these remarks.

The weakness of Part IV lies in the reservations that states have the options to [illegible] so many -- exempting the most crucial issues: delimitation of boundaries, activities in the Economic zone, military activities, and actions of ~~[illegible]~~ which [illegible]

AAAS
May 31, 1983

At a time when global economic woes combined with political brinkmanship see to be heading us ineluctably towards disaster, it takes a considerable dose of optimism to talk confidently about the contribution the new Law of the Sea can make towards the maintenance and enhancement of peace. Not even the most perfect convention could stem this tide; and the United Nations Convention on the Law of the Sea certainly is not perfect.

Yet, among all the uncertainties with which we have to live, one thing is certain: and that is that things will change. Trends will reverse; power will change hands: though we don't know where this change will set in: where the point of break-through toward peace may be located. It might be in any of a number of sectors of international relations. It might as well be in the Law of the Sea, at this frontier of innovation and change.

There are some aspects under which the Convention on the Law of the Sea fails as a potential contribution to peace.

Peace, as we all know, must be based on equity. And those among us who had hoped that the new Law of the Sea would enhance equity, would contribute to greater equality among Stastes, have been disappointed. Clearly, the vast extension of national jurisdiction by coastal States in ocean spacxe increases inequality among States and makes the rich richer and the poor poorer. The trend towards the extension of national claims is as direct consequence of the penetration of the industrial revolution into the oceans. It was initiated by the industrialized States --

with the Truman Declarations of 1945 -- and it serves primarily the interests of the industrialized States

Secondly, peace must be founded on security of boundaries. The further extension of claims entails conflict. Those among us who had hoped that the Convention would set clearly defined, stable boundaries and thus halt further claims, again, have been disappointed. There are loopholes and ambiguities in the provisions on delimitation, which, so long as present trends continue, will invite further expansionof claims. The definition of straight baselines; the delimitation of the outer continental margin, andthe definition of islands, offer such loopholes and contain such ambiguities. It is an easy prediction that -- so long as present trends continue --any newly discovered important economic resources anywhere in the oceans will be claimed by some coastal or island state.

With this, however, my list of complaints is exhausted. In a much broader and more important sense, the Convention can make a tremendous contribution to peace, or, more importantly even, to the creation of a peace system, basically different from the present war system founded on sovereign States as we have known them for the past three and a half centuries or so -- let us say, since the end of the Thirty-Years War.

The potential contributions of the new Law of the Sea to peace and the establishment of a peace system are at least four.

First: the new Law of the Sea is a response to ocean development, that is, the penetration of the industrial

revolution into the oceans which, in turn, it will further intensify and accelerate. The oceans are playing a rapidly increasing role in world economics. A significant portion -- far more important than in the past -- of the world's food supply, the world's supply of minerals and metals, of energy, and of other raw materials for industrial and pharmaceutical development, will come from the oceans. Ocean management and marine resources will be an integral, in many cases, a central, part of development strategy.

Since peace must be based on development, ocean development, as enhanced and accelerated by the new Law of the Sea, can make a significant contribution to peace.

Secondly, the intensification and growth of the peaceful uses of ocean space and resources may have an indirect arms control effect, through a process called by certain disarmament expets a process of passive disarmament. This occurs when a policy or strategy is planned for a certain purpose, and arms control or disarmament ensues, as a by-product, so to epak.

The purpose of the expansion of national jurisdiction in ocean place was clearly economic -- the establishment of an economic zone -- but there can be no doubt that the nationalization of ocean space will put some constraints on the free and unnoticed movements of naval forces. The purpose of monitoring and surveillance in the oceans, again, may be the protection of the environment, but other things may be monitored and surveilled incidentally. The technologies for ocean exploration and for ASW are largely identical. A transparent and intensively managed ocean

puts constrains on naval strategy that did not exist in the opaque wilderness of the seas of past centuries.

Thus a British expert, Elizabeth Young, wrote (as early as 1973!):

"The activities of the various existing and planned United Nations bodies and of an ocean regime's own organization are bound to result in a considerable internastional presence in ocean space....This presence, of itself, would have an arms control effect, proportionate to its scale and the range of its activities, and at some point it will be necessary to consider how this effect can be enlarged and enhanced.... Any inspectorate, research exercise, moni toring body, is part of a de facto international verification system. In setting them up, the arms control significance of the information they are to acquire should be kept in view and eventually concerted.")Pacem in Maribus IV, Proceedings, Malta: International Ocean Institute, 1973)

Thirdly, the Convention marks a significant step forward in the asrea of international dispute settlement. And dispute settlement by peaceful means is essential for the maintenance and ehnancement of peace.

The Convention provides in fact for the most comprehensive and most binding system of dispute settlement ever devised on a global scale.It should be pointed out, incidentally, that the United States Delegation made a considerable contribution to the design of this system.

States, when signing, ratifying, or acceding to, the Convention, make an undertaking that they will submit to some form of binding dispute settlement. This may be arbitration, or special arbitration, through arbitral tribunals established through the specialized agencies of the United Nations, the so-called "competent international organizations (UNEP, IMO, FAO, and IOC) which had never before been involved with dispute settlement responsibilities; or it may be recourse to the traditional International Court of Jusice in the Hague, which is making itself a new reputation with its learned decisions on sea boundary delimitation. The recent cases of Tunisia vs Libya and Libya vs Malta are cases in point. Lastly -- but not leastly -- States, and other actors on the international scene, may resort to the new International Tribunal for the Law of the Sea which, under the Convention, is to be established in the Hanseatic city of Hamburg in the Federal Republic of Germany. This Tribunal is one of the most constructive innovations generated by the Convention. What is of particular interest is that it is not only States (as in the Hasgue Tribunal) that have a standing before this new tribunal but, in certain cases, also non-States: whether supranational entities like Common Markets, or nongovernmental entities like industrial companies or other "legal persons" or even individuals.

In any case, signatory States must submit to, and accept the decision of, any one of these existing or new judiciary organs as binding. And this, of course, is progress, enhancing peace.

Just as in other parts of the Convention, however, there are loopholes: Exceptions: areas in which States are not bound to submit to compulsory dispute settlement: inevitable concessions to the traditional concept of absolute State sovereignty. And these exceptions are precisely in the most sensitive areas where disputes are most likely to engender conflict. These optional exceptions are enumerated in Article 298 of the Convention and concern issues related to sea boundary delimitation (it is encouraging, however, that, as we have seen, States, in most cases, are willing to accept voluntarily dispute settlement by the Court), military activities; and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.

Regrettable as these loopholes may be: this is as far as the international community could go at this time, and it definitely signifies a step forward and a contribution to the maintenance and enhancement of peace.

The most important contribution to peace, however, is the concept of the Common Heritage of Mankind which, exclicitly (with regard to Part XI) or implicitly (for the whole Convention) is the basis and foundation of the new ocean regime and which, in spite of all difficulties it is encountering -- as all new concepts inevitably do; and the frightened opposition of the present U.S. Administration constitutes not the least of these difficulties -- well, in spite of all of this I am convinced that the concept will expand and become the basis of a truly new international order.

The Convention provides that not only the seabed beyond the limits of national jurisdiction which has been explicitly declared to be the Common Heritage of Mankind, is reserved exclusively for peaceful purposes: The same applies, under the Convention, to the high seas, and to marine scientific research carried out on the high seas or on the seabed or, naturally, under the auspices of the "competent international organizations." The legal implications of this "reservation for peaceful purposes" are not yet clearly spelled out or fully developed, except in the case of the international seabed area where the concept is embodied in an institutional framework, the International Seabed Authority. Defective though this institutional framework may be -- and some of its worse defects, paradoxically, are due to the insistence of the United States which now is repudiating that for which it is largely responsible -- the International Seabed Authority opens possibilitiesa for new forms of industrial cooperation between North and South and East and West, which may provide a firm basis for a peace system, a system based, not on competition but on cooperation, not on power and ownership, which is a form of power; but on non-ownership and equity: on co-development and shared management of marine sciences and technologies.

A hundred years ago, even fifty years ago, a concept of this sort would have had a totally utopian ring in Europe, whose common heritage was a war system in which hereditary enemies, Germany and France, were intent on dismembering one another, war after war, generation after generation. Then, at the end of World War II, came the

Monet or Schuman Plan providing for the common management of the coal and steel industries. Obviously the plan had to encounter great difficulties, but eventually, it became the nucleus of the system of the European Economic Communities. Within this system, war between France and Germany has become inconceivable, a thing of an irrevocable past.

There are, obviously, many and very important differences between the Europe of the late forties and early fifties, and the world community of the eighties and nineties. It is nevertheless not inconceivable that the International Seabed Authority could play a similarly catalytic role in the world today. It is, in any case, a new instrument that we can use, if we wish to, to enhance the internationalization of the marine sciences and the co-development of marine technologies from which both industrialized and developing countries coulds greatly benefit. Towards the end of the century, or early next century, this could give rise to an internationally managed industry which might become the nucleus of a World Economic Community, somewhat along the flexible, expansible lines of the European Economic Community. It is up to us.

Much, of course, will depend on the success of the Preparatory Commission which got off to a painful and slow start with its first session in Jamaica from March 13 to April 8 this year. The task of this Commission, as I see it, is to adjust the ideas and ideals of the 'sixties and 'seventies to the economic realities of the 'eighties and 'nineties. The Commission may provide a form of interim regime for exploration and research and development in marine technology.

Don't think, however, that I am speaking in terms of generalities or rhethorics when I speak of the articulation of the principle of the Common Heritage of Mankind in new forms of industrial cooperation between North and South, East and West (with or without the United States, during a first stage). We have precise and concrete plans -- a discussion of which would exceed the scope of these considerations of today which were intended merely to point out the potential contribution of the new Law of the Sea to the maintenance and enhancement of peace and the establishment of a peace system. To sum up: these contributions are four: Economic development; passive arms control and disarmament effects; an improved international dispute settlement system, and new, institutional forms of international industrial cooperation through the Seabed Authority which might become the nucleus of a peace system.

THE LAW OF THE SEA AND THE LAW OF THE LAND

Thomas spence issued in 2795 a Description of Spensonia which ws followed in 1801 by The Constitution of Spensonia... Spensonia begins with a paragle about a father who ha a number of sons. who built them a ship for traffic and who provided that the profits of the enterprise were to be shared in commn. This ship is wrecked upon an island, and the sons quickly awake to the conclusion that if "they did not apply the Marine Constitution giventhem by their father to their landed property, they would soon experience inexpressible inconveniences. They therefore declared the property of the island to be the property of them all collectively in the same manner as the ship had been, and they ought to share the profits thereof in the same way...

CID. 1/ALG/ C.B.1/REV.1

4. - THE LAW OF THE SEA:

1. The oceans, covering over two thirds of our globe, contain a preponderant portion of its wealth: a wealth which advancing technologies are making available at a rapid pace. No international economic order can be viable if it is not applied to this increasingly important sector of world economy which, under the present regime, suffers from the same imbalances and inequities that characterize the present economic order in general. The industrial nations are in a position to appropriate the lion's share of the natural resources of the oceans, which are the common heritage of mankind, and to dominate shipping, maritime trade, and scientific research, which must be public international services, shared by all.

2. The Third United Nations Conference on the Law of the Sea provides a unique occasion to correct these imbalances and inequities and to create for the first time an institutional framework to embody the New International Economic Order.

3. Much of the work of the Conference, however, is not relevant to the building of the New International Economic Order, while the real economic potential of the oceans -- food (both fish and unconventional living resources for human consumption), hydrocarbons, shipping and maritime trade, and scientific research -- is not being mobilized for the building of the new order but remains fixed in the old.

4. The documents of the Sixth Special Session of the General Assembly and the Charter of Economic Rights and Duties of States contain a number of provisions which require action and implementation by the Conference on the Law of the Sea. The Conference has acted on some. The time has come for it to act on the others.

5. To advance the building of the New International Economic Order in ocean space, we recommend that the Conference on the Law of the Sea consider and act upon the following points raised by the above mentioned documents on the New International Economic Order:

a) Special attention should be given to the question, not only of developing land-locked and geographically disadvantaged States, but also to <u>developing island States</u> which, if present trends continue unchecked, may find them-

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1. The oceans, covering over two thirds of our globe, contain a preponderant portion of its wealth: a wealth which advancing technologies are making available at a rapid pace. No international economic order can be viable if it is not applied to this increasingly important sector of world economy which, under the present regime, suffers from the same imbalances and inequities that characterize the present economic order in general. The industrial nations are in a position to appropriate the lion's share of the natural resources of the oceans, which are the common heritage of mankind, and to dominate shipping, maritime trade, and scientific research, which must be public international services, shared by all.

2. The Third United Nations Conference on the Law of the Sea provides a unique occasion to correct these imbalances and inequities and to create for the first time an institutional framework to embody the New International Economic Order.

3. Much of the work of the Conference, however, is not relevant to the building of the New International Economic Order, while the real economic potential of the oceans -- food (both fish and unconventional living resources for human consumption), hydrocarbons, shipping and maritime trade, and scientific research -- is not being mobilized for the building of the new order but remains fixed in the old.

4. The documents of the Sixth Special Session of the General Assembly and the Charter of Economic Rights and Duties of States contain a number of provisions which require action and implementation by the Conference on the Law of the Sea. The Conference has acted on some. The time has come for it to act on the others.

5. To advance the building of the New International Economic Order in ocean space, we recommend that the Conference on the Law of the Sea consider and act upon the following points raised by the above mentioned documents on the New International Economic Order:

a) Special attention should be given to the question, not only of developing land-locked and geographically disadvantaged States, but also to developing island States which, if present trends continue unchecked, may find them-

selves geographically disadvantaged in enclosed or semi-enclosed seas such as the Mediterranean or the Caribbean. The development of the aforementioned States places special responsibilities on the international Community.

b) The formulation and implementation of an international code of conduct for transnational corporations operating in ocean space should be the responsibility of the institutions created by the Law of the Sea Conference. As a first step, the International Seabed Authority, which must have the exclusive control and the power to manage directly the exploration and exploitation of the seabed beyond the limits of national jurisdiction, should, in addition, be empowered:

(i) to formulate and implement a code to regulate the international activities of transnational corporations operating on the seabed under national jurisdiction, especially in their relations with developing coastal states;

(ii) to provide for the international incorporation of such transnational companies for their better control;

(iii) to establish, as the need and the feasibility may arise, "other public international enterprises," similar to the nodule mining Enterprise already foreseen, which, in the future, might serve as a "countervailing power" to the private multinational companies.

c) Existing international organizations within the U.N. system should be restructured and strengthened to assure the full participation of the developing nations in decision making and to enable these organizations to assist developing nations in the exploitation of their nationalized resources and to assure their equitable participation in the exploration and exploitation of the living resources of international ocean space.

d) Equitable participation of developing nations in the world shipping tonnage should be assured. Specific recommendations on this point were made by the Group of 77 (e.g., Preliminary Proposals by the Group of 77 for the Revision of the International Development Strategy for the Second U.N. Development Decade, 4 June, 1975), and these should be acted upon by the Conference on the Law of the Sea.

e) The Definition of a policy framework and the coordination of all organizations, institutions, and subsidiary bodies within the U.N. system, for the implementation of the

Programme of Action and the New International Economic Order should be the responsibility of the Law of the Sea Conference, as far as such organizations operate in ocean space. The Declaration of Oaxtepec contains some specific proposals in line with the documents of the Sixth Special Session of the General Assembly. We recommend that the Conference on the Law of the Sea consider these.

In this way the Conference on the Law of the Sea could make a concrete and vital contribution to the building of the New International Economic Order. In re-focusing their attention on this common goal, furthermore, the developing nations will strengthen their unity and cooperation, and on this unity the success of the Conference itself depends.

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...without concepts and data readily available, it is not possible to frame a meaningful new law of the sea: no new order for the seas and oceans can be built. The new law of the sea has to straddle law, economics, and science in unprecedented ways.

The people who have to make this new law need the facts set in an orderly and logical framework: not specialized facts in specialized books that are hard to come by and go through but an overview of concepts and data in their interaction. The people who will have to ratify the new Convention -- hopefully the people of all countries -- will need the same kinds of information and understandings in order to vote meaningfully. Policymakers, students, concerned citizens, planners, conservationists, industrialists, fishermen, all will need this information and understanding. The Ocean Yearbook is intended as a contribution to the satisfaction of this newly felt need....

This is the purpose of the Ocean Yearbook as defined in the introductory pages of Volume I: to present an integrated view of man's activities in the oceans, to analyse trends and present them in their interaction.

As the themes of Volume I are taken up and further developed in this volume, a profile of this work in progress appears to take shape, a format is emerging. It is hoped that Volume II is somewhat closer to the achievement of an integrated view, although such an integrated view remains an illusive goal: for it keeps changing as the components change and as perceptions of events, trends, and priorities keep changing.

In the introductory pages, Volume I projected a number of major trends. It may be of interest to look at these again, to re-examine them in the light of the events reported in this Volume II.

IOI Report

Law of the sea and the private sector

REPRESENTATIVES of almost all national governments will be working during 1974 on one of the most complex and urgent tasks of international law—nothing less than the framing of a new regime for governance of the ocean and its resources. The United Nations Conferences on the Law of the Sea (UNCLOS) were held in 1958 and 1960: more comprehensive than either previous session will be the one slated for 1974. After prolonged argument in the Preparatory Committee, it has been agreed that this next Conference will deal with practically all aspects of interrelated marine problems—seabed minerals, pollution, fisheries, territorial waters, and so on. The political atmosphere in which UNCLOS starts is one of growing tendency by governments to extend their authority over ocean space. This, if continued, will erode the value of the historic UN Declaration of Principles, of December 1970, which embodied the concept that a large part of the seabed and ocean floor is the common heritage of mankind and therefore cannot be appropriated by any persons or states.

Several groupings of interested people which are internationally minded and do not represent governments have been watching with mounting concern as governments shy away from the vision of the common heritage. These bodies—in UN jargon, NGO's: nongovernmental organizations—have in various ways expressed their view that the vision should be not only maintained but expanded. It should encompass not only the international seabed but ocean space as a whole, including the water column above, its resources, and even the air space above that. They believe —and bring much supporting evidence— that only by this action can we ensure future peace and equity in the ocean and, further, that this will inspire and guide solutions to some other pressing international problems, among them monitoring the state of the planetary environment and the future rational and equitable use of natural resources.

The World Association of World Federalists, the Society of Friends, the International Association for Ecology (INTECOL, a professional body affiliated with the International Council of Scientific Unions), interparty groups of parliamentarians in Britain and elsewhere, and in the United States the Sierra Club among others, have made rather similar statements of their positions.

Brian Johnson of Sussex University has suggested (in a widely-read article in the British journal *Your Environment*) that NGO's should aim for an effective, and coordinated, influence on the UNCLOS. Besides submitting papers, and pressing for participation in the Conference (as over a hundred of them did successfully in the UN Conference on the Human Environment in Stockholm, 1972), they should, Johnson suggested, immediately set up a nongovernmental ocean space environment committee, and should ask for the appointment of a Conference secretary-general with powers and support as great as Maurice Strong had at Stockholm. The idea of a working committee also came up in the proposal from the British parliamentarians for a "watchdog" for the ocean environment, to be called "Trustees of Ocean Space." The fourth *Pacem in Maribus* Convocation took up this question, and drafted the elements of a new Declaration later made available to members of the UN Preparatory Committee (see *Oceans*, Sep.-Oct. 1973).

A world assembly of NGO's concerned with the environment has since been held. High priority should be given, it decided, to coordinating NGO's opinion about main UNCLOS issues. The Association of World Colleges and Universities invited the International Ocean Institute, a member, to draft a policy for it on this matter. The following text is an attempt to harmonize the various statements published so far. Its core is the document prepared at PIM IV. The preamble is based on the INTECOL statement drafted by Professor Garrett Hardin, eminent ecologist of the University of California at Santa Barbara:

OCEAN SPACE FOR MANKIND

Preamble

In the beginning, no part of Earth had any man's name on it, nor the sign of any group of men. In the development of the land the concept of private property was created. Inequity in distribution was almost the invariable rule, but this may not have been as bad as the ruin of common property that inevitably occurs whenever all men have the right to take from the commons and none have responsibility to manage for the future. Now the land is filled and subdivided; only the ocean remains without a basis for a rational policy governing its use. Continuing to treat the manifold riches of the ocean as commons to be exploited by any and all, without restraint, will soon bring ruin to them and renewed conflict among men. We now understand too well the meaning of equity and the preemptive force of national power, to support any division of the common wealth of the seas along national policy lines. The erasing of old inequities is an obstinate problem to which reasonable men are committed, but to which they expect no early solution. But *nascent* inequities, as yet lightly invested with national interests, may be suppressed at the outset, if we can but muster the will. No generation has had so clear and splendid an opportunity—that is, to distribute the wealth of the ocean better than did our ancestors the wealth of the land. By designating at least the greater part of the ocean as the common heritage of mankind, we may both assure future peace and equity in ocean affairs and inspire and guide solutions to other pressing international problems.

The UN Declaration of Principles, of 1970, should form the basis for a future international regime for the seabed, ocean floor, and subsoil thereof beyond the limits of national jurisdiction, but it needs to be broadened to conform to contemporary technological

conditions. Persuasive evidence has since been produced in discussions within the United Nations that: (a) *the area to which the 1970 Declaration applies must be considered as a part of ocean space which is an ecological whole;* (b) *man's many uses of ocean space intersect and interact;* (c) *activities in the water column may substantially affect the seabed, and vice versa;* (d) *activities in areas under national jurisdiction may substantially affect international areas, and vice versa;* (e) *the conservation of the marine environment and the rational management of its resources are essential to the survival of humanity.*

Ocean space as a whole

1. Ocean space and the air column above it are an ecological unity. Increasing industrialization, multiplying populations, coastal congestion, increased use of chemicals, and many other factors are subjecting the marine environment to unprecedented pressures, particularly in the vicinity of industrialized countries. No one state can cope alone with the evolving situation. Minimum worldwide standards are thus required with regard to the avoidance of pollution in the marine environment.

2. Rapidly advancing technology is enabling man significantly to change the state of the marine environment through diversion of important rivers, construction of canals, weather modification, and other means. Use of technology which can affect the natural state of the marine environment over large areas must be subject to international control.

3. The development of super-tankers, liquified natural gas carriers, submarine navigation, ships with nuclear propulsion, and other developments are creating new hazards to the marine environment and to the safety of navigation. Minimum international standards must be elaborated through global marine institutions with comprehensive functions which can take due account of the interaction among the main peaceful uses of the sea.

4. Ocean space is becoming an economic unity in that the uses of the surface of the sea, of the water column, and of the seabed are becoming increasingly interlinked. International law must recognize this fact by integration of existing legal regimes for different activities.

5. The rapid increase and diversity of man's activities require the management of the sea and its resources to a much larger extent than in the past. Control and management of the oceans must be shared between coastal states and the international community in accordance with the principle of the common heritage of mankind.

Ocean space within national jurisdiction

6. Precise overall limits to national jurisdiction are required.

7. Navigation, overflight, scientific research, the laying of submarine cables, and perhaps some other activities are vital public international interests and as such must be internationally protected within the limits of national jurisdiction.

8. Despite research and international management agreements, intolerable pressures are developing on fish stocks in many parts of the world. Global minimum standards of biological and economic management must be elaborated to be implemented through regional bodies and marine institutions for ocean space with comprehensive functions.

9. Special international protection must be accorded to slowly reproducing species, such as marine mammals.

10. Coastal states have obligations as well as rights in the area of ocean space within their jurisdiction; these obligations extend not only to the protection within the jurisdiction of such activities as may be considered public international interests, but also to management of the environment and of living resources in a manner conforming at least to minimum international standards.

11. States which do not possess the financial or technical capability to attain minimum international standards must receive the assistance needed through comprehensive institutions for ocean space.

Ocean space beyond national jurisdiction

12. Only through the adoption and subsequent implementation by the international community of the basic concept of common heritage of ocean space beyond national jurisdiction can the future beneficial use of ocean space and its resources by all states be assured, and indeed expanded, in contemporary conditions of intensive exploitation accompanied by increasingly powerful technology. The concept of common heritage of mankind of ocean space and its resources beyond national jurisdiction must form the basis of future international law of the sea and be given expression in an international treaty or treaties, generally agreed upon by all the international community, harmonizing the rights of states within the emerging world interest.

13. The above treaty or treaties must include provision for a machinery balanced in such a manner as to ensure that its decisions reasonably reflect the wishes of the majority of the world's population, giving due weight to the needs of the developing nations and to the economic dependence of states on ocean space.

14. Land-locked and shelf-locked countries must be assured access to ocean space, must be given the opportunity, on an equal basis with coastal states, to take part in the exploitation of resources beyond national jurisdiction and must partake in the benefits derived from the exploitation of those resources.

The international machinery

15. The international machinery must perform, *inter alia*, these functions: (a) providing a general forum for the discussion, negotiation, and accommodation of national interests in ocean space; (b) general and non-discriminatory standard setting and regulation with respect to major peaceful uses of ocean space; (c) biological and economic management and conservation of the living resources of the sea beyond national jurisdiction, and management and conservation, in cooperation with the coastal states, of living resources which migrate between ocean space under national jurisdiction and that beyond it; (d) exploration and exploitation of nonliving resources of ocean space beyond national jurisdiction, either directly or in participation with states or through a system of licenses; (e) equitable sharing of benefits derived from the exploitation of the living and nonliving resources of ocean space beyond national jurisdiction, which also makes provision for a contribution from coastal states in respect to benefits derived from the exploitation of resources in areas of ocean space under their jurisdiction (such a contribution appears justified in view of the benefits that would be derived by the coastal state from the management of resources outside its jurisdiction); (f) protection and general regulation in ocean space of such activities exclusively for peaceful purposes as may be considered to be of vital international public interest; (g) providing a mechanism for the effective access of technologically less developed countries to advanced marine technology relevant to their needs, and for the transfer of such technology; (h) promotion of scientific research in ocean space, and establishment of an effective mechanism for associating scientifically less advanced countries in such research; (i) providing to the international community such services in ocean space as may be considered necessary or desirable: *inter alia*, to sail vessels for rescue, scientific, or other international purposes.

16. Many of the functions of the international institutions could be appropriately undertaken through regional bodies.

17. It is of great importance either to consolidate existing UN bodies primarily dealing with questions concerning ocean space into the future international institutions for ocean space, or at least effectively to coordinate their activities through the institutions in order to avoid bureaucratic proliferation, duplication of activities, and inadequate or excessively complex coordination machineries at the international level.

18. The international regime should provide machinery for interdisciplinary discussion and decision-making involving, as far as possible, all users of ocean space and resources and including, in particular, science, industry, and the service sector.

19. International law and practice concerning the legal responsibility of states and of the persons under their jurisdiction, with regards to culpable activities which cause damage to other states in the marine environment, must be considerably expanded and made more precise: in particular a course of action must be given to the international community through the international institutions with regard to deleterious activities in ocean space beyond national jurisdiction.

20. No institutional system for ocean space would be complete without appropriate machinery for the compulsory settlement of disputes.

SIDNEY HOLT, *Acting Secretary*
International Ocean Institute

QUESTIONNAIRE

Addressing the UNCLoS at caracas, President Echeverria of Mexico 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 the 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 global and integrated vision and treatment of the marine environment.

Do you agree with this statement?

Considering recent developments in the navigational uses of ocean space, do you think new measures of international regulation are needed? With regard to standards of ship construction? The training of crews? The construction of port and superport facilities? The licensing of international shipping?

What kind of international fisheries management system do you think is required for international ocean space? Do you think that the resources of national ocean space can be effectively managed without an international management system which could assist the development of management in the national ocean space of developing countries? What kind of cooperation do you envisage between national, regional, and global fisheries management systems? What kind of cooperation do you envisage between the fisheries management system and other sectors of ocean management to harmonize the multiple uses of ocean space and resources, including new activities based on the development of new technologies?

Do you think technologies whose effects are potentially transnational should be used in the oceans? Under what conditions? Upon international consultation? Subject to the consent of international institutions?

Do you think a Sea-Bed Authority, limited to nodule mining, processing and marketing, will be economically viable? What other functions and competences do you think the Authority should have? Should it regulate, control, conduct, scientific research in the area? Will it be possible to separate the seabed from the water column with regard to scientific research? What will be the most efficient way to insure the participation of less developed nations in the conduct of scientific research?

What plans does your country have to develop an efficient management and surveillance system for your national ocean space?

The effective management both of national and international ocean space requires a clear and unambiguous definition of the boundaries between the two. Any open-endedness would clearly invite conflict. Do you believe the traditional distinctions between territorial seas, contiguous zones, fishing zones, pollution control zones, continental shelves, high seas and seabeds still hold in view of technological advances and the increasing interaction of all uses and of all sectors of ocean space? Do you think the simple division of ocean space into national and international ocean space would be more in accord with the comprehensive and interacting management systems that must evolve?

Do you think a compromise can be worked out between nations claiming continental shelf areas beyond the 200-mile EEZ and nations which do not wish national jurisdiction to entend in any way beyond 200 miles? By compensating the former? How do you think they could be compensated?

Do you have any suggestions for the drawing of baselines so as to avoid ambiguities and open-endedness in measuring national ocean space?

Do you have any comment on the question of islands, islets, rocks, artificial islands? On the question of archipelagoes? Historic claims?

How can the participation of land-locked nations in the exploitation of the nonliving resources of the seabed and ocean floor be insured?

The success of the Law of the Sea Conference hinges on the unity of the group of 77. How can this unity be cemented and made most operative? What are the issues on which there is the widest and deepest consensus among the group of 77?

How do you think a rational system of management for international ocean space could best be advanced? By widening the competence of the Sea-Bed Authority (and, accordingly, the terms of reference of the First Committee)? By creating a system integrating, in an organic way, the functions of the newly created Seabed Authority with the functions of IOC, IMCO, and FAO Fisheries Committee? Would these have to be restructured to be able to exercise their new, managerial functions in an over-all framework?