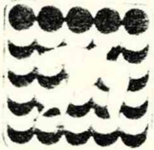

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LAW OF THE SEA:

THE NEXT PHASE

Introduction

In April, 1981, the Third World Quarterly published a report on the Third United Nations Conference on the Law of the Sea and an analysis of the Draft Convention by Dr. S.P. Jagota of India. The report traced the history and origin of the Conference. described the position of various interest groups on the major issues involved and assessed the emerging compromise colutions.

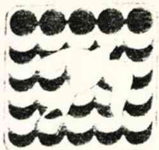
Since Dr. Jagota finished his report, two further Sessions of the Conference took place: The Tenth Session was held in New York from March 9 to April 17, and resumed in Geneva from August 3 to 28. The Eleventh Session opened in New York on March 8 and culminated, on April 30, 1982, in the adoption of the Convention by a vote of 130 States in favor, four against, and 17 abstentions.

The changes made in the text of the Convention since Dr. Jagota's report are of a very secondary importance, and his analysis remains as valid today as it was when it was written.

What has changed -- in some aspects, dramatically -- during the last year and a half, are the circumstances surrounding the text of the Convention.

Without repeating what was already stated in Dr. Jagota's excellent analysis, today's report will simply begin where Dr. Jagota ended.

We shall briefly discuss the events of the Tenth and Eleventh Sessions and the background against which they arose. We will then try to assess the importance of the Convention as a whole, in the context of the world situation as it appears today. Within this perspective, we shall attempt to examine the role of ocean mining and of the International Seabed Authority in international and national development strategy.



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I. Chronology of Events

1. The Tenth Session

The Ninth Session ended in a mood of euphoria. A major break-through had been achieved on one of the toughest questions that had still remained unresolved: the mode of decision making in the powerful executive body, the Council, of the International Seabed Authority, that is, one of the great innovating features of the emerging Convention. The solution to this problem had been largely engineered by the leader of the U.S. Delegation, Ambassador Elliot Richardson who, at the end of that session, expressed the confident hope that the Conference was now ready to adopt the Convention, an event which he deemed to be the most important one since the foundation of the United Nations itself.

The Tenth Session, instead, was overshadowed by the United States' decision to undertake a comprehensive review of the Draft Convention, questioning the very principles on which it was founded, and to withdraw from the negotiations at the Conference until this review was completed. The gaps between "Reaganomics" and the new philosophy of the Common Heritage of Mankind were altoo evident. Major changes, affecting the basic principles of the Convention, however, could not be considered without risking the unravelling of the whole "package," and it became soon clear that the choices were not between this Convention and another or better one, but between this Convention or none at all: not between a Convention with or without the U.S., but a Convention without the U.S. or no Convention at all. What would be the effect of the U.S. withdrawal on the other industrialized countries and, in particular, on Nato allies and EEC, was not too difficult to predict. It was clear that Europe's interest differed substantially from U.S. interests, and Europe's relations with Third-

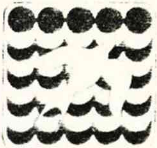
World countries were considerably more important than those between Reagan's America and developing countries. It was clear that countries like Canada, Australia, Norway, had to gain too much from the Convention to be willing to give it up, while the socialist countries could not be displeased by a demonstration of political isolation of the United States as the Cold-War temperatures kept sinking. If the Tenth Session began with deep concerns as to the practical utility of a Convention on the Law of the Sea to which major maritime powers would not be parties, it ended with the unquestionable determination to go ahead and conclude the monumental work, even at the cost of abandoning the principle of consensus and proceeding to vote. In spite of overwhelming political difficulties looming in the background, the work of the Tenth Session was productive.

Of the five major issues left to resolve -- listed by Dr. Jagota on p. 291 of his article -- two: the question of the location of the International Seabed Authority and its organs and, simultaneously, the location of the International Tribunal for the Law of the Sea, and the question of the delimitation of economic zones and continental shelves between States with adjacent or opposite costs, were solved.

The question of the seat of the Authority was a thorny and politically sensitive one, since it was divisive within the Group of 77 itself.

Malta, which, as is well known, had played a leading role in laying the foundations for UNCLOS III, officially renounced this role during the Second Session in Caracas in the summer 1974. "The path indicated by Malta in the past remained open," Mr. Bellizzi, the Maltese representative, said on July 11, 1974, "but his delegastion would not be acting as guides." (Official Records, Vol. I, p. 158). In accordance with this policy, Malta did not put forward its candidacy for the seat of the Authority. Filling the vacuum, Jamaica stepped forward and promptly secured the support of the Group of 77. It was only thereafter that Malta changed its mind and placed its candidacy. The competition between the two developing island states was fierce, and often bitten, and not really defused by the advent of a third competitor, Fiji, without, however, having a serious

which joined the contest in 1976,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chances of displacing the two senior rivals.

When it became clear that the Conference could not reach any consensus on the question of the seat, it was decided to put it to a vote during the Tenth Session -- together with the equally ~~burning~~ question of the seat for the International Tribunal for the Law of the Sea, ~~contested~~ by Portugal, Yugoslavia, and the Federal Republic of Germany.

— contested
— coveted

Jamaica won the vote, on the second ballot, with 76 votes, while Malta obtained 66 votes, and there were five abstentions. Fiji, having received only fourteen votes in the first ballot, was eliminated in the second. To have failed, actually only by five votes, after starting the race with such an unfortunate handicap, was really a moral victory for Malta and attested to the perseverance and diligence of the Maltese Delegation, working, as they did, under very difficult circumstances.

Malta conceded her defeat graciously, with sincere recognition of Jamacia's valiancy in the contest. Fiji's somewhat jesting conclusive observation, that "Jamaica has the seat of the Authority, but we have the nodules," may have more significance than may have been apparent when it was made.

The International Tribunal for the Law of the Sea fell to the Federal Republic of Germany. May the Hanseatic city of Hamburg, with its long maritime tradition and its independent spirit, provide a suitable home.

The question of delimitation had eluded satisfactory solution through nine sessions. The advocates of the two opposing schools of thought -- one relying on equidistance (median line) as the decisive criterion for delimitation, the other, on the principle of "equitable principles" -- were entrenched in two separate interest groups, after the attempt by Judge Manner of Finland to arrive at a solution [illegible] had

failed. Both sides held out, unwilling to make any concessions which might have entailed losses in case UNCLOS should fail and there was not to be any convention. Nor could one have expected them to do otherwise, in the real world, not the world of ideas and ideals. On this issue, involving territorial rights and questions of sovereignty, there was no difference between developed and developing countries. Both the "equidistance" group and the "equitable principle " group -- one lead by Ireland, the other by Spain -- contained both developed and developing countries on a purely pragmatic basis.

That the Tenth Session saw the hardened positions softening and a compromise solution emerging, was a clear indication of the political mood of the Conference: Clearly, there was the light at the end of the long tunnel. There would be a Convention, and the time had come to give up holding positions.

The compromise, very simple, and embodied in Articles 74 and 83 of the Draft Convention, provides that delimitation between States with opposite or adjacent coasts "shall be effected by agreement on the basis of international law as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution." The articles also contain a formula on an interim solution which should not prejudice the final delimitation.

. The solution to these two long-standing problems:

. substantial progress in the discussion on "participation," that is, the question of who may sign the Convention and be a member of the Seabed Authority: States only, as under traditional international law, or other entities, responding to the fact that the structure of international relations is changing;

. the adoption of hundreds of technical changes in the Text, resulting from the Herculean labor of the Drafting Committee;

. the change of the status of the Draft Convention,

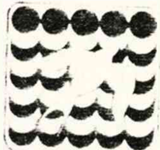
effected by dropping the subtitle "Informal Text"; and, finally,

. the adoption of an iron-clad schedule for the completion and adoption of the Convention at the Eleventh Session:

these are the principal achievements of the Tenth Session, and one must admit, they are substantial, considering the difficulties engendered by the U.S. withdrawal and the general deterioration of the world political climate, which might even have led to the final break-up of the Conference.

2. The Eleventh Session

The agenda for the Eleventh Session was heavy. Three of the five issues listed by Jagota were yet to be resolved: The establishment of a Preparatory Commission and its functions and powers in relation to the future Seabed Authority; the proposal, by the industrialized countries, for a "Preparatory Investment Protection," pending entry into force of the Convention, and the issue of participation. The Drafting Committee had yet to complete its work, particularly on Part XI and annexes: and beyond these technical questions loomed the political problems arising from the fact that the U.S. President had completed his fundamental review, and the U.S. Delegation was ready to discuss a set of amendments which were first presented in the so-called "Green Book" -- a practically complete rewrite of Part XI of the Convention, taking the Conference back to pre-Caracas days -- and subsequently, in somewhat attenuated form in a set of formal amendments sponsored by seven industrialized States (Belgium, France, Federal Republic of Germany, Italy, Japan, U.K., -- Doc. A/Conf. 62/L.121). Very little of this material found its way into an alternative set of amendments, sponsored by a group of neutral "Friends of the Conference consisting of medium-sized and small industrialized countries (Australia, Austria, Canada, Denmark, Finland, Iceland,



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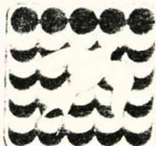
Ireland, New Zealand, Norway, Sweden, and Switzerland: Doc. A/Conf. 62/L. 104). This group tried to mediate between the U.S. on the one hand and the Third World on the other, but only three, rather minor, points of their proposal survived in the final text of the Convention as adopted by the Conference.

In accordance with the time table adopted at the end of the Tenth Session, the first three weeks (8-26 March), were devoted to informal consultations and negotiations. The results were presented on March 29 in as series of documents (Report by the President on participation in the Convention by entities other than States, doc. A/Conf.62/L.95; Report by the Chairman of the First Committee, Paul Bamela Engo of Cameroon, indicating lack of agreement on proposed changes in the text, A/Conf.62/L.91; Report by the Co-chairmen of the Working Group of 21 on seabed issues, offering two draft resolutions, one on Preparatory investment protection, the other on the establishment of the Preparatory Commission, A/Conf.62/C.1/L.30; Report by the Chairman of the Second Committee, Andres Aguilar of Venezuela, stating that sufficient support had been indicated for only one minor amendment, proposed by the United Kingdom and regarding the duty of coastal States to remove abandoned or disused structures to ensure safety of navigation.)

The introduction of these reports was followed by nine plenary meetings during which 112 speakers were heard. On the basis of this discussion, the Collegium completed the final revision of the text. The recommendations of the Chairmen and of the President were all incorporated, with very minor changes (Doc. A/Conf.62/L.93 and corr.1).

After receiving this revised document, the Conference was ready for the introduction of formal amendments by States who were dissatisfied with the compromises adopted.



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A spate of amendments came forth, affecting almost every part of the Convention. Six meetings were devoted to hearing 87 speakers on these proposed amendments. During this period, however, President Koh succeeded in convincing the sponsors of most of them not to press for a vote. The adoption of amendments, which could have upset the balance of the Conference package as a whole, might have endangered the adoption of the Convention.

On April 23 the Conference determined that all efforts of reaching general agreement had been exhausted, and that the Conference was ready for decision-making.

The amendments were disposed of on April 26: All but 12 of the 31 sets of formal amendments had already been withdrawn, and more disappeared during that day. In the end, only three were put to the vote. Two (by Spain) concerned minor points with regard to passage through straits used for international navigation: one was put forward by Turkey and would have cancelled Article 309, providing that "No reservation or exception may be made to this Convention unless expressly permitted by other articles of this Convention."

The defeat of these amendments demonstrated that the Conference wanted to conclude and adopt the Convention such as it was, and no chances were to be taken by opening a Pandora's box of amendments, wherever they came from.

On the other hand, the rejection of these amendments was paid for with the loss of three votes: Spain abstained in the final vote, while Turkey, joined by Venezuela, voted against the adoption of the Convention which, to them was unacceptable, unless they had the right to make reservations, especially with regard to the question of delimitation.

Only one amendment proved to be sufficiently non-controversial to be adopted, and it concerned a Resolution

rather than the Text itself. This amendment enabled Namibia, through the U.N. Council for Namibia, to sign the Convention and thereby qualify for participation in the Preparatory Commission.

The next two days were marked by hectic activity, on stage and off stage, to ready the final package for adoption or rejection on the appointed day, April 30. "Consensus" still was within the realm of the possible, inasmuch as it was clear that the overwhelming majority of the Conference was in favor of the Convention, and it was anybody's guess whether the United States, and perhaps some of its allies would raise a "formal objection." Last-minute changes were conceded, to better the odds, but it was in vain. On April 30, the United States demanded that a roll-call vote be taken. Had the Conference gauged the mood of the U.S. more correctly, it might have refrained from last-minute compromises which could not soften the U.S. position, while frustrating the Group of 77 and alienating, and finally losing, the Eastern European Socialist States.

II. The Resolutions

1. The Resolution on the Protection of Preparatory Investments

The major object of confrontation, at this time, was not the Convention itself, but the Resolution on the Protection of Preparatory Investments: the one important innovation emerging from the work of the Eleventh Session.

A first draft for a text on PIP had been introduced by the United States on April 2, 1980, at the end of the Ninth Session.

It was not discussed during that session but formed the basis for discussions outside the Conference, on the so-called "Mini-Treaty" or reciprocal agreement among States having enacted unilateral mining legislation.

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7/ The U.S. proposal was officially withdrawn from the Conference early in 1980.

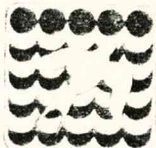
Upon the urging of the Conference, a new text was introduced, this time co-sponsored by Belgium. the Federal Republic of Germany, Italy, and the U.S. (A/Conf.62/L.122). The proposal practically amounted to a Mini-Treaty. It carved up the international seabed into enormous blocs and totally emasculated the Authority. obliging it to rubberstamp the production plans presented by the "pioneer investors" who would at any rate been enabled to go ahead even without that rubberstamp. in case the Convention was not ratified ("Nothing in this resolution shall be construed to prohibit commercial production after 1 January 1988 if the Convention has not entered into force by that date").

An alternative proposal was introduced by the Group of 77. In fourteen points it stressed strict conformity with the provisions of Part XI of the Convention and demanded that training and technology transfer would be undertaken on a scale that would make it possible for the Enterprise to initiate exploitation simultaneously with the "pioneer operators."

Thirdly, the Delegation of France introduced an interesting compromise proposal, responding, in particular to the need for training and technology transfer, for which the pioneer operators would be responsible.

In the meantime, the Co-chairmen of the Group of 21 had introduced a draft which, subsequently, went through a number of revisions incorporating suggestions in the above mentioned documents. The final draft was introduced on April 29 (Doc. A/Conf.62/L. 141 (Add 1) and it was accepted by the Conference on April 30.

The essence of this Resolution -- Resolution II, in the Convention package -- is that it defines and recognizes as number of "pioneer investors;" obliges them to register their claims to an exploration site not larger than 150,000 square km, and pay a registration fee of $150,000. after they have reciprocally, among themselves, agreed to ensure that there are no overlapping claims and, in case of conflicting claims, accepted a system of mandatory dispute settlement (this, really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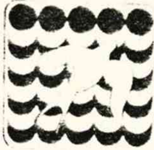
being the essence of the "Mini-Treaty"); it carefully circumscribes their right to the exploration of poly-metallic nodules in the international area and to research and development of the pertinent technology; it imposes on them the duty (a) of turning over to the Preparatory Commission a "reserved site" in accordance with the terms of the Convention; and (b) of assuming the responsibility for training and technology transfer for the future Enterprise; finally, it guarantees priority to the pioneer investor with regard to a contract for exploitation and a production authorization, once the Convention has entered into force and the "pioneer investor" has ratified it (supposing the "pioneer investor" is a Staste), or, supposing it is a consortium, its "certifying State" or States must have ratified.

The importance of this resolution is quite considerable. It establishes in fact an interim regime, in force immediately and lasting for an indeterminate time, which may be quite long. For whereas it is practically certain that fifty States will be found to sign the Convention, thus establishing the Preparatory Commission, ratification and entry into force may require years or even a decade, depending on circumstances wider than the interests of seabed miners.

Whether this regime is going to be the one created in the minds of the originators of the Conference, is an open question, which will be ansered by those who will be called upon to implement it.

On the one hand, this regime does incorporate the principle of the Common Heritage, or at least, pays lip service to it (it should be noted, however, that the term "Common Heritage of Mankind" does not occur in the Resolution; that the Resolution, nevertheless recognizes the principle must be deduced from the assertion (para. 1,(e) (iii) that "area...shall have the meanings assigned to [that term] under the Convention", since, in the Convention, the Area and its resources are defined as the Common Heritage of



Mankind). Those who will manage it, therefore may move in this direction. On the other hand, the regime practically creates a "grid system" as proposed, e.g., by the U.K. in pre-Caracas days. it effectively divides the Common Heritage and turns it over to as limited set of operators functioning on the basis of reciprocal agreement. licensed by a Commission with little operational capacity of its own.

The "pioneer investors" as defined by the Resolution. presently are eight, consisting of (i) France. India. Japan, and the Soviet Union with their State companies. and (ii) of six private consortia (Kennecott. Ocean Mining Associates, Ocean Management Inc., Ocean Minerals Co., Association Françaíse pour l'étude et la recherche des nodules. and Deep Ocean Minerals Association) having the nationality of, or being controlled by. one or more of the following eight States:Belgium. Canada, Federal Republic of Germany, Italy, Japan. Netherlands. U.K., and U.S.A.

The door is left open to new-comers from developing countries. provided they meet the financial criteria by 1 January 1985. Depending on wider political and economic circumstances, one could imagine three more "pioneers" to emerge within this period: Brazil. Mexico. and perhaps a regional African Consortium. as proposed by the Tunis Symposium in May. 1982. One even could imagine the emergence of three regional. private/public enterprises: an African, a Latin American. and an Asian one, which might influence in unexpected ways the development of the Authority. once the Convention is in force.

This division of the actual or potential "pioneer investors" into three groups -- two of which, (i) and (iii) are States which are obliged to sign the Convention to qualify. while one group (ii) consists of nonstate entities (consortia, most of which are multinational) caused great difficulties and the eventual withdrawal of the Eastern European Socialist States.

These States had two basic objections. First, they maintained, private corporations had no place in an international Convention which determines the conduct of States, not of nonstate entities; secondly, and more important even, the provision was discriminatory inasmuch as the States enumerated under (i) and indicated under (iii) were bound to sign the Convention in order to qualify as pioneers, whereas the phrasing of (ii) provides a loophole for States to benefit from the activities of their companies without signing. Thus, e.g., the United States could benefit without signing, from the work of a consortium, some of whose components were domiciled in the U.S. but which could be "certified" by some other States who had signed.

On the first point the Socialist States were overruled by the Legal Advisor of the U.N. whose advisory opinion was sought on the request of the Soviet Union. The advisory opinion was that no international law was being violated by the provision in question. On the second question, the discriminatory character of the provision was conceded. It was pointed out, however, that a subsequent paragraph (para. 8 (c)) insures that "no plan of work for exploration and exploitation shall be approved unless the certifying State is a party to the Convention. In the case of entities referred to in para a (a)(ii), the plan of work for exploration and exploitation shall not be approved unless all the States whose natural or juridical persons comprise these entities are parties to the Convention."

The Soviet Union and its allies demurred. The fact remained that during a first phase, of indeterminate length, there remained discrimination. And thus the eight members of the Group abstained in the final vote.

How the question will eventually be resolved, depends on Soviet policy in a broader context. One could imagine a situation in which the Soviet Union prefers not to sign, if the U.S. insists on noncooperation -- especially in consideration of the fact that, for the

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Soviet Union, signature is almost tantamount to ratification, and entry into force, without the United States, has substantial financial implications.

Thus, the Soviet Union now has the possibility to stick to its guns and stay out.

On the other hand, the Soviet Union may want to sign and to participate in the work of the Preparatory Commission. In this case, there are two scenarios: First, one could envisage a loosening of the Conference package. Perhaps, in Caracas, in December, 1982, it will be possible to sign the Convention while maintaining one's disapproval with regard to one or more of the Resolutions. Experts, presently, are divided on this question. Should the Conference insist on maintaining the integrity of the "package," there might still be a second way open to the Soviet Union and its allies: They could sign the Final Act of the Conference, implying observer status in the Commission -- with a statement that they will accede to the Convention as the 53rd to 60th States: for, upon the deposit of the sixtieth instrument of ratification or accession, the Convention enters into force, and the discriminatory provision lapses.

The second, immensely important aspect of the Resolution is that it recognizes that "activities in the area" in the foreseeable future will not consist of commercial exploitation and that contracts for "integrated mining operations" such as envisaged, with such lavish detail, by the text of the Convention, will not be applicable for the foreseeable future. It will be the task of the Commission to concentrate its attention, for the time being, on exploration, research and development and to ensure the fullest possible participation of developing countries in these activities. This could be achieved in either one of several ways: There is nothing in the text of the Resolution to prevent the Commission from establishing a joint venture, or joint ventures, on exploration, research and development,

financed jointly by the private sector, States, and international funding institutions in the field of development cooperation. Such arrangements would be highly beneficial to the industrialized countries, by cutting investment costs and sharing risks. They would be equally advantageous to developing countries, enabling them to participate on an equal footing in an enterprise of high-technology management. Whether there would be one such joint venture, composed by those industrialized States and companies who wishes to participate, together with a certain number of Board Members from Developing countries who might be appointed by the Commission -- or whether there would be several such ventures, taking into account eventual regional developments as suggested by the Africans -- depends on the actual course of events over the next two or three years. In any case, concentration on such a venture or ventures would scale down the cost of the Authority and the Enterprise to a non-utopian level, in line with economic and technological realities.

The proposal is not a thunderbolt falling from a blue sky: The Delegation of Austria introduced it in a statement on March 31 (Provisional Summary Record of the 160th Plenary Meeting, A/Conf. 62/SR. 163, April 6, 1982); it also would be very much in line with the proposal launched by President Mitterand at the opening of the Versailles summit in June, 1982.

"Ocean exploration" indeed is one of the high-technology areas which, together with space technology, biotechnology, electronics, nonconventional energy technologies, etc., make up the "Third Industrial Revolution." It is in these areas of new technologies that the French President proposed the launching of a "concerted programme," by establishing "international commissions for research and development and for technological cooperation between private and public firms and states." in this proposal he stressed the importance of the participation of developing countries in "joint ventures" (<u>initiatives conjointes</u>) to assure to the countries

of the "South" the acquisition of these new technologies. which would be greatly facilitated by "agreements on co-development" or common research and development. (Le Monde, June 6/7).

Nothing could be more in line with the French proposal than our suggestion that the Commission concentrate its early efforts on establishing a joint venture for exploration, research and development in ocean mining.

2. The Preparatory Commission

A third important aspect of Resolution II is its impact on developments which will have to follow implementastion of Resolution I. calling for the establishment of the Preparatory Commission.

Discussions during the Eleventh Session clearly demonstrated that this Commission had to be different from other preparatory commissions established within the United system in the past. More than merely consultative powers, the Commission must be given executive and operational powers if it is to discharge the tasks imposed on it by Resolution II, that is, to recognize pioneer investors, register claims, chose reserved sites, and arrange for training and technology transfer for the Authority.

So important, indeed, will be the functions of the Commission that it may become essential to device a system of balanced representastion and decision-making. One Delegation indeed proposed, during the discussions, that, considering its powers and functions, the Commission itself should be composed somewhat along the lines of the future Council of the Authority, and that it should appoint various subcommissions and committees.

The final text as adopted provides that the Commission shall be composed by all signatories of the Convention; all signatories of the Final Act may participate

as Observers. The Commission shall establish a special subcommission "on the problems of land-based producers likely to be most seriously affected by the production of the Area."

A second sub-commission is to be established to "take all necessary measures for the early entry into effective operation" of the Enterprise.

There is nothing in the Text preventing the Commission from appointing or electing a smaller executive council, which might be organized, quite simply, on a regional basis. The Resolution, in fact, provides (para.7) that "The Commission may establish such subsidiary bodies as are necessary for the exercise of its functions and shall determine their functions and rules of procedure."

The establishment of such an executive council might increase the efficiency of the Commission and guarantee a fair balance in decision-making which might be lacking in the larger body.

3. The Other Resolutions

Not much need be said about the remaining Resolutions in the "package."

Resolution III reaffirms, but separates from the body of the Convention, what previously was a Transitional Provision, to the effect of guaranteeing to people who have not yet obtained full independence the ejoyment of the rights and benefits of the Convention.

Resolution V, introduced by the Group of 77, calls on member States, the Competent International Organization the World Bank, and the Secretary General to assist developing countries in training, education and assistance in the field of marine science and technology and ocean services.

These two resolutions hardly caused controversy.

Considerable controversy, instead, was caused by Resolution IV, which provides that the national liberation movements, which have been participating in the Third United Nations Conference on the Law of the Sea, shall be entitled to sign the Final Act of the Conference, in their capacity as observers, and

that, in that capacity, they may participate in the Preparatory Commission. The adoption of this Resolution, as an inextricable part of the "package" induced Israel to vote against adoption of the Convention package.

III The Convention on the Law of the Sea

1. Introduction

As already mentioned, the changes made in the text of the Convention itself are very minor. The reader is therefore referred to Dr. Jagota's analysis which remains valid. It is on the basis of that analysis that we will attempt to assess the importance of the Convention for the international community in general and for developing countries in particular.

There can be no doubt: The adoption of the Convention is a landmark. It signifies a breakthrough in the structure of international relations: introducing, as it does, a number of concepts into international law which, taken together, offer a new platform from which to launch a new international order.

These innovations were stressed, in the final statements of the Conference, by President Koh and Ambassador Beesley of Canada, the Chairman of the Drafting Committee.

- The concept of the Common Heritage, transcending the traditional notions of sovereignty and ownership:
- the concept of a public international institution -- the Seabed Authority -- that is operational, capable of generating revenue, imposing international taxation, bringing multinational companies into a structured relationship; responsible for resource planning on a global scale as well as for the protection and conservation of the marine environment and scientific research: an institution linking politics, economics and science in new ways -- a model, potentially, for international

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organization in the 21st century;

. the concept of the Economic Zone, adding a new dimension to development strategy;

. the concept of <u>international environmental law</u>;

. new concepts such as the archipelagic State or transit passage, adjusting the traditional law of the sea to the requirements of the situation as it emerges from UNCLOS III;

. a regime for marine scientific research and technology transfer;

. the most comprehensive, and most binding system of international dispute settlement ever devised

-- there never has been a document like this.

Needless to say, progress is never linear. History manages to move forward and backward at the same time. The Convention is the result of political compromises, reflected in ambiguities, loopholes, and even contradictions. Solutions of some prolems give rise to new problems, as big as, or bigger than, the ones solved. Perceptions of interests keep changing. Circumstances surrounding problems supposedly solved keep changing, rendering adopted solutions obsolete before they even have a chance of being applied. Agreed solutions may turn out to have implications and consequences nobody wanted or even thought of.

Thus while the Conference was crossing the last t's and dotting the last i's of this law for the future, symbolically, and as though to remind the world community of the persistence of the old , navies were girding for battle in the South Atlantic, to decide a question of "sovereignty," imperial style -- whose dimensions, however were being transformed by UNCLOS III: for at stake was no longer the domination of a far-flung tiny

colonial holding, but the hub of an ocean area larger than the continent of Europe, probably rich in untapped resources, and a bridgehead to the last continent, Antarctica, where the next conflict is looming between the principle of national sovereignty and the principle of common heritage, between the past and the future.

2. Common Heritage, Seabed Authority, and Ocean Mining

The concept of the Common Heritage of Mankind, proposed by the Delegation of Malta in 1967, is one of the few great contributions of the 20th Century to political theory and international law.

Resource depletion, technological and economic developments transcending the boundaries of nation states, and the degradation of the marine environment on which all life depends, were beginning to play havoc with the application of the traditional principles of sovereignty and ownership to the new medium of the ocean. While not negating the old principles, the new concept of the common heritage transcends them by asserting thast certain resources, and, inseparably lined with them, certain technologies, and, in the last analysis, certain financial resources

. cannot be owned in the traditional sense, but

. must be managed in common

. for the benefit of all mankind, with particular consideration for the needs of the poor and of future generations;

. can be used for peaceful purposes only.

The principle of the Common Heritage, first applied to the resources of the seabed beyond the limits of national jurisdiction, has implications far wider than the oceans. It could ideally become the foundation

of a new economic order not only in the oceans but in general. It should become the basis of a new economic theory, which the world so badly needs to replace the worn-out and evidently bankrupt economic theories applied today, quite incapable of coping with contemporary economic ills.

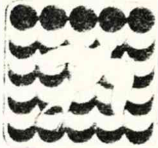
True, the Convention does not fully define the new principle: but the gist is there.

True, while proclaiming the new principle, States, both developed and developing, hastened to contravene and abridge it as far and as fast as possible by stretching the limits of their nationasl jurisdictions. These jurisdictions, however, are somewhat permeated by the new principle: functional sovereignty, that is, sovereign rights over uses, is taking the place of hard-and-fast territorial sovereignty and absolute ownership.

True, the mechanism embodying and articulating the principle of the Common Heritage, that is, the International Seabed Authority, is far from perfect: reflecting conflicts and contradictions the Conference was really not able to overcome.

Thus, industrializeds countries, having spent hundreds of millions on developing technologies that should have increased their independence from supposedly unstable foreign producer countries, found themselves slipping, collectively, through the Seabed Authority, under the control of the very same countries they had sought to avoid individually, bilaterally. Developing countries, on the other hand, who had hoped to gain collectively from sharing in the management of the Common Heritage, found their economies threatened individually by the competition between marine resources and land-based resources.

The very nature and scope of the Authority remains somewhat uncertain: between the aspirations of the developing countries, who wanted to build a first piece



of the New International Economic Order in the shape of an operational Authority with broad and comprehensive powers and functions ranging from scientific research and environmental policy to resource management, technology transfer and a redistribution of wealth -- and the conservatism of the industrialized world wanting an Authority -- if any -- as narrow in scope -- restricted to nodule mining -- and as powerless as possible. To reduce its discretionary powers to the minimum, they insisted that every administrative and financial detail be spelled out in advance: and this, for an industry still in an experimental stage, and on the basis of economic projections that had to be purely conjectural.

Thus, with every session that passed, the compromise text became more complex, more ambiguous, more unwieldy, and more remote from the world of the real.

For the assumptions of the 1970s, on which the whole edifice -- including system of production, production limitations, etc. -- is based were never questioned. While they remained immobile, however, the real world kept moving, so that a gap opened, and began to widen, between the construct and the economic and political reality.

The assumptions of the seventies, basically, were three: First, that seabed mining would be fully operational, on a commercial scale, by the 1980s, and that the revenues accruing to the Authority, both from licenses and from the operations of the Enterprise, would be substantial. Secondly: that seabed mining would practically be restricted to the mining of polymetallic nodules, and that other deep-sea minerals would be without economic interest for the foreseeable future; and, thirdly, that nodules were to be found only in the "international area," far beyond the limits of national jurisdiction, so that the Authority would have a monopoly position enabling it effectively to control production.

All three assumptions have turned out to be wrong: Economic depression, a glut of land-based minerals, and volatile prices on the commodity market, are not inducive to the launching of a new industry. Before the beginning of next century, there is not likely to be a commercial, integrated mining project of the kind considered by the MIT Model, on which the convention has lavished such an abundance of legal minutiae.

Thus, no revenues are in sight for the Seabed Authority. From an instrument for the redistribution of wealth, it is becoming a drain for large-scale international funding, needed to defray administrational costs and to assist the Enterprise to get started.

This reappraisal of the financial potential of the Seabed Authority raises the fundamental question of the real relevance of ocean mining for developing countries, and, on this, opinions are divided.

The more traditional view of the development economist is that ocean mining is of no interest, since the technologies involved are highly complex and highly capital intensive rather than labor-intensive.

This writer has always held the opposite view. Ocean mining technologies belong to those listed by President Mitterand as part of the Third Industrial Revolution. If developing countries fail to join this revolution -- and the most economical way is to join it "on the ground floor" -- at the present stage of research, development, and exploration -- the development gap will widen to the point -- 20 years from now -- where it may become unbridgeable. Ocean mining technologies, furthermore, can be disaggregated into systems and subsystems which range from highly complex to fairly simple. On the less complex end of the spectrum, even the least industrialized countries could make some contribution. Participation in an international venture in ocean mining will accelerate technology transfer and

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enhance industrial diversification. If, in the long term, over the next 50 years, there is going to be a large-scale displacement of land-based mining by ocean mining -- a development that appears to be very probable -- then land-based producers should be the first ones to join the new industry: just as the oil companies are eager to buy into ~~alternate~~ energy industries, in view of the anticipated shift from a petroleum-based energy economy to one based on other energy resources and technologies.

To come now on the second assumption on which Part XI of the Convention is based: that the only commercially interesting form of deep sea mining would be nodule mining: recent scientific discoveries have altered this picture. The discoveries of sulphide deposits in the offshore of the Galapagos islands and off the West Coast of the United States, with metal contents in concentrations far superior to those of the manganese nodules, have defused interest in the manganese nodules -- the only type of resource covered by the text of the Convention, which thus is already obsolete in this respect. Rules, regulations, and procedures will have to be drafted, not only for manganese nodule mining but for other forms of deep=sea mining as well.

The most serious consequences, however, will derive from the collapse of assumption No. 3 -- that the Authority has a virtual monopoly over the resource it is to manage. Apart from the metalliferous muds of the Red Sea, ~~in the Economic Zones~~ of Saudi Arabia and the Sudan, and apart from the sulphides, under the jurisdiction of Ecuador and the United States, even nodule deposits of considerable commercial interests have been identified in the Economic Zones of Chile and Mexico. It is probable that additional deposits have already been discovered and will be explored in Polynesia (under French jurisdiction) and in the offshore of Hawaii (U.S. jurisdiction).

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It need not be emphasized, because it is self-evident, that the Authority's position is of one kind if States and companies have no choice but have their activities organized, carried out and controlled by the Authority on behalf of mankind as a whole -- and that it is quite another thing if States and companies have a choice between working under the Authority or under bilateral agreement with some coastal State, in areas under national jurisdiction. It is well known, and documented, where the preferences of the companies would go.

Production limitation, under the Convention, always posed problems which have not really been resolved. It was only during the Tenth Session that the land-based producers among the developing countries became aware of the fact that a limitation formula based on the projected nickel demand would not really protect the producers of cobalt and manganese. But even supposing it had been possible to device a formula safeguarding these countries: it is one thing to base such as formula on the assumption of monopoly by the Authority; and it is quite another thing to apply such formula, if production is out of control by the Authority and takes place in areas under national jurisdiction: For what cannot be produced by or through the Authority because of the application of production limitation, may be produced, unchecked, in areas under national jurisdiction.

Thus arises the spectre of an Authority incapable of performing the functions for which it was created, and useless, because ocean mining, if and when it comes, will take place in areas under national jurisdiction. Thus arises the spectacle of as whole bureaucracy Waiting for Godot.

But it need not go that way. Curiously enough, those vety actors who, through their kind of PIP resolution

they proposed at the Conference, clearly manifested the intention of postponing the Common Heritage regime ad calendas graecas and, for all practical purposes, of replacing it with a registry system based on mutual agreement among the seabed mining States, have opened the possibility of initiating activities in the right direction. Part XI being inapplicable in the present situation, the Convention might have been by-passed if ratified, or not ratified at all. The PIP resolution confers powers and functions on the Preparatory Commission it might not have had otherwise. Yet the Preparatory Commission -- unlike the rigid structure erected in Part XI -- is flexible enough to adjust the concepts of the seventies to the realities of the eighties. The establishment of the Commission, furthermore, when a mere fifty States will have merely signed (not ratified) the Convention, is a goal that is undoubtedly far easier to reach than the sixty ratifications needed for the establishment of the Authority. Whether the Commission will succeed in adjusting and preparing the activities of the Authority in such a way that, rather than waiting for Godot, it may render tangible and immediate services to the world community and especially to developing countries, depends of the trends of history, the political will and the leadership capacities of those who will be called to serve. The foundation has been laid. Never before has the international community had at its disposal an instrument with a development potential such as that of the Commission.

3. The Exclusive Economic Zone

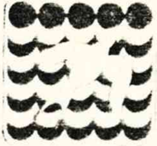
One need not be a Hegelian, assuming that whatever happened had to happen, to realize that the extension of national jurisdiction into the oceans was inevitable. The territorial sea of three, or of six, or even of twelve miles was an anachronism, unable to respond to the needs of military as well as economic security as shaped by technological developments. Industrialized countries had to regulate and manage the penetration of the industrial revolution into deeper and wider offshore zones.

Developing nations had to defend their coastal waters against the depredations of modern distant water fishing fleets and factory ships. No country could tolerate the emplacement of spying devices or the conduct of polluting activities near their coast. The time of laissez-faire in the oceans was over. Systems of management were required, and jurisdiction was needed to build them. Even Arvid Pardo, the father of the Common Heritage concept, proposed, as early as 1971, in his Draft Convention, submitted to the Seabed Committee, the recognition of "national ocean space" up to a limit of 200 miles from clearly defined baselines. Nor was he overly concerned that the establishment of such a zone would detract from or conflict with the concept of the Common Heritage.

On principle, the EEZ concept is the most benign, the most flexible, and the most innovating way in which the inevitable trend towards the extension of national jurisdiction could have been met. In the Convention, however, it is flawed by a few ambiguities which, as in the case of seabed mining, open the possibilities of increasing inequality, conflict and chaos as well as those of rational management and international cooperation.

If the hope had been that the new limits should be such as to forestall further expansion of claims which might entail conflicts and further increase inequalities among States, this hope has been deluded. There are three major loopholes through which expansion could proceed unchecked.

The first is the inadequate definition of straight baselines in Article 7, which does not specify the maximum length of these baselines from which territorial sea, EEZ and, in some cases, the breadth of the continental shelf are measured. Nor does it define the "appropriate points" to be connected by the baselines, which need not be on land but may be defined by coordinates on the map. States thus have the possibility of including considerable ocean spaces as "internal waters and extend



their EEZs, the breadth of which is measured from the baselines, way out beyond 200 miles from shore.

The second loophole is the lack of a proper definition of islands in Article 121. It may turn out to be difficult to draw the line between an "island," defined as a "naturally formed area of land, surrounded by water, which is above water at high tide," and which is entitled to an EEZ and a continental shelf, from a "Rock which cannot sustain human habitation or economic life of its own" and is not entitled to and EEZ or a continental shelf of its own. The acquisition of tiny islands, or rocks claimed to be islands, may bestow vast ocean spaces and their resources. The Falkland Island conflict, alas, may be one in a long series of similar conflicts.

The third loophole is the definition of the limits of the Continental Shelf in Article 76. The "Irish formula," on which it is based -- of Byzantine complexity -- is practically open-ended, and competent geologists, from the Soviet Union as well as from the Intergovernmental Oceanographic Commission of UNESCO, and others, have not failed to point out that it is inadequate as a basis for actually drawing boundaries. I personally do not hesitate to define it as pseudo-scientific. Beyond that, I would seriously challenge the validity of invoking geophysical criteria for the drawing of political boundaries. Such criteria have long since been abandoned on land, and there is no reason for this relapse into romantic geopolitics at sea.

The Soviet amendment, incorporated in the final text of Article 76, limiting any claims under the Irish formula to no further than 350 miles from the abovementioned baselines, is undoubtedly an improvement. But even this limit is as elastic as the baselines from which it is measured.

The continental shelf doctrine might have been deemed superseded by the economic-zone doctrine, as

was proposed by Arvid Pardo and advocated by a number of countries, especially African and Arabic, at the Conference. To have one single boundary, from the surface through the water column to the ocean floor and its subsoil, at 200 miles from clearly defined baselines would have been simple and tidy: Only few countries would have lost rights they might have claimed, beyond 200 miles, under the Continental Shelf Convention of 1958 -- and they might have been compensated.

As long as present political winds prevail, it is to be feared that expasnsion will continue, and the discovery of any significant resource anywhere in the oceans will immediately be followed by claims by the nearest coastal Staste, island or archipelatic State. Further expansion of claims will further increase inequalities among States and increase tension and conflict.

But, again, the glass is half empty as well as half full. The Convention, while yielding to, and further encouraging, expansionist and nationalistic trends, also respons to other needs and has triggered off different trends.

The extension of national jurisdiction itself, and the transition from a laissez-faire system to a system of management requires more, not less international cooperation and organization. Three developments, all initiated by the Convention even before its adoption, are clearly discernable.

IV. New Trends, triggered by the Convention

1. National Legislation

The first is the adjustment and updating of national legislation and the building of national infrastructure, to respond to the opportunities offered and responsibilities imposed by the new Law of the Sea. This is a complex

process. Old laws have to be pulled out of a great number of Government Departments. Activities that did not exist, areas over which the State had no jurisdiction, have to be covered by new laws. Boundaries have to be determined, out at sea, or negotiated with neighbors. Hydrographers, geologists, experts in marine biology, fish population dynamics and fisheries management, in the protection of the marine environment in all its ramifications, in ocean mining, in energy, are needed: lawyers trained in the most recent developments in public and private international law are needed to create a new body of national laws, collecting, collating, updating, and harmonizing the old laws, among themselves and with the international law.

Ocean Development Departments, Ministries for Ocean Affairs have to be built, and their interaction with other Government Departments, at the national, at the local, as well as with international agencies, have to be articulated. In no other area are internal and international affairs so inextricably linked as in ocean affairs.

2. Regional Integration

Pollution, as is well known, does not stop at national boundaries. Fish cross political frontiers without submitting to passport control. If, in a laissez-faire, or freedom-of-the-seas system, it was possible for each nation to fend for itself, and the strongest nations fended best, a system of management, instead, requires attention to interlinkages. If Nation A wants effectively to manage a certain fish stock, it depends on Nations B and C for cooperation, for this stock may migrate between two or more EEZs, or between EEZs and the high seas. And it is not only with regard to this one stock that cooperation is necessary -- it is for the stock that this fish feeds on, as well as the predators that may feed on the fish in question; it is the environment in which it breeds: it is the whole ecosystem, which in most cases cannot be contained within national

boundaries. Scientific research, on which stock assessment and management must be based, must extend over the whole ecosystem, and, if management is to be effective, the political system will have to be adjusted to it. Oceanographic research, furthermore, is too costly to be carried out by individual nations, in most cases, and necessitates international cooperation, not only because the ecosystem to be researched is transnational, but as a cost-sharing mechanism.

Thus we see an emerging trend toward regional integration of marine activities. The Convention foresees such development, in Article 123, on Cooperation of States Bordering Enclosed or Semi-enclosed Seas, and in the sections dealing with the management of living resources, in the EEZ as well as on the high seas; with the protection and preservation of the marine environment; with marine scientific research, and the transfer of technology.

The real push, however, came from the Regional Seas Programme, initiated and coordinated by the United Nations Environment Programme and involving the cooperation of over a hundred Governments, intergovernmental organizations and nongovernmental organizations. Ten regional sea programmes are presently in action, covering one area after another with networks of regional cooperation, with laws and regulations, plans of action, monitoring and enforcement systems, and financial arrangements to carry the cost. The Regional Seas Programme would be unthinkable without the Third Conference on the Law of the Sea and the principles it has been evolving. On the other hand, the Convention on the Law of the Sea might have remained dead letter, had it not been for the Regional Seas Programme, which is beginning to articulate, at a practical, regional level, -- to implement and complement, to give "teeth" to the new Law of the Sea.

3. The Evolving Basic Ocean Organizations

The third development, strictly related to the first two, is the restructuring and strengthening of the U.N. agencies and institutions engaged in marine activities. "Basic organizations," in this respect, are: the Inter-Governmental Maritime Organization (IMO -- formerly, IMCO), the Intergovernmental Oceanographic Commission of UNESCO (IOC), the United Nations Environment Programme (UNEP), and the Committee on Fisheries of the Food and Agriculture Organization of the United Nations (COFI).

The text of the Convention imposes new responsibilities and enlarges the scope of activities of each of these. There are no less than sixty-two references to the "competent international organizations" whose cooperation is prescribed in determining shipping lanes, in managing living resources, in monitoring pollution, in advancing scientific research and facilitating technology transfer, in establishing regional centres, in harmonizing national laws, standards and regulations. "Competent international organizations" -- identified, on this occasion, as FAO, UNEP, IMO, and IOC -- have to play an entirely new role in dispute settlement: they have to establish and maintain a register of experts from which special arbitration commissions may be drawn, and which may also be entrusted with functions of fact finding in disputes.

Resolution V, adopted by the Conference as part of the Convention package, recognizes "the special role of the competent international organizations envisaged by the Convention on the Law of the Sea," and recommends "that all competent international organization within the U.N. system expand programmes within their respective fields of competence" for assistance to developing countries in the field of marine science, etc., while Article 278 of the Convention itself prescribes that "the competent international organizations

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referred to in this Part [XIV] and in Part XIII shall take all appropriate measures to ensure, either directly or in close cooperation among themselves, the effective discharge of their functions and responsibilities under this Part."

A study, released by the Secretary-General of the United Nations during the Tenth Session in 1981, on "The Future Functions of the Secretary-General Under the Draft Convention and on the Needs of Countries, Especially Developing Countries, for Information, Advice and Assistance Under the New Legal Regime," similarly points out that "The emphasis in the present study has necessarily been placed on the interrelationship among 'problems of ocean space' and on the need to establish effective linkages among marine activities, particularly for the establishment of sufficiently comprehensive policies." While this is beyond the scope of the Conference itself, it may be expected, the Study concludes, "that the 'cross-organizational programme analysis' on marine affairs to be conducted for the Committee on Programming and Coordination in 1983 will be helpful in this respect, as will the various studies that have been made or are planned by individual organizations with respect to the effects of a new legal régime on their technical cooperation activities and the effects of the relevant provisions of the Draft Convention on their functions."

(emphasis added)

Looking at the Convention in as wider historical perspective, one notices indeed a curious discrepancy. "Conscious that the problems of ocean space are clearly interrelated and need to be considered as a whole," the Convention covers all uses of the oceans. In this sense, the Convention is truly a Constitution for the Oceans. At the same time, however, it provides an institutional framework only for one specific use of ocean space -- and not the most important one -- that is, deep-seabed mining. With respect to the other uses of the oceans, the Convention is satisfied with more or less nebulous references to "the competent internatio-

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nal institutions."

The Maltese Draft of 1971 -- the prototype of this Convention -- provided an institutional framework for all major uses of ocean space. It was way ahead of its time.

Rather than doing the whole, overwhelmingly complex job at one, revolutionary swoop, the international community has chosen a more gradual approach, building on the past and on the present, utilizing existing structures: the basic organization within the U.N. system.

All of them are now busy analysing the effects of the Convention on their own structures and functions and studying how they can adjust to the new requirements. It is more than likely that the International Seabed Authority -- the institutional model provided by the Convention -- will exercise some influence in the various areas in which restructuring is required.

The first requirement is a transition from a co-ordinating to an operational stage. As long as membership of these organizations was restricted to a small number of countries with highly developed marine capabilities of their own, co-ordination of their activities was a proper function. Now the task is not only to co-ordinate and harmonize, but to create marine capabilities where they do not exist, especially in the developing countries. This clearly requires operational capacity.

There is indeed no reason why, mutatis mutandis, the basic "competent international organizations" should not, over time, develop "Enterprises" or "joint ventures" of their own, just like the Seabed Authority, on a regional or on a global basis. Just as in seabed mining, such ventures would offer the most direct, effective, and economical way to bring developing countries into the mainstream of ocean management. The regional marine

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scientific centres, prescribed by the Convention could be conceived as joint ventures in research and development. A first such venture, with the IOC or the Seabed Authority or both, for research and development in ocean energy (OTEC, tides, waves, salinity gradients) would be of direct and immediate benefit to developing countries. A joint venture with FAO for the exploration and exploitation of Antarctic krill -- which really should be declared a Common Heritage of Mankind -- could provide a very large source of protein to developing countries. An International Sea Service, in joint venture with IMO, could perform not only useful international functions with regard to emergency situations, disaster relief, or training, but it could provide an economically effective way to strengthen Third-World shipping capabilities.

Secondly, what is needed, is an expansion of financial resources. Here, again, the innovative principles already adopted with regard to the Seabed Authority could serve as an example. The Seabed Authority has the power to impose taxation. There is no reason why the other basic organizations should not equally have a right to tax. If they are operational, they ought to be able to generate revenue, just as provided for the Seabed Authority. If they render tangible services to the international community, these services ought to be paid for. Nothing could be more equitable than a progressive tax on the major commercial ocean uses or users, the beneficiaries of the activities of these "competent international organizations." An Ocean Development Tax was proposed by the International Ocean Institute as early as 1970. The Maltese Draft provides for it in Article 61. In the evolving ocean economy, such a tax would go a long way towards security the kind of "automaticity of transfers" that has been sought by development economists in the World Bank and elsewhere.

Thirdly, there is the requirement of close cooperation and integration of policies between all the basic organizations, including the Seabed Authority.

Presently existing inter-Agency co-ordinating mechanisms are evidently inadequate for the new job. as indicated by the Secretary-General's recommendation that new ones be established. What is needed is an effective integrative machinery, comprising the Seabed Authority, IMO, IOC, UNEP, and FAO/COFI, perhaps through a joint Assembly where problems of ocean policy and management can be debated in a comprehensive, trans-sectoral manner.

All these developments will undoubtedly take time -- perhaps the next 25 years. Let us assume a time table could be agreed on, to complete them by the time of the Review Conference of the Seabed Authority.

Taken together

. the signing of the Convention and the establishment of the Commission as an effective interim regime:

. the adjustment of the functions of the Seabed Authority. in accordance with the terms of the Convention. but in accordance, also, with the economic and technological realities of the 'eighties;

. the development of national legislations and infra-structures in accordance with the provisions of the Convention and interacting with international law and organization;

. regional integration and cooperation;

. the evolution of the "competent international institutions" and integration of their policies with those of the Seabed Authority through an appropriate integrative machinery; and

. the introduction of a functionally-based "ocean development tax"

could contribute much towards transcending the unwanted

and unforeseen possible implications of the Convention. Such a development, based on cooperation rather than conflict, on redistribution of income rather than on unilateral aggrandizement, on the concept of the common heritage of mankind rather than on obsolete concepts of absolute sovereignty and ownership, would also greatly diminish the importance of where the "boundaries are." and would facilitate the participation of landlocked and geographically disadvanted countries in regional and global joint activities, as well as the participation of developing countries in the new ocean industries.

The establishment of a New International Economic Order is not a one-time happening at a given place on a given date. It is an ongoing process and will never be quite completed. Within this process, however, the adoption of the Convention on the Law of the Sea is undoubtedly a milestone. The Convention is imperfect, as are all things human. It is ambiguous: it is ambivalent. It does not, by itself, solve the problems it set out to solve. Neither security of boundaries nor economic justice nor the integrity of the environment are necessarily enhanced. Given certain political trends, the further escalation of national claims, increased inequality among States, the degradation of the environment, the exhaustion of fish stocks, will go unchecked: The Convention cannot prevent it. Mankind may destroy itself at sea as on land and in outer space.

But it need not be so. The Convention on the Law of the Sea, more than any other international instrument, offers to all countries and all persons of good will the possibility of an alternative development, the realization of new principles, the emergence of new economic theories and solutions. It offers a forum, a platform on which to stand, a framework within which to act creatively, innovatingly. Without the Convention we would not have had these possibilities. With the Convention, we have at least ambivalence: the path to destruction is not closed, but a path to construction has been opened.

It is therefore of the utmost importance that at least fifty States will sign the Convention this year, so that the Commission can be established and the next phase can begin. Clearly, this decision is in the hands of the Third World.