



Caracas - Geneva - Caracas

The Mandate of the Conference

shall be do adopt a Convention dealing with all matters relating to the law of the sea... bearing in mind that the problems of ocean space are closely related and must be considered as a whole.

General Assembly Resolution 3067 (XXVIII) November 16, 1973.

*is the Conference
likely to Fulfil this Mandate ?*

What Geneva is likely to achieve

Most nations are likely to agree on a **Terri-
torial Sea of twelve miles...**

Most nations are likely to agree on an
**Exclusive Economic Zone of two hundred
miles...**

What Geneva is likely not to achieve

but there may be no agreement on strict criteria for the drawing of straight baselines from which to measure the territorial sea, with the consequence that portions of what used to be territorial sea or even high sea may become internal waters, and the limits of the territorial sea would be extended accordingly.

but there may be no agreement on the extension of the legal continental margin beyond the two hundred mile limit; on a strict definition of islands; on artificial islands; on the status of archipelagic waters; on historic bays; on the rights of landlocked nations; on national or international pollution standards in the Economic Zone; on dispute settlement...

... likely to achieve

Most nations are likely to agree on freedom of most commercial navigation

Possibly there will be sufficient support for the establishment of an **International Seabed Authority**, for the regulation and management of the mineral resources of the deep seabed beyond the limits of jurisdiction of the legal continental margin...

... likely not to achieve

but there may be no agreement on the rights of passage of warships ; on national or international safety standards in the Economic Zone; on the status of formerly international straits which may become part of the territorial sea or even of the internal waters of coastal states.

but given the uncertainties, the **International Seabed Authority will have little to regulate and manage** since a large part of the manganese nodules will escape into areas under national jurisdiction. Nor will the International Seabed be competent to

... likely to achieve

There will be integrated management systems for the rational exploitation of national ocean space, especially of the economically and technologically powerful coastal states

... likely not to achieve

regulate or manage other uses of ocean space and resources, traditional or new, or to regulate the interaction of such uses.

... but the management systems of the weak and geographically disadvantaged nations will be frustrated by the lack of an integrated system in international ocean space, with which to interact and cooperate.

GENEVA

end of a dream?

A Treaty on the Law of the Sea, articulating success and failure along these lines would

— **Multiply, not diminish, conflict between States.**

This conclusion derives from the lack of precision of the formulations favored by the majority of States with regard to nearly all important matters; from the simultaneous affirmation both of the traditional freedoms of the seas and of wide but imprecisely defined coastal state powers within national jurisdictional areas; from the failure to establish a credible compulsory dispute settlement system; and from the inadequate provisions which will be adopted with regard to the important question of delimitation of national jurisdictional areas...

— **Increase, not decrease, inequalities between States;**

A few coastal states, mostly already rich, will become richer; and it will be only the rich and technologically developed nations that will be able to exploit the resources of international ocean space whose economic potential, at any rate, cannot be fully realized if pollution and conflict go unchecked; and there will be no international machinery enabling poorer nations to participate in the management of the resources of the international area and to share the profits therefrom, or which would accelerate transfers of technologies and act as an equalizer redistributing burdens and benefits...

— **Doom the commons of the high seas...**

A division of ocean space mainly between oceanic countries will be inevitable. For, given the lack of appropriate international institutions, national claims will further expand to fill the jurisdictional vacuum...:

— **Hamper, not enhance, the possibilities of effective international cooperation; worsen, not improve, the prospects of continued essential transnational activities, such as scientific research and navigation, or the preservation of the marine environment.** For if such activities are not put under international control and/or management, they will inevitably be put under national control, likely to be increasingly strict and subject to heterogeneous if not conflicting standards...

... or turning point !

Yet it need not come this way !

The Exclusive Economic Zone can be wholly beneficial to many nations and harmful to none

- if national management systems are properly integrated with an international management system, with comprehensive powers, matching, and interacting with, those of the national management systems.

The unfinished business of Geneva on details of boundary determination and national and international competences need not engender conflict

- if permanent machinery is established to deal with such questions on a continuing basis and to prepare, in due time, conventions for their regulation. The complexities, intricacies, and changing requirements of the Law of the Sea are such that they cannot possibly be settled once and for all—or even for the next ten years—by an **ad hoc** Conference operating under crippling time and other constraints...

... or turning point !

The limitations of the International Seabed Authority need not doom the rest of ocean space to anarchy or the law of the stronger

- if this Authority is conceived as part of a comprehensive system of international institutions so structured and coordinated as to be able to regulate and manage the other uses of ocean space and resources and their interactions.

Such a system can still be built. It can be built on the work done in Caracas. The pieces assembled in Caracas can be fragments on a heap of rubble, or they can be building blocks for the new system...

BEARING IN MIND THAT THE PROBLEMS OF OCEAN SPACE
ARE CLOSELY RELATED AND MUST BE CONSIDERED AS
A WHOLE...

It depends on the political will. It depends on the decision, by the majority of States, to put back into focus the great design, the great goal, they set out to reach in 1967.

THE DECLARATION OF OAXTEPEC, adopted by a group of Latin American experts upon the initiative of the International Ocean Institute (Pacem in Maribus) proposes a

NEW STRATEGY

to resume the march toward that goal.

The declaration of Oaxtepec

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 and vice versa; activities in international areas and in national coastal zones affect one another mutually; and the sea in its totality, and the atmosphere above it, form one ecological system. All these interactions demand a global and integrated vision and treatment of the marine environment.

Luis Echeverria
President of Mexico
Caracas, July, 1974

... An ocean regime has to be established with all countries of the world represented, favoring none and discriminating against none, with jurisdiction over a maximum area of the oceans. Such a regime would gradually develop the type

of resource-conserving and environmentally sound technology required to explore, develop, process and distribute ocean resources for the benefit of those who need them most.

From the Cocoyoc Declaration
Mexico, October, 1974

The Caracas session of the Third United Nations Conference on the Law of the Sea has made substantial progress toward the establishment of international machinery, including an Enterprise, to regulate, manage, and develop one particular use of ocean space beyond national jurisdiction and its resources, that is the exploitation of resources from the deep floor of international ocean space.

Little consideration, however, has yet been given to the development of new forms of international cooperation with regard to other ocean resources and to the traditional uses of ocean space, such as navigation, which are being transformed by technological advance. Also many new uses of the oceans are arising, and interaction between both new and traditional uses of the sea is growing. Increasingly, the need for the preservation of the marine environment requires coordinated action. International criteria for the harmonization of certain ocean uses must be elaborated and the uses themselves must be subject to regulation, if conflicts are to be avoided and if the potential benefits which the oceans offer are to be realized.

A necessary complement to the exercise of comprehensive powers by coastal states in wide areas is international management of ocean space beyond national jurisdiction (international ocean space) since the continued existence of the freedoms of the High Seas beyond national maritime areas must frustrate to a greater or lesser degree national management of the sea and its resources within national jurisdiction; this is particularly the case in the light of contemporary military and technological developments. In addition such international management would

enable landlocked and other geographically disadvantaged States to participate on an equal footing in the management of and benefits from international ocean space and its resources.

Thus it is in the long-term interest of all States to seek to realize the goal set by the President of Mexico. It is in the immediate interest of all developing nations striving for a new international economic order to establish a new regime for ocean space. The creation of a machinery to administer ocean space beyond national jurisdiction and its resources would be an important institutional step in the direction of the new economic order.

To this end, a new strategy is suggested which, building upon the results of Caracas, could provide a common focus for the work of the three main conference committees; could cement the unity of developing countries through adoption of a common goal; and could appropriately utilize international institutions.

The new strategy would be based upon the assumption that international management of ocean space beyond national jurisdiction is a necessary complement to the exercise of comprehensive powers by coastal states in wide areas. Accordingly, the establishment of an International Seabed Authority as envisaged by the First Committee of UNCLOS will need to be supplemented by other organizational mechanisms dealing with the management and regulation of other uses of international ocean space. At the same time it is suggested that appropriate arrangements be made to deal with all ocean space activities not covered by existing intergovernmental organizations, particularly with regard to ocean space beyond national jurisdiction.

Such arrangements would entail, on the one hand, functional coordination and possible restructuring of these organizational mechanisms; on the other hand there is a need for a permanent body to keep under constant review the existing activities of the United Nations system relating to the seas and oceans and to provide a forum

for the discussion of emerging problems relating to ocean space. In addition, other functions of this permanent body could be :

1. To integrate the work of the agencies and organizations whose primary activities are directed towards the oceans ;
2. To deal with all ocean activities not covered by existing intergovernmental organizations ;
3. To harmonize interactions of multiple ocean space uses ;
4. To promote cooperation between national and international management systems ;
5. To ensure effective international cooperation with technologically less advanced countries in the development of national ocean space ;
6. To ensure equitable distribution of benefits derived from the exploitation of the resources of international ocean space ;
7. To promote the progressive development of the law of the sea ;
8. To assume some functions with regard to dispute settlement.

It is emphasized that the new strategy would not require any change in the terms of reference of the First Committee nor would it contradict the Declaration of Principles contained in Resolution 2749 (XXV) ; at the same time, all the work of the First Committee could be utilized. The new strategy would open new perspectives for the work of the Second Committee, particularly with regard to the concept of the High Seas, since, no matter where boundaries are drawn eventually, the fundamental problems of the marine revolution are still with us, the activities of States in ocean space and the interactions of all uses must still be harmonized and, on occasion, regulated. On the contrary, it is likely that the new strategy, holding forth the unifying

prospect of an effective management system for international ocean space, could facilitate the solutions of some of the thorny problems dealt with by the Second Committee. For the work of the Third Committee, the new strategy would provide a coherent institutional framework which has been lacking thus far.

The new strategy would take into account the possible difficulties associated with the lack of regional arrangements while at the same time it could accommodate a variety of regional developments, whether in the area of fisheries management, pollution control, or other peaceful activities in ocean space, such as envisaged by this Seminar with regard to the Caribbean region, or to other regions where regional organization is at an advanced stage of development. A global ocean regime, to be effective, should be articulated in regional organizations; regional organizations, on the other hand, to be effective, should adhere to global guidelines.

The new strategy rests on the continued convictions that the concept of the Common Heritage of Mankind holds the key to the future and is a step toward the creation of the new international economic order. This step must be taken.

Oaxtepec, Mexico
January 15, 1975

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This document has been produced on the initiative of the International Ocean Institute as a basis for further discussion and development and in the belief that it may make a positive contribution to the continuing debate on the establishment of a new order for ocean space. It is emphasized that it in no way reflects official views but only the views of the majority of participants at the Oaxtepec meeting.

A new strategy

Elisabeth Mann Borgese

On invitation by the Government of Mexico, the Planning Council of the International Ocean Institute recently held a seminar at Oaxtepec, Mexico. Members of the Council were joined by experts from a number of Latin American and Caribbean nations. The seminar ended with the adoption of the Declaration of Oaxtepec, which is reproduced in these pages. I should like to add some brief comments on the Declaration and, perhaps, to interpret and develop somewhat further the "new strategy" it proposes.

In a way, the Declaration enlarges and specifies the position we represented during the Caracas session of the U.N. Conference on the Law of the Sea, which gave rise to some discussion. It was before the First Committee in Caracas that we pointed out that, on the one hand, the economic and, therefore, the political viability of the seabed authority as conceived by the First Committee, might be weakened by decisions taken, or not taken, by the Second Committee; that, on the other hand, the establishment of the Economic Zone, comprising the seabed as well as the superjacent waters and providing for the management of all uses of national ocean space, requires as a complement the establishment of an equivalent management system for international ocean space. International ocean space institutions are to the seabed authority what the patrimonial sea or economic zone is to the legal continental shelf. Both concepts—international ocean space institutions and the patrimonial sea—suggest the substitution of an integrated, multipurpose management system for a single-purpose fragmented system. The strategy we propose,

operational arm, analogous, in some way, to the "Enterprise" of the seabed authority. Thus, the "Enterprise" of a restructured IOC might be an international oceanographic institute, or perhaps a network of regional international oceanographic institutes, to manage international research, train experts from developing nations and otherwise cooperate with developing nations in oceanographic research, and advance the transfer of technologies. There might be an international fisheries "Enterprise," enabling less developed and landlocked nations to participate effectively in the exploitation of living resources in international ocean space; the operational arm, or "Enterprise," of a restructured IMCO, finally might, be an international sea service, sailing vessels under the U.N. flag, for international community purposes, such as rescue missions, surveillance, or environmental emergencies.

Even if they were restructured in the ways here suggested, it is clear, however, that they will not be able to cover all activities in ocean space, nor their interactions. On the one hand, there will continue to exist a number of intergovernmental organizations dealing with some activities in ocean space, such as UNEP, WMO, WHO, IAEA, etc., and, on the other hand, a large and increasing number of activities—artificial islands, extraction of energy from the sea, etc.—are not covered by any organization.

The new strategy should, therefore, urge the "basic organizations" to maintain and strengthen their present cooperation with the Specialized Agencies and other organizations. At the same time, the new strategy calls for the creation of an **integrative machinery** with the competence, inter alia, to deal with ocean space activities not covered by existing intergovernmental organizations.

The Integrative Machinery

Besides the necessary restructuring of the "organizational mechanisms" dealing with various uses of ocean space and resources, the Declaration proposes "appro-

priate arrangements" for the establishment of a "permanent body" to "integrate the work of the agencies and organizations whose primary activities are directed toward the oceans." This "permanent body" should also exercise a number of other basic functions not now exercised by any body. These functions are enumerated in the Declaration. Obviously, they cannot be exercised at the intersecretariat level. They must be exercised at the policy-making and planning level, that is, at the Assembly level.

Whatever the name one might give to this "permanent body," one could imagine that it should bring together elements designated by the Assemblies of the four "corner stone" or basic organizations described above. By way of illustration, one might suggest that each of the four assemblies (of the seabed authority, IMCO, COFI, and IOC) should designate 60 members, in accordance with its own constitutional procedures, to serve in the "Permanent Body", each group constituting a "chamber" of that body. A fifth "chamber" could be designated by the General Assembly of the United Nations on a regional basis, and would act as the fulcrum of the system. It would resolve conflicts between the four chambers, and would deal with matters not covered by any of them. The "Permanent Body," —one might call it "The Conference,"— would be able to consider technical problems in their legal and political context and provide a mechanism for interdisciplinary decisionmaking.

Such a "Conference" would be a rather large, policy-making body. One could imagine that, in turn, it might elect a smaller Planning Council, responsible for integrating the plans elaborated by the "basic organizations" into one coherent ocean development plan.

It is also likely that the permanent body would need a Secretariat, to which staff members of the basic organizations could be seconded.

What is interesting in this "strategy," thus interpreted, is that it does not propose a new intergovernmental organization in the traditional sense. What it in fact proposes

thus, is in full accord with the Latin American concept of the law of the sea, as was pointed out by Latin American experts in Oaxtepec. We might add that it is equally in accord with the African concept.

Finally, as we pointed out in Caracas, a seabed authority would be unable to cope with the problems arising from the transformation, by modern technologies, of the traditional uses of ocean space, such as fishing and navigation, or with the new uses created by new technologies, or with the interaction of all uses.

Two strategies could be considered to move towards the goal of creating a management system for ocean space, rather than for the seabed only. One strategy, which was worth attempting back in 1968, or even as late as 1971, was to aim at an extension of the terms of reference of the Seabed Committee to deal with ocean space as a whole. We feel that this approach is not politically viable today. To propose today changes in the Declaration of Principles adopted by the General Assembly, or to attempt to change the terms of reference of the First Committee might endanger the results of its work. It might lengthen the time that is needed to complete this work. It might cause confusion. So we propose to abandon this strategy. The other strategy which we are suggesting for consideration is entirely different. It does not require any changes in the First Committee. It requires that the First Committee should go ahead and create a seabed authority along the lines presently projected : with its Enterprise system and all. This seabed authority will then be one of the corner stones or basic organizations of the new regime we propose to build. The seabed authority will do certain things which will have to be done in ocean space. It will not do certain other things. The status of the superjacent waters will not be affected by the activities of the seabed authority, and this is in accordance with the Declaration of Principles. The superjacent waters will be subject to different regimes, embodied in different institutions. Thus, there was widespread agreement in Caracas, especially among developing nations, that an effective management system is needed for fisheries in international ocean space ; for, without such a system, fisheries

cannot be managed efficiently in national ocean space either. Navigation, scientific research and the transfer of technologies, likewise, must be effectively regulated and managed, both in national and international ocean space, within complementary national and international systems. The existing intergovernmental machinery is inadequate to assume these new tasks, or to assure effective coordination of all uses. It is quite possible, however, to restructure existing organizations in a way to enable them to assume these new responsibilities. The new strategy proposes such a restructuring of the organizations presently dealing with fisheries, navigation, and scientific research in ocean space, and the coordination and integration of their activities, not at the inter-secretariat level, but at the policy-making and planning level.

The Basic Organizations

It is clear which are the existing "organizational mechanisms" referred to in the Declaration, dealing with these uses of ocean space. The Committee on Fisheries (FAO) is the over-all body dealing with the world fisheries ; IMCO deals with navigation ; IOC deals with oceanographic research. All three have been engaged in a process of enlarging their membership and their competences. Neither one of them possesses, at present, the powers required to undertake effectively their suggested regulatory and managerial tasks. The new strategy calls on all member States to undertake to make within these organizations such constitutional and organizational changes as may be necessary to provide them with the competences and powers required.

It is conceivable that the structure of the seabed authority, with its regulatory and managerial capacities, might, in some ways, provide a pattern for the restructuring of the other "organizational mechanisms"; quite conceivably, each one of them would have an Assembly of Members, a Council, a Secretariat, and an

is a kind of functional association—one might even say, functional confederation—of basic organizations operating in ocean space. This is new thinking, but it is based on a number of ongoing trends and developments.

Obviously, a great deal of detailed work would be needed to spell out this "strategy," thus interpreted, in draft articles embodying this new type of ocean space institutions.

What the new strategy upholds is that the great goal of creating a new international economic order in ocean space, embodied in an institutional framework, can still be advanced by the U.N. Conference on the Law of the Sea as presently constituted. It is not the format of UNCLOS that is challenged. It is the political will, especially of the developing nations, to translate the principles of the Charter on the Economic Rights and Duties of States, for the first time, into operational institutions.

