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THE NEW INTERNATIONAL ECONOMIC ORDER AND THE LAW OF THE SEA

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INTRODUCTION

General Significance of the Oceans

The traditional legal order in the oceans is being rapidly eroded by technological and political developments and must be replaced by a new legal order if escalating tensions, depletion of living resources and serious deterioration are to be avoided. There are many factors which make such a change imperative. Among the background factors one should obviously mention the population explosion which is creating a demand for increasing quantities of food and water as well as the worldwide intensification of industrialization which will consume enormous and increasing quantities of water, raw materials and energy and is already a major cause of environmental degradation. In broadest terms, the current transformation of the international order in the oceans must be considered in the context of a two-fold revolution that is shaking the entire international order during the second half of this century. Its components: the change in the structure of international relations owing to the entry of the *new nations* into world affairs and the *technological revolution* which transcends the traditional nation-state and transforms traditional concepts of sovereignty and property.

Up to the present, man has intensively used little more than half the area of emerged land. There is scant hope that this portion of the globe -- over the balance of this century -- can provide all the water, food and raw materials required. There is a strong incentive, therefore, to utilize with increasing intensity those areas of our planet previously considered either worthless or inaccessible to sustained economic activity. *Ocean space* is by far the largest and most valuable region of our planet which still awaits full utilization. Technology is providing the tools to penetrate, use and exploit ocean space in all its dimensions.

Ocean space covers more than two-thirds of our planet. It comprises the surface of the seas, the water column, the seabed and its subsoil, and has all the features of emerged land: mountains, plains and valleys, a varied flora and fauna, and mineral resources.

Ocean space is of vital importance for the following reasons:

1. It contains more than 95 per cent of the world's water, probably more hydrocarbons and certainly

vastly greater quantities of a wide range of hard minerals than are found on land; it also contains vast living resources which can make a far greater contribution to world food needs than at present. Some of these resources, such as krill and marine plants, are still virtually unexploited.

2. It is an immense potential source of energy which awaits exploitation.

3. It is not merely the last and greatest resource reserve of our planet; it also offers space for a variety of activities which are at present land-based, and it is an essential medium for the expansion of knowledge of the planet, for international trade, and for the maintenance of national security, as perceived today.

4. It is of fundamental importance to climates, indeed to life on earth, and is the ultimate sink of the enormous, growing and increasingly toxic wastes produced by our expanding industrial society.

Since the manner in which ocean space will be used and exploited affects the perceived national interests of every nation in the world, it is vitally important in the creation of any new international order.

The Traditional Law of the Sea and Current Attempts to Transform It

Sovereignty and Freedom in Ocean Space

For the past three centuries the law of the sea has been governed by the twin principles of sovereignty and freedom. Sovereignty of the coastal State, limited only by the doctrine of innocent passage, was recognized over a narrow belt of sea adjacent to the coast called the territorial sea. Beyond territorial waters were the high seas where freedom, in theory, reigned, subject only to a reasonable regard for the interests of other States in the exercise of the same freedom.

The principle of sovereignty was, and is, based on the nature of the international community composed of sovereign States and on the security and economic needs of coastal States *in the technological conditions of three centuries ago*.

The principle of freedom of the seas was explicitly based on the assumption that the living resources of the seas were inexhaustible and that the oceans were sufficiently vast to accommodate all navigational uses without need for regulation.

Implicitly, it was assumed that man could not seriously impair the quality of the marine environment and that the oceans were so vast and their uses so limited that serious conflicts of use were impossible.

It is obvious that the assumptions on which the principle of freedom of the seas is based are, at best, obsolescent. Visible contamination of some areas of the sea has aroused concern and requires the adoption of measures of control of *marine pollution* which cannot be effective under the old freedom of the seas principle. We now know that the living resources of the sea are not inexhaustible and that they can be depleted; effective measures of *conservation and management* are now required, but they cannot be implemented under the concept of the freedom of the seas. Intensified exploitation of *hydrocarbons*, and soon of *hard minerals*, and many of the new uses of ocean space -- from offshore ports to offshore petroleum storage tanks -- require the exercise of recognized authority to protect investments, control marine pollution, reconcile competing uses of ever wider areas of the seas, and facilitate the equitable participation of the less developed nations. The emergence, furthermore, of growingly sophisticated technologies -- such as those for weather modification -- which potentially could change the natural state of the marine environment over vast areas, raises fundamental and political questions that cannot be solved under the old freedom of the seas principle.

The gradual extension and diversification of man's activities in the marine environment involves an expansion of the interests of coastal States and has been accompanied by a progressive extension of coastal State jurisdiction. Thus the 1958 Geneva Conventions on the Law of the Sea, apart from codifying major areas of customary law, recognized expanding coastal State interests by giving international sanction to the concept of *straight baselines*, to the concept of the *contiguous zone*, and to the concept of the *legal continental shelf*, in which the coastal State exercises sovereign rights for the purpose of resource exploration and exploitation. The special interests of the coastal State in the maintenance of the productivity of the living resources of the sea in areas of the high seas adjacent to the territorial sea were also recognized. However, neither the rights and duties of States within these areas nor their limits (apart from the limits of the contiguous zone) were clearly defined. Furthermore, the revolution in our uses of ocean space, caused by technological advance, was not anticipated. Most importantly, the obsolescent principle of the freedom of the seas was maintained.

The revolution of our uses of ocean space is proceeding at such a pace and involves so many activities that there is no reasonable prospect that the slow processes of negotiating treaties and technical agreements can sufficiently alleviate, within the foreseeable future, the adverse effects of the *abuse of the high seas* and of their resources which are the inevitable consequences of technological advance, diversifying use and intensifying exploitation in a world of competitive national States.

Thus, due both to the need for resources and the need to avoid adverse consequences of other nations' activities in the general vicinity of their coasts, coastal States are under increasing pressure to take *unilateral* and, occasionally, *regional*, action to subject ever wider areas of ocean space to their authority -- a process which is facilitated by the ambiguities and deficiencies of the 1958 Geneva Conventions. There is often a further motive for the extension of coastal State maritime jurisdiction, and that is the strong desire to equalize opportunities of ocean uses, since the ability to use ocean space freely and exploit its resources is an important factor in the disparity between technologically-advanced maritime countries and other countries. Since equalization of opportunities cannot be achieved under the present law of the sea, the alternative for weaker maritime States is to subject progressively wider areas of the oceans to their own jurisdiction, thus restricting the area in which technologically-advanced maritime countries can freely exploit ocean resources. If present trends continue unchecked, there is a serious possibility that the greater part of ocean space could be covered by sometimes conflicting national claims. Experience has shown that such claims tend to escalate.

A division of ocean space between coastal States on the basis of sovereignty, however, is a solution as dangerous and as obsolete as the maintenance of the freedom of the seas. National authority can deal effectively with uses of the ocean connected with the extraction of mineral resources and with the exploitation of those living resources that spawn and live within its national maritime jurisdiction. *Fragmentation of ocean space* between more than one hundred different sovereignties, with sharply different maritime capabilities, however, would be virtually certain to obstruct significantly vital transnational uses of the marine environment such as overflight, navigation, and scientific research. The latter, of course, is an essential prerequisite to rational resource management and development. Management of several important commercial fisheries would be very difficult if ocean space were divided between coastal States on the basis of sovereignty, and effective control of marine pollution would be almost impossible. Most importantly, a division of the oceans -- assuming the practicability of peaceful delimitation of the respective areas of coastal State jurisdiction -- would measurably *aggravate world tensions*. About twenty nations, the majority already rich, would appropriate some two-thirds of ocean space, thus exacerbating the gross inequality between States and potentially inflicting grave economic damage on geographically disadvantaged countries.

In conclusion, neither *sovereignty nor freedom* are suitable as a basis for a viable and reasonably equitable legal regime for ocean space under contemporary conditions. A new, international legal order must be created, based on a new principle which constrains both sovereignty and freedom in the common interest.

This should be the task of the present Conference on the Law of the Sea which was convened by the United Nations General Assembly to consider all matters relating to the Law of the Sea in their multiple inter-relationships (UNGA Res. 3067, XXVIII). Three sessions have so far taken place (New York, 1973; Caracas, 1974; and Geneva, 1975).

The Geneva Session and the Informal Single Negotiating Text

The Geneva session ended with the publication of an *Informal Single Negotiating Text*, presented in three parts, to which a fourth has been added more recently. This text might lead to a generally acceptable international Convention. The Text, however, has not been negotiated and accordingly does not represent the consensus of the Conference. It was drafted under the sole responsibility of the Chairmen of the main working committees and of the President of the Conference, but it is based on the formal and informal discussions that have taken place to date and in general it reflects major conference trends.

Part I of the Single Negotiating Text contains the draft of a "Convention on the sea-bed and the ocean floor and the sub-soil thereof beyond the limits of national jurisdiction," based on the principle that this part of ocean space is a *common heritage of mankind* and as such should be reserved for peaceful purposes and should be used, and its resources exploited, "for the benefit of mankind as a whole." The waters above the international seabed area retain the traditional status of High Seas. In order to implement the principle of common heritage, it is proposed to establish an international agency, called the International Sea-bed Authority, "through which States Parties to the Convention shall administer the area." While the Authority, in principle, is recognized competence with regard to all activities in the international seabed area, its proposed structure is geared essentially to the exploration and exploitation of mineral resources, particularly the manganese nodules of the abyss. The principal organs of the Authority are: an Assembly, a Council, a Tribunal, an Enterprise, and a Secretariat.

The Assembly is "the supreme policy-making organ of the Authority," while the Council of 36 members, elected by the Assembly, partly "in accordance with the principle of equitable geographical representation" and partly "with a view to representation of special interests," is conceived as the executive organ of the Authority acting in accordance "with general guidelines and policy directions laid down by the Assembly." The Council is assisted by an Economic Planning Commission and a Technical Commission. The Tribunal is given final and binding jurisdiction over "all disputes relating to the interpretation and application of the proposed Convention, over the rules, regulations and procedures prescribed thereunder and the terms and conditions of any contract entered into by the Authority." The Tribunal must also render advisory opinions on the request of any organ of the Authority.

Several articles in the Single Negotiating Text contain interesting innovations in the current practice of international organizations, but it is the proposed creation of an Enterprise which undertakes "the preparation and execution of activities of the Authority" in the international seabed area which really distinguishes the proposed Authority from all present and past international organizations. Although the negotiating text does not indicate the nature of the activities to be undertaken by the Authority through the Enterprise, it is clear both from the debates at the Conference and from the Annex to Part I, that these activities are intended to be principally, if not exclusively, the exploration and exploitation of the mineral resources of the international seabed area. This is the first time that a global intergovernmental organization is charged with the responsibility for *resource management*, and this is significant, even though the importance of manganese nodule mining beyond national jurisdiction is likely to be comparatively small in the foreseeable future.

But the attempt to build a new economic order on seabed nodule mining in that part of ocean space which will remain beyond national jurisdiction after the conclusion of the present Conference of the Law of the Sea cannot be expected to balance the pressure exerted by economically far more significant activities, such as fishing, navigation and hydrocarbon extraction, which will continue to be conducted either under the principle of the freedom of the seas, benefiting the stronger nations, or under the exclusive regulation of the coastal State, depending, as heretofore, on the technologies of powerful multinational companies. Nor can the institutional innovation of the creation of the Enterprise for one activity of very limited scope counterweigh the conservative effect of leaving the rest of the institutional system unchanged.

Part II of the Single Negotiating Text develops existing trends in the present law of the sea with regard to such complex and important questions as the limits of marine areas under national sovereignty or jurisdiction, the rights and duties of States therein, and the regime of the High Seas. In general it may be said that the negotiating text extends coastal State control in ocean space over wide areas of formerly high seas and frequently expands present functional jurisdiction into comprehensive jurisdiction. At the same time, the limits of coastal State jurisdiction are not precisely defined and no clear criteria are proposed for the delimitation of national jurisdictional areas between States lying adjacent or opposite each other.

The marine area covered by the regime of the High Seas is restricted as a consequence of the proposed extensions of coastal State Jurisdiction. The High Seas regime is also limited to the surface and water column of areas beyond national jurisdiction, while the seabed is governed by the totally different principle of the common heritage of mankind. While some constructive changes are proposed to the present regime of the High Seas, this regime cannot be easily reconciled with the new regime suggested for the seabed beyond national jurisdiction.

Part III of the Negotiating Text deals with *environmental protection*, *scientific research* and the *transfer of technology*. In the field of environmental protection, it establishes a general obligation of States to protect and preserve the marine environment, to take all necessary measures to ensure that marine pollution does not spread outside their national jurisdiction and to cooperate in the formulation of international rules, standards, and procedures. This section of the document also contains articles providing in general terms for monitoring of the marine environment and technical assistance for the prevention of marine pollution. Finally, there are articles on the establishment and enforcement of pollution standards by the coastal States in the marine environment.

In the section on *scientific research*, general articles affirm the right of all States to conduct scientific research in ocean space and the general duty to promote international cooperation in this area; at the same time, the right of coastal States to control scientific research on the continental shelf and in the economic zone is affirmed, and the conditions with which such research should comply are prescribed.

Part III of the Negotiating Text is completed by a section urging international cooperation in the development and *transfer of technology*. Finally, responsibility and liability of States for environmental damage and for the conduct of scientific research is affirmed in general terms.

Part III proposes no specific machinery to implement the principles and provisions of the Negotiating Text with regard to the environment, scientific research and the transfer of technology.

Part I thus is the only part of the Negotiating Text which is, at least potentially, "systems transforming." Part II is entirely "systems preserving," while Part III is systems-transforming in its principles but systems-preserving in its applications.

In the present context, therefore, it is to be feared that the systems-transforming functions of Part I may be made largely ineffective by its own systems-preserving limitations and by those of the other parts of the Negotiating Text. These contain numerous ambiguities which will lead to an increase rather than a decrease of inequalities between States, to a multiplication rather than reduction of conflicts, and to considerable uncertainties with regard to the law.

This picture is not substantially changed by the publication, in July 1975, of Part IV of the Informal Single Negotiating Text, dealing with Dispute Settlement in the oceans.

The system envisaged covers in principle any dispute between Parties to the future Convention relating to its interpretation or application to rules or regulations enacted thereunder, or to agreements or arrangements concluded pursuant

to the Convention. It is specifically stated, however, that "nothing contained in the present Convention shall require any Contracting Party to submit to the dispute settlement procedures provided for...any dispute arising out of the exercise by a coastal State of its exclusive jurisdiction...except when it is claimed that a coastal State has violated its obligations...(i) by interfering with the freedom of navigation or overflight or the freedom to lay submarine cables and pipelines...(ii) by refusing to apply international standards or criteria established by the present Convention or in accordance therewith...." When ratifying the Convention, a Contracting Party may also declare that it does not accept some or all of the dispute settlement procedures provided with respect to one or more of the following: (a) disputes arising out of the exercise of discretionary rights by a coastal State pursuant to its regulatory and enforcement jurisdiction under the proposed Convention: (b) disputes concerning boundary delimitations between adjacent States or involving historic bays or titles; (c) disputes concerning military activities; (d) disputes in respect of which the U.N. Security Council is exercising the functions assigned to it by the U.N. Charter.

Special dispute settlement procedures are envisaged for questions relating to fisheries, pollution and scientific research. In these cases, at the request of any of the parties, disputes may be submitted to a special committee of five members selected from a list of experts established respectively by FAO, IMCO, and IOC. The decisions of the special committees are binding on the parties to the dispute but are not necessarily "conclusive." These provisions add significantly to the functions exercised by the Agencies concerned.

Contracting Parties which are parties to a dispute are first referred to Article 33 of the Charter of the United Nations or to any obligation they may have accepted under a general, regional or special agreement to settle disputes by arbitration or judicial settlement or to any special dispute settlement procedures provided in other parts of the proposed Convention. If these procedures are either not applicable or fail to settle the dispute, the Single Negotiating Text proposes the following specific dispute settlement procedures: (a) conciliation by a specially established Conciliation Commission, the findings of which are not binding on the Parties to the dispute; (b) arbitration by a specially established Arbitral Tribunal, the award of which is final and without appeal; (c) judicial settlement by a Law of the Sea Tribunal, the members of which are elected by the Contracting Parties on the basis of equitable geographical distribution. The judgment of the Tribunal is final and without appeal, but has binding force only between the Parties to the dispute and does not constitute a precedent. In addition, there is also access to the International Court of Justice, in cases where its jurisdiction applies.

The Informal Single Negotiating Text, in its four parts, is a unique document, without precedent in the history of international law and organization. In spite of its lacunae and contradictions, it contains the seeds of a new order. It is clear, nevertheless, that many States have failed to see the

relevance of the law of the sea for the building of the new international economic order. Instead, a consensus seems to have developed, at least among coastal States, that an acceptable new law of the sea can be achieved merely by shifting the balance of the existing law from freedom over the greater part of the oceans to national sovereignty over the greater part of ocean space. This is merely a change within the existing legal framework and is counter-productive from the point of view of constructing a new international legal order.

A Comprehensive Approach to Ocean Affairs

Purposes and Principles

Ocean space is a new world which is gradually opening to full utilization and intensive exploitation by man. All States are vitally interested in the legal regime which will govern man's activities in ocean space.

The increasingly serious problems arising in the oceans are insoluble on the basis of the present law of the sea. Nor can they be solved merely through accommodation of the interests of significant States in the context of a massive appropriation of ocean space and its resources. This would sow the seeds of lasting tensions by increasing inequalities between States since scarcely more than a score of States with long coastlines fronting on the open oceans would acquire some two-thirds of that vast portion of ocean space which the Single Negotiating Text proposes to place under national jurisdiction; landlocked States would acquire nothing and the remainder very little. As has already been mentioned, fragmentation of ocean space between more than one hundred sovereignties, large and small, would not be conducive to rational management of most living resources, to effective pollution control or to the unhampered exercise of transnational uses of the sea, such as scientific research or navigation. The law of the sea conference, therefore, must aim not merely at an accommodation of national interests but at their accommodation within a legal framework conducive to the achievement of more general, highly desirable goals: reduction of world tensions, reduction of inequality; reasonable protection of the marine environment; control of emerging dangerous technologies; promotion of international cooperation; management and conservation of living resources with the full participation of developing nations, etc. This requires the creation of a new international order in ocean space which (a) safeguards the common interests of all peoples in ocean space as a whole; (b) flexibly accommodates multiplying inclusive and exclusive uses of ocean space; (c) provides expanding opportunities to all countries, especially the developing ones, in the use of ocean space beyond national jurisdiction for ~~the resources of ocean space beyond national jurisdiction~~; (d) makes possible, through effective management, development of the resources of ocean space beyond national jurisdiction for the benefit of all countries, especially the poorer ones, and equitable sharing in the benefits derived from

To achieve these ends, international agreement is required on:

1. The concept of *ocean space* comprising the surface of the sea, the water column, the seabed and its subsoil. This is essential because activities in the marine environment increasingly involve the seas in all their dimensions.

2. The concept of the *common heritage of mankind*, which must supersede the traditional freedoms of the sea. This concept has five basic implications. First, the common heritage of mankind cannot be appropriated. It can be *used but not owned* (functional concept of ownership). Second, the use of the common heritage requires a *system of management* in which all users must share. Third, it implies an *active sharing of benefits*, including not only financial benefits but the benefits derived from shared management and the transfer of technologies. These latter two implications, shared management and benefit sharing, change the structural relationship between rich and poor nations and the traditional concepts of development aid. Fourth, the concept of the common heritage implies *reservation for peaceful purposes* (disarmament implications); and fifth, it implies *reservation for future generations* (environmental implications).

3. The concept of *functional sovereignty* as distinguished from the traditional concept of territorial sovereignty exercised by States. Functional sovereignty means *jurisdiction over determined uses* as distinguished from sovereignty over geographic space. This transformation of the concept of sovereignty is in line with the transformation of the concept of ownership. Functional sovereignty permits secure accommodation of inclusive and exclusive uses of the sea or, in other words, the interweaving of national and international jurisdiction within the same territorial space. Conceptually, it opens the possibility of applying the concept of the common heritage of mankind within marine areas under national jurisdiction and management.

4. The concept of *regional development* within the framework of global organization. A number of activities, including most aspects of fisheries management and pollution control, the management of mineral exploitation and harmonization of uses, can usually be dealt with successfully on a regional basis, while other activities, such as navigation or scientific research, are more directly of global concern. No oceanic region

is a "closed system." While global organization, to be effective, must be articulated in an infrastructure of regional organization, regional organization to be effective must be developed in the context of global organization.

5. The clear and precise definition of the *limits of national jurisdiction for all purposes*. If agreement cannot be obtained on this point, coastal State jurisdiction will inevitably continue to expand.

6. The creation, not merely of a seabed agency, but of a *balanced international system for ocean space*, with comprehensive powers of administration and resource management beyond national jurisdiction. Only thus can there be some assurance that the present jurisdictional vacuum in the seas will be filled, that the provisions of the future treaty will be complied with by States, that all States will benefit in some measure from the future international order and that serious attempts will be made to control environmental and other abuses beyond national jurisdiction.

Medium and Long-Term Proposals

In ocean space we have to create, for the first time, international institutions charged with the responsibilities for *resource management* and its economic and ecological implications; with the *control and management of science and technology*; with the *harmonization and integration of uses*, including questions arising from the *impingement of military uses* on an environment, resources, technologies, and management systems reserved for peaceful uses only; and with the *interaction of national and international management systems*. In the oceans we are challenged concretely, for the first time, not only with the need for, but with the opportunity of, initiating an *international redistribution of income*. For, on the one hand, the international management and development of resources that are the common heritage of mankind generates an income that can be used for international development purposes; on the other hand, and far more significantly, not only resource exploitation beyond national jurisdiction but also some major ocean space uses could be made subject to the payment of fees to international ocean institutions: i.e., contributions of States would be based on their use of the ocean and its resources. Naturllly this would require great improvement in information and statistics on ocean uses and their economic value in order to establish a rational basis for a schedule of fees, and whatever formula were evolved would need to take account also of factors, such as population, gross national product, economic dependence on sea uses, etc., of the country involved.

In the oceans, finally, one might make a concrete beginning towards controlling the international activities of *multinational corporations* involved in ocean space activities: on the seabed, in international shipping and sea-borne trade, and in fishing, seafood processing and marketing. The international ocean institutions, forming part of a regionally and functionally decentralized network, would be the proper organizations to implement in their area of activities the "Report of Eminent Persons" on transnational enterprises, published by the U.N. Secretariat in 1974.

Thus a concrete beginning could be made in the oceans to build the *New International Economic Order*.

A new international order in the oceans will require considerable changes in the nature and functions of existing United Nations Agencies whose activities are centered on the marine environment. These changes can only come from within these agencies. The Conference, however, could make appropriate suggestions. It would also be up to the Conference to *create an integrative machinery* which must ensure stability and fairness for all States and which must provide for a credible system of dispute management with regard to the controversies which may be expected to arise from the progressive development of ocean space. Part IV of the Single Negotiating Text is, in this sense, already a part of this "integrative machinery."

A practical model for an effective integrative machinery could be constructed on the basis of existing United Nations Agencies or segments thereof, the activities of which are centered on the marine environment (hereinafter called *basic organizations*). These are: the Inter-Governmental Maritime Consultative Organization (IMCO), for navigation; the Committee on Fisheries (COFI) which presently is part of FAO, for living resources; the Inter-Governmental Oceanographic Commission (IOC), presently part of UNESCO, for scientific research -- in addition to the International Seabed Authority proposed by the Conference on the Law of the Sea, for non-living resources. To meet the management and regional requirements mentioned, these agencies must be structured or, respectively re-structured, as follows:

1. IOC and COFI should be detached from UNESCO and FAO respectively and made autonomous Agencies;

2. The Seabed Authority, as prototype embodying international resource management functions, could provide a model for the restructuring of the other "basic organizations." Although there are obvious differences in the problems arising from the international management of mineral resources, living resources and services like navigation or scientific research, some of the functions of the "basic organizations" will be similar.

3. It will be necessary for each of the four "basic organizations" to make appropriate provision for cooperation with other agencies and organizations active (though not exclusively) in marine affairs both within and outside the United Nations system, such as UNEP, WMO, WHO, IAEA, ILO, the International Hydrographic Bureau, etc., and for proper interaction between international, national, and regional management systems.

To meet the structural requirements of coordination and integration of policies and activities, we propose an *integrative machinery* with the following functions:

1. To provide a forum for the discussion of major problems relating to ocean space in their multiple interrelationships;

2. To deal with ocean space questions beyond national jurisdiction not falling within the specific competence of any of the basic organizations;

3. To integrate the policies of the basic organizations;

4. To establish guidelines for multiple ocean space use, taking into account the need for cooperation between national and international management systems;

5. To ensure cooperation with technologically less advanced countries in the development of national ocean space;

6. To ensure equitable sharing of the benefits derived from the exploitation of resources of ocean space;

7. To promote the progressive development of the law of the sea;

8. To assume some functions with regard to dispute settlement.

As illustrated in Part III, Section 3, of this study, the integrative machinery should be based on an assembly system composed of elements derived from, or delegated by, the Assemblies of the "basic organizations." This is essential; because more than traditional cooperation at the inter-secretariat level between the "basic organizations" is required. What is proposed, on the other hand, is not a new international organization of the traditional type, but a *functional confederation of international organizations*, with functions which are novel in international law. This would seem the proper organizational

response to the requirements arising from the new concepts of *functional sovereignty* and *functional ownership* (common heritage of mankind).

A functional confederation of international organizations has a number of advantages. In the first place, the "integrative machinery" would require less international bureaucracy than the traditional type of international organization, since staff and delegates from existing "basic organizations" would be used. Furthermore, it combines *integration at the policy level* with a maximum of *decentralization at the operational level*: each of the "basic organizations" would be largely autonomous in its activities, and the integrative machinery would be no more than just that: an integrative machinery.

Integration of policies at the assembly level has additional advantages over coordination at the secretariat level as currently practiced in the U.N. system. In the present situation, States can discuss policies only sectorially (fisheries, in the Assembly of COFI; science in the Assembly of IOC; navigation in the Assembly of IMCO; minerals in the Assembly of the International Seabed Authority). There is no forum for States to discuss policy on interaction of uses. An Inter-secretariat body is too restricted to make policy decisions. The Assembly system here proposed will give to States this opportunity.

At the same time, the structure proposed provides a *balanced system of functional interests*. For each "basic organization" would be represented, in the assembly system, by the same number of delegations. Thus, while each State would have one vote in the Assemblies of each of the "basic organizations" as heretofore, each "basic organization," in turn, would have the same number of votes in the assembly system of the integrative machinery. The new structure thus would interweave State representation and regional and transnational functional interests in a new way.

Finally, this kind of functional confederation of international mechanisms, autonomous yet united in purpose and action, could not only be a *model* for international organization in other sectors; it could become *part* of an even wider structure: it could be expanded into and flexibly connected with, functional confederations in other fields. Twenty-five or fifty years from now, one might indeed imagine international resource management systems for energy and food, for outer space and satellites, for weather control and modification, and all these systems could be linked and coordinated.

We have strayed into the future -- a future, however, that has already begun. This study shows how the present work of the Conference on the Law of the Sea can be fitted in its totality, into the proposed model. The model restores a focus and a goal to the efforts of the Conference which seemed entirely lost but has begun to re-emerge in the Single Negotiating Texts. We must move on from here.

The proposed model, providing an *institutional framework for the new international economic order*, as applicable to a sector of the world economy that is of enormous and increasing importance, would benefit most immediately the small, disadvantaged, and poor nations who have the strongest interest in comprehensive, strong international organization. It will be resisted by large, technologically developed nations in an advantageous geographic position which think they still can benefit from freedom of the sea and from the proposed vast extension of their maritime sovereignty. Of great importance will be the cooperation of those United Nations Specialized Agencies which we propose to develop into "basic organizations."

Proposals for Immediate Action

At the appropriate moment, possibly toward the end of the next session of the Law of the Sea Conference, a State or group of States might take the initiative to introduce a *resolution* directed to the General Assembly and ECOSOC, recommending that these bodies encourage Members to initiate the necessary restructuring of COFI, IOC, and IMCO. The Annex on Special Procedures of Part IV of the Single Negotiating Text already sets a precedent for recommendations of this kind. The restructuring itself could be undertaken either in the context of the recommendations of the 25 Experts for the restructuring of the U.N. system, or in the framework of the Programme of Action adopted by the Sixth Special Session of the General Assembly, which calls for the integration of the activities of the specialized agencies to advance the building of the new international economic order. It is in the oceans that we can make a practical beginning in implementing this program.

At the same time, the Conference could request its President to appoint a *committee of experts*, chosen on the basis of their individual expertise, to make proposals for the creation of a machinery capable of integrating the policies of the proposed International Seabed Authority, IMCO, COFI, and IOC, taking into account the fact that the uses of ocean space are closely interrelated. The experts could be requested to submit their proposals for consideration by the Conference and by the U.N. General Assembly, not later than 1977 -- ten years after the concept of international ocean space institutions to manage the resources and the environment of two-thirds of our globe was introduced in the General Assembly of the United Nations by the Delegation of Malta.

Discussion and negotiation of the proposals might take two or three years; in the meantime IMCO, COFI (FAO) and IOC (UNESCO) could complete the procedures required for their restructuring as basic organizations within the new international structure for ocean space.

Thus a new international order in ocean space might be established by 1980, consolidating the first phase of what already manifestly is a revolution in international relations.

If the Law of the Sea Conference were allowed to close before proposals for an integrative machinery were introduced, a unique opportunity would be lost to create a new international order in ocean space.