

Lecture on The Ocean Regime

by

Elisabeth Mann Borgese

The Oceans are free. The mere thought that they could be "appropriated" by any ruler however mighty, by any nation, no matter how vast its empire, has something blasphemous. The oceans, in a way, are the most sublime expression on earth of what is extra-human, superhuman, indomitable. That the oceans are free is, in fact, the oldest of all international laws. Back in the sixteenth century, Ivan the Terrible called the ocean "God's Road," and Queen Elizabeth I of England, in disposing of the Spanish Ambassadors' complaints on the depredations by Sir Francis Drake on the Spanish treasure fleet, is quoted as having said: "The use of the sea and the air is common to all. Neither can title to the oceans belong to any people or private person forasmuch as neither nature nor public use or custom permitted any possession thereof."

This is still valid today, and the 1958 Convention on the High Seas provides that "The High Seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty."

Thus the law persisted. But the world it was to govern, changed, and is changing ever more rapidly.

The High Sea, governed by that law, was a mighty body of water that separated and united people, a challenge to which they responded, a Great Educator that made people great. Sea-faring peoples have provided History's greatest merchants, explorers; sea-faring peoples are free as the oceans. Republics are the creation of maritime peoples: Tyranny was born inland.

Hegel has a prophetic page in his Philosophie des Rechts, on the role of the seas in an industrial society. He knew the culture-forming, educative influence of the oceans and invited us to compare the maritime nations, in their industriousness and enlightenment, with those nations whom Destiny had denied navigation and who, like the Egyptians and the Indians, sank into stupor and the most horrid and shameful superstitions....

The freedom of the seas, however, was a simple matter: bi-dimensional like the paintings those people painted before the invention of perspective. The freedom of the seas meant the freedom to navigate -- and there was plenty of room for all. And the freedom to fish -- and the supply was unlimited. The boundaries of the oceans were self-defining, or more or less so. Territorial waters might extend as far as the eye could see or a sailboat could travel in two days or as far as a cannon could shoot -- it did not matter which. No matter what criterion was adopted, territorial waters were a minute portion of the boundless main.

The air above, furthermore, was for the birds, not for man; and the depth below, hiding sunken cities or continents, treasures, monsters and mermaids, was a dream world unfathomable as man's unconscious or the Milky Way.

Technology has changed all that. The first submarine was designed by a British mathematician and gunner, William Bourne, in 1578. It was a completely enclosed boat, with wooden framework, covered with waterproofed leather, that could be submerged and rowed under the surface. Such a boat was actually built and launched by a Dutchman in 1605, who maneuvered it successfully during repeated trials on the Thames, at a depth of 21 to 15 feet beneath the surface. This is the first ancestor of "Polaris" whose evolution required roughly three centuries and a half. Today the Soviet Union disposes of the world's largest submarine fleet, with the United States running second and Great Britain third. The laws governing surface navigation have been extended to cover submarine navigation as well. The freedom of the High Seas now has a third, vertical dimension.

But then, in 1866, the first successful transatlantic telegraph cable was completed. It ran from Heart's Content, New Foundland, to Valentia, Ireland. Since that time, submarine telegraph cables have been laid all over the world -- followed by telephone cables, electric power lines, and gas and oil pipe lines.

In interpreting the freedom of the sea, a third freedom thus had to be added to the traditional two (navigation and fishery), and that is the freedom to lay submarine cables and pipe lines. This was insured by the Convention for the Protection of Submarine Cables signed in 1884.

Then, in May 1927, Charles Lingbergh made his spectacular flight across the Atlantic -- and added a fourth dimension to the freedom of the sea, namely, the right, for everybody, to use the air space above the High Seas. This was embodied in the 1952 Convention on the High Seas: which is still governing the oceans today.

In the meantime, however, other developments took their course.

The laying of cables, especially, necessitated an extensive and detailed study of the ocean floor. Mountain ranges were discovered, volcanoes and deep gorges; it all was charted and mapped, but what was more: it was discovered that, just as the continents, these submarine lands -- covering over 70 percent of the globe -- held minerals like cobalt, manganese, zinc, gold, iron, oil, and natural gas, in untold quantities, and kept reproducing them at a calculable rate.

Our maps of these submarine lands are still very approximate -- at the stage of refinement our terrestrial maps had reached about 250 years ago. Our technologies, for the exploration and exploitation of submarine wealth, are still rudimentary. By 1958 it was utopian to think of any exploration or exploitation beyond a depth of 200 meters. The social and political order down below the sea, is at the heroic or pioneering stage.

How is this order to develop? Whose is this wealth to be?

Two courses are open to mankind. One is to extend the law of the land to the submarine lands. That is, as technology develops, the developed nations would appropriate ever larger portions of the submarine lands and subject them to their national sovereignty. The other course is to extend the law of the seas to

the ocean floor, adding a fifth freedom to those embodied in the Conventions on the High Seas, by declaring that the ocean floor and its resources belong to mankind as a whole, are God's road, and cannot be appropriated by any Nation.

This is the great debate today. Mankind has embarked on both courses -- and which will win is as yet undecided. It depends, of course, on the political climate of the world in general: on whether we move toward détente and cooperation or toward a renewal of the cold war and ultimate catastrophe.

The course of extending the law of the land was initiated with the Truman Doctrine of the Continental Shelf and its international recognition in the International Continental Shelf Act of 1958. According to this doctrine, the submarine areas adjacent to a nation, the so-called continental shelf, down to a depth of 200 meters, constitute the submerged continuation of that nation and are subject to its jurisdiction; and the resources of this area belong to that nation. That still would have left by far the greatest portion of the submarine lands beyond the limits of national jurisdiction -- no man's land, free; but so that, with advancing technology, nations should not miss anything, a loophole was built into the law: that is, a clause, enabling nations to extend their sovereignty beyond the 200 meter depth limit whenever technological development made exploitation of the resources of the ocean floor possible. The continental shelf thus was open-ended. The law of the land could penetrate deeper and deeper into the submarine areas.

Two hundred seventy miles due west off the State of Washington, deep in the international waters of the Pacific Ocean, an extinct submerged volcano was discovered in 1950. Cobb Seamount is scientifically important and geologically unique. From a 9,000 feet deep basin it rises to within 112 feet of the surface. The advocates of the extension of the law of the land want to occupy this submarine volcano, and thereby subject it to U.S. sovereignty. Vice Admiral Turner Calwell, director of the U.S. Navy Anti-Submarine Warfare Program, recently called it an "ideal location," which "would furnish an

excellent means for developing legal concepts of utilization and occupation of real estate at the sea floor." A preliminary evaluation of the seamount has been made for a possible manned-in-bottom base, and other similar studies have been proposed.

This would be the next step in the direction of extending the law of the land to the lands under the sea: conquest, occupation. A new race for colonial empires, the carving up of these vast lands in the interest of powerful nations, for national profit. A few variants and refinements have been proposed to this crude form of neo-imperialism: such as the national lake theory, turning the oceans over to the coastal nations surrounding it and whose sovereignty would be extended to median lines. Although this method would be apparently more peaceful, at least theoretically, the consequences would be the same, and they would be disastrous. Ocean space is one ecological whole. The ruthless, unregulated exploitation and industrialization of the ocean floor, with its drillings and spillings, explosions and pollutions would make mockery of the traditional four freedoms of the seas; interfering with navigation, depleting ocean fauna and flora, imperilling cables and pipe lines, making unsafe even the atmosphere above international waters. The colonial occupation of the ocean floor would be the death of the oceans, bringing us closer, by one giant step, to the death of the planet as a whole.

The other course, that is, the extension of the law of the seas to the ocean floor, was initiated by the new famous proposal by the Republic of Malta to the U.N. General Assembly -- a little over a year ago. What Malta proposed was, essentially

-- that the ocean floor and its resources beyond the present limits of national jurisdiction is to be considered the common property of mankind;

-- that it is not subject to national appropriation;

-- that it must be used for peaceful purposes only;

-- that its resources should be developed cooperatively, not

competitively, and for the benefit of mankind as a whole, and particularly for the benefit of developing nations;

-- and that an international regime should be created, in the framework of the United Nations or emanating from the United Nations, to guarantee these principles and plan for the development of the common ocean resources.

The proposal was received with unanimous approval. An Ad Hoc Committee was set up to study its implications and make its recommendations to the next General Assembly. The Ad Hoc Committee, with the help of the U.N. Secretariat and a great number of specialized agencies involved in one way or another with the law of the seas and the development of its resources, has put together a most remarkable documentation which was discussed by the First Committee of the Twenty-Third Assembly last November and December. The discussion was really illuminating, clarifying the merits of the proposal as well as its immense complexity. The Soviet Union insisted most emphatically on the necessity of keeping the ocean floor demilitarized, but was careful to avoid anything which might be interpreted as infringing national sovereignty or which might imply the common management of common property or resources by a combine of socialist and nonsocialist nations, which would be contrary to Communist doctrine. The developing nations on the other hand were most emphatic in demanding concrete steps for the establishment of machinery to enforce the Maltese principles -- a demand which to most of the developed nations seemed premature. The U.S.A. contributed the idea of an International Decade of Ocean Exploration. Based on this discussion, four resolutions have been adopted by the Twenty-Third General Assembly by an overwhelming majority of votes. One establishes a permanent Committee on the Oceans of 42 members; one recommends anti-pollutive measures; one establishes an International Decade of Ocean Exploration; and one recommends that studies be undertaken to implement the ocean regime with the appropriate machinery. Let us look briefly at some of the problems in the Maltese propositions.

The ocean floor and its resources are the common property of mankind. The Western businessman's approach would be: Here we have a piece of real estate that belongs to nobody. Let's set up an agency to sign out leases and collect rents and royalties to finance the agency itself, and turn the balance over to the U.N. for welfare.

The first difficulty with this approach is that the piece of real estate is open-ended and undefined. To define it, the establishment of the "agency" requires a revision of the 1958 Convention on the Continental Shelf. This is a very thorny question and its solution depends, precisely, on the kind of "regime" or "agency" we are going to have beyond the limits of national jurisdiction. If it is a good, trustworthy regime, nations will more easily agree to a narrow definition of the continental shelf and national jurisdiction. If it is an inadequate regime, they will want to extend their jurisdiction as far out as possible. That is: industrial and commercial interests will push in this direction. But, to further complicate the picture, Nations have other interests in the oceans besides industrial and commercial ones. Above all, they have military interests. These, curiously enough, push in the opposite direction. The great maritime or naval powers traditionally favor the narrowest possible definition of national jurisdiction in the seas: which leaves them free to operate as closely as possible to the shore of adversary nations. Only weak nations, without naval power, advocate a wider interpretation of national jurisdiction in the seas. So if you consider commercial, military, national and international interests and the total ambiguity of existing laws and treaties, it becomes obvious that the "territorial question" of the regime is a very complex one.

But this is not all. Another problem arises from the interdependence between the "horizontal" dimension of the ocean floor, however defined, and its "vertical" dimension, that is, the superjacent waters. What happens on the ocean floor necessarily

affects the whole ecology of the waters above: the industrialization of the ocean floor affects fishing, aquaculture, in-solution mining and navigation. It is therefore totally unrealistic to assume that the "regime" or "agency" could take care of only the nonliving resources of the ocean floor, leaving other maritime activities to other laws or organizations or to national jurisdiction. This would create a web of contradictions and loopholes.

The ocean floor must be used for peaceful purposes only.

The first question that arises is whether the ocean floor should be completely demilitarized, or whether only atomic weapons and weapons of mass destruction should be banned from it. Both interpretations have been proposed. The second question, again, is territorial. The Soviet Union has repeatedly and strongly insisted that the ocean floor includes the continental shelf beyond the limit of territorial waters. Other nations insist on a separate status for the continental shelf. Here too, the boundaries of the problem, which seems to be clearly circumscribed, dissolve under closer scrutiny. Any practical solution, furthermore, is complicated by the interdependence between military technology and technology in general, whether scientific or industrial. The very same instruments are used for scientific exploration and for spying. How can the "regime" control their correct use and prevent their misuse? An additional complication arises, again, from the interdependence of ocean floor and superjacent waters. It may indeed turn out impossible -- or meaningless -- to keep the sea bed demilitarized while atom-bomb loaded submarines are cruising a few inches from the bottom in shooting range off the coast of "hostile" nations. As long as there are submarines, there will be "test ranges" staked out, and tracking devices installed on the ocean floor. In military terms, the ocean floor and the superjacent waters are as interdependent as earth and atmosphere.

Submarines, however, are part and parcel of the whole complex of armament. Nations will not relinquish their submarines while engaged in an arms race on land, in the air, and in outer space. This third interdependence, the interdependence of the military

arsenal, further frustrates any hope for easy solutions of the problems of the "Ocean Regime."

Now, considering all these forms of interdependence: geographic or territorial -- both in the horizontal and vertical sense -- and functional, in the sense that all maritime activities are linked to one another, and linked to land-based activities -- it becomes clear that the jurisdiction of the Regime must be conceived in a rather wide sense.

And second, the approach to the organization of these functions must be systemic: it cannot be partial or fractional.

If there is to be a new organization embodying the Ocean Regime, it must be such as to strengthen the United Nations, not to weaken it. It cannot be the United Nations, whose structure -- with the one-nation-one-vote system in the General Assembly and the veto in the Security Council -- is not suited for tasks like those assigned to the Regime. The Regime must be independent from the United Nations -- like the world bank or the International Atomic Energy Agency -- yet it must be in some way connected with it: it must emanate from it; it must be legitimized by it.

It must be structured in such a way as to coordinate all activities concerned with the oceans in all U.N. agencies and committees, and all other intergovernmental and nongovernmental international organizations, and if you look at the United Nations family of organizations, these activities, agencies, and committees are amazingly numerous and of an extraordinary variety. From UNESCO, FAO, ECOSOC, to the International Atomic Energy Agency, WHO, ILO, the numerous fishery associations and oil concerns, these organizations run into the hundreds.

Considering the vastness and complexity of its tasks, the Regime cannot be a "specialized agency"; on the contrary, it must synthesize certain aspects of the activities of all specialized agencies. It will have features of a corporation, a business, a cooperative, a government. It will be both governmental and nongovernmental: acting in a sphere where public international law and private international law have long since begun to blend. It must be administratively

efficient. It must be the trustee for all mankind. It must give maximum opportunity for participation. It must accommodate socialist and nonsocialist economies which is possible only if one assumes the possibility of the evolutionary or revolutionary developments both of the socialist and of the capitalist systems in the post-industrial era, -- and, the Regime must serve the interests both of developed and developing, of maritime and of landlocked nations.

All this is implicit in the Maltese Propositions. Without facing all these problems squarely and realistically, the Maltese Propositions would remain in the realm of pious hopes.

In facing these problems, the framers of the Regime must use everything they can use, in legal precedent, in existing organizations and ongoing efforts; but they must not shy away from innovation where innovation is needed.

If we try to project such an organization, apt to extend the rule of the law of the seas to the ocean floor, a number of precedents come to mind.

The first one is the Outer Space Treaty, or Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, signed on January 17, 1967. There is some exact correspondence. If you start from the territory of a state, and you move in the direction of outer space, on the one hand, and of ocean space or inner space, on the other, you pass the atmosphere on the one hand, the territorial waters on the other. Both are still under national jurisdiction. From the atmosphere you pass into outer space; from the territorial waters you pass into High Seas. Both are extra-territorial, extra-national, and cannot be appropriated by any nation. In this, space law has borrowed from the law of the seas, has developed and spelled out a number of its principles: which the law of the seas is now borrowing back.

From Outer Space, you hit the Moon and Other Celestial Bodies, which are covered by the same Outer Space Law. From the High Seas you hit the Sea-bed and the Ocean Floor. It is tempting to take

the laws developed for the Moon and the Celestial Bodies and transcribe them in terms of ocean space, including the Ocean Floor. A number of principles, regarding scientific cooperation, the nationality of vessels, the obligation of mutual aid, are applicable. But then there are also great differences. For while the ocean floor, with its mysteries, is contiguous to the international High Seas, it is also and at the same time contiguous to the Nation States. The Moon and the Other Celestial Bodies are not. And while the Moon and the Other Celestial Bodies are economically unproductive, at least for the time being, the Ocean Floor is charged explosively with economic potential.

The differences thus are both military and economic.

It is -- for the time being -- considerably easier to keep the Moon and the Other Celestial Bodies demilitarized than to keep the ocean floor demilitarized.

If one considers the economic potential and accepts the principle that Nations should cooperate in this industrial-economic sector which, however, cannot fail to influence other sectors of the national economies; if one accepts the principle that a new type of cooperation must be structured: a dialogue, so to speak, between nations, industrial and scientific enterprises, and the international community, then another set of precedents comes to mind, and that is, the European Communities, especially the Treaty Constituting the European Coal and Steel Community. I am not speaking here from the social and political point of view, from which one may totally reject the European Communities as examples; I am speaking from the point of view of the development of international law, and from this point of view they do set some interesting precedents.

There are of course great differences between the European Coal and Steel problem in the early fifties, and the globe-encompassing ocean problem of the late sixties. Western Europe was a closely knit unit with a more or less common historical, cultural, social and economic pattern. The world is not. But then, there are some remarkable similarities.

Coal and steel were thought to constitute the major war-making potential of the European nations. The merger of the French and German coal and steel production was thought to eliminate forever the possibility of war between these nations and therefore to be essential for peace and development in Europe.

Coal and steel are, more or less, of yesterday. The ocean, the ocean floor, and outer space are essential for war and peace tomorrow. The Soviet Union and the United States are playing approximately the role in the world at large that France and Germany played in Europe. A merger of their industrial activities in the deep seas and thereafter, possibly, in outer space, based on a treaty open to all other nations, would be the end of the cold war and open up a new chapter of world history.

If you consider that the activities of the Ocean Regime require very special skills and technologies, while, on the other hand, they must benefit all nations, developed and undeveloped, you hit on another set of precedents, the international organizations dealing with the peaceful use of atomic energy. The Charter of the International Atomic Energy Agency contains many provisions that are applicable to the statute or charter of an Ocean Regime. What is of particular interest is that, besides developed and developing nations, that Charter also associates socialist and free enterprise nations in its particular sphere of economically highly important activities.

Euratom, on the other hand, whose membership is restricted to Western, that is, free enterprise, and highly developed nations, sets another interesting precedent, that is, that of "Common Property." Under the Euratom Treaty, all fissionable material is the property of the Community, and there is a set of elaborate provisions that spell out this concept. Since one of the basic principles of the Ocean Regime would be that the resources of the ocean floor and the high seas beyond the limits of national jurisdiction are the common property of mankind, there may be something we may learn from the Euratom Treaty too.

A study of the United Nations Development Programme, the Charter of the World Bank, FAO, the World Health Organization, may provide other ideas -- especially if you remember that they all are concerned in one way or another with activities overlapping with those of the ocean regime and that these activities must in some way be coordinated.

But there is one basic issue in which there is no precedent, in which the drafters of the statute for an Ocean Regime must take a bold new step -- which, in turn, may set a new precedent of other international organizations. And that is the composition of a responsible, efficient, representative international assembly.

When he presented his proposal, Ambassador Pardo of Malta said: "I would only observe that it is hardly likely that those countries which have already developed a technical capability to exploit the ocean floor would agree to an international regime if it were administered by a body where small countries, such as mine, had the same voting power as the United States or the Soviet Union."

Theoretically, there are three alternatives.

The regime could be set up like a business corporation. This would be the triumph of technocracy over democracy. One would hope that the technocrats, aided by their computers, would be good and enlightened men, and put the wealth of the oceans, the common property of mankind, to good use; but there would be no democratic control over their activities. How this would work out may be more or less difficult to predict; what is quite certain, however, is that neither the socialist countries nor the technologically undeveloped countries would accede to such a regime. It is utopian.

The second alternative is to adapt the national democratic-parliamentary process somehow to the international scene. In this case, however, both the one-man-one-vote system, one of the fundamentals of democracy, would have to be abandoned as simply not applicable on the international scene; so would the one-nation-one-vote system -- the other pillar of the traditional federal-democratic system -- as pointed out by Ambassador Pardo. Compromises have

been proposed, such as giving half of the votes to the developed nations, half to the undeveloped nations and requiring a two-thirds majority for any decision. This would mean to build a class structure into the international assembly. Would that be a step forward? Would it be acceptable and practical? Other methods have been proposed -- to "weight the vote" taking into account numbers of population, GNP, education, consumption of energy and what not. But the crude fact is that any system of weighting the vote -- the very principle itself of weighting the vote means to give certain advantages to the rich. The poor shall be limited in their decision-making power. They do not have the same rights as the rich.

It would take years, decades, to work out criteria for weighting the vote in an international assembly. No solution would ever be totally acceptable. Systems applicable to federal unions of few members, relatively homogeneous in size of population and stage of development, simply are not applicable to international organizations with hundreds of members, a discrepancy in size of population of a range of 1:4000, and a scale of development ranging all the way from the stone age to the space age. No matter how you patch them up, the traditional principles are bound to break down.

The third alternative is to recognize that parliamentary representative democracy has reached a dead end and that new principles have to be discovered.

Thus far we have known two principal phases of democracy: the first is direct democracy, exercised through the town-meeting, where decisions were made directly by all citizens. When the political community outgrew the dimensions of the town-meeting, a momentous step was taken with the invention of representative democracy. This was the second phase. Some thinkers, like Rousseau, never accepted it. Whatever its merits, representative, parliamentary democracy is in crisis everywhere today: because of the size of political communities which has outgrown rationally manageable

dimensions in States counting 200 to 400 million inhabitants; because of the crisis of the party system, rooted in the eighteenth and nineteenth century and unable to adapt to the problems facing mankind in the second half of the 20th century; because of the growing impingement of nonpolitical, economic, social and technological issues on politics; because of the overdevelopment of bureaucracy; because of the growing interdependence between domestic and foreign policy. These probably are the main reasons -- others might be added -- for the crisis of the parliamentary-representative system at the national level, and, certainly, for its applicability at the international level.

A new transition is needed: as courageous and imaginative as that from direct to representational democracy. This is already recognizable in broad terms: it is the transition from representational democracy to participational democracy, as experimented, at this moment, particularly in France and Yugoslavia.

It is quite simple, really. It is the recognition that modern government has not only a political dimension, but an economic, a social, a cultural dimension as well. It is the recognition that you cannot represent men only on the basis of "pieces of land" or "numbers of heads" but that you must consider them also as workers or students, members of a church, a cooperative, a corporation. Man is not one-dimensional either. It is the conviction that workers must participate not only in the profits but in the decision-making processes of enterprises, students in the management of universities, tenants in the administration of housing projects, etc., and that enterprises, universities, corporations and cooperatives, in turn, must participate in the decision-making processes of government. It is the conviction that participation, responsibility and initiative are more important incentives than profits, that cooperation today is more productive than competition, that consensus is more important than coercion. It is the conviction that these principles hold both at the national and at the international level and may serve, in fact, to bridge the

gap, or reconcile the contrasts between these two levels of action.

Now let us return to the ocean regime, which we want to be a res publica of the Deep Seas, imbued with the spirit of freedom that has always emanated from the oceans.

How would the principles of "participational democracy" apply to the construction of an Ocean Regime?

You would have to safeguard national interests by the establishment of a Maritime Commission or Governing Board built on traditional principles -- let's say, like the Governing Board of the U.N. Development Programme or the International Atomic Energy Agency. But then you would make this Maritime Commission responsible to an international Maritime Assembly, built on the new principles. That is, you would have one political house or chamber, emanating from the U.N. General Assembly, elected by that Assembly, on a regional basis. There are many precedents for that.

Then you would take all the international, intergovernmental and nongovernmental organizations engaged in the extraction of nonliving resources from the ocean floor -- the people who actually do the work and invest the money -- and you put them together in a second house or chamber.

Then you take all the international intergovernmental and nongovernmental organizations engaged in fishery and aquaculture and you put them together in a third chamber.

Then you take all the scientific organizations engaged in marine geology, marine biology, meteorology, pollution prevention, disposal of atomic waste, tidal energy production, desalination, etc., and you put them together in a fourth chamber. Now you have the Nations, the international community, the experts, technicians and scientists. These are your characters -- for writing a Constitution is in many ways like writing a drama -- and now you engage them in dialogue. You set down the rule that any decision

made by the assembly requires a majority of the first, political chamber -- so to speak, the fulcrum of the system -- and of the chamber that is competent in the matter to be decided. You get a rotating bicameral system: problems concerning fishery to be decided by the political chamber and the fishery chamber, scientific problems to be decided by the political chamber and the chamber of scientists, then, of course, to be passed or promulgated or enacted by the Commission.

To complete the system, you would have a special Maritime Court, before which not only Nations but nongovernmental and inter-governmental organizations, too, would have a standing which they do not have before the International Court of Justice at the Hague. There is nothing utopian or revolutionary in this: the European Communities have provided us with a solid precedent.

We have now taken care of what traditionally was called the three branches of government: the executive, if you wish, the legislative, and the judiciary. But if the regime is to discharge its functions effectively, a fourth branch has to be added, and that is Planning. A Maritime Planning Agency of experts, economists, could partly be appointed by the Commission, partly elected by the Assembly as a whole. And the chiefs or Secretary-Generals of all the organizations of the U.N. family currently engaged in development and the redistribution of wealth in the world could be associated with it ex officio.

This would take care of the problem of coordinating all the activities in the U.N. that are now dispersed.

Last and not least you would have to build an efficient Secretariat; but here you could fall back on the traditional pattern of the Secretariat of the United Nations itself or any of its specialized agencies.

Such an organization for the Ocean Regime may appear more complicated than it is. At the Center for the Study of Democratic Institutions we have drawn up a model Statute for it, spelling it out in every particular -- and this document is no longer,

nor more complicated, than the statutes of any of the specialized agencies or of the world bank. It is quite considerably shorter than the Treaty Constituting the European Coal and Steel Community.

There are a number of advantages inherent in the creation of such an organization.

First, it would solve the functional problems for which it would be created, that is, the security, the conservation and the development of the oceans and their resources. It would create a considerable amount of new wealth, by giving to enterprises a security for their investments without which technological development would inevitably slow down; and it would facilitate the re-distribution of this wealth.

Second, all this would happen in a sphere where Nations would not have to give up anything they now have: neither materially nor ideally, neither economically nor politically. For the payments Nations and enterprises would have to make to the Regime would be on products they are not now producing and which they could not produce without the existence of a regime guaranteeing their investments. No iota of national sovereignty would be surrendered, but a new sovereignty would be created in a geographic and functional sphere which does not belong to any nation now.

Third, all this would not require any revision of the United Nations Charter nor amendments to any of the statutes of the existing specialized agencies or other intergovernmental organizations. Their respective charters and statutes already contain enabling clauses under which they may set up committees, commissions, new organizations, and cooperate with these as the circumstances and the purposes set forth in these statutes or charters may require. This is very important, for if the creation of the Ocean Regime required a revision of the U.N. Charter it would be utopian. A Charter Review Conference could not be called under the present political circumstances, or if one were called it would create more problems than it could possibly solve.

Fourth, the establishment of the Ocean Regime would not only "set a pattern for the future activities of mankind," as Ambassador Goldberg said of the Outer Space Treaty, it would, practically, open new ways for the evolutionary transformation of the United Nations. Given the impossibility of charter revision, the possibility of this evolutionary process is of particular relevance. The breakthrough -- the mutant gene -- would be the creation of an international assembly based on the new principles of participational democracy. One advantage of such an assembly, as we have outlined it, is its great flexibility. Suppose it works, you can add on to it, without complicating its decision-making processes. The U.N. General Assembly could gradually confer wider powers on it: for instance, the regulation of outer space, or of disarmament. This could be done by adding to the rotating bicameral system other chambers of scientists. No matter how many functional chambers you had, it would not complicate the process. The system would also allow for a regrouping of the functional chambers as functions and needs may require. The U.N. General Assembly itself would gradually assume the role of a world electoral body. The Security Council, organized on a regional basis, might evolve into the first, political chamber, the fulcrum of the rotating system. The veto would not even have to be abolished, in such a case. It would fall into obsolescence.

Let me close on this note of hope for the evolution of the United Nations, set off by the creation of an Ocean Regime. The goal that is taking shape if we follow this road is not likely to be a "world State" in the traditional sense of "state" or "superstate." More likely it is going to be a flexible system of cooperative world communities, evolving new, though already recognizable principles of democracy, of federalism, of planning and of law.