In spite of much encouragement thatwe got yesterday, on the whole I am unhappy with the American unhappiness with the United Nations. The mere idea that the United States could withdraw from the United States strikes me as an absurdity. And, mind you, such a withdrawal would be more destructive to the United States than to the United Nations. No country today can afford to withdraw from the organized community of nations.

Certainly, the U.N. is defective; it is obsolescent; it reflects the world of 30 years ago -- of a generation ago. There is general agreement that it must be restrcutured, brought up to date, streamlined and made more functional. Everything in the U.N. seems to be moving or groping, in this direction.

I would like to mention three developments which are all encouraging although each one of them is beset with paradoxes and problems.

The first is the attempt to restructure the U.N. system as a whole. The result of this effort thus far is the Report of the 25 experts: which is good, as far as it goes. But it does not go very far. It does a lot in the way of rationalizing bureaucratic procedure, but it does not go down to the basic problems, which were indicated yesterday by Mr. Hutchins in his introductory remarks: that is, that we have today no institutional framework to cope with basic transnational issues such as food, resources, the oceans, the environment, to name only a few. The proposals for change in the report of the 25 experts are very moderate because they must be contained within the present framework of the Charter of the United Nations. Charter revision is not considered a practical possibility and I think that this is quite realistic. The 25 experts, as you know, came from all parts of the world, East ,

came from all parts of the world, East and West, developing and developed, and the United States played a very active and constructive role in this effort.

The second great effort is that of the developing nations, led by Algeria and Mexico, to build a New International Economic Order. Two special Sessions of the General Assembly -- the Sixth in 1974 and the Seventh in 1975 -- have been dedicated to this effort, and a voluminous documentation -- resolutions, programmes of action, and the Charter of Economic Rights and Duties of States -- have been adopted by the General Assembly.

It is true that the effort to build a New International Economic Order has not yet passed beyond the stage of principles and general statements of intention: much more will have to be done about it. A binding treaty framework will have to be established, if this discussion is to move beyond the stage of generalities: be that as it may: In this effort the United States has definitely not been co-operative. The attitude of the United States towards the developing world is deplorable, and has been described as such, e.g., by Mr. McNamara.

The third major effort is the creation of a new international order, including a new international economic order in the oceans, and this has been, I think, the most exciting of the three efforts, the one that has the greatest potential. It has the greatest development potential: The contribution the oceans can make to the world economy in food, in minerals, in energy, is quite considerable and bound to grow over the next few years or decades. It has the greatest emotional potential -- and this is very important when you have to

mobilize public opinion -- the fact is that everybody loves the oceans, and that international law which, excuse the pun, is rather dry and boring, when you take it into the oceans, it somehow absorbes the mystery and the beauty and the romanticism of that medium and can become very exciting. This does have some iiportance. But, thirdly, the ocean effort has the greatest institutional potential. It is not handicapped by the limitation the Committee of the 25 Experts had to face. In the oceans, we are not paralyzed by the U.N. Charter, for we are creating new institutions: an International Seabed Authority, and, theoretically, we can make it as good and as effective and modern as we want. We are also perfectly free to strengthen and improve existing international institutions dealing with other uses of the oceans -- sucu as IMCO for navigation, IOC for marine sciences and COFI for living resources: make them perfect, stramlined, effective, and integrate their functions. There is no formal obstacle, no constitutional limitation.

Are we doing it? Are we building a new international order in the o eans which might become a model for, and a vital part of the new international order?

I think we are.

At the end of the last session of the Law of the Sea Conference in Geneva this year, a document was released: a document in four parts, with the forbidding name: Informal Single Negotiating Text. ISNT is, by all standards and from whatever angle you look at it, a document without precedent in the history of international relations. Without going into details,let me just point out that, with all its lacunae and contradictions, and being bound by Conference trends

which have tended to distort the focus of the Conference from the building of a new international order to allocating ocean space and resources to coastal nations -- in spite of all this the document carries the seed of a revolution in international relations, in two ways: first, it creates the first, the prototype of, an international authority, a public international authority charged with the responsibility of resource management: an operational authority, one that can engender international income, one that can redistribute resources and income. I say it is a prototype because that is the kind of authority we need, and shall create in a number of other areas of transnational scope.

Secondly, it establishes a dispute settlement with binding jurisdiction in a number of xx areas, with a Law of the Sea Tribunal before which not only States but international organizations, and companies, even individuals, have a standing.

The United States, incidentally, has not been a good influence in what concerns the expansion of national claims. It is only fair to say that this trend, dictated by the oil companies, started here. The United States, also, has not been very constructive in the effort of building the international Enterprise xfxthex which is the most important feature of the Seabed Authority; thexUnitedxStatesxhasx beenxx In a general way, there seems to be a paradox in the fact that the nation which has been most critical of the United Nations system as it is today, has been very busy, very active trying to build a new order in the oceans that looks as much as possible like the old order! But to be quite fair: with regard to the dispute settlement

system, the role of the United States has been very constructive. The work of Louis Sohn of Harvard has been really fundamental in this area.

So, all in all, I do think that these two features have a considerable chance of being adopted and ratified over the next two years, and I think the impact this is going to have, over time, on the whole United Nations system cannot be overrated. It may not look like much today, but with the Law of the Sea Treaty the United Nations remind s me of the girl that the marriage broker wants to marry to a respectable gentleman: a very honest broker and so he confides to the prospective briddgroom that the girl is just a little bit pregnant.

Section I. The Limits of National Jurisdiction in Ocean Space.

1. Baselines. The first issue which arises when considering problems related to national sovereignty or jurisdiction in the oceans is that of the line from which it is measured.

According to the 1958 Convention on the Territorial Sea, the normal baseline is the low-water line along the coast except that, where the coastline is deeply indented or if

there is a fringe of islands in its "immediate vicinity," the method of straight baselines joining "appropriate points" may be used; provided that a straight baseline must not depart to any "appreciable extent from the general direction of the coast" and that it cannot be drawn to or from low-tide elevations unless installations permanently above sea level have been built on them.[1/] The convention permits considerable flexibility by setting no limit on the length of straight baselines, and by not defining the words "immediate vicinity" and "appreciable extent from the general direction of the coast" and finally by not stating that the"appropriate points " to be jointed by a straight baselines should be land points. In recent years, coastal States have taken full advantage of the flexibility of the 1958 Convention on the Territorial Sea by enclosing as internal waters hundreds of thousands of square miles of previously high seas, hence it has become urgent to define more clearly the criteria for drawing straight baselines in order to avoid unilateral expansion of coastal State sovereignty in ocean space.

The single negotiating text, however, reproduces the words of the 1958 Territorial Sea Convention, and adds to its flexibility by providing (a) that "where because of the presence of a delta or other natural conditions the coastline is highly unstable the appropriate points (of straight baselines) may be selected along the furthest seaward extent of the low-water line, and, notwithstanding subsequent regression of the low-water line, such baselines shall remain effective[2/]..." (b) that a coastal State may employ the method of "mixed" baselines to suit local conditions;[2/] and (c) that straight baselines may be drawn to and from low tide elevations not only when installations permanently above sea level have been built on them but also when the drawing of such baselines has received "general international recognition."[3/]

1/ See for details 1958 Convention on the Territorial Sea and Contiguous Zone, Articles 3-6.
2/ UN Document A/CONF 62/WP8/ Part II, Articles 4-6.

3/ Ibid., Article 6(4).

In addition the single negotiating text proposes that (a) an archipelagic State[1/] "may draw straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that such baselines enclose the main islands and an area in which the ration of the area of water to that of land, including atolls, is between one to one and nine to one," provided that the length of such baselines does not "exceed 80 nautical miles except that up to ... per cent of the total number of baselines enclosing any archipelago may exceed that length up to a maximum of 125 miles"[2/] (b) an archipelagic State may draw straight baselines to and from low tide elevations on which installations permanently above sea level have been erected and to and from low tide elevations situated "at a distance not exceeding the breadth of the territorial sea from the nearest island."[3/]

2. Delimitation of areas under national jurisdiction between States lying adjacent or opposite each other.

The single negotiating text proposes criteria for the delimitation of national jurisdictional areas between States lying adjacent or opporite each other very similar to those contained in the 1958 Geneva Convention on the Territorial Sea and that on the Continental Shelf. The wording of Article 13 of Part II of the single negotiating text on the delimitation of the territorial sea is identical to the corresponding

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1/ An archipelagic State is defined as "a State constituted wholly by one or more archipelagoes and that may include other islands." (Doc. A/CONF 62/WP 8/Part II, Article 117 (2) (a).

2/ UN Document A CONF 62/WP 8/ Part II, Article 118 (1), (2).

3/ *Ibidem*, Art. 118 (4).

article (Article 12) in the 1958 Geneva Territorial Sea Convention. The wording of the continental shelf delimitation article in the single negotiating text (Part II, Article 70) is different from that of the corresponding article (Article 6) in the continental shelf convention but the rule remains substantially unchanged;[1] delimitation takes place "by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line and taking account of all the relevant circumstances." These are also the criteria of delimitation proposed for the exclusive economic zone, with the proviso that, in the absence of agreement, "no State is entitled to extend its economic zone beyond the median line or equidistance line." An important innovation in the single negotiating text is the reference to procedures for the settlement of disputes if the States concerned cannot agree "within a reasonable period of time" on the delimitation of their exclusive economic zones and continental shelves.[2]

States cannot be expected to respect the rights of the coastal State within areas claimed to be under national jurisdiction unless reasonable publicity is given to the limits of these areas. The 1958 Geneva Conventions[3] provided only that the coastal State "must clearly indicate straight baselines on charts, to which due publicity must be given" and that fish conservation zones and the line of delimitation between

1/ Perhaps this statement should be qualified. A comparison between Article 6 of the Continental Shelf Convention and Article 70, Part II, of the single negotiating text shows that the latter formulation weakens the reference to the median line as a criterion for delimitation and introduces a new general criterion: "equitable principles."

2/ UN Doc. A/CONF 62/WP 8/ Part II, Articles 61(2) and 70(2). There is no similar provision in respect of the delimitation of the territorial sea or contiguous zone; surprisingly the single negotiating text, as distinguished from the 1958 Territorial Sea Convention, contains no provisions whatsoever for the delimitation of the contiguous zone.

3/ Convention on the Territorial Sea, Articles 4(6) and 12(2); Convention on Fishing, Article 7(5).

the territorial seas of States lying opposite or adjacent to each other shall be marked on large-scale charts officially recognized by the States concerned. Similar provisions are included in the negotiating text, which is, however, more specific with regard to baselines: coastal States, it is proposed, should "indicate straight baselines on charts, supplemented by a list of geographical coordinates of points, deposited with the Secretary-General of the United Nations, who shall give due publicity thereto" and a very similar formulation is proposed for baselines established by archipelagic States.[1/]

1/UN Document A/CONF 62/WP 8/Part II, Art. 6(7) and Article 118(6). The single negotiating text (Part II) does not lay down any specific rules for giving publicity to the limits of the contiguous zone, exclusive economic zone and continental shelf. Nevertheless, in Part III of the Negotiating text (Article 2) it is stated that "States Parties to the Convention shall notify the International Seabed Authority of the limits [of the seabed and ocean floor and the subsoil thereof beyond national jurisdiction] determined by coordinates of longitude and latitude indicated on appropriate ~~officially recognized~~ large scale charts." A further indication that some publicity is expected to be given to the limits of the economic zone and continental shelf, as determined by the coastal STate, is the provision in the negotiating text that "in delimiting the boundaries of the exclusive economic zone [or continental shelf] and lines which are drawn...should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land." (A/CONF 62/WP 8/ Part II, Articles 61 (5) and 70(5). The appropriateness of the reference to fixed permanent identifiable points on land is not entirely clear when referring to boundaries situated well beyond 200 nautical miles from the coast.

officially recognized by the State."

Section II. National Ocean Space: Marine Areas within the Limits of National Jurisdiction.

1. Historic bays and historic waters. "historic bays" are mentioned incidentally in the same context both in the 1958 Territorial Sea Convention and in the single negotiating text, but in neither document is an effort made to define a historic bay.[1]

There has been for some tim e a troublesome expansion of claims to certain marine areas as historic waters. The question was not addressed in the 1958 Convention on the Territorial Sea and is not addressed in the single negotiating text. A provision might be added making it incumbent on contracting parties to register their claims to historic bays and waters within a determined time span after which no further claims would be recognized. This might avoid complications later.

2. Territorial sea. The territorial sea lies seaward of, and adjacent to, the baselines drawn by the coastal State.

The breadth of the territorial sea was not directly defined in the 1958 Territorial Sea Convention where it is stated only that "the contiguous zone (the zone contiguous to the territorial sea where the coastal State exercises certain specific powers) may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured."[2] After many years of dispute and contradictory international practice it is now proposed that "every State shall have the right to establish the breadth of its territorial sea up to a limit not exceeding twelve nautical miles measured from baselines drawn in accordance with" the Convention."[3]

According to present international law the coastal State is recognized sovereignty over its territorial sea subject to the obligation not to hamper the innocent passage[4] of foreign ships and "to give appropriate publicity to any

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1/ 1958 Territorial Sea Convention, Article 7(6) in which it is stated that the provisions for drawing straight baselines in bays do not apply to so-called "historic" bays.

2/ 1958 Territorial Sea Convention, Article 24 (2)

3/ UN Document A/CONF 62/WP8/ Part II, Article 2.

4/ Innocent passage is defined as "passage not prejudicial [illegible] good order, or security of the coastal State

to any dangers to navigation of which it has knowledge."[1] The coastal SLate "may prevent passage which is not innocent and may without discrimination among foreign ships suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships, if such suspension is essential for the protection of its security," but no suspension of the innocent passage is permitted through straits "used for international navigation between one part of the high seas and another part of the high seas or territorial sea of a foreign State."[2] Foreign ships transiting the territorial sea must comply with the laws and regulations enacted by the coastal Ste, particularly with those relating to transport and communications, and submarines are required to navigate on the surface and show their flag.[3]

The single negotiating text develops the rather simple and general provisions on the territorial sea contained in the 1958 Convention, elaborating, particularly, detailed norms on passage through straits used for international navigation[4] to clarify existing law and to take into acoount the proposed extension of the territorial sea which will now cover many straits previously part of the high seas.

The main changes proposed with regard to navigation in the territorial sea consist in minor changes in the definition of "passage" and "innocent passage;[5] in changes of comparatively

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1/ 1958 Territorial Sea Convention, Article 15. The Convention (Articles 18-20) also contains specific provisions limiting the criminal and civil jurisdiction which may be exercised by a coastal State, with respect to foreign vessels passing through its territorial sea and providing that charges may be levied on such vessels only for specific services rendered to the ship.

2/ 1958 Territorial Sea Convention, Article 16 (3), (4).

3/ Ibid. Articles 14 (6) and 17

4/ The term "straits used for international navigation" is not adequately defined in the negotiating text.

5/ In order to cover the recent development of offshore terminals and harbors, passage has been defined as "navigation through the territorial sea for the purpose of traverins that sea without entering internal waters or calling at a roadstead or port facility outside internal waters." Innocent passage now also specifically includes stopping "for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress."(Words underlined are new.) A/CONF 62/WP 8/ Part I, Article 15

minor importance in the wording of some articles of the 1958 Territorial Sea Convention[1], in an enumeration of the circumstances in which passage of a foreign vessel is prejudicial to the peace, good order or security of the coastal State[2] and in an enumeration of the subjects relating to innocent passage on which the coastal State may make laws and regulations which must be observed by foreign vessels.[3] The coastal State is also recognized the right to prescribe sea lanes and traffic separation schemes in its territorial sea.[4] The negotiating text finally contains a couple of articles on responsibility and liability of States in connection with the exercise of the right of innocent passage, which constitute a considerable development of present international law.[5]

The general effect of these proposed changes is to resolve the present debate on the respective rights and duties of the coastal and flag State largely in favor of the former and to confine innocent passage in the territorial sea almost exclusively to activities directly connected with transit. The articles on the responsibility and liability of private

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1/ For instance Article 14(6) of the 1958 Territorial Sea Convention has been modified as follows (words underlined are new): "Submarines <u>and other underwater vehicles</u> are required to navigate on the surface and show their flag <u>unless otherwise authorized by the coastal State</u>."

2/ See UN Document A/CONF 62/ WP 8/ Part II, Article 16(2).

3/ *Ibid*, Article 18.

4/ *Ibid*., Article 19.

5/ *Ibid*, Articles 23 and 32. The latter article is of particular importance since it establishes the "international responsibility" of the flag State for damage caused to the coastal State by government ships and warships. The negotiating text also contains an article providing that nuclear powered ships and ships transporting nuclear substances and other noxious ~~cargoes~~ substances "must observe when passing through the territorial sea special precautionary measures established for such ships by international agreement." The provisions for such vessels are perhaps too limited. See also *Ibid*., Article 19. On this point, Main Trends (A/CONF 62/C.2/WP 1) Provision 36 might be taken even more extensively.

and ~~commercial~~ government vessels used for commercial purposes and ~~of~~ noncommercial ~~governmental vessels~~ purposes for damage caused to the coastal State when they do not comply with coastal STate laws and regulations weaken the traditional concepts of exclusive flag State jurisdiction over commercial vessels and of "sovereign immunity" of warships and government vessels operated for noncommercial purposes.

3 Straits

The major difference, however, between the negotiating text and the 1958 Territorial Sea Convention lies in the rules proposed for passage through straits used for international navigation.

As has been mentioned, the traditional rule is that there can be no suspension of innocent passage through straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State. It is now proposed to distinguish two types of passage: transit passage and innnocent pasaage. Transit passage is defined as the "exercise in accordance with the provisions of this Part /of the proposed convention_7[1] of the freedom of navigation and overglight solely for the purpose of continuous and expeditious transit of the strait between one area of the high seas or ~~or~~ an exclusive economic zone and another area of the high seas or an exclusive economic zone" (Article 38)

1/ The relevant provisions to which the article refers are that ships and aircraft must "(a) proceed without delay through the strait; (b) refrain from any threat or use of force against the territorial integrity or political independence of a strait State or in any other manner in violation of the Charter of the United Nations; (c) refrain from any activities other than hhose incodent to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress; (d) comply with other relevant provisions of this Part."

See UN Document A/CONF 62/ WP 8 Part II, Article 39.

Transit passage applies to "straits used for international navigation between one area of the high seas or an exclusive economic zone and another area of the high seas or an exclusive economic zone" except that "if the strait is formed by an island of the strait State, transit passage shall not apply if a high seas route or a route of similar convenience exists seaward of the island.[1/]" The regime of innocent passage, as modified in the single negotiating text, is on the other hand maintained in straits used for international navigation other than those covered by the regime of transit passage or connecting areas of the high seas or an exclusive economic zone and the territorial sea of a foreign State.[2/]

The reasons for introducing into international law the new concept of transit passage, as distinguished from innocent passage, is presumably to ensure the unhampered transit of aircraft and vessels through straits (and the airspace above), previously part of the high seas, which may become internal waters or territorial sea if the proposals on jurisdiction limits contained in the negotiating text are adopted. Both in the case of transit passage and in the case of innocent passage, passage through international straits may not be suspended[3/] and the obligations of the strait State and of transiting foreign vessels and aircraft are similar under both regimes.

A comparison of the negotiating text Articles 16-23 and 44 on the regime of innocent passage and Articles 37-43 on transit passage appears to show only comparatively minor, and in some cases purely semantic differences, the net effect of which would seem to be (a) in the case of straits covered by the regime of transit pasaage "user States and strait States should by agreement cooperate in the establishment and maintenance of necessary navigation and safety aids;"[4/]

1/ UN Document A/CONF 62/WP 8/Part II, Articles 36 and 37.

2/ Ibid., Article 44

3/ Except that "if the strait is formed by an island of the strait State, transit passage shall not apply if a high

seas route or a route in an exclusive economic zone of similar convenience exists seaward of the island." Ibid., Article 38.

4/ The language of this provision is weak. What happens if the two States do not agree on such measures, and an accident ensues? There is no provision for liability. The transit State should have the duty and responsibility to provide all necessary safety measures. It might be aided by the right to collect transit fees and/or by the competent international institution.

(b) in the case of straits covered by the regime of transit passage, a strait State is not explicitly recognized the right to make laws and regulations in respect of the protection of submarine cables and pipelines[1], conservation of the living resources of the sea, and research, as are coastal States in respect of their territorial sea; (c) the obligations of aircraft and vessels exercising the right of transit passage are formulated in more general terms than those of vessels exercising the right of innocent passage and submarines are not required to navigate on the surface when transiting straits covered by the regime of transit passage.

4 3. Contiguous zone. The territorial sea as defined by the single negotiating text more than absorbs the contiguous zone under the 1958 Territorial Sea Convention.[2] A new contiguous zone is accordingly proposed which "may not extend beyond 24 nautical miles from the baseline from which the breadth of the territorial sea is measured."[3] No changes are proposed in the negotiating text in the rights of the coastal State within the contiguous zone.[4]

1/ Cables and pipelines are treated jointly through out the negotiating text. Considering the difference in their functions and in the problems they might cause it would be better to treat them differently. UN Document A/CONF 62/ WP 8/Art II, Articles 47 and 65.

2/ The 1958 Territorial Sea Convention speaks of "miles," the single negotiating text of "nautical miles." It should be noted also that the territorial sea will be measured from straight baselines more loosely defined than in the 1958 Territorial Sea Convention.

3/ UN Doc. A/CONF 62/ WP 8/Part II, Article 33.

4/ See 1958 Convention on the Territorial Sea, Article 24 and UN Document A/CONF 62/WP 8/ Part II, Article 33.

The single negotiating text unnecessarily multiplies the number of legal regimes in ocean space. Retention of the "contiguous zone" does not appear necessary in view of the expansion of the territorial sea and the creation of an exclusive economic zone under the comprehensive jurisdiction of coastal States; the same applies to the new concept of archipelagic waters.

5. ~~4~~. <u>Exclusive economic zone</u>. According to the present law of the sea, the coastal State, in principle, exercises no jurisdiction beyond the contiguous zone apart from sovereign rights over the natural resources of the seabed of the continental shelf. It is now proposed that "in an area beyond and adjacent to its territorial sea, described as the exclusive economic zone,"[1/] not extending "beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured"[2/] the coastal State should exercise "with due regard to the rights and duties of other States":

(a) "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether renewable or non-renewable, of the bed and subsoil and the superjacent waters;

(b) exclusive rights and jurisdiction with regard to the establishment and use of artificial islands, installations and structures;

(c) exclusive jurisdiction with regard to:

(i) other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents, and wind; and

(ii) scientific research.

(d) jurisdiction with regard to the preservation of the marine environment, including pollution control and abatement.

(e) other rights and duties provided for in the present Convention."[3/]

At the same time all States anjoy in the exclusive economic zone "freedom of navigation and overflight, and of the laying of submarine cables and pipelines and other international lawful uses of the sea related to navigation and communications."[4/]

1/ UN Document A/CONF 62/ WP 8/Part II, Article 45.

2/ *Ibid.*, Article 46.

3/ *Ibid.*, Article 45

4/ *Ibid.*, Article 47 (1).

It should be noted that freedom of navigation will be difficult to maintain in an intensively developed economic zone. Thus many of the coastal State's regulatory powers, now restricted to the territorial sea, will eventually have to be extended to the economic zone.

The Articles on the exclusive economic zone are taken, with very minor variations, from the Evensen Paper. In comparing the introductory article (45) with the corresponding article in Evensen and in the '77 paper, it is interesting to note that the present provisions are stronger on the side of the coastal State than Evensen. Evensen provides for jurisdiction with regard to "other activities," the negotiating text provides for exclusive rights and jurisdiction over artificial islands, installations and structures, and exclusive jurisdiction over non-depleting economic uses and scientific research.

The "77", on the other hand, provide for sovereign rights over such uses; jurisdiction in environmental matters, and exclusive jurisdiction with regard to artificial islands, etc., and matters pertaining to what used to be the contiguous zone. "Jurisdiction"without "exclusive," obviously includes the possibility of concurrent jurisdiction by the competent international authority.

Where the proposed convention does not attribute rights or jurisdiction, conflicts between the interests of coastal States and other States are to be resolved "on the basis of equity and in the light of all relevant circumstances taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole."[1/]

The rules proposed with respect to artificial islands and other installations have been largely derived, with some modifications, from the 1958 Continental Shelf Convention (Article 5(2) to 5(7)).

1/ UN Document A/CONF 62/WP 8/Part II, Article 47(3).

The main difference between these provisions and Article 48 of the negotiating text is the explicit recognition of exclusive coastal State jurisdiction over artificial islands and installations in its economic zone and the fact that the safety zones around them may not exceed a breadth of 500 meters "except as authorized by generally accepted international standards or as recommended by the appropriate international organizations.[1]

With regard to scientific research, the consent of the coastal State is required for any research "concerning the exclusive economic zone and undertaken there." "Nevertheless the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research and that the results shall be published after consultation with the coastal State concerned."[2] These general provisions formulated by the chairman of Committee II appear contradicted in part by provisions contained in Part III of the negotiating text which was prepared by the chairman of the third Committee of the Conference. Here instead of the statement that the coastal State shall not normally withhold its consent to a request to conduct research in the exclusive economic zone, we find a provision asserting that "marine scientific research... in the economic zone and the continental shelf shall be conducted by States as well as by appropriate international organizations in such a manner that the rights of the coastal State...are respected."[3]

The 1958 Continental Shelf Convention had already distinguished for certain purposes between "purely scientific research into the physical or biological characteristics

1/ UN Document A/CONF 62/WP 8/ Part II, article 48(5). Minor concession to advance of technology.

2/ Ibid., Article 49.

3/ UN Document A/CONF 62/WP 8/ Part III, Marine Scientific Research, Article 17.

of the continental shelf"[1/] and other types of research. It is now proposed to make a basic distinction between "fundamental" research and research related to the exploration and exploitation of living and non-living resources.

When "States and international organizations" intend to conduct in the economic zone scientific research which they consider to be of a fundamental nature they are to communicate through appropriate official channels all details of the project[2/] to the Coastal State concerned which is required to reply immediately. If the coastal State considers that "the research project as defined by the researching State as fundamental is not of such nature, it may object only on the ground that the said project would infringe on its rights as defined in this Convention over the natural resources of the economic zone or continental shelf."[3/] Any resulting dispute, if not settled by negotiation,shall be submitted at the request of either party to the dispute settlement procedure established by the proposed Convention.[4/] When the affirmative reply of the coastal State is received[5/] the project may be undertaken subject to the obligations enumerated in Part III, Articles 16[6/] and 23[7/]

1/ 1958 Continental Shelf Convention, Article 5(8).

2/ UN Document A/CONF 62/WP 8/ Part III, Marine Scientific Research, Article 15, outlines the information which must be submitted.

3/ _Ibid._, Article 19.

4/ _Ibid._, Article 20.

5/ It is not entirely clear whether the sponsoring State or international organization may proceed with the research, if no reply is received. Article 22, Part III, which deals with coastal State participation in research projects appears to state that in this case the research project may proceed; on the other hand, Article 45, Part II, states that the coastal State has exclusive jurisdiction over research conducted in the economic zone.

6/ It is interesting to note that it is now proposed to subject "fundamental" scientific research to stricter conditions than those mentioned in Article 5 of the 1958 Continental Shelf Convention. Thus, the coastal State is now recognized not only the right to participate or be represented in the research project but also the right (a) to be provided

with the conclusions of the project; (b) the right to receive the raw and processed data and samples; (c) the right to request assistance in assessing the data and samples. The "intention of open publication" has been replaced by an obligation to make the research results internationally available through International Data Centers or through other international channels. (A/CONF.62/WP.8/Part III, Marine Scientific Research, Article 16.)

7/ "States and international organizations conducting marine scientific research...shall take into account the interests and rights of the landlocked and other geographically disadvantaged States of the region... shall notify these States of the proposed research project as well as provide at their request...information and assistance" on assessing the results of the research and on any major change in the the research project.

On the other hand research related to the living and non-living resources of the economic zone may be conducted only with the explicit consent of the coastal State; if consent is granted the entity undertaking the research must provide the information outlined in Article 15, Part III, of the single negotiating text and comply with the conditions enumerated in Article 16 but may not publish or make the results of the research internationally available without the express consent of the coastal State.1/

The articles on scientific research in the economic zone are completed by providing that liability of States for damage within the area under national jurisdiction of a coastal State arising from marine scientific research shall be governed by the law of the coastal State.2/

Part III of the negotiating text attempts a compromise, based on the Mexican working paper, between the alternatives of freedom of research and coastal-State control.

In the present situation, however, one may question whether these alternatives really exist. The inextricable connection between scientific research and industrial research on the one hand, military research on the other, has made "freedom of scientific research" intolerable. Any compromise between the alternatives "freedom of research" and "coastal State control," no matter how perfect in theory, is bound to work out in practice in favor of coastal State control. The distinction between fundamental and resource-oriented research necessarily will give rise to innumerable disputes and crippling delays. This is quite inevitable, especially as between scientifically/industrially advanced nations and others.

1/ U.N. Document A/CONF 62/WP 8/ Part III, Article 21.

2/ Ibid., Article 35(3). Some discrepancies in terminology between Part II and Part III of the single negotiating text should be noted. Thus, for instance, Part III uses the term "economic zone" instead of "exclusive economic zone" used in Part II; Part III mentions only "states and international organizations" as entities which may be authorized to conduct scientific research in the economic zone while Part II suggests that scientific research will normally be conducted by "qualified institutions," etc.

The articles on the management of living resources are all taken over from the Evensen paper.

In principle the single negotiating text recognizes the exclusive jurisdiction of the coastal State over living resources in its exclusive economic zone. The rights of the coastal State, however, must be exercised in such a way that the living resources are not endangered by over-exploitation and that provision is made for the exchange of information and statistics relevant to the conservation of fish stocks "through sub-regional, regional and global organizations."[1]

The coastal State must determine both its own capacity to harvest the living resources of the exclusive economic zone and the allowable catch: where it does not have the capacity to harvest the entire allowable catch the coastal State has the obligation to grant to other States access to the surplus catch through agreements or other arrangements with the States concerned and subject to the rules and conditions which are set out in detail in the negotiating text.[2] Special provision in this connection is made for land-locked States in the exclusive economic zones of adjoining States[3].

1/ UN Document A/CONF 62/WP 8/Part II, Article 52.

2/ *Ibid*, Articles 50 (1) and 51.

3/ *Ibid*, Artoc;e 57/ Ot os mpt qiote c;ear! jpwever. wju. it was found necessary to add the sentence "Developed land-locked States shall be entitled to exercise their rights only within the exclusive economic zones of neighboring developed coastal States." There are no developing coastal States adjoining developed land-locked States, unless Yugoslavia is considered a developing country.

The desire of developing land-locked countries, furthermore, to fish in the economic zones of neighboring coastal States -- or to fish at all, or even to eat fish -- is rather hypothetical. It would really be useful to make a study of the social and economic implications of this Article. How many developing land-locked States have fished under the regime of freedom of the seas? How does the establishment of the exclusive economic zone affect them with regard to living resources?

There is also special provision for cooperation in the conservation of living resources between the States concerned either directly or through sub-regional or regional organizations when stocks of associated species occur either in the exclusive economic zones of two or more States or in the exclusive economic zone of a State and in the area beyond.

As distinguished from the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, the single negotiating text contains articles specifically directed towards the conservation of highly migratory species and of anadromous stocks.

With regard to the former, it is proposed that the coastal State and those other States "whose nationals fish highly migratory species in a region shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization...both within and bevond the exclusive economic zone".1/

As for anadromous stocks, it is proposed to establish the principle that "coastal States in whose rivers [they] originate shall have the primary interest and responsibility" for them;2/ thus the single negotiating text establishes the general principle that fisheries for anadromous stocks shall be conducted only in waters within exclusive economic zones and recognizes to the State of origin the right, and responsibility, to ensure the conservation of anadromous stocks through appropriate regulatory measures, including establishing total allowable catches; at the same time the negotiating text states that countries other than the State of origin "participating by agreement [with it] in measures to renew anadromous stocks, particularly in expenditures for that purpose, shall be

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1/ UN Document A/CONF 62/ WP 8/ Part II, Article 53.

2/ Ibid., Article 54.

given special consideration by the State of origin in the harvesting of stocks originating in its rivers."1/

Comprehensive powers are granted to/the coastal State "in the exercise of its sovereign rights to explore, exploit, conserve, and manage the living resources in the exclusive economic zone"2/ to enforce its fishery regulations. Nevertheless penalties for violations of fishery regulations may not include "imprisonment or other corporal punishment" and arrested vessels and their crew must be "promptly resleased upon posting of reasonable bond or other security.3/ Arrests of foreign vessels and any penalties subsequently imposed must be promptly notified, through appropriate channels, to the State of registry.

Enforcement of regulations regarding anadromous and catadromous stocks outside the exclusive economic zone is by agreement between the State of origin and the other States concerned.4/

One should note, however, the numerous references to international management measures without which national management measures cannot be effective.5/ But the provisions

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1/UN Document A/CONF 62/WP 8/ Part II, Article 54. The negotiating text also contains, *mutatis mutandis*, analogous provisions for catadromous stocks.

2/ *Ibid*, Article 60.

3/ *Ibid*.,Articles ~~54(3)(d) and 55(3)~~. 60(3) and (4)

4/ *Ibid*.

5/ See especially Articles 50(2) and (5); Article 52 (1) and (2); Article 53 (2) and (3). No attempt has been made, however, to define the machinerz needed for these complementary international management measures. We have made such an attempt in Part II, Section 2, of this Projection. See also Articles 81-90 of UN Document A/AC.138/ Sc.II/L.28, which, without contradicting any of the provisions of the negotiating text -- interweave national and international management measures in an exemplary way.

of the negotiating text are still based on the assumption that coastal States in their unfettered discretion are best qualified effectively to manage the bulk of the living resources of the sea, an assumption contradicted by known facts. The text shows no awareness whatsoever that the major problem afflicting world fisheries is excessive pressure on living resources of the sea which can only be effectively dealt with through licensing by the coastal State of its <u>own</u> fishermen (not merely foreign fishermen) and the adoption of effective fishery conservation measures for its <u>own</u> citizens.

Finally, the concept of maximum sustainable yield is outdated because of technological advances in the harvesting of living resources of the sea and and new researbh in the dynamics oftheir interactions.

As already noted, the single negotiating text recognizes that in its exclusive economic zone a coastal State has "jurisdiction with regard to the preservation of the marine environment, including pollution control and abatement." The general norm in Part II of the negotiating text is elaborated in Part III where it is stated that the coastal State "has the exclusive right to permit, regulate, and control" dumping of "wastes and other matter" within an, as yet, undetermined distance from its coast and the right to establish and enforce "appropriate non-discriminatory laws and regulations for "the protection of the marine environment within...its economic zone, where particularly severe climatic conditions create obstructions or exceptional hazards to navigation...[1/] The negotiating text also provides that "where internationally agreed rules and standards are not in existence or are inadequate to meet special circumstances and where the coastal State has reasonable grounds for believing that a particular area of the economic zone is an area where for recognized technical reasons in relation to its oceanographical and ecological conditions, its utilization and the particular character of its traffic, the adoption of special mandatory measures for the prevention of pollution from vessels is required, the coastal State may apply to the competent international organization for the area to be recognized a special area"; if recognition is given, the laws and regulations established by the coastal State become applicable in relation to foreign vessels six months after they have been notified to the international organization concerned.[2/]

1/ U.N. Document A/CONF 62/ WP 8/ Part III, Protection of the Marine Environment, Article 20(5).

2/ *Ibid.*, Article 20.

The coastal State is given full authority to enforce its laws and regulations. In the case of suspected violations of international standards and rules relating to vessel discharges within a yet undetermined distance from the baseline from which the territorial sea is measured, the coastal State may normally only require the vessel to identify itself, to specify its last and next port of call and such other information as will make it possible to establish whether a violation has been committed.[1] If the suspected violation "has been of a flagrant character causing severe damage or threat of damage to the marine environment,"[2] the vessel may be required to stop and submit to boarding and inspection. In either case the coastal State must promtply notify the flag State both of the suspected violation and of the measures taken[3] and must provide "recourse in its courts in respect of loss or damage resulting from the inspection, the enquiry or application of measures taken...where they exceed those which were reasonably necessary in view of existing information."[4]

6. Continental Shelf

The concept of a legal continental shelf over which the coastal State exercises "sovereign rights for the purpose of exploring it and exploiting its natural resources"[5] was launched -- in a completely different context and with a completely different intention -- in the 1945 Truman Proclamation[6]

1/ U.N. Document A/CONF 62/ WP 8/Part III, Article 30.

2/ Ibid., Article 31

3/ Ibid., Article 32. If the vessel has been stopped and inspected the coastal State must also inform the consular and diplomatic representative of the flag State of the vessel.

4/ Ibid., Article 37.

5/ 1958 Continental Shelf Convention, Article 2.

6/ The words used in the Proclamation were "jurisdiction and control."

and officially introduced into the law of the sea by the 1958 Geneva Convention on the Continental Shelf. It was explicitly stated that sovereign rights of the coastal State over its continental shelf did not affect the legal status of the superjacent waters as high seas or that of the airspace above those waters.

The legal continental shelf was defined as (a) "the sea-bdd and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depths of the super-jacent waters admits of the exploitatıdon of the natural resources of the said areas; (b) to the sea-bed and sub-soil of similar submarine areas adjacent to the coast of islands."1/ This ambiguous definition has enabled coastal States over the past ten years to extend their control over the seabed to ever increasingg distances from the coast and one of the principal aims of the Conference on the Law of the Sea is to replace the existing definition by another which will set clear limits to the expansion of coastal State jurisdiction, taking into account the creation of the exclusive economic zone.

The single negotiating text reddefines the legal continental shelf as "the sea-bed and sub-soil of the submarine areas that extend beyond the territorial sea of a coastal State throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend to that distance."2/

1/ 1958 Continental Shelf Convention, Article 1.

2/ U.N. Document A/CONF 62/WP 8/Part II, Article 62. It is unfortunate that the text has taken over the term "the natural prolongation of the land territory of a coastal State," since this concept is scientifically dubious and philosophically unacceptable: A State, not being a "natural formation, can hardly have a "natural prolongation."

In other words it is proposed to replace the present criteria of adjacency to the coast, depth (200 meters), and exploitability, by the criteria of minimum distance (200 nautical miles from straight baselines[1] and [illegible] (the outer edge of the continental margin as the natural prolongation of the continental landmass). All islands are recognized a legal continental shelf, with the exception of rocks "which cannot sustain human habitation or economic life of their own.[2] The single negotiating text leaves it to be inferred that the coastal State will itself decide where the outer edge of its continental margin lies: the circumstance is of some importance because it is usually difficult to determine with any precision where the margin ends.

It is inevitable that (1) the delimitation of the continental margin beyond the 200 mile limit, to be determined by the coastal State unilaterally, and (2) the overlapping of one State's Economic Zone and another's continental margin will give rise to an infinite number of disputes and conflicts.

The rights and duties of coastal States within their redefined legal continental shelf remain basically similar to those outlined in the 1958 Continental Shelf Convention[3]

1/ Not from the coast. This circumstance is of some importance since the coastal State is recognized considerable flexibility in establishing straight baselines.

2/ Most atolls are thus, presumably, recognized a continental shelf, although, in fact, the submarine mountain sustaining the atoll is not the prolongation of the atoll's land mass. It is not easy, further more, to define quite clearly what is meant by "an economic life of their own."

3/ Some changes of form and substance have, however, been introduced. Thus Article 26(3) of the 1958 High Seas Convention has been reproduced as the last subparagraph of Article 65 of the negotiating text and the waters above the redefined continental shelf are no longer defined as "high seas" (Compare in this connection, 1958 Continental Shelf Convention, Article 3, and Article 64 of the single negotiating text.

with the addition of the specific recognition to coastal State exclusive jurisdiction over artificial islands and installations and of the coastal State right to take appropriate measures to protect the marine environment from pollution arising from such artificial islands and from seabed activities subject to its jurisdiction.[1/] Scientific research concerning the legal continental shelf is regulated in the same way as scientific research in the exclusive economic zone.

The major innovation in the single negotiating text, as compared to the 1958 Continental Shelf Convention, is the proposal that "the coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured."[2/] The payments or contributions are to be made to the International Authority[3/], on terms yet to be agreed upon, and the Authority will distribute them "on the basis of equitable sharing criteria, taking into account the interests and needs of developing countries."[4/] This sets an interesting precedent for payments, or contributions, or taxes, on revenue from areas under national jurisdiction. It might be extended to revenues from the economic zone, or to revenue from any ocean produce anywhere.

It is regrettable that the Articles on the continental shelf do not contain any provision on disarmament, or, at least, de-nuclearization -- at least in accordance with the Sea-Bed Disarmament Treaty, if one cannot go beyond that.

1/ U.N. Document A/CONF 62/WP 8/ Part II, Articles 66 and 68.

2/ Ibid., Article 69. Presumably the "international Authority" is the International Seabed Authority.

3/ Ibid.

4/ Ibid.

7. Landlocked States. The 1958 Convention on the High Seas recognized that in order to enjoy the freedom of the seas on equal terms with coastal States, landlocked countries should have free access to the sea. To this end the Convention stated that States situated between the sea and a State having no sea-coast should by common agreement with the latter accord: "(a) to the State having no sea-coast, on a basis of reciprocity, free transit through their territory and (b) to ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of other States, as regards access to seaports and the use of such ports."[1] All matters relating to freedom of transit and equal treatment in ports were to be settled by mutual agreement, in case the States concerned were not already parties to existing international conventions.

The single negotiating text contains a different terminology and more detailed provisions than the 1958 Convention on the High Seas but does not significantly expand the rights of landlocked countries. The principle of freedom of transit to the sea is maintained, but the "terms and conditions" for the exercise of this right must be agreed "through bilateral, sub-regional or regional agreements" and the States situated between the landlocked country and the sea are recognized "the right to take all measures to ensure that the rights provided ... for landlocked States, shall in no way infringe their legitimate interests."[1]

Equality of treatment in the ports of the country situated between the landlocked State and the sea, is limited to "treatment equal to that accorded to other foreign ships."[2] On the other hand, the negotiating text contains a provision not found in the 1958 High Seas Convention, to the effect that, by agreement between the States concerned, "free zones or other facilities may be provided at the ports of entry and exit in the transit State."[3]

1/ 1958 Convention on the High Seas, Article 3.

2/ UN Document A/Conf 62/WP 8/Part II, Article 109.

3/ *Ibid.*, Article 115. It should be noted that the clause "treatment equal to their own ships" (i.e., equal to the ships of the country lying between the landlocked State and the sea) contained in Article 3 (1) (6) of the 1958 High Seas Convention, has disappeared.

4/ *Ibid.*, Article 112.

7. Archipelagos

Traditionally, waters (including airspace and seabed) on the landward side of straight baselines used for measuring the breadth of the territorial sea are considered internal waters over which the coastal State exercises as full a sovereignty as over its land territory.

The single negotiating text now proposes to distinguish between waters on the landward side of straight baselines drawn by coastal States which are not archipelagic States and waters enclosed by straight baselines drawn by archipelagic States to join the outermost points of the outermost islands of the archipelago. In the former case, the traditional full sovereignty of the coastal State is maintained unaltered. In the second case, the negotiating text suggests the introduction into international law of the new concept of archipelagic waters. Archipelagic waters, their seabed and the airspace above them are under the sovereignty of the coastal State[1] but the exercise of this sovereignty is subject to the restraints enumerated in the negotiating text. Thus the archipelagic State must "recognize traditional fishing rights of immediately adjacent neighboring States in certain areas of archipelagic waters"[2] and a "right of innocent passage through these waters exists for ships of all States."[3] The right of innocent passage is circumscribed and carefully regulated in an attempt equitably to balance the requirements of international navigation and the desire of archipelagic States to obtain control over sea and air navigation. Thus, on the one hand, the archipelagic State is recognized the right to "designate sea lanes and air routes suitable for the safe, continuous and expeditions passage of foreign ships and aircraft," to suspend passage temporarily in specified areas "if such suspension is essential for the protection of its security" and to make laws and regulations, which must be observed by foreign ships, on such amtters as the prevention of pollution, safety of navigation, regulation of marine traffic, prevention of fishing, etc. On the other hand, the archi-

pelagic State is required to give "appropriate" publicity to dangers to navigation or overflight within the designated sea lanes of which it has knowledge; the designated sea lanes must be clearly indicated on charts, must be not less than a yet-to-be-decided width and must include all normal passage routes used for international navigation or overflight, etc.4/

1/ UN Document A/CONF 62/WP8/ Part II, Article 120.

2/ *Ibid*. Article 122.

3/ *Ibid*. Article 123.

4/ For details, see UN Document A/CONF 62/WP8/Part II, Articles 124-129.

9. Islands. Present international law recognizes that islands, defined as "naturally formed areas of land, surrounded by water, which are above water at high tide."1/ may have a territorial sea and a continental shelf. The single negotiating text maintains the present definition of islands and expressly recognizes that they all have a territorial sea, a contiguous zone, an exclusive economic zone and a continental shelf determined in accordance with the provisions applicable to other land territory; however, rocks which "cannot sustain human habitation or economic life of their own"2/ are recognized only a territorial sea and a contiguous zone.

The text is, nevertheless, very very inclusive, especially since the subparagraph concerning the "economic life of their own" may give rise to disputes.

Very great expanses of ocean space will fall under national jurisdiction, in accordance with Article 132 of the single negotiating text.

10. Enclosed and semi-enclosed seas. The 1958 Geneva Conventions do not contain special provisions concerning enclosed and semi-enclosed seas. The single negotiating text, on the other hands, contains a couple of articles defining the duty of cooperation between States bordering enclosed or semi-enclosed areas.3/ Cooperation, direct or through "an appropriate regional organization" shall extend to the following activities: "(a) coordinate the management, conservation, exploration and exploitation of the living resources of the sea; (b) co-ordinate the implementation of their rights and duties with respect to the preservation of the marine environment; (c) co-ordinate their scientific research policies and undertake where appropriate joint programs of scientific research in the area; (d) invite, as appropriate, other interested States or international organizations to cooperate with them in the furtherance of the provisions of this article."4/

1/ 1958 Territorial Sea Convention, Article 10.

2/ UN Document A/CONF 62/WP 8/ Part II, Article 132

3/ *Ibid*. Articles 133-135.

4/ *Ibid.*, Article 134.

Perhaps a subparagraph (e) could be added to this article: "Co-operate to regulate the interaction of various uses of marine space and its recoures." This would, at least by indirection, touch on the extraction of nonliving resources, especially oil. The interaction of various uses -- especially the extraction of oil and the harvesting of living resources -- must be regulated in enclosed and semi-enclosed seas, and priorities must be set.

11. Territories under foreign occupation. The single negotiating text proposes that "the rights recognized or established by the present Convention to the resources of a territory...under foreign occupation or colonial domination... shall be vested in the inhabitants of that territory to be exercised by them for their own benefit..." and "in no case may these rights...be exercised, profited or benefited from or in any way infringed by a metropolitan or foreign power administrating or occupying such territory..."[1/]

This Article has been taken over from the proposals by the Group of 77. It will not be easy to enforce.

1/ UN Document A/CONF 62/ WP 8/Part II, Article 136.

Section III. International Ocean Space: Marine Areas Beyond National Jurisdiction and the Rights and Duties of States Therein.

According to present law of the sea, the high seas, comprising all parts of the sea (including the air space above) not within the territorial sea or internal waters of a State and the seabed and its subsoil beyond the limits of the continental shelf,[1/] are open to all States and are subject to a regime of freedom,[2/] to be exercised "with reasonable regard to the interests of other States in their exercise of the freedom of the high seas."[3/]

The single negotiating text proposes to establish two radically different legal regimes in marine areas beyond national sovereignty or jurisdiction by maintaining on the one hand, the traditional regime of the high seas for waters "that are not included in the exclusive economic zone, in the territorial sea, or in the internal waters of a State or in the archipelagic waters of an archipelagic State"[4/] and creating, on the other hand, a special regime based on the principle of common heritage of mankind, for the seabed and ocean floor and their subsoil "beyond the limits of national jurisdiction."

1/ This is the prevalent opinion; some authors, however, have been of the opinion that, because of the exploitability criterion in the 1958 Convinental Shelf Convention, all parts of the seabed of the oceans are, potentially, part of the legal continental shelf.

2/ The freedoms specifically recognized are: freedom of navigation, freedom of fishing, freedom to lay submarine pipelines and cables, and freedom of overflight,"together with other freedoms recognized by the general principles of international law" (a phrase generally held to include the freedom of scientific research).

3/ 1958 High Seas Convention, Articles 1 and 2.

4/ A/CONF 62/WP 8/ Part II, Article 73.

(i) High Seas

in the more limited area to which it now applies, the regime of the high seas has been made more specific but remains basically unchanged. The traditional freedoms are maintained[1/] and to these are added the freedom to construct artificial islands [2/] and other installations permitted under international law, and the freedom of scientific research.[3/] All freedoms must be exercised "with reasonable regard to the interests of other States." All States, whether coastal or not, retain the right to sail ships under their flag, to fix the conditions for the grant of their nationality to ships, etc.[4/] Slave trade and piracy remain prohibited.

The major differences proposed as compared to present law are: (a) Modification of Article 7 of the 1958 High Seas Convention dealing with the right of States and other entities to sail vessels under their own flag. The single negotiating text[5/] restricts the term "intergovernmental organizations" to "the United Nations, its Specialized Agencies and the International Atomic Energy Agency. (b) elaboration of the sentence in the 1958 High Seas Convention to the effect

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1/ The freedom of fishing, however, has been made subject to "the rights and duties, as well as interests of coastal States" and to the obligation to cooperate with other States in adopting such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas," to cooperate in establishing subregional or regional fishery organizations and to exchange regularly scientific data and statistics through such organizations. (A/CONF 62/WP 8, Part II, Articles 103-107) The necessity for an international management system, complementary to national management systems is thus recognized.

2/ Subject to the obligations enumerated in A/CONF 62/WP 8/ Part II, Article 48 (3) to (8).

3/ Subject to the provisions contained in A/CONF 62/WP8/ Part III (Scientific Research), Articles 27-36 and in particular, Article 25 (3) and (4).

4/ Doc. A/CONF 62/WP8/ Part II, Articles 76-78, 80(3), 81-93, 96-97, 99-102, reproduces often textually the text of Articles 4, 5, 6, 10(1), 9, 11-21, 23, 26, 27, 28, of the

1958 High Seas Convention.

5/ Doc. A/CONF 62/ WP 8/ Part II, Article 79.

that "every State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag"[1] by requiring States to implement this principle by maintaining a register of shipping and by assuming jurisdiction under their municipal law over vessels flying their flag, and their crews;[2] (c) elaboration of Article 10 of the 1958 Geneva High Seas Convention, by prescribing specifically that among measures to ensure safety at sea, the flag State must include those measures necessary to ensure that ships flying its flag shall be surveyed by a qualified surveyor at appropriate intervals, have on board such charts and instruments appropriate for safe navigation and be in the charge of qualified masters and officers who are, inter alia, conversant with the applicable international regulations concerning the safety of life at sea, the prevention of collisions, etc.;[3] these provisions are completed by a proposal that every marine casualty or accident causing loss of life or serious damage shall be the subject of inquiry by the flag State before a qualified person or persons and that if "a State has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised [it] may report the facts to the flag State" which is obligated to investigate and, if appropriate, take any action necessary to remedy the situation;[4] (d) obligation of States to cooperate in the suppression of aunauthorized broadcasting; the person responsible may be arrested and

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1/ 1958 High Seas Convention, Article 5(1).

2/ Doc. A/CONF 62/WP 8/Part II, Article 80(2).

3/ Ibid., Article 80(4).

4/ Ibid., Article 95.

and prosecuted by the flag State of the vessel or installation, by the State of which the person is a national, by the States in which the transmissions can be received or by those where authorized radio transmissions suffer interference;[1]
(e) finally, it is proposed to assimilate in some respects vessels engaged in unauthorized broadcasting and in illicit traffic in narcotic drugs with pirate ships.

The articles on ship registration and the responsibility of flag States are thus much more detailed and stringent than the corresponding articles in the 1958 High Seas Convention. It is questionable, however, whether they are adequate to cope entirely with the increasingly important phenomenon of the flag of convenience or open registry. For this reason, some authors have proposed an international registration of ships (see Part II, section 3 of this projection), and international jurisdiction over ships in international ocean space (See, e.g., A/AC.138/53).

The single negotiating text proposes that the use of the High Seas shall be reserved for peaceful purposes,[2] a concept carried over from Main Trends.[3] It is one of the implications of the notion that ocean space beyond national jurisdiction is the common heritage of mankind which, curiously enough, has survived, e.g., in Doc. A/CONF 62/C3/ L.12/Rev. 1, presenting the position of the Group of 77. The naval powers do not share this view. This is why they refuse the extension of the concept of common heritage from the deep seabed (militarily not so interesting) to the superjacent waters and the establishment of appropriate institutions for the management of this extended common heritage.

The Conference has not dared to move in this direction. In the present limited context: what can be the meaning of the statement that the uses of the high seas shall be reserved for peaceful purposes? Would it be more correct to say that this Convention deals only with the peaceful uses of the High Seas?

1/ Doc.A/CONF 62/WP 8/Part II, Article 95.

2/ Ibid. Article 74. 3/ UN Doc. A/CONF 62/C.2/WP 1.

(ii) Seabed Beyond National Jurisdiction

The regime proposed for the seabed beyond the limits of national jurisdiction in the single negotiating text is highly innovative and marks a radical departure from traditional law of the sea.

The basic principle on which the regime is based is that the seabed beyond the limits of national jurisdiction is a common heritage of mankind and, as such, should be reserved for peaceful purposes and used and exploited "for the benefit of mankind as a whole irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of the developing countries."[1] In order to implement this principle in practice, an international agency (called the International Sea-bed Authority) is established "through which States Parties shall administer the Area, manage its resources and control the activities of the Area in accordance with the provisions of this Convention."[2]

Definition of the Area -- Since the negotiating text leaves coastal States considerable freedom in determining the limits of their national sovereignty or jurisdiction in ocean space, the international seabed area is not defined directly but only by reference to the action taken by the States Parties to the Convention which "shall notify the International Sea-bed Authority" of the limits of their national jurisdiction over the sea-bed "determined by coordinates of latitude and longitude and shall indicate the same on appropriate large scale charts officially recognized" by the States concerned; the Authority shall register and publish the notifiaations received.[3]

1/U.N. Document A/CONF 62/WP 8/Part I, Articles 3 and 7.

2/ Ibid. Articles 21 and 21. The drafting of the sentence quoted could be improved: probably the words "control the activities of the area" should read "regulate and/or supervise activities in the area.

3/Ibid., Article 2.

The question whether a coastal State may subsequently change its national jurisdictional limits and inform the international Authority to this effect is not addressed in the single negotiating text, nor are there provisions making it possible to establish provisional boundaries to the international area in cases where States omit to inform the Authority of the limits of their national jurisdiction within a reasonable period of time.

General principles with regard to the Area -- the single negotiating text contains a number of general principles applicable to the international seabed area. These may be summarized as follows:

a. The proposed seabed regime does not affect "the legal status of the waters superjacent to the area or that of the airspace above those waters."[1]

b. There shall be no claim or exercise of sovereignty or sovereign rights over any part of the Area.[2]

c. States shall act in the area in accordance with the provisions of the Convention and of the United Nations Charter.[3]

d. All activities in the Area shall be governed by the provisions of the Convention[4] and shall be undertaken with reasonable regard for other activities in the marine environment.[5]

e. The Area is reserved exclusively for peaceful purposes and is open to use, without discrimination, by all States Parties in accordance with the provisions of the Convention.[6]

1/ U.N. Document A/CONF 62/WP 8/Part I, Article 15.

2/ Ibid., Article 4.

3/ Ibid., Article 5.

4/ Ibid., Article 6.

5./ Ibid., Article 16(1)

6/ Ibid., Article 8.

f. Activities in the Area must ensure: orderly and safe development and rational management of resources; expanding opportunities to all; conservation and utilization of resources for the optimum benefit of producers and consumers of raw materials; equitable sharing of benefits with particular consideration for the interests and needs of developing countries whether landlocked or coastal.1/

g. Scientific research, as all other activities, in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole.2/

h. Stationary and mobile installations for the conduct of activities in the Area may be emplaced and removed solely subject to specifically enumerated conditions and to the rules and regulations prescribed by the International Seabed Authority.3/

i. States and international organizations have the responsibility to ensure that activities in the Area undertaken either directly or on their behalf are conducted in accordance with the provisions of the Convention. Damage caused by such activities entails liability on the part of the State or international organization concerned.4/

There are further general provisions with regard to international cooperation in the conduct of scientific research, transfer of technology, the protection of the marine environment, protection of human life, and the rights of coastal States.5/

1/ U.N. Doc. A/CONF 62/WP 8/ Part I, Article 9(2).

2/ Ibid., Articles 7 and 10(1).

3/ Ibid., Article 16(2).

4/ Ibid., Article 17.

5/ The provisions on the rights of coastal STates (Article 14) are of great importance. They provide that a coastal State must be consulted before any activities are undertaken with regard to resources which "lie across" the limits of national jurisdiction and that coastal States have the right to take

such measures as may be necessary to "prevent, mitigate or eliminate grave and imminent danger to their coastlines or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by activities in the Area."

Section IV: General Norms Concerning the Rights and Duties of States in Ocean Space as a Whole.

The only general norms in the 1958 Geneva Conventions concerning the rights and duties of States in ocean space[1/] consist in rules regulating the exercise of the right of hot pursuit[2/] and in two articles obligating States, in general terms, (a) "to draw up regulations to prevent pollution of the seas by discharge of oil from ships or pipelines or resulting from the exploitation or exploration of the seabed and its subsoil;" (b) "to take measures to prevent pollution of the seas from the dumping of radio-active wastes;" (c) "to cooperate with the competent international organizations in taking measures for the prevention of pollution of the seas or airspace above, resulting from any activities with radio-active materials or other harmful agents."[3/]

While the rules regulating the exercise of the right of hot pursuit have remained unchanged,[4/] the single negotiating text contains a considerable number of articles[5/] on the protection and preservation of the marine environment which attempt to reflect contemporary environmental concerns. The system established by the negotiating text may be summarized as follows:

1/ Apart from the norms, already referred in the text, concerning the exercise of the freedom of navigation (1958 High Seas Convention, Articles 4-12), of the freedom of fishing (1958 Convention on Fishing, Articles 3-8), of the freedom to lay submarine cables and pipelines (1958 High Seas Convention, Articles 26-29).

2/ 1958 High Seas Convention, Article 23.

3/ *Ibid.*, Articles 24 and 25.

4/ UN Document A/CONF 62/WP8/Part II, Article 97, which reproduces the text of Article 23 of the 1958 High Seas Convention.

5/ UN Document A/CONF 62/WP 8/ Part III, Protection and Preservation of the Marine Environment, Articles 1-44/

a. States have an obligation to protect and preserve all the marine environment and to take all necessary measures to prevent and control its pollution from any source in accordance with their capabilities. In taking these measures States "shall gaard against the effect of merely transferring, directly or indirectly, damage or hazards from one area to another or from one type of pollution to another."[1]

b. States have an obligation to "cooperate on a global and, as appropriate, regional basis, directly or through competent international organizations...to formulate...international rules, standards and recommended practices and procedures...for the prevention of marine pollution."[2]

c. States have an obligation to cooperate in preventing or eliminating the effects of pollution and in promoting studies and encouraging the exchange of information about pollution of the marine environment.[3] They also have the obligation to take a variety of measures to provide assistance to developing countries for the preservation of the marine environment.[4]

d. States, in accordance with their capabilities and consistent with the rights of other States, have an obligation to monitor the marine environment for pollution and to report the results of this activity to the United Nations Environment Programme and to regional organizations.[5]

1/ For details see UN Doc. A/CONF 62/WP 8/ Part III, Protection and Preservation of the Marine Environment, Articles 2-5.

2/ Ibid,, Article 6. See also Article 10.

3/ Ibid., Articles 8 and 9

4/ Ibid., Article 11.

5/ Ibid., Articles 13 and 14.

e. States have an obligation to establish national laws and regulations to prevent and control pollution of the marine environment from land-based sources; to endeavor to harmonize their national policies at the regional level and to establish global and regional rules, standards and recommended practices.1/ States have similar obligations with respect to pollution arising from seabed exploration and exploitation activities, from dumping of "wastes or other matter" in the marine environment, and from vessels.2/

f. States have an obligation to establish national laws and regulations to prevent and control pollution of the marine environment from the atmosphere and to endeavor to establish global and regional rules, standards and recommended practices in this connection.3/

g. When States become aware of imminent danger to the marine environment arising from pollution, they are obligated immediately to notify other States likely to be affected, as well as the competent international organizations.4/

h. When States "have reasonable grounds for expecting that planned activities under their jurisdiction... may cause substantial pollution of the marine environment," they have an obligation "as far as practicable, to assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments."5/

Enforcement of laws and regulations with regard to atmospheric and land-based sources of marine pollution is

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1/ For details, see U.N. Doc. A/CONF 62/WP 8/ Part III, Protection and Preservation of the Marine Environment, Article 16.

2/ For details, see ibid., articles 17-20.

3/ Ibid., Article 21. It should be noted that States only have the obligation to endeavor to establish rules, etc., for marine pollution arising from the atmosphere while for uses sources of marine pollution they are obligated to establish the relevant rules.

4/ See ibid., Article 7 .

5/ Ibid., Article 15. It is not clear to whom the reports of the environmental assessments should be communicated. The text says that they should be communicated "in the manner provided in paragraph 2 of Article 13" but this paragraph deals with a different subject. Article 14, on the other hand, states that monitoring reports should be sent "to the U.N. Environment Programme and to other competent international or regional organizations." Perhaps this is also the procedure envisaged in Article 15? The similarity or difference between the "environmental assessments" required in Article 15 of the negotiating text and the "environmental impact statements" required by United States law, should be noted.

left generically to "States."[1] Laws and regulations concerning marine pollution arising from seabed exploration and exploitation activities are enforced by coastal States within the legal continental shelf and by the International Seabed Authority in cooperation with flag States in the area beyond national jurisdiction.[2] While laws and regulations for the protection of the marine environment from dumping at sea are enforced (a) by any State within its territory; (b) by the flag State with regard to vessels and aircraft registered in its territory or flying its flag; (c) by the coastal State with respect to vessels and aircraft engaged in dumping within the exclusive economic zone and continental shelf and (d) by the port State with respect to vessels and aircraft loading at its facilities or offshore terminals.[3] The rules proposed by the negotiating text with regard to violation by vessels of international pollution prevention and control standards and risks are detailed and rather complicated.[4] Their effect is, on the one hand, to oblige the flag State to take action on reports of violations of international pollution and control standards and rules by its vessels and, on the other hand, to permit the coastal and in some cases the port State to investigate violations, inspect and arrest vessels and institute legal proceedings in marine areas under its sovereignty

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1/ UN Doc. A/CONF 62/ WP 8/ Part III, Protection and Preservation of the Marine Environment, Articles 22 and 40.

2/ *Ibid.*, Articles 23 and 24

3/ *Ibid.*, Article 25.

4/ For details, see *ibid.*, Articles 26-39.

or jurisdiction.[1/] These proposals, if adopted, will constitute a highly significant departure from the basic principle of exclusive flag State jurisdiction followed in the 1958 Geneva Conventions.

It should be noted that the single negotiating text equates the protection and preservation of the marine environment with the prevention of pollution. There are no articles dealing with changes in the marine environment caused by technologies which are not polluting , e.g. (a) the use of technology to change the climate, water temperatures, weather phenomena and in general the natural state of the marine environment; (b) the transplantation of marine plants and living organisms from their natural habitat to other parts of the marine environment; (c) degradation of the marine environment caused by recreational activities and tourism. Perhaps the Soviet resolution, introduced in the General Assembly in 1974, which prohibits the use of certain technologies which might alter the marine environment (including the atmo-sphere) might be taken into consideration. See also the Maltese Draft Articles on the Preservation of the Marine Environment, Article 2, subparagraph 1 (a).

There exists now a well developed international movement for the establishment of marine parks for the preservation of exceptional or threatened marine fauna and flora. A number of developing nations are interested in this development which, besides its environmental value, may have an economic value, on the one hand, by regenerating depleted fish stocks, on the other, by attracting tourism. Perhaps there could be an article covering this new development.

There are no articles on the control of dangerous activities, such as the use of nuclear energy for peaceful purposes or the storage and disposal of radioactive waste in ocean space beyond the limits of national jurisdiction.

With regard to marine scientific research and the transfer of marine technology, the single negotiating text con-

1/ Note, however, that a STate, in taking action, must not discriminate among foreign vessels (Article 38) and that it would appear that a coastal State may not detain or arrest a vdssel in straits covered by the regime of transit passage (Article 39).

tains general norms that have no parallel in the 1958 Geneva Conventions or in traditional law of the sea.

While affirming explicitly the right of all States and international organizations to conduct marine scientific research,[1] the single negotiating text affirms that this right is exercised subject to the rights of coastal STates and must be conducted "exclusively for peaceful purposes," without interference with other legitimate uses of the sea, and must comply with international regulations for the protection of the marine environment.[2] Scientific research activities cannot form the legal basis for any claim to any part of the marine environment and its resources. The negotiating text contains also general articles on the obligation of States to cooperate in the promotion of scientific research and in the exchange of data and transfer of knowledge resulting therefrom.[3]

The norms concerning the conduct of marine scientific research in areas under national jurisdiction have already been mentioned. It may nevertheless be useful to summarize here the regime for marine scientific research in ocean space as a whole proposed in the single negotiating text:

(a) Scientific research in the territorial sea may be conducted only with the explicit consent and under the conditions established by the coastal State;

1/ Scientific research is not mentioned in the 1958 High Seas Convention, but is generally considered to be included in the "other freedoms of the high seas" mentioned in Article 2 and as such the freedom of scientific research must be exercised"with reasonable regard to the interests of other States."

2/ UN Document A/CONF 62/WP 8/Part III,/Marine Scientific Research, Articles 4 and 5.

3/ Ibid., Articles 8-12.

(b) fundamental scientific research may be conducted in other areas under coastal State jurisdiction subject to appropriate notification to the coastal State and to the conditions mentioned in the negotiatng text; scientific research related to exploration and exploitation of resources, on the other hand, is subject to the explicit consent of the coastal State and to the conditions enumerated in the negotiating text;

(c) all States and appropriate international organizations have the right to conduct scientific research on the high seas, subject to due regard to the interests of other States;

(d) all States and appropriate international organizations have the right to conduct scientific research in the international seabed area subject to publication of the research results, (general supervision of the International Seabed Authority (this is not entirely clear)) and, in certain cases, a variety of enumerated conditions designed to protect the interests of the coastal States nearest to the area where the research is conducted.

Conflicts may arise between the principle of freedom of scientific research applying to the high seas, and the common heritage principle, applying to the subjacent ocean floor and seabed, where "The [International Seabed] Authority shall be the centre for harmonizing and co-ordinating scientific research.[1]

It is also important to note here that the single negotiating text ~~also~~ contains general norms on the status of scientific equipment in the marine environment and on the measures required for its identification and protection which should facilitate the conclusion of a detailed convention on this subject.[2] General articles on responsibility and

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1/ U.N. Document A/CONF 62/WP 8/Part I, Article 10

2/ UN Doc. A/CONF 62/WP8/Part III, Marine Scientific Research, Articles 27-33. A draft convention on the status of scientific equipment in the marine environment has been under consideration by UNESCO (IOC) for several years.

liability establish the principle that (a) the entity conducting the research is responsible for the fact that the research is conducted in accordance with the provisions of the Convention and is liable for any damage arising therefrom; (b) liability in respect of damage caused within areas under national jurisdiction of a coastal State are governed by the law of the coastal STate.1/

In connection with the development and transfer of marine technology, the single negotiating text establishes the fundamental obligation of all States "either directly or through appropriate international organizations [to] cooperate within their capabilities to actively promote the development and transfer of marine sciences and marine technology at fair and reasonable terms, conditions and prices," particularly with ragard to developing countries;2/ and to this end a number of measures are recommented3/ and States are obliged "either directly or through appropriate international organizations [to] promote the establishment of universally accepted guidelines and to cooperate actively with the International

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1/UN Doc. A/CONF 62/WP 8/Part III, Marine Scientific Research, Articles 34 and 35. In this connection also, we find an obligation of all States to cooperate "in the development of international law relating to procedures for the assessment of damage, the determination of liability, the payment of compensation and the settlement of disputes." (Ibid., Article 36).

2/UN Document A/CONF 62/WP8/Part III, Development and Transfer of Technology, Article 1.

3/The single negotiating text uses the imperative "shall"; but in this case, as in many other parts of the text, it is not likely that there is an intention to create an international legal obligation for STates. It would appear ridiculous, in fact, to impose a legal obligation on "all States [including presumably landlockdd States] to promote the development of appropriate marine technology." (See ibid., Article 3 (b))

Seabed Authority[1]. Finally, the negotiating text enjoins STates to "promote, within their capabilities, the establishment, especially in developing States, of regional marine scientific and technological centres [with functions described in the negotiating text] in coordination with the International Seabed Authority when appropriate as well as with international organizations and national marine scientific and technological institutions in order to stimulate and advance the conduct of marine scientific research by developing countries."[2]

In conclusion one may observe that while undoubtedly the negotiating text reveals a sensitivity to environmental, scientific, and technological concerns which is not found in the 1958 Geneva Conventions,this sensitivity is, in practice, largely translated into norms transferring from the flag States to coastal and port States control over vessel source pollution; in other words, coastal States acquire increased power and it is not evident that they will all exercise their new powers more responsibly than flag States have done in the past. It is difficult to envision any real progress without a precise restructuring of the internatonal machinery dealing with scientific research, the transfer of technology, and the conservation of the marine environment.

1/ For details see UN Document A/CONF 62/WP 8/ Part III, Development and Transfer of Technology, Articles 2-9. There is much repetition and some confusion in this section of the negotiating text.

2/ Ibid.,Articles 10 and 11. While the purpose of these two articles is reasonably clear, the formulation leaves much to be desired.

Summary: All of Part II, and sections of Parts I and III of the Informal Single Negotiating Text deal with non-institutional aspects of the law of the sea, i.e., with general principles, norms, and rules of conduct. These non-institutional aspects are considered here as a whole. With certain amendments, they could form the basis of an institutional framework for a new international economic order.

Amendments might cover the following points:

1. Clear definition of baselines.
2. terminal date for the claim of historic bays and waters.
3. Absorption of contiguous zone into Exclusive Economic Zone.
4. Better regulation of navigation in economic zone;
5. Better articulation of interaction between management of living resources in national and international ocean space;
6. harmonization, or integration of sections of Parts I, II, and III, dealing with scientific research in national and international ocean space;
7. abandonment of distinction between fundamental and research-oriented research;
8. limitation of continental shelf to a distance of 200 nautical miles from the baseline from which the territorial sea is measured;
9. Distinction between cables and pipelines as they serve different functions and raise different problems;
10. Peaceful uses of continental shelf: addition of disarmament and arms control measures, or atleast reference to seabed disarmament treaty.
11. Clarification and furheer strengthening of transit rights of landlocked states.
12. Provisions for possible cooperation between landlocked and coastal states in exploration and exploitation of continental shelf.
13. Better definition of islands. Special provisions for developing island states.
14. enlargement of scope of cooperation between States bordeing

enclosed or semi-enclosed seas to include "interaction of verious uses of marine space and its resources."

15. International registration for ships navigating the high seas.
16. Definition of "reservation of the high seas for peacefulpurposes.
17. more stringent regulations for vessels carrying nixious cargoes
18. Protection of marine environment against changes from non-polluting technologies.
19. More specific reference to dispute settlement procedures as specified in Part IV of negotiating text.
20. Provision for review, ten years after ratification of treaty, of limits of national jurisdiction, in view of requirements of New International Economic Order.

PART II

THE USES OF OCEAN SPACE AND RESOURCES AND THEIR INSTITUTIONAL REQUIREMENTS.

Section I: The Mining of Minerals from the Seabed Beyond the Limits of National Jurisdiction

General Comments

The major innovation in the single negotiating text with regard to new forms of international cooperation is the creation of an international regime, based on the principle of the common heritage of mankind, for the seabed beyond national jurisdiction. Such a regime which comprises international machinery for the administration of the seabed area beyond national jurisdiction and the development of its resources could provide a model for global cooperation in other areas with immense impact on policies, politics, and the future of our planet. Failure of this experiment, on the other hand, could have highly adverse consequences for the development of those cooperative legal, political and economic institutions which are becoming essential to the survival of an ever more sophisticated and complex industrial civilization.

In its present form, the Constitution for the International Seabed Authority proposed by the Single Negotiating Text raises a number of problems which would make it difficult for the Authority to play a useful role and perhaps even to survive. Some of the negative factors involved are:

(1) A discrepancy or disproportion between structure and function. The structure is most complex, comprehensive -- and costly; the function will turn out to be very, very limited. The mining of manganese nodules from the deep ocean floor of international ocean space will be of minor importance for the foreseeable future, creating an income that will not even be sufficient to pay for its own costs, much less, to contribute to the development of the poorer nations.

(2) Restriction of jurisdiction to the seabed and ocean floor beyond national jurisdiction, without regard to the interactions between the seabed and the water column and their uses by man;[1/]

1/ Article 1 (a) provides an interesting opening towards including

Section II: <u>Institutional Requirements of the International Management of Fisheries</u>

<u>General comments</u>

Part II of the single negotiating text makes repeated reference to the need for international management measures both with regard to the conservation of the living resources within the economic zone and with regard to the "high seas." Since very few species complete their life cycle within the economic zone of any one State (and even where they do, the species, animal or plant, lower on the food chain, on which they depend, may not) and since pollution moves accross national boundaries, no management system for national ocean space can be effective if it is not complemented by and integrated with an international system. This is recognized in Articles 50 (2) and (5); Article 52 (1) and (2) and Article (2) and (3) of Part I of the Negotiating Text. Articles 103-107, furthermore lay down certain principles for the management and conservation of the living resources in the High Seas. "Appropriate subregional and regional organizations" are postulated in Article 105, but neither their required functions nor their competences, nor their structure are in any way described. The present section offers some suggestions as to how this lacuna could be filled.

<u>Present Arrangements for Management of Fisheries</u>

Although the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas contains a definition of "conservation" and admonition to States Parties to take appropriate conservation measures, such management as there now is of fisheries in international waters and of resources which inhabit waters under more than one jurisdiction is done under the auspices of regional and specialized fishery bodies. These have increased in number and scope since 1946 until they now appear to cover practically the entire ocean. This full coverage is, however, illusory if one is concerned with function. The range of scope and competence of the fishery bodies is

extremely wide. In the North Atlantic two regional Commissions (ICNAF and NEAFC) have comprehensive responsibility for practically all resources in their respective areas, and count as members practically all the coastal nations and others fishing there; the members are all "developed" countries, they are supported by strong research efforts, and are engaged in both overall regulation of fishing and the allocation of shares of the fish yields among participants. In the North and Central Pacific, on the other hand, research and management are fractured, bodies have limited competence as to species responsibility and limited membership; there is no regional scientific advisory body with the prestige and effectiveness of ICES, for example. Elsewhere, off the West Coast of Africa, e.g., the characteristics of the existing bodies are that their members are a mix of coastal, developing countries and powerful Northern Hemisphere countries whose ships have, in recent years, come down to fish in the area. The wide variety of situations and arrangements has been well documented elsewhere and needs no repetition here. Our main concerns are the scope of competence, the orientation of the policies of these bodies, and their links with the global international system, that is, with the UN family.

As to scope, the fact that some bodies are species-oriented and others are regionally comprehensive, creates a problem of overlapping competence. Thus tunas in the North Atlantic are within the purview of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and of ICNAF, and NEAFC as well as ICES. In practice arrangements can be made relatively easily for a "leading role" to be taken by one organization, and the work reasonably coordinated. This is, however, only feasible so long as the various stocks of fish are considered to be more or less independent of each other. But as the exploitation of living marine resources becomes more intense and also diversified, independence becomes a less viable assumption;

increasingly man continues to exploit a "traditional" stock while beginning to catch the organisms which form its diet or are competitors with it or otherwise ecologically related. The mix of "species and area" bodies (especially those latter having limited authority) will not be able to cope with the new ecological problems arising from intensive use.

A "species" coverage can cover large gaps in overall responsibility. The outstanding example is the Antarctic ocean. We have become accustomed to think of Whales as the only important living resource exploitable in that area, and they are the responsibility, for better or for worse, of the International Whaling Commission (IWC). Now, however, the interest of Northern Hermisphere nations is turning seriously also to the shrimp-like "krill" (main food of some whales) and the Antarctic fish which are far from negligible in abundance. Management of these cannot be achieved solely through the creation of an "Antarctic ocean fisheries commission" if that has no interest also in whales, since the definition of a rational and equitable exploitation policy necessarily must take into account all the resource stocks and the biological interactions between them.

The policies of the fishery commissions were based originally on the assumption that management is the responsibility of those nations which exploit the resources -- or rather of the nations whose flags are flown by the fishing vessels. In regional bodies recently established under the auspices of FAO -- since 1958 -- the interest of the coastal States is, of course, recognized, irrespective of the level of their fishing activities. Nowhere, however, is the interest of the world community explicitly recognized, even for resources far offshore. The over-exploitation of whales by a few nations gives, again, a dramatic example.

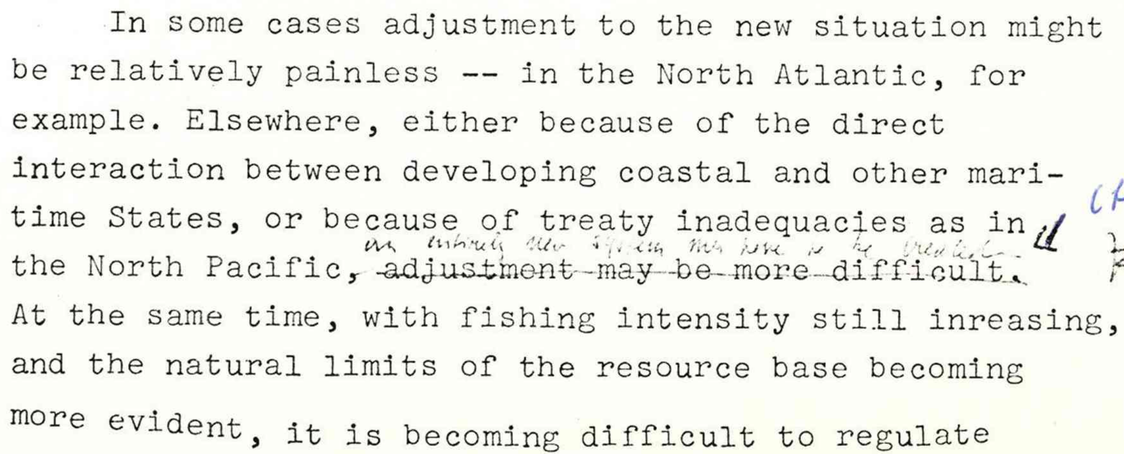
It can be, and indeed has been, maintained with economic arguments to back it, that if those nations deplete such a resource, they will suffer the consequences in loss of profits, food products and employment. By their actions, however, they have denied to the rest of the world the possibility of securing some part of a very large protein source for the half-century it will take for the Southern Hemisphere whale stocks to recover. Further, if the "krill" is exploited intensively -- by some nations -- in the next ten years, as now seems very likely, the whale stocks will recover even more slowly, if at all. Thus, agreements through treaty organizations to limit catches, and to share them among present participants, while being immensely better than a cut-throat free-for-all, do not ensure either that the resources are maintained in such a state that they can be harvested on a continuing basis, or that the yields are shared equitably as between either present peoples or between the present generation and its descendants.

As to the relations of the fisheries bodies with the United Nations system, there has been no progress, even regression, in the past three decades. Some new bodies were established soon after the end of the Second World War with provision in their Convention that they might seek association with, even integration in, the emerging UN systmm; in no case did they elect to do so. The majority of regional and specialized fishery bodies were created outside the system and stayed there.Notwithstanding constitutional impediments noted above, a number of bodies were, however, established under the aegis of FAO, under a number of different constitutional provisions. These FAO bodies, covering the Mediterranean, Central Eastern Atlantic, S.W. Atlantic, Indo-Pacific, Indian Ocdan, and most recently the Caribbean, all contain a majority of developing countries as members, Most derived their funds entirely

from the completely inadequate FAO regular budget and are correspondingly crippled, although some -- notably the Indian Ocean Fisheries Commission (IOFC) -- have been able in recent years to secure support through UNDP projects. Although all fishery bodies work through the voluntary action of each member State following collective decisions, the force of these decisions varies greatly among the bodies, and those established under FAO are generally weaker than the others; none have yet taken firm management decisions, although in some cases tentative steps are now being taken in that direction, (for example, by the General Fisheries Council for the Mediterranean GFCM, a quarter century after its establishment).

Future Arrangements for Management of Living Resources

It seems evident that any decisions taken by the UN Conference on the Law of the Sea regarding the resources living within Exclusive Economic Zones will greatly affect the existing fisheries bodies most of which are concerned, at present, overwhelmingly with the exploitation of resources within 200 miles off... one coast or another. The need for regional arrangements will remain because few of the resources live wholly within one national economic zone. Without agreement among the fishing nations, whether they are groups of adjacent countries, or including others, national management is inconceivable in most cases.



In some cases adjustment to the new situation might be relatively painless -- in the North Atlantic, for example. Elsewhere, either because of the direct interaction between developing coastal and other maritime States, or because of treaty inadequacies as in the North Pacific, ~~adjustment may be more difficult~~. At the same time, with fishing intensity still inreasing, and the natural limits of the resource base becoming more evident, it is becoming difficult to regulate

1/ If properly coordinated by a global organization such as COFI, almost all fisheries commissions could function more effectively on a regional rather than on a species-oriented basis. This will avoid overlaps of competences, duplication of efforts, and cut down on the number of commissions. There are two, however, which can only function on a species-oriented and global basis, and that is an international Tuna commission and an international whaling commission. The competence of this latter should be broadened, making it into an international commission for Marine Mammals.

fishing in one region without having significant repercussions elsewhere. Regulation of tuna fisheries in the Pacific can cause vessels to move into the Atlantic; closure of some exclusive economic zones to foreign vessels will certainly lead to the deployment of these vessels elsewhere. It seems therefore that this period of adjustment is one during which a new global view of the future of the sea fisheries can be taken.

There have been suggestions that a new world fishery organization should be established, and even that such a body need not absorb the Department of Fisheries of FAO and its COFI, but could act in a complementary manner.[1] It seems desirable at the present time, however, on the one hand not to encourage the multiplication of partially competent organizations, nor on the other hand to substitute a new body for the FAO-based structures, provided that the latter can be adapted to present and future needs. The body which was established to take a global view, but which has hardly yet been able to do so, is COFI. To fulfil its role in the new situation considerable change is required. Such change might be modelled on the IOC which, while remaining administratively in UNESCO, has far more operational independence, enhanced by the growth of separate financial resources in its Trust Fund.[2] Thus COFI should be able to accept membership by States not members of FAO; membership should not be subject to

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1/ See, e.g., A.W. Koers "International Regulation of Marine Fisheries," 1973.

2/ It may be premature to discuss the possibility of severing IOC from UNESCO and COFI from FAO. But once it has been decided that a system of ocean space institutions should be established, it would be more logical for COFI and IOC to become an integral part of that system while maintaining cooperation and consultation with FAO and UNESCO respectively than to remain within the restrictive framework of these organizations while maintaining

a cooperative and consultative relationship with
the other ocean space institutions (the International
Seabed Authority and IMCO).

approval by executive organs of FAO; COFI should have a clearly identified and adequate secretariat; it should serve the other Agencies of the UN System, as IOC serves others than UNESCO; it in turn, should be served, as is IOC, by an advisory system, including but not confined to the ACMRR.[11] COFI should be enabled to accept and expend funds in addition to those provided by the FAO regular budget.[12] An additional feature of the style of operation of the IOC is the growing role of the elected officers -- the Chairman and the six vice-chairmen. These officers working closely with the joint secretariat contribute very much to both the formulation and implementation of the IOC program. They are unpaid (although some remuneration has been suggested) but they devote considerable time to their duties, and also each takes on specific areas of responsibility. A corresponding evolution of COFI could contribute to its status and effectiveness.

Changes on the above lines would put COFI into a position of more authority with respect on the one hand to the regulatory fishery bodies and on the other hand to the other special organs of the world system concerned with the ocean -- IMCO, IOC, and the proposed International Seabed Authority. At the time of establishment of COFI it was stressed by FAO that its purpose was "to supplement but not to supplant" the existing international fisheries bodies. The intent was that it should not be suspected of having been given a coordinating role. Such a role must however now be taken, and COFI can be the appropriate body for this purpose. A failing of the 1958 Geneva Conventions was that no organ was assigned continuing responsibility for keeping under

1/ No fisheries management system can function without independent scientific research capacity. The question may be raised whether a restructured COFI, coordinating a system of regional and functional management systems, should have its own scientific arm, or whether the scientific capacity should be lodged in a restructured IOC. Considering the interdependence of fisheries research with other branches of oceanographic and meteorological research, the latter alternative seems preferable and will be discussed in Part II, Section 4.

2/ Additional funds might accrue to COFI from licensing fees as well a from the revenues of an Enterprise.

review the implementation of the provisions in them with respect to fisheries. COFI should be required to fulfil that function with regard to the provisions laid down by UNCLoS, and as IMCO already does, through convening review conferences relating to the various conventions for which it is responsible. Specific mechanisms need to be created to ensure that the business of regional fishery bodies is conducted in accordance with general guidelines and principles established by global authority, including particularly the principles of the New International Economic Order. One such mechanism might be a Council of designated governmental representatives of the fishery bodies, or their elected officers, under the auspices of COFI and reporting to it. An important function of COFI would then be to examine the actions taken by the fishery bodies and evaluate the likely consequences of them with respect to the principles of the New International Economic Order. COFI should be given a special responsibility for overseeing the development and conservation of fisheries in the areas beyond national jurisdiction, and the actions within national jurisdictions which may affect the open ocean resources. This may imply, on the one hand, the adoption of a system of non-discriminatory licensing of commercial fishing in international ocean space;[1] on the other hand, and as a longer-term proposition, one might conceive of an International Fishing Enterprise, established on the pattern of the nodule mining enterprise proposed in Part I of the Single Negotiating Text. Such a public International Fishing Enterprise might be the only -- and, at any rate, the quickest -- way to include developing nations in the management and exploitation of the living (especially nonconventional) resources in the international area[2] -- especially in the Antarctic, from which

1/Such a system has been proposed e.g., by Francis Christy. See, for details UN Document A/AC 138/53, Articles 138-140.

2/ This should deal not only with marine animals but also with marine plants. The large-scale farming of kelp and other marine plants, not only in areas near the coast, but in international ocean space is rapidly becoming a practical possibility. The potential benefits, in energy resources, food, petrochemicals, and pharmaceutics, is enormous. See Appendix II. Technologies for the large-scale farming of marine plants are now being developed by the industrialized nations. Their application and R&D should be taken over as quickly as possibly by the international community through the appropriate ocean institution. Where this kind of ocean farming will be undertaken within the economic zone, it will nevertheless affect international ocean space (e.g., by attracting fish or changing theeir route of migration; by affecting the weather or changing the flora and fauna in the region). Where it takes place in international ocean space, légal and economic issues, analogous to those raised by seabed mining, are bound to arise. See also UN Document A/AC/138/53, Article 141.

they would remain excluded due to the lack of technology. In addition, COFI should be given the authority, directly or through the establishment of a new body permanently associated with it, to regulate the development of industries based on living marine resources south of the Antarctic convergence, including the marine mammals (whales and seals) in that region. It might be empowered to delegate in certain cases such authority to other existing bodies, such as the IWC, and the group of Antarctic Treaty nations, but ultimate responsibility should stay with the world community as represented through a strengthened expanded COFI.

In accordance with Part IV of the Single Negotiating Text, COFI[1/] should establish machinery for the settlement of disputes related to fisheries. This would include keeping a list of legal, administrative and scientific experts from which parties to a dispute could, for any given case, select a special committee of five members. The Secretary or Director general of COFI should be empowered to make the selection if the parties fail to come to an agreement. The committee should have power to prescribe such provisional measures as it considers appropriate to be taken to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending its final decision. These measures should be binding on

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1/ Part IV of the Single Negotiating Text assigns this new function to FAO as a whole rather than to COFI which, in its present form, would not have the necessary authority. Since it is COFI, however, and not FAO as a whole, that deals with fisheries, the function should be assigned to a strengthened and restructured COFI, not to FAO as a whole, which deals with other aspects of food and agriculture, not related to the oceans. If FAO, as a whole, were to assume the function of dispute settlement with regard to marine affairs, why should not UNEP do the same with regard to pollution of the marine environment? Part IV of the Single Negotiating Text assigns

I. The Ongoing Evolution of IMCO

Among the intergovernmental organizations concerned with ocean space, the Inter-Governmental Consultative Organization (IMCO) is the one closest to being ready to take its place as a "basic organization" in a "functional confederation of international organizations." For IMCO is a specialized agency and as such an independent intergovernmental organization already in close relationship with maritime and environmental bodies of all kinds, intergovernmental and nongovernmental. It has its own membership. constitutional structure and budget, and its purposes are:

(a) to provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation;

(b) to encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination;

(c) to provide for the consideration by the Organization of matters concerning unfair restrictive practices by shipping concerns in accordance with Part II;

(d) to provide for the consideration by the Organization of any matters concerning shipping that may be referred to it by any organ or specialized agency of the United Nations;

(e) to provide for the exchange of information

among Governments on matters under consideration by the Organization.

The Treaty which created IMCO was concluded on March 6, 1948, but did not enter into force for a decade afterwards, in part because of hesitations by some maritime countries about purposes (b) and (c) above. The Organization did not in fact exist until 1959 when its headquarters were established in London.

IMCO consists of an Assembly of all the Member States (including one Associate Member, Hong Kong), a Council of eighteen Member States, a number of functional Committees and Sub-Committees and a Secretariat of under two hundred international civil servants.

At the beginning, the Council of IMCO was composed of sixteen Members all of which had either large or substantial interest in shipping or seaborne trade and only some of which were elected by the Assembly. The first functional Committee of IMCO was the Maritime Safety Committee and this, too, was composed of States with important interests in shipping, sixteen in number and elected for four years with eligibility for re-election.

The expansion of the United Nations membership and the growing interest of developing countries led in the mid-1960s to amendments of the IMCO Convention to expand to eighteen States the membership of the Council and sixteen for the Maritime Safety Committee.

These amendments not only increased the membership but provided that all Council Members would be elected by the Assembly and introduced the principle of equitable geographic representation in both Council and Maritime Safety Committee.

The amended Convention is still in force, but in 1974 a further expansion took place when the Assembly of IMCO "recognizing the need to ensure at all times that the principle organs of the Organization are representative of the total

membership of the Organization and ensure equitable geographic representation of Member States on the Council" adopted a new series of amendments (expected to enter into force in the near future) expanding the membership of the IMCO Council to twenty-four and opening the Maritime Safety Committee to all Members of IMCO.

IMCO has thus been going through a process of enlargement of its membership and democratization of its structures. A widening of its scope of operations has accompanied these developments, and new Committees have been created as described below.

In part, this process reflects the enormous expansion in the uses and users of ocean space since the early years after World War II, when the idea of a new international maritime organization arose from the activities of Governments.

In those days, the nations which dominated international shipping and sea-borne trade naturally saw a need, and had the power, to dominate any new body which considered such matters as "discriminatory action and unnecessary restrictions by Governments affecting shipping" or "matters concerning unfair restrictive practices by shipping concerns." They were instrumental in putting these questions into the deep-freeze from which they have never emerged. They achieved their purpose so well that matters of a commercial or economic nature, which could have been dealt with under the IMCO constitutive treaty, were in fact not dealt with. They had to be taken up in other places, such as UNCTAD, where the "maritime States" have not had a predominating influence.

IMCO has made its mark in the area of international technical and legal legislation where expertise is all-important, but where economic considerations still have their place. The importance of maritime safety -- not the least for the preservation of the marine environment -- is so great that the work of the Maritime Safety Committee

was the ~~principal output~~ of the Organization for a decade. Aids to navigation including radio and satellite communication; the construction and equipment of vessels; the handling of dangerous cargoes; safety procedures and requirements for mariners, including the International Regulations for Preventing Collisions at Sea; life-saving appliances; standards of training and watchkeeping; containerization; fire protection; load lines; search and rescue -- these and many other matters directly involving maritime safety and efficiency of navigation have formed the ongoing consultative work of IMCO. From 1954 onward (and therefore five years before the Organization was actually in being) it was foreseen that IMCO would also be responsible as the "bureau" for the International Convention for Prevention of Pollution of the Sea by Oil. This treaty, in force since 1958 and amended in 1962, covers between 90 and 95 percent of the world's deep-sea shipping and tanker fleet.

It was this interest in pollution prevention and control and in maritime safety in general that led to the calling of an extraordinary session (the third) of the IMCO Council on May 5, 1967 to consider what the Organization could do on the intergovernmental plane to deal with massive marine pollution resulting from ships' casualties. The representatives on the Council, with the _Torrey Canyon_ incident fresh on their minds, adopted an 18-point program which included matters not theretofore considered collectively by IMCO, namely legal questions arising, first, from "intervention" for self-protective purposes by a State which suffers or is threatened by pollution damage from a ship of a foreign flag, and, second, from the need to compensate victims of large-scale marine pollution by oil.

Two additions have been made to the IMCO structure in consequence of this interest in anti-pollution and related matters. One was the creation by the Council of a _Legal Committee_ which first met as an ad hoc body in June 1968 and has held nearly thirty sessions since. The second was

the establishment of the Marine Environment Protection Committee by decision of the Council confirmed by the eighth session of the IMCO Assembly in November 1973. The first session of the MEPC met on March 4, 1974.

Both new Committees consist of all Members, each Member having one vote, and without discrimination among powerful maritime States and others.

The Legal Committee has launched a growing number of projects ranging from pollution and nuclear matters to wreck removal and liabilities for ships' passengers and their luggage. The MEPC has undertaken a heavy program concerned with such matters as provision of reception facilities in ports for pollutants, procedures for the discharge of noxious liquid substances, performance standards for oily water separators and oil content meters, development of standards and test methods for sewage treatment plants, a comprehensive anti-pollution manual for mariners and a comprehensive plan for the protection of the marine environment from pollution from ships.

In addition, the Organization has begun looking into the prickly question of sub-standard ships -- unsafe vessels which ply the seas in spite of the almost universal applicability of the International Convention for the Safety of Life at Sea, of 1960. The pollution treaties and the Load Lines Convention, 1966, also contain standards which are not always enforced by shipowners and masters as they should be. Both the IMCO study of sub-standard ships and the work of the Legal Committee on legal enforcement of the anti-pollution treaties is expected in due time to help alleviate the problem of maritime law-breaking.

IMCO has an expanding program of technical assistance in the field of marine pollution, and is endeavoring through symposia, technical advice to developing countries and other means, to sustain and expand international standards of safe navigation and environmental protection.

The enlargement of the structure and of the scope

of IMCO's activities necessitated another series of amendments, which were agreed upon by an Ad Hoc Working Group in February, 1975, and will be submitted to the next IMCO Assembly (1975) for action. These amendments include a restatement of the Purposes of the Organization, which now include legal matters and the prevention of marine pollution from ships. They also open the door towards a further enlargement of scope and increased cooperation with other organizations.

With regard to the enlargement of scope, the present Convention states in Article 49 that

> subject to approval by a two-thirds majority vote of the Assembly the Organization may take over from any other international organizations, governmental or nongovernmental, such functions, resources and obligations within the scope of the Organization as may be transferred to the Organization by international agreements or by mutually acceptable arrangements entered into between competent authorities of the respective organizations."

Under the new amendments, IMCO would, in addition, be very broadly empowered to "perform tasks...assigned by it under international instruments relating to maritime matters" (Article 3 (d). Article 30 (b) stipulates that the Maritime Safety Committee "shall provide machinery for performing any duties assigned to it...by or under any other international instrument and accepted by the Organization." The Secretary-General or IMCO, likewise, is empowered to "assume any other function which may be assigned to him by the Assembly or the Council"(Article 49).

With regard to cooperation with other organizations, the Present Convention (Article 48) enables cooperation with any specialized agency of the United Nations in matters which may be the common concern of IMCO and the other specialized agency in question. Article 26, furthermore, provides that "the Council may enter into agreements or arrangements covering the relationship of the Organization with other organizations," subject to approval by the Assembly. This Article is strengthened by the new proposed amendments, by the addition of a second section (b):

"Having regard to the Provisions of Part XIV and to the relations maintained with other bodies by the respective Committees...the Council shall, between sessions of the Assembly, be responsible for relations with other organizations.

Thus it is clear that the evolution of IMCO has not come to its end. The expansion of its membership will continue, and the role of the developing nations will grow. At the time of the first IMCO Assembly in January 1959, approximately half of the thirty-two Members were developing countries. In the present membership of ninety, the preponderance of these countries is closer to two-thirds. There is likely to be a further democratization of structure: thus the structure of the Council, which still discriminates between nations with strong maritime interests and others, has become somewhat obsolete in an over-all structure which has abolished this discrimination in all its other organs. And the enlargement of activities is likely to continue in response to the requirements arising from the new law of the sea and the building of a new international economic order in ocean space.

II. IMCO and the New International Economic Order

The Informal Single Negotiating Text deals with navigation in Part II. Articles 14-23 define and assure innocent passage in the territorial sea; and authorize the coastal State to enact laws and regulations with regard to the safety of navigation and the regulation of marine traffic, the protection of navigational aids, facilities and installations, the preservation of the environment and the prevention of pollution; tankers and ships carrying nuclear or other inherently dangerous or noxious substances.

Articles 24-32 contain rules applicable to merchant ships and government ships transiting the territorial sea. Articles 34-44 deal with passage through straits used for international navigation. The section on Economic Zone grants freedom of navigation to all ships of all States, and has no other reference to navigation. The section on the High Seas grants freedom of navigation (Article 75), deals with the nationality of ships and the question of flags of convenience (Articles 77-80) even though this treatment is inadequate and lacks enforcement measures. Articles 81 and 82 grant immunity to warships and State-owned or -operated ships on the High Seas; Articles 83 and 84 deal with collision. Article 85 has survived from very old times and deals with the transport of slaves in ships; Articles 86 - 96 deal with the suppression of piracy, traffic in narcotics and unauthorized broadcasting from the high seas; Article 97 deals with hot pursuit; Article 98, with the preservation of the marine environment; Articles 99-102, with the protection of cables or pipelines from ships. Passage through archipelagic waters is defined in Articles 124 -130.

Implicit reference to the work of IMCO can be found in Articles 19, 39, 40, 42, 47, 80, 125, and 128. Its services -- as of a "competent international organization" -- are invoked only in Articles 19 and 40, in connection with the designation of sea lanes and the prescription of traffic separation schemes in territorial waters and in straits. The concept of freedom of navigation is still pervasive. The recognition that the nature of modern sea traffic and the interaction of uses of ocean space is such that there is a need for a management system and that, just as in the case of resource management or the management of science and technology, this system must have a national and an international component is advancing only slowly. As it advances it is likely that the

role of IMCO in making and executing laws and regulations on navigation will increase together with its managerial and operational capacity. This will require some adjustments in the Articles enumerated above -- as well as a further enlargement of the Statement of Purposes of IMCO which will have to include something like "the regulation of international navigation in ocean space, in accordance with international law and the laws of coastal States, and with due regard for other uses of ocean space."

If the injunction of the Sixth Special Session of the General Assembly, that all U.N. institutions and agencies must contribute to the realization of the Programme of Action for the establishment of the New International Economic Order, then it will be necessary to take economic and commercial issues out of IMCO's "deep freeze." The advancement of the shipping capacity of the poorer nations, assuring their fair share in shipping tonnage and international sea-borne trade must be included among the stated purposes of IMCO and be reflected by the Articles of the Law of the Sea.

Implementation must take place on various levels, and IMCO has moved into some.

Shipping is largely training as far as developing economies are concerned. Ships can be bought, and in many developing countries there is now no shortage of money to buy them. What is lacking is trained personnel, and this training takes about 12 to 15 years. IMCO has a technical assistance program of a magnitude out of all proportion to the size of its Secretariat and basic work program. A network of marine academies has been created on all continents. The IMCO center in Alexandria, Egypt has developed into a real university. Fourteen Arab States send people to acquire the whole spectrum of maritime training. There are other centers either in being or well along in planning in Saudi Arabia, Quatar, Iraq, Ghana, Nigeria, the Ivory Coast, Brazil, Indonesia, Malaysia, the Gilbert and Ellice Islands and

elsewhere.

IMCO estimates that from 6 to 7 percent of the world fleet is now held by developing countries. The more optimistic members of the IMCO Secretariat think that in less than a generation the developing nations might take over the world's shipping completely.

Crew training, however, is not the only problem. IMCO has two projects in Korea for shipbuilding and repair. It has a fellowship program for maritime technology. IMCO enjoys the unanimous support of the Member STates for all this activity, and it is the Secretary-General's goal that there should not be any under developed countries with regard to shipping in about 15 to 20 years.

There are other obstacles to overcome, however, and other estimates and predictions are less optimistic. A series of UNCTAD reports have documented that the developing countries share of sea-borne trade is very small indeed (the figures coincide with those of IMCO), but, contrary to IMCO's assessment, UNCTAD points out that this share is steadily declining. In "Review of Maritime Transport," 1973 (TD/B/C.4.114), prepared for the Sixth Session of the Committee on Shipping, April 9, 1974, UNCTAD came to the following conclusions:

> The relative share of tonnage under the flags of develping countries dropped further in 1973, though only slightly, as compared with 1972. As against 7.3 per cent in 1965, the share of tonnage of this group of countries accounted for 6.4 per cent in 1971, 6.1 per cent in 1972, and 6.0 per cent in 1973.

In other words, the industrialized countries are still exercising a virtual monopoly over shipping while sea-borne trade increased from 1,080 million metric tons in 1960 to 2,861 million in 1972, that is, almost trebled. (Hernan Santa Cruz, ____________________________)
This, of course, is inherent in the whole structure of the multinational shipping business which, through the so-called liner conferences, tends to more and more cartellized and -- given the lack of international regulation --

escapes national regulations through flags of convenience of countries of so-called open registry.

This problem has, over the last decade and a half, assumed dimensions which are rather alarming: a threat to the safety of navigation, to the ocean environment, to labor standards and human rights, and to economic equity. (see, in particular, Esko Antola, "The Flag of Convenience System: Freedom of the Seas for Big Capital," in

Distinguish

In 1972, one fifth of the world's tonnage was flying flags of convenience, and the figure is still going up. Of the world's tanker tonnage alone, 27.5 percent was flying the Liberian flag in 1973. The owners frequently are the great multinational corporations, including Chevron Shipping (Standard Oil of California), Texaco Inc., Shell Transport and Trading Co., or United Fruit Co. As is well known, the open-registry countries offer lax construction standards; ships are minimally manned with crews mostly recruited from low-wage areas (Asia and AFrica). Equipment and working conditions are often poor. Some of the most clamorous accidents in the last years -- e.g., the Torrey Canyon's involved ships and tankers sailing under flags of convenience. According to ILO statistics, the figure for the loss of total tonnage and break-up is considerably higher for flag of convenience ships than the world average. E.g., the loss figures for the Lebanses fleet between 1966 and 1970 was 3.84 percent, and for the Cyprian fleet, 4.42. Break-up records were 20.94 for Labanon and 12.58 for Cyprus. The world average figures are 0.40 for losses and 1.92 for break-up!

IMCO has made some efforts to cope with the problem of "sub-standard ships," and conceivably may solve it within the next few years. But safety, of course is only one aspect of the problem of the flags of convenience. The Law of the Sea Conference is trying to establish some

criteria for the conditions of ship registration, but there is no international authority to enforce these criteria, nor even to inqure in how far they are enforced nationally.

There are two ways of dealing with the problem of open registry and flags of convenience.: correctively or preventively.

The Maltese Draft Ocean Space Treaty deals with it correctively. Article 8 (7), reads:

> Vessels lying in or traversing International Ocean Space may be subject to proceedings before the International Maritime Court and to penalties if it is found that they
>
> (a) Are registered at the same time in more than one State;
> (b) Have the nationality of more than one State or have the nationality of no State or are not entitled to fly the flag of an intergovernmental organization;
> (c) Are flying the flag of a State that does not effectively exercise its jurisdiction and control over them in administrative, technical and social matters;
> (d) Do not possess documents proving their right to the flag they are flying;
> (e) Do not conform to such technical, safety and social standards and regulations as may be prescribed by the International Ocean Space Institutions in accordance with the present convention.

As a preventive approach, one might envisage an international licensing system for ships, as proposed by a group of experts at the University of Wales and presented by Professor Peter Fricke at Pacem in Maribus V (Malta, 1974). Such a licensing system, Fricke said, would in fact provide an "international passport"for merchant vessels which would allow them to trade in the seas of the world. It would be issued only upon evidence that the ship satisfied pollution regulations, was propoerly insured, and properly manned and constructed. Fricke suggested that such a licensing system could be "set up as an extension of some form of international authority, possibly IMCO slightly revised and developed."

The license would provide a basis for freedom of

of navigation. For the license would define a vessel as being "innocent," and thus entitle it to innocent passage (obviously, without abrogating from a coastal State's right to designate sea lanes and prescribe traffic separation schemes and other safety measures).

An effective international licensing system obviously would put the countries of open registry out of business. Ideally, the new law of the sea should combine the preventive and the corrective approach, and the licensing of ships should be entrusted to a strengthened IMCO.

To deal with the progressive cartellization of the shipping business -- to the exclusion of the poorer countries -- UNCTAD has proposed a Code of Conduct for Liner Conferences, to insure that the interests of ship-owners and users are kept in balance, and to strengthen the position of small companies and national fleets against the giant cartels, by the general principle that 40 percent of a country's foreign trade should be carried out by national merchant fleets, and only 20 percent should be left to a third party (40-40-20). Whether it is realistic to look for a national alternative to a development that has become probably irretrievably internationalized is an open question. Possibly the only realistic alternative to private internationalization, benefitting rich companies and rich countries, is public internationalization, benefitting the rich and the poor alike. Some way would thus have to be found to bring the Liner Conferences from the private to the public sector, or at least to a mixed private/public sector: either by stipulating that Liner Conference decisions, to be valid, have to be approved by the IMCO Assembly; or by making Liner Conferences into "Public International Enterprises under the political control of the IMCO Assembly. If the New International Economic Order is to become concrete, IMCO, and the Law of the Sea, will have to deal with the multinationals and their cartels in shipping just as the International Seabed Authority will have to deal with the multinationals

operating on the seabed.

If the International Seabed Authority can be considered under some aspects as a structural model, one might examine the possibility of giving IMCO an operational analogue to the "Enterprise." This operational arm might be an International Sea Service whose main purposes would be: to assist in the implementation of expanded marine scientific activities of the U.N. system; to assist in pollution monitoring activities; to serve for the transport of relief supplies, the provision of speedy emergency assistance in cases of natural disaster; and to assist in the training of maritime skills and techniques, especially with regard to the manpower of developing nations (see Pardo, Statement to the Second Committee of the General Assembly, November 24, 1971, in The Common Heritage, Malta, 1975).

The International Sea Service should be managed by IMCO -- as should, in the opinion of this writer, the marine satellite system which instead is presently being planned as a separate Corporation INMARSAT, with its own Council and its own Assembly. This might contribute to the further proliferation of international organization and the dispersion of their activities. It would run counter to the recommendations of the Programme of Action for the Establishment of a New International Economic Order, calling for streamlining and integration. IMCO would be strengthened, and its activities better integrated if INMARSAT, as well as the International Sea Service were "Enterprises" under IMCO's control and management. V insert 14a

~~To conclude~~ Summary: The process of restructuring and strengthening of IMCO is well on its way. With the amendments of

Part IV of the ISNT suggests a further expansion of IMCO's functions and structure. Annex II B proposes, in Article I, that any dispute between two or more contracting parties concerning the application of the articles relating to pollution of the Convention, if not settled by negotiation, shall, at the request of any of the parties to the dispute, be submitted to a special committee of five members, appointed by agreement between the parties and selected from a list of experts on scientific and technical marine polluton problem established by the Inter-Governmental Maritime Consultative Assembly Organization. Article 2 establishes that if the parties fail within a period of three months, the members of the special committee shall, at the request of any party to the dispute, be appointed by the Secretary-General of IMCO. Articles 3-5 provide further details regarding the functions of the committee of arbitrators which, according to Article 6, shall give its decision within five months (except in cases of emergency) of having been set up.

As noted elseshere in these pages, it seems surprising that IMCO (rather than UNEP) should deal with disputes arrising in connection with pollution from all sources. It might be preferable to limit IMCO's jurisdiction to ship-borne pollution.

On the other hand there exists a proposal for exactly the same kind of arbitration process in UNCTAD's proposed Code of Conduct for Liner Conferences. According to the UNCTAD proposal, the list of experts should be kept by the U.N. Secretariat in Geneva, which should also be responsible for the setting up of the Committee.

It would appear redundant to have two different special procedures for dispute settlement with regard to navitation: one for pollution, established under IMCO, and one for economic issues, established under the U.N. Secretariat in Geneva. Considering also the possibility of overlaps between environmental and economic issues, it might be more rational to merge the UNCTAD and the ISNT proposals and establish one special procedure for the settlement of any dispute arising from navigation, under IMCO.

This might be an important step toward the enactment of the proposed Code of Conduct and it would strengthen IMCO's role in the building of the new international Economic order.

1974 and 1975, IMCO could well take its place as a "basic organization" in a functional federation of international organizations dealing with the peaceful uses of ocean space and resources.

Additional, long-term changes, apt to strengthen IMCO's contribution to the building of the new international economic order, might include:

1.A restructuring or IMCO's Council, omitting discriminatory criteria;

2. An international licensing system for ships, to cope effectively with the problem of the flags of convenience or open registry;

3. Effective control of shipping cartels and liner conferences;

4. a strengthening of the operational aspects of IMCO's services, including control and management of INMARSAT and an International Sea Service.

5. Establishment of a special procedure for dispute settlement in connection with all issues arising from navigation.

Section IV; Institutional Requirements of International Scientific Research, the Transfer of Technology and the Preservation of the Marine Environment.

The Evolution of the Inter-Governmental Oceanographic Commission.

The IOC was established, as a semi-autonomous organ within UNESCO, in 1960.

Realizing the need for dynamic and co-ordinated action in the field of marine sciences, UNESCO's General Conference, at its tenth session, held in Paris in November 1958, adopted a resolution which provided for the convening of an intergovernmental conference on oceanographic research. This conference, in the preparation of which the U.N., FAO, WMO and IAEA were closely associated, was held in Copenhagen in July 1960. It considered and approved a body of measures designed, on the one hand, to ensure the common use by the Member States concerned, of international services for oceanographic research and the training of personnel and, on the other hand, the immediate application of an international research and training program in marine sciences.[1]

The principal recommendation of the Copenhagen Conference was that an Inter-Governmental Oceanographic Commission be set up with the help, and within the framework, of UNESCO, with the task of recommending to Member States concerted action in oceanographic research. At its eleventh session, November/December 1960, the General Conference adopted the recommendation of the Copenhagen Conference and established IOC within the framework of UNESCO. In particular, it approved the funds needed and set up an office of oceanography to assure its Secretariat.

At its founding, IOC had 40 members -- all of which were developed States -- and a budget of $21,015, out of a total of $183,000, which, that year, constituted the total mount UNESCO Was spending on marine sciences.[2]

"UNESCO looks upon your Commission as an instrument which can be of great assistance in solving those problems of oceanography for which...concerted international action is imperative," UNESCO's

Acting Director General, Rene Maheu, said at the opening session of IOC, on October 19,1961.[13] "However, it should no doubt be said that there are many other problems which need to be examined by scientists, institutions or specialized laboratories, research work in which it is not the Commission's function to direct or to co-ordinate. Nor, it must be remembered, is it the Commission's duty to carry out meteorological research -- that is a function of WMO -- nor fishery research, which comes within the field of competence of FAO." On the other hand, Maheu pointed out, "it is desirable that in executing its programs, the Commission should cooperate closely with other institutions of the United Nations family, particularly with the United Nations Food and Agriculture Organization (FAO), the World Meteorological Organization (WMO), the International Atomic Energy Agency (IAEA), and all other competent intergovernmental and nongovernmental organizations, respecting their various fields of competence, but working together with them to arrange meetings and other forms of useful collaboration."

Thus IOC was burdened from the beginning with the ambiguity of its position within UNESCO and the complexities of relationships with other organizations. Both caused tensions, which induced an evolution sui generis, which may be rapidly reaching a point where the organization must either emancipate itself and become something resembling a "Basic Organization," or regress functionally and return into UNESCO's womb. Both trends are strong, responding to real needs and interests. The coordination of the International Decade of Ocean Exploration with its manifold and ambitious projects, for which IOC has assumed the responsibility, demands a strong organization. So do the needs of the growing number of developing nations among its membership. The great powers, on the other hand, on whose support IOC overwhelmingly depends, obviously wish to maintain their own control over scientific research. A strong international operative scientific organization might not always be subservient to their own interests.

Whether the tasks of the International Decade will eventually

call for IOC to become partly operational, i.e., to own and operate research vessels and ocean monitoring networks, has been discussed on various occasions. As one commentator put it, "First, if the IOC were to take on the function of operating programs itself, national governments might perceive the international management as a threat to their interests. Second, if programs operated were not congruent with the interests of national governments, these governments might well withdraw support. For these reasons the conduct of operations is not thought essential to IOC's capacity to implement Decade tasks."[4] And again: "...the Statutes and Rules of Proecedure do not specifically authorize the Commission to conduct operations, establish and enforce norms, or settle dispute. These functions have not been determined essential to IOC's achieving the tasks of the Decade. Should Commission members determine at a later time that any or all of these needs should be performed, they may amend the Statutes according to the amendment procedure."[5]

In 1969, the Statutes of IOC were revised. The Conference of Members was transformed into a regular Assemblyof Members and affiliated organizations. This is the supreme body of the organization. It adopts resolutions on program planning and implementation, establishes norms of conduct, creates guidelines for subsidiary bodies, and provides a forum for deliberations on all matters within the scope of the organization. The Assembly elects its own Chairman.

The Assembly elects the members of the Executive Council which, under the revised State, replaces the former Bureau and Consultative Council. The Executive Council meets between sessions of the Assembly, directs the work of the Secretariat and the subsidiary bodies. It adopts policy recommendations which, as a rule, though not in all cases, are submitted to the Assembly for approval. While the IOC Secretary reports to the Director-General of UNESCO, the IOC Chairman is responsible to the Member States directly, and member states need not even be members of UNESCO. Any STate that is a member of the United Nations or of any of its specialized agencies or subsidiary organizations, may join IOC. All this illustrates the ambivalent position

of IOC within UNESCO.

Through its Assembly and Executive Council, IOC may establish subsidiary bodies for specific projects. It has established well over twnty such bodies during the decade and a half of its existence. Some of these are groups of experts, others are intergovernmental bodies, responsible for the planning and coordination of such projects as the International Indian Ocean Expedition, the International Cooperative Investigation of the Tropical Atlantic, and the Cooperative Studies of the Kuroshio, Caribbean, and Mediterranean.

The mandate to establish formal collaboration with all interested organizations that contribute to the work of IOC and are to use, in return, the Commision for advice and review in marine sciences, led to the establishment of an Inter-Secretariat Committee on Scientific Programmes Relating to Oceanography, ICSPRO, consisting of IOC's Secretary and the Executive Heads (or their representatives) of the U.N., UNESCO, FAO, WMO, and IMCO: an "integrative machinery" within the field of marine sciences. The experience, over the subsequent years, was not encouraging. Integration at the Secretariat level turned out to be rather ineffective, and ICSPRO failed to produce the staff and budgetary developments that had been hoped for.

In the meantime, internal organizational tensions led, in 1972, to the separation between the administration of the Office of Oceanography of UNESCO, and that of the Secretariat of IOC. This was a decisive step in the direction of the emancipation of IOC from UNESCo. The possibility of detaching IOC even geographically and relocating it, e.g., in Geneva, to facilitate its cooperation with other organizations, and especially with the U.N. Seabed Committee, was under serious consideration, but was not acted upon.

The number of Member States of IOC had grown to 74, by 1972, including several developing and landlocked nations. It has now reached 86.

IOC's budget has been growing in proportion to the

increase in its activities in response to the demands of the International Decade. From the initial modest $21,015, constituting about one ninth of UNESCO's budget for marine sciences, the budget grew to $352,000 in 1971-2, constituting almost one half of UNESCO's marine science budget. In 1975-6, IOC's budget reached the unprecedented height of $2,601,000. Not all of this comes out of UNESCO's regular budget. In part it comes out of a special trust fund to which member States make voluntary contributions. But this is still a small fraction of the funds IOC is "co-ordinating" -- several hundreds of millions -- in contributions of member States to IOC-coordinated programs. These funds, however, come exclusively from developed nations. Only about a dozen of IOC's 86 members have an oceanographic capacity, and of these, five -- U.S.A, U.S.S.R., U.K., Canada and Japan -- contribute 75-90% -- an imbalance that is bound to reflect itself in the program, the priorities, and the structure of the organization. Developing nations, lacking research ships and capacity, simply cannot participate as equal partners in IOC activities. Many of them are not even interested and choose not to participate -- one of the reasons being IOC's weakness in fishing research which is of far greater interest to developing nations than geophysical research.6/ IOC's staff, furthermore, is drawn almost exclusively from developed nations. No staff members have been recruited from Africa and Asia, except Japan.7/

Obviously this imbalance must be corrected if IOC is to serve as the scientific arm of the new system of ocean institutions, or become a "basic organization" in a functional federation of international organizations.

Future Developments:

The Demands of the Informal Single Negotiating Text

The Informal Single Negotiating Text makes new demands on the international organization of science. IOC must respond to these, and it has already manifested its willingness to do so.

Thus Part III,"Protection and Preservation of the Marine Environment," prescribes the establishment of global and regional organizations "to formulate and elaborate international rules, standards and recommended practices and procedures consistent with this Convention, for the prevention of marine pollution, taking into account characteristic regional features" (Article 6); in Article 11, Part III of the ISNT postulates "international regional organizations" to

"(a) promote programmes of scientific, educational, technical and other assistance to developing countries for the preservation of the marine environment and the prevention of marine pollution."

The article then specifies that such assistance shall include, inter alia,

(i) training of scientific and technical personnel;

(ii) facilitation of their participation in relevant international programs;

(iii) supply of necessary equipment and facilities;

(iv) enhancing the capacity of developing countries to manufacture such equipment;

(v) development of facilities for and advice on research, monitoring, educational and other programmes.

Article 10 ("Development and Transfer of Technology") provides for the establishment of Regional Marine Scientific and Technological Centers with the following tasks, inter alia [2]/

a) training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geology,seabed mining and desalination technologies;

b) management studies;

c) study programmes related to the preservation of the marine environment and the control of pollution;

d) organization of regional seminars, conferences, and symposia;

e) acquisition of marine scientific and technological

data and information;

f) prompt dissemination of results of marine scientific and technological research in readily available publications;

g) serving as a repository of marine technologies for the States of the region covering both patented and non-patented technologies and know-how;

h) technical cooperation to the countries of the region.

~~The existence of such regional centers~~ The provision for such regional Centers will either remain dead letter, or, their establishment, unifying all marine scientific research, the preservation of the marine environment and the transfer ot technology, evidently would basically transform the existing international framework for scientific cooperation. These Centers must necessarily be <u>operational</u>: for how else could they serve regions where member States have no scientific operational capacity of their own?

Regional centers of this kind would be the most suitable instruments to bring developing nations into the international scientific community, to strengthen their scientific capacity, and to serve their research needs. The ISNT does not specify, however, how these Centers should be funded nor what would be their relationship to a global international scientific institution (IOC). Such a relationship evidently must be established, and it will require some basic changes within IOC itself. First, it will require the addition of a program on marine biology and fisheries research, equal, in qualitative and quantitative terms, to IOC's ongoing programs in the geophysical sciences; second, IOC will have to assume responsibilities for the transfer of technologies, which is presently beyond the scope of its competences; third, the operational capacity of the regional centers, even if they are conceived as largely autonomous, will make new demands, both administrative and budgetary, on IOC.

Funds for the Regional Centers cannot be expected to come from member States in regions where most or all of the members are developing countries. They cannot come from UNESCO either; nor can regional centers depend on the voluntary contributions of rich nations. The only realistic alternative is that they be financed

from the revenues of the other, operative, ocean institutions, i.e., from he international revenues from the exploitation of living and nonliving resources which depend so crucially on scientific research. In other words, if IOC is to respond to the challenges of coordination and funding posed by the proposed regional centers, it must be separated, administratively from UNESCO, and become part of an operative system of ocean institutions which it will serve and which will finance its services.

Part IV of the ISNT imposes a further enlargement of the functions and structure of IOC. Annex II C provides that any dispute...concerning [scientifid research], if not settled by negotiation, shall, at the request of any of the parties to the dispute, be submitted to a special committee of five members appointed by agreement between the parties and selected from a list of experts on marine scientific problems established by the IOC (Article 1). Articles 2-9 spell out how the arbitration process is to be carried out. The measures imposed by the arbitrators are to be binding on the parties. Obviously this new function of dispute settlement requires appropriate amendments in the Statutes of IOC.

The number of disputes likely to arise between States, and between States and scientific institutions, with regard to fundamental vs. research-oriented research in areas under national jurisdiction could be reduced by falling back on, and enlarging on a procedure already established by a IOC resolution adopted September 1969 (Report of the Fifth Session, Annex V. See also UNESCO/IOC Working Group on Legal Aspects of Scientific Research, Summary Report, SC/IOC/VI/15, Paris, 1969.

According to this resolution any research project is to be submitted in advance to the coastal State and to IOC. The IOC Secretary is to transmit the request, together with IOC's request for favorable consideration and, if possible, a factual description of the requesting State's international scientific interest in the project.

In other words, IOC could become the "clearing house" for research projectes to be carried out by a State, or its

nationals, in the economic zone or on the economic shelf of another State. IOC would guarantee to coastal States, especially to developing ones, the scientific nature of such projects. Only projects "cleared," or registered[9] or licensed or participated in, by IOC could be carried out internationally -- whether in international ocean space or in the national ocean space of another State. This is the only way of solving the dilemma between coastal State control and the so-called freedom of scientific research. To attain credibility in this respect, IOC would have to be far more representative than it is today, and the full participation of developing nations in its staff as well as in its decision-making processes will have to be assured.

Summary

IOC has gone some length in the direction of becoming a "basic organization." To fully function as the scientific arm of a system of ocean institutions, it must be further strengthened and reorganized, somewhere along the following lines:

1. It must comprize more developing nations in its membership and its staff.

2. It must be administratively and financially detached from UNESCO and funded out of the international revenues of the other operative ocean institutions.

3. It must be responsible for the setting up of the Regional Marine Scientific and Technological Centers postulated in Part III of the ISNT.

4. Where regional cooperation does not seem to offer the best possible alternative for international scientific research -- e.g., in Antarctica -- it may establish its own scientific operational enterprise.

5. It must co-ordinate the activities of the Regional Marine Scientific and Technological Centers which must be linked to it through an advisory council representing each Center.

6. It must add a program for marine biology and fisheries research to its oceanographic program.

7. It must assume responsibility for thetransfer of technology.

8. It must assume responsibility for registering or licensing all international research projects.

9. It must assume responsibility for dispute settlement in accordance with the provisions of Part IV of the ISNT.

10. It may establish marine parks for the preservation of endangered flora and fauna and the conduct of international scientific research, and it may assist coastal nations in establishing such parks in areas under their jurisdiction.

Notes

1/ UN Document UNESCO/NS/176, Paris, 1 February 1962.

2/ The Intergovernmental Oceanographic Commission: Its Capacity to Implement an International Decade of Ocean Exploration. By Margaret E. Galey. Occasional Paper #20, December, 1973, Law of the Sea Institute, University of Rhode Island.

3/ UN Doc. UNESCO/NS/176, Paris, 1 ebruary 1962.

4/ Margaret E. Galey, op.cit.

5/ Ibid.

6/ Ibid.

7./ Ibid.

8/ Article 11, "Protection and Preservation of the Marine Environment," and Article 10, "Development and Transfer of Technology," of Part III of the ISNT should probably be consolidated.

9/ See UN Document A/AC.138/53, Article 35.

ANNEX TO PARTS I. AND II

SOME COMMENTS ON

THE RELATIONS BETWEEN THE INFORMAL SINGLE NEGOTIATING TEXTS

AND THE NEW INTERNATIONAL ECONOMIC ORDER

With the penetration of the technological revolution into ocean space, the oceans are contributing, and are going to contribute, a rapidly increasing proportion of produce to the world economy. They are playing an ever more vital role in the economies of nations. It is therefore impossible to build a new international economic order without including the oceans. The principles developed by the Sixth and Seventh Special Session of the General Assembly and the Charter of Economic Rights and Duties of States must be applied to States and to the international community in their activities in the seas as on land. Or else there can be no New International Economic Order.

The building of new international institutions in the oceans provides an occasion, on the other hand -- the first such occasion -- to create an instituitonal framework to embody the principles of the New International Economic Order. Thus the oceans are our great laboratory for the building of the New International Economic Order. If nations succeed in making a concrete reality of the New International Economic Order in the new ocean institutions, they may then apply the same methodology to other sectors of the world economy. If nations fail to establish a New International Economic Order in the oceans, there may be no other opportunity for building it anywhere in the foreseeable future; and if there were one, there is no reason to assume that nations would succeed in the more rigid environment of terrestrial sovereignties if they failed in the more flexible, extra-national ocean environment. The U.N. Conference on the Law of the Sea thus is a test case.

The relations between the emerging new law of the sea and the emerging new international economic order ought to be examined in two ways: What is the contribution of the new law of the sea to the building of the new international economic order? How far do the Informal Single Negotiating Texts fulfil the requirements of the resolutions of the Programme of Action adopted by the Sixth Special Session of the General Assembly as well as the Charter of Economic Rights and Duties of States?

The following comments are very preliminary. The questions raised will require a great deal of research.

Tentatively, one might make a check-list of ten points on which the documents of the Sixth Special Session and the Charter on Economic Rights and Duties of States require action from the Conference on the Law of the Sea:

(1) The development of land-locked States and developing island States;
(2) The study of raw materials and development;
(3) Permanent sovereignty over natural resources and international cooperation. In particular: efforts to ensure that competent agencies of the U.N. system meet requests for assistance from developing countries in connection with the operation of nationalized means of production;
(4) unexploited or underexploited resources which, put to practical use, would contribute considerably to the solution of the world food crisis;
(5) strengthening of economic integration at the regional and subregional level;
(6) formulation and implementation of an international code of conduct for multinational corporations;

(7) Transfer of technology;

(8) Equitable participation of developing countries in the world shipping tonnage;

(10 ~~9~~) Definition of policy framework and coordination of the activities of all organizations, institutions, and subsidiary bodies within the U.N. system, for the implementation of the Programme of Action and the New International Econom ic Order;

(9 ~~10~~) Enhancement of participation in decision-making bodies in development-financing and international monetary problems.

(1) Land-locked States are referred to throughout, by all three parts of the Informal Single Negotiating Text. Developing island States are not given any special treatment. In the documents of the First and Third Committees their interests are subsumed under those of other developing nations. In the text of the Second Committee, however, they probably should be given special attention, particularly with regard to the delimitation of their national ocean space. An island like Malta, for instance, is likely to end up badly squeezed between Libya, Tunesia and claims arising in connection with Italian islands. Similar problems will arise for some developing island States in the Caribbean.

A provision might be added under Article 132 of the Text of the Second Committee.

The participation of land-locked States in the exploration and exploitation of the deep seabed is provided for in the Text of the First Committee; their right to transit is assured in that of the Second Committee. This, of course, is of prime importance economically, and, as pointed out, some improvement could be made here. Their right to fish in the economic zone of neighboring coastal States is equally assured. This, as was pointed out, is a right that is at once too broad and probably economically rather insignificant, at least for many years to come.

On the other hand, landlocked countries have no rights on the continental shelf, on the basis of the theory of the "natural prolongation of the land territory of a State," and on the basis of that same theory, shelf-locked and zone-locked countries are severely disadvantaged. Given the overwhelming importance for development of oil and gas, this is of course the crux of the whole matter. In terms of power politics, nothing can be cone about it, at this time, In terms of hard and logical thinking, at least some beginning could be made: issues could be raised, bargaining positions could be strengthened. New approaches could be adopted regionally especially where their adoption would (1) strengthen mutual self-reliance among developing countries; (2) reduce the cost of exploration and exploitation for individual developing countries; (3) redistribute income in favor of the most disadvantaged (landlocked) nations; (4) strenthen the position of developing nations vis a vis the multinational corporations. This would be in accord with the requirements of the documents of the New International Economic Order.

The continental shelf is indeed called the continental shelf because it is the natural prolongation of the continental landmass, which is a thing given in geo-physical terms: It is not the natural prolongation of the human artifact that is the State. The whole import of the Truman Doctrine, on which the Continental Shelf Convention purports to be based, was to take away jurisdiction from coastal States, beyond their territorial sea of three miles, and to turn it over to the Federal (continental) Government, since, being the natural prolongation of the continental mass, it belonged to all of the United States.

This becomes quite clear from a reading of the documents and correspondence preceding the Truman Proclamation of 1946 (Truman Library, Independence, Mo.) One of the concerned citizens who did much to goad the President into making his Proclamation, was a certain Robert E. Lee Jordan, who fought for the principle

of Federal ownership ever since 1937. He urged a law suit, "to the end that the United States Supreme Court will declare a superior title and eject all trespassers".... "Every day lost is an oil producing day gone into oblivion, insofar as over one hundred thousand barrels of oil, daily, belonging to each and every citizen of all forty-eight States, is being drained, stolen, and gotten away with -- and without each and every citzen and tax-payer of all the STates of the United States getting one dime..." (Letter from Robert E. Lee Jordan to President Truman of September 7, 1945, the Harry S. Truman Library, Papers of Harry S. Truman, Official File. Stresses added.)

Rarely has a theory been twisted around in such strange ways: Its main intention had been to settle an internal matter -- between States and Federal Government: it became an international cause. It was to serve to unify the management of resources; it became an instrument to fragment it.

On the basis of the real Truman Doctrine, the continental shelf and its resources, beyond the territorial sea, now of twelve miles, should be the common heritage of all States on the continental landmass: it should not be appropriated by States. A form of cooperation should be deviced, for States occupying the same continental landmass, to administer their shelf jointly.

An interesting precedent can be found in the Eems-Dollard Treaties of 1960 and 1962, concluded between the Netherlands and the Federal Republic of Germany. The Treaties are very comprehensive. What is of interest here is the "cooperative agreement" they contain with regard to the exploitation of the natural resources of the subsoil of the estuary. (See Willem Riphagen, "Some Reflections on 'functional sovereignty'", to be published.)

The area under dispute is declared to be common to both countries. "Obviously, Riphagen states, "such solution

requires either the establishment of a common 'authority,' or a functional division between the two national authorities. The Treaties generally opt for a combination of both, inasmuch as they provide for a duty to consult and to negotiate, for the establishment of an "Eems Commission" composed of experts appointed by each of the two Governments, and for an Arbitral Tribunal."

As far as the seabed is concerned, the common area is divided by, roughly, a median line. "The actual exploration and exploitation activities on the German side of the line are conducted by German licensees, on the Dutch side of the line by Dutch licensees. The products of the exploitation are equally divided between the German and Dutch licensees, as are the costs of exploration and exploitation. Operators on both sides of the line are obliged to cooperate under contracts to be concluded by them and to be approved by the two Governments...." (Riphagen, loc. cit.)

If one were to apply and adapt this precedent to the situation that might arise, e.g., on the Gulf of Guinea, the "Eems Commission" would be replaced by a "regional office or center" in accordance with Art. 20 of Part I of the Informal Single Negotiating Text. It would be composed of experts appointed by the Governments of the coastal and the land-locked nations of the region. The shelf would be divided into management zones to be allotted to all nations of the region -- coastal and land-locked. Exploration and exploitation costs would be pooled, and profits shared.

Such an arrangement would indeed advance the New International Economic Order: for it would strengthen mutual self-reliance; it would reduce the cost of exploration and exploitation; it would redistribute income in favor of the most disadvantaged nations (including Upper Volta, Chad, and the Central African Republic); and it would strengthen the position of all of these nations vis a vis the multinational corporations.

(2), (3), and (4) belong together.

Our perception of the role of raw materials in the development process is undergoing various changes. On the one hand, there remains the basic fact that such materials -- food and fiber as well as minerals -- are essential, and that the draining of such materials by foreign companies under the aegis of a postcolonial extraction economy has been one of the basic obstacles to development. In this sense, the work of the Commission on Permanent Sovereignty over Natural Resources and the Report of the Secretary General (A/AC.97/5/Rev.2, E/3511, A/Ac.97/13) are of basic importance and mark a step forward in the emancipation and development of the non-industrialized nations. The numerous U.N. Resolutions, intended to strengthen the application of the principle of permanent sovereignty over natural resources, stand, and there is no going back on them.

If we are serious about building a New International Economic Order, we must look forward, not backward, and probe deeper.

There are three terms involved in the principle of permanent sovereignty over natural resources: resources, ownership, and sovereignty. All three are undergoing a process of transformation, under the impact of technological, economic, and political developments. By the end of the century, one cannot look at them in the same way one did in the 1950s.

The 'seventies have taught us to consider natural resources not in isolation, one by one, but as a "package" of interdependent parts, the values of which rise and fall together and can be "indexed." The "package," however, is even more comprehensive than that. For it includes technology and social infrastructure, comprizing both capital and skilled labor. It is these three factors together that produce wealth and development. The relative importance of each factor varies, according to time and place. As we move up

the ladder of development, the relative importance of natural resources decreases: Advanced technologies, cutting down waste and availing themselves of recycling and synthetics, are less resource-intensive than more primitive ones. Without the presence of all three factors, resources alone are not conducive to developmen

If a resource is considered part of this wider package, including technology and social infrastructure, it becomes clear that it cannot be "owned" in the classical, Roman-law sense. Resources in this context become part of something that can be used and managed but not owned. In other words, all natural resources are approaching the legal status of the resources of the deep sea, which are the common heritage of mankind, with the five legal/economic attributes enumerated in the Introduction: that is, resources that are the common heritage of mankind (1) cannot be owned; (2) require a system of management; (3) postulate active benefit sharing (not only of financial profits, but of management and eecision-making); (4) are reserved for peaceful uses only; (5) must be preserved for posterity.[1/]

Sovereignty, finally, is taking on a new dimension, and that is participation: participation in the making of decisions that directly affect the citizens' wellbeing. A State that does not participate in the making of such decisions -- e.g., concerning man-made climatic changes, changes resulting from pollution, or the effects of macro-engineering beyond the limits of its own jurisdiciton -- has for all practical purposes, lost its sovereignty International organization, offering a forum for participation in decision-making in matters of transnational impact, thus does not detract from national sovereignty; it is a condition for its assertion and preservation. Sovereignty, in the relations between State and international community, just like freedom, in the relation between individual and society, is not conceived here as something pre-existing, something static. It is conceived as something dynamic, that has to be created and continuously re-created in the relationship between State and international community. This concept is applicable to a relationship of conflict, where sovereignty asserts (creates) itself in the threat or use of war; and it is applicable to a relationship of cooperation, where it asserts (creates) itself in the participating in decision-making. Sovereignty thus is not abolished, it is

The powers and functions of the Council

1/ In a recent private communication (October 24, 1975) Ambassador Sir Egerton Richardson of Jamaica stresses the importance of permanent sovereignty over natural resources to developing nations. "...the mineral in the soil," he wrote, " is like the soil itself, held by the whole nation as tenants in common, with common rights of exploitation, but held to the exclusion (from those rights) of all who are not members of the national group or entity. It is in this sense that developing nations speak of sovereignty over natural resources -- a sovereignty which is held by the nation in perpetuity and cannot be permanently alienated." The important part of this statement is natural resources are to be held by the whole nationa in common, and that they cannot be owned by others, i.e., foreign companies, individuals, or States. This brings natural resources fully into the purview of the common heritage as here defined. There is nothing in the definition that precludes that they be used and managed by and for the benefit of the nation as a whole, in accordance with criteria of international planning, it being understood that the developing nation has its full share in determining such criteria. This is where participation comes in, as the new dimension sovereignty is assuming in our time.

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transformed by assuming the new dimension of participation.

Thus while there is no going back on the principle of permanent sovereignty over natural resources, it is clear that the ongoing transformation of the concepts of resources, ownership, and sovereignty will necessitate a rethinking

on the implications of that principle. Transnational or global planning for basic resources like food and energy, which is an essential tool for the building of the new international economic order, must be based on this new conception of resources, ownership, and sovereignty.

The Programme of Action adopted by the Sixth Special Session of the General Assembly calls for efforts to ensure that competent agencies of the U.N. system should meet requests for assistance from developing countries with the operation of nationalized means of production.

This is essential. In the absence of such competent agencies, a developing country, even if it has nationalized its resources and established a national company, will have to fall back on dependence on the services of private multinational companies. An example is the recent agreement betwean Egypt, the Egyptian General Petroleum Corporation, and Esso on the concession for Petroleum Exploration and Production (International Legal Materials, Vol. XIV, Number 4, July, 1975). This carefully drawn document amounts to a sharing of Egypt's natural wealth between that country and the private sector of a rich country, thus further enriching the rich.

Supposing, on the other hand, that there were a public international enterprise for oil, such as the one projected for deep-sea mining by the Single Negotiating Text of the First Committee, which could effectively assist developing nations in the exploration and exploitation of their resources: In this case the natural wealth of the developing country would be shared between that nation and the international community which would plow profits back into development. It is obvious that both the developing nation and the international community would be better off for it.

The real importance of the Seabed Authority's Enterprise probably is not at all in the mining of manganese nodules which are of marginal importance in the total picture of the new international economic order. The real importance of the

Enterprise may be that it provides a new form of active, participatory cooperation between industrialized and non-industrialized nations. If this were so, the establishment of other public international Enterprises ought to be considered: first of all for oil and gas which constitute the real wealth of the seabed, for years to come. If the new law of the sea is to make a real contribution to the building of the New International Economic Order, it must mobilize the real wealth of the oceans for this purpose, not the ficticious. The real wealth of the oceans is in oil, gas, food, and shipping.

It may not be realistic to attempt today to establish a public international Enterprise for oil and gas. What could be done, however, without any difficulty, is to insert a clause, adding, under the Functions and Powers of the Assembly of the Seabed Authority, the power to establish "other" enterprises if and when they appear to be feasible and useful.[1]

Point (4) touches on the delicate question of the underuse of living resources in the economic zones of some of the less developed nations. This is dealt with in Article 51 of the text of the Second Committee. It is closely linked to the whole question of the implications of the principle of permanent sovereignty over natural resources. A really satisfactory solution to the problem of fully exploiting the living resources of the economic zone of such countries, again, can be found only in the establishment of an international fisheries management system, capable of interacting efficiently with the national sytems. Such a system is postulated in the text of the Second Committee, but in no way created.

Another question that should be raised in this context is the development of unconventional living resources in international ocean space, such as squid, or Antarctic krill. This should be developed through international cooperation. This vast potential is not touched upon by the Single Negotiating Text. It requires, again, the creation of an effective inter-

i/ The possibility of an international public enterprise for oil and gas was discussed, for the first time, at Pacem in Maribus VI (Okinawa, October 1-4, 1975). It was noted that such an Enterprise could have three possible functions: (1) to manage oil and gas in the international area; (2) to enter into joint-ventures with developing nations for the exploration and exploitation of their continental shelves; (3) to manage the oil and gas resources of the Antarctic continental shelf. If boundaries are drawn in accordance with the provisions of the Single Negotiating Text, it is not likely that there will be economically exploitable hydrocarbon resources in the international seabed that would warrant the establishment of an Enterprise for oil and gas. If, on the other hand, such an Enterprise were to assume fundtions (2) and (3), it is obvious that it could play a major role in the building of the new international economic order. The Pacem in Maribus VI working group dealing with the subject stressed that the Seabed Authority would be the proper organ to examine the usefulness and feasibility of such an Enterprise which, eventually, might be established under its authority. This is in full agreement with the views here expressed.

national management system for fisheries, through the appropriate structural changes in COFI and the integration of the activities of the regional or sectoral fisheries commissions.

(5) Regional cooperation plays an important role in all three parts of the Single Negotiating Texts.

The text of the First Committee (Article 20) provides for "regional centers or offices" of the Seabed Authority. Regional representation is the basis for the composition of the Council and is taken into consideration in the composition of all other organs.

Regional organization will play a major role in fisheries management, as indicated in Articles 50, 53, and 105 of the text of the Second Committee. Enclosed and semi-enclosed seas are the basis for regional cooperation with regard to environmental policy,fisheries management and scientific research (text of the Second Committee, Articles 133-135).

The text of the Third Committee, finally, provides for regional cooperation with regard to the Protection and Preservation of the Marine Environment (Articles 6, 11), monitoring (Article 14), standards (Article 7), the transfer of technology (Article 5). Chapter 3, Articles 10 and 11, provides for Regional Marine Scientific and Technological Centers. All this may play a role in strengthening economic integration at the regional and subregional level.

It should be noted that three different kinds of regionalization are involved in building an ocean regime. They are overlapping and, one might say, in a dialectic relationship to one another. They are:

Political regionalism

Continent-centered regionalism

Sea-centered regionalism.

Political regionalism originates from the regional groupings in the U.N. and, in particular, at the Conference on the Law of the Sea. It forms the basis of systems of representation in various organs of the ocean regime, particularly in the Council of the Seabed Authority. This has been commented on above, in connection with the text of the First Committee, Article 27. It is likely, furthermore, that existing regional intergovernmental organizations, such as EEC, COMECON, OAS, etc., will have a special relationship with the organs of the ocean institutions, just as they have it at the Conference -- or even more so: they might, e.g., become Associate Members.

Continent-centered regionalism is foreshadowed in the text of the First Committee, Article 20, establishing "regional centers or offices of the Seabed Authority." If and when developing nations, land-locked and geographically disadvantaged nations -- that is, the overwhelming majority of nations -- will realize that it is more to their advantage, that it will strengthen new forms of economic integration and hasten development if they interpret the Truman Doctrine in the sense proposed in these pages, these regional centers and offices of the Seabed Authority may develop regional Enterprises for the exploitation of the continental shelf beyond twelve miles. Obviously these would be structurally related to the Seabed Authority itself, and their work would be complementary, not competing. The "boundary" between the area under the administration of the continental center and the area managed by the Seabed Authority directly would therefore be far less important and controversial.

All this, of course, is far in the future. The "regional centers or offices of the Seabed Authority" provided for in the text of the First Committee, Article 20, may nevertheless be seminal.

Ocean-centered regionalism is developing around fishing, environmental policy, and scientific research. Englosed and semi-enclosed seas are the most obvious starting point.

Ocean-centered regionalism may have a strong cultural component, for instance, in the Caribbean or in the Mediterranean. Here ancient cultural systems of communication and modern scientific and technological interdependence reinforce each other. This kind of regionalism will play an increasingly important role.

On the whole, one may predict a shift from the continent-centered, "geopolitical," regionalism of the nineteenth century, based on sovereignty, ownership, and power, which was part of a war system, to the sea-oriented regionalism of the twenty-first, which may be part of a peace system based on the concept of cooperation, the common heritage of mankind, and the transformation of the concept of sovereignty along with that of ownership.

A number of nations will participate in all three forms of regionalism. Far from being unbearably confusing, this may increase stability, after this revolutionary period of building the New International Economic Order. For, as modern anthropology knows, overlapping membership in a number of different social systems increases social stability and reduces conflict.

(6) The only provisions making any contribution under the heading "Formulation and implementation of an international code of conduct for multinational corporations" are contained in Annex I to the Text of the First Committee, on Basic Conditions of General Survey, Exploration and Exploitation, which is based on CP/cab.12. It is indicative, however, that, as the Chairman of the Working Group reported on April 25 (Provisional Summary Record of the Twentieth Meeting), the fears of some delegations that the entire seabed might become a prey to exploitation by giant corporations to the detriment of developing countries, was not entirely dispelled. The control of the Authority extends to States members of the Authority or State enterprises, or persons natural or juridical which

possess the nationality of a State Party or are effectively controlled by it or its nationals and are sponsored by a State Party, or any group of the foregoing. "Any group of the foregoing" would include the multinationals. There is no other reference to multinationals, however, and it is likely that they would continue to escape through the same legal loopholes through which they escaped in the past.

Here, again, the work of the Conference on the Law of the Sea should insert itself into, and take advantage of, the work done by the United Nations in general, as well as by specific regions, such as the Andean Group or the EEC, in the broad effort to create a new international economic order. The international control of the multinational corporations is indeed an essential part of such an order.

In response to the Ecosoc Resolution 1721 of July, 1972, the U.N. Secretariat published in 1973 and 1974 two volumes of studies on the multinational corporations: Multinational Corporations in World Development, and The Impact of Multinational Corporations on Development and on International Relations; (the latter, issued by the Secretariat, but compiled by a "Group of Eminent Persons"). These documents give an in-depth analysis of the growth of the multinationals, their impact on world trade, on labor, on development, on international relations. They express the unqualified conviction that there is a need for establishing new international machinery to cope with the problems; because "Governments often feel the lack of power to deal effectively with powerful multinational corporations. Indeed, no single national jurisdiction can cope adequately with the global phenomenon of the multinational corporation, nor is there an international authority or machinery adequately equipped to alleviate the tensions that stem from the relationship between multinational

corporations and the nation state."

Without going into details which are covered by other sections of the RIO project, we should remember here that the Reports suggest that action should be taken at the national level (creation of national commissions to deal with the problem in a systematic and comprehensive way); on the regional level(to strengthen the bargaining power of weaker countries vis a vis the big corporations, e.g., Andean Pact) and on the global level: the establishment, under ECOSOC, of a Commission on Multinational Corporations, which should

(a) Act as the focal point within the United Nations system for the comprehensive consideration of issues relating to multinational corporations;

(b) Receive reports through the Council from other bodies of the United Nations system on related matters;

(c) Provide a forum for the presentation and exchange of views by Governments, intergovernmental organizations and non-governmental organizations, including multinational corporations, labour, consumer and other interest groups;

(d) Undertake work leading to the adoption of specific arrangements or agreements in selected areas pertaining to activities of multinational corporations;

(e) Evolve a set of recommendations which, taken together, would represent a code of conduct for Governments and multinational corporations to be considered and adopted by the Council, and review in the light of experience the effective application and continuing applicability of such recommendations.

(f) Explore the possibility of concluding a general agreement on multinational corporations,enforceable by appropriate machinery, to which participating countries would adhere by means of an international treaty;

(g) Conduct inquiries, make studies, prepare reports and organize panels for facilitating a dialogue among the parties concerned;

(h) Organize the collection, analysis and dissemination of information to all parties concerned;

(i) Promote a programme of tec hnical cooperation, including training and advisory services, aimed in particular at strengthening the capacity of host, particularly developing, countries in their relation with multinational corporations.

The Commission, according to the Report, should be assisted by an Information and Research Center on Multinational Corporations, within the Secretariat of the U.N.

The solution, obviously, is as complex and comprehensive as the the problem itself. It may be interesting to note that action on the global level, far from detracting from action on the national and regional levels, on the contrary presupposes such action, and all three levels would re-inforce one another rather than conflicting.

Within such a network, and within the terms of reference ofthe Programme of Action of the Sixth Special Session of the General Assembly, which require that all U.N. institutions should contribute to the realization of the Programme, it would be dysfunctional if a new international organization like the International Seabed Authority were simply to forget about the multinational corporations. The omission stems from two facts: The failure, thus far, to see the Conference on the Law of the Sea as a part of the wider struggle; and a peculiar, very restrictive, and not warranted interpretation of the functions of the Seabed Authority: conceived as a territorial entity, located in the middle of the bottom of the sea, with the sole purpose of "cultivating its own garden," a "state" which must not interefere with what is going on in neighboring States. True, the Seabed Authority has its own (very poorly defined, and continuously shrinking) "territory." But it is an authority that is partly territorial, partly functional: its functional authority extends to regulating the international activities of nations on the Seabed. It is under this second aspect that the International Seabed Authority becomes the proper Authority for the regulation of multinational

corporations engaged in international operations on the seabed. These are, above all, the oil and natural gas producing companies.

There are at least two ways in which this could be done.

Following the lines laid down by the Group of Eminent Persons and endorsed by the U.N. Secretariat, for the regulation of multinational companies in general, one might suggest that, together with the Technical Commission and the Planning Commission, the Council of the Seabed Authority should establish a Commission on Multinational Corporations which sould gather information on the activities of such corporations from national governments and regional authorities; analyse such information and prepare an annual report for the Council as well as for ECOSOC; Provide a forum for the presentation and exchange of views by Governments, intergovernmental organizations and nongovernmental organizations, including multinational corporations, labor, consumer, and other interest groups; Undertake work leading to the adoption of specific arrangements or agreements ~~in selected areas~~ pertaining to activities of multinational coporations engaged in international operations on the seabed; draft ~~Evolve a set of recommendations which, taken together, would represent~~ a code of conduct for Governments and multinational corporations to be considered and adopted by the Council, and review in the light of experience the effective application and continuing applicability of such a code; Promote a program of technical cooperation, including training and advisory services, aimed in particular at strengthening the capacity of host, particularly, developing countries in their relations with multinational corporations.

The code of conduct should cover, inter alia, modes of technology transfer, questions of employment and labor, consumer protection, market structure, transfer pricing, and taxation. It should set international standards of disclosure, accounting and reporting, and harmonize environmental regulations. It should develop forms and procedures to ensure the participation of workers and their unions in

the decision-making process of multinational corporations at the local and international level.

The Commission should also study the precedent set by the Commission of the EEC in proposing Statutes for the European incorporation of multinationals operating within the EEC.

It should,finally, examine the possibility of establishing a public international Enterprise for the exploration of oil and natural gas, along the lines adopted for the manganese nodule mining Enterprise. The potential of this Enterprise as a model was recognized already in the 1973 report of the Secretariat:

> Recent proposals for the creation of an international authority for the regulation or exploration of resources of the seabed beyond the limits of national jurisdiction indicate further possibilities for the creation of supranational machinery. These proposals also indicate difficult problems of control. The pending negotiations with respect to the seabed would thus throw light on possible arrangements concerning the creation of supranational corporations or machinery dealing with them.

Another way of dealing with the multinationals was proposed in The Ocean Regime (Center for the Study of Democratic Institutions, 1968). It moves farther away from the traditional pattern of international organization and approaches that of participational democracy as articulated in the Yugoslav Constitution of 1963. It is based on the idea that the best way to control is through participation and mutual responsibility. Accordingly it proposes, not a Commission on multinational corporations, but a Chamber of multinational corporations which would participate in the making of decisions falling within the competence and affecting the interests of such corporations. This Chamber would be part of the Assembly structure. The Assembly as a whole thus would have some of the characteristics proposed by the Group of Eminent Persons for the Commission on the Multinational Corporations, i.e., it would "provide a forum for the presentation and exchange

of views by Governments, intergovernmental organizations and nongovernmental organizations, including multinational corporations, labor, consumer and other interest groups."
In other words, it would provide a mechanism for interdisciplinary decision-making for interdisciplinary issues. While the multinationals would thus have the advantage of participating in the making of laws and regulations affecting them, they would have to accept the discipline of not making decisions by themselves alone, but in cooperation with the public sector.

Perhaps this is in the direction in which we are moving. It is some distance away, however, and the ongoing revolution in international relations will have to advance further before this kind of interaction between the public and the private sector of the international community will become practical.

(7) Transfer of technology is dealt with in the Text of the First Committee, where it is entrusted to the Technical Commission (Article 31). It is also insured by the rules, regulations, and procedures of the Enterprise (Appendix I, paragraph 12 (11)). Since the financial means of the Seabed Authority in the present perspective are very limited, it is to be feared that its effectiveness in the transfer of technology will also be very limited.

The Text of the Third Committee amply provides for the transfer of technology both with regard to the protection of the environment and scientific research. Since no institutional framework is prescribed to enact these measures, however, they ermain hortatory. Only a scientific organ, such as a restructured IOC, with expanded functions, integrated into the system and properly financed, could make the measures effective.

(8) No provision whatsoever is made for the equitable participation of developing countries in the world shipping tonnage. It is difficult to see how this could be done in the Single Negotiating Text, Part II, dealing with navigation, such as it now stands. Perhaps at least a reference to the problem could be made. When the Conference on the Law of the Sea takes up the question of restructuring and integrating the activities of the specialized agencies active in ocean space, this problem ought to be considered in connection with the activities of IMCO. We have dealt with it in Part II, Section 3, of this Projection, providing for a restructured and strengthened IMCO, integrated into the system.

10 ~~(9)~~ The Conference on the Law of the Sea has done nothing toward the definition of a policy framework and coordination of the activities of all organizations, institutions, and subsidiary bodies within the U.N. system. This is attempted in Part III of this Projection. The model presented there is a development and expansion of the Oaxtepec Declaration, issued last January (1975) on the initiative of the International Ocean Institute, Malta, in Oaxtepec, Mexico. This is also reproduced in Part III.

9 ~~(10)~~ One place in which the Law of the Sea could make a contribution towards the enhancement of participation of developing nations in decision-making bodies in development-financing and international monetary problems is in Articles 42-46 of Part I of the Single Negotiating Text, establishing a General and a Special Fund of the Seabed Authority. As was noted in the comments on those articles, no progress has been made toward increasing the participation of developing nations. The Articles quoted provide -- in deference to the wishes of the industrialized nations -- to divide decision-making into two parts: The industrialized nations, likely to control a "balanced" Council -- decide, through the Council to which this part of the decision is entrusted, how much money is to be distributed; the poorer nations, likely to

dominate the Assembly, may decide how to distribute the funds among themselves. It is clear which part of the decision making is the basic one.

True, it is not likely that there will be much, or anything to be distributed in any case. If and when, however, a an Enterprise for oil and gas were to be added to the Seabed machinery, the situation might change drastically. The Articles on Financial Provisions ought to be re-examined in view of these considerations.

In conclusion one must admit that, in spite of some promising starting points, (1) very large sections of the Single Nagotiating Texts have no relevance to the building of the New International Economic Order. The text of the First Committe is by far the most relevant contribution. Its effects, however, are bound to be extremely reduced by the limitations imposed on the operations of the Seabed Authority by the provisions of the text of the Second Committee, which is mostly irrelevant to the building of a new international economic order and partly, possibly, counterproductive. The text of the Third Committee has a great potential, but lacks and institutional infrastructure.

Much detailed, technical study is needed to confirm or refute these conclusions. On the basis of such studies it should be possible -- at least partially -- to suggest amendments apt to increase the positive impact of the Articles on the building of the New International Economic Order.

Chapter I. Purposes and Principles

Article 1

The purposes of the International Ocean Space Institutions shall be:

(1) to safeguard the ocean environment as an essential reservoir of life and to transmit this common heritage of mankind legally intact and ecologically viable to future generations;

(2) to harmonize the actions of nations in ocean space with a view to ~~securing expanding~~ equal[ly] opportunities for all peoples, especially the poor ones, in the peaceful use of the marine environment;

(3) to encourage the investigation of ocean space and the dissemination of scientific knowledge about ocean space, to promote international co-operation in scientific research in ocean space and to strengthen the ocean research capabilities of technologically less advanced countries;

(4) to promote the development and practical application of advanced technologies for the penetration of ocean space and for its peaceful use by man and to disseminate knowledge thereof;

(5) to provide assistance to Contracting Parties or to their nationals in all matters relating to knowledge and development of ocean space and its resources and in particular to assist Contracting Parties to train their nationals in scientific disciplines and technologies related to the peaceful uses of ocean space;

(6) to develop in an orderly manner and to manage rationally International Ocean Space and its living and nonliving resources and to ensure the equitable sharing by all States in the benefits derived from the development of the natural resources of International Ocean Space, taking into particular consideration the interests and needs of poor countries, whether landlocked or coastal;

(7) to promote the harmonization of national maritime laws and the development of international law relating to ocean space;

(8) to undertake in ocean space such services to the international community and such activities as may be consistent with the provisions of this Convention.

Article 2

In pursuit of the purposes stated in article 1 each Contracting Party shall act in accordance with the following principles:

(1) Each Contracting Party, in order to ensure to itself and to all other Contracting Parties the rights and benefits resulting from the activities of the Institutions, shall fulfil in good faith the obligations assumed by it in accordance with the present Convention;

(2) Each Contracting Party shall settle disputes arising from the present Convention in a manner that does not endanger international order in ocean space. In the event that other means of pacific settlement of disputes fail, each Contracting Party undertakes to submit disputes to binding judicial settlement or adjudication in accordance with this Convention;

(3) Each Contracting Party shall refrain from the threat or use of force in International Ocean Space unless expressly authorized by the Institutions;

(4) Each Contracting Party shall respect the territorial, jurisdictional and ecological integrity of International Ocean Space and undertakes to conduct itself therein in accordance with such rules and regulations as may be made by the Institutions;

(5) Each Contracting Party undertakes to give the International Ocean Space Institutions every assistance in any action they may take in accordance with the present Conventions.

Chapter II: Structure and Organs

Article 3

The International Ocean Space Institutions shall consist of the Basic International Organizations Operating in Ocean Space (called hereinafter also the Basic Organizations) and the Integrative Machinery.

Chapter III: The Basic Organizations

Article 4

The Basic Organizations Operating in Ocean Space are:

(1) The International Seabed Authority (ISA);

(2) The Committee on Fisheries (COFI)

(3) The Inter-Governmental Maritime Consultative Organization (IMCO);

(4) The Inter-Governmental Oceanographic Commission (IOC);

and such other international or intergovernmental organizations as may be established in response to changing requirements.

Article 5

Within the limits set by the articles of this Convention, the Basic Organizations shall be autonomous, self-managing organizations. Their Constitutions are included in Part II of this Convention and form an integral part thereof. They shall determine their own membership and associate membership. They shall encourage the participation of nongovernmental organizations in their activities. Their functions shall be regulatory, planning, managerial, and operational. Each Basic Organization shall have its assembly of members, council, secretariat, operational arm, and such other organs as may be determined in its Constitution.

Article 6

Each Basic Organization shall prepare its own one-, two, five-, and ten-year plan and longer-range projections, which it shall propose to the Planning Council in accordance with the articles of this Convention.

Each Basic Organization shall prepare its own budget and distribute benefits and burdens in accordance with the articles of this Convention.

Article 7

Each Basic Organization shall operate autonomously in the management of International Ocean Space and resources. In the management of National Ocean Space and resources each Basic Organization shall establish appropriate forms of cooperation with national management systems, in accordance with the requests of coastal nations and with the articles of this Convention.

Article 8

Each Basic Organization shall establish or maintain appropriate forms of cooperation with the Specialized Agencies of the United Nations such as WMO, WHO, IAEA and any other intergovernmental organization operating in ocean space.

Article 9

In determining its environmental policy, each Basic Organization shall cooperate with the United Nations Environment Program which shall be responsible for co-ordinating and integrating all environmental programs in ocean space.

Chapter IV: The Integrative Machinery

Article 10

The Integrative Machinery shall consist of a Permanent Conference, a Planning Council, a Secretariat, and an Ocean Tribunal.

Members are encouraged to include a wide representation of technological and economic disciplines and mining expertise in their delegations to Conference sessions.

3. The Third Chamber shall be elected by the Committee on Fisheries, with due regard to regional representation and the participation of industrialized and non-industrialized, coastal and landlocked, socialist and free-enterprise nations.

Members not represented in the Third Chamber for a three-year period have mandatory precedence in the elections for the next following Conference.

Members are encouraged to include a wide representation of marine biological sciences and fishing expertise in their delegations to Conference sessions.

4. The Fourth Chamber shall be elected by the General Assembly of IMCO, with due regard to regional representation and the participation of industrialized and non-industrialized, coastal and landlocked, socialist and free-enterprise nations.

Members not represented in the Fourth Chamber for a three-year period have mandatory precedence in the elections for the next following Conference.

Members are encouraged to include a wide representation of naval construction and navigation expertise in their delegations to Conference sessions.

5. The Fifth Chamber shall be elected by the Assembly of members of IOC, with due regard to regional representation and the participation of industrialized and non-industrialized, coastal and geographically disadvantaged, socialist and free-enterprise nations.

Members not represented in the Fifth Chamber for a three-year period have manadatory precedence in the elections for the next following Conference.

Members are encouraged to include a wide representation of oceanographic sciences in their delegations to Conference sessions.

Article 13

Each Delegation in each Chamber shall have one vote.

Article 14

Each Chamber shall elect its own President. The Conference as a whole shall elect its President and make its own rules of procedure.

Article 15

Decisions require the consensus of two Chambers, viz., the First Chamber and the Chamber competent in the matter to be decided upon.

If either Chamber fails to reach a consensus among its own members, the matter shall be put to a vote and adopted by a majority of those present and voting.

If the two Chambers fail to reach a consensus among themselves, they shall discuss the matter in joint session and vote jointly. A majority of those present and voting shall be required for the adoption of any decision.

In any dispute as to which Chamber is competent in a matter, the decision of the First Chamber shall be final.

Article 16

The initiative in proposing decisions, making recommendations, and expressing opinions shall be shared equally by all five Chambers.

Article 17

The Conference may discuss any questions or any matters within the scope of this Convention; issue decisions and recommendations for enactment by the Council, and give recommendations and opinions to States on any such question or matter.

Article 18

The Conference shall

(a) elect the Secretary General

(b) Discuss any question relating to the maintenance of international law and order in ocean space;

(c) call the attention of the Council and of the Secretary General to situations which are likely to endanger international law and order in ocean space or the territorial, jurisdictional, or ecological integrity of International Ocean Space;

(d) adopt the Ocean Development Plan or return it -

to the Planning Council in part or as a whole. The Council shall then submit an amended Plan to the Conference within one month;

(e) approve the budget of the Institutions and the Basic Organizations or return it to the Council with its recommendations. The Council shall then submit an amended Budget to the Conference within one month;

(f) make basic rules for revenue raising and revenue sharing;

(g) review the basic conditions for the exploration and exploitation of the seabed and the subsoil thereof beyond the limits of national jurisdiction and propose amendments when required;

(h) review the basic conditions for the exploration and exploitation of the seabed and subsoil thereof within national ocean space and examine the possibilities of the impact of such activities on International Ocean Space or the National Ocean Space of other States; and, where such impact is likely to exist, to make appropriate recommendations to States;

(i) make rules for the international activities of national or multinational corporations;

(j) approve general criteria for the conservation, development and exploitation of the living resources of ocean space;

(k) approve rules and establish general criteria with regard to overflight, the use of marine satellites, the safety of navigation; ship construction, and the construction of ports and superports;

(l) make rules for the construction of artificial islands, pipelines, submarine cables, underwater habitats in international ocean space; review such activities in national ocean space, examine their possible impact on International Ocean Space or the National Ocean Space of other nations, and make appropriate recommendations to States;

(m) make rules for the extraction of energy from international ocean space; in cooperation with the IAEA, establish safety standards for floating atomic power systems, whether based on fission or thermonuclear fusion processes; monitor and keep an inventory of levels of energy production from tidal, ocean-current, ocean-thermal, or wave production plants, or biological energy production systems, and their environmental impact; study the interaction between energy production in ocean space and other uses of ocean space and resources and make rules for the equitable dis-

tribution of ocean energy supplies, with special regard for the needs of non-industrialized nations; and harmonize the activities of land-based and ocean-based energy systems;

(n) adopt standards for the conservation of the marine environment and the prevention of pollution from all sources;

(o) adopt rules for scientific research in ocean space and the transfer of technologies;

(p) give or withhold authorization with regard to projects of macro-engineering, including dams, isthmuses, canals, installations, whether in National or International Ocean Space, the effect of which, either on the environment or on populations, are transnational;

(q) regulate the interaction between all uses of ocean space and resources;

(r) regulate the interaction between management systems in International and National Ocean Space;

(s) approve, or object to, the way States delimit National Ocean Space by drawing baselines, defining historic bays, determining the breadth of safety zones and regulations to be observed with regard to reefs, low-tide elevations and islets not situated within national ocean space;

(t) arbitrate or adjudicate delimitations between States;

(u) give or withhold authorization for thermonuclear explosions for peaceful purposes in ocean space;

(v) give or withhold authorization for waste disposal or the storage of petroleum in international ocean space;

(w) adopt rules and regulations for waste disposal or storage of petroleum in National Ocean Space;

(x) approve the annual report of the Planning Council;

approve the reports to be submitted to the United Nations as required by the relationship agreement between the Institutions and the United Nations;

(y) approve any agreement between the Institutions, the Basic Organizations, and other organizations;

(z) approve rules and limitations regarding the exercise of borrowing powers by the Planning Council; approve rules

regarding the acceptance of grants to the Institutions and approve the manner in which general funds may be used;

(x) promote the harmonization of national maritime law and the development of international law relating to ocean space;

(w) approve amendments to this Convention.

Chapter VI: The Planning Council

Article 19

The Planning Council (hereinafter called "The Council") shall consist of seventeen members and shall be composed as follows:

(1) The outgoing Council (or in the case of the first Council, the U.N. Conference on the Law of the Sea) shall designate seven members for membership in the Council;

(2) The Conference shall elect ten members in the following manner:

Each of the five Chambers shall nominate four members, that is, a total of twenty members, of which the Conference as a whole shall elect ten, with due regard to equitable representation of developed and developing, maritime and landlocked, socialist and free-enterprise States;

(3) Any State not represented on the Council may appoint an _ad hoc_ representative, with the right to vote, whenever its own vital interests are directly concerned; but the number of _ad hoc_ members at any time shall be limited to four and the final decision regarding their participation rests with the Council.

The members of the Council shall serve for three years; they shall be eligible for reelection for the following term of office.

Article 20

The Council shall be so organized as to be able to function continuously. Each member (except _ad hoc_ members) shall for this purpose be represented at all times at the seat of the Institutions.

Article 21

The Council may establish such subsidiary organs as it deems necessary for the performance of its functions. The Council shall review every six years the continued need for such organs as it may establish.

Article 22

The Council shall elect its own President and make its own rules of procedure.

Each member of the Council shall have one vote.

Article 23

Decisions of the Council shall be made, whenever possible, by consensus. When all efforts at reaching a consensus have been exhausted, a vote shall be taken, and a majority of those present and voting shall suffice for the adoption of any decision.

Article 24

The Council shall carry out the activities of the Conference between sessions of the latter.

Article 25

The Council shall be responsible for revising, harmonizing and integrating the Plans submitted by the Basic Organizations and present them in the form of an integrated Ocean Development Plan to the Conference.

Each Basic Organization shall submit each year to the Council a progress report and development plan to be stored in the Council's computer and included in the Ocean Development Plan. In integrating the plans, the Council shall give due consideration to:

(1) the usefulness of the plan, including its scientific and technical feasibility;

(2) the adequacy of funds and technical personnel to assure its effective execution;

(3) the adequacy of proposed health,safety, and environmental standards;

(4) the equitable distribution of financial grants;

(5) the special needs of the underdeveloped areas of the world;

(6) and such other matters as may be relevant.

Article 26

The Council shall make long-range ecological and economic projections and over-all forecasts up to fifty years and beyond; ten-year plans, and annual programs. The long-range projections shall be published every five years. The ten-year plan shall be a general estimate of probable developments; the annual program shall provide readjustment to developing conditions and fix the annual budget.

Article 27

The ten-year Plan shall be submitted by the Chairman of the Council to the Conference one year prior to its going into effect. The annual program shall be submitted to the Conference and to all States one month prior to the opening of the Regular Annual Session of the Conference.

Article 28

Plans shall be published by all States and shall be fully discussed by their Parliaments or legislative branches, by all interested scientific economic and social organizations, as well as by all Chambers of the Conference.

Article 29

To be enacted, the Ocean Development Plan and the Budget must be approved by the Conference as a whole.

Article 30

The Council may undertake such functions with regard to the military uses of ocean space or with regard to the regulation of armaments in ocean space as may be conferred upon it by aunanimous vote of its members.

Abstention from voting shall not be regarded as detracting from the unanimity of the vote on the questions referred to in the above paragraph.

Article 31

The Council shall submit to the Conference for approval:

(1)agreements with any State concerning the transfer to the administration of the Institutions of sandbanks, reefs, or islands;

(2) the basic norms governing the administration of inhabited islands.

Article 32

The Council shall approve the establishment of

(1) scientific stations, nature parks or marine preserves in International Ocean Space;

(2) such services for international community purposes in ocean space as may be consistent with the provisions of this Convention.

Chapter VII: Maintenance of law and order in ocean space and threats to the integrity of International Ocean Space

Article 33

The Council has primary responsibility for the maintenance of law and order in ocean space and for the maintenance of the territorial and jurisdictional integrity of International Ocean Space. In discharging these responsibilities the Council shall act in accordance with the Purposes and Principles of the Charter of the United Nations and with Article of this Convention.

Article 34

The Council may investigate any situation or event or any action by States which might be seriously prejudicial to the maintenance of law and order in ocean space or which might endanger the territorial or jurisdictional integrity of International Ocean Space. In such cases the Council shall make and publish a report containing a statement of the facts with regard to the situation, event or action which gave rise to the investigation.

Article 35

Should the Council determine the existence of any situation, event or action which is seriously prejudicial to the maintenance of law and order in ocean space or which endangers the territorial or jurisdictional integrity of International Ocean Space, it may make such recommendations as may appear desirable taking into account, where appropriate, the provisions of Chapter of this Convention.

Article 36

Should the Council determine that action under Article 35 has proved inadequate or has not been complied with and should it consider that law and order in ocean space is seriously prejudiced or that the territorial or jurisdictional integrity of International Ocean Space is seriously impaired, it may decide what measures not involving the use of force are to be employed to give effect to its decisions. Such measures may include

(1)action under Chapter of this Convention

(2) exclusion of a State or other legal person from participation in the equitable sharing of benefits derived from the exploitation of the natural resources of International Ocean Space;

(3) exclusion of a State or other legal person from their right to exploit the natural resources of International Ocean Space in accordance with the provisions

of this Convention;

(4) suspension, by the Basic Organization concerned or by the United Nations, of a member or associate member from participation in the rights and privileges of membership;

(5) exclusion of a State or of its nationals from their right to make use of International Ocean Space or the air-space above International Ocean Space for some or for all purposes.

Article 37

The Council may call upon all States or some of them, as it may determine, to ensure compliance with its decisions under article 36 by such action as may be necessary, including the employment of naval and air forces.

Members of the Basic Organizations and of the United Nations shall join in affording assistance in ensuring compliance with the decisions of the Council, unless the Conference has taken the action referred to in article 46.

Article 38

The Conference shall be informed immediately of any action taken under article 37. The Conference may recommend that the Council reconsider the action taken by it.

Chapter VIII: Pacific Settlement of Disputes

Article 39

Members of the United Nations or members or associate members of the Basic Organizations that are parties to any dispute in ocean space shall, in the first instance, seek a solution by any peaceful means of their choice. In default of agreement the dispute shall be submitted to the Council on the initiative of any of the parties to the dispute. The Council shall endeavor to settle the dispute and shall in any case make and publish a report containing a statement of the facts and such recommendations as may appear desirable.

A dispute between States with regard to any matter expressly provided for in the present Convention shall be submitted to binding adjudication by the Ocean Tribunal at the request of the Council or of any of the parties to the dispute, in the event that other peaceful means of settlement fail.

Article 40

A State with is not a member of the United Nations or of any of the Basic Organizations may submit to the Council any disputes to which it is a party in ocean space if it accepts in advance for the purposes of the dispute the provisions of the present Chapter of this Convention.

Article 41

A dispute between a State member of the United Nations or any of the Basic Organizations and the Institutions shall be submitted to the Ocean Tribunal for binding adjudication at the request of any of the parties to the dispute.

Chapter IX: Maintenance of the Ecological Integrity of International Ocean Space

Article 42

The Council, or a body designated by the Council, may investigate any event, situation, practice or action which might cause significant and extensive change in the natural state of the marine environment or which might impair the ecological integrity of International Ocean Space.

Article 43

Should the Council determine that any event, situation, practice or action endangers the natural state of the marine environment or impairs the ecological integrity of International Ocean Space, the Council, or the body designated by it, shall make and publish a report containing a statement of the facts.

If the event, situation, practice or action referred to in the above paragraph has occurred in national ocean space, the Council on reliable scientific advice shall make such recommendations as may appear necessary on reliable scientific advice to the coastal State or States concerned.

If the event, situation, practice or action referred to has occurred in International Ocean Space, the Council shall take such action within its powers as it deems necessary or desirable. This may include the regulation of dangerous practices or technologies and the prohibition or licensing of the disposal of harmful substances in International Ocean Space.

Article 44

In the event of imminent danger of serious contamination of extensive areas of International Ocean Space, the Council, after taking scientific advice, may proclaim a regional or a world ecological emergency.

Article 45

During a state of regional or world ecological emergency States within the region or all States in the world, as the case may be, whether or not members of the United Nations or any of the Basic Organizations, shall take promptly such action for the preservation of the ecology of ocean space as may be prescribed by the Council, or by the body designated by the Council for this purpose.

The Council, if necessary, shall ensure compliance with its directions by taking any of the actions mentioned in Articles 36 and 37.

Chapter X: The Ocean Tribunal

Article 46

The Ocean Tribunal shall be the principal judicial organ of the International Ocean Space Institutions. It shall function in accordance with the annexed Statute which forms an integral part of the present Convention.

Article 47

All members of the United Nations and of any of the Basic Organizations are ipso facto parties to the Statute of the Ocean Tribunal.

A State which is not a member of the United Nations or of any of the Basic Organizations may become a party to the Statute of the Ocean Tribunal on conditions to be determined in each case by the Conference upon recommendations of the Council.

Article 48

The competence of the Ocean Tribunal shall extend to persons natural or juridical other than States with respect to matters which have occurred in International Ocean Space.

Article 49

Each party to the Statute undertakes to comply with a final decision of the Ocean Tribunal in any case to which it is a party.

If any party to a case fails to perform the obligations incumbent upon it under a final judgment rendered by the Tribunal within one year of its delivery, it shall have no vote in the Conference, and the other party may have recourse to the Council which may, if it deems necessary, take any of the measures referred to in Article 44 of this Convention.

If any of the Basic Organizations or organs of the Integrative Machinery fails to perform within one year the obligations incumbent upon it under a final judgment rendered by the Court, the other party may have recourse to the Council, which shall investigate the situation and may, if it deems necessary, take any action within its powers.

If any party to a case, other than those referred to in the above paragraphs, fails to perform within one year the obligations incumbent upon it under a final judgment

rendered by the Tribunal, the other party may have recourse to the Council which shall investigate the situation and may, if it deems necessary, take any of the measures referred to in article 44 of this Convention.

Article 50

The Conference or the Council or the Secretary General, after consultation with his senior advisers, may request the Ocean Tribunal to give an advisory opinion on any legal question within the scope of this Convention.

Any party to the Statutes of the Ocean Tribunal may request the advisory opinion of the Tribunal on the equity or nondiscriminatory nature of the principles and rules referred to in Part II of this Convention, as also on the equity or nondiscriminatory nature of licensing systems in international ocean space.

Chapter XI: The Secretariat

Article 51

The Secretariat shall comprise a Secretary General and such staff as the Institutions may require. The Secretary General shall be elected by the Conference upon nomination of the Council. He shall serve for a term of six years and may be re-elected for one further term.

The Secretary General may be relieved of his duties for cause by the Council.

The Council shall recommend to the Conference the election of a new Secretary General in the event of the Secretary General becoming physically or mentally incapacitated.

Article 52

The Secretary General shall:

(a) be the chief administrative officer of the International Ocean Space Institutions and act in that capacity in all meetings of the Conference and of the Council;

(b) report periodically to the Council and annually to the Conference on the activities of the Institutions;

(c) prepare the budget for the Integrative Machinery and submit it for the Council;

(d) Inspect at reasonable times and with due consideration the resource exploration and exploitation activities of any State or of its nationals in International Ocean Space;

(e) participate in so far as possible in scientific research conducted in International Ocean Space and bring the results thereof to the attention of States;

(f) issue periodic notices to mariners giving publicity to any danger to navigation of which he has knowledge pursuant to article   of this Convention;

(g) receive notifications of the temporary suspension of innocent passage of foreign vessels pursuant to article   of this Convention and bring such notifications to the attention of the Council;

(h) receive from States the maps referred to in articles of this Convention and bring them to the attention of the Council and to that of all members of the United Nations and members and associate members of the Basic Organizations;

(i) Receive notifications pursuant to article of this Convention and bring such notification to the attention of the Council;

(j) maintain a register of the disposal of radioactive wastes in International Ocean Space;

(k)administer under rules laid down by the appropriate organs of the Institutions any inhabited islands which may have been transferred to the administration of the Institutions and any scientific stations, marine preserves or nature parks which may be established;

(l) perform such other functions as may be entrusted to him by the organs of the Integrative Machinery or by the Basic Organizations.

Article 53

The Secretary General may bring to the attention of the Council any matter which in his opinion may endanger the achievement of the purposes of the Institutions.

Article 54

In the performance of his duties the Secretary General shall be assisted by principal advisers, no two of whom may be nationals of the same State. The senior adviser in terms of length of service shall act as Secretary General if the latter becomes temporarily incapacitated.

Article 55

In the performance of their duties the Secretary General and the staff shall not seek or receive instructions from any Government or from any authority external to the Institutions. They shall refrain from any action which might reflect on their position as international officials responsible to the Institutions.

Each member of the United Nations and each member or associate member of the Basic Organizations undertakes to respect the exclusively international character of the responsibilities of the Secretary General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 56

The staff shall be appointed by the Secretary General under general regulations established by the Council.

Appropriate staffs shall be permanently assigned to the organs of the Integrative Machinery and to the Basic Organisations and, as required, to other organs of the Institutions.

The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

Article 57

The Secretary General and members of the staff shall not be actively associated with or financially interested in any operations of any Enterprise concerned with exploration or exploitation of the natural resources of Ocean Space.

The Secretary General shall request permission of the Council in the event that exceptions to the provisions of the above paragraph are necessary.

Article 58

Disclosure by the Secretary General or by a member of the staff of confidential technical information shall be considered a grave infraction and shall make the offending party legally responsible for damages.

Chapter XII: Regional Organization

Article 59

Coastal States and neighboring landlocked States shall have the right to establish jointly a regional ocean space up to a maximum distance of 200 nautical miles measured from the applicable baselines, or comprizing an enclosed or semi-enclosed sea the total surface of which is not larger than the sum of the national ocean spaces of the States surrounding it.

Article 60

All the States concerned shall participate fully in the managment of the regional ocean space and shall be entitled to enjoy the use and benefits of all renewable and nonrenewable resources therein, with equal rights and obligations.

Article 61

The States which form part of a regional ocean space shall jointly manage the exploration, exploitation and conservation of the resources of the area through regional machinery, on the same lines as that proposed for similar purposes in ocean space beyond the limits of national jurisdiction, which shall also ensure an equitable distribution of the resulting benefits.

Article 62

Third States, international governmental and non-governmental organizations whatever their scope, and natural or legal persons may be allowed to co-operate in the regional management systems, and financing may be accepted from any source for the operation of the regional machinery.

Article 63

Within the limits of each regional ocean space there shall be regional sovereigntyfor the exploration, exploitation and conservation of the natural resources, whether renewable or nonrenewable.

Article 64

On the basis of the equality of rights and obligations of all participating States without discrimination of any kind, the regional management system shall protect and preserve, and ensure the protection and preseruation of, the marine environment, and may permit joint scientific research to be carried on.

Article 65

States parties to a regional ocean space may establish, preferably through the regional machinery, an Enterprise or Enterprises responsible for carrying out all technical,industrial and commercial activities, including the regulation of production, the marketing and the distribution of raw materials from regional ocean space resulting from exploration of the area and exploitation of its natural resources. The Enterprise, in the exercise of its functions and powers, which shall be laid down in a Convention and its pertinent regulations, shall assume responsibility for the relevant activities, either directly or through operational contracts, joint ventures, joint management or any other type of legal regime which does not conflict with the interests of the region and the machinery shall ensure effective administrative and financial control in all circumstances.

Article 66

In the exercise of its powers and functions, the Enterprise shall act in accordance with the general policy and conditions laid down by the competent regional Conference, and shall submit proposals with regard to its activities and the legal provisions required for such activities to the competent body or Council for consideration and authorization.

Article 67

On the same lines as international ocean space and the marine and ocean resources beyond national jurisdiction, which are deemed to be the common heritage of mankind -- a principle that has already acquired the character of a rule of international law -- regional ocean space and its renewable and nonrenewable resources shall be declared the <u>common heritage of the region</u>

Article 68

Regional ocean space may be organized on the broadest possible basis and the machinery, through its appropriate organs, shall exploit its resources in such a manner as to ensure that they do not adversely affect the national land-based economies of countries dependent on a single commodity.

Article 69

States members of a regional ocean space regime, whether or not they are coastal States, shall be equitably and fairly represented both in the regional machinery and in the Enterprise.

Chapter XIII: Miscellaneous Provisions

Article 70

Every Treaty and every international agreement concerning ocean space entered into by any member of the United Nations or of any of the Basic Organizations after the present Convention comes into force shall be registered with the Secretariat and published by it.

Article 71

The seat of the Integrative Machinery shall be in Malta.

Article 72

Any member of the United Nations or of any of the Basic Organizations may propose amendments to this Convention. Amendments shall enter into force when approved by the Conference as a whole and ratified by a majority of States members of the United Nations.

Article 73

The present Convention shall have a duration of 20 years from the date of entry into force.

On the expiration of 20 years there shall be convened a General Conference on Ocean Space at which the present Convention shall be reviewed.

Article 74

Any State may withdraw from this Convention by written notification to the Secretary General. The Secretary General shall promptly inform all other Contracting Parties of any such withdrawal.

The withdrawal shall take effect two years from the date of the receipt by the Secretary General of the notification.

Article 75

This Convention shall be open for signature on_____ by all Member States of the United Nations or any of the Basic Organizations, and shall remain open for signature by those States for a period of ninety days.

The signatory States shall become parties to this Convention by deposit of an instrument of ratification.

Instruments of ratification by signatory States and instruments of acceptance by States whose membership

has been established under Article
of this Convention shall be deposited with the Governments
of__________________ hereby designated as Depositary
Governments.

Ratification or acceptance of this Convention shall be affected in accordance with the respective constituitonal processes of the States concerned.

This Convention shall come into force when eighteen States have deposited instruments of ratification.

The Depositary Governments shall promptly inform all States signatory to this Convention of the date of each deposit of ratification and the date of entry into force of the Convention. The Depositary Governments shall promptly inform all signatories and members of the dates on which States subsequently become parties thereto.

Article 76

This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Agreements entered into in accordance with Article 78 of this Convention shall be registered with the United Nations if registration is required under Article 102 of the Charter of the United Nations.

Article 77

This Convention, done in the Chinese, English, French, Russian, and Spanish languages, each being equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Convention shall be transmitted by the Depositary Governments to the Governments of the other signatory States, to the Secretariats of the Basic Organizations, and to the executive organs of their associate members.

In witness whereof the undersigned, duly authorized, have signed this Statute.

Done at__________, this____ day of ______, 1980 .

On the other hand, the Conference has no managerial or operational functions: These functions are decentralized and vested in the Basic Organizations and their Enterprise systems.

Chapter VI. The Planning Council combines executive functions and planning functions. This is meant to cut down on unnecessary machinery. Planning at the central level, such as it is conceived here, does not require a great apparatus. Planning is very much decentralized, and democratized. It is entrusted to the Basic Organizations and, as much as possible, to the "grass roots." This is emphasized especially in Article 28. The function of the Council is to coordinate and integrate plans rather than to engender them.

Article 30 is taken over from the Maltese Draft Ocean Space Treaty.

Articles 31 and 32 are also taken over from the Maltese Articles.

Se are, with very minor variations, Chapters VII, VIII, IX, X, and XI.

It is indeed not the scope of operations that has been changed in this model. The requirements of effective ocean management, the division of tasks between national (economic zone) and international management systems, and the interaction between these two sets of management systems were perfectly foreseen by the Maltese Draft Articles which, in this respect, are as valid today as they were in 1971.

Chapter XII is taken over from A/Conf.62.C.2/L.65: Bolivia and Paraguay: draft articles on the "regional economic zone," 16 August, 1974.

No comment is needed on Chapter XIII, which mostly follows the Maltese articles.

Article 71 proposes Malta as the seat of the Integrative Machinery. Since Malta was the first State to propose a comprehensive approach to ocean affairs, this seems appropriate. The vicinity of the headquarters of IMCO (London), IOC (Paris), and COFI (Rome) would make Malta particularly suitable. Add to this its location, geographically, between Europe, Africa, and Asia; socio-economically, between developed and developing nations; politically, between East and West; add to this its great harbor and dock facilities and the presence of other global and Mediterranean ocean institutions -- and it would

General Comments

A first draft of these Articles was discussed at the Center for the Study of Democratic Institutions in Santa Barbara on December 13, 1975.

The intention of this model is

(1) to re-focus attention on the building of a new international order and to strengthen international institutions on which especially the smaller and weaker nations depend for their national integrity and development;

(2) to cope with all uses of ocean space and their interaction;

(3) to utilize, in its entirety, the work accomplished to date by the U.N. Conference on the Law of the Sea, including

(a) the establishment of an Economic Zone
(b) the establishment of a Seabed Authority with its Enterprise system;

(4) to utilize, and develop, ongoing trends towards the integration of the activities of the Specialized Agencies and other intergovernmental and nongovernmental organizations in ocean space.

The first point indicates a strategy rather than a goal. Goal and strategy, however, coincide. The New International Economic Order is a goal of vital importance to all developing nations. To rally their forces for the attainment of this goal will have a unifying effect, which may be of decisive strategic value at the Conference on the Law of the Sea.

The second point is a precondition for the success of any ocean regime. To deal with ocean uses, which are interdependent and interacting, in a piece-meal fashion is destructive to users, uses, and the ocean environment.

The third point, again, affects both goal and strategy. Continuity is an essential part of that strategy. Any model for ocean-space institutions (goal) proposed today must start from the results reached thus far by UNCLoS. These, obviously, are still subject to change and amendment. Perceptions of vital interests will continue to change as time goes on, and the general trend of world events, and the efforts to restructure the U.N. system as a whole, will not remain without influence on the further work of UNCLoS.

Thus the implications of the documents of the Sixth and Seventh Special Session of the General Aseembly for the Law of the Sea must be systematically studied.

Under the fourth point, we have taken this material and brought it into relationship with the Report of the Group of Experts on the Structure of the United Nations System -- especially Annex III, List of Conclusions and Recommendations of the Group of Experts, prepared by the Secretariat. The attempt to restructure the Specialized Agencies and integrate their activities could be decisively advanced with regard to the oceans. Reference should be made, in particular, to sections 3.7 and 3.8 of that U.N. document. It would seem that our model reflects and advances the developments recommended there.

The result of our projection is a new type of international organization. Rather than an international organization in the traditional sense, this might be called a functional confederation of international organizations. The structure of the "integrative machinery" is in fact not based directly on territorial States but on functional intergovernmental organizations the Members of which, in turn, are States. The structure thus links political (national) and functional (economic and scientific: transnational) interests in a new way. Since the functional international organizations on which it is based are fully autonomous and self-managing, the structure allows for a maximum of decentralization of functions and minimizes the need for new international bureaucracy. While safeguarding the sovereign equality of States, the structure balances the weight of different interests such as navigation, fishing, scientific research, and mining -- which are the interests of different groups of States. The "integrative machinery" is small, efficient, and balanced.

Detailed Comments

Chapter I follows, with very minor variations, Chapter XVII, Purposes and Principles of A/AC.138/53, the Maltese Draft Ocean Space Treaty, which is the only Draft before the United Nations that deals with ocean space as a whole and with all uses of ocean space and resources. One might also have included Chapter XV: Basic principles, of that text, but it was felt that this might rather be used to integrate Part I of the present Projection, dealing with the Law of the Sea in general, based on the work

of the Second Committee, whereas the present Part III should concentrate on institutional framework.

Chapters II and III define, in broad lines, the relations between (a) the Basic Organizations and the Integrative Machinery; international ocean management and national ocean management systems; Basic Organizations and other intergovernmental and nongovernmental organizations; (d) all organizations operating in ocean space and the United Nations Environment Programme. Article 7 is likely to require a great deal of development giving rise to new forms of transnational cooperation -- conceivably following the practice, already adopted by some fisheries Conventions, which transcend national boundaries and are equally applicable and enforceable on either side of the boundary, in international as well as in national ocean space.

Chapter IV. The Integrative Machinery is minimal. The Personnel is pracitally all drawn or seconded from existing organizations. This means also that the extra expense involved will be minimal.

Chapter V. The Permanent Conference should embody the suggestions made in Part III, Section 2, point 8: That is, it is an institutionalization of joint sessions of the Assemblies of the four Basic Organizations.

There is an interesting precedent for the merger of the policy-making organs of two separate organizations resulting in the creation of a new entity. The new European Space Agency emerges from the merger of two organizations, the European Space Research Organization (ESRO) and the European Organization for the Development and Construction of Space Vehicle Launchers (ELDO). The Convention for the Establishment of the European Space Agency (Paris May 30, 1975), contains a Resolution, titled Functioning "de facto of the European Space Agency, which recommends

> that the representatives of Member States on the ESRO and ELDO Councils should meet jointly as from the day following the date of signature of the Final Act, thus acting in anticipation of the establishment of the Council of the European Space Agency

and that

> in order to enable the Agency to function de facto as from the aforementioned day, that in the application of the Conventions for the establishment of ESRO and ELDO the provisions of the Convention for the Establishment of a European Space Agency should be taken into account to the greatest possible extent....

In the case of the Conference proposed here, it would not be purposive for the Assemblies of the Basic Organizations to meet in toto. A rather numerous "delegation" of each Assembly would suffice. It is important, on the other hand, that each group should have the same number of Members (membership should be rotated among the delegations composing the Assemblies of the Basic Organizations). This provides a mechanism for the balancing of the various functional interests (mining, fishing, navigation, science). One additional group or "chamber" has been provided for -- the First Chamber -- to represent politiaal interests and to establish a link with the political structure of the United Nations. The selection of Members in this Chamber is based on regions. The regional grouping indicated in Article 12 is merely illustrative. For instance, it could be discussed whether the U.S.A. should be treated as a region and allowed 5 delegates, or whether there should, instead, be a North and Central American region, including Canada and the Caribbean, for instance. The same question could be raised with regard to the U.S.S.R. and the People's Republic of China. On the other hand, it is of course a fact that these States are not really "nations" in the usual sense.

An alternative to the derivation of this First Chamber from the General Assembly would be to use ECOSOC, restructured and strengthened in accordance with the recommendations of the Group of Experts, as First Chamber.

This First Chamber serves as the fulcrum of the whole system. This system looks far more complicated than it really is. Basically, it is a rotating bi-cameral decision-making system, allowing for interdisciplinary decision-making on issues which by their very nature are inter-disciplinary.

The model is an adaptation of the Assembly system of the Yugoslav Constitution of 1963.

Article 18 is very comprehensive. The intention is that the Conference should review and coordinate all the activities of the Basic Organizations. While the Assembly of each Basic Organization will discuss its program from a technical and specialized point of view, the Conference should discuss each program from an interdis-iplinary point of view, study the interaction of all programs, and consider them in a political and legal context. Only a body such as this Conference can do just that.

The Conference should also deal with problems arising from activities and technologies presently not covered by any intergovernmental agency.

Section 4

COMMENTS ON THE NEW MODEL

ZWEITER TEIL

DIE PERSONEN DES DRAMAS