national jurisdiction and the use of their resources in the interest of mankind."

Opening the discussion last November, Ambassador Pardo delivered an address that may well go into the records of the United Nations as one of the most imaginative, scholarly, and politically sagacious speeches ever heard there. He described the potential wealth and the potential danger. He pointed to the weaknesses of the international law of the seas, and to the areas that are ruled by no law at all except that of uncertainty. He listed all the efforts currently undertaken within and outside the United Nations to cope with this situation. "Nearly all United Nations agencies are directly or indirectly, actively or potentially, concerned with the seas." The International Atomic Energy Agency has done research on the question of radio-active waste disposal into the seas; the ILO is concerned with the condition of the work of seafarers; the FAO and other agencies with fisheries; IMCO and UNCTAD with shipping; WHO with the health of aquanauts; WMO, UNESCO, and other organs are also involved. The Ambassador also quoted the proposal in favor of an international regime that had been put forward by the World Peace Through Law Conference: "Whereas new technology and oceanography have revealed the possibility of the exploitation of untold resources of the high seas and the bed thereof beyond the continental

shelf, and whereas more than half of mankind finds itself under-privileged, underfed, and underdeveloped, and whereas the high seas are the common heritage of all mankind, Resolved that the World Peace Through Law Center recommend to the General Assembly of the United Nations the issuance of a proclamation declaring that the non-fishery resources of the high seas, outside the territorial waters of any State, and the bed of the sea beyond the continental shelf, appertain to the United Nations and are subject to its jurisdiction and control."

The debate that followed Ambassador Pardo's presentation revealed virtual unanimity among West and East, maritime and landlocked nations, developed and developing countries. Ambassador Goldberg cited the statement by President Johnson of July 13, 1966: "Under no circumstances, we believe, must we ever allow the prospects of rich harvest and mineral wealth to create a new form of colonial competition among the maritime nations. We must be careful to avoid a race to grab and to hold the lands under the high seas. We must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings."

The soviet Representative to the United Nations, Mr. Mendelevich, stressed the role his country has played in the oceanographic research of various specialized agencies of

the United Nations. He stated, "We can say quite definitely that the question of the role of the ocean bed and its use exclusively for peaceful ends is of great and serious significance in our opinion. We should like to remind the Committee in this connection that the Soviet Union is unalterably in favor of using exclusively for peaceful purposes all media in which human beings live and act--the spacious oceans and seas, the dry land, outer space and the atmosphere, and of course the ocean bed--and we put forward our proposal on general and complete disarmament consistently seeking for its implementation."

A working committee was established under the chairmanship of Mr. Fahmy of the United Arab Republic, to embody the Maltese Proposition in a resolution that called for the establishment of an Ad Hoc Committee consisting of the following member states: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Ceylon, Chile, Czechoslovakia, Ecuador, El Salvador, France, Iceland, India, Italy, Japan, Kenya, Liberia, Libya, Malta, Norway, Pakistan, Peru, Poland, Romania, Senegal, Somalia, Tanzania, Thailand, U.A.R., U.K., U.S.A., U.S.S.R. and Yugoslavia. The resolution was adopted by the U.N. First Committee by 93 votes to none, with one abstension, and by the U.N. General Assembly unanimously. The Ad Hoc Committee was asked to prepare a full-scale study for

consideration by the General Assembly at its 23rd session.

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To gauge the chances of the Ad Hoc Committee's success in reaching concrete results during the foreseeable future, one needs to go below the smooth surface of diplomatic discourse. Is it possible that divided mankind, seemingly intent on blowing itself into extinction, should suddenly have awakened to an acknowledgment that there is such a thing as a common heritage of mankind and that they should proceed towards its institutionalization and legal embodiment? In fact, the underground rumblings were very audible indeed. One example can be found in the U.S. House of Representatives. The "Findings and Recommendations of the House Committee on International Organizations and Movements," which held hearings on various House joint resolutions dealing with the Maltese Proposition last Fall, included these statements:

> "First: At the present time the oceans and their potential for sustaining and enriching life are still largely unknown.
>
> "Second: Numerous private, national and international undertakings are currently in progress aimed at enlarging our knowledge of the oceans and their resources.
>
> "Third: Many uncertainties, unresolved questions and

possible conflicts exist in international law and usage on the use of the seas and exploitation of ocean resources; and

"Fourth: The proposal to internationalize the seabed and the ocean floor cuts across a broad spectrum of scientific, economic, political and security considerations and could profoundly affect the entire structure of private, national and international marine undertakings.

"Based on the above, the subcommittee believed that it would be precipitate, unwise and possibly injurious to the objectives which both the United States and the United Nations have in common, to reach a decision at this time on a matter which vitally affects the welfare of future generations. The subcommittee therefore recommended:

"First: that the studies undertaken pursuant to the U.N. General Assembly resolution...and the Marine Resources and Engineering Act of 1966, be pursued to a conclusion;

"Second: That the U.S. Government actively discourage /emphasis added/ any action to reach a decision at this

time with respect to the vesting of title to the sea-bed, the ocean floor or ocean resources in any existing or new international organization; and

"Third: That the U.S. Government, while continuing to encourage and support constructive international cooperation in the exploration of the oceans, proceed in this field with greatest caution so as not to limit or prejudice our national interests in the exploration, use and economic exploitation of ocean resources. The United States should urge further study of all the issues and problems relating to this entire subject.

"In concluding, the subcommittee stated that in its opinion hasty action in this field could create more problems than it would solve or avert."

Similar pressures must have been at work in the Soviet Union. The word "premature" figures several times in the statements of its representatives. It is of course unrealistic to assume that the Great Powers can act cooperatively and constructively in an area of such practical importance as long as they are locked in a calamitous war in Southeast Asia. Disappointment with their lack of leadership in this matter was indeed voiced in the U.N. First Committee. As the representative

of Tanzania, Mr. Waldren-Ramsey, noted, "We detect that there is a certain proclivity on the part of the more advanced technological powers not to have this item discussed with any elasticity whatsoever, but that we should confine ourselves to such activity as has been going on so far within the United Nations system. This we find to be somewhat unfortunate, if we understand this attitude correctly, because it would seem to us to indicate a certain degree of negativeness on the part of the more technologically advanced countries. This, of course, is to be regretted."

The suspicion that the injunction "to study the problem" really means "to study the problem to death," is, alas, not fanciful. For while the study is on, so is the grab. Claims are staked, and the "common heritage of mankind" continues to erode--to the point, perhaps, of becoming so puny as not to be worth bothering with, as far as the United Nations is concerned. On the other hand, it must be admitted that each of the key concepts of the Maltese Proposition raises issues deeper than the oceans themselves. What is needed, besides a relaxation of international tension, is clarification and enlightenment before the republic of the deep seas can be created.

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In recognition of this, the Center has joined all the other study groups and organizations currently at work on this global problem. The Center launched its project with a three-day planning session in February, which was attended by a group of Ambassadors to the United Nations, most of them members of the Ad Hoc Committee, and by a group of distinguished scientists and scholars from various countries, West and East.

The major issues raised in the discussion were these:

1. "The seabed and the ocean floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction" is not a clearly defined concept. According to existing international law, "national jurisdiction" extends (a) to the "territorial waters," which may vary from a limit of three to a limit of two hundred miles from the shoreline, according to the claims of various nations and (b) to the continental shelf established by the Geneva Convention of 1958; that is, the submarine extension of the coast down to a depth limit of two hundred meters, or beyond if exploitation proves practical. Where the oceans are shallow, the continental shelf--subject to national jurisdiction and exploitation--may extend for hundreds of miles. The criterion of exploitability, furthermore, is elastic--establishing a "rubber frontier", defined not

by legal norms but by technological progress. The most developed nations may claim most of the ocean floor. So, what, actually, is the submarine area "beyond the limits of national jurisdiction"?

As though this difficulty were not enough, the scientists pointed to another one: for all practical purposes, it is impossible to separate the use of the ocean floor and the seabed from that of the overlying waters. The ecology of the ocean space does not permit such a distinction. What is done at the bottom will affect the overlying waters, just as activities on the earth will affect the atmosphere, and vice versa. Problems of pollution, for instance, cannot be isolated. Thus, the use of the extranational submarine areas in the interest of mankind is inextricably linked with the use of the waters, with the problems of the traditional freedom of the seas, with fishery, with conservation, with navigation--and any treaty or other international arrangement must take account of this.

2. The concept of "the reservation exclusively for peaceful purposes" of this area, however defined, is borrowed from the Outer-Space Treaty, which, in general, is one of the most relevant and pertinent precedents for the conception of an <u>ocean</u>-space treaty, and it is curious to

note the "feed-back" action between the two. The Outer-Space Treaty has borrowed some of its major concepts and even some details (for instance, the treatment and status of astronauts, called, most beautifully, "envoys of mankind," or the registration and ownership of space vessels) from the traditional law of the seas; in turn, any implementation of the Maltese Proposition on ocean-space would borrow heavily from outer-space law. The concept of "the reservation exclusively for peaceful purposes" is of this kind. If its interpretation and enactment caused difficulties in outer-space, the difficulties are compounded in the case of ocean-space. There are already two interpretations of the concept. One is Ambassador Pardo's, which would prohibit the installation of any military hardware in the seabed beyond national jurisdiction, however defined. The other is U.S. Senator Pell's, which would prohibit the installation of atomic weapons and weapons of mass destruction on the seabed anywhere, including any parts now under national jurisdiction. Either interpretation would have to face the problem of the use of submarines and the establishment of test ranges for their use; and this, in turn, is inextricably linked with the whole complex of the arms race versus disarmament and arms control.

Is the Ad Hoc Committee of the U.N. competent to deal with problems of this sort? U.S. Ambassador Goldberg is on record in favor of bringing the over-all matter of disarmament into the study of the ocean-space problem. Others are not. They have pointed out that the peaceful use of the seabed must not be confused with world peace and that the disarmament question does not belong within the competence of the Ad Hoc Committee but belongs to the Disarmament Conference. If the use of the ocean floor has two aspects--active and preventive; or developmental and inhibiting; or economic and military; or positive and negative -- these people believe that the Committee should concentrate on the first term of each of these pairs, emphasizing economic cooperation and development, not military controls.

Peaceful and military uses seem inextricably connected. Any scientific discovery may be used for military purposes; any military operation may have scientific by-products; the instruments of work and exploration are the same. A new approach to the whole problem of disarmament and arms control may be necessary and, in fact, it may be triggered off by the debate on the peaceful use of the seas.

3. The concept of the "common heritage of mankind"

opens up another host of problems of both a juridical-philosophical and an economic-social character. "The common province of mankind," "the common property of mankind," "social property" are related terms which are used in various other contexts. But what is the real meaning of the phrase, and how is it to be spelled out, especially when it is charged with an explosive economic potential? Here, incidentally, lies one of the main differences between the problems of outer-space law and those of ocean-space law: the possibilities for economic exploitation are remote in outer-space, but they are in the forefront in ocean space. "Common heritage" may be construed to mean that every one, nation or person, should have free access to the exploration and exploitation of common resources. But does this not mean, in practice, that such access is preempted by the rich, the powerful, and the technologically developed? Another interpretation is that it means a common share in the revenues derived from the exploitation of the common resources. But this would not make things any easier. Would it mean that ownership would be vested in an international, extranational, or supranational organization (however defined and however related to the United Nations), which would then assign rights of use to nations and enterprises, or to enterprises through nations? Would it mean that this

organization would be vested with territoriality and, consequently, with sovereignty? Or would it mean that "ownership" would be vested in nobody but the organization would assign rights of use to nations and enterprises as long as they used them "in the common interest of mankind?" The I.T.U.'s assigning of wave lengths to nations, without itself "owning" the "ether", would seem to set a precedent, except that wave lengths are not (directly) economically productive while the use of the common ocean resources is. Would it mean that the organization would grant leases or licenses and extract fees or taxes?

The fact is that, not unlike the concept of "sovereignty", the concept of "ownership" or "property" is in crisis today, in West, East, and the middle between them. Wealth is no longer created by ownership of land, water, or other resources and the implicit right to use or misuse them. It is created by technology, by education, by organization and design. These are "owned" by no one. Ownership, in pre-capitalistic terms, was a "bundle of rights", "the right to use". The Latin proprietas meant both "property" and "propriety"; that is, property that had to be used properly. Is it in this sense that the "common property" or "common heritage" of mankind should be construed?

4. The common heritage has also been called a "trust", implying the notion of a "trustee". This would involve the creation of a "regime" to act as trustee for all mankind, regulating and controlling all activities on extranational terrain and concerned with the exploration and exploitation of extranational resources. At the United Nations, Ambassador Pardo said: "We do not believe that it would be wise to make the United Nations itself responsible for administering an international regime....We say this not because we have any objections of principle, but for practical reasons....I would only observe that it is hardly likely that those countries which have already developed a technical capability to exploit the ocean floor would agree to an international regime if it were administered by a body where small countries, such as mine, had the same voting power as the United States or the Soviet Union."

The establishment of such a regime raises unprecedented problems. A "trusteeship of all mankind" in developing, administering, and redistributing the common wealth of the oceans must include free-enterprise nations and socialist nations, landlocked and maritime nations, capital-exporting and capital-importing nations, developed and developing nations. Obviously not all of them can participate in the

administration, but the administration must somehow be responsible to all of them. Managerial efficiency must be combined with political responsibility, and a degree of "participational" democracy unprecedented at the international level must be designed.

The regime would have to strengthen the United Nations, not weaken it by bypassing it; in other words, it must be under the U.N. "umbrella", organized in such a way as to coordinate the work of all the specialized and intergovernmental organizations now dealing with one or another aspect of the ocean problem. At the same time the regime must be open to all nations, whether they are U.N. members of not. A new role must be assigned to corporations and enterprises, whether public or private, national or international, for they will be the protagonists in the development of the common resources of the oceans. The originality and imaginativeness of the regime must match the novelty of its functions. It is clear that such an organization cannot be designed overnight.

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If action on the Maltese Proposition had to depend on common agreement to a solution of problems of this magnitude

and complexity, no action could be forthcoming in the near future. Existing technology could complete the job of final erosion of the freedom of the seas and the final pollution of the common heritage of mankind; while, on the other hand, the uncertainty of jurisdiction would delay further technological progress and slow down the orderly and rational development of the common resources. Some kind of beginning, therefore, must not be postponed beyond the 23rd General Assembly of the United Nations, which will open next Fall.

The Conference recommended that the problem be divided tactically--although, in substance, no such division is possible because all aspects are inextricably connected--and approached from both a short-term and long-term angle. The former would be the stage of initiation; the latter, the stage of implementation. The initiating act would be to lay down a set of principles and guidelines that could be the basis for a Declaration the 23rd Assembly could adopt. If it is to draw a general consensus, the Declaration should be as simple as possible. If controversial elements or issues were to be introduced, a whole year might be wasted in fruitless debate.

A certain number of guidelines are implicit in the U.N. Resolution adopted last December. Others are explicit

in Ambassador Pardo's speech. They should be given substance and form, and might provide the basis for the Ad Hoc Committee's deliberations. Among the principles which should be included are the following:

1. The seabed and ocean floor, however defined, and the subsoil thereof, are the common heritage of mankind; they should be used, explored, and exploited for the common interest of mankind.

2. The delimitation of the continental shelf should be left in suspense. The Declaration should content itself with a statement of the principle of non-recognition of any further claims to sovereignty over the seabed and ocean floor, a moratorium, so to speak, coupled with a statement that the Geneva Convention will have to be reviewed, if not revised (a matter that cannot come up before 1969). It is likely that such a revision would link exploitability with adjacency; that is, it would add a horizontal limitation (distance from the shore line) to the depth limitation. The distance from the shore line might be limited to 30 km, which is the algebraic mean of the extensions of all continental shelves all over the world. Until such a revision, however, the Declaration should

merely freeze the status quo.

3. There was a general agreement that the Declaration must assert the principle of the peaceful use of the seabed and the ocean floor, even it it is difficult at this point to see how this could be enacted and enforced. Pending a Treaty, nations should voluntarily refrain from installing atomic missile silos or other weapons of mass destruction on the ocean floor and from using military personnel for scientific research on the ocean floor. It may be necessary, however, to limit the Declaration to the statement that the peaceful use of the ocean floor and the seabed must conform to the Charter of the United Nations and to international law as a means of ensuring the freedom of the seas.

4. Some indication should be given, even if it can not be spelled out, of the concept of trusteeship. To speak only of the concept of "common heritage" of the ocean resources without recognizing the necessity for their development by an appropriate body for the benefit of mankind would leave the Declaration incomplete.

5. As an interim measure, pending a Treaty, the Declaration might recommend that in any bilateral or

multilateral contracts for the exploitation of ocean resources the United Nations might be included as a party in order to establish the interest of the world as a whole, at least insofar as the United Nations represents it. The conferees felt that a declaration embodying these principles would have an excellent chance of being adopted by the 23rd General Assembly. This would open the way to the long-range approach: the spelling-out in some detail of the principles enunciated in the Declaration, their embodiment in a Treaty open to all nations, and their implementation in a regime. This process cannot reasonably be completed before the 1970's. It will require the coordination of all efforts, governmental and non-governmental, much research, and patient negotiation.

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One school of thought at the Center conference held that once the principles are agreed upon, their institutionalization in a regime will not cause grave difficulties; another, that a "model" devised during the early stages might give a focus to the planning and research, which

might otherwise tend to be open-ended. In other words, a model could be a useful device to clarify issues and might therefore facilitate the work of the Ad Hoc Committee on the initial task of drafting the Declaration and also shorten the period that is bound to elapse between the stage of initiation and the stage of implementation.

Such a model can not be built by governments or their official representatives in official meetings. They could only build a Treaty, and the time for this is not ripe. A model must be created by private institutions acting in a private capacity; but lest it become a model for a castle in the air, it should be elaborated and constantly tested by political leaders (acting individually) and by representatives of those scientific groups, corporations, and organizations involved in the development of the seas. The model will inevitably change during this process and may eventually approximate the form that the Treaty would assume.

A model of this sort was submitted to the conference. Discussion of its main points was undertaken during the final session. Its main points are:

The Treaty would be open to all nations.

The Treaty would clarify and spell out the principles enunciated in the Declaration,

The Treaty would set up the regime and define its relations to the various organs of the United Nations and specialized agencies,

The regime would provide for a new kind of voluntary cooperation to develop the common oceanic resources and redistribute the common wealth. To this end, it must be enabled to levy taxes on ocean produce, to make loans, to receive grants, to make development plans, and to encourage research and the universal diffusion of its results.

The parties to the Treaty would appoint a Maritime Commission of a determined number of members (probably not more than seventeen). They would be chosen on the basis of their competence only, to act as individuals, not responsible to any State, in the interest of the world community as a whole. The governing body of The World Health Organization, for example, is appointed in this manner. However, a number of States are now pressing to make the members of this body responsible to the States that appoint them. Analogously, the members of the Maritime Commission might be made responsible to the appointing member

States. The Commission in this case might resemble the Security Council, with a group of permanent members--probably the technologically most developed States--and a rotating group of non-permanent members. It might also be stipulated that the Commission would act on the basis either of unanimity or of a majority that would include the votes of all the permanent members. Whether this is the best way of doing business is questionable. And like business is what the Commission should be, the WHO precedent might be sounder than that of the Security Council. However, the difference may turn out to be more theoretical than practical, for if the regime serves the interest of its members and if world tension has been reduced, the Commission will function well whether its members are responsible to their own States or to the organization itself. If, on the other hand, tensions are high and the world situation is such that the regime cannot do its job, the members of the Commission will yield to the pressures of the great powers whether they are officially responsible to them or not. At any rate, in the appointment of these members due consideration should be given to a fair balance between the free-enterprise and the socialist nations and between developed and developing

nations. Any State that is party to the Treaty but is not represented on the Commission may appoint an ad hoc member whenever its own vital interests are directly concerned. The number of ad hoc members on the Commission, however, should be limited. The Commission would elect its own chairman.

To embody the principle of trusteeship, the Commission would be responsible to a Maritime Assembly that would reflect, on the basis of fair geographical distribution, the real political, economic, and scientific forces and interests. Although this Assembly cannot be the General Assembly of the United Nations it could emanate from it. It should be created under Articles 59, 60, and 68 of the U.N. Charter, Article XI of the UNESCO Constitution, and Articles XII, XIII, and XIV of the FAO Constitution.

The Maritime Assembly would consist of three chambers, of eighty-one members each:

(a) the first to be elected by the General Assembly of the United Nations with provisos

--that nine members be elected for each of the nine regions of the world (North America; the socialist countries of Eastern Europe; Western Europe; Latin America; Africa south of the Sahara; the Far East; the Middle East;

Southeast Asia; India and Pakistan);

--that every representative in the U.N. General Assembly be automatically a candidate for election to the Maritime Assembly except those representing States that are not parties to the ocean Treaty or not wishing to be represented in the Maritime Assembly; and that additional candidates up to a total of twenty-seven for each of the nine regions of the world be nominated by national parliaments or governments or regional parliaments or intergovernmental organizations, including any that may be signatories of the ocean Treaty but not members of the United Nations;

(b) the second chamber, representing international corporations, labor organizations, producers, and consumers, to be elected as follows:

--one-third by the U.N. Social and Economic Council, on the basis of nominations made by the organizations themselves;

--one-third by the General Assembly of FAO, on the same basis; and

--one-third by the General Assembly of ILO, on the same basis;

(c) the third chamber, representing scientists, to be elected by the General Assembly of UNESCO, on the basis of nominations by universities, national and international science organizations and foundations.

Each chamber would elect its own president; the Assembly as a whole would elect its president and make its own rules of procedure.

A majority vote of two chambers, including the chamber of regions, would be required for the adoption of any decision or recommendation.

The right to offer proposals, recommendations, and opinions would be shared equally by all three chambers of the Assembly and by the Commission.

Decisions adopted by the Commission would become effective when adopted by two chambers of the Assembly including the chamber of regions; decisions adopted by the Assembly would become effective when passed by the Commission. By a three-fourths majority vote the Commission could return decisions and recommendations to the Assembly where they may not be taken up again before the lapse of a two-year period.

The structure of this model Maritime Assembly is suggested by the Center's more comprehensive studies on international organization. It bypasses the one-nation-one-vote difficulty of the U.N. Assembly, not by returning to some feudal system in which rich nations would have more voting strength than poor nations, but by incorporating certain principles of recent theories of federalism that transcend the traditional principle of territorial-political representation and add a social and economic dimension to the concept of federalism.

This structure would assign a new role to non-governmental organizations and corporations.

It should be noted that the Assembly would have more than purely consultative powers but somewhat less than full legislative powers. Real decision-making power would still be vested in the government-appointed Commission.

To embody the principle of coordination of all U.N. organs and intergovernmental agencies now working on one aspect or another of the ocean problem, a Maritime Planning Agency would be established, half of its members to be appointed by the Commission, the other half to be elected

by the Assembly, with the members of the Inter-Agency Board of the U.N. Development Program and the president of the World Bank as members ex officio.

There would also be a Secretariat for ocean mining, a Secretariat for fisheries, a Secretariat for deep-sea oil extraction, and probably others, the heads of which would be elected by the Maritime Assembly.

A Maritime Court would be established by agreement among the States that are parties to the Treaty. The code of procedure for the Court would be appended to the Treaty. States, international organizations, corporations, and persons would have a standing before the Court, litigations between States to be referred to the International Court of Justice by agreement among the Maritime Court, the International Court, and the States concerned.

A Commission on Maritime Law would be appointed to review and clarify all existing maritime law. In any case of inconsistency, the Treaty would prevail. A list specifying and describing the common ocean resources and a Protocol on transitional measures would be appended to the Treaty.

The Treaty would contain nothing abrogating the sovereign

equality of member States. Since its jurisdiction extends exclusively over extranational areas and activities, beyond the limits of present national jurisdictions, it would create a new sovereignty rather than detract from any existing one.

The declaration that the ocean space and ocean resources beyond the present limits of national jurisdictions are to be considered the common heritage or province or property or mankind is not to be construed in the sense that it vests territoriality in the regime but in the sense that the regime assigns and regulates the right to use such space and resources, such assignment to be made to States or to public or private national or international organizations or corporations of individualist or collectivist economy, in every case subordinated to the interests of the common good.

....