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A CONSTITUTION FOR THE OCEANS

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Twelve are the working papers whose careful comparative analysis is the content of document A/AC.138/c/10, 28 January 1972, prepared by the Secretariat of the United Nations.

And already a voluminous literature, in many languages, is growing around this documentation -- summarizing, extrapolating divergences and convergences, forecasting trends.

Suffice it to mention the comprehensive study by Fabrizio Bastiannelli and Emma Generali, published by the Rivista Italiana del Petrolio in February 1972- Professor Wolfgang Friedmann's essay, "Selden redivivus "(The American Journal of International Law, Vol. 65, 5 1971), and Professor Louis Sohn's "The Council of an International Sea-Bed Authority" (xeroxed) which we have included in the background documentation for Pacem in Maribus III.

Pacem in Maribus I has dealt extensively with the American, Pacem in Maribus II, with the Maltese draft. In these pages, I shall not try to make one more summary. My purpose is to concentrate on some "model" aspects of the other documents under review which, in my opinion, may indicate the contours of international organization in the 21st century.

There is something historically unique about the whole effort, and the literature it has produced.

~~Here~~ We have a piece of our planet, the seabed and ocean floor, and what is below it, whose economic potential is still largely unknown. For the next few decades, however, it is likely that the produce it may yield will not markedly affect world economy. This is ~~La Que's~~ estimate ~~of revenues from manganese nodules is modest, and~~ borne out by the Secretary-General's Report entitled "Possible Impact of Sea-Bed Mineral Production in the Area beyond National Jurisdiction on World Markets, with Special Reference to the Problem of Developing Countries; a Preliminary Assessment." ~~(A/AC/138/36).~~

~~As far as fossil fuels are concerned, Professor de Jouvenel, in his paper "Vue Economique des Problemes Marins," (Pacem in Maribus III), comes to the conclusion that the seabed is not an economically viable entity -- especially considering the ineluctable trend of nations to expand national jurisdiction.~~

How, then, can it be explained that hard-boiled and realistic national governments have lavished so much time, resources, and ingenuity on the devising of constitutional and institutional structures, magnificent enough to administer the world as a whole -- to cope with lands unknown quantitatively and qualitatively? ~~Are they all enthralled by the Pied Piper this tiny island State has sent out into the world, to follow him to never-never land?~~

The disproportion between effort and object is so striking as to be unbelievable: unless one assumes that, consciously or unconsciously, nations are looking at the seabed not as an object but as an occasion;

an occasion to begin to think differently about the world of science and technology, of communications and development; a world as vulnerable as it is potent, as integrative as it is disintegrative; a world on which the international structures devised during the first half of the 20th century no longer fit.

~~It is this expansive, future-oriented assumption that must guide our effort.~~

If our minds were to remain fixed too long on the sea floor, we would be lost. For the sea floor is fast eroding under the impact of the integrative-disintegrative forces around us. For, as we are striving to determine its boundaries, the disintegrative forces of misunderstood nationalism are pulling and pushing on them, while uncontrolled macro-technology is making a mockery of the whole issue.

We may well say: No ship may trespass here, and the area under our national jurisdiction shall be closed to research and exploration, extraneous to our interest. But while the ship stays out, satellites are moving in the freedom of space "beyond the limits of national jurisdiction," and, uninterdictably, doing the research the ship was interdicted from doing. The search for earth resources, including mineral deposits, soil with high growth potential, and fish at sea; the monitoring of such diverse phenomena as ice movements on the oceans, forest fires, mass insect movements on land; flood predictions, and similar world wide collection of warning data, collision avoidance and distress relay and rescue ~~-~~ may all be achieved through the satellites. Fault structures

extending from Swedish iron ore deposits into Finland and Norway were identified from about 1,000 miles up and are being explored for iron deposits. Photographs taken from about 125 miles up have assisted in Australian oil exploration. Much of the equipment utilized for gathering information about the moon is equally useful for earth.

Against this type of research, boundaries are of no avail.

We may well say: no oil rig may be erected here. This oil is ours, to enhance our national power, our wealth, our independence. But the world's fossil-fuel-based economy is in trouble. All that has a beginning has an end. The post-industrial era, into which we are rapidly moving, will be based on other sources of energy: quite possibly, atomic fusion energy, with fuel drawn from the oceans, ~~as projected by Dr. Kaplan in his study for Pacem in Maribus III~~; or solar energy. During a ~~recent~~ conference at the Center for the Study of Democratic Institutions, Dr. Richard Post, one of the most authoritative experts in the field of fusion energy, ~~in which he has worked for over twenty years,~~ told us that (1) the scientific problems involved in the production of fusion energy will have been solved within eight to ten years from now; (2) the engineering and development phase might require a period from five to eight years thereafter, but that it could be shortened if sufficient financial support were available, and that much of this work could be carried out concurrently with the scientific work so that actual production could start in about ten years; (3) the capital cost of fusion reactor plants will be lower than the capital required for the production of energy from

other sources; (4) the fuel will be practically without cost and unlimited; (5) radiation and health hazards, in comparison with those connected with fission energy production, are like one to a million; and (6) atomic fusion energy cannot be diverted to atomic arms production, nor are fusion reactors vulnerable to sabotage, whereas every atomic fission breeder reactor is potentially a bomb factory.

Other experts may be less optimistic in their forecasts; but whether this development takes ten or twenty or fifty years -- what difference does it make?

The fact is that a world whose economy is based on new sources of energy, will laugh at our squabbles over the boundaries of the continental shelf. An economy based on extracting minerals from the waters that know no boundaries, ~~such an economy~~, and only such an economy, is in fact capable of restoring to the planet ecological balance by a macro-recycling of productivity. Agricultural civilizations were ecologically balanced insofar as they were cyclical. From the earth everything came and was restored to the earth. Industrial civilizations broke this cyclicity. They stripped, they exhausted earth resources. They dumped, wasted, and polluted; most of the waste and pollution ended in the oceans, "the biggest hole in the ground." Postindustrial civilization, based on new sources of energy, may in fact heal the wounds of the planet ere it dies: taking from the oceans, in multi-purpose industrial complexes, and restoring to the oceans, through rivers and atmosphere.

The seabed, then, is a transitory concept, both real and unreal; an entity with which we can deal fruitfully only if we look beyond it.

Thus, we look at ocean space as a whole: a far more viable entity, geographically and economically, than the seabed. A far better laboratory for the development of new and more rational methods of resource management, the control of macro-technology, of science policy. In the post-industrial era, ocean-space may well become the fulcrum of world economy, just as each semi-enclosed or enclosed ocean basin, e.g., the Mediterranean, will be, much more than in the past, the fulcrum of regional economic activities. What we are witnessing today is in fact a shift from a heartland-continent centered world view to an ocean-centered world view.

Ocean-space may hold our attention much longer than the seabed -- certainly for many years to come.

Yet some of the contradictions inherent in a seabed regime are inherent in an ocean-space regime as well. The boundary question is still thorny, and complex issues arise whenever and wherever the functions of a system transcend its geographical area. Pollution controls in the oceans transcend these boundaries. They involve rivers and land-based industries, and the atmosphere.

And just as a "Seabed Authority" could only function effectively in the context of effective regimes for the multiple uses of ocean space, so an ocean-space regime eventually will be able to function effectively only in the context of analogous regimes for the management of earth resources, energy, communications, and atmospheric processes.

But a beginning, a break-through, must be made, a "model" must be created somewhere. The seabed was ideal for this purpose. The seabed was the most creative myth in the history of international organization. What is of lasting value, however, in the seabed literature, is not so much in the detailed technical provisions applicable to the seabed and to the seabed only, but the structural concepts, transcending technological innovation and changeable geographical contours, concepts which, although using the seabed as an occasion or test-application or model, yet come to grips with the basic problems of international organization in 2000. Such concepts are contained in all of the Drafts.

Boundaries

Deterred by the controversial nature of the boundary problem, and aware of the interdependence of the territorial delimitation on the one hand and the structure and functions of the seabed or ocean-space regime on the other, most of the U.N. Drafts Treaties simply leave the boundary question open. The U.S. Draft, the Draft of the land-locked nations ("Seven-Power Draft") and the Maltese Draft, are ~~the~~ exceptions. Each one of these proposes different criteria.

On the whole there has been an unmistakeable trend towards enlarging claims and pushing boundaries ~~out~~ seaward, and a concurrent shift from an exclusive emphasis on the geographic location of boundaries to a greater attention to the question of the content of jurisdiction within the boundaries, wherever they are located. This can be noted in the American

and in the Maltese draft; it is observable even with regard to the Latin American States who had been most adamant in their territorial claims ("Latin American and the Law of the Sea," by F.V. Garcia Amador, Director, Department of Legal Affairs, General Secretariat of the Organization of American States, xeroxed). This shift seems inevitable, since the impact of "national" activities on international interests grows with the expansion of territorial claims and the concurrent advance of the technological revolution. What a nation does with its more powerful means within its enlarged boundaries thus must be tempered by consideration of the consequences of these activities beyond the boundaries.

This recognition has undoubtedly contributed to a softening of the issue which, in spite of all difficulties, appears more soluble than it did even a year ago.

I should like to add here another consideration.

Inter-national boundaries are boundaries between nations. Their function is to safeguard territorial integrity and national sovereignty against intrusions or exploitations by another nation or nations or their citizens.

The Geneva Conventions fixed the criteria (in so far as they did) for the establishment of international boundaries of precisely this sort: between nations, or, more precisely, between each nation and all other nations. It did not fix, nor touch upon the problem of, boundaries between nations and an international ocean organization which did not exist and whose existence was not contemplated at that time.

When the Geneva Conventions will be re-opened for revision, the problem will have to be considered in the context of the establishment of an international authority or system.

It is my contention that this changes the problem qualitatively. The boundary issue will now have to be divided into two parts:

(1) boundaries between nations,

(2) boundaries between nations and the international system.

Boundaries between nations will have an unaltered function, albeit in an altered setting. Qualitatively, they will not be different from boundaries between nations anywhere else.

On the whole, national boundaries on land tend to decrease in importance with the increase and intensification of communications. Although they are strictly territorial in nature, functional factors tend to impinge on them (e.g., custom controls are no longer located exclusively at frontier posts, but at airports, anywhere within the nation-space). Border disputes tend to be submitted to international arbitration or the jurisdiction of international courts.

It is not likely that international boundaries at sea will have to "recapitulate" the evolution of boundaries on land: from fortified geophysical boundaries to essentially political and administrative boundaries; from boundaries derived from bilateral agreement and subject to national control, to boundaries agreed upon and guaranteed internationally (as in the Charter of the U.N.).

History does not move by "recapitulating." "Phase-skipping" predominates; and boundaries in the oceans may take up the trend of land boundaries at a far more advanced stage.

At the present state of technological and economic development it is in fact essential that boundaries be fixed by international agreement and, once agreed upon, be guaranteed by the Charter of the international ocean-space regime.

The point I want to stress, however, is that they are and remain boundaries between nations, that they are territorial, and that they do not affect directly the relations between nations and the international regime. For example, a fishing boat from another nation may be stopped at the international boundary. Whether a situation would ever arise in which a ship of the international ocean-space institutions would be stopped there, is a qualitatively different question.

2. Boundaries between nations and the international community of which these nations are part, in this sense, cannot exist.

There are no territorial boundaries between California and the United States (although the Federal Government recognizes the State boundaries between say, California and Nevada), the Ukraine and the Soviet Union, Serbia and Yugoslavia, or France and the European Common Market. The boundaries between a state or republic or sovereign nation and the more comprehensive political or economic or economic/political unit of which it is part are not territorial, they are functional.

The question, in the relations between a nation and the international, supranational, or transnational organization it has freely decided to join, is not where the geographic boundaries of that nation are located. It is (1) whether laws, regulations, norms, or decisions, in the framing of which the nation has had its full part, are directly binding on that nation or its citizens; and (2) in which functional areas such laws, regulations, norms, or decisions would be so binding.

One could conceive of boundaries between functional areas, within which decision-making would have to be based on various degrees of consensus. The area of technical cooperation -- e.g., in setting standards for pollution controls, safety-standards, a mining code, etc. -- might be governed by decisions based on majorities, including a majority of the technical experts and "operators" in the area. Economic interests of nations would have to be safeguarded by decision-making based on a near consensus, including the consensus of the parties most directly affected. Matters vital to the interest of nations, including military matters, might require consensus.

Once a decision had been made, on the agreed basis of consensus, however, it would be applicable to the oceans as a whole (or, depending on the case, to an ocean region basin) regardless of the territorial boundaries of nations. Decisions regarding coal and steel production, once adopted by the European Community, are applicable across national boundaries. Decisions regarding the oceans, once adopted by the ocean community, apply equally across national boundaries.

These considerations, displacing the issue from one of determining territorial boundaries to determining functional boundaries would seem to be in line with the above mentioned trend to shift attention from the geographic location of boundaries to the content of jurisdiction.

Common Heritage of Mankind

The basic concept of all Drafts is that of the common heritage of mankind. Adopted formally by the Twenty-Fifth General Assembly, it has since been spelled out and embodied in Treaty articles and institutional structures.

Of all the documents before the United Nations, only two avoid the term: neither the Soviet nor the Japanese Draft contains the words, "common heritage of mankind." But if they do not call it by its name, they nevertheless accept it in its legal and economic characteristics. And what's in a name?

The basic characteristics are four.

The first is that the common heritage of mankind is not appropriable. The "area" and its resources cannot be appropriated by States or persons, by any means. This is recognized in article 5 of the Soviet Draft, and in article 7 of the Japanese Draft -- as it is, of course, recognized by all the Drafts which have explicitly adopted the term "common heritage of mankind."

The second characteristic is that it requires benefit sharing. It must be managed for the benefit of mankind as a whole, with particular consideration for the needs of developing nations. This, too, is recognized in all Drafts, including the Soviet (article 8) and the Japanese Draft (articles 1 and 42).

Benefit sharing may be interpreted to mean the passive receipt of profits, or it may mean active participation in the management of the common heritage. On this point there is a marked division, not between the socialist and the free-enterprise nations as one should have expected, but between developed and developing nations. The Drafts of the developed nations (USA, USSR, Japan) and the working papers of the U.K. and France reduce benefit sharing to profit sharing, not including a sharing in managerial prerogatives, nor do they provide in great detail for the sharing of skills and technologies. The Drafts of the developing nations (Tanzania, the Latin American countries, the land-locked nations) stress the sharing of managerial prerogatives and decision-making power. Of course, this division is not sharp. The Maltese draft remains fairly equidistant from both extremes, establishing most precise criteria for profit sharing and providing for rather comprehensive participation of the developing nations in general decision-making, but its provisions for planning and managing are minimal. The regime is conceived primarily as a regulatory, not as an operational system. But explicitly or implicitly, the drafts of the developed nations project a control by the industrialized nations in active managing, even if, conceivably, the developing nations might control the organ entrusted with the distribution of profits, ~~(e.g., British Working Paper, A/AC.138/46 — UK (A/8421) par. 22).~~

The real question, however, does not hinge on the distribution of voting power as much as it depends on the nature of the regime. There can be no active participation in management if there is no management except in the

hands of the developed nations individually. The real question is whether the regime is conceived as a "night watchman" type of government or as an economically active system. And here the distinction between the approaches of developed and developing nations is even clearer. The Tanzanian, the Latin American, and the landlocked-nations' drafts project ocean institutions which are operational, i.e., they themselves are production-managing enterprises. No such provisions are to be found in the drafts of the developed nations.

We shall return to the structural implications of this below. What should be stressed here is that the active concept of benefit sharing implies not only participation in decision-making. It implies an active concept of governance.

The third characteristic of the common heritage of mankind is that it can be used for peaceful purposes only. Here again, there is unanimity in the acceptance of the principle but wide differences in interpretation. In this instance, however, the alignment shifts, and the socialist nations are closer to the developing nations in giving the most inclusive interpretation to the demilitarization of the "area." This is borne out not only by the texts of the Drafts but by the debates preceding their introduction. The strongest statements in favor of total disarmament of the sea-bed in the perspective of total and general disarmament all come from the Socialist and developing nations, (~~Declarations before the First Commission of the General Assembly: Bulgaria, (1598th Session), Cameroon (1601th session), Honduras (1600th session), Hungary (1599th session), India,~~

(1591th session), Iraq (1599th session), Ireland (1595th session), Jamaica (1601th session), Libya (1597th session) Norway (1593th session), Poland (1597th session), UAR (1593th session), Bielorussia SSR (1602th session), Romania (1596th session), Rwanda (1595th session and 1605th session), Sweden (1596th session) Czechoslovakia (1598th session), Tunisia (1601th session), USSR (1592th session and 1603th session), Yugoslavia (1593th session). Cited by Alain Piquenal: Le Fond Des Mers, Patrimoine Commune de L'Humanite , Institut du Droit de la Paix et du Developpement, Faculte de Droit et des Sciences Economiques, Universite de Nice, 1971.)

The U.S. Draft (article 4) and the Japanese Draft (article 8) contain nothing beyond the acknowledgment of the principle. The British and French working papers contain nothing. The Soviet Draft on the other hand, goes far beyond the provisions of the Treaty on the Prohibition of Emplacement of Nuclear Weapons on the Seabed, ~~signed last year~~, by stipulating that "the use of the sea-bed and the subsoil thereof for military purposes shall be prohibited" and imposing the obligation that "States parties to this Treaty undertake to conclude further international agreements as soon as possible." The Tanzanian Draft (article 17) empowers the authority "to conduct its activities in accordance with the principles of the U.N. to promote peace and international cooperation and, in conformity with policies of the U.N. furthering the establishment of safeguarded worldwide disarmament and in conformity with any international agreement entered into pursuant to such policies," and contains other provisions for maintaining peace and ensuring security.

The Maltese Draft (art. 84) stays in line with the Treaty on the Prohibition of the Emplacement of Nuclear Weapons on the Seabed and the Test Ban Treaty. It goes further than these Treaties by authorizing, in art. 127, the Council to "undertake such functions with regard to the military uses of ocean space or to the regulation of armaments in ocean space as may be conferred upon it by a unanimous vote of members in category A referred to in art. 110."

The important fact, however, is that the concept of the common heritage of mankind, named or unnamed, forms the basis of all drafts and working papers, all of which spell out, in various ways, its legal and economic characteristics and implications.

In all except the Maltese Draft, however, the application of the concept is still restricted to the seabed and its resources. They do not touch on the other dimensions of ocean space and its multiple uses. Following the path marked by the Maltese Draft, however, world opinion seems to be moving rather rapidly in the direction of considering ocean space as a whole. Thus the most recent study prepared by the Secretary General on the Uses of the Sea (E/5120, 28 April, 1972) stresses the need "not only to consider the establishment of relevant sets of priorities but also to establish a basis for ocean management systems which would ensure the most rational development of resources and minimize potential conflicts," and it invites Governments "to examine the varied, interrelated activities in ocean space" and calls for "bold and innovative concepts, not the least of which will be a new spirit within the United Nations system and

action to supplement practical sectoral requirements and activities with over-all guidance according to modern management principles."

The basis for such management systems can only be an expanded concept of the common heritage of mankind, applicable to ocean space as a whole and to its resources.

Structure

If an ocean management system as envisaged by the Secretary General requires a broadly-based concept of common heritage, the common heritage concept, in turn requires a system of management, and this is its fourth fundamental characteristic.

It is in this area that most of the work is yet to be done. Several of the Drafts do not provide for a management system at all. The British and French working papers propose to parcel it out to the nations, thus mutilating the principle of common heritage. The Soviet Draft does not contain formulations regarding issues relating to licenses for industrial exploration and exploitation of seabed resources and the distribution of benefits, but merely notes the existence of these issues (art. 9 and 14), ~~(Doc. A/AC. 138/43)~~. The Japanese and U.S. Drafts contain elaborate (perhaps too elaborate, considering the rapid rate of change!) provisions for licensing, but the Seabed Authority's function is strictly regulatory and supervisory, not planning, operational or managerial. The same (or almost) applies to the Maltese Draft.

Interesting starting points are offered by the Tanzanian Draft. Here the Authority is in fact empowered "to explore the International

Area and exploit its resources for peaceful purposes by means of its own facilities, equipment and services, or such as are procured by it for the purpose" (article 16 (1)). The draft of the land-locked nations, likewise provides in article 11 that "the Assembly may upon recommendation of the Council decide to establish a body charged with direct exploration, exploitation and marketing (including the direct licensing of a private or public enterprise, joint ventures and service contracts) of a specified part of the international area." The direct licensing of enterprises is another interesting feature in this draft, conducive to the kind of relationship between the Authority and the producing enterprises that fits the base of the common heritage of mankind. The Tanzanian Draft also empowers the Authority "to establish oceanographic institutions on a regional basis for the training of nationals of developing countries in all aspects of marine science and technology" (article 16 (9)). Perhaps it would be even more purposive if these institutions dealt with "ocean affairs" rather than oceanography, and included the study of resource management, planning, and the legal/political dimension of ocean affairs. Other original features of the Tanzanian Draft relating to the problem of management are the proposed "Distribution Agency" and the "Stabilization Board." Between these two, a planning of seabed production, in the context of world production, might at least begin to emerge, although (1) it may be impractical that this germinal planning is splintered between two organs; (2) price fixing and quantity fixing belong to the regulatory rather than the planning function; (3) the criteria for benefit sharing

may turn out to be too rigid, and therefore not benefit-maximizing; and (4) while inadequate in terms of general economic planning the provisions may in fact be too elaborate if applied only to the resources of the seabed which, for many years to come, are not likely to cause fluctuations in prices, hardly will need to be restrained in quantity, and will not markedly raise the per capita income in the developing nations.

Like the Tanzanian and the land-locked nations' Drafts, the Latin American Draft empowers the Seabed Authority "to undertake exploration of the area, and exploitation of its resources as well as all activities relating to production, processing, and marketing (article 14,c). More specifically, however, the Draft establishes the "Enterprise" which by itself or in joint venture with private or public corporations ("juridical persons duly sponsored by States") engages in operational activities. Relations between the "Enterprise" and the Assembly are indicated in article 24 (h) -- the Assembly is to "approve the report of the Enterprise, submitted through the Council"; relations with the Council are sketched in article 32, (m). There is no indication of any relation of the Enterprise with the Planning Board which is briefly described in Article 25, and the questions relating to the structure and functions of the Enterprise are not dealt with, and this, of course, is the crux of the matter.

If the Enterprise is to correspond to the concept of the Common Heritage of Mankind, it would have to meet a number of conditions. First. Adequate measures must be taken to prevent its being

controlled by private interests. This could be done by stipulating that at least half its capital must be provided by the seabed or ocean-space authority; at least half its directors must be appointed or elected by the Assembly; and that a number of them must come from the developing nations. In this case the Enterprise would really be a shortcut, not otherwise available, leading to the active participation of the poor nations in the industrial exploitation of ocean resources.

Second, If the economic, and efficiency-oriented activities of the Enterprise are to be controlled and regulated by the political, and equity-oriented organs of the Regime, such control and regulation can best, or only, be achieved through participation. That is, the Enterprise must be represented on the Planning Board and, in a suitable way, in the deliberative and policy-making organs of the regime.

The underlying concepts of the common heritage of mankind and of participation thus politicizes, to a certain extent, the Enterprise, just as it economizes the political organs of the regime. It is this new form of merger of the economic and the political that gives rise to new structures of the kind broadly envisioned by the Canadian Government in its working paper: "...It is clear that the nature of the task [the international machinery] is to perform is so radically different from anything now being undertaken in the U.N. system that this new institution will require a new approach not tied to traditions and practices intended for wholly different purposes. In a sense, this machinery may be more like an enterprise than the ordinary U.N. agency."

Third, If the Enterprise (or Enterprises) is (or are) structured and integrated into the system in this way, there is of course, no reason whatsoever why it should operate exclusively in "the international area." It should operate wherever such operations are most beneficial, according to general consensus, including, of course, the consensus of the country on whose territory the operation is to take place. This may not be too relevant with regard to manganese nodule production. A maritime mining corporation, incorporated in the ocean regime, may indeed prevalently operate on the "international seabed," but it would be quite relevant for a maritime oil corporation.

It is very likely that weaker nations will prefer, near their shores, the operation of the Enterprise in whose management and planning they have an active role, to the operations of an extraneous private enterprise, yielding royalties but no other benefits. It is indeed likely that the operation of the Enterprise, or Enterprises, will exert a competitive influence on the international style of the big private multinational corporations and may eventually bring them into an analogous relationship with the regime on the one hand, and with the developing nations on the other.

Thus, the impact of the common heritage concept on the structure of the regime is beginning to be felt but it has not yet been fully spelled out. On the whole the Drafts still tend to perpetuate the structure of international organization devised during the first half of this century -- an Assembly of all member states; a Council of a limited number of presumably

leading states; a certain number of commissions, also based on states but leaning on experts and nongovernmental organizations; a secretariat of international civil servants, and an international court or tribunal -- and to stretch it and twist it to fit the totally new basis that has been created with the concept of the common heritage of mankind.

~~They~~ The Drafts reflect political changes. They project, in various ways, the decline of the West, even though valid attempts to balance this trend are made by the U.S. Draft which practically assures to the six industrially most advanced nations a veto over whatever the majority of developing nations might try to do; and, in a different way, by the Maltese Draft, through an ingenious way of weighting the vote. The Drafts of the developing nations seem to take it for granted that the Council will be dominated by them, in as much as the Council is elected, without further specifications, by the Assembly, in which, in turn, they hold a safe majority. The Soviet Draft allots one fifth of the votes to the West. If one were to assume an interest coincidence between the socialist and the developing nations, the West could come off badly indeed. The way it would work out however, would be a cooperation between the highly developed socialist nations of Eastern Europe, and the West; a cooperation between the developing nations of Africa and Latin America; with "Asia," divided between a highly developed Japan and a China espousing the cause of the developing nations, holding the balance.

Thus, while ~~they~~ the Draft Treaties reflect and, in various ways, structuralize political change; while they reflect -- indeed they are all inspired by --

the underlying changes in the economic, technological, and scientific order, they do fail, to various degrees, to structuralize these changes. This would imply a departure from the model of international organization inherited from the first half of our century. The new model, while not by any means negating the reality of the nation state, would embody an active concept of sharing in the common heritage, in an operational system bringing together government, science, and production. It would be so structured as to (1) plan and control technological development through a new science policy emerging from joint decision-making between the political and the scientific communities; (2) plan and control economic development and its impact on the total environment through a new industrial management policy emerging from joint decision-making between the political and the industrial communities; (3) reconcile the conflicts between ecological/economic units of management and political units by a shift from a territorial to a functional perspective; (4) reconcile the disparate claims of governments and people, rulers and ruled, public sector and private sector, owner and non-owner, based on new forms of peoples' participation in the conduct of world affairs (without which democracy cannot survive in any form) and on the concept of the common heritage of mankind which transcends these dualisms.

The beginnings of all this are clearly recognizable, explicit or implicit, in one or the other or all of the drafts -- as are a number of other innovations in international law (e.g., the acknowledgment of national responsibility beyond the limits of national jurisdiction, or the

acknowledgment of the need of peaceful settlement of conflicts) that would have been unthinkable only a few years ago. It is indeed amazing how many new concepts and approaches have been pullulating during the short span of four years, and have found their way into the Drafts. With the third Law of the Seas conference opening ~~next year~~ in 1973 we have to work hard to assimilate all this material in a new structure.

If the oceans are indeed man's last frontier on this old earth of scarcity and competition to which we have reduced our common heritage, the law of the seas is the advance post on the long march toward a new world of science and technology, of abundance and cooperation which we have set out to ~~conquer~~ achieve.