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THE NEW INTERNATIONAL ECONOMIC ORDER AND
THE LAW OF THE SEA

Seminar organized jointly by UNITAR
and the International Ocean Institute

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April 7, 1976

MILLAR-CRAIG

Ladies and gentlemen, let me just very briefly say who I am and what I am doing here. My name is Hamish Millar-Craig, and I am the Director of Administration of UNITAR. Very unfortunately, our Executive Director, Dr. Davidson Nicol, is away in Geneva, and our present Director of Research is away in some other part of the United States. So it falls upon me, although I claim absolutely no expertise whatever in this field, to have the pleasant task of welcoming you to UNITAR this evening. I find myself in a somewhat embarrassing position with my very distinguished former Chief sitting opposite me, who is one of the leading experts in this field, but as I say, my task really is simply to set the ball rolling. It was also to try and organize a little refreshment beforehand to give the setting of this.

We have in UNITAR tried to use the Institute from time to time to provide a forum at times like this when there are interesting conferences going on where various people concerned can take time off for a little informal exchange of views, and I would like to say that in welcoming you, we do have in mind that this is quite informal, that everybody here is in quite a personal capacity, and although we have got a tape here, this is not with a view to playing things back to you but simply to help with producing some kind of a summary record of what we discuss this evening and tomorrow evening.

The originator of these two evening discussions is on my left, Mrs. Elisabeth Mann Borgese, whose official title is Chairman of the Planning Council of the International Ocean Institute in Malta. I think the best thing I can do is to ask Mrs. Borgese to give us the setting for this evening's discussion.

BORGESSE

Thank you very much, Mr. Chairman. First of all, I would like to say how delighted we are to be back at UNITAR because we have a long history with UNITAR. When we embarked on our project of *Pacem in Maribus* which then led to the establishment of the International Ocean Institute in Malta back in 1968, we had indeed a seminar here at UNITAR together with Oscar Schachter which gave birth to a large volume on planning and development in the oceans which in 1968 was a revolutionary topic to deal with. What we are doing now takes us right back where Oscar and those of us who were present at that time stopped at that time.

We are happy indeed to be back here at UNITAR that after having interrupted this series of meetings these many years, this will be the beginning of a new series of cooperation between us.

The topic of our seminar these next two evenings is "The New International Economic Order and the Law of the Sea," and this of course is an enormously big and important subject. We, as far as the International Ocean Institute is concerned, have been working at it systematically for over a year now. We launched the subject at a seminar in Geneva last year, and to our amazement, people thought it was an out of the way idea that the two things, the new international economic order and the law of the sea, might have anything to do with each other. At our seminar in Geneva, there were some of the architects of the new international economic order, and they looked at the charter and at the documents of the 6th Special Assembly, and they said, "This is one thing, the oceans is another."

To us it seemed the kind of economic potential that the oceans indeed have, and with the role that marine activities are playing and continue to play ever more in the economic life of every nation and in the economic life of every community, it seems to us unthinkable to separate the two things. I mean,

if we have a new international economic order, obviously we have to apply it in an area that occupies two-thirds of the world and that produces a large share of the world GNP, and on the other hand to make a law of the sea which does not take into account the demands and requirements of the new international economic order, if we don't do it there, we won't do it anywhere. In a way, the oceans are, if you wish, a test case because here for the first time we really are building institutions which either do or do not embody these principles and if they don't, we can be quite sure that there will be no other chance to create the institutions to embody these principles in the near future anywhere.

This was our point when we started in Geneva last year and then we were fortunate because the Government of the Netherlands picked up the thread and commissioned this study which we did in the context of Jan Tinbergen's study on the new international order, which because a very expanded sub-study of that. (We apologize for the number of typos and slips.) With this we feel we are only at the beginning of what we want to do. As a matter of fact, when this session comes to an end we want to redo this paper and bring it up to date and include the results of this session into the new edition. In connection with this, we have planned a series of seminars. The first one was held in January in Santa Barbara, and you have a digest of that on the table before you. I am sure, however, you have not had a chance to go through it. So perhaps, in order to introduce the whole subject and before coming to today's agenda, I might just give you a very brief rundown and introduce you to what we have been doing.

You see here an introduction, and that merely summarizes the main points that the Secretary-General made in his very brief inaugural statement here at this Session of the Law of the Sea Conference which, nevertheless, we found very relevant because in a succinct way, he really summarized the gist of

what we were trying to do in this paper. Then we step over to the proceedings of our seminar in Santa Barbara itself, and as you see, we started with a general stocktaking of what went on, where we were at the Law of the Sea Conference, and I am sorry to say that the assessment of the participants of our seminar in Santa Barbara, which included a number of delegates to the Conference was rather pessimistic. It was felt generally that the Law of the Sea, such as it was being conceived at that moment, indeed, did not make much of a contribution to the building of a new international economic order. This, of course, is very deplorable. It was further pointed out that the Law of the sea, such as it is emerging now, does not seem to do very much to cope with the different uses of ocean space and their interaction and their conflicts at times, and in particular, that it was not up to date because many of the new technologies and the problems arising with the use of these technologies were not adequately considered.

Then we dealt with very specific issues. We dealt with the issue of living resources which, of course, are of vital importance for the building of a new economic order because the oceans managed properly and looking toward the future rather than to the past, could indeed contribute to a considerably greater share to the world food need than they do at present. And this in particular, if you shift your attention from the overfished commercial species, which in the best of all cases can be increased to some point but not very much beyond what they are yielding now, if you shift your attention from that to the new or so-called unconventional resources which could perhaps contribute as much as ten times what we are having now. The question is how to insert that, how to make use of that in such a way that it will not again end up altogether in the pockets of the nations who are already rich and that the poor nations will be cheated out of ^{that part of} the common heritage.

It was pointed out that the concepts on which the work of the Second Committee at present is based, concepts like the maximum sustainable yield, really no longer sustainable from a scientific point of view, and all the scientists present, in particular Sidney Holt, gave us some very eloquent explanations why these concepts are no longer tenable, and why, for that reason, it was totally unrealistic to assume that coastal nations would be able to determine the optimum catch unilaterally in their economic zone, even within a 200-mile range. So the conclusion was that the entire discussion clearly indicated that the work of the law of the sea conference had barely scratched the real issues of fishery management and its relevance to the building of the new international economic order, and that insofar as it's done so, it's done it the wrong way.

That, of course, is not very encouraging, but still, there is time to reconsider many issues, and I'm quite sure from what I've seen so far at the conference that the issues are still quite live.

Next we dealt with the subject of the potential of Committee I as far as the new international economic order was concerned and in a way theoretically, the potential of what Committee I can contribute to the building of the new international economic order is very considerable except that you are stuck with the reality that Committee I giveth and Committee II taketh. The resource basis on which the whole thing has to function is being eroded by the ambiguities that are left in the provisions that are under consideration now by Committee II. On page 14 of the summary that you have before you, I summarize some of the conclusions that we came to, what would be the conditions under which the seabed authority really could contribute more to the international economic order than it is doing now. One is, of course, ^{that} the limits of national jurisdiction have to be defined more clearly by Committee II than they are being defined

now. The second would be more or less, rather more than less, that the position of the African States with regard to the continental margin and its relation to the economic zone, would certainly be more conducive to increasing the resource base of the international seabed authority than the position of, let's say, the Evensen Committee in this respect.

A third point we made and which is now being advanced by the Delegation of Algeria is that somehow and in some form you have to get hydrocarbons back into within the purview of the seabed authority. That might take a number of forms. We might discuss them while we are here during these two days.

We next dealt with the role that IOC might play in the building of the new international economic order. Of course, IOC is already in the process of reorganizing and restructuring and I think that the Law of the Sea Conference and what it comes up with will certainly make new demands on IOC. We had an interesting discussion there on the relations between IOC and the seabed authority. It seems that there are two tendencies within the First Committee right now. One would be to absorb IOC and associate it with the seabed authority. The other would be to give it up and create a new international agency for the conduct of international scientific research and marine affairs. That would be most unfortunate because we don't want to proliferate and to duplicate efforts. I think we should use what we have got and improve it rather than throw away the old toy and take a new one which most probably would be thrown away in due course as well.

One of the points that was made and that seems to be very important is that the outstanding need is for a change in the nature of the words "data exchange system" which now is in the hands of two designated super-powers and which should be truly internationalized and certainly IOC could play and should play an important role in that.

Next we dealt with the economics of shipping and the role of IMCO. There it was pointed out that in fact IMCO, in spite of the fact that in the IMCO convention there is a provision that IMCO should take care of restrictive practices, these economic matters in IMCO have so far systematically not been taken up and UNCTAD and OECD have filled the vacuum. But the paragraph in IMCO that states IMCO should take care of these things is still in the books and as IMCO is changing its constituency and is becoming more universal and is acquiring more the confidence of the world community, it was pointed out that its role in economics might be strengthened. If we are to take the resolutions of the Sixth and Seventh Special Session of the General Assembly, if we are to take them seriously, then every organization and that includes IMCO ought to make its contribution to the building of the new international economic order.

Then we dealt in particular with the issue of dispute settlement which now is on the agenda these days, this week, of the general debate in the plenary of the Conference. We felt that we might make some kind of contribution to that subject. It's a very complicated subject and I don't want to get lost in it right now. We have it on the agenda tomorrow. What we pointed out here in our summary is the very interesting parallel between the structure proposed by Part IV of the Single Negotiating Text and the structure that we in this study that you have here really are suggesting for the emerging ocean space institutions because, you see, we are not stupid enough to suggest that Committee I should be busted and that instead of having a seabed authority, we ought to have an ocean-space authority. It's too late in the game for that altogether. The seabed authority is going to be what it's going to be. We have to live with it and we can live with it very very well. But what has to be done is to bring the other agencies that are now active with regard to ocean space and resources up to the level that we hope the seabed authority

will be brought to by this Conference and then create a kind of what we call integrative machinery to hold the whole thing together and to get a viable set of ocean space institutions that way.

The kind of structure that we are proposing in our study and which we call a functional federation of international organizations and which is kind of a very economical structure and a structure based on the present goings on in the United Nations system and here at the conference is an exact counterpart to the kind of structure that the President of the Conference has, in fact, proposed for the tradition of the dispute settlement system. We are in this paper exploring these parallels to some extent, and I do think that they are interesting.

In particular, we dealt for a while on the suggestion made in Part IV of the Single Negotiating Text, namely that the judges be elected by a conference of States that would meet every three years. One of the participants at that time suggested that when that meeting of States gets together, besides electing judges, they might do a few things. In other words, they might be a first element in that continuing mechanism that we need here at the conference because no matter how the treaty turns out, it will only be the beginning, and the process will have to be continued in some way. The conference of States proposed in Part IV of the Single Negotiating Text might be a first step in that direction.

On that we closed our seminar in Santa Barbara, and in the last section of this paper, we summarized the recommendations that we came up with and which will take us to the last point on our agenda tomorrow. I therefore will not anticipate them now. You can read them and we can discuss them tomorrow.

I would suggest, Mr. Chairman, that we now go to the agenda. Today we are supposed to deal with the changing context and the

changing focus of the Law of the Sea Conference, and we certainly would want to know what everybody here feels about it. Perhaps Dr. Pardo would have a few words to say about that.

PARDO

Mr. Chairman, I feel that the introduction by Elisabeth Mann Borgese has been admirable. The paper is clear and very much to the point. I have very little to add to what has already been said. I would propose to intervene, if I may, at a somewhat later stage.

MILLAR-CRAIG

I don't know who would like to start the discussion. As I see it, we are going to take the subjects for tonight as a whole. This is sort of a general debate on the overriding principles, and then tomorrow we will be looking in a little more detail at mechanisms. If anybody wishes to speak to the agenda for tonight which you all have, the floor is now open.

BORGESE

Let me just say one thing in this connection. Maybe it will help to get things started. We all have been at this game, which is a tremendous game. I think it's probably the biggest one that we have had since the end of the 2nd World War, and we will not have another one of this kind for some time to come. So we've been engaged in that since 67. During these last almost 10 years now, 9 years, two things have happened. One is external to the Conference, that is, a lot of new developments have started and have accelerated, and of course, the Sixth and Seventh Special Session of the General Assembly are of particular relevance there. The search in the United Nations for a new type of international order including a new type of international economic order has gained momentum, I

should say much faster than anybody would have expected three or four years ago. Now these things must have certainly their effect on the Conference because there is no political event that can stay outside these things. It's all part of one long march, let's put it that way. So these, I would say, are the changes in the context of the Conference, and the question that arises is, has the Conference really lived up, has it moved along with this changing context, or has it remained behind? Is there a danger that it be left out, out of conscientious concern to wind up the task that it set itself seven years ago. It sort of loses its own context. There might be this danger. This is one of the questions that within the Conference itself now we can't even consider, but in a seminar like this we can try to have a look at that side of the problem.

Group dynamics is a very fascinating subject, and it always happens that the way that you look at a thing outside is the same as you look at a thing inside. I mean, the interrelation between foreign politics, domestic politics are a case in point, but even the relations of an individual towards its society or toward its inside belong to the same family of problems. I have the feeling that if the Conference, should it be the case, should it be true, has lost its context, there might even be the possibility that it has lost its own focus. I mean, how far is the focus of the Conference and the context of the Conference interrelated? Whereas in 1967 we set out with a very precise focus, a very precise job, namely to create a new international order to take care of the advanced technologies that have eroded the old law of the sea, and we were really going to build up new institutions, that was 1967. This focus certainly has been displaced to some extent and other concerns have superceded, have taken its place. That, certainly, when you look at it as an outsider, has had an effect on the whole mechanism, on the whole way of proceeding of the Conference. So perhaps

one of the subjects that we might discuss is the interrelation between this changing context and this changing focus of the Conference and what can we do to restore both at this point?

RUIVO [tape not at all clear]

There are two items on the agenda, the recommendations to the General Assembly and the development. I think these looked at in a certain way may explain the lack of momentum. I think we are replacing the two systems which are interacting with their own dynamics or at least with their own system of expression. Let me see if I can verify what I have in mind. When we are discussing the resolutions of the United Nations General Assembly, we are dealing with statements by deputies of governments which even when they are conservative, they are operating on an external base in part of the process where they feel comfortable. A conservative, theoretic government at home may appear in international affairs as apparently a ^{productive} progressive government, and the statements from these governments appear, at least from outside, extremely interesting, but they don't any government.

But at the same time there are the dynamics, either inside this government, or this country, let us say, and in the other countries where the economic pressures and the dynamics of the groups that are behind them have their own role. So, in a certain sense, when we look to the ocean affairs, we have from one side at the beginning the convergence of the two elements, from one side, the new needs resulting from technology and the great

I don't think this is a bad trend because having incorporated some new elements like the seabed authority, and having already stripped the process that contained other elements ... , these represent a consolidation of some of these accusations, and this is why, in Geneva when we discussed these matters, in a certain sense we are confronted to look a foreign office and this it is not. The new economic order leads us to the common heritage of mankind and that lets a big area for international use, but at the same time some sort of real politique in terms of defeating the forces that are in fact opposing the common heritage, the appropriation of resources by some coastal countries with the majority of developing countries is a step toward justice that appears in the Charter of Economic Rights and Uses. So it is a process of consolidation of certain accusations that in fact -- I usually translate in these terms: The prehistoric man to catch a mammal just throws in two arrows and runs for tools until he lost blood and catch him to get meat. Here in international affairs what developing countries are doing in a certain way is to throw some arrows on some big mammals, to run for some years until they can get meat, and the meat is more justice in economic trade, more justice in access to resources, etc. What we have is the conceptual element with the political element ... and then the implementation within the feasibility ~~wixxix~~ of the agreements that we are negotiating. Therefore I don't see a contradiction. In my own view, it is a positive trend and is a feedback process because what they are achieving here is helping the other fights that are going on on the economic order.

MILLAR-CRAIG

May I just say before we go any further that if anyone wants to go out and get himself a cup of coffee or tea, it is there, or indeed anything else you would like by way of liquid refreshment.

SCHACHTER

I think the remarks of the speaker were interesting. I wonder about the question of the strategy or the bargaining that is now open for consideration. In talking about this question earlier with someone here, I was concerned with the issue of whether, the issue referred to in the paper very briefly, the issue of whether there would be any treaty at all, and the question as to whether one would press for a kind of agreement now which would be far less than what might be desirable in the present circumstances. Let us say, a statement of principles, a statement of objectives that might be a basis for future development on the assumption that a treaty would perhaps not come into force for a considerable period of time even if agreed upon here, or whether, alternatively, it would be better facing this difficulty to postpone the matter somewhat more. I have no fixed view on this. I am concerned about what seems to me to be considerable likelihood of a treaty that would be simply a

+ which will not really be setting out. We've had so much experience with treaties that are going back to the 19th century were treaties which have been adopted and then not had much effect and sometimes that may be desirable. The 1897-8 convention later become a working treaty some 15 years later, whatever it was, 10 years later. I

*beached
Switzerland*

just am raising this in a rather, not in a very precise way, but I'd like to hear what people think about this kind of alternative, a kind of options that are presented by the situation today.

BUSHA [tape not clear]

As another example of the unrealized, not the ITO, the gaps not only do not -- I'm being realistic in starting with the thought of possible failure. I see myself in the present state of mind ... I feel a very definite intention to bring something to paper here, whether it is to be a real _____ is of course the burning question and I wonder whether this. I wonder whether this will come up tomorrow rather than today, on the managerial side the institutional side, so I won't say more on this, but I just wish to throw in ... a general agreement on tariffs and trade, something which worked out very well as an ongoing...

BORGESE

We have been faced with the discussion of failure ever since the day that the first working session of the Conference started, and I must say, it's always made me very angry to read in the papers that Caracas was a failure because it didn't produce a treaty, I think is either dishonest or stupid because anybody who was in the business knew that Caracas was not there to produce a treaty. It was the first basis for further work, it was not more than that, and I'm always suspicious about people who say it's just as well we don't have any treaty because who are they, and what are they going to get out of it. This is one of the points that we dealt with in our seminar in Santa Barbara which only

reinforced my suspicions in this respect. They are the people who are strong enough to see there a way to protect their interests and their gains in the oceans, no matter whether they have a treaty or whether they don't. In other words, they are the few marine powers, and I don't have to mention them, but it seems to me that the poor nations who do not have the technology or the economic or the military power to get into the game individually today are the ones who are losing immediately. In the long run, everybody is going to lose, that's for sure, but in the short, the rich nations will gain and the poor nations will lose if we have no treaty. So, in spite of the daily frustrations and so on, I very strongly think that it would be a sell-out and a step back and the missing of an enormous opportunity and the sacrifice of an enormous potential were we to renounce the idea of a treaty. That does not mean that we have to have everything wrapped up next year and then go home and see whether it works or whether it doesn't because I do indeed feel, and to that we will come back tomorrow, that the establishing of a continuing mechanism is as important as the signing of a treaty over the next few ... but I wouldn't give up on the treaty.

PARDO

I think that for political reasons ... there will be a treaty, among other things because as the Secretary General stated, the whole structure of international cooperation and also other fields other than the law of the sea would be effective There is a political imperative: a treaty. The questions arises, what kind of treaty. And here we have various views. Of course

a treaty must require a basic harmonization of States' interests somehow or other. Since, however, in fact, there serious divergencies in the perceived interests of national States, such harmonization in a treaty can only take place through the device of formulations that may be interpreted in different ways according to the interests of the State concerned. The search for these adequate formulations is of course a search which is taking place at the present time in the conference on certain critical issues.

I think there will be a treaty. The treaty will contain political compromises of a basic nature, compromises that leave the uncertainties as they are in effect. The question is, is such a treaty worthwhile? Here, one has to make different assumptions. It will depend of course on the content of those parts of the treaty that are not ambiguous. Here what do we see in the Single Negotiating Text. First of all, a basic assumption. The competence of the coastal States at whatever level of technological development to effectively and rationally administer the resources in ... areas. Is this assumption valid? Maybe in some cases, but it is doubtful whether it is valid in all cases.

The second assumption which is basic to the Single Negotiating Text is the retention of the freedom of the high seas. In spite of a variety of technological development which would suggest that the freedom of the high seas as interpreted in international law and in the Single Negotiating Text is obsolescent. However, this is valid by the creation of a seabed authority. Will the seabed authority in future have the possibility of increasing the development of the law of the high seas? This will depend on a

whole series of ...ables -- who will be at the head of the seabed authority, the competence of the direction, the general political situation at the time, and so on. It's very difficult. I think the basic problem with the present conference on the law of the sea is this, that one can approach the questions of the law of the sea from various points of view. Basic to an agreement is harmonization of the interests of States, the perceived interests of States, but should the negotiation take place exclusively on that level, or should there other purposes for the Conference. For instance, should the Conference attempt to take into account techno the psychological developments that are transforming the uses of ocean space? It would seem obvious that these should be taken into account. At the same time, however, this may impede if this other aspect were brought into the negotiations, it might impede the harmonization of States' interests. Rooted assumption in certain States would have to be revised, and this is very difficult for bureaucratic and other reasons. Should the Conference, again on a third plane, take into account, try to achieve through the Conference, or facilitate through the Conference, the achievement of other For instance, should it try to take into account the achievement a better measure of world order, of course only in the seas, but if it is achieved in the seas, it could be achieved also on land. Should the Conference take into account the desirable goal of, for instance attempting some international regulation of certain dangerous technology in the seas? Of course if the Conference does take into account these goals, highly desirable goals, this complicates ~~immensely~~ negotiations. So the problem of the Conference, as I see it is that instead of

taking into account all the factors which must be taken into account to obtain a treaty which is a constructive treaty, the whole negotiation has been reduced to the level of harmonization of States' interests. I want this, you want that, our mutual desires are incompatible. Let us find a formula to reconcile this. The approach then is ambiguity formulation and we have of course the huge area of the high seas. If we disagree, let us cut our piece from the high seas. It is a little bit like the first division of Poland. You cut that, and then when you have absorbed the first division, we make a second and final division. This is the attitude.

How to assess this? Is it constructive? Is it not constructive? There is a small seed of constructiveness in all this negotiation because for the first time there is created a seabed authority with independent revenue, something unique in international organizations and with managerial functions. The negative aspect of this establishment of a seabed authority is that the limits of the area over which this authority will exercise managerial function is undefined. It's under, It is defined exclusively by the States concerned, and there is nothing in the proposal that says that States ... have been defined, national area vis-a-vis international area, cannot be defined at a later date when the international area is developed. A State can say that my jurisdiction extends to latitude 40 South one day and then the next day it will say jurisdiction extends to latitude to 42 South. It doesn't matter. There is no restriction on that. So it means that the authority has jurisdiction or rather exercises managerial powers in an area which is likely to be a diminishing area. A second

negative factor is that the authority, that it is assumed in the proposals made that the authority ... will have control over the bulk of manganese nodules stock when in fact it will have no such control. It will have to compete with manganese nodules under national jurisdiction in the exploitation of this resource. A third negative factor is that there is no definition in the Text, there's no attempt at definition, and there will be no attempt at definition of where the regime of the high seas ends and the regime of the common heritage of mankind for the seabed begins. In theory one could in the general framework of the Negotiating Text, one could say that the regime of the high seas ends one quarter of an inch above the seabed. Everything is freedom except for the seabed itself. If this interpretation were to become current, of course the seabed authority would be of very little relevance. If, on the other hand, the interpretation that all activities in the high seas connected or related in some way to seabed activities that come under the purview of the competence of the authority, the seabed authority would have a totally different aspect. This is an area which will be a grey area, even when the convention is signed.

The seabed authority is the seed of a new order. However, this seed, the development of this seed is threatened by a whole series of other developments, both with regard to the extension of .. rights and of the competence of States. What to prefer? I find it very difficult to make a choice, whether to take a positive view and be optimistic or to take a somewhat pessimistic

view. I don't know. One thing is certain, however, that the high seas, the traditional high seas will disappear within Whatever the text of the convention may say. It will disappear because of the reason mentioned so well by the Secretary General of the need of a multiplying humanity for resources. Humanity can no longer afford to exploit the resources in the way that the hunter goes after the, used to go after the resources, the wild beasts of the forests. It is essential, and this is felt very widely both by government and I think by most individuals, that there must be resource management, and resource management can come only through the exercise of authority, either by States or through international It is said that, it is an argument that has been used that international management of resources is impossible because the world is divided between different ideologies, because we haven't yet reached that stage which would make international management of resources possible and desirable. If that is the case, and I don't want to discuss it one way or the other, if that is the case, then there would be coastal management. And if there is coastal management of the resources of the seas, it would mean an effective division of the seas of ocean space, then those States with a long coastline and ample access to the seas will of course manage for their own benefit, not for the benefit of others, the greater part of those resources, and States with small coastlines fronting on narrow or small seas will find themselves at a competitive disadvantage. If that is what is desired, if it is desired to increase inequality between States as one of the results of this

Conference, it is difficult to wish for a treaty. But here again, there are other considerations, if there is no treaty, then coastal states will do without the form of legality conferred by a treaty, we're back in the same thing. They'll grab what they can and inequality of States will be increased in any case. So I find myself torn by two sentiments. I do not wish to confer the legality of a treaty on what some coastal States are planning. On the other hand I see perfectly well that if this legality is not conferred upon them, they will take it all the same. What is to be done? This I hope somebody will reply.

RAMAN

What emerges from the Law of the Sea discussions now is a treaty in the traditional sense that an international agreement bilateral or multilateral somewhat disturbs me. If this was the objective, I think one can very easily say the labor is not well-spent.

But my own reading of the matter is, and I agree perfectly with Ambassador Pardo on that, some institutional arrangement will emerge from these negotiations, whether it be a comprehensive convention, will be specific enough, detailed in character, without any ambiguities, or would it incorporate a set of general directions and principles, as Mr. Schachter pointed out. The net result will not be different. Even if the Conference fails to produce an acceptable treaty in all its aspects, this whole discussion in the period of seven years, supported by an immense amount of effort on the part of private organizations and agencies and individuals, compels me to look at this in the same form now as the charter

was drafted in the 40's, in 1945. The whole notion that the States' sovereignty has not been affected by the charter, that the charter will not in any way satisfy the requirements of global interests. Perhaps it is correct that this is defied by our own experiences later when once the authority is established, its organs will have competence to interpret the convention. And in the same manner as the organs of the United Nations have interpreted the charter provisions, perhaps there is room to be optimistic that the international seabed authority would be able to extend its consignment beyond what was clearly defined its area of responsibility. To inject this notion of international concern in the same manner as the organs of the United Nations have interpreted the charter provisions to make inroads into what was once considered the jurisdiction of States.

I am not completely in agreement with this draft report of Santa Barbara seminar. There are a good number of highly relevant aspects of the international economic order that have been discussed in the Second Committee and in the First Committee and to some extent in the Third Committee. It is true that many of the lofty ideals and policies of the new international economic order reflected in the 6th and the 7th Special Sessions of the General Assembly have not come to be, have not had their effects so clearly. But remember here, broadly speaking, there were two parties, perhaps three parties in the discussion of the international economic order. When it came to the question of implementation in relation to the law of the sea, there are not two sides; there are 20 sides, perhaps 200 sides, so with the result the specific details to be ... here have increased and become of course clear

enough. We have this reflected in a good number of provisions of the Single Negotiating Text about the need to provide technology and capital .. seabed exploitation and what mechanisms are to be applied here and we have here for example provisions concerning policies for pricing commodities and the need to protect land-based economies, and the criteria for sharing the revenues and the special privileges to be accorded to the GDO's, the disadvantaged states, and the land-locked communities.

So it's not completely correct in my opinion to say that the thinking of the new international economic order is not ~~not~~ reflected in the present concerns of the law of the sea discussions and delays. Whether these are adequately reflected or whether these are peripherally suggested here perhaps is a little early to conclude. While I shared the general concern that the interests of the less-developed countries are not adequately taken into account and that no mechanisms were provided for realizing this ideal of common heritage of mankind, we'll come to that perhaps tomorrow. The groundwork I think for discussing these problems has now been established.

RUIVO [not clear]

First of all, if we are going to have a treaty if
 ... the question if we have a treaty or ~~if~~ is ... a worthwhile achievement. My feeling is that we are going to have a treaty because in the same way.... *discussion*

the problem of stopping war was not a moral achievement. ~~The~~ *It was* ~~problem~~ was the most easy solution to a situation, and the problem here I think is the same. because we have made a moral progress. It is because it is an ~~in~~convenient solution to the

problems with which countries are confronted. Here I think the problem is the same. In a certain sense ...countries reaching consent about the treaty now realize that under the present world situation, to have a treaty in a certain sense cover the interests of both parties. The demonstration that a big power or advanced country cannot ~~impose~~ ^{impose} by force a solution is evident every day, the question of the tuna boats in Ecuador, Iceland, Germans and U.K., and so on and therefore force ~~of law~~ ^{alone} is not enough. In the countries that have intention to exploit ocean resources in their technology or to expand, extend their capacity to catch living resources in a way are now thinking that a treaty will provide a frame that will facilitate ~~the~~ ^{the} extension of their capability with a minimum of security.

On the other side, as was mentioned during the discussion yesterday ~~in the second committee~~ ^{on settlement disputes}, the fact is that whether ^{nice} a treaty in the United Nations with some rules even if they are ambiguous, and we can accept a degree of ambiguity to arrive to a compromise, is a very important element in the defense of the developing countries ...

Discussion in the Security Council every day show that even if very symbolic things, there is an instrument of action behind them. So I think that there is a ~~code~~ ^{code} of needs

discussion of ambiguity

but at the same time I realize that this ambiguity is part of the exercise and the important question is not whether the treaty is established but ^{where} the institutions that are embodied there.

Then I take the second point ~~concerning~~ the question, is our discussion now on the Conference conservative, not looking too much on the future? My feeling is that the future is already there, the future is in the seabed authority. The new ideas were already incorporated when you start putting some of these new ideas that finally enter in the game. And I think for that purpose it is finished for this part, or this of

The important thing is whether the institutions could conceivably adjust to the new situation because more and more I am disappointed with the question -- and I must say in my own experience, in my own country these last ³ two years .. in that regard -- one thing is to bring in the year 2000 and the other thing is to make the year 2000 tomorrow ~~xxxxxxx~~. The problem is ^{bring} make institutions ^{to make} ~~the~~ the year 2000 [?] in ~~the year~~ 1985, if I succeed to get the convenient student. And therefore I think the important battle now is to insure that the institutional arrangements are incorporated in such a way that they contain the elements to permit the incorporation of the new technological trends, the new change in ~~the~~ ^{balance of} power ^{in the world} ~~as well~~, the change in position of ^{the} developing countries, and productively to provide the place where we are going, we, I mean, some countries that are fighting, or people that are trying to create a new order, more justice, to bring there . . . discussion. And therefore to bring them on the developing discussion. And this is why I think only seabed authority. I am personally convinced that the seabed authority is going to be restricted by external forces

in some areas and therefore we should not use only that mechanism, but the important thing is to use this in connection with another the restructuring of the U.N. system. And therefore are two or three motors that are attached to our progress. One motor is the changing technology. The other motor is the changes in balance of power. The other motor are even the superstructures and the .. including the secretariat. The question is when the charter of the United Nations established the sovereignty of States ..., it is not true, it is a fiction. The sovereignty of States was eroded like some water on the rock and the next day the rock had some less molecules on it. Every the sovereignty of States is eroded. And every day the countries are keeping the fiction that they are maintaining their sovereignty but they are giving up step by step ... so the problem I think in terms of future is to assure that the institutional arrangements are pushed so far as possible. And I think that is there that the developing countries or the countries that are ... for other reasons in the future should try to incorporate their effort.

The last point on which I would like to make a remark is the question of seabed authority and what would be, and I just put it

...

a kind of Pavlovian reflex that ... trying to generate in relation with what are called the empty zone outside national jurisdiction. Many people, and particularly political people involved

They spoke and now there is a current of opinion that expects

outcome in terms of

A failure in the seabed authority setback in the process of creating the institutions for the future because it will demonstrate or condition the people to the fact that the international approach in the same way that on a national level it is all explained that State enterprise are

and therefore approach and the private managers are really the last element in the success of the develop

that in fact, even with the long process, state enterprise and administration by States could become so efficient as the private element in the same way that in international affairs, the international institution could become so efficient it has the combination of the national administrations or

that national administrations are very good in international affairs.

So I think that the question therefore is to try to make very clearly to people that the seabed authority is not to provide whatever is expected because otherwise the frustration may lead to a reverse trend. One could say that this is deliberate. One could think that this is just the result of the economic process but I am inclined to think that

attempt to demonstrate that this is a fiction is an utopian

approach and therefore it is better to keep the old

And if these elements are taken into account and translated in terms of resolutions or some elements that could be used not only ~~of~~ of ocean affairs ~~at~~ at the political level of the United Nations, I think that in a way we are effecting ^a some new motors to the process

LEVERING

explaining the
I'd like to start by ~~xxxxxxxxxx~~/perspective from which I look at this. I am a lobbyist in Washington opposing nationalistic ~~xxxxxxxxxx~~ solutions which as you can well imagine are attempts by the United States to get control of the seas to grab whatever it can which is strong in our country. I for 16 year was chairman of the Quaker legislative group in Washington which takes, as you can imagine a point of view exactly opposite to this, that neither peace nor justice nor nor any other good value is furthered by use of power and wealth and technology and capital to seize more for those who already have more than they need. Obviously we Quakers see no benefit in this, so that I would want to comment from those points of view. First the people of the United States who oppose any treaty are our most beknghted, most nationalistic, most selfish, and I could name them but I won't. They are the ones who would like to see no treaty are those who spec and say so, who are going out and grab the resources of the deep ocean and use our military power to protect those who grab. In the last few weeks and months, the use of military power has been a stated means whereby these

people intend to perpetrate them.

BORGESE

You mean they

in the night?

LEVERING

beknighted and so on. We published an issue of Neptune. Some of you may have gotten it. We published a short contribution of Gary Knight just to show you what some of us are up against in this country. Failure to get a treaty here would be a victory for the very worst elements in the United States and they would expect to exploit that failure immediately and would do so to the extent they could. It also would be a great blow to the United Nations which already is in trouble in the United States. And this would be another demonstration that the international approach to dealing with internal problems is as far as the United States is concerned at least a superfluity and probably worse. We should go it alone. Again it would be a very serious damage to those of us who feel otherwise in this country if there is no treaty.

Now look at the content of the treaty itself

[other side]

We pointed out at the seminar at Caracas that the result of the 200-mile economic zone is that some 73% of the ocean's petroleum will fall in the hands of those who are already well-to-do. But we got no takers for reversal of this among the developing countries. And we have been, as we repeatedly pointed out, with almost no response except for a few landlocked countries and only a mild

response from them. The coastal states have had their way in this regard up to the present time and all the ambiguities that Ambassador Pardo has talked about are for the special benefit of further grabs by coastal States. To the extent that you can put a clamp on these ambiguities that much of the rape of the ocean can be prevented. Now on the other hand, we see very real benefit in the prospective treaty for the .

We believe that the international seabed authority, while of little economic benefit for a period, later on may be of rather large economic benefit as the resources become a major economic use rather than a potential. We believe that the experience gained in this authority is at least potentially transferable to an internationally arms control and disarmament authority, the broader types of ocean authority dealing with other common world problems and wherever we see a chance to move forward to an effective international institutions, we want to take the step even though it isn't nearly as much as we'd like. We Quakers have been around a long time and we don't expect to get to Utopia tomorrow. On the other hand, if we can make even a small step, we are all for it. So that we haven't given up on this treaty at all. We know that if it's signed, then our major job is to get it ratified. If it's ratified, it will be implemented and see that it's not thwarted and then we expect in about 15 years, there'll be another conference to go beyond and rectify the mistakes. That's the way human being operate after all, perfection and human beings are rarely synonymous, certainly not in the political realm. If there can be some progress, we think we can, we're all for it, we are hopeful at this point, and I think there is a 50/50 chance

of getting a treaty, even in the next two years, which is much better than no treaty, at least the basic outlines and agreements in place. We're not ~~xxxxx~~ ^{disheartened} at all

MILLAR-CRAIG

We did schedule this for 6:30 to 8:30 and there is a logistic problem in that we have a security guard on the front door who may lock it presently. Then we would not be able to get out, but if there are more people who would like to speak maybe I could ask, Mr. Wapeny, you would like to say something, could we keep it ...

WAPENY

Thank you Mr. Chairman. My intervention would have been very brief as it is even without the time limitation.

I hope that the members here tomorrow perhaps will address themselves to one of the major problems, but speaking from the Secretarial point of view, I don't think we have been as pessimistic as some members have put it here at one stage, we had the feeling that national legislative procedures were forcing the hand of the Conference to make a treaty this year. There are logistic problems. Even the voting mechanism as envisaged in this will take more than the time most members realize because of the breathing time, time to 10 days for something to be done, and by the time we get to that, even then it will take some time and I hope the national legislative members will understand that point and not expect a miracle.

But what I was going to speak about and perhaps if I have the chance tomorrow, I could develop on it, and that is the problem of

landlocked and geographically disadvantaged states. It's a very complicated subject and very I am very disappointed as a member of the Secretariat not to see any of them here.

Except this lady from the Federal Republic. But one of the stumbling blocks so to speak has been the problem that this group causes the conference. As one speaker has already put it, we may end up with a beached Leviathan but we ended up with a Beach Leviathan in 1965 on just transit treaty just for transit trade, and just now what they have been claiming at a minimum of, has a minimum data of what is embodied in that treaty of 1965. I don't think they have added on much. I know this because I was part of the ^{declaration} Kampala/group that were up there, whatever the basic needs of the landlocked countries, geographically disadvantaged States. They have since of course been realistic enough to expand their membership to include the Federal Republic of Germany, and I think it was some of these days that one of the major powers came up with a very positive statement in support of the idea that this group has to be accommodated in order to reach a solution, but as you said, Mr. Chairman, we have run out of time and I hope we can continue this discussion tomorrow

BRIDGMAN

I will also be very brief. I am reminded of the discussion I had with one of the members of the Holy See in Geneva who said that possibly the most valuable thing resulting from the Conference is not the treaty at all but educational process we have been

going through. We have in the past years pretty much defined many areas that were previously never considered, and even without a treaty it is perfectly possible that many of the elements of what we come up with will be incorporated through national legislation, although I am optimistic that a treaty will result, and a good treaty, I think we also must consider that even without a treaty, many of the things we have talked about tonight may come to pass through^a bilateral and multi-lateral treaty.

BORGESSE

There are a lot of questions we have left for tomorrow. Let us see how much we have covered today. We really didn't go through the recommendations of the Sixth Special Assembly. Actually we had an overview, but tomorrow we ought to go into tomorrow's agenda and come back to the points that we didn't get into today in perspective as a by-product as it were, but I think we should focus on the last two questions tomorrow if that's all right.

MILLAR-CRAIG

Thank you very much indeed for your participation. I must confess when Mrs. Borgese first suggested these two evening seminars to me, I doubted whether people would really feel like coming to a seminar at this time of the evening after a long day, and I know you have another long day tomorrow so I must say that I think the standard of the discussion has been remarkably high, considering that it's come at the end of a long day, and

although I know you have another long day tomorrow, I very much hope that you will all be back tomorrow, maybe with some more colleagues and then Mrs. Borgese says we can take a little bit of a look at the second part of the agenda. Thank you very much.

April 8, 1976

MILLAR-CRAIG

May I welcome back those of you who were here lastnight and extend a very warm welcome to those of you who are here for the first time this evening. I hope you have had enough to eat and drink. If you have not, it is all there and you can slip out quietly and get whatever you require while we are going on.

Last night we endeavored to look at the first part of the agenda. I'm not sure whether we covered it all really, but we had a very interesting discussion on what one might call a general overview of the subject. Tonight, as you will see from the agenda, we are hoping to be rather more specific and get down to a little more detail and I think the best thing I can do is to ask Mrs. Borgese if she would say a little bit to set the ball rolling and to set the tone, as it were, for the kind of discussion that we hope to have this evening.

BORGESSE

Thank you very much. Looking at yesterday's agenda, I am afraid that our overview was rather a bird's eye and that we didn't really get into the details that were outlined for us

there. Of course those of you who have had a chance to look at this blue book will have found out that more or less, we did try to get into these points and we would be grateful for suggestions for changes as we go along because we are during the next three weeks going to get out a new editions of this as I indicated yesterday.

But I suppose that rather than going back systematically in the agenda of yesterday, we should delve into today's. Of course we might look now at the subject outlined for us today from two particular points of view, two particular angles. For one, Dr. Pardo made a statement today on dispute settlement and political infrastructure, a statement which is very much to the first point in our agenda here and I hope that although his speech lasted for almost half an hour, that in a few minutes he can give us a rundown on it because it really fits into today's discussion. ^{It was} ~~He~~ pointed out by one of the participants here there seems to be a disagreement between the more optimistic assessment of Part IV given in this background paper here and what Dr. Pardo had to say today. But I would just like to point out that that is not the case. What I am dealing with here and I hope we have a chance to go into that in some detail is the restructure of the dispute settlement system as proposed by Ambassador Amerasinghe which by itself and looked at as a structure is indeed very interesting and it seems to me rooted both in the requirements and the ^{necessities} ~~necessity~~ ~~is~~ created by the uses of the oceans and their potential conflict and on the other hand in the existing structure of international organization which they have to serve

as a basis for for what we come up with in the future.

In this paper I looked at it from a purely structural point of view. What Dr. Pardo pointed out this morning was the discrepancy between the structure on the one hand which is very advanced and the political infrastructure which it is supposed to serve and that this discrepancy might lead to consequences which are not desirable. With this realistic assessment I find myself in no way in disagreement.

The other event of today of course and I am sure we will have to ~~refer~~ refer to it as we go along is the big, voluminous and eloquent statement of the Secretary of State Mr. Kissinger here today. I am sure that we will want to take that into consideration as we go on. So now if you want to stick to the first half of our agenda. Incidentally, the first half is dispute settlement and the second half, After this Conference, what?, to our mind are strictly interrelated. As a matter of fact, four of these statements that were heard on dispute settlement during the plenary of the Conference already pointed to the question of the continuing mechanism, what kind of continuing mechanism, and that seemed to grow organically from the proposals for the settlement system, so these two topics belong quite logically together.

So if I just might say one more word on point 2 of this first point of our agenda, that is the functional federation of international organizations. I think we have gone into that already yesterday to some superficial extent, but what I tried to point out in this paper is the striking analogies between the kind of structure which we call functional federation of

international organizations and the dispute settlement structure, and under point 3 which is a sort of a mysterious title, we pointed to the changes in the nature of international law that is to be enforced or rather not enforced, maybe half-way enforced and that is one point that Mr. Busha raised in our seminar in Santa Barbara. That is we don't have a law that you either keep or don't keep, I mean something that's black and white, either/or, but we are developing in international law perhaps something that is between a norm, a rule, a standard, a model of, something to which we try to approach our conduct but which we may not realize fully at once and we need not necessarily be penalized for that. Well, this ties very much in, this kind of much more shaded, much more varied type of law tied very much in with this first question on whether we should have a compulsory system at all.

In conclusion on this point I would only raise one thing that may interest our Yugoslav colleague here. It seems to me that exactly this kind of very much more differentiated law that is not merely yes or no is being evolved in the only other system that we have in the world today that is evolving ^a jurisprudence based on the concept of common heritage. They call it social ownership but it is exactly the same thing and I found a beautiful passage in one of the writings of Jovan Djordjevic which unfortunately I don't have with me because the mail broke down on that, when he develops this kind of very much more richly nuanced type of law which we will have to deal with and which they have to deal with under Yugoslav law, so between these two systems, between this management system of the common heritage and the management system of ^{social} ownership, we do have parallels

immediate implementation of this system entirely practical. First of all, of course, it is the nature of international society and international law. Secondly there is the fact of the underlying law of the sea as expressed in the Single Negotiating Text and in the underlying law of the sea we find deliberate ambiguities which are political in nature. We find other very general formulations which are not necessarily political in nature but which are very general in form and which cannot serve very easily as a basis for law and thirdly we find formulations that are too detailed as to be almost unworkable. Well, under these circumstances, of course, if we have a compulsory system and binding system of dispute, we would have to leave to the judges that operate this system very wide discretion. But how is it proposed to elect the judges. Judges are elected in accordance with the various geographical regions in the United Nations system and this does not appear conducive to balancing judgments. Some years we would have an enormous majority of coastal states elected as judges. Other years we would have a substantial number of land-locked countries elected as judges. Some years perhaps a majority of the judges would be from socialist countries. Other years that majority of judges would come from countries which are not socialist.

SCHACHTER

Arvid, may I interrupt? Why is that? It strikes me as a rather extraordinary thing. We've had elections for 30 years now. That sort of thing has never happened

PARDO

No but in the system as proposed, if you will see in the statute of the new Law of the Sea Tribunal, you will see that the statute proposes specifically a certain number of judges from each group of states, and these judges, because of the nature of the applicable law, would have very wide discretion, and all right . . . there would be four judges from African States, Now the four judges could come from the coastal African States, or they might come from landlocked African States. One doesn't know. It depends on how the African group will decide to elect these judges. In short, there is a balance of geographical regions but not a balance of interests in the composition of the tribunal which would have a tremendous importance.

BRUCAN

That means that the election procedures should be adjusted to its end.

PARDO

Exactly. That is exactly the point. You always find my point. That is exactly the point, and it should be adjusted to the type of law which is proposed. Here we have certain questions where the law is extraordinarily vague, the new law of the sea, and now of course judges have recourse to the general principles of law, but the general principles of the law of the sea are in a state of transition, some principles from the old law will be retained, some principles of the new law are not entirely accepted by States, and there will be a period in which the emerging law

law of the sea will be far from clear. In the situation I suggested, it will be very constructive if there were fact-finding procedures, conciliation procedures, certain arbitration procedures but that with regard to the interpretation of those parts of the law of the sea which remain vague, contradictory, inadequate or ambiguous, it would be necessary to have a continuing political body because since these are political matters and not in essence legal matters. And this is the first part.

On the other hand, I said that one could imagine that the deficiencies of the text proposed as the basis for negotiations would be very substantially improved, that the uncertainties of the text would be removed, that the text would not have this rather obsolete

Husband: nice but complicated
slav. ↑

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"THE NEW INTERNATIONAL ECONOMIC ORDER
AND THE LAW OF THE SEA"

TRANSCRIPT

OF A 2-DAY SEMINAR SPONSORED
BY UNITAR AND IOI
APRIL 7, 8, 1976
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THE NEW INTERNATIONAL ECONOMIC ORDER AND
THE LAW OF THE SEA

Seminar organized jointly by UNITAR
and the International Ocean Institute

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April 7, 1976

MILLAR-CRAIG

Ladies and gentlemen, let me just very briefly say who I am and what I am doing here. My name is Hamish Millar-Craig, and I am the Director of Administration of UNITAR. Very unfortunately, our Executive Director, Dr. Davidson Nicol, is away in Geneva, and our present Director of Research is away in some other part of the United States. So it falls upon me, although I claim absolutely no expertise whatever in this field, to have the pleasant task of welcoming you to UNITAR this evening. I find myself in a somewhat embarrassing position with my very distinguished former Chief sitting opposite me, who is one of the leading experts in this field, but as I say, my task really is simply to set the ball rolling. It was also to try and organize a little refreshment beforehand to give the setting of this.

We have in UNITAR tried to use the Institute from time to time to provide a forum at times like this when there are interesting conferences going on where various people concerned can take time off for a little informal exchange of views, and I would like to say that in welcoming you, we do have in mind that this is quite informal, that everybody here is in quite a personal capacity, and although we have got a tape here, this is not with a view to playing things back to you but simply to help with producing some kind of a summary record of what we discuss this evening and tomorrow evening.

The originator of these two evening discussions is on my left, Mrs. Elisabeth Mann Borgese, whose official title is Chairman of the Planning Council of the International Ocean Institute in Malta. I think the best thing I can do is to ask Mrs. Borgese to give us the setting for this evening's discussion.

BORGESSE

Thank you very much, Mr. Chairman. First of all, I would like to say how delighted we are to be back at UNITAR because we have a long history with UNITAR. When we embarked on our project of *Pacem in Maribus* which then led to the establishment of the International Ocean Institute in Malta back in 1968, we had indeed a seminar here at UNITAR together with Oscar Schachter which gave birth to a large volume on planning and development in the oceans which in 1968 was a revolutionary topic to deal with. What we are doing now takes us right back where Oscar and those of us who were present at that time stopped at that time.

We are happy indeed to be back here at UNITAR that after having interrupted this series of meetings these many years, this will be the beginning of a new series of cooperation between us.

The topic of our seminar these next two evenings is "The New International Economic Order and the Law of the Sea," and this of course is an enormously big and important subject. We, as far as the International Ocean Institute is concerned, have been working at it systematically for over a year now. We launched the subject at a seminar in Geneva last year, and to our amazement, people thought it was an out of the way idea that the two things, the new international economic order and the law of the sea, might have anything to do with each other. At our seminar in Geneva, there were some of the architects of the new international economic order, and they looked at the charter and at the documents of the 6th Special Assembly, and they said, "This is one thing, the oceans is another."

To us it seemed the kind of economic potential that the oceans indeed have, and with the role that marine activities are playing and continue to play ever more in the economic life of every nation and in the economic life of every community, it seems to us unthinkable to separate the two things. I mean,

if we have a new international economic order, obviously we have to apply it in an area that occupies two-thirds of the world and that produces a large share of the world GNP, and on the other hand to make a law of the sea which does not take into account the demands and requirements of the new international economic order, if we don't do it there, we won't do it anywhere. In a way, the oceans are, if you wish, a test case because here for the first time we really are building institutions which either do or do not embody these principles and if they don't, we can be quite sure that there will be no other chance to create the institutions to embody these principles in the near future anywhere.

This was our point when we started in Geneva last year and then we were fortunate because the Government of the Netherlands picked up the thread and commissioned this study which we did in the context of Jan Tinbergen's study on the new international order, which because a very expanded sub-study of that. (We apologize for the number of typos and slips.) With this we feel we are only at the beginning of what we want to do. As a matter of fact, when this session comes to an end we want to redo this paper and bring it up to date and include the results of this session into the new edition. In connection with this, we have planned a series of seminars. The first one was held in January in Santa Barbara, and you have a digest of that on the table before you. I am sure, however, you have not had a chance to go through it. So perhaps, in order to introduce the whole subject and before coming to today's agenda, I might just give you a very brief rundown and introduce you to what we have been doing.

You see here an introduction, and that merely summarizes the main points that the Secretary-General made in his very brief inaugural statement here at this Session of the Law of the Sea Conference which, nevertheless, we found very relevant because in a succinct way, he really summarized the gist of

what we were trying to do in this paper. Then we step over to the proceedings of our seminar in Santa Barbara itself, and as you see, we started with a general stocktaking of what went on, where we were at the Law of the Sea Conference, and I am sorry to say that the assessment of the participants of our seminar in Santa Barbara, which included a number of delegates to the Conference was rather pessimistic. It was felt generally that the Law of the Sea, such as it was being conceived at that moment, indeed, did not make much of a contribution to the building of a new international economic order. This, of course, is very deplorable. It was further pointed out that the Law of the sea, such as it is emerging now, does not seem to do very much to cope with the different uses of ocean space and their interaction and their conflicts at times, and in particular, that it was not up to date because many of the new technologies and the problems arising with the use of these technologies were not adequately considered.

Then we dealt with very specific issues. We dealt with the issue of living resources which, of course, are of vital importance for the building of a new economic order because the oceans managed properly and looking toward the future rather than to the past, could indeed contribute to a considerably greater share to the world food need than they do at present. And this in particular, if you shift your attention from the overfished commercial species, which in the best of all cases can be increased to some point but not very much beyond what they are yielding now, if you shift your attention from that to the new or so-called unconventional resources which could perhaps contribute as much as ten times what we are having now. The question is how to insert that, how to make use of that in such a way that it will not again end up altogether in the pockets of the nations who are already rich and that the poor nations will be cheated out of ^{that part of} the common heritage.

It was pointed out that the concepts on which the work of the Second Committee at present is based, concepts like the maximum sustainable yield, really no longer sustainable from a scientific point of view, and all the scientists present, in particular Sidney Holt, gave us some very eloquent explanations why these concepts are no longer tenable, and why, for that reason, it was totally unrealistic to assume that coastal nations would be able to determine the optimum catch unilaterally in their economic zone, even within a 200-mile range. So the conclusion was that the entire discussion clearly indicated that the work of the law of the sea conference had barely scratched the real issues of fishery management and its relevance to the building of the new international economic order, and that insofar as it's done so, it's done it the wrong way.

That, of course, is not very encouraging, but still, there is time to reconsider many issues, and I'm quite sure from what I've seen so far at the conference that the issues are still quite live.

Next we dealt with the subject of the potential of Committee I as far as the new international economic order was concerned and in a way theoretically, the potential of what Committee I can contribute to the building of the new international economic order is very considerable except that you are stuck with the reality that Committee I giveth and Committee II taketh. The resource basis on which the whole thing has to function is being eroded by the ambiguities that are left in the provisions that are under consideration now by Committee II. On page 14 of the summary that you have before you, I summarize some of the conclusions that we came to, what would be the conditions under which the seabed authority really could contribute more to the international economic order than it is doing now. One is, of course, ^{that} the limits of national jurisdiction have to be defined more clearly by Committee II than they are being defined

now. The second would be more or less, rather more than less, that the position of the African States with regard to the continental margin and its relation to the economic zone, would certainly be more conducive to increasing the resource base of the international seabed authority than the position of, let's say, the Evensen Committee in this respect.

A third point we made and which is now being advanced by the Delegation of Algeria is that somehow and in some form you have to get hydrocarbons back into within the purview of the seabed authority. That might take a number of forms. We might discuss them while we are here during these two days.

We next dealt with the role that IOC might play in the building of the new international economic order. Of course, IOC is already in the process of reorganizing and restructuring and I think that the Law of the Sea Conference and what it comes up with will certainly make new demands on IOC. We had an interesting discussion there on the relations between IOC and the seabed authority. It seems that there are two tendencies within the First Committee right now. One would be to absorb IOC and associate it with the seabed authority. The other would be to give it up and create a new international agency for the conduct of international scientific research and marine affairs. That would be most unfortunate because we don't want to proliferate and to duplicate efforts. I think we should use what we have got and improve it rather than throw away the old toy and take a new one which most probably would be thrown away in due course as well.

One of the points that was made and that seems to be very important is that the outstanding need is for a change in the nature of the words "data exchange system" which now is in the hands of two designated super-powers and which should be truly internationalized and certainly IOC could play and should play an important role in that.

Next we dealt with the economics of shipping and the role of IMCO. There it was pointed out that in fact IMCO, in spite of the fact that in the IMCO convention there is a provision that IMCO should take care of restrictive practices, these economic matters in IMCO have so far systematically not been taken up and UNCTAD and OECD have filled the vacuum. But the paragraph in IMCO that states IMCO should take care of these things is still in the books and as IMCO is changing its constituency and is becoming more universal and is acquiring more the confidence of the world community, it was pointed out that its role in economics might be strengthened. If we are to take the resolutions of the Sixth and Seventh Special Session of the General Assembly, if we are to take them seriously, then every organization and that includes IMCO ought to make its contribution to the building of the new international economic order.

Then we dealt in particular with the issue of dispute settlement which now is on the agenda these days, this week, of the general debate in the plenary of the Conference. We felt that we might make some kind of contribution to that subject. It's a very complicated subject and I don't want to get lost in it right now. We have it on the agenda tomorrow. What we pointed out here in our summary is the very interesting parallel between the structure proposed by Part IV of the Single Negotiating Text and the structure that we in this study that you have here really are suggesting for the emerging ocean space institutions because, you see, we are not stupid enough to suggest that Committee I should be busted and that instead of having a seabed authority, we ought to have an ocean-space authority. It's too late in the game for that altogether. The seabed authority is going to be what it's going to be. We have to live with it and we can live with it very very well. But what has to be done is to bring the other agencies that are now active with regard to ocean space and resources up to the level that we hope the seabed authority

will be brought to by this Conference and then create a kind of what we call integrative machinery to hold the whole thing together and to get a viable set of ocean space institutions that way.

The kind of structure that we are proposing in our study and which we call a functional federation of international organizations and which is kind of a very economical structure and a structure based on the present goings on in the United Nations system and here at the conference is an exact counterpart to the kind of structure that the President of the Conference has, in fact, proposed for the tradition of the dispute settlement system. We are in this paper exploring these parallels to some extent, and I do think that they are interesting.

In particular, we dealt for a while on the suggestion made in Part IV of the Single Negotiating Text, namely that the judges be elected by a conference of States that would meet every three years. One of the participants at that time suggested that when that meeting of States gets together, besides electing judges, they might do a few things. In other words, they might be a first element in that continuing mechanism that we need here at the conference because no matter how the treaty turns out, it will only be the beginning, and the process will have to be continued in some way. The conference of States proposed in Part IV of the Single Negotiating Text might be a first step in that direction.

On that we closed our seminar in Santa Barbara, and in the last section of this paper, we summarized the recommendations that we came up with and which will take us to the last point on our agenda tomorrow. I therefore will not anticipate them now. You can read them and we can discuss them tomorrow.

I would suggest, Mr. Chairman, that we now go to the agenda. Today we are supposed to deal with the changing context and the

changing focus of the Law of the Sea Conference, and we certainly would want to know what everybody here feels about it. Perhaps Dr. Pardo would have a few words to say about that.

PARDO

Mr. Chairman, I feel that the introduction by Elisabeth Mann Borgese has been admirable. The paper is clear and very much to the point. I have very little to add to what has already been said. I would propose to intervene, if I may, at a somewhat later stage.

MILLAR-CRAIG

I don't know who would like to start the discussion. As I see it, we are going to take the subjects for tonight as a whole. This is sort of a general debate on the overriding principles, and then tomorrow we will be looking in a little more detail at mechanisms. If anybody wishes to speak to the agenda for tonight which you all have, the floor is now open.

BORGESE

Let me just say one thing in this connection. Maybe it will help to get things started. We all have been at this game, which is a tremendous game. I think it's probably the biggest one that we have had since the end of the 2nd World War, and we will not have another one of this kind for some time to come. So we've been engaged in that since 67. During these last almost 10 years now, 9 years, two things have happened. One is external to the Conference, that is, a lot of new developments have started and have accelerated, and of course, the Sixth and Seventh Special Session of the General Assembly are of particular relevance there. The search in the United Nations for a new type of international order including a new type of international economic order has gained momentum, I

should say much faster than anybody would have expected three or four years ago. Now these things must have certainly their effect on the Conference because there is no political event that can stay outside these things. It's all part of one long march, let's put it that way. So these, I would say, are the changes in the context of the Conference, and the question that arises is, has the Conference really lived up, has it moved along with this changing context, or has it remained behind? Is there a danger that it be left out, out of conscientious concern to wind up the task that it set itself seven years ago. It sort of loses its own context. There might be this danger. This is one of the questions that within the Conference itself now we can't even consider, but in a seminar like this we can try to have a look at that side of the problem.

Group dynamics is a very fascinating subject, and it always happens that the way that you look at a thing outside is the same as you look at a thing inside. I mean, the interrelation between foreign politics, domestic politics are a case in point, but even the relations of an individual towards its society or toward its inside belong to the same family of problems. I have the feeling that if the Conference, should it be the case, should it be true, has lost its context, there might even be the possibility that it has lost its own focus. I mean, how far is the focus of the Conference and the context of the Conference interrelated? Whereas in 1967 we set out with a very precise focus, a very precise job, namely to create a new international order to take care of the advanced technologies that have eroded the old law of the sea, and we were really going to build up new institutions, that was 1967. This focus certainly has been displaced to some extent and other concerns have superceded, have taken its place. That, certainly, when you look at it as an outsider, has had an effect on the whole mechanism, on the whole way of proceeding of the Conference. So perhaps

one of the subjects that we might discuss is the interrelation between this changing context and this changing focus of the Conference and what can we do to restore both at this point?

RUIVO [tape not at all clear]

There are two items on the agenda, the recommendations to the General Assembly and the development. I think these looked at in a certain way may explain the lack of momentum. I think we are replacing the two systems which are interacting with their own dynamics or at least with their own system of expression. Let me see if I can verify what I have in mind. When we are discussing the resolutions of the United Nations General Assembly, we are dealing with statements by deputies of governments which even when they are conservative, they are operating on an external base in part of the process where they feel comfortable. A conservative, theoretic government at home may appear in international affairs as apparently a progressive government, and the statements from these governments appear, at least from outside, extremely interesting, but they don't any government.

But at the same time there are the dynamics, either inside this government, or this country, let us say, and in the other countries where the economic pressures and the dynamics of the groups that are behind them have their own role. So, in a certain sense, when we look to the ocean affairs, we have from one side at the beginning the convergence of the two elements, from one side, the new needs resulting from technology and the great

...

I don't think this is a bad trend because having incorporated some new elements like the seabed authority, and having already stripped the process that contained other elements ... , these represent a consolidation of some of these accusations, and this is why, in Geneva when we discussed these matters, in a certain sense we are confronted to look a foreign office and this it is not. The new economic order leads us to the common heritage of mankind and that lets a big area for international use, but at the same time some sort of real politique in terms of defeating the forces that are in fact opposing the common heritage, the appropriation of resources by some coastal countries with the majority of developing countries is a step toward justice that appears in the Charter of Economic Rights and Uses. So it is a process of consolidation of certain accusations that in fact -- I usually translate in these terms: The prehistoric man to catch a mammal just throws in two arrows and runs for tools until he lost blood and catch him to get meat. Here in international affairs what developing countries are doing in a certain way is to throw some arrows on some big mammals, to run for some years until they can get meat, and the meat is more justice in economic trade, more justice in access to resources, etc. What we have is the conceptual element with the political element ... and then the implementation within the feasibility ~~wxxxxx~~ of the agreements that we are negotiating. Therefore I don't see a contradiction. In my own view, it is a positive trend and is a feedback process because what they are achieving here is helping the other fights that are going on on the economic order.

MILLAR-CRAIG

May I just say before we go any further that if anyone wants to go out and get himself a cup of coffee or tea, it is there, or indeed anything else you would like by way of liquid refreshment.

SCHACHTER

I think the remarks of the speaker were interesting. I wonder about the question of the strategy or the bargaining that is now open for consideration. In talking about this question earlier with someone here, I was concerned with the issue of whether, the issue referred to in the paper very briefly, the issue of whether there would be any treaty at all, and the question as to whether one would press for a kind of agreement now which would be far ~~or~~ less than what might be desirable in the present circumstances. Let us say, a statement of principles, a statement of objectives that might be a basis for future development on the assumption that a treaty would perhaps not come into force for a considerable period of time even if agreed upon here, or whether, alternatively, it would be better facing this difficulty to postpone the matter somewhat more. I have no fixed view on this. I am concerned about what seems to me to be considerable likelihood of a treaty that would be simply a

which will not really be setting out. We've had so much experience with treaties that are going back to the 19th century were treaties which have been adopted and then not had much effect and sometimes that may be desirable. The 1897-8 convention later become a working treaty some 15 years later, whatever it was, 10 years later. I

*Reached
Dunithan*

just am raising this in a rather, not in a very precise way, but I'd like to hear what people think about this kind of alternative, a kind of options that are presented by the situation today.

BUSHA [tape not clear]

As another example of the unrealized, not the ITO, the gaps not only do not -- I'm being realistic in starting with the thought of possible failure. I see myself in the present state of mind ... I feel a very definite intention to bring something to paper here, whether it is to be a real is of course the burning question and I wonder whether this. I wonder whether this will come up tomorrow rather than today, on the managerial side the institutional side, so I won't say more on this, but I just wish to throw in ... a general agreement on tariffs and trade, something which worked out very well as an ongoing...

BORGESE

We have been faced with the discussion of failure ever since the day that the first working session of the Conference started, and I must say, it's always made me very angry to read in the papers that Caracas was a failure because it didn't produce a treaty, I think is either dishonest or stupid because anybody who was in the business knew that Caracas was not there to produce a treaty. It was the first basis for further work, it was not more than that, and I'm always suspicious about people who say it's just as well we don't have any treaty because who are they, and what are they going to get out of it. This is one of the points that we dealt with in our seminar in Santa Barbara which only

reinforced my suspicions in this respect. They are the people who are strong enough to see there a way to protect their interests and their gains in the oceans, no matter whether they have a treaty or whether they don't. In other words, they are the few marine powers, and I don't have to mention them, but it seems to me that the poor nations who do not have the technology or the economic or the military power to get into the game individually today ~~are~~ the ones who are losing immediately. In the long run, everybody is going to lose, that's for sure, but in the short, the rich nations will gain and the poor nations will lose if we have no treaty. So, in spite of the daily frustrations and so on, I very strongly think that it would be a sell-out and a step back and the missing of an enormous opportunity and the sacrifice of an enormous potential were we to renounce the idea of a treaty. That does not mean that we have to have everything wrapped up next year and then go home and see whether it works or whether it doesn't because I do indeed feel, and to that we will come back tomorrow, that the establishing of a continuing mechanism is as important as the signing of a treaty over the next few ... but I wouldn't give up on the treaty.

PARDO

I think that for political reasons ... there will be a treaty, among other things because as the Secretary General stated, the whole structure of international cooperation and also other fields other than the law of the sea would be effective There is a political imperative: a treaty. The questions arises, what kind of treaty. And here we have various views. Of course

a treaty must require a basic harmonization of States' interests somehow or other. Since, however, in fact, there serious divergencies in the perceived interests of national States, such harmonization in a treaty can only take place through the device of formulations that may be interpreted in different ways according to the interests of the State concerned. The search for these adequate formulations is of course a search which is taking place at the present time in the conference on certain critical issues.

I think there will be a treaty. The treaty will contain political compromises of a basic nature, compromises that leave the uncertainties as they are in effect. The question is, is such a treaty worthwhile? Here, one has to make different assumptions. It will depend of course on the content of those parts of the treaty that are not ambiguous. Here what do we see in the Single Negotiating Text. First of all, a basic assumption. The competence of the coastal States at whatever level of technological development to effectively and rationally administer the resources in ... areas. Is this assumption valid? Maybe in some cases, but it is doubtful whether it is valid in all cases.

The second assumption which is basic to the Single Negotiating Text is the retention of the freedom of the high seas. In spite of a variety of technological development which would suggest that the freedom of the high seas as interpreted in international law and in the Single Negotiating Text is obsolescent. However, this is valid by the creation of a seabed authority. Will the seabed authority in future have the possibility of increasing the development of the law of the high seas? This will depend on a

whole series of ...ables -- who will be at the head of the seabed authority, the competence of the direction, the general political situation at the time, and so on. It's very difficult. I think the basic problem with the present conference on the law of the sea is this, that one can approach the questions of the law of the sea from various points of view. Basic to an agreement is harmonization of the interests of States, the perceived interests of States, but should the negotiation take place exclusively on that level, or should there other purposes for the Conference. For instance, should the Conference attempt to take into account ^{techno} the ~~psycho~~logical developments that are transforming the uses of ocean space? It would seem obvious that these should be taken into account. At the same time, however, this may impede if this other aspect were brought into the negotiations, it might impede the harmonization of States' interests. Rooted assumption in certain States would have to be revised, and this is very difficult for bureaucratic and other reasons. Should the Conference, again on a third plane, take into account, try to achieve through the Conference, or facilitate through the Conference, the achievement of other For instance, should it try to take into account the achievement a better measure of world order, of course only in the seas, but if it is achieved in the seas, it could be achieved also on land. Should the Conference take into account the desirable goal of, for instance attempting some international regulation of certain dangerous technology in the seas? Of course if the Conference does take into account these goals, highly desirable goals, this complicates ~~immensely~~ immensely negotiations. So the problem of the Conference, as I see it is that instead of

taking into account all the factors which must be taken into account to obtain a treaty which is a constructive treaty, the whole negotiation has been reduced to the level of harmonization of States' interests. I want this, you want that, our mutual desires are incompatible. Let us find a formula to reconcile this. The approach then is ambiguity formulation and we have of course the huge area of the high seas. If we disagree, let us cut our piece from the high seas. It is a little bit like the first division of Poland. You cut that, and then when you have absorbed the first division, we make a second and final division. This is the attitude.

How to assess this? Is it constructive? Is it not constructive? There is a small seed of constructiveness in all this negotiation because for the first time there is created a seabed authority with independent revenue, something unique in international organizations and with managerial functions. The negative aspect of this establishment of a seabed authority is that the limits of the area over which this authority will exercise managerial function is undefined. It's under, It is defined exclusively by the States concerned, and there is nothing in the proposal that says that States ... have been defined, national area vis-a-vis international area, cannot be defined at a later date when the international area is developed. A State can say that my jurisdiction extends to latitude 40 South one day and then the next day it will say jurisdiction extends to latitude to 42 South. It doesn't matter. There is no restriction on that. So it means that the authority has jurisdiction or rather exercises managerial powers in an area which is likely to be a diminishing area. A second

negative factor is that the authority, that it is assumed in the proposals made that the authority ... will have control over the bulk of manganese nodules stock when in fact it will have no such control. It will have to compete with manganese nodules under national jurisdiction in the exploitation of this resource. A third negative factor is that there is no definition in the Text, there's no attempt at definition, and there will be no attempt at definition of where the regime of the high seas ends and the regime of the common heritage of mankind for the seabed begins. In theory one could in the general framework of the Negotiating Text, one could say that the regime of the high seas ends one quarter of an inch above the seabed. Everything is freedom except for the seabed itself. If this interpretation were to become current, of course the seabed authority would be of very little relevance. If, on the other hand, the interpretation that all activities in the high seas connected or related in some way to seabed activities that come under the purview of the competence of the authority, the seabed authority would have a totally different aspect. This is an area which will be a grey area, even when the convention is signed.

The seabed authority is the seed of a new order. However, this seed, the development of this seed is threatened by a whole series of other developments, both with regard to the extension of .. rights and of the competence of States. What to prefer? I find it very difficult to make a choice, whether to take a positive view and be optimistic or to take a somewhat pessimistic

view. I don't know. One thing is certain, however, that the high seas, the traditional high seas will disappear within Whatever the text of the convention may say. It will disappear because of the reason mentioned so well by the Secretary General of the need of a multiplying humanity for resources. Humanity can no longer afford to exploit the resources in the way that the hunter goes after the, used to go after the resources, the wild beasts of the forests. It is essential, and this is felt very widely both by government and I think by most individuals, that there must be resource management, and resource management can come only through the exercise of authority, either by States or through international It is said that, it is an argument that has been used that international management of resources is impossible because the world is divided between different ideologies, because we haven't yet reached that stage which would make international management of resources possible and desirable. If that is the case, and I don't want to discuss it one way or the other, if that is the case, then there would be coastal management. And if there is coastal management of the resources of the seas, it would mean an effective division of the seas of ocean space, then those States with a long coastline and ample access to the seas will of course manage for their own benefit, not for the benefit of others, the greater part of those resources, and States with small coastlines fronting on narrow or small seas will find themselves at a competitive disadvantage. If that is what is desired, if it is desired to increase inequality between States as one of the results of this

Conference, it is difficult to wish for a treaty. But here again, there are other considerations, if there is no treaty, then coastal states will do without the form of legality conferred by a treaty, we're back in the same thing. They'll grab what they can and inequality of States will be increased in any case. So I find myself torn by two sentiments. I do not wish to confer the legality of a treaty on what some coastal States are planning. On the other hand I see perfectly well that if this legality is not conferred upon them, they will take it all the same. What is to be done? This I hope somebody will reply.

RAMAN

What emerges from the Law of the Sea discussions now is a treaty in the traditional sense that an international agreement bilateral or multilateral somewhat disturbs me. If this was the objective, I think one can very easily say the labor is not well-spent.

But my own reading of the matter is, and I agree perfectly with Ambassador Pardo on that, some institutional arrangement will emerge from these negotiations, whether it be a comprehensive convention, will be specific enough, detailed in character, without any ambiguities, or would it incorporate a set of general directions and principles, as Mr. Schachter pointed out. The net result will not be different. Even if the Conference fails to produce an acceptable treaty in all its aspects, this whole discussion in the period of seven years, supported by an immense amount of effort on the part of private organizations and agencies and individuals, compels me to look at this in the same form now as the charter

was drafted in the 40's, in 1945. The whole notion that the States' sovereignty has not been affected by the charter, that the charter will not in any way satisfy the requirements of global interests. Perhaps it is correct that this is defied by our own experiences later when once the authority is established, its organs will have competence to interpret the convention. And in the same manner as the organs of the United Nations have interpreted the charter provisions, perhaps there is room to be optimistic that the international seabed authority would be able to extend its consignment beyond what was clearly defined its area of responsibility. To inject this notion of international concern in the same manner as the organs of the United Nations have interpreted the charter provisions to make inroads into what was once considered the jurisdiction of States.

I am not completely in agreement with this draft report of Santa Barbara seminar. There are a good number of highly relevant aspects of the international economic order that have been discussed in the Second Committee and in the First Committee and to some extent in the Third Committee. It is true that many of the lofty ideals and policies of the new international economic order reflected in the 6th and the 7th Special Sessions of the General Assembly have not come to be, have not had their effects so clearly. But remember here, broadly speaking, there were two parties, perhaps three parties in the discussion of the international economic order. When it came to the question of implementation in relation to the law of the sea, there are not two sides; there are 20 sides, perhaps 200 sides, so with the result the specific details to be ... here have increased and become of course clear

enough. We have this reflected in a good number of provisions of the Single Negotiating Text about the need to provide technology and capital .. seabed exploitation and what mechanisms are to be applied here and we have here for example provisions concerning policies for pricing commodities and the need to protect land-based economies, and the criteria for sharing the revenues and the special privileges to be accorded to the GDO's, the disadvantaged states, and the land-locked communities.

So it's not completely correct in my opinion to say that the thinking of the new international economic order is not ~~xxx~~ reflected in the present concerns of the law of the sea discussions and delays. Whether these are adequately reflected or whether these are peripherally suggested here perhaps is a little early to conclude. While I shared the general concern that the interests of the less-developed countries are not adequately taken into account and that no mechanisms were provided for realizing this ideal of common heritage of mankind, we'll come to that perhaps tomorrow. The groundwork I think for discussing these problems has now been established.

RUIVO [not clear]

First of all, if we are going to have a treaty if
 ... the question if we have a treaty or ~~it~~ ... a worthwhile achievement. My feeling is that we are going to have a treaty because in the same way.... *discussion*

the problem of stopping war was not a moral achievement. ~~The~~ *It was* ~~problem~~ was the most easy solution to a situation, and the problem here I think is the same. because we have made a moral progress. It is because it is an *inconvenient* solution to the

problems with which countries are confronted. Here I think the problem is the same. In a certain sense ...countries reaching consent about the treaty now realize that under the present world situation, to have a treaty in a certain sense cover the interests of both parties. The demonstration that a big power or advanced country cannot ~~impose~~ by force a solution is evident every day, the question of the tuna boats in Ecuador, Iceland, Germans and U.K., and so on and therefore force ~~of law~~ ^{alone} is not enough. In the countries that have intention to exploit oceans resources in their technology or to expand, extend their capacity to catch living resources in a way are now thinking that a treaty will provide a frame that will facilitate ^{the} extension of their capability with a minimum of security.

On the other side, as was mentioned during the discussion yesterday ^{on settlement dispute} ~~in the Second Committee~~, the fact is that whether ^{nice} a treaty in the United Nations with some rules even if they are ambiguous, and we can accept a degree of ambiguity to arrive to a compromise, is a very important element in the defense of the developing countries ...

Discussion in the Security Council every day show that even if very symbolic things, there is an instrument of action behind them. So I think that there is a ~~code~~ ^{codi} of needs

discussion of ambiguity

but at the same time I realize that this ambiguity is part of the exercise and the important question is not whether the treaty is established but the institutions that are embodied there. ^{where}

Then I take the second point ~~concerning~~ the question, is our discussion now on the Conference conservative, not looking too much on the future? My feeling is that the future is already there, the future is in the seabed authority. The new ideas were already incorporated when you start putting some of these new ideas that finally enter in the game. And I think for that purpose it is finished for this part, or this of

The important things is whether the institutions could conceivably adjust to the new situation because more and more I am disappointed with the question -- and I must say in my own experience, in my own country these last ³ two years .. in that regard -- one thing is to bring is to bring in the year 2000 and the other thing is to make the year 2000 tomorrow ~~xxxxxxx~~. The problem is ^{bring} make institutions ^{to make} ~~the~~ the year 2000 in [?] ~~the year~~ 1985, if I succeed to get the convenient student. And therefore I think the important battle now is to insure that the institutional arrangements are incorporated in such a way that they contain the elements to permit the incorporation of the new technological trends, the new change in ~~the~~ ^{balance of} power ^{in the world} as well, the change in position of ^{the} developing countries, and productively to provide the place where we are going, we, I mean, some countries that are fighting, or people that are trying to create a new order, more justice, to bring there . . . discussion. And therefore to bring them on the developing disucssion. And this is why I think only seabed authority. I am personally convinced that the seabed authority is going to be restricted by external forces

in some areas and therefore we should not use only that mechanism, but the important thing is to use this in connection with another the restructuring of the U.N. system. And therefore are two or three motors that are attached to our ^{process} progress. One motor is the changing technology. The other motor is the ^{changes in} world balance of power. The other motor are even the superstructures and the .. including the secretariat. The question is when the charter of the United Nations established the sovereignty of States ..., it is not true, it is a fiction. The sovereignty of States was eroded like some water on the rock and the next day the rock had some less molecules on it. Every the sovereignty of States is eroded. And every day the countries are keeping the fiction that they are maintaining their sovereignty but they are giving up step by step ... so the problem I think in terms of future is to assure that the institutional arrangements are pushed so far as possible. And I think that is there that the developing countries or the countries that are ... for other reasons in the future should try to incorporate their effort.

The last point on which I would like to make a remark is the question of seabed authority and what would be, and I just put it

...

a kind of Pavlovian reflex that ... trying to generate in relation with what are called the empty zone outside national jurisdiction. Many people, and particularly political people involved

They spoke and now there is a current of opinion that expects

outcome in terms of

A failure in the seabed authority setback in the process of creating the institutions for the future because it will demonstrate or condition the people to the fact that the international approach in the same way that on a national level it is all explained that State enterprise are

and therefore approach and the private managers are really the last element in the success of the develop

that in fact, even with the long process, state enterprise and administration by States could become so efficient as the private element in the same way that in international affairs, the international institution could become so efficient

it has the combination of the national administrations or

that national administrations are very good in international affairs.

So I think that the question therefore is to try to make very clearly to people that the seabed authority is not to provide whatever is expected because otherwise the frustration may lead to a reverse trend. One could say that this is deliberate. One could think that this is just the result of the economic process but I am inclined to think that

attempt to demonstrate that this is a fiction is an utopian

approach and therefore it is better to keep the old

And if these elements are taken into account and translated in terms of resolutions or some elements that could be used not only of ocean affairs at the political level of the United Nations, I think that in a way we are effecting ^a some new motors to the process

LEVERING

I'd like to start by ~~xxxxxxxx~~ explaining the perspective from which I look at this. I am a lobbyist in Washington opposing nationalistic ~~xxxxxxxx~~ solutions which as you can well imagine are attempts by the United States to get control of the seas to grab whatever it can which is strong in our country. I for 16 year was chairman of the Quaker legislative group in Washington which takes, as you can imagine a point of view exactly opposite to this, that neither peace nor justice nor nor any other good value is furthered by use of power and wealth and technology and capital to seize more for those who already have more than they need. Obviously we Quakers see no benefit in this, so that I would want to comment from those points of view. First the people of the United States who oppose any treaty are our most beknghted, most nationalistic, most selfish, and I could name them but I won't. They are the ones who would like to see no treaty are those who spec and say so, who are going out and grab the resources of the deep ocean and use our military power to protect those who grab. In the last few weeks and months, the use of military power has been a stated means whereby these

people intend to perpetrate them.

BORGESE

You mean they in the night?

LEVERING

beknighted and so on. We published an issue of Neptune. Some of you may have gotten it. We published a short contribution of Gary Knight just to show you what some of us are up against in this country. Failure to get a treaty here would be a victory for the very worst elements in the United States and they would expect to exploit that failure immediately and **would** do so to the extent they could. It also would be a great blow to the United Nations which already is in trouble in the United States. And this would be another demonstration that the international approach to dealing with internal problems is as far as the United States is concerned at least a superfluity and probably worse. We should go it alone. Again it would be a very serious damage to those of us who feel otherwise in this country if there is no treaty.

Now look at the content of the treaty itself

[other side]

We pointed out at the seminar at Caracas that the result of the 200-mile economic zone is that some 73% of the ocean's petroleum will fall in the hands of those who are already well-to-do. But we got no takers for reversal of this among the developing countries. And we have been, as we repeatedly pointed out, with almost no response except for a few landlocked countries and only a mild

response from them. The coastal states have had their way in this regard up to the present time and all the ambiguities that Ambassador Pardo has talked about are for the special benefit of further grabs by coastal States. To the extent that you can put a clamp on these ambiguities that much of the rape of the ocean can be prevented. Now on the other hand, we see very real benefit in the prospective treaty for the .

We believe that the international seabed authority, while of little economic benefit for a period, later on may be of rather large economic benefit as the resources become a major economic use rather than a potential. We believe that the experience gained in this authority is at least potentially transferable to an internationally arms control and disarmament authority, the broader types of ocean authority dealing with other common world problems and wherever we see a chance to move forward to an effective international institutions, we want to take the step even though it isn't nearly as much as we'd like. We Quakers have been around a long time and we don't expect to get to Utopia tomorrow. On the other hand, if we can make even a small step, we are all for it. So that we haven't given up on this treaty at all. We know that if it's signed, then our major job is to get it ratified. If it's ratified, it will be implemented and see that it's not thwarted and then we expect in about 15 years, there'll be another conference to go beyond and rectify the mistakes. That's the way human beings operate after all, perfection and human beings are rarely synonymous, certainly not in the political realm. If there can be some progress, we think we can, we're all for it, we are hopeful at this point, and I think there is a 50/50 chance

of getting a treaty, even in the next two years, which is much better than no treaty, at least the basic outlines and agreements in place. We're not ~~xxxxx~~ at all
 disheartened

MILLAR-CRAIG

We did schedule this for 6:30 to 8:30 and there is a logistic problem in that we have a security guard on the front door who may lock it presently. Then we would not be able to get out, but if there are more people who would like to speak maybe I could ask, Mr. Wapeny, you would like to say something, could we keep it ...

WAPENY

Thank you Mr. Chairman. My intervention would have been very brief as it is even without the time limitation.

I hope that the members here tomorrow perhaps will address themselves to one of the major problems, but speaking from the Secretarial point of view, I don't think we have been as pessimistic as some members have put it here at one stage, we had the feeling that national legislative procedures were forcing the hand of the Conference to make a treaty this year. There are logistic problems. Even the voting mechanism as envisaged in this will take more than the time most members realize because of the breathing time, time to 10 days for something to be done, and by the time we get to that, even then it will take some time and I hope the national legislative members will understand that point and not expect a miracle.

But what I was going to speak about and perhaps if I have the chance tomorrow, I could develop on it, and that is the problem of

landlocked and geographically disadvantaged states. It's a very complicated subject and very I am very disappointed as a member of the Secretariat not to see any of them here.

Except this lady from the Federal Republic. But one of the stumbling blocks so to speak has been the problem that this group causes the conference. As one speaker has already put it, we may end up with a beached Leviathan but we ended up with a Beach Leviathan in 1965 on just transit treaty just for transit trade, and just now what they have been claiming at a minimum of, has a minimum data of what is embodied in that treaty of 1965. I don't think they have added on much. I know this because I was part of the ^{declaration} Kampala/group that were up there, whatever the basic needs of the landlocked countries, geographically disadvantaged States. They have since of course been realistic enough to expand their membership to include the Federal Republic of Germany, and I think it was some of these days that one of the major powers came up with a very positive statement in support of the idea that this group has to be accommodated in order to reach a solution, but as you said, Mr. Chairman, we have run out of time and I hope we can continue this discussion tomorrow

BRIDGMAN

I will also be very brief. I am reminded of the discussion I had with one of the members of the Holy See in Geneva who said that possibly the most valuable thing resulting from the Conference is not the treaty at all but educational process we have been

going through. We have in the past years pretty much defined many areas that were previously never considered, and even without a treaty it is perfectly possible that many of the elements of what we come up with will be incorporated through national legislation, although I am optimistic that a treaty will result, and a good treaty, I think we also must consider that even without a treaty, many of the things we have talked about tonight may come to pass through^a/bilateral and multi-lateral treaty.

BORGESSE

There are a lot of questions we have left for tomorrow. Let us see how much we have covered today. We really didn't go through the recommendations of the Sixth Special Assembly. Actually we had an overview, but tomorrow we ought to go into tomorrow's agenda and come back to the points that we didn't get into today in perspective as a by-product as it were, but I think we should focus on the last two questions tomorrow if that's all right.

MILLAR-CRAIG

Thank you very much indeed for your participation. I must confess when Mrs. Borgese first suggested these two evening seminars to me, I doubted whether people would really feel like coming to a seminar at this time of the evening after a long day, and I know you have another long day tomorrow so I must say that I think the standard of the discussion has been remarkably high, considering that it's come at the end of a long day, and

although I know you have another long day tomorrow, I very much hope that you will all be back tomorrow, maybe with some more colleagues and then Mrs. Borgese says we can take a little bit of a look at the second part of the agenda. Thank you very much.

April 8, 1976

MILLAR-CRAIG

May I welcome back those of you who were here lastnight and extend a very warm welcome to those of you who are here for the first time this evening. I hope you have had enough to eat and drink. If you have not, it is all there and you can slip out quietly and get whatever you require while we are going on.

Last night we endeavored to look at the first part of the agenda. I'm not sure whether we covered it all really, but we had a very interesting discussion on what one might call a general overview of the subject. Tonight, as you will see from the agenda, we are hoping to be rather more specific and get down to a little more detail and I think the best thing I can do is to ask Mrs. Borgese if she would say a little bit to set the ball rolling and to set the tone, as it were, for the kind of discussion that we hope to have this evening.

BORGESE

Thank you very much. Looking at yesterday's agenda, I am afraid that our overview was rather a bird's eye and that we didn't really get into the details that were outlined for us

there. Of course those of you who have had a chance to look at this blue book will have found out that more or less, we did try to get into these points and we would be grateful for suggestions for changes as we go along because we are during the next three weeks going to get out a new editions of this as I indicated yesterday.

But I suppose that rather than going back systematically in the agenda of yesterday, we should delve into today's. Of course we might look now at the subject outlined for us today from two particular points of view, two particular angles. For one, Dr. Pardo made a statement today on dispute settlement and political infrastructure, a statement which is very much to the first point in our agenda here and I hope that although his speech lasted for almost half an hour, that in a few minutes he can give us a rundown on it because it really fits into today's discussion. ^{It was} /~~He~~ pointed out by one of the participants here there seems to be a disagreement between the more optimistic assessment of Part IV given in this background paper here and what Dr. Pardo had to say today. But I would just like to point out that that is not the case. What I am dealing with here and I hope we have a chance to go into that in some detail is the restructure of the dispute settlement system as proposed by Ambassador Amerasinghe which by itself and looked at as a structure is indeed very interesting and it seems to me rooted both in the requirements and the ^{necessities} ~~necessity~~ ~~xx~~ created by the ~~x~~uses of the oceans and their potential conflict and on the other hand in the existing structure of international organization which they have to serve

as a basis for for what we come up with in the future.

In this paper I looked at it from a purely structural point of view. What Dr. Pardo pointed out this morning was the discrepancy between the structure on the one hand which is very advanced and the political infrastructure which it is supposed to serve and that this discrepancy might lead to consequences which are not desirable. With this realistic assessment I find myself in no way in disagreement.

The other event of today of course and I am sure we will have to ~~xxxx~~ refer to it as we go along is the big, voluminous and eloquent statement of the Secretary of State Mr. Kissinger here today. I am sure that we will want to take that into consideration as we go on. So now if you want to stick to the first half of our agenda. Incidentally, the first half is dispute settlement and the second half, After this Conference, what?, to our mind are strictly interrelated. As a matter of fact, four of these statements that were heard on dispute settlement during the plenary of the Conference already pointed to the question of the continuing mechanism, what kind of continuing mechanism, and that seemed to grow organically from the proposals for the settlement system, so these two topics belong quite logically together.

So if I just might say one more word on point 2 of this first point of our agenda, that is the functional federation of international organizations. I think we have gone into that already yesterday to some superficial extent, but what I tried to point out in this paper is the striking analogies between the kind of structure which we call functional federation of

international organizations and the dispute settlement structure, and under point 3 which is a sort of a mysterious title, we pointed to the changes in the nature of international law that is to be enforced or rather not enforced, maybe half-way enforced and that is one point that Mr. Busha raised in our seminar in Santa Barbara. That is we don't have a law that you either keep or don't keep, I mean something that's black and white, either/or, but we are developing in international law perhaps something that is between a norm, a rule, a standard, a model of, something to which we try to approach our conduct but which we may not realize fully at once and we need not necessarily be penalized for that. Well, this ties very much in, this kind of much more shaded, much more varied type of law tied very much in with this first question on whether we should have a compulsory system at all.

In conclusion on this point I would only raise one thing that may interest our Yugoslav colleague here. It seems to me that exactly this kind of very much more differentiated law that is not merely yes or no is being evolved in the only other system that we have in the world today that is evolving ^a jurisprudence based on the concept of common heritage. They call it social ownership but it is exactly the same thing and I found a beautiful passage in one of the writings of Jovan Djordjevic which unfortunately I don't have with me because the mail broke down on that, when he develops this kind of very much more richly nuanced type of law which we will have to deal with and which they have to deal with under Yugoslav law, so between these two systems, between this management system of the common heritage and the management system of ^{social} ownership, we do have parallels

which have fascinated for many years and to which we will come back

...

Why don't we then start with these three points?

Arvid, do you want to briefly recapitulate what you said?

PARDO

Briefly recapitulate what I said this morning? I don't think I can remember it because I don't have a copy of the text in front of me. Ah, give me a copy because I don't really remember. Perhaps it may jog my memory a little.

BRUCAN

Are you sure it's the right copy?

PARDO

Anyway, the point I was trying to make this morning was that the President of the Conference on the Law of the Sea had proposed a rather comprehensive system of compulsory and binding dispute settlement. It is a system which in theory is admirable.

BRUCAN

As every theory is.

PARDO

It will admirably serve in its general lines as a model dispute settlement system for a new law of the sea, but unfortunately here we have various factors which do not make the

immediate implementation of this system entirely practical. First of all, of course, it is the nature of international society and international law. Secondly there is the fact of the underlying law of the sea as expressed in the Single Negotiating Text and in the underlying law of the sea we find deliberate ambiguities which are political in nature. We find other very general formulations which are not necessarily political in nature but which are very general in form and which cannot serve very easily as a basis for law and thirdly we find formulations that are too detailed as to be almost unworkable. Well, under these circumstances, of course, if we have a compulsory system and binding system of dispute, we would have to leave to the judges that operate this system very wide discretion. But how is it proposed to elect the judges. Judges are elected in accordance with the various geographical regions in the United Nations system and this does not appear conducive to balancing judgments. Some years we would have an enormous majority of coastal states elected as judges. Other years we would have a substantial number of land-locked countries elected as judges. Some years perhaps a majority of the judges would be from socialist countries. Other years that majority of judges would come from countries which are not socialist.

SCHACHTER

Arvid, may I interrupt? Why is that? It strikes me as a rather extraordinary thing. We've had elections for 30 years now. That sort of thing has never happened

PARDO

No but in the system as proposed, if you will see in the statute of the new Law of the Sea Tribunal, you will see that the statute proposes specifically a certain number of judges from each group of states, and these judges, because of the nature of the applicable law, would have very wide discretion, and all right . . . there would be four judges from African States, Now the four judges could come from the coastal African States, or they might come from landlocked African States. One doesn't know. It depends on how the African group will decide to elect these judges. In short, there is a balance of geographical regions but not a balance of interests in the composition of the tribunal which would have a tremendous importance.

BRUCAN

That means that the election procedures should be adjusted to its end.

PARDO

Exactly. That is exactly the point. You always find my point. That is exactly the point, and it should be adjusted to the type of law which is proposed. Here we have certain questions where the law is extraordinarily vague, the new law of the sea, and now of course judges have recourse to the general principles of law, but the general principles of the law of the sea are in a state of transition, some principles from the old law will be retained, some principles of the new law are not entirely accepted by States, and there will be a period in which the emerging law

law of the sea will be far from clear. In the situation I suggested, it will be very constructive if there were fact-finding procedures, conciliation procedures, certain arbitration procedures but that with regard to the interpretation of those parts of the law of the sea which remain vague, contradictory, inadequate or ambiguous, it would be necessary to have a continuing political body because since these are political matters and not in essence legal matters. And this is the first part.

On the other hand, I said that one could imagine that the deficiencies of the text proposed as a basis for negotiations would be very substantially improved, that the uncertainties of the text would be removed, that the text would not have this rather obsolescent flavor that it has at the present time, and in that case, the prospects of viability of the underlying law would be greater, and in this connection, I said, if this is done, then possibly a dispute settlement system of a binding nature can be contemplated. The main argument I have for suggesting that the provisions contained in the the SNT were not sufficient to justify the establishment of a binding and compulsory dispute settlement system was the fact that the text itself gives so much discretion to the judges. The text is bad. It gives so much discretion to the judges that it could be interpreted in an unbalanced way against the interests of weak nations. It could be interpreted in a way which would imprison the international community in a law which is entirely inadequate and this would not be very constructive.

A third alternative is perhaps it isn't too late for the

text to be radically revised and to take into consideration not merely the perceived national interest of States but also the usage of the sea over the next decade or so and general consideration of a highly desirable nature such as considerations with regard to world order, considerations with regard to control of certain dangerous technologies and so on. In that case I said of course a binding dispute settlement system would be an essential part of such a new order in the seas.

BORGESE

You're not convinced by the problems that might arise .. elections of these judges, or not, on a regional basis proposed.

SCHACHTER

No, I just assume that as always, these things will be balanced out so that interest groups within each group would be an appropriate sharing of the different positions, nor am I convinced by Arvid's rather positivist notion of what international law is like or how it operates. We come from rather different traditions. He is educated in Italy where they have a different approach to this. Essentially what he says is right, however, that there is a considerable amount of indeterminacy in agreements of this kind as indeed there is in all international law, and I would not suppose myself that that in this case presents any enormous problem and it has many positive features to it. The question though that he puts as to whether you, as I take it from his summary, whether the choice is between a political body or a judicial body seems to me to be somewhat unrealistic in this context. Both obviously have a place

.. kind of interpretation and application of a treaty of this kind largely takes place through state behavior. It takes places through political organs or through State behavior outside the system. This will be true even before the treaty enters into force, and a great deal of the critical decisions may be taken between the conclusion of the treaty and the rather far-off period when it enters into force because the states will be interacting that way.

It seems to me that the problem ought to be looked at in terms of trying to get a more workable dispute settlement procedure so that there would be a safety valve for reduction of tensions that would mount as this interaction takes place. I think that one must now address oneself to that possibility. My personal feeling, and I don't know how this falls in with acceptability, that by and large, it is probably desirable to apply a system which would allow the governments considerable freedom of choice with regard to the method, arbitration or the court or if it is acceptable, the tribunal as well, and I don't see this as constituting a serious limitation on the natural political forces or the operation of a political organ

BORGESE

The question that arises... There is a movement headed by a California lawyer by the name of Gerry Gottlieb. I don't know whether you're familiar.

SCHACHTER

He's been to see me.

BORGESSE

Well, he's seen most of us. His idea is the establishment of a Court of Man. It is a beautiful construct and it is something that is infinitely more comprehensive than the international court of justice and of course individuals ... and he thinks that is kind of a short cut. It's one way of creating a new world order. My objection to Gerry Gottlieb always has been that you cannot create such a system when you don't have political and social and legal infrastructure. You cannot just start building a viable entity by building a court. I mean this concept of a court is out of phase with the rest of political evolution in the world, in the international...

SCHACHTER

His thesis, you know, the interesting thesis is that this happened in the 18th century through the operation of the so-called law merchant. It does in fact exist in the law of the sea that the arbitration courts in London have and still do make a great deal of law applicable to the sea through their -- as Tom knows better than I do -- through their, the operation in that private law sector in which they operate which is accepted. This just doesn't seem applicable to a situation where state power as we now have it is so predominant. The notion that there would be some spontaneous growth in this area other than what goes on in the private field is just unrealistic.

BORGESSE

I would agree with that. I would raise the question in these

terms. Is Part IV too far ahead of the other parts of the Single Negotiating Text, or do you find that it is on the same lines, on the same wave length?

SCHACHTER

I defer to my friend Raman who's been worrying about this for a couple of years.

RAMAN

The important aspect here is not so much whether Part IV is farther ahead or going in a tangent from the other three parts but to understand the purpose of including an elaborate procedure for settlement of disputes. Generally, the international practice certainly since the second World War has been to first agree to the substantive principles in a treaty or a convention sufficiently in advance and then and then probably at the end or the penultimate section about its application or its interpretation in a very standard form. This is the unique feature of the law of the seas negotiations that the agreement on the substantive terms is linked to a kind of a consensus on acceptable third-party procedures for settlement. This way it is really a different type of structure. And when we go to the details of the procedures recommended here, there are also some very unique features. The concept of advance commitment to a procedure and then giving a wide choice of procedures -- arbitration, tribunal, and the court. The famous Riphagen formula. In fact you know it meets the choices customarily made by different parts of the world to one procedure or the other. But the more complicated aspects there which in fact I could not really understand

well is why do we need two tribunals, one for the seabed authority and the other for the law of the sea tribunal to take into account the other aspects covered by the Committee II and Committee III and so on. So here now we have a set of arbitration procedures. We have an elaborate structure for the law of the sea tribunal. We have detailed provisions for the seabed tribunal. We have the international court of justice, and we have three different sets of conciliation procedures for these special areas like fisheries, pollution and scientific research. The general thrust of all these procedures to me is a very formal one. It reflects a very narrow point of view .. compulsory third party judicial settlement procedure in some mysterious way guarantees the effectiveness of the law that it is supposed to apply. But this is quite untrue if we look into international practice. The procedures by which countries resolve their disputes are in fact quite different, and the percentage of cases really decided by these formal tribunals is pretty small compared to the whole what I call as a customary practice of creating international law.

Now this brings us back to the philosophical questions that are being raised in the plenary. On the one hand, we say that the substantive law cannot but be vague, either by design or by default, and since this is going to be vague, we need a compulsory third party settlement to check you know distractions from this consensus and provide certain uniformity and interpretation. The reply to this argument has been that because the law is very vague,

we cannot really entrust the responsibility of interpretation to a

There is a close relationship, and this is the psychological element, between the vagueness of law and the attitude towards a compulsory third party settlement procedures. My one principal objection to Part IV has been that a complete and probably total denial of the richness of the informal procedures, and the few informal procedures, so-called conciliation procedures referred to in the text, are only fictitiously informal in the sense that the procedures recommended there are no different from the traditional procedures of arbitration, the only difference being that a panel of experts is maintained by these specialized agencies and these experts, once they are selected, they operate just in this same manner as five or three bench arbitrators would do. Of course there is room for fact finding. There is room for an analysis of the data collected, and so on and so forth, but the informal procedures are different ~~xxx~~ from this formal conciliation technique used in the SNT. There is no room for example. There is no provision for example for the secretariat, the head of the secretariat, to offer his good offices. In the same manner, for example, the secretary general's good offices have come to play an enormous informal technique for resolving specific differences between states. Not only the procedures of mediation, the informal procedures of conciliation, which I have had an opportunity to examine in detail in the book that I passed to you. These techniques have not been reflected in the SNT and so much so the argument has been on the one hand, direct negotiation is the only acceptable procedure with respect to the exclusive jurisdiction of coastal states

and the tribunal will accept provided the tribunal applies the law as interpreted and decided by the authority. So this is on the one side the traditional view. I don't know if it is the minority view ~~of~~ or a view shared a number of states but on the other hand we have the recommended procedure that there should be a compulsory third party settlement procedure. These two are not mutually incompatible in my opinion, and once the choices are increased, states would be more inclined to be conscious of the fact that what is at stake here is the obligation to decide peacefully, not an obligation to decide through a particular procedure. So once this is accepted, then the procedures can come into operation automatically.

SCHACHTER

Do you favor flexibility and many options? Even though it's complicated?

RAMAN

Yes, I think so because it is complicated we need this flexibility and the multiplicity ~~of~~ of forums for both formal and informal decisions. And again, may I add one more point here. This business of drafting and of making panels of experts might provide a temporary satisfaction to international lawyers and scholars but in practice this may not work satisfactorily because no state is going to commit in advance whom it is going to appoint in a future panel until after a dispute arises. Nobody can be a professional mediator. He is given

after the dispute becomes impossible. So similarly the panelist will have to face this possibility that they will come into existence only after a dispute has really materialized and the parties themselves are unable to resolve through their direct negotiations.

BOHTE

Following the preparatory work in the committee of the general assembly now for several years already the conference, I am more and more convinced that the eventual text of the treaty is going to be a very controversial one because if we are seeking to have compromises, then compromises are very often possible only in vaguely defined text or as Ambassador Pardo said today, I am quoting now from ... that agreement could be reached only by deliberate ambiguity of language. Now I just give one example. Even in the language of the Group of 77 of developing countries, it is very hard to find sometimes common language and for the time being still we use even in the 3rd committee when we talk about topics such as pollution or scientific research or scientific technology about areas which we find as areas under national jurisdiction or sovereignty. Now this language show that there is quite a widely spread variety of opinions whether