ABELTH MANN BORGESE

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Report from Caracas

THE LAW OF THE SEA

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The subject matter was of first importance. The oceans cover more than two-thirds of the planet. Every problem of war and peace that has ever beset relations between nations projects itself onto the oceans: food, minerals, energy, communications, science, technology, environment, territoriality, sovereignty, power, and the life and death of the planet. If we learn how to handle these problems in the oceans, we can handle them elsewhere as well. A new law for the oceans is a new law for the world.

There were three thousand participants, along with supporting staff, at Caracas. One hundred and thirty-eight nations were represented, plus the United Nations Council for Namibia. There were a number of regional and intergovernmental organizations, such as the League of Arab States, the Organization of African Unity and the Organization of American States, the Commonwealth Secretariat, and the European Economic Community; the Inter-American Development Bank, and all the specialized agencies of the United Nations; about two dozen nongovernmental organizations and nine national liberation movements, including the Palestinian Liberation Organization.

There was an array of senior members of the U.N. Secretariat, including Secretary General Kurt Waldheim; his special representative, Constantin Stravropoulos; and the father and founder of the whole momentous undertaking, Arvid Pardo of Malta.

Two heads of state (the Presidents of Mexico and of Venezuela), one deputy head of state (Crown Prince Tupoutoa of Tonga), one Deputy Prime Minister (Anton Vratusa of Yugoslavia), fifteen foreign ministers, and thirty-two other officials of ministerial rank participated in the conference.

The largest delegations were those of the United States, Venezuela, Canada, and the Soviet Union, consisting of about 120 members each. The smallest — such as Tonga's — consisted of one or two. The large delegations had the advantage of expertise in every conceivable area, but their policies, more often than not, were compromises between their own internal interests and pressure groups rather than the result of a give and take within the international community. The smaller delegations had more flexibility. The whole enterprise, after all, was due to the initiative of Malta, the second smallest member of the United Nations.

The ten-week working period was divided into four overlapping phases.

The first phase, from June 20th to June 27th, was devoted to the rules of procedure. The main issue was how decisions would be made on substantive matters. This was no problem for the developing

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The compromise — a testimony to the firmness and diplomatic brilliance of the conference president, Ambassador H. Shirley Amerasinghe of Sri Lanka — was that decisions on substantive matters were to be taken by a two-thirds majority of members present and voting, but that this must include a majority of "participating states." This decision itself was taken by consensus, without a vote, and reflects a significant development in U.N. decision-making. It was formulated during the preparatory session of the conference in New York last December. This so-called "gentlemen's agreement" stipulated that decisions would be made by consensus, based on extensive discussion and negotiation. Voting would be resorted to only after all possibilities of reaching consensus had been exhausted. This should go a long way toward allaying the fears of states who are now in a minority in the United Nations.

The rules of procedure also provide that non-governmental organizations, with observer status recognized by the conference, have the right to distribute documents and to take the floor, in the plenary as well as in the three main working committees. This provision was made in response to an amendment introduced by the Holy See.

The second period, from June 28th to July 15th, was dedicated to plenary sessions at which general statements were made, setting the tone for the technical work of the three committees. One hundred and twenty-four such statements were presented by 115 states and nine representatives of organizations, during twenty-one meetings. They dealt with:

- ☐ The limits of the territorial sea;
- ☐ The extension of national jurisdiction over living and nonliving resources within an "economic zone" of two hundred miles;
- ☐ The management of fisheries;
- ☐ The passage through straits;
- ☐ The rights of landlocked nations;
- ☐ The establishment of an International Authority for the mining of seabed minerals in the area beyond the limits of national jurisdiction.

The major points of view clearly emerged in these general statements. The conflict is not so much between "nationalists," eager to expand the limits of national jurisdiction, and "internationalists," desiring to maximize the international zone, even though many observers still cast it in these terms.

The real conflict is between a minority of nations who hold out for the basic "freedoms of the sea" and for limited and fragmented international and national regimes, on the one hand, and, on the other, a majority of nations who have stepped forward in favor of a strong and rational regime for the oceans, the management of which would be shared by coastal nations, regional organizations, and the International Authority.

"One of the dogmas that we shall challenge is the freedom of the sea," said the representative of Tanzania, "for that freedom has served only the interests of the stronger, in navigation as well as in fisheries. The management of living resources and all other activities on the high seas must come under effective international control." In another statement, that same delegate went as far as to say, "If freedom of navigation were made the main objective of this conference, that freedom would destroy humanity."

At least two dozen nations — all of them developing — spoke out strongly in favor of a comprehensive ocean-space regime, such as first proposed by Malta. The President of Mexico, addressing the plenary session, said:

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"Man's entire attitude with regard to the sea must change. The dramatic growth of the world's population, and the consequent increase in demand for food from the sea; the expanding industrialization on all continents; the congestion of populations in coastal areas; the intensification of navigation and the ever more frequent deployment of supertankers, containers of liquid gas, and nuclear powered vessels; the increasing use of chemical substances which eventually end up in the seas — all these are factors which impose the necessity to regulate globally, to administer internationally, the uses of the oceans. Every day there will arise new and greater conflicts between different competitive uses of the oceans, conflicts which no nation will be able to resolve alone.

"There is, furthermore, a constant interaction between the multiple uses of the oceans. The exploitation of seabed resources may affect the utilization of the superjacent waters; activities in international areas in in national coastal zones affect one another mutually; and the sea in its totality, and the atmosphere above it, form one ecological system. All these interactions demand a global and integrated vision and treatment of the marine environment."

The establishment of such a regime is a long and profoundly revolutionary process. It will take years. Paul Engo of Cameroon, the chairman of the First Committee, said, "Negotiations should not be based on existing laws and rights, since the aim of the conference is to adopt new, universal, and probably revolutionary regimes."

The third period, overlapping with the second, was devoted to the technical work of the three working committees which had been established by the first session of the conference last December.

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The First Committee dealt with the International Seabed Authority and its machinery. It is in this committee where the most innovative and constructive work needs to be done. In the words of Chairman Engo, "The First Committee is entrusted with perhaps the greatest responsibility for designing international peace with norms and institutions hitherto unknown." The committee's informal working sessions were chaired by Sri Lanka's Christopher Pinto. Both Engo and Pinto have distinguished themselves during long years of work in the preparatory U.N. Seabed Committee.

The First Committee began its work on July 10th. It held about twenty formal and many informal sessions. It produced eleven formal proposals and a number of synopses, comparative tables, and working papers. The main result was a draft of the twenty-one first articles of a treaty establishing a Seabed Authority. There is not yet a single, agreed text; in many cases, the draft lists alternative provisions. However, these alternatives have been boiled down and contrasts and contradictions clarified, so that the document is a useful basis for intersessional negotiation, and discussion at the next session.

The central issue was captured in Article 9 of this draft treaty, "Who Shall Exploit the Area," and in a series of working papers on the "conditions of exploration and exploitation of the area." The majority of nations favored a strong international authority, competent to manage directly all phases of exploration, exploitation, production, and marketing of seabed minerals. A minority of industrialized nations opted for a laissez-faire system under which the international authority would be limited to the role of a licensing agency.

With regard to conditions of exploration and exploitation, the majority of nations favored the inclusion of a set of guidelines in the treaty text which would be flexible enough to enable the Authority to adapt its regulations to changing technological and economic requirements. A minority of nations insisted on the inclusion of a rigid and complex mining code, spelling out conditions of work and production on a basis of the *status quo*, or even the *status quo ante*.

The critical point in the committee's work was the presentation, by the U.N. Secretariat and by the U.N. Conference on Trade and Development, of documents (not always in accord among themselves) on the economic implications of seabed mining, the gist of which was summarized by the representative of UNCTAD:

"It can be safely assumed, if normal commercial criteria were to guide the production of minerals from the seabed, one important result would be to bring direct benefits to the consumers of these minerals, which are largely the mineral-using industries in developed countries. In the absence of special arrangements to protect the interest of developing nations, the availability of minerals from the seabed might result in a widening of the income gap between developed and developing countries."

The ensuing discussions, partly in committee, partly in an informal seminar organized by the chair-

man, were complex and dynamic. It must be said that the counterarguments offered by the United States and the United Kingdom, West Germany, and East Germany (which — *mirabile dictu* — came to the eloquent defense of the European Economic Community) did not fall on very fertile ground. The impression remained that a nodule-mining international Authority not only would not do much good for the majority of nations (considering that the Authority's revenues, in the best of cases, would be very small indeed), but that it could be definitely harmful to mineral-exporting developing nations. The latters' projected increase in income, it was estimated, would decrease by more than three hundred million dollars by 1980 because of manganese, cobalt, and copper production from the seabed, unless the Authority had broad powers to take preventive and compensatory measures. In no event, however, would the income of the Authority be large enough to compensate developing nations for their export losses.

This issue remained unresolved, and it cannot be resolved in terms of a seabed Authority alone.

The First Committee concluded its work on August 27th. Its substantial achievement was a clarification of issues, a dynamic change in perception of interests, a maturation of concepts — all basic for the work next year. Its procedural achievement was the establishment of a working group responsible for arriving at a single text for Articles 1 to 21, with special emphasis on the key Article 9. The group worked to the very end of the Caracas session, and will officially reconvene at the beginning of the next session. Between sessions, informal contacts and consultations will continue.

This group is constituted on the basis of the regional principle: each of the five geographic regional groups (Latin America, Asia, Africa, Eastern Europe, Western Europe and other states) delegated nine members; to these were added five members who had introduced major proposals for "the conditions of exploration and exploitation" or for Article 9, that is, one each from the United States, the "Group of 77," the European Economic Community, Japan, and Australia.

The principle of regional representation, which gives to the developing nations a less overwhelming majority than they hold in the committee as a whole, was conjoined with the principle of decision-making by consensus rather than voting.

While it was emphasized by some nations that "the composition of this group should not constitute a precedent for future bodies," that the group should be "open-ended," and that membership "was not in accordance with the principle of equitable geographical distribution" (it is sufficient to mention that India and China were lumped together with other nations in one Asian group), the trend is nevertheless significant. It is now practically conceivable that the Council of the Seabed Authority may be constructed on the principle of regional representation, although the concept of "region" would need considerable refinement in such a case.

The Second Committee, under the chairmanship of Ambassador Andres Aguilar of Venezuela, began its work on July 3rd and ended on August 28th. It dealt with fifteen major areas of the law of the sea, including the breadth of the territorial sea, the continental shelf, the economic zone, fishing zones and fisheries management, high sea, islands and archipelagic states, straits, and the rights of landlocked nations. It produced eighty-four new proposals and thirteen working papers setting forth major trends. It thus created a broad working basis for the next session.

If the thrust of the First Committee was toward the construction of an international regime, the Second Committee focused on national rights and duties. Putting the work of the two committees in perspective, one notices a disturbing imbalance: the Second Committee deals with national ocean space as a whole, whereas the First Committee deals with only a part of international ocean space, namely, the seabed. And whenever inevitable interactions between national and international zones appeared in that discussion — whether in connection with pelagic fisheries, navigation, or other issues transcending national boundaries no matter where they are — the Second Committee invoked an International Authority which, in reality, existed nowhere, since the Authority to be established by the First Committee is limited in its competence to the seabed and its minerals. This imbalance must be corrected somehow during the next session.

The Second Committee gave most attention to the economic zone. Ninety-nine statements were heard on this subject — more than on any other item. In summing up the committee's labor, Mr. Aguilar reported that the proposal for a territorial sea belt of twelve miles and an economic zone of up to two hundred miles had received support from the majority of delegations, even though final agreement depended on the resolution of a number of concurrent prob-

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lems such as passage through straits, the outer limits of the continental shelf, the regime of islands and archipelagic states, and the rights of landlocked nations. Whereas there was near-unanimity among the majority nations with regard to international ocean space, no such agreement existed in the Second Committee with regard to national ocean space.

There were divisions on the question of the extension of the economic zone. Many Latin American delegations, joined by India, Norway, and Australia, among others, proposed a two-hundred-mile zone, plus an extension of jurisdiction over the seabed beyond that — to include the outer margin of the continental shelf, down to the abyssal plain. The African nations, joined by Romania, Switzerland, Jamaica, Malta, among others, postulated an economic-zone concept that would replace the archaic division between territorial sea, fishing zone, contiguous zone, and continental shelf with a unified system of national ocean space, approaching the basic concept of the Maltese Draft of 1972. This would end at two hundred miles: water column, seabed, and all. The best definition of this concept was contained in a series of draft articles by Tanzania. These also accommodated the rights of landlocked and geographically disadvantaged nations, encouraged trends toward regional management systems, and guaranteed regulated freedom of navigation, overflight, and cable-laying.

Some delegations — e.g., Haiti — hailed the economic-zone concept, claiming unqualifiedly that it would "put an end to inequality and underdevelopment." Others, like Lesotho, pointed out that the economic-zone concept would increase inequality, making the poor nations poorer and the rich richer. The main winners, after all, would be the United States, Canada, Australia, Brazil, and South Africa, who were already rich; while a large number of nations would be disadvantaged. Sixty-eight such nations were mentioned among the latter, of which fifty-four would be developing nations, including the poorest, which are landlocked.

The landlocked nations introduced articles which would assure them of free access to the sea, the right to exploit the living and nonliving resources in the economic zone of coastal nations, and participation in the decision-making of the international Authority. However, some of the coastal nations stood adamantly on their existing rights over the mineral resources of their continental shelf which they were determined not to share with anyone.

Thus the economic-zone concept came under a

two-pronged attack: from the conservative great naval powers, who want to maintain the "freedom of the sea" (the Soviet Union, for example, insisted on treating the economic zone as belonging to the "high seas," and on strictly limiting national jurisdiction to resource exploitation while preserving the other "freedoms of the high seas" in the area); and from the landlocked nations, especially the developing ones, who want their fair share of the "common heritage of mankind." Obviously, much work remains to be done before an agreement on the economic zone is reached.

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One came away from these meetings with the impression that the discussions had been limited to purely legal considerations. A debate on the economic implications of the economic zone — similar to the one that shook the First Committee with regard to seabed mining — might have had a clarifying and unifying effect and contributed to the maturation of the concept. It is not too late for such a discussion.

In the meantime, the majority nations would do well at this point to concentrate their attention on international ocean space and its management, where they so widely agree, rather than risk breaking up their unity on arguments about the details of national ocean space. Once they have cemented their unity with an agreement on a comprehensive, strong, international ocean-space authority, they may find it easier to reach agreement on national ocean space. Politically it is essential that the majority should maintain and strengthen their unity.

Some progress was made with regard to international straits. A United Kingdom proposal would reconcile the perceived needs of the great naval powers with the concerns of coastal states, with most international straits falling within national ocean space. From the standpoint of the superpowers, the problem of free and unimpeded passage of warships through straits has assumed a crucial — one might say obsessive — importance. Both the Russians and the Americans and their client states kept asserting that there would be no treaty unless it guaranteed this right.

While the security interests of states bordering straits must be safeguarded, the Soviet Union conceded, "the security of the straits' users is no less important. The defense and security of the Soviet Union depends on communication through international straits." Neither the Soviet Union nor the United States would ever accept the concept of "innocent" passage through straits.

To the majority of nations the straits problem was not very interesting. Most thought that the right to innocent passage was plenty good enough. Albania suggested that the passage of warships through territorial waters — which now include all straits less than twenty-four miles wide — "must be according to the laws and wishes of the neighboring coastal states." It also demanded that the Mediterranean countries liquidate foreign bases on their territories, and deny facilities to American and Soviet fleets. "The conference should establish norms to prevent the concentration of large military fleets on the high seas or near the shore, and forbid military maneuvers near coasts."

Algeria proposed that the convention should include opposition to anything that could threaten the exclusively peaceful use of the sea; and the Dominican Republic demanded that all nonpeaceful uses of the seas should be prohibited.

Sri Lanka said a distinction should be drawn between the passage of commercial and military vessels. It would be in the interest of world trade to guarantee passage of commercial vessels against hindrance save for exceptional circumstances, on the basis of nondiscrimination in regard to flags or cargoes, regardless of origin or destination. It would not be reasonable to expect a coastal state to turn a blind eye when it found an armada of military vessels within invasion range of its territory. Military vessels must give prior timely notice of passage through international straits to the coastal states concerned.

Other nations, including Tanzania, Egypt, and Peru, agreed that merchant ships are useful to the world community and must enjoy unimpeded passage — subject, of course, to safety and traffic regulations, especially in the case of tankers — while warships, as the Tanzanian representative said, are "used mainly to further the foreign policy objectives of a few states. They must observe norms that would insure peaceful passage."

It seems difficult for a compromise to be reached on this point. Either warships, including submersed submarines, may pass, or they may not. It should be noted that the rights of passage of warships are not very clearly defined under existing international law, and rather than heading toward a collision between the few naval powers on the one hand and the majority of nations on the other, it may be wiser to leave things as they are, and not attempt explicit provisions for the passage of warships.

Here, again, the discussion appeared excessively legalistic, as though the international law aspect were all. This problem also has a technological aspect: e.g., the improvement of tracking and monitoring technologies may prevent the unobserved passage of submersed submarines through straits even if the law guaranteed it. On the other hand, such passage may become less crucial with the availability of intercontinental missiles and the Undersea Long-range Missile System, with the help of which the Mediterranean, for example, might well be controlled without a single warship passing through the Straits of Gibraltar or the Dardanelles. In addition, the problem has a political component: that is, passage could be arranged bilaterally, where deemed necessary, by dint of promises and threats, even if there were no universal treaty establishing the right of free passage through straits.

There is, however, another consideration of overriding importance. The great naval powers ought to worry: the days of their free, unimpeded operations in ocean space are over. They are over because the rapid development of the peaceful uses of ocean space cannot be stopped. The industrialization of ocean space involves an increase in management and governance, whether national or international. And such governance imposes limitations on military uses. In fact, the naval powers might fare better under an international ocean-space authority, which they now so greatly fear but in whose decision-making they would participate, than they would if they have to face the intransigence of national jurisdictions in ocean space.

Alternative articles were drafted, and main trends established on a number of other items on the huge Second Committee agenda. A single text of all the material is being prepared for the next session. The smaller problems will undoubtedly fall into place once the big issues are clarified and settled.

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The Third Committee, under the chairmanship of Ambassador Alexander Yankov of Bulgaria, began its work on July 4th. It held seventeen formal and a number of informal meetings, and concluded its work on August 27th. Its concerns were the preservation of the marine environment; scientific research; and development and transfer of technology.

As in the other committees, there was a contrast between a minority of states holding out for freedom of scientific research under a weak international regime and weak coastal-nation control, and a majority of nations favoring the internationalization of research in the international area and effective control by the coastal states in national ocean space. Again, with regard to national ocean space, there was a discrepancy between coastal developing nations who, unqualifiedly, included the economic zone in national ocean space, and landlocked nations, some of which favored different regimes for the territorial sea and the economic zone with regard to scientific research.

And the imbalance noted between the First and Second Committees concerning the competence of the International Authority existed also between the First and Third Committees. Time and again, delegates referred to an "Authority" which should conduct scientific research and be responsible for environmental controls — which, in the First Committee, limited as it was to seabed mineral extraction, simply did not exist.

Within its own terms of reference, however, the Third Committee did a lot of work and heard a number of new and constructive proposals.

One of the best drafts on pollution came from Kenya, home of the United Nations Environment Program. It went a long way toward spelling out the conditions laid down by UNEP's executive director, Maurice Strong, in his address to the plenary session.

In the Kenya draft, responsibility for pollution control is shared by states, regional and global international organizations, the Seabed Authority, and UNEP, in ways which are not always clear. Thus the Seabed Authority is charged with the obligation of setting up binding standards to control pollution from exploration and exploitation of marine resources of the seabed and water column beyond the limits of national jurisdiction, and of taking all necessary measures to prevent the pollution of the marine environment from all sources beyond the limits of national jurisdiction. This presumably includes shipborne pollution for which the Intergovernmental Maritime Consultative Organization, not the Seabed Authority, is responsible in the present framework. And while, according to the Kenya draft, UNEP would be in charge of sorting out duplications and contradictions of this kind, evidently the problem cannot be solved systematically without coöperation with the First Committee.

A zonal or regional approach was proposed in various papers and drafts, with regard both to pollution controls and the transfer of technology. Thus Chile proposed the establishment of regional stations

financed through contributions from the oil consortia and similar organizations "not only to prevent fuels from catching fire but also and above all to eliminate the effects of pollution of the marine environment caused by the spillage of large quantities of fuel ensuing from such accidents."

A number of draft articles dealt with the transfer of technologies. In this context, Nigeria proposed that "the International Seabed Authority shall make available to any country, on request, blueprints and patents of plants and machinery used in the exploration and exploitation of the international area."

Trinidad and Tobago proposed a kind of scientific enterprise for the conduct of scientific research in international ocean space, analogous to the Enterprise that is to manage the exploration and exploitation of seabed minerals in the area: "Marine scientific research in the international area shall be conducted directly by the International Authority and, if appropriate, by persons, juridical or physical, through service contracts or associations, or through any other such means which may be determined by the International Authority and which shall insure its direct and effective control at all times over such research."

The work has been concrete and clarifying. The alternatives have been laid out. Which ones will be adopted in the end will depend, of course, on the outcome of the work of the other committees.

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The concluding days of the Caracas session were dedicated to a plenary review of the results and to plans for future sessions.

The next session will be held in Geneva, from March 17 to May 3 or 10, 1975. It is not realistic to expect that the colossal amount of work to be done can be completed by next May. Considering the complexity and novelty of the task, anything done hastily could only be bad. Another working period of at least eight weeks, after Geneva, will be necessary. That additional session may be held in either Vienna or Caracas, later in 1975 or in 1976. It is anticipated that the treaty will be signed in 1976 in Caracas, in recognition of Venezuela's magnificent organizational efforts and hospitality as demonstrated at this conference.

The Third Conference on the Law of the Sea heralds a revolution in international relations. It is not only that the developing nations, supported on various occasions also by groups of developed nations, hold a solid majority of votes — well over two-thirds. This fact by itself might be construed by the minority as a token of obsolescence of the U.N. structure and its one-state-one-vote system, which, according to some, no longer corresponds to the political, economic, and technological realities of today, and therefore is unworkable. This, however, was not at all the impression one got in Caracas. There were other signs of the political reality and validity of the revolution.

Conference President Amerasinghe comes from a developing country. His diplomatic skill and political vision were challenged by no one. The conference could not have had a better president.

Of the thirty-one vice-presidents of the conference, twenty-three come from developing nations.

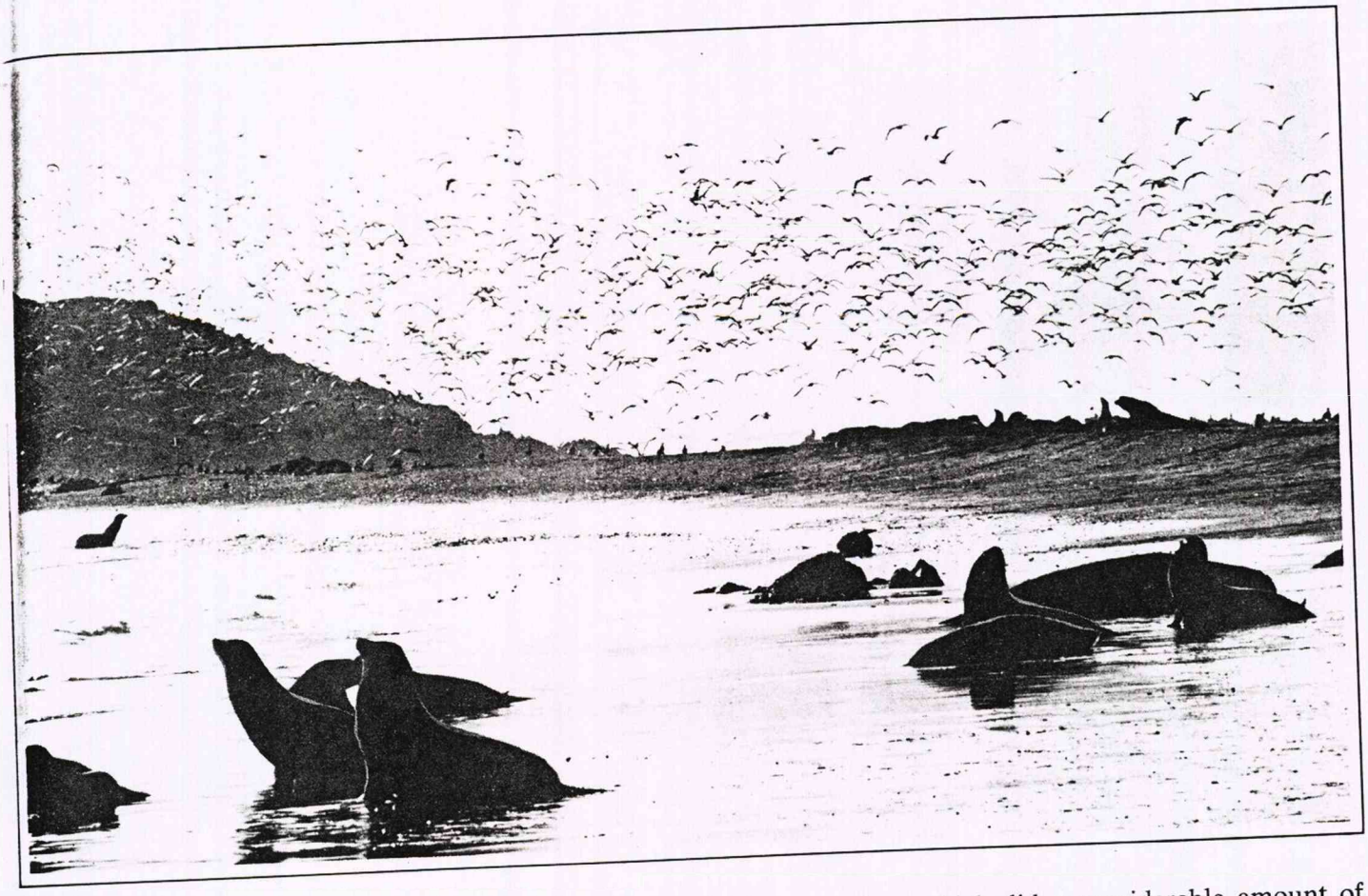
Of the three committee chairmen, two are from nonaligned developing nations, and one from a developing Socialist nation (Bulgaria). Of the nine vice-chairmen of the three committees, five come from developing nations; of three *rapporteurs*, two come from developing nations.

A committee has been established to draft the final Treaty Articles. It is chaired by Ambassador Alan Beesley of Canada, who has distinguished himself during the years of preparatory work in the Seabed Committee as one of the leaders in the whole endeavor. Of the twenty-two members of his committee, sixteen are from developing nations.

The credentials committee, headed by Heinrich Gleissner of Austria, consists of eight member nations, five of which are developing countries.

It would not be fair to ascribe this preponderance merely to the voting strength of the developing nations in the Plenary Assembly. For it was not the numerical preponderance that was the most striking feature of the conference. Much more impressive was the fact that the intellectual and conceptual initiative definitely has passed from the minority of great powers and developed nations to the Third World. The entire effort stems from the initiative of a small, developing nation, Malta. And while the majority, on the whole, showed a remarkable degree of restraint and willingness to negotiate, the minority of industrialized nations seemed intellectually and politically on the defensive, and — with some exceptions — not very effective at that.

It would be tragic if the minority insisted on its rigid rejection of change. For change will come. It could be peaceful, it could be glorious, if the developed nations regain flexibility and initiative. It could be painful, beset with starvation, disruption, and



violence, if the rift between majority and minority is allowed to widen.

Another striking feature was the emergence of the regional principle as a basis for organization. This ranged all the way from the ceremonial (on the occasion of both the commemoration of the death of President Juan Perón and the celebration of the birthday of Simon Bolivar, the Libertador, homage was rendered by the chairman of each of the geographical regional groups), to substantive work and negotiation, as exemplified by the working group of the First Committee referred to earlier. The regional groups met continuously in closed sessions, contributing political cohesion to the work of all the committees.

Of course, regional organization and representation still need a lot of refinement. There remain imbalances, overlaps, and gaps. And the most important of these groups, the so-called "Group of 77," comprising nonaligned developing nations on all continents, turned out to be the heart of the conference.

Other informed groups — "nonterritorial" and "functional" groups — played important roles in the background of the conference, including the "Evensen Group," named after its chairman, Jens Evensen of Norway. It consisted of about twenty mostly coastal nations which did a considerable amount of clarifying and negotiating during the session and will continue its activity between sessions.

There was also the "Dispute-settlement Group," co-chaired by El Salvador's outstanding Ambassador Galindo Pohl and Australia's Counsellor H. C. Mott. This consisted of about thirty nations, including the United States. In his report to the final plenary session, Ambassador Pohl extolled, in particular, the contribution of Louis Sohn of the United States to the work of this committee. Sohn's was probably the most constructive contribution of the United States to the whole conference. This group is considering a dispute-settlement system, which might take any of several alternative forms. It might be joined to the International Court of Justice at the Hague which might be reorganized in various "chambers" to deal with different kinds of issues arising under the new law of the sea; it might be created by a separate treaty or protocol; or it might be attached to the Seabed Authority. The decisions of this court would be binding on nations and other entities operating in ocean space.

Such a court would not be competent, however, to deal with questions affecting the territorial integrity of nations, which are not amenable to compulsory

settlement. These would have to be referred to the competent political organ of the International Authority, presumably the council, for arbitration or conciliation. Pohl pointed out that this kind of compulsory dispute-settlement system offers the only guarantee for the rights of smaller and weaker nations against the larger powers.

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There will be a great deal of work going on between sessions of the conference, not only at the U.N. Secretariat and at a number of specialized agencies and international organizations, but also among contact groups, regional groups, functional groups of national delegations. The full success of Caracas can be assessed only at the beginning of the Geneva session next March.

Looking forward to the chances and challenges of the next sessions of the conference, some problems and issues have not been considered simply because they do not fit within the terms of reference of the three main working committees of UNCLOS. This applies, in particular, to the interactions of uses of ocean space — of which the mining of seabed minerals is just one and not the most important one, nor, as the discussion of the First Committee revealed, is it one of economic interest for the majority of nations. It also applies to new uses and new technologies which, if unregulated, may alter large ocean areas during the next decades. It is on the regulation and management of these interactions and new technologies that the conservation of the ocean environment and the development of its resources depend.

The "Authority" referred to by all three committes must be made consistent and be given competences responding to the needs of these committees. In other words, we need an Ocean-Space Authority, not merely a Seabed Authority. This message came through, clear and loud, in statement after statement from the majority of nations. It has been blocked by the conservatism of the minority nations, as well as by the terms of reference of the three existing committees.

What can be done politically to help reach this goal? Theoretically, one could change the terms of reference of the First Committee to enable it to consider an international regime for ocean space, comprising the surface, water column, the seabed and subsoil thereof; and appropriate international machinery to give effect to this regime. The conference is sovereign and competent to make such a change — as the delegate from Tanzania pointed out in the First Committee.

There are dangers, however. The change might be diversive. It might jeopardize work on the seabed, which certainly also is needed and has made such a successful start, without achieving the wider political aim.

A second way would be to create a Fourth Main Working Committee to combine the work of the three committees and take up problems that do not fit into any of them.

The disadvantage of this approach would be shortage of manpower. It is a strain on many delegations to muster enough expertise to participate actively and simultaneously in the work of all three committees. Adding a fourth committee might overtax their capabilities.

A third way would be for the delegation or delegations of some forward-looking nation or group of nations to prepare treaty articles establishing the required Ocean-Space Authority, or to take up the Maltese draft and revise it as may be required by the progress of the work achieved during this session, and to introduce it at the next session in all three working committees. Each committee might then take up the section falling within its own competence and, at the end, propose the results of its deliberations to the plenary session.

It certainly would be more productive to work from a unitary and systematic text than to work in bits and pieces on the basis of conflicting premises. The new basic document should place the Seabed Authority in its proper perspective of interaction with other uses of the oceans and provide a common framework for the activities of this new Authority and of the Fisheries Department of the Food and Agriculture Organization, the Intergovernmental Oceanographic Commission, and the Intergovernmental Maritime Consultative Organization, with the structural modifications required to manage fisheries, navigation, and science in accordance with the deliberations of the Second and Third Committees.

Such developments may well mature in the intersession period. The job ahead is enormous. But the amount of work already done is remarkable.

Mrs. Borgese is a Senior Fellow of the Center. As a representative of the International Ocean Institute, she was present and active throughout the Caracas conference, making two statements before the First Committee, conducting a seminar, and distributing documents during the course of the meetings.