

Chapter 6

Conclusions and Recommendations

Since the days when the Britannia and many other nations with a fleet ruled her chosen waves by cannon-fire, the rule of law enforced by these maritime powers has been successfully applied to almost every other aspect of man's activity on earth. But the oceans and seaways are in a state of legal chaos, with dozens of partial conventions and agreements signed by varying numbers of nations and ignored by many, as well as the unilateral declarations of extended territorial rights that cause fishing and navigational conflicts from nearly all over the world.

The main reason is that the waters of the ocean have a profound influence on man and his environment. They play a major role in governing his climate. Their photoplankton produce over half of the earth's oxygen. They are a rich source of food, energy, and minerals, a highway of commerce, and a receptacle for wastes. The ocean's shores are the site for urban centers and industry, a place of refuge from industrial civilization for the commercial and sports fisherman, swimmer, boatsman, and sunbather.

Resultingly, there is a thrust to claim as much as possible the sea areas of the coastal nations. The movement to gain control of ocean resources is similar to the 19th century colonial push by European nations into Africa and Asia, as the industrial era was getting under way. The colonial era is over, but technological progress will now enable man to exploit the resources of

the sea, which cover 70 per cent of the total area of the globe.

Recently, three developments have heightened international interest in ocean exploration and research.

1) The world's growing population, together with intensified industrialization and urban concentration, has sharply increased the demand for food, energy, and minerals, enlarged worldwide ocean-borne resources distribution networks, and increased the quantity of waste products deposited in the ocean, thus threatening the environment, especially of inshore areas. Rapid population growth has more and more forced mankind to turn to the sea for its food and energy requirements. Each nation is struggling to find as many resources in the sea as possible. A proper control is very desirable to prevent national conflicts arising from such rivalry.

2) New marine technology is making possible increased operations in the sea, once inaccessible because of the ocean's hostile environment, thus opening possibilities for greater use of ocean resources. Many ways of exploiting the sea undreamt of a few years ago have now become possible. Man's technology will soon make it possible for him to exploit much of the sea's natural resources and may, in the not-too-distant future, allow him to actually live for long periods of time within the ocean. Of course, technological advances have not been limited to aiding exploitation of resources. Work is being done to improve and

expand underwater transportation, e.g. inaugurating navigation lines for commercial submersibles, developing underwater vehicles to aid fishing, and making submarine space available for fish farming and other forms of aquaculture. In addition, new and refined techniques will enable greater amounts of fresh water to be produced and more power to be generated. This advancing technology will, however, create many new legal problems.

Several new activities will have to be regulated and additional regulations will have to be produced.

3) After World War II more than 100 colonial possessions of the Western power became independent and this was resulted with the increase number of nations to face the sea. These countries hope that new developments in ocean technology will enable them to obtain greater benefits from ocean resources. This heightened international interest has increased the possibility of overlapping interests between nations and depletion of marine resources, and has spurred consideration of seaward extensions of national jurisdiction.

In view of the huge economic value of the seas and the oceans, which cover approximately three-fourths of the world's surface, it is not unexpected that developed nations, better equipped with technology and capital, are very eager to exploit these reserves. Their exploration and exploitation activities are not confined with their territorial sea limits alone, adjacent to other countries' territorial seas.

The enhanced ocean uses and resource potential can provide benefits to developing nations. Unused fishery resources

and fuel mineral deposits exist off the coasts of a number of developing countries, and many are dependent upon maritime transportation to link coastal communities and provide the basis for foreign trade. In fact, technologically-advanced and rich nations are already exploring and doing scientific research in the high seas, while poor nations seem to be indignant to see the resources--considered as "the common heritage of mankind"--touched and exploited by the developed countries, without their participation. The poor countries have to watch the vital living resources of the sea being efficiently and ruthlessly exploited almost within sight of their coast by foreign-flag vessels.

The wealthier nations, which have a huge technological head-start over the third-world nations, are infinitely better placed and if they got their hands on the sea's resources, they could already exploit the wealth of oceanic waters and bottoms in a systematic way. They are striving to get the most from the sea by employing higher technological knowhow while less-developed countries are trying to protect their interests in the sea for their possible future exploitation when they have accumulated adequate technology and capital. These countries see the gleam of immense riches of the ocean to which they think they have the right. Thus, the underdeveloped countries are united at least one respect--their longtime hunger for sovereignty and control participation over the ocean. The "have-nots" do not calculate their gains in economic terms, especially if the gains

sound like charity from the "haves". They are more interested in direct and exclusive control over what they consider to be theirs.

However, it must be accepted that conflicts of interests generated in the diversities between nations are not simply and only between developed nations and developing ones. The problems do not exclusively focus on "a widening rift" between developed and developing nations because if this is a case, they could surely have been resolved at the UN sponsored Conferences on the Law of the Sea, where the developing nations constitute more than two-thirds of the total votes. In short, developing countries collectively could have their ways at these Conferences. To illustrate their complexity, in fact, the geographical problems exist between states with the coasts facing the open sea and the geographically disadvantaged states, such as land-locked states, shelf-locked states, states situated in the areas of enclosed or semi-enclosed areas, as well as states with short coast lines or with minimum sea contact. Furthermore, the problems are aggravated by other difficult and complicated factors, such as a very wide range of diversity of economic, technological, and social and other aspects of national life, a great geographical variegation; and various other interlocking and interdependent issues. Thus, the manifold and complex problems discussed above are of unprecedented difficulty.



Consequently, the confrontation now threatens to extend to the bottom of the oceans. As economic investments and appropriations inevitably entail political control, a confrontation of the powers will take place on land, in the air, and at the bottom of the sea, and it would be absurd to believe that more than 150 nations, or even a small fraction of them, could preserve independence in such a showdown.

The world community therefore is trying to establish a new order to control and administer the exploration and exploitation of the resources of the oceans. The rights of the coastal state need to be clarified. The continental shelf must have a definite end. Competition in fishing ought to be regulated and fish conserved, freedom of scientific research reasserted, military uses controlled. Most important, perhaps, there is a wealth of treasure in the sea for future generations, and decisions have to be made that will determine how those resources will be exploited, for whose benefits, and with what consequences for individuals and nations.

Governments are beginning to think of these questions and to formulate policy in the light of national interests as they see them. Other nations also have competing interests, and the balance of interest of different nations might point to different

law. Most nations of the world are coastal nations, and are tempted to extend their sovereignty seaward. But there are nations without coasts and not all coastal nations are equally blessed with plentiful offshore resources. Even those who would like a wide shelf for themselves may be unhappy with the consequences of letting others have one. A few nations do, while most nations do not, have the skills and the capital to reach for the resources of the deep sea. Most nations are poor and will want law that will enable them to share in the wealth of the seas, but many of them depend in many ways on rich and skilled nations who may wish to impose law that will discourage exploitation and, in any event, they cannot impose on the powerful, wealthy and skilled few, law that the latter cannot or will not live with.

The real problem is being to achieve comprehensive treaty law in time so that it does have a chance of being accepted and is not overtaken by unilateral actions. The delay has its obvious dangers and thus every countries must keep the pressure on for moving ahead as expeditiously as possible. That is the reason why the United Nations Third Conference, convened since 1973 to enact a new sea law, is one of the most important diplomatic conferences in history. It has extremely important implication as well for every individual country as to the international community as a whole. Its purpose is to endeavor to establish a new legal regime of international law of the sea for the

equitable benefit of all mankind.

New law for the sea is law for a long future, It should not be made too fast or too early, but basic principles and general directions are being determined now. Law, moreover, is made by the actions of nations as well as by formal procedures, and undesirable law should not be allowed to "happen" by default.

The new setting up law of the sea is headed for a new direction. The basic direction is changing from an essentially laissez-faire approach to a system of proper and effective regulation of all activities in, or under the sea; from the chaotic practices among states due to inadequacy of traditional law of the sea to the need of regulating the competing uses of the sea, so that to avoid conflicts and to effect equitable redistribution of the resources of the sea among states.

It is recognized that the traditional concept of freedoms of the sea should be reconstructed, if not totally discarded. A vast majority of nations of present day's world are no more in the mood to tolerate or to accept the concept of the freedoms of the sea which has long been interpreted as englobing freedom of deployment of force, freedom of rivalry for power, freedom to monopolize the exploitation of marine resources, and also freedom to pollute. In other words, the world of today no longer accepts the freedoms of sea that mean freedoms of abuses of the sea which are now regard as a common heritage of mankind. A new legal order regarding the sea is urgently needed. And it should reflect

the reality of evolution of technology, the transformation of economic significance of the sea and of the change in political forces in international relations. The law of power should be replaced by the law of welfare and of social justice.

It is certain and inevitable that the task of enacting this new sea law represents an extremely difficult and most complicated one. The task of forming a new law of the sea is not only the one of identifying, clarifying and supplementing the existing rules of international law. In fact, it is to restructure the whole area of the law of the sea. In achieving this task, some recommendations must be taken into consideration.

The first recommendation is that the new law of the sea can be achieved by accommodating particular interests to the common ones, and this will take a form of "package deal" on all unsettled major issues. A package deal which can accommodate all interests involved. One of the favorable things about the law of the sea is that-- while in some areas there is a developed-developing split-- there are so many other types of interests involved. There are coastal states versus land-locked states, there are maritime states versus the environmentally oriented, and so on. While these differences of interest in some ways make the negotiation of the conference for setting a new law more complex, they also lead to the possibility of having a package that is more generally acceptable.

The particular interests, even of a minority, cannot be swept under the carpet. The laws of law making are based on equality of states. No decisions can be imposed on dissenters, and the law cannot survive if it is rejected by many states.

The prospect of a successful law, therefore, lies imperatively in the consensus or general agreement, which, in turn, can materialize only by the spirit of accommodation and flexibility.

The second recommendation, therefore is that the best course for a new law should be a mutual accommodation in order to devise a formula taking into account the interests and rights both of the coastal states and of their immediate neighbors in the region. It is not merely a case of diplomatic accommodation on some scientific issues of normal transaction among states which can be done outside this kind of law-making conference. It is, in fact, a case of mutual accommodation in legal principles. In other words, it means an accommodation which should not result in establishing the new rights for one in such a manner as to eradicate or suppress altogether the legitimate and indispensable interests of others.

It is rather a matter of how to adjust each other's interests, so that the application of the concept should not disproportionately affect other neighbors, taking into account the peculiarity of the situations, and the complexity of interests and the range of their needs.

In the development of the new sea law, the attitudes of major powers are crucial. They have extensive coastline, capital, technical skills, power, and influence. They have the unique opportunity to help develop law in the world interests and for the common good. As a result, an accommodation is an important issue for the successful law.

International cooperation in ocean activities is the third recommendation. International cooperation becomes the important factor to foster world order and development and to prevent and mitigate conflicts and rivalries. As various national interests

in ocean activities converge, international agreements and cooperation will be increasingly needed to reduce conflict and rivalry and to advance world order, understanding, and economic development.

International collaboration is essential if knowledge of the vast marine environment are to increase within a meaningful period. It is needed to obtain more and better information about the oceans. Because of the size, complexity, and variability of the marine environment, international cooperation in scientific investigations is needed, if many aspects of the oceans are to be studied in a reasonably short and useful period of time. A multinational approach to the peaceful uses of the seas is desirable and necessary.

International cooperation in the oceans has existed for many years. But the pace and scope of cooperative international activities is increasing. In the years ahead present initiatives will be implemented and new opportunities sought. Seabed arms control measures will have to be completed; multilateral development of legal arrangements to prevent conflicts in the ocean and on the seabed must continue; major oceanic exploration and research cooperative program must be carried out; efforts to provide the benefits of new marine technology for developing nations must be increased; and closer ties between nations in marine science collaboration will have to be forged. The opportunities for international cooperation in the oceans have

never been better; and the needs for such cooperation have never been greater.

The international cooperation in the activities of the marine sciences can be characterized as follows:-

- encouragement of increased cooperation among ocean scientists of all nations and broadened dissemination of scientific results;

- support of the activities of the many bodies of the United Nations system and other international organizations engaged in oceanic activities and of efforts to improve the international organizational structure;

- collaboration with other nations in developing and using new marine technologies within a framework of mutual benefit;

- making available marine technology and other assistance to complement the efforts of developing countries in strengthening their capabilities to use the ocean and its resources as a pathway to economic progress, recognizing that aid burdens must be shared by other nations and international organizations;

- strengthening of international programs and projects which foster cooperation among neighboring nations to meet common interests and problems;

- pursuit of a strengthened code of international law which will preserve the freedoms of the sea, insure that nations have equitable opportunities to participate in the development

of the wealth of the ocean, and anticipate and prevent potential conflicts arising out of expanding maritime interests; and

- development of international legal, financial, and political arrangements to promote investment in marine development and facilitate a fruitful partnership between public and private interests in marine matters.

In sum, a new law of the sea would be useless if there is dearth of world responsibility and no exchange of information concerning the sea among nations. This point is extremely essential for the attainment of any agreement. Information on the danger of pollution should be disseminated, and benefits to be derived from the ocean bed should be made known. Each nation should be prepared to forego its own interest for the sake of the world's benefit otherwise no solution seems to be possible.

The fourth is that the required new law for the sea should be based on the idea of "regional international law" if it is possible. Primarily, it should be the law of each region and then advanced to be the law of the universe, that is-- the international sea law for all mankind. (The term "regional international law" in this particular case, means "an organized interdependence based on geographical proximity".) Since the practical chances of success of a global approach, reinforced through the United Nations, have been viewed with a great deal of doubt, a regional approach could perhaps be considered a possibility.

The idea of "regional international law" occurs from the fact that laws and regulations of few nations in the same region

with the same interests and goals naturally would be easier to settle than those of different regions with different interests and goals. It is put forward as an alternative to the "universal international law" on the ground that only within limited segments of the globe can we find the foundations of common loyalties, the similarities of national problems, the awareness of common interests, which are necessary for the effective functioning of any multi-national organization. Regional cooperation on the sea law, if successful, could gradually evolve toward the actual merging of areas too small and too interdependent on one another to promote growth and to preserve national integration. There is a plea, therefore, in favor of regional approach for the law of the sea to extend to various parts of the world for the benefits of the sea law solution. This is because it is foreseen that, under the impact of the regional movement, the bipolar structure of the law will slowly evolve toward a more stable multipolar structure.

In short, we may conclude that there are some indications considered to be the fundamental changes in the law of the sea:- (a) from a uni-dimensional to a pluri-dimensional; (b) from a law of movement to a law of appropriations; (c) from a personal to a territorial law; and (d) from a universal to a regional law. Nevertheless, while the regional approach is still supported in some political quarters, at the moment it seems that regional solutions will merely supported the global ones.

Furthermore, scientific research on ocean activities must be promoted in order to advance a new law of the sea. This is because the oceans serve as a unique scientific laboratory. Our knowledge of the seas and their resources is also exceedingly limited; the necessary scientific investigations are thus indispensable. Scientific research is essential if knowledge of this environment is to increase within a meaningful period. Effective exploration of the oceans is best achieved through balanced research and surveys-- between programs to solve specific scientific problems and programs for systematic collection of data on a geographical base which can be usefully applied in all nation's evolving oceanic activities.

The benefits of research contribute to the entire international community. They provide to an understanding not only the oceans but to the total global environment. Research in one locality could have an important bearing on a problem of much more general scope. It was pointed out that, since resource exploration and exploitation would be subject to coastal state jurisdiction, the coastal state need not fear the effect of scientific research data, but to the contrary could have much to gain from new information. The scientific research is apparently vital to the case of developing coastal states as the technical means to assess the implications of the research for its economic interests. Scientific investigation provides a much needed boost and assistance to the less developed countries by accelerated development of untapped marine resources. Shortly speaking, the advancement of marine affairs depended upon

expanding this scientific base of information.

Finally, recommendation is suggested on the development and transfer of technology. Every **country** especially the technologically advanced coastal states must establish a duty to promote the development and transfer of marine sciences and technology to the less developed ones. With regard to this transfer of technology, specific reference is made to the development of the marine scientific and technological capacity of developing states. All states have specific duties to promote the acquisition, evolution and dissemination of marine scientific and technological knowledge, scientific training and education, and facilitate access to scientific and technological information and data to developing country nationals. The establishment of universally accepted **guidelines** for the transfer of marine technology must also be set up.

In conclusion, the United Nations Conferences on the Law of the Sea, whose next session is to be held on May 23, 1977, are usually considered to be another attempt to establish a new sea law treaty on a worldwide basis. This is because the time has come for all states to resolve various obstacles with the eventual possibility of the emergence of a new era in international cooperation in the world's seas and oceans. No country wants to see anarchy in the oceans and every nation wants to know what its rights are. And no country wants a situation in which it would have to fight to maintain what it considers to be its rights. There may be strong disagreements about how the law

should be, but at least, everybody now wants a law of the sea treaty. It can only be hoped that such an international cooperation in working out the new law will work under the spirit of mankind's benefit with equitable share by all states.

Nonetheless, if a question is put on whether this Third United Nations Sea Law Conference will be capable of fulfilling its expected goal, the answer is still uncertain. To answer in the negative is to admit defeat for the United Nation's endeavor to solve the sea law problems as well as the aspirations for cooperation of the countries in world arena, but it is also too optimistic to answer in the affirmative at present.

In the author's opinion, however, she thinks that there is a tendency that the probability of the success of the next Conference is very scanty. This is because there are so many significant aspects of the law of the sea which states do not agree. The negotiations so far have also revealed that states do not agree on what the law should be in the future. In this situation, if a new treaty of the law of the sea is to be truly meaningful, it must deal reasonably with all of the main specific issues which, at present, seems impossible.

The reason is that each country of the world seems to have its own distinctive problem and, therefore, it is inconceivable for the United Nations Sea Law Conference to acquiesce to the satisfaction of all the countries. A solution appropriate for one country may not be for the other. For example, while the majority of the countries of the world are pushing for the

concept of the economic zone of 200 nautical miles in order to meet the dilemma of the specific breadth of the territorial sea limit and the definite zone of the continental shelf, others may not be in the position to benefit from this concept. Should the 200 mile criterion be accepted by the majority, the so-called geographically disadvantaged states i.e. land-locked states, shelf-locked states, semi-enclosed states and short coast-line states, would wish for an international standard to be devised to give compensatory rights of benefits for their geographically disadvantaged position. This is because they have no possibility of extending their jurisdictional sea areas to that limit. In the case of Thailand, for example, although she has a fairly long coast-line both in the Andaman Sea and in the Gulf of Siam, there is no possible means to claim the economic zone to a distance of 200 miles due to the fact that the widest limit of her coast-line is only 120 to 130 miles.

Apart from this, another significant aspect worth noting here is that there are more than 20 countries of the world which have already made unilateral proclamations extending their economic zones to 200 miles, regardless of whether the foregoing United Nations Conference will accept this concept or not. Some of these countries are, for example, the United States, the nine members of the European Common Market, the USSR, India, Bangladesh, Indonesia, Burma, Philippines, Malaysia, the Khmer Republic and Vietnam. These unilateral actions have already reduced the importance of the next Conference, whose possible

agreement could merely become a confirmation of the increasing reality.

Briefly stated, at this stage, it could only be assumed that the possible resolution which may come out of the Conference would merely indicate prospects representing the main trends and conceptions of each distinctive group. It is hoped that the Conference will be able to lay down some ground work and present some main recommendations as bases for the future bargaining in order to attain the general standard for international consensus. It is, however, improbable that there would be any concrete result produced from the negotiations. This is because the problems of the sea law have expanded in scope, involving vital interests of every country of the world in terms of economics, politics, and security. In this situation, each country would have to weigh its loss and gain carefully and it is likely to be a slow process before possible solutions will be unavoidably admitted.